

HISTORY

This case comes before the Secretary of the Commonwealth (hereinafter "Secretary") pursuant to the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990 (P.L. 1200, No. 202) (hereinafter "Act") as amended, 10 P.S. §§162.1 *et seq.* On September 29, 2016, the Department of State, Bureau of Charitable Organizations (hereinafter "Bureau") filed an Order to Show Cause charging Dwight Huston ("Huston") and Homeless Outreach of Crawford County, Ltd. ("Organization") (hereinafter "Respondent" when referred to jointly) with three violations of the Act.

The Order to Show Cause alleged that Respondent violated Section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by and through actions that were in violation of Section 12 of the Act, 10 P.S. §162.12, in that Respondent failed to keep true and accurate fiscal records of the activities of Homeless Outreach of Crawford County, Ltd. in the Commonwealth. The Order to Show Cause further alleged that Huston violated Section 21 of the Act, 10 P.S. §162.21 by misappropriating funds from the Organization for his personal use, benefit and gain in direct violation of his fiduciary duty as founder and sole board member of nonprofit and charitable Organization. The Order to Show Cause lastly alleges Respondent violated Section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1) by soliciting contributions through both the Organization's and Huston's personal Facebook pages after the issuance of the Cease and Desist Order, issued March 2012.

The Order to Show Cause directed Respondent to file a written answer to the charges within thirty days of the date that the Order to Show Cause was issued and notified Respondent that failure to file an answer within the time allowed may result in the factual allegations being deemed admitted.

On January 12, 2017, 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 pleading. The Secretary now issues this Adjudication and Order in final disposition of this matter.

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, 10 P.S. §§162.1, *et seq.*

2. The last known mailing address for Respondent is the address of Erick Grinder, Respondent's Accountant, because Respondent does not have a permanent address and Mr. Grinder contacted the Bureau and requested that all correspondence concerning Respondent be sent to his address instead. Erick Grinder's address is: McGill, Power, Bell & Associates, 623 State Street, Meadville, PA 16335. (Motion to Enter Default and Deem Facts Admitted ¶3-¶4).

3. Homeless Outreach of Crawford County, Ltd. (Organization) was incorporated by Dwight Huston (Huston), founder and sole board member, as a non-profit entity in the Commonwealth of Pennsylvania on or about April 3, 2009. (Order to Show Cause ¶2).

4. As founder and sole board member of the organization, Huston was a fiduciary and acted in a fiduciary capacity. (Order to Show Cause ¶3).

5. In his capacity as sole board member of Organization, Huston had sole custody and control over Organization's solicitation activities, contributions, and distribution of contributions and financial records. (Order to Show Cause ¶4).

6. About or around the time of incorporation, Respondent began soliciting contributions as a charitable organization in the Commonwealth of Pennsylvania, and specifically, in the area of Meadville, Crawford County. (Order to Show Cause ¶5).

7. Respondent has never been registered with the Bureau or provided information that the organization is exempt from registration under the Act. (Order to Show Cause ¶6).

8. On or about December 12, 2011, the Bureau received a complaint regarding Organization and Organization founder Dwight Huston. (Order to Show Cause ¶7)

9. The complaint alleged that Respondent was soliciting contributions without proper registrations and that the contributions were being used for the personal benefit and gain of Huston. (Order to Show Cause ¶8).

10. On or about December 14, 2011, the Bureau's Division of Investigations and Audits opened a complaint file on Respondent to investigate the allegations of the complaint. (Order to Show Cause ¶9).

11. During the investigation, it was confirmed that Respondent was soliciting contributions through fundraising events such as raffles, food and toy drives; conducted solicitation activity on the Internet as well as setting up a donation table. (Order to Show Cause ¶10).

12. Respondent maintains two accounts on the social media platform, Facebook: Huston's personal account and the Organization's account. (Order to Show Cause ¶11)

13. Requests for in-kind and monetary donations are solicited on both Huston's personal and Organization's Facebook pages. (Order to Show Cause ¶12).

14. On or about January 11, 2012, the Bureau sent via certified mail a letter notifying Respondent that Organization may be required to register with the Bureau and further requesting Respondent to reply within 30 days by either becoming registered or providing evidence that Organization was exempt or excluded from registration. (Order to Show Cause ¶13).

15. Respondent failed to respond to the Bureau's request. (Order to Show Cause ¶15).

16. As a result, the Secretary of the Commonwealth issued a Cease and Desist Order against Respondent on March 5, 2012. (Order to Show Cause ¶16).

17. On or about May 31, 2012, Respondent provided the Bureau with financial records, including Organization's IRS tax-exempt determination letter, Treasurer's reports, and print-outs of Organization's monthly bank statement summaries for January 2010 through December 2011. (Order to Show Cause ¶21).

