



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

PROTHONOTARY

2003 DEC 16 AM 9:46

Department of State

Commonwealth of Pennsylvania,
Bureau of Charitable Organizations,

vs.

FINCA International, Inc.

:
:
:
:
:
:
:

Docket No. 0010 -98-03
File No. 03-98-12298

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations ("Bureau") and FINCA International, Inc. ("Respondent") stipulate as follows in settlement of the above-captioned case.

JURISDICTION

1. This matter is before the Secretary of the Commonwealth ("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. §§162.1-162.24.

2. Respondent was registered as a charitable organization in the Commonwealth of Pennsylvania, registration number 11637, until January 13, 2002.

3. At all relevant and material times, Respondent did not hold a registration to solicit charitable contributions within the Commonwealth of Pennsylvania.

STIPULATED FACTS

4. Respondent admits that the following allegations are true:

a. Respondent's last known business address, as on file with the

Department of State, is 1101 14th Street, NW, 11th Floor, Washington, DC 20005.

- b. Respondent's registration expired on January 13, 2002.
- c. On October 11, 2002, the Bureau received evidence that Respondent was soliciting contributions from Pennsylvania residents without an approved registration with the Bureau.
- d. On October 21, 2002, the Secretary issued a Cease and Desist Order against Respondent for failing to register with the Bureau.
- e. Between November 18, 2002 and July 31, 2003 Respondent, on at least seven separate occasions, solicited charitable contributions from Pennsylvania residents without an approved registration with the Bureau and in violation of the Cease & Desist Order.
- f. The solicitations contained the disclosure statement pursuant to 10 P.S. § 162.13(c) stating that Respondent was registered when, in fact, it was not.

AGREED VIOLATIONS

5. Respondent agrees that by engaging in the foregoing activities, Respondent committed multiple violations of the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.5(a), in that Respondent solicited charitable contributions in the Commonwealth of Pennsylvania after Respondent's registration had expired.

6. Respondent agrees that by engaging in the foregoing activities, Respondent committed multiple violations of the Act at 10 P.S. §162.15(a)(1), by and through §162.17(a)(1), in that Respondent solicited charitable contributions between November 18, 2002 and July 31, 2003, in violation of the Secretary's Cease and Desist Order.

7. Respondent agrees that by engaging in the foregoing activities, Respondent committed multiple violations of the Act at 10 P.S. § 162.15(a)(2), by and through 10 P.S. § 162.13(c), by printing the disclosure notice on its solicitations stating that it was registered with the Bureau when, in fact, it was not.

MITIGATION

8. In mitigation of any penalty for the foregoing violations, Respondent states that it uses the services of a vendor, Global Impact, to file its registration materials, that Respondent timely provided all materials to Global Impact for filing with the Bureau and Respondent believed that it was in compliance with all Bureau requirements. Global Impact has contacted the Bureau and confirmed this statement.

PROPOSED ORDER

9. The participants consent to issuance of the following Order in settlement of this matter:

- a. Respondent violated the Act at 10 P.S. § 162.15(a)(1) by and through 10 P.S. §§ 162.5(a) and 162.17(a)(1).
- b. Respondent violated the Act at 10 P.S. § 162.15(a)(2) by and through 10 P.S. § 162.13(c).
- c. An **ADMINISTRATIVE FINE** of five thousand dollars (\$5,000.00) is levied upon Respondent. Respondent shall tender the full sum of five thousand dollars (\$5,000.00) with this executed Consent Agreement which

shall be paid by **certified check, cashier's check, attorney's check, or U.S. Postal money order made payable to the "Commonwealth of Pennsylvania."**

d. Respondent shall not solicit charitable contributions in the Commonwealth of Pennsylvania unless and until all registration requirements have been satisfied and the Bureau has approved Respondent's registration.

e. Respondent shall not use the disclosure statement on solicitations it mails to Pennsylvania unless it is properly registered with the Bureau.

VIOLATION OF THE SECRETARY'S ORDER

f. Notification of a violation of the terms or conditions of this Consent Agreement and Order shall result in the imposition of additional penalties as follows:

(1) The prosecuting attorney for the Bureau shall file with the Secretary a Petition which indicates that Respondent has violated the terms or conditions of this Consent Agreement and Order.

(2) Upon a probable cause determination that Respondent has violated the terms and conditions of this Consent Agreement and Order, the Secretary, or his designee, shall, without holding a formal hearing, issue a Preliminary Order, effective thirty (30) days after its mailing, which imposes a sixty (60) day period of suspension on Respondent's registration to solicit charitable contributions.

(3) Respondent shall be notified of the Preliminary Order within three (3) days of its issuance by certified mail and first class

mail postage prepaid, sent to the last registered address on file with the Bureau, together with a copy to Respondent's attorneys by facsimile or first class mail.

