STATE OF CONNECTICUT
STATE ETHICS COMMISSION

DOCKET NUMBER 95-6	)	STATE ETHICS COMMISSION
IN THE MATTER OF A	)	20 TRINITY STREET
COMPLAINT AGAINST	)	HARTFORD, CT 06106
ALAN S. PLOFSKY	)	JULY 7, 1995

NOTICE OF TERMINATION OF PRELIMINARY INVESTIGATION
AND RESULTS THEREOF

Pursuant to Conn. Gen. Stat. §1-82a, the State Ethics Commission declares that on July 7, 1995 it terminated the preliminary investigation conducted with regard to this matter. As the result of this investigation the Commission makes the following finding:

Finding: The Commission finds that the complaint in question is precluded under the doctrine of collateral estoppel.

Reasons: The above complaint was filed by John Merchant, who is the Respondent in Ethics Commission Docket No. 94-2. During the course of the Commission's preliminary investigation of Docket No. 94-2, Mr. Merchant filed, on October 7, 1994, a Motion to Disqualify Commission staff members, including Alan S. Plofsky. The allegations which are the subject of Docket No. 95-6 were also the subject of the referenced Motion in Docket No. 94-2. On October 7, 1994, the Ethics Commission heard and denied the referenced Motion, finding the allegations raised therein to be without merit.

Motion to dismiss Docket No. 95-6 moved by Commissioner DeFronzo; Seconded by Commissioner Lorenzo. Adopted 6-0.

Pursuant to Conn. Gen. Stat. §1-82a(a), the Respondent, Alan S. Plofsky, has requested that this matter be open and public.

By order of the Commission,

Cindy Cannata

Cindy Cannata
Clerk of the Commission

Dated July 11, 1995

Certified No. P 510 386 259

Phone: (203) 566-4472 Fax: (203) 566-3806
20 Trinity Street • Hartford, Connecticut 06106-1660
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95-6

CONNECTICUT ETHICS COMMISSION
20 TRINITY STREET
HARTFORD, CT 06106

COMPLAINT

I wish to register with the State Ethics Commission a complaint alleging a violation of:

XXXXXX The Code of Ethics for Public Officials and State Employees, Chapter 10, Part I, General Statutes.

_____ The Code of Ethics for Lobbyists, Chapter 10, Part II, General Statutes.

XXXXXX The Code of Ethics for Members and Employees of the State Ethics Commission, Section 1-80(h) of the Connecticut General Statutes.

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1. TIME AND DATE MATTERS COMPLAINED OF OCCURRED.
September, 1994.

2. PLACE ALLEGED VIOLATIONS OCCURRED.
Ethics Commission Office in Hartford and the Department of Public Utility Control (DPUC)in New Britain.

3. PERSONS INVOLVED.
ALAN S. PLOFSKY, Executive Director and General Counsel, State Ethics Commission.

4. WITNESSES.
Alan S. Plofsky, State Ethics Commission;
Reginald Smith, Chairman, DPUC;
Robert Golden, Assistant Attorney General;
Various DPUC employees;
Other DPUC Commissioners; and
Unknown others.

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STATE ETHICS COMMISSION

5. CIRCUMSTANCES WHICH INDICATED THAT THE CODE OF ETHICS DESIGNATED ABOVE WAS VIOLATED ARE AS FOLLOWS:

(see Statement of Facts attached hereto as EXHIBIT A)

CERTIFICATION

I hereby certify under penalty of false statement that I believe the foregoing statement, and the statement marked as EXHIBIT A, which is attached hereto and made a part hereof, which statements taken individually and collectively describe violations of the Codes of Ethics, are true.

