

COPY

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

Commonwealth of Pennsylvania,
Bureau of Corporations and
Charitable Organizations

vs.

CompAnimals Pet Rescue, Inc.
Respondent

:
:
:
:
:
:
:
:
:
:
:
:
:

Docket No. 0003-98-16
File No. 14-98-00398

FINAL ADJUDICATION AND ORDER

PROTHONOTARY
2016 JUL -6 PM 2:57
Department of State

Pedro A. Cortés
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 March 29, 2016, alleging that CompAnimals Pet Rescue, Inc. (“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 Section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by soliciting contributions in the Commonwealth in violation of an Order to Cease and Desist issued to Respondent by the Secretary. The Order to Show Cause also alleges that Respondent violated the Act, 10 P.S. §162.15(a)(1), by soliciting contributions without being properly registered under the Act.

On June 1, 2016, 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. 12000, No. 202, *as amended*, 10 P.S. §§ 162.1-162.24. (Order to show cause ¶ 1)

2. Respondent became incorporated in the Commonwealth of Pennsylvania on or about April 14, 2008, and about that time began soliciting contributions as a charitable organization in the Commonwealth of Pennsylvania. (Order to show cause ¶ 2)

3. On or about March 17, 2009, Respondent submitted to the Bureau of Charitable Organizations (now the Bureau of Corporations and Charitable Organizations) ("Bureau") information from its fiscal year July 1, 2007 through June 30, 2008, as was required by the Act so that it could become registered with the Bureau. (Order to show cause ¶ 3)

4. Following receipt of the information submitted in March 2009, the Bureau assigned Registration number 37267 to Respondent. (Order to show cause ¶ 4)

5. Thereafter, as required by the Act for annual registration, Respondent submitted to the Bureau registration information for its tax years ending June 30, 2009, and June 30, 2010. (Order to show cause ¶ 5)

6. Respondent has not been registered with the Bureau since May 15, 2012, when it failed to submit the registration information for the fiscal year ending June 30, 2011. (Order to show cause ¶ 6)

7. On July 25, 2013, the Bureau sent Respondent a letter by Certified Mail advising Respondent that it appeared to the Commonwealth that the organization may be required to be registered pursuant to the Act. (Order to show cause ¶ 7)

8. The letter requested that Respondent become registered or provide evidence showing that the organization was excluded or exempt from the registration requirement in the Act. (Order to show cause ¶ 8)

9. When Respondent failed to become registered or provide evidence showing that the organization was excluded or exempt from the registration, on October 24, 2013, the Secretary issued an Order directing the Respondent to Cease and Desist from soliciting contributions in the Commonwealth until such time that it provided the required information and became duly registered or provided evidence that the organization was excluded or exempt from the registration requirement in the Act. (Order to show cause ¶ 9)

10. Respondent has not provided the required information and has not become duly registered nor has Respondent provided evidence that the organization was excluded or exempt from the registration requirement in the Act. (Order to show cause ¶ 10)

11. The last known mailing address for the Respondent on file with the Bureau is: 1497 Flint Hill Road, Landenberg, PA 19350; which address is consistent with the address listed on the website maintained by Respondent, www.companimals.org. (Order to show cause ¶ 11)

12. The Commonwealth served the Order to Show Cause upon Respondent by mailing one copy via Certified Mail, Return Receipt Requested and another copy via First Class Mail, Postage Prepaid, to Respondent at the following address: 1497 Flint Hill Road, Landenberg, PA 19350. (MDFA at ¶ 3)

13. The copies of the Order to Show Cause sent to the Respondent by Certified Mail, Return Receipt Requested, was returned to the Commonwealth, with the envelope marked by the U.S. Postal Service to reflect that it was "Unclaimed." (MDFA at ¶ 5)

14. The copy of the Order to Show Cause sent via First Class Mail, Postage Prepaid, was not returned to the Commonwealth. (MDFA at ¶ 7)

15. The order to show cause directed Respondent to file an answer thereto within thirty days of its date. (MDFA at ¶ 8)

16. Thirty days from the date of the order to show cause expired on April 28, 2016. (MDFA at ¶ 1 and 9)

17. Respondent did not file a response to the order to show cause or the motion to enter default and deem facts admitted. (Docket number 0003-98-16)

18. Respondent was served with all pleadings, orders and notices filed of record in this matter. (Docket number 0003-98-16)

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 7-9, 11-18)
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. (Findings of Fact 10)
4. 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, by soliciting contributions in the Commonwealth. (Findings of Fact 6-10)
5. Respondent is subject to disciplinary action under section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by soliciting contributions in the Commonwealth, without being properly registered as a charitable organization under the Act. (Findings of Fact 6-10)

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*, 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. Cmwlth. 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. Cmwlth. 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. Cmwlth. 1986), citing Yarbrough v. Department of Public Welfare, 478 A.2d 956 (Pa. Cmwlth. 1984).

