

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

PROTHONOTARY

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Department of State

Commonwealth of Pennsylvania, Bureau of Corporations and Charitable Organizations	:		
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	:		
vs.	:	Docket No.	0001-98-16
	:		
Greater Wilkes-Barre, PA, American Legion Post 132, Respondent	:	File No.	14-98-00096
	:		
	:		

CONSENT AGREEMENT AND ORDER

PARTIES

The Commonwealth of Pennsylvania, Department of State, Bureau of Corporations and Charitable Organizations (“Bureau”) and **Greater Wilkes-Barre, PA, American Legion Post 132** (“Respondent”), stipulate as follows in settlement of the above-captioned matter:

JURISDICTION

1. This matter is before the Secretary of the Commonwealth (“Secretary”) pursuant to the Solicitation of Funds for Charitable Purposes Act (“the Act”), Act of December 19, 1990, P.L. 1200, No. 202, *as amended*, 10 P.S. §§ 162.1-162.24.

LICENSE AND REGISTRATION STATUS

2. Respondent does not deny the truth of the following averments:
 - a. Respondent is an American Legion Post with offices at 45 North River Street, Wilkes-Barre, PA 18702.
 - b. The Post Commander is Parker H. Davis, Jr., and the Adjutant is David E. Searfoss.

c. The last known mailing address for the Respondent is: 45 North River Street, Wilkes-Barre, PA 18702.

FACTUAL ALLEGATIONS

3. The Respondent admits that the following allegations are true:

a. Bingo games are held no more than 2 days a week at the location at 45 North River Street, Wilkes-Barre, PA.

b. Pull-tab or other small games of chance are also conducted at the times that the bingo games are held.

c. Contributions received from the bingo games and the small games of chance go toward the mission of the American Legion Organization.

d. For each calendar year from, at least, calendar year 2009 through calendar year 2014, and continuing, Respondent received contributions from bingo and small games of chance in excess of \$25,000.

e. Respondent failed to register annually with the Bureau of Corporations and Charitable Organizations ("Bureau") as a charitable organization as required by Section 5(a) of the Act, 10 P.S. § 162.5(a).

f. Respondent failed to maintain adequate records of the contributions received from bingo and the small games of chance.

g. Although records were destroyed by flood waters in 2011, both the records that were available for the period of time prior to the flood and the records for the years subsequent to the flood were poorly kept and failed to have appropriate documentation in place in support of the financial record.

h. The failure of Respondent to accurately report revenue and expenses led to an understatement of the contributions received by Respondent.

AGREED VIOLATIONS

4. The parties agree that by engaging in the foregoing activities, Respondent committed multiple violations of:

a. Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by:

(1) soliciting charitable contributions in Pennsylvania without being properly registered on an annual basis as a charitable organization, in violation of Section 5(a) of the Act, 10 P.S. § 162.5(a); and

(2) by failing to maintain true and accurate records of the contributions received and the expenditures made of funds meant to promote the organization's charitable purpose, in violation of Section 12 of the Act, 10 P.S. § 162.12.

b. Section 15(a)(2) of the Act, 10 P.S. § 162.15(a)(2), in that the failure of the organization to fully report contributions received through gaming and small games of chance constituted an unfair and deceptive practice creating a likelihood of confusion or misunderstanding regarding the organization's financial status.

MITIGATION

5. In mitigation of any Administrative Fine to be imposed in this matter, Respondent offers the following statements:

a. As the result of the sudden death in 2009 of the legion member who ran the bingo games, inexperience members were required to take over the operation;

b. Those inexperienced members made an attempt to understand the laws and requirements that applied to the operation of the bingo games.

c. In 2011, a flood caused damage to Legion property and resulted in the loss of financial information related to the operation of the bingo games.

d. Following the post re-opening after the flood, measures were taken related to the operation of the bingo games to make proper payments to vendors, make proper bank deposits and to keep proper records of each bingo game.

e. An IRS tax form 990 was filed each year and the federal tax exemption certificate did not list an expiration date, leading the members running the bingo games to believe that they were in compliance.

f. Although there was a failure to register with the Bureau, inexperience was a factor in the failure; there was never any motive related to theft or any intent to deceive the Bureau.

g. More recently, the Respondent has operated with the intent of paying the bills until the building it owns at 45 North River Street, Wilkes-Barre, PA could be sold and the Respondent could transfer its membership to an active American Legion Post (815) in nearby Wilkes-Barre Township.

h. The sale of the building has not occurred and the Respondent has limited financial resources to pay any Administrative Fine that may be assessed.