18. In June 2012, Huston contacted the Bureau via telephone and spoke with Chief Investigator (Chief) Robert Rapak and Special Investigator (SI) Andrew McCole. (Order to Show Cause ¶24).

19. During the phone call, Huston stated that Organization was acting in violation of the Act. (Order to Show Cause ¶25).

20. Huston informed Chief Rapak and SI McCole that he was soliciting contributions for Organization at various locations in Meadville, Pennsylvania and using the monies contributed for personal benefit and gain in violation of his fiduciary duty. (Order to Show Cause ¶26).

21. Huston further stated that Organization did not maintain proper financial records. (Order to Show Cause ¶27).

22. During the telephone call, Chief Rapak and SI McCole informed Respondent that the Secretary's Order to cease and desist from all solicitation activity remained in effect and would continue to remain effective unless or until Respondent provided information required by the Act, including proper financial records. (Order to Show Cause ¶28).

23. On or about January 9, 2013, the Bureau received information that Respondent moved to Texas and, after confirming with Meadville authorities that Respondent was no longer soliciting in the area, closed the investigative file with the Secretary's March 2012 Cease and Desist Order remaining in effect. (Order to Show Cause ¶31).

24. On or about May 17, 2016, the solicitation activities of Respondent were again brought to the attention of the Bureau when several news outlets, including Meadville Tribune and yourErie.com, ran articles in which Homeless Outreach of Crawford County and founder Dwight Huston were discussed. (Order to Show Cause ¶32).

25. An interview with Respondent was also aired on Erie WJET Television which directed viewers to both Organization's and Huston's Facebook pages through which charitable contributions are solicited. (Order to Show Cause ¶33).

26. Further investigation confirmed that Respondent continued to solicit contributions via the Organization's Facebook page and Huston's personal Facebook page following issuance of the March 2012 Cease and Desist Order. (Order to Show Cause ¶34).

27. The Order to Show Cause was sent to Respondent's Accountant, Erik Grinder, as opposed to Respondent directly because Respondent does not have a permanent address and Mr. Grinder contacted the Bureau and requested all correspondence concerning Respondent be sent in his care. (Motion to Enter Default and Deem Facts Admitted ¶3).

28. The Commonwealth served the Order to Show Cause upon the Respondent by mailing one copy via Certified Mail, Return Receipt Requested and another copy via First Class Mail, Postage Prepaid, to the Respondent C/O Erick Grinder, at the following address: 623 State Street, Meadville, PA 16335. (Motion to Enter Default and Deem Facts Admitted ¶4).

29. Respondent received the Order to Show Cause on October 3, 2016 as evidenced by Postal Form 3811, Article #917 9690 0935 0056 1821 46. (Motion to Enter Default and Deem Facts Admitted ¶6, Exhibit C).

30. The Order to Show Cause sent to Respondent via First Class Mail, Postage Prepaid, was not returned to the Commonwealth. (Motion to Enter Default and Deem Facts Admitted ¶7).

31. The Order to Show Cause directed Respondent to file an Answer within thirty days of the mailing date. (Motion to Enter Default and Deem Facts Admitted ¶8).

32. Thirty days from the date of the Order to Show Cause expired on October 29, 2016. (Motion to Enter Default and Deem Facts Admitted ¶9).

33. Because no response was received from Respondent's accountant, Respondent's receipt of the Order to Show Cause could not be confirmed. (Motion to Enter Default and Deem Facts Admitted ¶10).

34. As such, the Prosecuting Attorney for the Commonwealth of Pennsylvania requested personal service of the Order to Show Cause upon Huston. (Motion to Enter Default and Deem Facts Admitted ¶11).

35. On or about November 15, 2016, the Department's Bureau of Enforcement and Investigations (hereinafter "BEI") received the request for personal service of the Order to Show Cause upon Huston by a BEI Professional Compliance Investigator. (Motion to Enter Default and Deem Facts Admitted ¶12).

36. On or about November 22, 2016, personal service of the Order to Show Cause upon Huston was executed by the assigned BEI Professional Compliance Officer at Huston's residence at 11942 Pennsylvania Avenue, Apartment 2, Meadville, PA, 16335. (Motion to Enter Default and Deem Facts Admitted ¶13).

37. Prior to service, the assigned BEI Professional Compliance Officer confirmed Huston's identity from a photograph included in the request for personal service. (Motion to Enter Default and Deem Facts Admitted ¶15).

38. The assigned BEI Professional Compliance Officer further confirmed Huston's identity via verbal acknowledgement from Huston of his identity during service. (Motion to Enter Default and Deem Facts Admitted ¶16).

39. Following the execution of personal service, the assigned BEI Professional Compliance Officer completed an Affidavit of Service before a notary public. (Motion to Enter Default and Deem Facts Admitted ¶17, Exhibit D).

