

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

PROTHONOTARY

7-11-98 10:02

2000-11-30

Commonwealth of Pennsylvania,  
Bureau of Charitable Organizations,

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

vs.

Docket No. 006 -98-05  
File No. 05-98-04847

Preferred Community Services, Inc.,  
Respondent

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations ("Bureau"), and Preferred Community Services, 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. At all relevant and material times, Respondent was registered as a professional solicitor, registration number 24651.

STIPULATED FACTS

3. Respondent admits that the following allegations are true:

a. Respondent's last known business address, as on file with the Department of State, is 5696 West 74<sup>th</sup> Street, Indianapolis, IN 46278.

b. Children's Cancer Fund of America ("Children's Cancer Fund") is a nonprofit corporation with a business address of 7435 East Main Street, Building #1, Mesa, AZ 85207.

c. On March 2, 2005, Children's Cancer Fund became registered with the Bureau as a charitable organization, registration number 31532.

d. On or about February 14, 2005, Respondent and Children's Cancer Fund entered into an Agreement for fundraising services to be provided by Respondent on behalf of Children's Cancer Fund. The term of the contract is for five years commencing on February 14, 2005 until February 13, 2009 [sic].

e. By addendum dated February 14, 2005, the term of the contract was amended for "purposes of the State of Pennsylvania" to state that "solicitation activity is to commence on February 14, 2005 ... or ten (10) working days after the Solicitation Notice is received by the [Bureau] and/or is approved by the [Bureau]."

f. On April 14, 2005, Respondent filed with the Bureau its Solicitation Notice, Bureau Form BCO-170, which stated, among other things, that Respondent would be soliciting charitable contributions in the Commonwealth on behalf of Children's Cancer Fund for the period of April 27, 2005, to February 13, 2009 "or ten (10) working days after the Solicitation Notice is received by the [Bureau] and/or is approved by the [Bureau]."

g. On April 14, 2005, Respondent filed with the Bureau copies of the February 14, 2005 Agreement and the addendum.

h. The Solicitation Notice and the February 14, 2005 Agreement and addendum were rejected by the Bureau on April 26, 2005.

i. As of March 22, 2005, Respondent did not have an approved contract on file with the Bureau to solicit charitable contributions on behalf of Children's Cancer Fund.

j. The Bureau has evidence that Respondent actively solicited contributions on behalf of Children's Cancer Fund beginning at least on March 22, 2005.

#### **AGREED VIOLATION**

4. Respondent agrees that, based upon the foregoing, the Secretary is authorized by the Act at 10 P.S. §162.17 to suspend or revoke, or otherwise restrict Respondent's registration and/or impose an administrative fine in that Respondent violated the Act at 10 P.S. §162.17(a)(3) by making a material false statement in the Solicitation Notice and February 14, 2005 addendum filed with the Bureau.

#### **PROPOSED ORDER**

5. To address concerns raised by the Commonwealth and to resolve this matter on a compromise basis, the participants consent to issuance of the following Order in settlement of this matter:

a. Respondent violated the Act at 10 P.S. §162.17(a)(3).

#### **ADMINISTRATIVE FINE**

b. An **ADMINISTRATIVE FINE** of one thousand dollars (\$1,000) is levied upon Respondent. Respondent shall tender the full sum of one thousand

dollars (\$1,000) 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."**

**FILING OF AMENDED CONTRACT ADDENDUM**

c. Respondent shall file with the Bureau an amended Solicitation Notice and amended Contract Addendum which accurately states the date Respondent began soliciting charitable contributions in the Commonwealth on behalf of Children's Cancer Fund under the terms of the February 14, 2005 Addendum. Upon receipt and approval of Respondent's amended Solicitation Notice and Contract Addendum, Respondent will be permitted to solicit charitable contributions in the Commonwealth on behalf of Children's Cancer Fund. Respondent may not solicit charitable contributions in the Commonwealth on behalf of Children's Cancer Fund until the amended Solicitation Notice and Contract Addendum is approved by the Bureau.

**VIOLATION OF THE SECRETARY'S ORDER**

d. 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:

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.

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.

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.

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 Front 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.

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.

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.

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

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 he 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.

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.

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.

e. Nothing in this Consent Agreement shall affect Respondent's current registration with the Bureau. All future registration applications submitted by Respondent shall be subject to the Bureau's review and approval pursuant to Section 162.5 of the Act.

6. 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**

7. Respondent waives the filing and service 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**

8. 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**

9. 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**

10. 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.

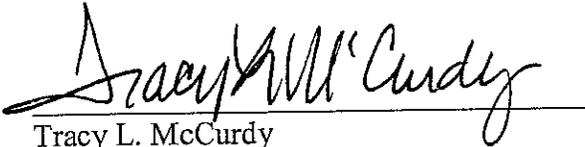
**AGREEMENT DOES NOT PREVENT REFERRAL TO OTHER AGENCIES**

11. 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**

12. 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.

PREFERRED COMMUNITY SERVICES,  
INC.



Tracy L. McCurdy  
Prosecuting Attorney  
Department of State

DATED: 6-1-05

By:   
Title: PRESIDENT  
Respondent

DATED: 5/25/05



**IN THE MATTER OF THE SOLICITATION OF  
FUNDS FOR CHARITABLE PURPOSES BY  
PREFERRED COMMUNITY SERVICES, INC.  
FILE NO. 05-98-04847**

**ORDER**

AND NOW, to wit, on this 2<sup>nd</sup> day of June, 2005, the terms of paragraph 5 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

Pedro A. Cortés  
Secretary of the Commonwealth