TERMS OF BOARD ORDER

6. To address the concerns raised by the Commonwealth and to resolve this matter on a compromise basis, the Commonwealth and the Respondent, intending to be legally bound, agree to the issuance by the Secretary of the following Order in settlement of this matter:

a. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), on multiple occasions by and through the violation of Section 15(a) of the Act, 10 P.S. § 162.15(a), in that Respondent solicited charitable contributions in Pennsylvania without first being registered as a charitable organization;

b. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), on multiple occasions by and through the violation of Section 12 of the Act, 10 P.S.

§ 162.12, in that Respondent failed to maintain true and accurate records of contributions received and expenditures made of funds meant to promote the organization's charitable purpose; and

c. Respondent violated Section 15(a)(2) of the Act, 10 P.S. § 162.15(a)(2), on multiple occasions in that the failure of the organization to fully report contributions received through gaming and small games of chance constituted an unfair and deceptive practice creating a likelihood of confusion or misunderstanding regarding the organization's financial status.

ADMINISTRATIVE FINE

d. An **ADMINISTRATIVE FINE** in the amount of **TWO-THOUSAND-FIVE-HUNDRED-DOLLARS (\$2,500.00)** is hereby levied upon Respondent.

(1) Respondent shall tender the full sum of the **ADMINISTRATIVE FINE** with the return of this executed Consent Agreement;

(2) Payment of the **ADMINISTRATIVE FINE** shall be by certified check, cashier's check, attorney's check, or money order issued by a usual, customary, and reputable issuer (e.g. U.S. Postal Money Order, Western Union Money Order, etc.).

(3) The instrument of payment shall be payable to the 'Commonwealth of Pennsylvania,' and shall be valid for a period of at least one hundred eighty (180) days.

(4) Respondent agrees that payment shall only be made by one of the methods indicated above and shall not be made by uncertified personal or corporate check.

FILING OF REGISTRATION DOCUMENTS

e. Respondent agrees not to solicit charitable contributions in the Commonwealth of Pennsylvania without first being properly registered with the Bureau in accordance with Section 162.5 of the Act, 10 P.S. § 162.5.

f. Respondent acknowledges that failure to register with the Bureau when required to do so, may result in an administrative fine of \$1,000.00 for each violation and an additional penalty of \$100.00 for each day a violation continues.

g. Respondent acknowledges that failing to register with the Bureau when required to do so and being penalized for that failure may result in a subsequent registration being automatically suspended until the fine is paid or until the normal expiration date of the registration in accordance with Section 162.17 of the Act, 10 P.S. § 162.17.

h. Respondent acknowledges that no subsequent registration shall be renewed until any fine imposed is paid.

i. Respondent shall not enter into any contract or agreement or employ any professional fundraising counsel or professional solicitor unless that professional fundraising counsel or professional solicitor is registered with the Bureau.

CASE SETTLED AND DISCONTINUED

j. This case shall be deemed settled and discontinued upon the Secretary issuing an Order approving this Consent Agreement and adopting the terms of this paragraph.

k. Nothing in this Consent Agreement and Order shall preclude the Prosecuting Attorney for the Bureau from filing charges, or the Secretary from

imposing, disciplinary or corrective measures for violations or facts not contained in this Consent Agreement and Order.

ADMISSIBILITY OF CONSENT AGREEMENT IN FUTURE PROCEEDINGS

7. Respondent agrees that if Respondent is charged with a violation of the Act in the future, this Consent Agreement and Order shall be admitted into evidence without objection in that proceeding.

