

HISTORY

This matter comes before the Secretary of the Commonwealth (Secretary) on an order to show cause (OSC) filed September 5, 2001, alleging that L.W. Robbins Associates, Inc. (Respondent), a registered professional fundraising counsel, is subject to administrative sanctions under the Solicitation of Funds for Charitable Purposes Act (Solicitation Act), the Act of December 19, 1990, P.L. 1200, No. 202, *as amended*, 10 P.S. § 162.1 *et seq.* Respondent filed an answer to the OSC March 27, 2002, and a formal administrative hearing was held in Harrisburg June 4, 2002, before Frank C. Kahoe, Jr., Esquire, hearing examiner for the Department of State.¹ Bridget K. Guilfoyle, Esquire represented the Commonwealth as prosecuting attorney. Respondent was not represented at the hearing.² The record was closed with the filing of the notes of testimony June 13, 2002.

¹ The Commonwealth served the OSC upon Respondent by certified mail, return receipt requested, as evidenced by the U.S. Postal Service return receipt filed of record. On March 1, 2002, the Commonwealth filed a Motion to Enter Default and Deem Facts Admitted (MDFA) which was followed by the filing of Respondent's answer March 27, 2002. As a consequence of the filing of Respondent's answer, the undersigned issued an order April 29, 2002, denying the Commonwealth's MDFA and scheduling a hearing for June 4, 2002. On May 7, 2002, the Commonwealth filed a Motion for Judgment on the Pleadings (MJOP), which was not acted upon by the Secretary prior to the hearing and is deemed denied.

² The hearing examiner noted on the record that he had received a voice mail message the morning of the hearing from Roger Robbins on behalf of Respondent who indicated that he would not attend the hearing. (N.T. 5)

FINDINGS OF FACT

1. Respondent is registered by the Department of State, Bureau of Charitable Organizations (Bureau) as a professional fundraising counsel, registration number 10425, in accordance with section 8(a) of the Solicitation Act, 10. P.S. § 162.8. (Bureau records)
2. Respondent's business address on file with the Bureau is 201 Summer Street, P.O. Box 5838, Holliston, MA 01746-5838. (Bureau records)
3. The OSC issued in this matter was served upon Respondent by certified mail, return receipt requested as evidenced by the U.S. Postal Service return receipt filed of record. (Docket no. 0015-98-01)
4. Respondent filed an answer to the OSC March 27, 2002, admitting the key factual averments of the OSC as hereinafter recited. (Docket no. 0015-98-01)
5. On March 13, 2001, the Bureau, upon information that contracts governing Respondent's service as a professional fundraising counsel for charitable organizations soliciting contributions in Pennsylvania had never been filed with the Bureau, sent Respondent a letter asking it to submit to the Bureau all unfiled contracts with charitable organizations soliciting contributions in Pennsylvania. (Exhibit C-1, ¶¶ 4, 5; Exhibit C-2, ¶¶ 4, 5)
6. By letter dated April 4, 2001, Respondent informed the Bureau that it believed it had submitted to the Bureau every contract, past and present, governing its performance as a professional fundraising counsel for charitable organizations soliciting in Pennsylvania. (Exhibit C-1, ¶ 6; Exhibit C-2, ¶ 6)
7. The Bureau, in additional letters to Respondent dated April 23, May 16 and June 4, 2001, informed Respondent that it believed that Respondent still had not submitted contracts

governing Respondent's service as a professional fundraising counsel for charitable organizations soliciting contributions in Pennsylvania, specifically identifying Central Pennsylvania Food Bank and Performing Animal Welfare Society (PAWS). (Exhibit C-1, ¶¶ 7, 8, 9, 10, 11, 13, 14; Exhibit C-2, ¶¶ 7, 8, 9, 10, 11, 13, 14)

8. Although Respondent submitted some additional contracts that had not been previously submitted, it did not submit contracts for Central Pennsylvania Food Bank and PAWS until approximately July 19, 2001, and November 21, 2001, respectively. (Exhibit C-1, ¶¶ 15, 16; Exhibit C-2, ¶¶ 15, 16)

9. Respondent failed to submit its contracts to serve as a professional fundraising counsel with the Central Pennsylvania Food Bank and PAWS to the Bureau for review at least ten days prior to performing professional fundraising counsel services, and performed such services in the Commonwealth without an approved contract. (Exhibit C-1, ¶¶ 17, 18, 20, 24; Exhibit C-2, ¶¶ 17, 18, 20, 24)

10. Respondent was served with the order and notice of hearing issued April 29, 2002, and Respondent did not attend and was not represented at the hearing held in Harrisburg June 4, 2002. (Docket no. 0015-98-01; N.T. 3-5)

