

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE SECRETARY OF THE COMMONWEALTH

FROM: [unclear]
DATE: 10/13/97
BY: [unclear]

Commonwealth of Pennsylvania, :
Bureau of Charitable Organizations :
 :
 : Docket No. 0039-98-10
 v. :
 :
 : File No. 10-98-05397
 Michael Selvanto, :
 Respondent :

FINAL ADJUDICATION AND ORDER

Carol Aichele
Secretary of the Commonwealth

302 North Office Building
401 North Street
Harrisburg, PA 17120

HISTORY

This case comes before the Secretary of the Commonwealth (Secretary) pursuant to the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990 (P.L. 1200, No. 202), as amended (Act), 10 P.S. §§162.1 *et seq.* On June 30, 2010, the Department of State (Department), Bureau of Charitable Organizations (Bureau) filed an order to show cause charging Respondent with several violations of the Act, 10 P.S. §§ 162.1 *et seq.*

On August 5, 2010, Respondent filed an Answer to the order to show cause, denying the allegations contained in the charging document. A formal administrative hearing was scheduled for October 18, 2010. On September 9, 2010, the Commonwealth filed a Motion for Continuance which was granted, and the hearing was rescheduled for December 17, 2010. On October 25, 2010, the Commonwealth requested a pre-hearing conference, which was scheduled for November 17, 2010.

On November 10, 2010 and again on March 21, 2011, the Commonwealth requested continuances of both the hearing and pre-hearing conference pending settlement of the matter. Thereafter, a hearing was scheduled for October 17, 2011. Respondent was notified of the new hearing date by notices mailed to 451 East Bay Avenue, Barnegat Bay, New Jersey 08005 and 19 Merle Drive, Manahawkin, New Jersey 08050. A formal administrative hearing was held October 17, 2011, as scheduled. Jacquelyn E. Pfursich, Esquire, represented the Commonwealth. Respondent did not appear at the hearing. The Commonwealth waived the filing of a post-hearing brief. The record closed October 25, 2011, with the filing of notes of testimony.

FINDINGS OF FACT

1. This case comes before the Secretary of the Commonwealth (Secretary) pursuant to the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990 (P.L. 1200, No. 202) as amended (Act), 10 P.S. §§162.1, et seq.

2. Respondent's last known addresses are 451 East Bay Avenue, Barnegat Bay, New Jersey 08005 and 19 Merle Drive, Manahawkin, New Jersey 08050. (Docket No. 0039-98-10)

3. Respondent is not registered as a professional solicitor or professional fundraising counsel in the Department of State (Department), Bureau of Charitable Organizations (Bureau). (Bureau records)

4. Respondent owns a Chevrolet Corvette C5 that is decorated with the names and logos of various charitable organizations, including the names and logos of the ONE Campaign and Live8; the Corvette is registered under the name of his wife, Sheri Selvanto. (N.T. 12-13, 17-19; Exhibit C-4)

5. In August 2009, Respondent displayed the Corvette with the ONE Campaign and Live8 names and logos at the Carlisle Corvette Car Show, an event for Corvette enthusiasts. (N.T. 12, 17, 20, 26; Exhibit C-4)

6. Patrick Lemay, an event manager for Carlisle Productions, was in charge of public and media relations in August 2009. (N.T. 11-12)

7. Mr. Lemay understood from his conversations with Respondent that Respondent was affiliated with the ONE Campaign and Live8. (N.T. 13)

8. Mr. Lemay believed that Respondent's purpose for showing the Corvette was to raise money for the charities, particularly the ONE Campaign. (N.T. 12)

9. Respondent was allowed to display his vehicle in order to promote his charity campaign. (N.T. 12)

10. During the Carlisle Car Show, Respondent had a donation jar near his Corvette. (N.T. 13; Exhibits C-2 and C-3)

11. Mr. Lemay believed that the money deposited in the jar was for the ONE Campaign and other charities represented by Respondent. (N.T. 13)

12. Visitors of the Car Show who made a \$10.00 donation were permitted to sign the hood of the car. (Exhibits C-2 and C-3)

13. An article from The Sentinel (cumberlink.com) posted August 29, 2009, featured the Corvette at the Car Show and noted that since 2005, Respondent has "raised over \$500,000 for the ONE Campaign, which raises awareness about poverty and preventable disease, particularly in Africa." (Exhibit C-3)

14. The article also stated that the Corvette would be on display at the Carlisle Fairgrounds through Sunday, August 30, 2009. (Exhibit C-3)