40. On or about November 22, 2016, the Prosecuting Attorney received a voicemail message from Huston in which Huston stated his wish to discuss the Order to Show Cause that was served upon him. (Motion to Enter Default and Deem Facts Admitted ¶19).

41. The Prosecuting Attorney spoke with Respondent via telephone specifically answering Respondent's questions, explaining the Order to Show Cause, and stating that a response was required within thirty days of receipt. (Motion to Enter Default and Deem Facts Admitted ¶20).

42. Respondent did not file a response to the Order to Show Cause or the Motion to Enter Default and Deem Facts Admitted. (Docket Number 0015-98-16).

43. Respondent was served with all pleadings, orders, and notices filed of record in this matter. (Docket Number 0015-98-16).

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in the matter pursuant to Section 4 of the Act, 10 P.S. §162.4. (Findings of Fact ¶1, ¶¶3-7).

2. Respondent [i.e. Dwight Huston (“Huston”) and Homeless Outreach of Crawford County, Ltd. (“Organization”) - “Respondent” when referred to jointly] 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 ¶¶27-44).

3. Respondent violated Section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by failing to keep true fiscal records as to its activities in the Commonwealth as required by Section 12 of the Act, 10 P.S. §162.12. (Findings of Fact ¶¶4-5, ¶¶17 -19, ¶21).

4. Huston violated Section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by operating in violation of his fiduciary duties by misappropriating funds from the Organization for his personal use, benefit and gain, in violation of Section 21 of the Act, 10 P.S. §162.21. (Finding of Fact ¶¶4-5, ¶20).

5. Respondent violated Section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), in that Huston and Organization continued to solicit contributions through the Organization’s and Huston’s Facebook pages in direct violation of the March 2012 Cease and Desist Order issued by the Secretary. (Findings of Fact ¶¶24-26).

DISCUSSION

I. STATUTORY AND REGULATORY PROVISIONS

This case comes before the Secretary pursuant to the Solicitation of Funds for Charitable Purposes Act, Act of December 9, 1990 (P.L. 1200, No. 202), as amended, 10 P.S. §§162.1 *et seq.*

The pertinent provisions of the Act are the following:

§ 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.

§ 162.13. Limitation on activities of charitable organizations; disclosure requirements

(a) SOLICITATION LIMITATION.-- A charitable organization may only solicit contributions for the charitable purpose expressed in solicitation for contributions or the registration statement of the charitable organization and may only apply contributions in a manner substantially consistent with that purpose.

* * *

§ 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.

* * *

§ 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.

* * *

(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:

* * *

(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.

* * *

§ 162.21. Charitable organizations deemed fiduciary

Every person soliciting, collecting or expending contributions for charitable purposes and every officer, director, trustee and employee of any such person concerned with the solicitation, collection or expenditure of such contribution shall be deemed to be a fiduciary and acting in a fiduciary capacity.

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 orders to show cause.

A person upon whom an order to show cause has been served... shall, if directed so to do, 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 made in the order, set forth the facts upon which respondent relies and state concisely the matters of law relied upon... A respondent failing to file 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 Nat’l Bank of Pike County v. Dep’t of Banking and Bank of Matamoras, Intervening, 300 A.2d 823, 824 (Pa. Commw. Ct. 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. Dep’t of Env’tl. Res., 613 A.2d 65, 67 (Pa. Commw Ct. 1992) (citation omitted), appeal denied, 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 Bd, 516 A.2d 75, 77 (Pa. Commw. Ct. 1986), citing Yarbrough v. Dep’t of Pub. Welfare, 748 A.2d 956 (Pa. Commw. Ct. 1984).

After Respondent’s accountant, Erick Grinder, contacted the Bureau to request that all correspondence concerning Respondent be sent in his care, a copy of the Order to Show Cause was mailed via Certified Mail, Return Receipt Requested and another copy via First Class Mail, Postage Prepaid, to Respondent under the care of Erick Grinder. A true and correct copy of the Order to Show Cause was mailed to the Respondent via Certified Mail was marked as Item Number 9171 9690 0935 0131 3990 94. Respondent received the Order to Show Cause on October 3, 2016, as evidenced by Postal Form 3811, Article Number 9171 9690 0935 0056 1821 46. The Order to Show Cause sent to Respondent via First Class Mail, Postage Prepaid, was not returned to the Commonwealth and is presumed to have been delivered to and received by Respondent. The Department’s Bureau of Enforcement and Investigations personally served Dwight Huston with the Order to Show Cause on November 22, 2016. Therefore, the Secretary finds that the Organization and Huston received actual notice of the action and allegations against them.

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. Furthermore, the Order to Show Cause warned Respondent that if it failed to request a hearing, Respondent would be deemed to have waived the right to a hearing and final judgment may be entered without a hearing. Due process does not confer an absolute right to be heard, but only that a party be provided 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 the factual allegations contained in the Order to Show Cause admitted, and grants the Motion to Enter Default and Deem Facts Admitted against Respondent.