A copy of the Order to Show Cause was mailed to CompAnimals Pet Rescue, Inc. at the Flint Hill Road address by certified mail, return receipt requested, and another copy via First Class Mail, Postage Prepaid. The copy of the Order to Show Cause sent by Certified Mail was returned to the Commonwealth by the U.S. Postal Service with the envelope of the Certified Mail marked to reflect that it was being returned to sender as a result of being “unclaimed.” The Order to Show Cause sent to Respondent to its address of record and last known address via First Class Mail, Postage Prepaid, was not returned to the Commonwealth (Motion to Deem Facts Admitted, docket 0003-98-16). 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 deems admitted the factual allegations contained in the Order to Show Cause 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 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 three, the Commonwealth specifically charges that Respondent violated Section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by soliciting contributions in the Commonwealth in violation of an Order to Cease and Desist issued by the Secretary, with the violations occurring repeatedly and on multiple occasions. There is one count for each separate violation of contribution solicitation. The facts deemed admitted establish the Secretary issued the Order to Cease and Desist on October 24, 2013 after CompAnimals Pet Rescue, Inc. failed to become registered or provide evidence showing that the organization was excluded or exempt from the registration requirement in the Act. Count one alleges Respondent continued to solicit contributions by having a "Donate" button on its website, www.comanimals.org. The "Donate" button remained on the website through, at least, January 6, 2014. Count two alleges Respondent continued to solicit contributions on its website, subsequent to removing the "Donate" button, in the form of direct or implied written requests for donations on the representation that such

donations would be used for a charitable purpose. Count three further alleges Respondent continued to solicit contributions on its website after removing the "Donate" button in the form of advertisements for goods and services representing that a purchase of the good or service would result in a contribution to the Respondent to be used in whole or in part for a charitable purpose.

Respondent's repeated solicitations of contributions in the Commonwealth subsequent to an Order to Cease and Desist issued by the Secretary establishes a violation of 10 P.S. § 162.15(a)(1) and Respondent is thus subject to disciplinary action on counts one through three.

In count four, the Commonwealth specifically charges that Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by soliciting charitable contributions without being registered as required, with the violation occurring repeatedly and on multiple occasions. The facts deemed admitted establish that CompAnimals Pet Rescue, Inc. has not been registered with the Bureau since May 15, 2012, when it failed to submit the registration information for the fiscal year ending June 30, 2011. Respondent's solicitation of contributions in the Commonwealth without being properly registered violates Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1) and Respondent is thus subject to disciplinary action on count four.

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 in violation of the Secretary's Order to Cease and Desist, with the violation occurring repeatedly and on multiple occasions. Further, Respondent solicited contributions without properly being registered as a charitable organization.

The legislative intent behind the 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 an Order to Cease and Desist is precisely the conduct the Act is intended to curtail and penalize. Respondent, CompAnimals Pet Rescue, Inc., has failed to respond to the Bureau on several occasions, from the Order to Cease and Desist 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.

CompAnimals Pet Rescue, Inc.
Respondent

Docket No. 0003-98-16
File No. 14-98-00398

ORDER

AND NOW, this 6th day of July, 2016, 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 **CompAnimals Pet Rescue, Inc.** 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
306 North Office Building
Harrisburg, PA 17120

CompAnimals Pet Rescue, Inc., 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 **CompAnimals Pet Rescue, Inc.** 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:



Pedro A. Cortés
Secretary of the Commonwealth

Counsel to the Secretary:

Martha Brown
Commonwealth of Pennsylvania
Department of State
306 North Office Building
Harrisburg, PA 17120

For the Commonwealth:

Robert B. Armour
Commonwealth of Pennsylvania
Department of State
P. O. Box 69521
Harrisburg, PA 17106-9521

Respondent:

Leslie Hunt, Director
CompAnimals Pet Rescue, Inc.
1497 Flint Hill Road
Landenberg, PA 19350

Date of Mailing: July 6, 2016