ACKNOWLEDGMENT OF NOTICE AND WAIVER OF HEARING

8. Respondent acknowledges the filing and the receipt of service of an Order to Show Cause in this matter.

9. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and knowingly and voluntarily waives the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

ACKNOWLEDGMENT OF RIGHT TO ATTORNEY

10. Respondent acknowledges that it is aware that it has the right to consult with, and be represented by, private legal counsel of Respondent's choosing and at Respondent's expense when reviewing, considering and accepting the terms of this Consent Agreement.

11. To the extent that Respondent is not represented by legal counsel, Respondent has knowingly elected to proceed in this matter without the assistance of legal counsel.

WAIVER OF CLAIM OF COMMINGLING AND OTHER CONSTITUTIONAL CLAIMS

12. Respondent expressly waives any constitutional rights and issues, such as commingling of prosecutorial and adjudicative functions by the Secretary or counsel, which may arise or have

arisen during the negotiation, preparation and/or presentation of this Consent Agreement. This paragraph is binding on the participants even if the Secretary does not approve this Consent Agreement.

NO MODIFICATION OF ORDER

13. Respondent agrees, as a condition of entering into this Consent Agreement, not to seek modification at a later date of the Stipulated Order adopting and implementing this Consent Agreement without first obtaining the express written concurrence of the Prosecution Division.

AGREEMENT NOT BINDING ON OTHER PARTIES

14. This Consent Agreement is between the Bureau and Respondent only. It does not bind any other governmental or administrative entity of the Commonwealth of Pennsylvania, including any other bureau within the Department of State.

15. The Office of General Counsel has approved this Consent Agreement as to form and legality; however, this Consent Agreement shall have no legal effect unless and until the Secretary issues an Order approving and adopting this Consent Agreement.

EFFECT OF SECRETARY'S REJECTION OF CONSENT AGREEMENT

16. Should the Secretary not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Secretary shall not prejudice the Secretary from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Secretary does not approve this Consent Agreement.

AGREEMENT DOES NOT PREVENT REFERRAL TO OTHER AGENCIES

17. The parties acknowledge that other federal, state, and/or local agencies may have jurisdiction over the activities of, or representations made by, Respondent and its officers, directors, agents, employees or independent contractors. Nothing in this Consent Agreement or

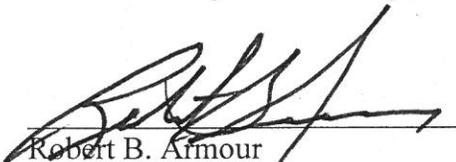
the Order based upon this Consent Agreement shall preclude representatives of the Bureau from referring any information or data obtained or produced as a result of this matter to any federal, state, or local agency or governmental unit having jurisdiction over the activities of Respondent or over any officer, director, agent, employee or independent contractor of the Respondent.

ENTIRE AGREEMENT

18. This agreement contains the whole agreement between the participants; provided however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

VERIFICATION OF FACTS AND STATEMENTS

19. Respondent verifies that the facts and statements set forth in this Consent Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Consent Agreement are made subject to the criminal penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Robert B. Armour
Prosecuting Attorney
Department of State

DATED: 06/29/16



Parker H. Davis, Jr., Post Commander
American Legion Post 132, Wilkes-Barre, PA
Respondent

DATED: 6-21-16



BUREAU OF CORPORATIONS AND CHARITABLE ORGANIZATIONS

vs.

GREATER WILKES-BARRE, PA, AMERICAN LEGION POST 132

DOCKET NO. 0001-98-16

FILE NO. 14-98-00096

ORDER

AND NOW, this 20th day of July 2016 the foregoing Consent Agreement is approved and the terms set forth in paragraph 6 are hereby adopted and incorporated herein as the Order of the Secretary of the Commonwealth issued in resolution of this matter.

THIS ORDER shall take effect immediately.

BY ORDER

A handwritten signature in black ink that reads "Pedro A. Cortés".

Pedro A. Cortés
Secretary of the Commonwealth

For the Commonwealth:

Robert B. Armour, Esquire
2601 North Third Street
P. O. Box 2649
Harrisburg, PA 17105-2649

For Respondent:

William Ruzzo, Esquire
590 Rutter Avenue
Kingston, PA 18704

Date of mailing:

07/21/16