III. ANALYSIS AND SANCTION

In Count One of the Order to Show Cause, Respondent is charged with violating Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1) by and through actions that were not in accordance with Section 12 of the Act, 10 P.S. §162.12. The facts deemed admitted establish that Dwight Huston (“Huston”) was the founder and sole board member of Homeless Outreach of Crawford County (“Organization”) – both are referred to jointly as “Respondent.” As such, Respondent was obligated to keep true and accurate fiscal records of the activities of Homeless Outreach of Crawford County. Based on Huston’s admissions and the financial records provided by Respondent to the Bureau, Respondent failed to keep true fiscal records as to its activities in the Commonwealth in a form that enables the provision of accurate information as required by the Act, Section 12, 10 P.S. §162.12.

In Count Two of the Order to Show Cause, Dwight Huston is charged with violating Section 21 of the Act, 10 P.S. §162.21. The facts deemed admitted establish that Huston was founder and sole board member of Homeless Outreach of Crawford County and thus, Huston was a fiduciary to Organization and acted in a fiduciary capacity. Huston admitted that he solicited contributions for the Organization at various locations in Meadville, Pennsylvania and used this money for his own personal benefit and gain. Therefore, Huston violated his fiduciary duty by misappropriating funds from Homeless Outreach of Crawford County for his personal benefit, use, and gain, in violation of Section 21 of the Act 10 P.S. §162.21.

In Count Three, Respondent is charged with violating Section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by soliciting contributions in violation of an order of the Secretary. The facts deemed admitted establish Respondent continued to solicit contributions in 2016 via the Facebook page of Homeless Outreach of Crawford County and Respondent's own personal Facebook page, following the issuance of a Cease and Desist Order on March 5, 2012. Therefore, Respondent operated in violation of the Cease and Desist Order of the Secretary, thereby violating Section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1).

When the Secretary finds that a charity or individual has violated any of the provisions of the Act, the Secretary is authorized to enforce the Act against such person pursuant to Section 17(a)(1) of the Act, 10 P.S. §162.17(a)(1), and to levy administrative fines according to Section 17(b)(3) of the Act, 10 P.S. §162.17(b)(3). Under Section 17(b)(3), the Secretary may impose an administrative fine not to exceed \$1,000 for each act or omission which constitutes a violation of the Act.

It is clear that Respondent has repeatedly violated the Act. Respondent has failed to keep true fiscal records as to its activities in the Commonwealth. In addition, Huston has violated his

fiduciary duty by misappropriating money from an organization allegedly dedicated to helping homeless individuals in Crawford County. Moreover, Respondent has continued to solicit contributions even after the issuance of the Secretary's March 5, 2012 Cease and Desist Order. It is up to the Secretary of the Commonwealth to hold Respondent accountable.

A civil penalty of \$3,000 is appropriate. In addition, Respondent should be ordered again to cease and desist from all fundraising and solicitation activities in the Commonwealth for a period of three years. After such time has passed, Respondent shall continue to cease and desist from all fundraising and solicitation activities until all penalties are paid in full.

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 Corporations and	:	
Charitable Organizations	:	
	:	Docket No. 0015-98-16
v.	:	File No. 16-98-07273
	:	
Dwight Huston, t/d/b/a Homeless	:	
Outreach of Crawford County, Ltd.,	:	
Respondent	:	

ORDER

AND NOW, this 16th day of March, 2017, upon consideration of the foregoing findings of fact, conclusions of law, and discussion, it is hereby **ORDERED** that:

(1) Dwight Huston and Homeless Outreach of Crawford County, Ltd. shall **CEASE AND DESIST** from all manner of fundraising and solicitation activities in this Commonwealth, until all penalties imposed below are paid in full, and in no case shall either engage in fundraising and solicitation activities for a period of (3) years from the effective date of this Order.

(2) An administrative fine in the amount of **\$3,000.00** shall be imposed upon Dwight Huston and Homeless Outreach of Crawford County, Ltd. This amount shall be remitted by certified check or U.S. postal Service money order made payable to Commonwealth of Pennsylvania" within thirty (30) days of the effective date of this Order and mailed to:

Martha H. Brown
Pennsylvania Department of State
Office of Chief Counsel
401 North Street, Room 306
Harrisburg, PA 17120

Appeal to 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 show below.

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

BY ORDER



Pedro A. Cortés
Pedro A. Cortés
Secretary of the Commonwealth

For the Commonwealth: Caroline Bailey
Prosecuting Attorney
401 North Street, Room 306
Harrisburg, PA 17120

Respondent: Erick Grinder
McGill, Power, Bell & Associates
623 State Street
Meadville, PA 16335

Dwight Huston
11942 Pennsylvania Avenue, Apartment 2
Meadville, PA 16335

Date of Mailing: 3.17.17