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Finding of Fact no. 1)
2. Respondent 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. 3, 4, 10)
3. Respondent's failure to submit its contract to serve as professional fundraising counsel (PFC) with the Central Pennsylvania Food Bank to the Bureau for review at least ten (10) days prior to performing PFC services, its performance of PFC services without an approved contract and its failure to disclose information required by the Act when after repeated requests it failed to provide the Bureau with a copy of its contract with the Central Pennsylvania Food Bank constitute violations of sections 15(a)(1) and 17(a)(2) of the Act, 10 P.S. §§ 162.15(a)(1) and .17(a)(23). (Findings of Fact nos. 5, 6, 7, 8, 9)
4. Respondent's failure to submit its contracts to serve as PFC with the PAWS to the Bureau for review at least ten (10) days prior to performing PFC services, its performance of PFC services without an approved contract and its failure to disclose information required by the Act when it failed to provide the Bureau with a copy of its contracts with the PAWS constitute violations of sections 15(a)(1) and 17(a)(2) of the Act, 10 P.S. §§ 162.15(a)(1) and .17(a)(23). (Findings of Fact nos. 5, 6, 7, 8, 9)

DISCUSSION

The Commonwealth's case in this matter comprised copies of the pleadings filed of record which were admitted into evidence as Exhibits C-1 and C-2. The OSC, comprising four counts, is brought under sections 15(a)(1) and 17(a)(2) of the Act, 10 P.S. §§ 162.15(a)(1) and 17(a)(23), which provide in pertinent part as follows:

§ 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 the 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 have 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 to employee thereof:

* * *

(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.

In Counts One and Three of the OSC, the Commonwealth alleged that Respondent failed to submit its contracts to serve as a PFC with Central Pennsylvania Food Bank and PAWS to the Bureau for review at least ten (10) days prior to performing PFC services as required by section 8(d) of the Act, and by performing services in the Commonwealth without an approved contract. Section 8(d) of the Act, 10 P.S. § 162.8(d), provides as follows:

§ 162.8. Registration of professional fundraising counsel and contracts

* * *

(d) **Written contract.**— There shall be a written contract between a charitable organization and a professional fundraising counsel which shall be filed by the professional fundraising counsel with the department at least ten working days prior to the performance by a professional fundraising counsel of any service. . . .

In its answer, Respondent admitted the Commonwealth's allegations in these counts but argued that it was an "honest mistake and error." In Counts Two and Four, the Commonwealth alleged that Respondent failed after repeated requests to provide the Bureau with copies of its contracts with Central Pennsylvania Food Bank and PAWS constituting failure to disclose information required to be disclosed under the Act. Respondent admitted the Commonwealth's allegations with respect to these counts. The sole issue presented is what sanction under the Act is appropriate.

Respondent did not attend the hearing nor was it represented by counsel. The only mitigation presented is found in averments contained within Respondent's answer, specifically that Respondent's violations were not intentional and that it eventually submitted the requested contracts albeit after it had begun to act in the capacity of a PFC for Central Pennsylvania Food Bank and PAWS. As recited above, section 17(a) of the Act provides that the Secretary "may

refuse to register or revoke or suspend the registration of any . . . professional fundraising counsel" who fails to provide records when requested. In addition, section 17(b) authorizes the following penalties:

(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.

At the conclusion of the hearing, the Commonwealth recommended as a sanction the imposition of the maximum administrative fine of \$4,000.00 and a six month suspension of Respondent's registration as a PFC. We find that the Commonwealth's recommended sanction is supported by the record and appropriate under these circumstances. Accordingly, the following order shall issue.

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

Commonwealth of Pennsylvania,
Bureau of Charitable Organizations

v.

L.W. Robbins Associates, Inc.,
Respondent

:
:
: Docket No. 0015-98-01
: File No. 01-98-03787
:
:
:

ORDER

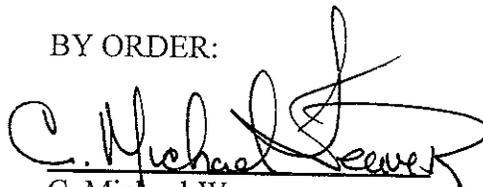
NOW, this 8th day of August, 2002, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ordered** as follows:

1. Respondent's registration as a professional fundraising counsel shall be **suspended for six (6) months**; and

2. An **administrative fine** in the amount of **\$4,000.00** shall be imposed upon Respondent in accordance with 10 P.S. § 162.17(b)(3). This amount shall be remitted by money order or certified check made payable to the Commonwealth of Pennsylvania and forwarded to Christal Pike-Nase, Bureau Counsel, 302 North Office Building, Harrisburg, PA 17120 within 30 days of the date of this order.

Appeal of this decision to the Commonwealth Court may be taken pursuant to 2 Pa.C.S. § 702 within 30 days of the date of mailing shown below.

BY ORDER:



C. Michael Weaver
Secretary of the Commonwealth

For the Commonwealth:
Bridget K. Guilfoyle, Esquire
OFFICE OF GENERAL COUNSEL
116 Pine Street; P.O. Box 2649
Harrisburg, PA 17105-2649

For Respondent:
Roger W. Robbins
L.W. ROBBINS ASSOCIATES, INC.
201 Summer Street; P.O. Box 5838
Holliston, MA 01746-5838

Date of mailing: 8-12-02