

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

Department of State

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PROTHONOTARY

Commonwealth of Pennsylvania,
Bureau of Charitable Organizations

v.

Equus Sanctuary,
Respondent

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Docket no. 0001-98-00

Department File no. 99-98-02569

ADJUDICATION AND ORDER

Kim Pizzingrilli
Secretary of the Commonwealth

302 North Office Building
Harrisburg, PA 17120
(717) 787-7630

HISTORY

This matter comes before the Secretary of the Commonwealth (Secretary) on an order to show cause (OSC) filed February 3, 2000, alleging that Equus Sanctuary (Respondent), an unregistered charitable organization, is subject to administrative sanctions under the Solicitation of Funds for Charitable Purposes Act¹ (Solicitation Act). The OSC was served upon Respondent via certified mail February 11, 2000, as evidenced by a United States Postal Service Domestic Return Receipt filed of record. On August 25, 2000, the Commonwealth filed a motion to enter default and deem facts admitted (MDFA), which was served upon Respondent at an address provided by Respondent. Respondent did not file an answer to either pleading.

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

FINDINGS OF FACT

1. Respondent is a charitable organization which is not currently and never has been registered as a charitable organization pursuant to the Solicitation Act. (Department of State records)

2. On February 3, 2000, the Commonwealth filed the OSC issued in this matter, which was served upon Respondent via certified mail, return receipt requested, addressed to: 2829 Glenoaks, Suite 106-110, Burbank, CA 91504, as evidenced by a United States Postal Service Domestic Return Receipt, filed of record in this matter. (Docket no. 0001-98-00)

3. On March 16, 2000, Respondent requested an additional 30 days to respond to the OSC. (Docket no. 0001-98-00)

4. On August 25, 2000, the Commonwealth filed a MDFA in this matter which was served upon Respondent at the address Respondent provided in its request for additional time: P.O. Box 3273, Glendale, CA 91221. (Docket no. 0001-98-00)

5. To date, Respondent has not filed an answer to either the OSC or the MDFA. (Docket no. 0001-98-00)

6. On February 10, 1999, the Department of State, Bureau of Charitable Organizations (Bureau) received a copy of a brochure soliciting financial contributions to Respondent, which material contained selections of various monetary amounts to choose from along with the following language:

Yes, Linda, I want to help save an animal like Golden Boy, abandoned at the killers. Here's my gift to spend over the next month . . .

(OSC, ¶ 4, Exhibit 1)

7. On February 18, 1999, the Bureau sent Respondent correspondence via certified mail, return receipt requested, informing it of the Solicitation Act's registration requirements and requesting Respondent to register as a charitable organization with the Bureau, which correspondence was received by Respondent February 23, 1999. (OSC, ¶¶ 5, 6, Exhibit 3)

8. Respondent did not respond to the Bureau's February 18, 1999 correspondence.

(Bureau records)

9. On March 23, 1999, the Bureau sent a second letter via certified mail, return receipt requested, directing Respondent to respond to the Bureau within 7 days or a "Cease and Desist Order" would be issued. (OSC, ¶ 7, Exhibit 4)

10. Respondent received the Bureau's March 23, 1999 letter March 27, 1999. (OSC, ¶ 8, Exhibit 5)

11. Respondent did not respond to the Bureau's March 23, 1999 letter. (Bureau records)

12. On April 7, 1999, the then-Acting Secretary issued an order to Respondent directing that it "CEASE AND DESIST FROM SOLICITING CONTRIBUTIONS IN PENNSYLVANIA" until it has registered as a charitable organization with the Bureau or provided evidence that it is exempt from registration. (Department records; OSC, ¶ 10, Exhibit 7)

13. The April 7, 1999 Cease and Desist Order was served on Respondent by certified mail delivered April 12, 1999. (OSC, ¶ 11, Exhibit 8)

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Finding of Fact no. 1)
2. Respondent has received notice of the charges against it and has been given an opportunity to be heard in this proceeding in accordance with Administrative Agency Law, 2 Pa.C.S. § 504. (Findings of Fact nos. 2, 3, 4, 5)
3. Respondent is in default in this action and the factual allegations contained in the OSC are deemed admitted in accordance with 1 Pa Code § 35.37. (Findings of Fact nos. 2, 3, 4, 5)
4. The Secretary is authorized to impose an administrative fine and other penalties under 10 P.S. § 162.17 because Respondent solicited charitable contributions in Pennsylvania without being registered with the Bureau in violation of 10 P.S. § 162.5(a). (Findings of Fact nos. 1, 6)

DISCUSSION

Motion for Default

The OSC was served on Respondent by certified mail February 3, 2000, which Respondent received February 11, 2000, as evidenced by U.S. Postal Service return receipt, filed of record in this action. In a notice attached to the OSC, Respondent was informed that a formal administrative disciplinary action had been instituted against Respondent and that “penalties may be imposed upon [Respondent].”² The OSC directed Respondent to file an answer to the allegations in the OSC, and advised that if Respondent did not file an answer to those allegations, disciplinary action may be taken against Respondent without a hearing. Under a section captioned "Procedures" in the OSC, Respondent was ordered to file a written answer to the OSC within 30 days and advised that “If Respondent fails to file an Answer within the time allowed herein, the Factual Allegations may be deemed admitted, and the Secretary will issue an Order which may impose penalties as set forth above.” On March 16, 2000 Respondent requested an additional 30 days to respond to the OSC but, to date, has not filed an answer. Respondent did not file an answer to the OSC and, on August 25, 2000, the Commonwealth filed a MDFA which it served on Respondent via first class mail to an address provided by Respondent. Respondent did not file an answer to the MDFA. Respondent is therefore in default in accordance with 1 Pa.

