

PROTHONOTARY

COMMONWEALTH OF PENNSYLVANIA 2009 JAN 21 PM 4: 27
DEPARTMENT OF STATE
BEFORE THE SECRETARY OF THE COMMONWEALTH
Department of State

Commonwealth of Pennsylvania,
Bureau of Charitable Organizations

v.

Swoyersville Volunteer Hose Co. #1,
Respondent

Docket No. 0003-98-2008

File No. 08-98-01619

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations ("Bureau"), and Swoyersville Volunteer Hose Company #1 ("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 solicited charitable contributions from Pennsylvania residents.

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 is Scott Street, Swoyersville, PA 18704.

b. Respondent is a volunteer fire company that retains the services of Municipal Marketing, a registered professional fundraising counsel.

c. Respondent does not qualify for a registration exemption pursuant to 10 P.S. § 162.6(a)(3)(ii) because Respondent retains the services of a professional fundraising counsel.

d. Respondent does not qualify for a registration exemption pursuant to 10 P.S. § 162.6(a)(8) because Respondent receives more than \$25,000.00 in gross annual contributions.

e. Respondent and Sparkware Associates, Inc., ("Sparkware") entered into a contract for professional fundraising counsel services on April 20, 2004, for a term of 1 year ending April 19, 2005; pursuant to the terms of the April 20, 2004 contract, Sparkware commenced professional fundraising counsel services on or about April 20, 2004.

f. Respondent and Municipal Marketing entered into a contract for professional fundraising counsel services on January 1, 2005, for a term of 3 years ending December 31, 2007; pursuant to the terms of the January 1, 2005 contract, Municipal Marketing commenced professional fundraising counsel services on or about January 1, 2005.

g. Respondent and Municipal Marketing entered into another contract for professional fundraising counsel services on January 1, 2008, for a term of 3 years ending December 31, 2010; pursuant to the terms of the January 1, 2008 contract, Municipal Marketing commenced professional fundraising counsel services on January 1, 2008.

h. Despite the fact that Respondent was required to register to solicit charitable contributions within the Commonwealth of Pennsylvania upon entering into a contract with a professional fundraiser, Respondent never so registered.

i. In 2004, Sparkware sent out a total of 1107 solicitations on behalf of Respondent, resulting in a total donation received amount of \$10,911.00.

j. In 2005, Municipal Marketing sent out a total of 1216 solicitations on behalf of Respondent, resulting in a total donation received amount of \$14,540.00.

k. In 2006, Municipal Marketing sent out a total of 1173 solicitations on behalf of Respondent, resulting in a total donation received amount of \$15,418.00.

l. In 2007, Municipal Marketing sent out a total of 1174 solicitations on behalf of Respondent, resulting in a total donation received amount of \$14,833.00.

m. During the years 2004, 2005, 2006 and 2007, Respondent received more than \$25,000 in total gross contributions.

n. In 2008, Municipal Marketing sent out a total of 1147 solicitations on behalf of Respondent; no donations received as a result of these solicitations have been yet reported.

o. Said solicitations stated that Respondent was properly registered to solicit contributions in Pennsylvania, when in fact, Respondent was not properly registered.

AGREED VIOLATIONS

5. Respondent agrees that by engaging in the aforementioned activities, Respondent violated the Act by soliciting charitable contributions without being registered with the Bureau in violation of 10 P.S. § 162.15 (a)(1), by and through § 162.5(a).

PROPOSED ORDER

6. The participants, intending to be legally bound, 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 § 162.5(a); and

ADMINISTRATIVE FINE

b. An **ADMINISTRATIVE FINE** of one thousand dollars (\$1,000.00) is levied upon Respondent. Respondent shall tender the full sum of one thousand dollars (\$1,000.00), with this executed Consent Agreement which shall be paid by certified check, cashiers check, attorney's check, or U. S. Postal money order made payable to the "Commonwealth of Pennsylvania."

CASE SETTLED AND DISCONTINUED

7. 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. However, nothing in this Consent Agreement and Order shall preclude the Prosecution 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 and Order.

ACKNOWLEDGEMENT OF NOTICE AND WAIVER OF HEARING

8. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and to the following rights related to the 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

9. 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

10. 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

11. 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

12. 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

13. 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.

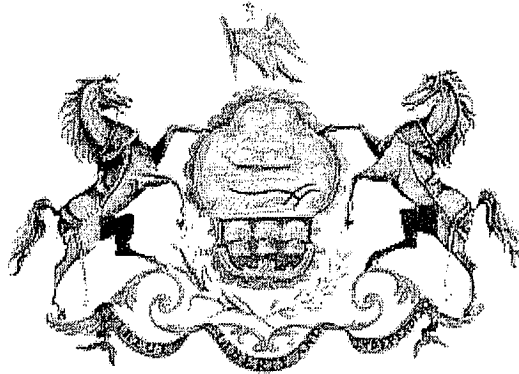
Swoyersville Volunteer Hose Co. #1

Dean F. Picarella
Dean F. Picarella
Prosecuting Attorney
Department of State

Joseph Rugh Jr.
By: Joseph Rugh Jr.
Title: VIC. PRES.
Respondent

DATED: January 20, 2009

JAN. 12, 2009
DATED:



IN THE MATTER OF

**Swoyersville Volunteer Hose Co. #1
FILE NO. 08-98-01619**

ORDER

AND NOW, to wit, on this 21st day of January 2009, the terms of paragraph 6 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