John F. Merchant
Signature

May 30, 1995
Date

Complainant's name and address: JOHN F. MERCHANT
480 RIDERS LANE
FAIRFIELD, CT 06430

Complainant's telephone numbers: Home - 203-255-6643
Work - 203-827-7887

Mail or hand deliver this complaint to: STATE ETHICS COMMISSION
20 Trinity Street
Hartford, CT 06106

NOTES:

(1) This Complaint may not be withdrawn by you, except with leave of the Ethics Commission.
(2) In addition to the criminal penalties that may be imposed upon a complainant who, under penalty of false statement, knowingly files a false complaint, the Codes of Ethics provide that if any complaint is made with the knowledge that it is without foundation in fact, the person against whom the complaint is made (the respondent) has a cause of action against the complainant for double the amount of damage caused. If the respondent prevails in the action, the costs of the action, together with reasonable attorney's fees may also be awarded the respondent by the court.
(3) The Commission's preliminary investigation into a complaint is confidential, unless the respondent requests that it be open. Unless the Commission advises you otherwise, the allegations in the complaint and any information supplied to or received from the Commission shall not be disclosed during the investigation to any third party by the complainant, respondent, witness, designated party, or Commission or staff member.

EXHIBIT A - (Statement of Facts re Complaint of John F. Merchant dated May 23, 1995)

1. On June 25, 1994, Jeffrey Olgin, an attorney employed by the State Office of Consumer Counsel (hereinafter OCC) in New Britain, CT, filed an Ethics Commission Complaint against John F. Merchant, which Complaint was designated Docket #94-2 by the Ethics Commission.

2. In September, 1994, Alan S. Plofsky, Executive Director and General Counsel for the State Ethics Commission, wrote, signed and sent a "Confidential" letter to Reginald Smith, Chairman and Commissioner of the Department of Public Utility Control (hereinafter DPUC), New Britain, CT.

3. Said letter *inter alia*, disclosed to Smith the fact that an Ethics Commission Complaint had been filed against Merchant. It asked Smith to intercede on behalf of Olgin in an internal matter involving Olgin and OCC. A copy of said letter is available upon proper request.

4. It is not known how Plofsky was made aware of this internal matter, however, he did not discuss the matter with either the Consumer Counsel or the Assistant Consumer Counsel, each of whom is Olgin's superior, prior to writing to Smith.

5. Plofsky knew, or should have known, that, as a matter of law, Smith could not grant his request since OCC and the DPUC are separate and independent State agencies. The OCC regularly appears before the DPUC in contested matters heard and decided by the DPUC. The letter requested Smith to act illegally and, risked interference with OCC's statutory relationship with the DPUC.

6. Plofsky's voluntary and secretive attempt to interfere in matters outside the jurisdiction of the Ethics Commission, or its staff, represents a deliberate and intentional violation of Connecticut General Statutes, Sections 1-80(h) 1-82(a) 1-82(b), 1-82a(a) and/or other confidentiality requirements of said statutes.It may also violate his oath of office.

7. Plofsky's acts suggest, and may represent, a preference by him on behalf of one party to a pending Complaint. They taint his future role in said proceeding and, perhaps, the proceeding itself. Arguably, the Commission, acting by and through Plofsky, may itself have violated the laws regarding confidentiality, whether they knew of Plofsky's letter or not. Also, arguably, Plofsky took sides and/or prejudged the issues in the Complaint, without the full investigation required by statute. He then failed to recuse himself from further participation in Docket #94-2. It is not known whether Plofsky disclosed the letter to Commission members. If he did, this raises other serious issues which must be addressed.

8. The Respondent's rights in Docket #94-2 have clearly been seriously violated.

9. CGS Section 1-80(h) imposes a legal duty upon State Ethics Commission members and staff to obey each and every law governing complaints filed with the Ethics Commission. Plofsky, and perhaps Commission members, violated the law. This Complaint is filed to formally address those violations.

John F. Merchant

John F. Merchant

STATE OF CONNECTICUT)
) ss May 30, 1995 at New Britain
COUNTY OF HARTFORD)

On this the 30th day of May, 1995, before me, Bruce C. Johnson, the undersigned officer, personally appeared John F. Merchant, known to me to be the person whose name is subscribed to the within Complaint and Statement of Facts and acknowledged that he executed the same for the purposes therein contained.

Bruce C. Johnson
Commissioner of the Superior Court
JURIS #307986