PROTEOVOTARY

2006 FEB - 7 PM 1: 1.3

Department of class

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

Commonwealth of Pennsylvania,

**Bureau of Charitable Organizations** 

Docket No.

COZ -98-95

vs.

File No.

2005-98-04677

Mental Health Association in

Westmoreland County,

Respondent

#### **CONSENT AGREEMENT AND ORDER**

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations ("Bureau") and the Mental Health Association in Westmoreland County ("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 ("the Act"), Act of December 19, 1990, P.L. 1200, No. 202, as amended, 10 P.S. §§ 162.1-162.24.
- 2. The Mental Health Association in Westmoreland County is registered as a charitable organization in the Commonwealth of Pennsylvania, registration number 1252.
- 3. From May 15, 1995 through March 18, 2005, Respondent did not hold a registration to solicit charitable contributions within the Commonwealth of Pennsylvania.

#### STIPULATED FACTS

4. Respondent's last known business address on file with the Bureau is 409 Coulter Avenue, Suite 4, Greensburg, PA 15601.

- Prior to Respondent's current registration filed and approved on March 18, 2005,
   Respondent's prior registration as a charitable organization had expired on March 15, 1995.
- 6. In December 2004, Respondent submitted a State Employee Combined Appeal ("SECA") application to the United Way of Westmoreland County ("United Way") to be included in the upcoming SECA fundraising campaign, which was forwarded by the United Way to SECA.
- 7. Respondent's SECA application was rejected by SECA and returned to the United Way because Respondent was not registered with the Bureau at the time it was submitted to SECA.
- 8. On March 15, 2005, upon request, the Bureau received from United Way copies of two registration certificates that were submitted with SECA applications for prior years that purportedly indicated Respondent was registered with the Bureau and listed expiration dates of November 15, 2003 and November 15, 2004, respectively.
- 9. The two registration certificates submitted to the United Way were not registration certificates issued by the Bureau.
- 10. From 2001 through 2004, Respondent received contributions totaling \$202,401.00 from 755 Pennsylvania contributors, including \$3,501.16 from the SECA campaign (30 contributors) and \$1,642.15 from the Combined Federal Campaign ("CFC") campaign (9 contributors).

#### AGREED VIOLATIONS

11. The parties agree 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, by soliciting charitable contributions in Pennsylvania without being properly registered as a charitable organization with the Bureau.
- 12. The parties agree that by engaging in the foregoing activities, former employees of Respondent utilized unfair or deceptive acts which created a likelihood of confusion or of misunderstanding which constituted violations of the Act at 10 P.S. §162.15(a)(2).

#### PROPOSED ORDER

13. To address 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 of the following Order in settlement of this matter:

#### **VIOLATION**

a. Respondent violated the Act at 10 P.S. §§ 162.15(a)(1) and 2.

#### ADMINISTRATIVE FINE

b. 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."

#### CASE SETTLED AND DISCONTINUED

14. This case shall be deemed settled and discontinued upon the Secretary issuing an Order adopting this Consent Agreement.

#### ACKNOWLEDGEMENT OF NOTICE AND WAIVER OF HEARING

15. Respondent waives the filing 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

16. 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

17. 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

18. 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 NTO PREVENT REFERRAL TO OTHER AGENCIES

19. 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.

## VERIFICATION OF FACTS AND STATEMENTS

20. 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.

Tracy L. McCurdy, Esquire Prosecuting Attorney at Law

Department of State

DATED: 2-6-06

MENTAL HEALTH ASSOCIATION IN WESTMORLAND COUNTY

By:

Respondent

DATED:



# IN THE MATTER OF MENTAL HEALTH ASSOCIATION IN WESTMORELAND COUNTY FILE NO. 2005-98-04677

# **ORDER**

AND NOW, this That day of Change, 2006, the terms of Paragraph 13 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