

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

PROTESTOTARY

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Docket at

Commonwealth of Pennsylvania
Bureau of Charitable Organizations

vs.

Moving the Lives of Kids Community
Mural Project,
Respondent

Docket No. 0032-98-12
File No. 12-98-07137

FINAL ADJUDICATION AND ORDER

Carol Aichele
Secretary of the Commonwealth

302 North Office Building
Harrisburg, PA 17120

HISTORY

This matter comes before the Secretary of the Commonwealth (“Secretary”) on an order to show cause filed August 16, 2012, alleging that Moving the Lives of Kids Community Mural Project (“Respondent”) is subject to administrative sanctions under the Solicitation of Funds for Charitable Purposes Act (“Act”).¹ The order to show cause alleges that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.5(a), by soliciting contributions in the Commonwealth without being properly registered under the Act. The order to show cause also alleges that Respondent violated the Act at 10 P.S. §162.15(a)(1) by operating in violation of a Cease and Desist Order issued to Respondent by the Secretary.

On October 12, 2012, the Commonwealth filed a motion to enter default and deem facts admitted in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code §35.37. Respondent did not submit a reply to either the order to show cause or the motion to enter default and deem facts admitted. The Secretary now issues this adjudication and order in final disposition of this matter.

¹ Act of December 19, 1990, P.L. 1200, No. 202, *as amended*, 10 P.S. § 162.1 *et seq.*

FINDINGS OF FACT

1. This matter is 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.* (Order to show cause ¶ 1)

2. At all relevant and material times, Respondent conducted business in Pennsylvania as a charitable organization, as defined by the Act. (Order to show cause ¶ 2)

3. Respondent is not registered as a charitable organization with the Bureau. (Order to show cause ¶ 3)

4. Respondent's last known address is 7008 Bennett Street, Pittsburgh, PA 15208. (Order to show cause ¶ 4)

5. Respondent solicits charitable contributions in Pennsylvania through grant application, direct mail, internet, and word of mouth. (Order to show cause ¶ 5)

6. Respondent exceeded \$25,000 in contributions for the fiscal year ending June 30, 2011. (Order to show cause ¶ 6)

7. On or about December 29, 2011, Respondent was ordered to Cease and Desist soliciting in the Commonwealth by the Secretary of the Commonwealth. (Order to show cause ¶ 7, Exhibit A)

8. On or about April 25, 2012, Respondent solicited charitable donations on its website, <http://www.mlkmural.com>. (Order to show cause ¶ 9, Exhibit B)

9. On or about July 26, 2012, Respondent solicited charitable donations on its website, <http://www.mlkmural.com>. (Order to show cause ¶ 11, Exhibit C)

10. Respondent is required to be registered with the Bureau. (Order to show cause ¶ 13)

11. Between on or about June 1, 2009 and the date of the filing of this Order to Show Cause, Respondent has continued to solicit charitable contributions in the Commonwealth. (Order to show cause ¶ 14)

12. Pursuant to the certificate of service attached to the order to show cause, on August 16, 2012, the Commonwealth mailed one copy of the order to show cause via certified mail, return receipt requested and another copy via first class mail, postage prepaid, to Respondent at the following address: Moving the Lives of Kids Community Mural Project, Attn: Kyle Holbrook, 7008 Bennett Street, Pittsburgh, PA 15208. (Motion to enter default and deem facts admitted ¶¶ 1-3; docket number 0032-98-12)

13. The order to show cause was delivered to Respondent via certified mail, return receipt requested, and first class mail. (Motion to enter default and deem facts admitted ¶¶ 1-3; docket number 0032-98-12)

14. Neither mailing sent to Respondent was returned to the Commonwealth. (Motion to enter default and deem facts admitted ¶ 3)

15. The order to show cause directed Respondent to file an answer thereto within thirty (30) days of its date. (Motion to enter default and deem facts admitted ¶ 4)

16. On October 12, 2012, Respondent was served with a copy of the motion to enter default and deem facts admitted at the Bennett Street address. (Motion to enter default, Certificate of service; docket number 0032-98-12)

17. As of the date of the motion to enter default and deem facts admitted, Respondent had filed no answer to the order to show cause. (Motion to enter default and deem facts admitted ¶ 5; docket number 0032-98-12)

18. Respondent did not file a response to the order to show cause or the motion to enter default and deem facts admitted. (Docket number 0032-98-12)

19. Respondent was served with all pleadings, orders and notices filed of record in this matter. (Docket number 0032-98-12).