² OSC, NOTICE.

Code § 35.37.³ Accordingly, the Commonwealth's motion for default is granted and the allegations in the OSC are deemed admitted.

Basis for the imposition of a disciplinary sanction.

The OSC filed in this matter is brought under the Solicitation Act, 10 P.S. § 162.1 *et seq.*, which grants the Secretary authority over charitable organizations as follows:

§ 162.4. Powers and duties of secretary

The secretary shall have the following powers and duties to:

- (1) Provide for and regulate the registration of charitable organizations, professional fundraising counselors and professional solicitors.
- (2) Decide matters relating to the issuance, renewal, suspension or revocation of registrations.
- (3) Promulgate, adopt and enforce the rules and regulations necessary to carry out this act.
- (4) Promulgate regulations altering fees and fines established in this act sufficient to meet expenditures of the bureau.
- (5) Take appropriate action to initiate any civil or criminal proceedings necessary to enforce this act, in accordance with the act of October 15, 1980 (P.L. 950, No. 164), known as the Commonwealth Attorneys Act.
- (6) Conduct hearings and make adjudications.

³ Section 35.37 of the General Rules of Administrative Practice and Procedure provides in pertinent part as follows:

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 said order an answer in writing . . . Any respondent failing to file an answer within the time allowed shall be deemed in default, and all relevant facts stated in the order to show cause may be deemed admitted.

(7) Keep a record showing the names and addresses of all registered charitable organizations, professional fundraising counsel and professional solicitors.

(8) Submit annually, on or before September 30, to the Governor, to the State Government Committees of the House of Representatives and Senate, as well as to interested parties, a report on the number of registered charities, the number of charities ordered to cease and desist solicitation, the number of charities contracting with professional solicitors and the compensation of professional solicitors for each solicitation campaign in relation to the funds raised and administrative costs.

(9) Delegate to a division director of his office such powers and duties under this act as he may deem appropriate.

(10) Exercise all other authority accorded to him by this act.

The Solicitation Act defines "Charitable organization" at 10 P.S. § 162.3 as follows:

"Charitable organization." Any person granted tax exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501 (c)(3) or any person who is or holds himself out to be established for any charitable purpose or any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal which has a tendency to suggest there is a charitable purpose to any solicitation. An affiliate of a charitable organization which has its principal place of business outside this Commonwealth shall be a charitable organization for the purposes of this act.

Among the facts alleged in the OSC and deemed admitted is that Respondent, an organization granted tax exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, solicited contributions for stated purposes which included caring for horses and rescuing more horses from the "slaughter industry."⁴ Respondent is therefore within the Solicitation Act's definition of "charitable organization" and therefore is subject to the Secretary's oversight under

⁴ OSC, Exhibit 1.

the Solicitation Act.

The Commonwealth's OSC comprises one count alleging that Respondent is subject to the imposition of "an administrative fine and other penalties under 10 P.S. § 162.17," which provides as follows:

§ 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:

* * *

(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 Commonwealth alleges specifically that “Respondent solicited charitable contributions in Pennsylvania without being registered with the Bureau.”⁵ Section 5(a) of the Solicitation Act, 10 P.S. § 162.5(a), provides as follows:

§ 162.5(a) 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. . . .

The facts alleged by the Commonwealth in its OSC and deemed admitted can be summarized as follows:

- Respondent is not registered as a charitable organization in this Commonwealth;
- The Bureau received a solicitation from Respondent February 10, 1999;
- The Bureau’s director sent Respondent two letters in response to the initial solicitation, requesting that Respondent “become properly registered or provide the Bureau with evidence that [Respondent] is either excluded or exempted from the [Solicitation] Act’s requirements;”⁶
- In his second letter, the Bureau director warned that a “Cease and Desist” order would issue if Respondent did not reply;⁷

⁵ OSC, § 13.

⁶ OSC, Exhibit 3.

⁷ OSC, Exhibit 2.

- Respondent ignored both letters;
- A “Cease and Desist” order was issued April 7, 1999, and served upon Respondent April 12, 1999.⁸

These facts support a finding that Respondent violated the Solicitation Act at 10 P.S. § 162.5(a) by not filing a “registration statement with the department” as required by the statute and is therefore subject to the imposition of administrative fines and other penalties in accordance with 10 P.S. § 162.17. In the absence of any mitigation, the Secretary determines that the maximum administrative fine should be imposed. Accordingly, the following order shall issue.

⁸ OSC, Exhibits 7, 8.

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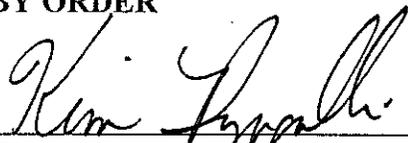
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ORDER

AND NOW, this 21st day of September, 2000, in accordance with the foregoing findings of fact, conclusions of law and discussion, the Secretary of the Commonwealth hereby **finds** that Respondent **Equus Sanctuary** has violated the Solicitation of Funds for Charitable Purposes Act at 10 P.S. § 162.5(a), it is hereby **ordered** that an **administrative fine** in the amount of **\$1,000.00** be and hereby is imposed upon Respondent in accordance with 10 P.S. § 162.17.

Appeal may be taken pursuant to 2 Pa.C.S. § 702 and 10 P.S. § 162.17(c).

BY ORDER



Kim Pizzigrilli
Secretary of the Commonwealth

Date of Mailing: 9/26/00

For the Commonwealth:
Carole L. Clarke, Esquire
Department of State
116 Pine Street; P.O. Box 2649
Harrisburg, PA 17105-2649

Respondent:
Equus Sanctuary
P.O. Box 3273
Glendale, CA 91221