15. Respondent's MySpace Webpage also displayed the Corvette with the name and logos of the ONE Campaign and Live8. (N.T. 21; Exhibit C-4)

16. Kenneth B. Weber, Chief Operating Officer of the ONE Campaign, is responsible for providing permission to individuals to solicit contributions on its behalf. (N.T. 32)

17. Mr. Weber confirmed that Respondent was not authorized by the ONE Campaign to use its name or logos in connection with any charitable fundraising campaigns or activities in Pennsylvania or any other state. (N.T. 31-33; Exhibit C-5)

18. Mr. Weber explained that the ONE Campaign does not fundraise or solicit charitable donations from the general public; their slogan is "We don't want your money, we want your voice." (N.T. 32)

19. The ONE Campaign has never received any donations from Respondent. (N.T. 33)

20. Steven Uhlrich, an Investigator for the Department of State, Bureau of Charitable Organizations, conducted an investigation of Respondent's fundraising activities in Pennsylvania. (N.T. 16-17)

21. On May 5, 2010, the Bureau sent Respondent an investigative subpoena requesting among other things, a list of all fundraising activities conducted in Pennsylvania, name and contact information of the charity on whose behalf donations were solicited, copies of all contracts between Respondent and any charitable organization soliciting in Pennsylvania, and copies of all written authorizations from charitable organizations granting Respondent permission to solicit contributions in Pennsylvania using the charity's name and/or logo. (N.T. 23-24, 27-28; Exhibit C-6)

22. Respondent did not provide the Bureau with copies of written authorizations to solicit contributions from ONE Campaign or Live8, or any other information requested in the subpoena. (N.T. 23-24, 27, 28-29)

23. Notices of the October 17, 2011 hearing sent to Respondent's last known addresses at 451 East Bay Avenue, Barnegat Bay, New Jersey 08005 and 19 Merle Drive, Manahawkin, New Jersey 08050 were not returned and are presumed to have been delivered. (Docket No. 0039-98-10)

24. Respondent was served with all pleadings, orders and notices filed of record in this matter. (Docket No. 0036-98-11)

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Section 4 of the Act, 10 P.S. § 162.4)
2. Respondent has received notice of the charges and an opportunity to be heard in this proceeding in accordance with Administrative Agency Law, 2 Pa.C.S. § 504. (Findings of Fact 2, 23-24)
3. Respondent violated the Solicitation of Funds for Charitable Purposes Act (Act) at 10 P.S. §162.15(a)(1), by failing to provide the records and information requested by the Bureau's investigative subpoena, in violation of 10 P.S. § 162.12. (Findings of Fact Nos. 20-22)
4. Respondent violated the Act at 10 P.S. §162.17(a)(2), by failing to provide the records and information requested by the Bureau's investigative subpoena. (Findings of Fact Nos. 20-22)
5. Respondent violated the Act at 10 P.S. §162.15(a)(2), by utilizing unfair or deceptive acts or practices and engaged in fraudulent conduct which created likelihood of confusion or misunderstanding. (Findings of Fact Nos. 3-15)
6. Respondent violated the Act at 10 P.S. §162.15(a)(3), by placing a donation jar next to his Corvette, thereby implying that the contributions were for or on behalf of a charitable organization, and used the ONE Campaign's name and logo(s) without first being authorized in writing to do so by the charitable organization. (Findings of Fact Nos. 3-15)
7. Respondent violated the Act at 10 P.S. §162.15(a)(7), by misrepresenting and misleading the public to believe that he had a sponsorship, approval, status, affiliation or connection that he does not have with the ONE Campaign, by using its name and logo(s) on the Corvette displayed at the Car Show. (Findings of Fact Nos. 3-19)

DISCUSSION

This case comes before the Secretary pursuant to the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990 (P.L. 1200, No. 202), as amended (Act), 10 P.S. §§162.1, *et seq.* On June 30, 2010, the Bureau filed an order to show cause charging Respondent with several violations of the Act: failing to provide information requested by the Bureau's investigative subpoena, in violation of 10 P.S. §§ 162.12 and 162.17(a)(2); utilizing unfair or deceptive acts or practices or engaging in fraudulent conduct which creates likelihood of confusion or misunderstanding, in violation of 10 P.S. §162.15(a)(2); utilizing any representation that implies the contribution is for or on behalf of a charitable organization, or utilizing any emblem, device or printed matter belonging to or associated with a charitable organization without first being authorized in writing to do so by the charitable organization, in violation of 10 P.S. §162.15(a)(3); and misrepresenting or misleading anyone in any manner to believe that a person has a sponsorship, approval, status, affiliation or connection that he does not have, in violation of 10 P.S. §162.15(a)(7).