(4) Within fifteen (15) days of mailing of the notification of the Preliminary Order, Respondent may answer the Commonwealth's petition, request that a formal hearing be convened concerning Respondent's alleged violation of this Consent Agreement, and move that the period of suspension be stayed until the Secretary or his designee issues a final order. Respondent shall file all answers and subsequent filings with the Prothonotary for the Department of State, 2601 North Third Street, Harrisburg, PA 17110. Respondent shall serve the prosecuting attorney for the Bureau with a copy of the answer and all subsequent filings in this matter.

(5) If the Respondent moves for a stay of the period of suspension, Respondent shall set forth properly verified facts and/or state concisely the matters of law which the Respondent believes justify a stay of the period of suspension. The Secretary or his designee shall issue a ruling on the Respondent's motion within fifteen (15) days from the date of the mailing of the notification of the Preliminary Order. If the Secretary or his designee makes no ruling on the Respondent's motion within the fifteen (15) days from mailing

of the notification of the Preliminary Order, the Respondent's motion shall be deemed denied.

(6) If a request for a formal hearing is received from Respondent, a formal hearing shall be convened within forty-five (45) days from the date of filing of Respondent's request for a formal hearing.

(7) The facts and averments in this Consent Agreement and Order shall be deemed admitted and uncontested at this hearing.

(8) If the Secretary or his designee, after such hearing, makes a determination adverse to Respondent, the Secretary or his designee will issue a Final Order imposing any disciplinary measures she deems appropriate. The Secretary or his designee may, but is not required to, take into account any period of active suspension already served by the Respondent pursuant to the Preliminary Order.

(9) If a request for a formal hearing is not received from Respondent within the prescribed fifteen (15) day period, the Preliminary Order shall become a Final Order.

(10) Nothing in this 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; provided, however, the

Bureau agrees to not reopen its investigation with regard to any Registration Statements on file with the Secretary as of the date of this Consent Agreement and Order unless the Bureau becomes aware of material facts or omissions of material facts which have previously not been disclosed to it and would give it probable cause that other violations existed during such period of time which it failed to uncover in its previous investigation.

10. This case shall be deemed settled and discontinued upon the Secretary issuing an Order adopting this Consent Agreement and the Respondent's successful completion of any ordered discipline.

ACKNOWLEDGEMENT OF NOTICE AND WAIVER OF HEARING

11. Respondent acknowledges receipt of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and to 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 Bureau; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

AGREEMENT NOT BINDING ON OTHER PARTIES

12. This Consent Agreement is between the Bureau and Respondent only. It does not bind any other administrative entity of the Commonwealth of Pennsylvania, including any other bureau within the Department of State. Except as otherwise noted, this Agreement is to have no

legal effect if *a*) the Office of General Counsel expresses an objection to the Agreement's form or legality and/or *b*) unless and until the Secretary issues the stipulated Order.

EFFECT OF SECRETARY'S REJECTION

13. 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.

ENTIRE AGREEMENT

14. This Agreement contains the whole agreement between the parties; 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.

AGREEMENT DOES NOT PREVENT REFERRAL TO OTHER AGENCIES

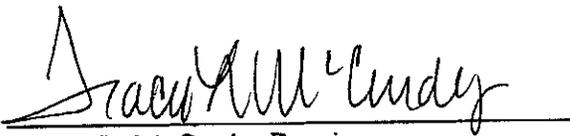
15. The parties acknowledge that other federal, state, and/or local agencies may have jurisdiction over the activities of, or representations made by, Respondent and its officers, directors, agents, employees or independent contractors. Nothing in this Consent Agreement or the Order based upon this Consent Agreement shall preclude representatives of the Bureau from referring any information or data 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 any officer, director, agent, employee or independent contractor of the Respondent.

VERIFICATION OF FACTS AND STATEMENTS

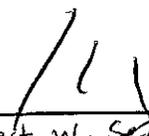
16. Respondent verifies that the facts and statements set forth in this Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Agreement are made subject to the criminal penalties of 18 Pa.C.S. §4904 relating to unsworn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

FINCA INTERNATIONAL, INC.



Tracy L. McCurdy, Esquire
Prosecuting Attorney
Department of State

DATED: 12-11-03

By: 

Name: Rupert W. Seaford
Title: Executive Director
Respondent

DATED: 12/10/03

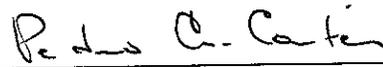


**IN THE MATTER OF
FINCA INTERNATIONAL, INC.
FILE NO. 03-98-12298**

ORDER

AND NOW, this 12 day of December, 2003, the terms of paragraph 9 of the foregoing Consent Agreement are hereby adopted and incorporated as the Order of the Secretary of the Commonwealth in resolution of this matter. This Order shall take effect immediately.

BY ORDER



Pedro A. Cortés
Secretary of the Commonwealth