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Findings of Fact 1-6)
2. Respondent has been afforded reasonable notice of the charges against it and an opportunity to be heard in this proceeding in accordance with the Administrative Agency Law, 2 Pa.C.S. §504. (Findings of Fact 4, 12-19)
3. There is good cause to grant the Commonwealth's motion to deem facts admitted because Respondent failed to file a written answer to the order to show cause. (Finding of Fact 19)
4. Respondent is subject to disciplinary action under section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by and through section 5(a), 10 P.S. §162.5(a), by soliciting contributions in the Commonwealth on April 25, 2012, without being properly registered as a charitable organization under the Act. (Findings of Fact 3-8, 10-11)
5. Respondent is subject to disciplinary action under section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by and through section 5(a), 10 P.S. §162.5(a), by soliciting contributions in the Commonwealth on July 26, 2012, without being properly registered as a charitable organization under the Act. (Findings of Fact 3-7, 9-11)
6. Respondent is subject to disciplinary action under section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by violating the Cease and Desist Order issued by the Secretary of the Commonwealth, by soliciting contributions in the Commonwealth on April 25, 2012. (Findings of Fact 3-8, 10-11)
7. Respondent is subject to disciplinary action under section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by violating the Cease and Desist Order issued by the Secretary of the Commonwealth, by soliciting contributions in the Commonwealth on July 26, 2012. (Findings of Fact 3-7, 9-11)

DISCUSSION

I. STATUTORY AND REGULATORY PROVISIONS

This matter is 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.* The order to show cause issued in this matter comprises four counts, alleging that Respondent violated the following provisions of the Act, which provide in pertinent part:

§ 162.5. Registration of charitable organizations; financial reports; fees; failure to file

(a) Registration and approval required. – A charitable organization, unless exempted from registration requirements pursuant to section 6, shall file a registration statement with the department. This statement must be refiled annually within 135 days after the close of its fiscal year in which the charitable organization was engaged in solicitation activities. The department shall review the statement pursuant to subsection (r). No charitable organization shall solicit contributions or have contributions solicited in its behalf before approval of its registration statement by the department.

* * *

§ 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.

* * *

The Secretary is authorized pursuant to the section 17 of the Act, 10 P.S. §162.17, to take the following actions to enforce the Act:

§ 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.

(3) Has made a material false statement in an application, statement or report required to be filed under this act.

(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.

The motion to enter default and deem facts admitted is in accordance with the General Rules of Administrative Practice and Procedure. The relevant provision of the General Rules of Administrative Practice and Procedure states as follows:

§ 35.37 Answers to order to show cause

Any person upon whom an Order to show cause has been served ... shall, if directed to do so, respond to the same by filing within the time specified in the order an answer in writing. The answer shall be drawn so as specifically to admit or deny the allegations or charges which may be in order, set forth the facts upon which respondent relies, and state concisely the matters of law relied upon. ... A respondent failing to file an answer within the time allowed shall be deemed in default, and relevant facts stated in the Order to show cause may be deemed admitted.

1 Pa. Code § 35.37.

II. DUE PROCESS

“It is well established that the requirements of due process of law apply to administrative proceedings.” First National Bank of Pike County v. Department of Banking and Bank of

Matamoras, Intervening, 300 A.2d 823, 824 (Pa. Cmwlt. 1973) (citation omitted). “Due process requires that a person be provided notice and an opportunity to be heard prior to an adjudication affecting that person’s rights.” Goetz v. Department of Environmental Resources, 613 A.2d 65, 67 (Pa. Cmwlt. 1992) (citation omitted), app. den., 625 A.2d 1196 (Pa. 1993). “Notice of administrative action which is mailed to the interested party’s last known address has been found to be reasonable notice.” Kobylski v. Commonwealth of Pennsylvania, Milk Marketing Board, 516 A.2d 75, 77 (Pa. Cmwlt. 1986), citing Yarbrough v. Department of Public Welfare, 478 A.2d 956 (Pa. Cmwlt. 1984).

The copy of the order to show cause mailed to Moving the Lives of Kids Community Mural Project at the Bennett Street address by certified mail, return receipt requested, was received by the organization at that address (Motion to Deem Facts Admitted, docket 0032-98-12). Therefore, the Secretary finds that Respondent received reasonable notice of the action and allegations against it. The order to show cause clearly and specifically stated the charges against Respondent. The order to show cause directed Respondent to file an answer or risk disciplinary action without a hearing. The order to show cause explained the procedures to request a hearing. Further, the order to show cause warned Respondent that if it failed to request a hearing it would be deemed to have waived its right to a hearing and final judgment might be entered without a hearing. Due process does not confer an absolute right to be heard, but only that a party be provided with an opportunity to be heard. Goetz, 613 A.2d at 67. The Secretary finds that Respondent was given an opportunity to be heard and failed to take advantage of that opportunity. Therefore, the Secretary of the Commonwealth deems admitted the factual allegations contained in the order to show and grants the motion to enter default and deem facts admitted against Respondent.

III. ANALYSIS AND SANCTION

In counts one through four of the order to show cause, the Commonwealth charges that Respondent violated the Solicitation of Funds for Charitable Purposes Act (Act) at 10 P.S. §162.15(a)(1), which generally prohibits charitable organizations from operating in violation of, or failing to comply with, any of the requirements of the Act.