The Bureau's evidence consisted of testimony from Steven Uhlrich, a Special Investigator with Bureau; Patrick Lemay, an event manager for Carlisle Productions; Kenneth B. Weber, Chief Operating Officer of the ONE Campaign; and six documents. Respondent did not appear at the hearing.

The first issue here is whether Respondent, who is not registered as a professional solicitor or professional fundraising counsel with the Bureau,¹ was soliciting funds in 2009 for

¹ § 162.3. Definitions

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

the ONE Campaign, a charitable organization, in violation of law.

The facts in this case are not in dispute. Respondent owns a Chevrolet Corvette C5 that is decorated with the names and logos of the ONE Campaign and Live8, two charitable organizations. On August 2009, Respondent represented to Mr. Lemay, an event manager in charge of Carlisle Corvette Car Show, that he was affiliated with the ONE Campaign and Live8. As a result, Respondent was permitted to display his Corvette at the car show in order to raise money for such charities. Respondent displayed his Corvette and had a donation jar sitting next to the car. Visitors who made a \$10 donation were permitted to sign the hood of the car. Mr. Lemay believed that the donations were for the ONE Campaign and other charities. Respondent and his Corvette were featured in a news article which described Respondent's fundraising efforts since 2005 for the ONE Campaign. This article informed the public that the Corvette was on display at the Carlisle Fairgrounds.

Professional fundraising counsel. Any person who is retained by a charitable organization for a fixed fee or rate under a written agreement to plan, manage, advise, consult or prepare material for or with respect to the solicitation in this Commonwealth of contributions for a charitable organization, but who does not solicit contributions or employ, procure or engage any compensated person to solicit contributions and who does not have custody or control of contributions. A bona fide salaried officer or regular, nontemporary employee of a charitable organization shall not be deemed to be a professional fundraising counsel provided that the individual is not employed or engaged as professional fundraising counsel or as a professional solicitor by any other person.

Professional solicitor. Any person who is retained for financial or other consideration by a charitable organization to solicit in this Commonwealth contributions for charitable purposes directly or in the form of payment for goods, services or admission to fundraising events, whether such solicitation is performed personally or through his agents, servants or employees or through agents, servants or employees especially employed by or for a charitable organization who are engaged in the solicitation of contributions, the sale of goods or services or the production of fundraising events under the direction of such person, or a person who plans, conducts, manages, carries on, advises, consults, whether directly or indirectly, in connection with the solicitation of contributions, sale of goods or services or the production of fundraising events for or on behalf of any charitable organization, but does not qualify as a professional fundraising counsel within the meaning of this act. A person who is otherwise a professional fundraising counsel shall be deemed a professional solicitor if his compensation is related to the amount of contributions received. A bona fide salaried officer or regular, nontemporary employee of a charitable organization shall not be deemed to be a professional solicitor provided that the individual is not employed or engaged as professional fundraising counsel or as a professional solicitor by any other person.

* * *

Section 3 of the Act, 10 P.S. § 162.3² defines "solicitation," among other things, as any direct or indirect request for a contribution on the representation that such contribution will be used in whole or in part for a charitable purpose, and includes any oral request or communication media, or any announcement requesting the public to attend an appeal or exhibit.

In this case, Respondent represented to Mr. Lemay that he was affiliated with the ONE Campaign and represented to Mr. Lemay and in a newspaper article that he has raised over \$500,000 for the ONE Campaign. Respondent then placed a donation jar next to his Corvette, which Mr. Lemay believed was used to collect money for charitable purposes. Based on these facts, it is reasonable to conclude that Respondent at the very least was indirectly requesting contributions from the public on the representation that such contributions would be used in whole or in part for a charitable purpose, thus acting as a professional solicitor. Respondent employed a charitable appeal when requesting to display his Corvette at the Car Show. Respondent engaged in fraudulent conduct by misrepresenting his affiliation with the ONE Campaign and soliciting contributions, when Respondent was not authorized in writing or by any

² § 162.3. Definitions

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"SOLICITATION." Any direct or indirect request for a contribution on the representation that such contribution will be used in whole or in part for a charitable purpose, including, but not limited to, any of the following:

(1) Any oral request that is made in person, by telephone, radio or television or other advertising or communication media.

(2) Any written or otherwise recorded or published request that is mailed, sent, delivered, circulated, distributed, posted in a public place or advertised or communicated by press, telegraph, television or any other media.

