

COPY

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

**Commonwealth of Pennsylvania
Bureau of Charitable Organizations**

vs.

**The Diamond Club
Respondent**

**Docket No. 0010-98-15
File No. 14-98-12142**

FINAL ADJUDICATION AND ORDER

**PROTHONOTARY
2015 NOV -5 PM 3:42
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 July 8, 2015, alleging that The Diamond Club (“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 operating in violation of a Cease and Desist Order issued to Respondent by the Secretary, and by failing to make financial records available for inspection upon demand of the Department of State.

On August 20, 2015, 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. On or about July 8, 2015, the Commonwealth filed an Order to Show Cause setting forth allegations that Respondent violated the Solicitation of Funds for Charitable Purposes Act. (Motion to Enter Default ¶ 1)

3. 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)

4. Respondent’s last known address is 320 B Franklin Street, West Pittston, PA 18643. (Order to show cause ¶ 5, Motion to Enter Default ¶ 3)

5. At all relevant and material times, Respondent did not hold a registration to solicit charitable contributions within the Commonwealth of Pennsylvania. (Order to Show Cause ¶ 3)

6. At all relevant and material times, Respondent had not provided required information to prove that it is exempt from registration requirements. (Order to Show Cause ¶ 4)

7. On or about May 20, 2014, the Bureau of Corporations and Charitable Organizations (“Bureau”) notified Respondent that it may be required to register pursuant to the Act and that it had thirty (30) days to respond by becoming properly registered or providing evidence that it is exempt or excluded from registering under the Act. (Order to Show Cause ¶ 7, Exhibit A)

8. The letter of May 20, 2014, was delivered to Respondent on or about May 22, 2014, as evidenced by the United States Postal Service Electronic Return Receipt for item 9171 9690 0935 0042 3861 83. (Order to Show Cause ¶¶ 9-10, Exhibit B)

9. Respondent failed to provide documentation and information to the Bureau as requested in the May 20, 2014, letter. (Order to Show Cause ¶ 11)

10. As a result, on or about August 19, 2014, Respondent was ordered to Cease and Desist soliciting in the Commonwealth by the Secretary of the Commonwealth. (Order to show cause ¶ 13, Exhibit C)

11. Subsequent to the issuance of the August 19, 2014, Cease and Desist Order by the Secretary, Respondent continued to solicit contributions in the Commonwealth on its website. (Order to show cause ¶ 14)

12. The Order to Show Cause was delivered to Respondent on or about July 11, 2015, as evidenced by the United States Postal Service Electronic Return Receipt for item 9171 9690 0935 0081 4010 45. (Motion to Deem Facts Admitted ¶ 5, Exhibit B)

13. A copy of the Order to Show Cause was sent to Respondent via First Class Mail, Postage Prepaid, and was not returned to the Commonwealth by the United States Postal Service. (Motion to Deem Facts Admitted ¶ 7)

14. The Order to Show Cause directed Respondent to file an Answer thereto within thirty (30) days. (Motion to Deem Facts Admitted ¶ 8)

15. As of the date of the Motion to Enter Default and Deem Facts Admitted, Respondent has not filed any Answer to the Order to Show Cause or the Motion to Enter Default and Deem Facts Admitted. (Motion to Deem Facts Admitted ¶ 10)

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Findings of Fact 1-3)
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 7-8, 12-15)
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 15)
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 12, 10 P.S. §162.12, for failure to make financial records available for inspection upon demand of the Department of State. (Findings of Fact 3, 6-7, 9-11, 15)
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 in violation of a Cease and Desist Order issued by the Secretary of the Commonwealth. (Findings of Fact 10-11, 15)

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 two counts, alleging that Respondent violated the following provisions of the Act, which provide in pertinent part:

* * *

§ 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.

* * *

§ 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).

The copy of the order to show cause mailed to The Diamond Club at the Franklin Street address by certified mail, return receipt requested, was received by the organization at that address on July 11, 2015, and signed for by Kathy Bellino (Motion to Deem Facts Admitted, Exhibit B). The copy of the order sent by first class mail was also not returned. Therefore, the Secretary finds that Respondent received both actual and 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 and two 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 count one, the Commonwealth specifically charges that Respondent violated the Act at 10 P.S. §162.15(a)(1) by soliciting contributions in the Commonwealth in violation of an order issued by the Secretary of the Commonwealth. The facts deemed admitted establish that Respondent has never been registered as a charitable organization with the Bureau. The facts deemed admitted also establish that after being ordered to cease and desist soliciting on August 19, 2014, Respondent continued to solicit contributions in the Commonwealth on its website.

Respondent's solicitation of contributions in the Commonwealth in violation of the cease and desist order establishes a violation of 10 P.S. §162.15(a)(1), and Respondent is thus subject to disciplinary action on count one.

In count two, the Commonwealth specifically charges that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.12, by failing to produce financial records when requested by the Department. The facts deemed admitted establish that the Department, acting through the Bureau's investigator, requested various documents and records from Respondent, but Respondent provided none. Respondent's failure to respond to the Department's

requests establishes a violation of 10 P.S. §162.15(a)(1) by and through 10 P.S. §162.12, and Respondent is thus subject to disciplinary action on count two.

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 a cease and desist order and failed to produce financial records requested by the Department.

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 Diamond Club 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. 0010-98-15
	:	File No. 14-98-12142
	:	
The Diamond Club	:	
Respondent	:	

ORDER

AND NOW, this 5th day of November, 2015, 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 \$2,000.00 shall be imposed upon **The Diamond Club**. 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

The Diamond Club, 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 **The Diamond Club** 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

Respondent:

The Diamond Club
Joe Bellino, President
320 B Franklin Street
West Pittston, PA 18643

For the Commonwealth

T'rese M. Evancho, Prosecuting Attorney
Commonwealth of Pennsylvania
Department of State
P.O. Box 69521
Harrisburg, PA 17106-9521

Date of Mailing:

November 5, 2015

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 Corporations and Charitable Organizations
401 North Street
Room 306
Harrisburg, PA 17120