In counts one through two, the Commonwealth specifically charges that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.5(a), by soliciting contributions in the Commonwealth without being properly registered under the Act. There is one count for each date on which the Commonwealth captured an image of Respondent's website, by which the public was solicited to "Click here to donate!" The facts deemed admitted establish that Moving the Lives of Kids Community Mural Project has never been registered as a charitable organization with the Bureau, even though it had contributions above \$25,000 in the fiscal year ending June 30, 2011, which raised it above the minimum threshold for registration. The facts deemed admitted also establish that since June 30, 2011, the charity continues to raise money in Pennsylvania by grant application, direct mailings, internet solicitation and word-of-mouth.

Respondent's solicitation of contributions in the Commonwealth on April 25 and July 26, 2012, without being properly registered under the Act establishes at least two violations of 10 P.S. §162.15(a)(1) by and through 10 P.S. §162.5(a), and Respondent is thus subject to disciplinary action on counts one and two.

In counts three and four, the Commonwealth specifically charges that Respondent violated the Act at 10 P.S. §162.15(a)(1), by operating in violation of a Cease and Desist Order issued to Respondent by the Secretary. The facts deemed admitted establish that Moving the Lives of Kids Community Mural Project continued to solicit Pennsylvania residents via its

website on April 25 and July 26, 2012 (as well as through other forms of solicitation) after a Cease and Desist Order was issued on December 29, 2011. Therefore, counts four and five are sustained and Respondent is subject to disciplinary action for its violation of section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1).

In assigning a sanction, the Secretary weighs the number and seriousness of the violations against any mitigating evidence. Respondent did not offer any mitigating evidence. The Commonwealth requests that the Secretary impose upon Respondent an appropriate penalty for the actions set forth in the order to show cause. Section 17(b)(3) of the Act, 10 P.S. §162.17(b)(3), authorizes the Secretary to “impose an administrative fine not to exceed \$1,000 for each act or omission which constitutes a violation of [the] Act.” Respondent solicited charitable contributions in the Commonwealth for over one year without properly being registered as a charitable organization. This was charged as, and may be reasonably found to constitute, two distinct violations of the Act, based on the two occasions which the Commonwealth presented screenshots from Respondent’s website, requesting donations on April 25 and July 26, 2012.

Respondent further solicited contributions on those dates in violation of the Bureau’s Cease and Desist Order, which are two other distinct violations of the Act.

The legislative intent behind the Solicitation of Funds for Charitable Purposes Act is not merely to require proper registration of charitable organizations, professional fundraisers and professional solicitors, but to 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. 10 P.S. §162.2. Failure to register and then continuing to solicit funds from Pennsylvania citizens in the face of a Cease and Desist Order is precisely the conduct the Act is intended to curtail and

penalize. Respondent Moving the Lives of Kids Community Mural Project has failed to respond to the Bureau on several occasions, from the Cease and Desist Order to the charges filed in the instant matter. There would appear to be little reason to mitigate any administrative fine.

Accordingly, based on the foregoing findings of fact, 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	:	
	:	
vs.	:	Docket No. 0032-98-12
	:	File No. 12-98-07137
Moving the Lives of Kids Community	:	
Mural Project,	:	
Respondent	:	

ORDER

AND NOW, this 29th day of November, 2012, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ORDERED** that an **administrative fine** in the amount of \$4,000.00 shall be imposed upon **Moving the Lives of Kids Community Mural Project**. 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

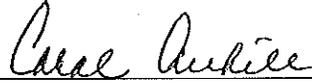
Moving the Lives of Kids Community Mural Project, its successors, agents or affiliates, shall **CEASE and DESIST** from all manner of fundraising and solicitation activities in this Commonwealth, until such time as all penalties imposed above are paid in full and **Moving the Lives of Kids Community Mural Project** comes into full compliance with all provisions of the Act, including proper registration.

Failure to comply with this Order shall constitute a violation of an order issued by the Secretary, subjecting Respondent to additional penalties section 17 of the Act, 10 P.S. §162.17.

Appeal may be taken pursuant to section 17(c) of the Act, 10 P.S. §162.17(c), and 2 Pa. C.S. §702, within 30 days of the date of mailing of this Adjudication and Order as indicated below.

This order shall take effect thirty days from the date it is deposited in the mail.

BY ORDER:



Carol Aichele
Secretary of the Commonwealth

Respondent:

Moving the Lives of Kids Community
Mural Project
7008 Bennett Street
Pittsburgh, PA 15208

For the Commonwealth

Katherine M. Delp, Prosecuting Attorney
Commonwealth of Pennsylvania
Department of State
212 North Office Building
Harrisburg, PA 17120

Date of Mailing:

November 29, 2012

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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