(3) Any sale of, offer or attempt to sell any advertisement, advertising space, sponsorship, book, card, chance, coupon, device, food, magazine, merchandise, newspaper, subscription, ticket or other service or tangible good, thing or item of value.

(4) Any announcement requesting the public to attend an appeal, assemblage, athletic or competitive event, carnival, circus, concert, contest, dance, entertainment, exhibition, exposition, game, lecture, meal, party, show, social gathering or other performance or event of any kind.

other means by the ONE Campaign to use its name or logos in connection with any charitable fundraising campaigns or activities in Pennsylvania.

Based on the evidence adduced at the hearing, Respondent is subject to the provisions of the Act in that he utilized unfair or deceptive acts or practices or engaging in fraudulent conduct which creates likelihood of confusion or misunderstanding, in violation of 10 P.S. §162.15(a)(2); utilized any representation that implies the contribution is for or on behalf of a charitable organization, or utilized any emblem, device or printed matter belonging to or associated with a charitable organization without first being authorized in writing to do so by the charitable organization, in violation of 10 P.S. §162.15(a)(3); and misrepresented and misled the public to believe that he had a sponsorship, approval, status, affiliation or connection that he did not have, in violation of 10 P.S. §162.15(a)(7). As such, Counts Three, Four and Five of the order to show cause are sustained.

In Counts One and Two of the order to show cause, the Bureau charged Respondent with violation of section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), which specifically prohibits a person from operating in violation of, or failing to comply with, any of the requirements of the Act,³ by failing to provide information requested by the Bureau's investigative subpoena, in violation of 10 P.S. §§ 162.12 and 162.17(a)(2). These provisions provide as follows:

³Section 162.15. Prohibited acts

(a) General rule.—Regardless of a person's intent or the lack of injury, the following acts and practices are prohibited in the planning, conduct or execution of any solicitation or charitable sales promotion:

(1) Operating in violation of, or failing to comply with, any of the requirements of this act, regulations of the department or an order of the secretary, or soliciting contributions after registration with the department has expired or has been suspended or revoked or soliciting contributions prior to the solicitation notice and contract having been approved by the department.

* * *

Section 162.12. Records to be kept by charitable organizations, professional fundraising counsels and professional solicitors; inspection; retention

Every charitable organization, professional fundraising counsel and professional solicitor subject to the provisions of this act shall, in accordance with the rules and regulations prescribed by the department, keep true fiscal records as to its activities in this Commonwealth as may be covered under this act, in such form as will enable them accurately to provide the information required under this act. Such records shall be made available for inspection upon demand by the department or the Office of Attorney General. However, names, addresses and identities of contributors and amounts contributed by them shall not be considered a matter of public record and, therefore, shall not generally be made available for public inspection, shall not be used for a purpose inconsistent with this act and shall be removed from the records in the custody of the department at such time that such information is no longer necessary for the enforcement of this act. Such records shall be maintained for a period of at least three years after the end of the period of registration to which they relate.

Section 162.17. Administrative enforcement and penalties

(a) General rule. —The secretary may refuse to register or revoke or suspend the registration of any charitable organization, professional fundraising counsel or professional solicitor whenever he finds that a charitable organization, professional fundraising counsel or professional solicitor, or an agent, servant or employee thereof:

- (1) Has violated or is operating in violation of any of the provisions of this act, the regulations of the department, or an order issued by the secretary.
- (2) Has refused or failed or any of its principal officers has refused or failed, after notice, to produce any records of such organization or to disclose any information required to be disclosed under this act or the regulations of the department.

(b) Additional actions. —When the secretary finds that the registration of any person may be refused, suspended or revoked under the terms of subsection (a), the secretary may:

- (1) Revoke a grant of exemption to any of the provisions of this act.
- (2) Issue an order directing that the person cease and desist specified fundraising activities.
- (3) Impose an administrative fine not to exceed \$1,000 for each act or omission which constitutes a violation of this act and an additional penalty, not to exceed \$100 for each day during which such violation continues. Registration will be automatically suspended upon final affirmation of an administrative fine until the fine is paid or until the normal expiration date of the registration. No registration shall be renewed until the fine is paid.

Section 12 of the Act, 10 P.S. §162.12, requires a charitable organization, professional fundraising counsel and professional solicitor to “keep true fiscal records as to its activities in this Commonwealth” and to provide them on demand by the Bureau. Essentially acting as a professional solicitor without being registered, Respondent solicited contributions from the public and failed to produce records or disclose information requested by the Bureau through its investigative subpoena. As such, Respondent violated section 15(a)(1) of the Act by and through 10 P.S. § 162.12, and Count One of the order to show cause is sustained.

In count two, the Commonwealth charges that Respondent violated the Act at section 17(a)(2), 10 P.S. §162.17(a)(2), by “failing to provide all information requested for inspection by the Bureau in the Bureau’s May 5, 2010 investigative subpoena.” By his lack of response to the Bureau’s subpoena, Respondent has refused or failed, after notice, to produce any records of such organization or to disclose any information required to be disclosed under this act or the regulations of the department. These facts establish a violation of 10 P.S. §162.15(a)(1), by and through 10 P.S. § 162.17(a)(2), and Respondent is thus subject to disciplinary action on count two.

When the Secretary finds that a person has violated any of the provisions of the Act, the Secretary is authorized to enforce the Act against such person pursuant to Section 17 of the Act, 10 P.S. § 162.17, which provides, among other things, for the issuance of an order directing that the person cease and desist specified fundraising activities. *See* Section 17(b)(2) of the Act, 10 P.S. § 162.17(b)(2), above. The Act also authorizes the imposition of an administrative fine not to exceed \$1,000 for each act or omission which constitutes a violation of the Act, and an additional penalty, not to exceed \$100 for each day during which such violation continues. Section 17(b)(3) of the Act, 10 P.S. § 162.17(b)(3).

Respondent's deceptive and misleading actions are exactly that which the Solicitation of Funds for Charitable Purposes Act was designed to prohibit and prevent.

It is the intention of the General Assembly that this act shall not merely require proper registration of charitable organizations, professional fundraisers and professional solicitors, but shall protect the citizens of this Commonwealth by requiring full public disclosure of the identity of persons who solicit contributions from the public, the purposes for which such contributions are solicited and the manner in which they are actually used, by promoting consumer education about charitable concerns, by providing civil and criminal penalties for deception and dishonest statements and conduct in the solicitation and reporting of contributions for or in the name of charitable purposes and by publicizing matters relating to fraud, deception and misrepresentation perpetrated in the name of charity.
10 P.S. §162.2

Respondent misled countless Pennsylvania citizens to donate to charitable causes, such as the ONE Campaign and Live8, when he in fact was not authorized by those charities to use their names or logos. The Chief Operating Officer of the ONE Campaign testified that the ONE Campaign has never received any donations from Respondent.

Based on the foregoing findings of facts, conclusions of law and discussion, and in the absence of mitigation, the following order shall issue:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE SECRETARY OF THE COMMONWEALTH

Commonwealth of Pennsylvania, Bureau of Charitable Organizations	:	
	:	
	:	Docket No. 0039-98-10
v.	:	
	:	
Michael Selvanto, Respondent	:	File No. 10-98-05397
	:	
	:	

ORDER

AND NOW, this 15th day of May, 2012, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ORDERED** that:

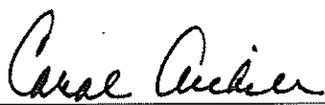
(1) Michael Selvanto shall **CEASE and DESIST** from all manner of fundraising and solicitation activities in this Commonwealth, until such time as all information requested by the Bureau has been provided, all penalties imposed below are paid in full and he comes into full compliance with all provisions of the Act, including proper registration.

(2) An **administrative fine** in the amount of **\$5,000.00** shall be imposed upon Michael Selvanto. This amount shall be remitted by certified check or U.S. Postal Service money order made payable to "Commonwealth of Pennsylvania" within thirty days of the effective date of this order and mailed to:

Martha H. Brown, Assistant Counsel
Pennsylvania Department of State
Office of Chief Counsel
301 North Office Building
Harrisburg, PA 17120

Appeal of this decision to the Commonwealth Court may be taken pursuant to 10 P.S. §162.17(c) and 2 Pa.C.S. §702 within 30 days of the date of mailing shown below.

BY ORDER



Carol Aichele
Secretary of the Commonwealth

For the Commonwealth:

Eric Spada, Esquire
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE OFFICE OF CHIEF COUNSEL
PROSECUTION DIVISION
P.O. Box 2649
Harrisburg, PA 17105-2649

For Respondent:

Michael Selvanto
451 East Bay Avenue
Barnegat Bay, New Jersey 08005

Michael Selvanto
19 Merle Drive
Manahawkin, New Jersey 08050

Date of mailing:

May 15, 2012

NOTICE

The attached Adjudication and Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Secretary of the Commonwealth with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Pennsylvania Department of State
Office of Chief Counsel
Legal Counsel, Bureau of Charitable Organizations
401 North Street
Room 301
Harrisburg, PA 17120