

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

7/13/11
11-98-09425
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| Commonwealth of Pennsylvania | : | |
| Bureau of Charitable | : | |
| Organizations | : | |
| | : | File No. 11-98-09425 |
| v. | : | Docket No. 0047-98-11 |
| | : | |
| Advantage Fund-Raising Consulting, Inc., | : | |
| Respondent | : | |

FINAL ADJUDICATION AND ORDER

Carol Aichele
Secretary of the Commonwealth

302 North Office Building
Harrisburg, PA 17120
(717) 787-7630

HISTORY

This matter comes before the Secretary of the Commonwealth (Secretary) from an order to show cause filed November 22, 2011, alleging that the Advantage Fund-Raising Consulting, Inc. (Respondent), a professional solicitor in the Commonwealth of Pennsylvania, is subject to administrative sanctions under the Solicitation of Funds for Charitable Purposes Act ("Act").¹ The order to show cause alleges that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(e), 10 P.S. §162.9(a) and 10 P.S. § 162.17(a)(1), by providing professional solicitor services without being properly registered and in violation of a cease and desist order. The order to show cause further alleges that Respondent failed to file contracts with the Bureau prior to rendering professional solicitor services.

On December 29, 2011, the Commonwealth filed a motion to enter default and deem facts admitted in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code § 35.37.

Respondent did not submit a reply to either pleading. The Secretary now issues this adjudication and order in final disposition of this matter.

¹ Act of December 19, 1990, P.L. 1200, No. 202, *as amended*, 10 P.S. § 162.1 *et seq.*

FINDINGS OF FACTS

1. Respondent Advantage Fund-Raising Consulting, Inc. is a professional solicitor as defined by the Solicitation of Funds for Charitable Purposes Act (Act). (Order to show cause ¶ 2)
2. Respondent's last known business address is 1771 East Flamingo Road, Suite 208B, Las Vegas, NV 89119. (Order to show cause ¶ 3; Bureau records)
3. Respondent is currently registered as a professional solicitor with the Bureau, registration number 15499, set to expire on August 9, 2012. (Order to show cause ¶ 4; Bureau records).
4. Respondent's prior registration with the Bureau expired on September 5, 2005 and was not renewed until August 9, 2011. (Order to show cause ¶ 5)
5. On or about July 1, 2010, the Secretary of the Commonwealth issued an order, ordering Respondent to cease and desist from providing professional solicitor services in the Commonwealth. (Order to show cause ¶ 6, Exhibit A)
6. The Cease and Desist Order was not lifted until August 9, 2011. (Order to show cause ¶ 8)
7. The Associate Alumnae of Douglas College is a charitable organization that is registered with the Bureau, certificate number 27798. (Order to show cause ¶ 10)
8. On or about July 1, 2008, Respondent entered into a contract with the Associate Alumnae of Douglas College, in which Respondent was to provide the Associate Alumnae of Douglas College with professional solicitor services in the Commonwealth until termination of the contract on June 30, 2010. (Order to show cause ¶ 11, Exhibit B)
9. Respondent did not file its contract with the Associate Alumnae of Douglas College with the Bureau until July 27, 2011. (Order to show cause ¶ 13)

10. Respondent has provided professional solicitor services to the Associate Alumnae of Douglas College in the Commonwealth since July 1, 2008. (Order to show cause ¶ 14)

11. Ashley, Inc. is a charitable organization that is registered with the Bureau, certificate number 38029. (Order to show cause ¶ 19)

12. On or about March 4, 2010, Respondent entered into a contract with Ashley, Inc., in which Respondent was to provide Ashley, Inc. with professional solicitor services in the Commonwealth until termination of the contract by the parties. (Order to show cause ¶ 20, Exhibit C)

13. As of June 2011, Respondent was still providing services to Ashley, Inc. as per the terms of the March 4, 2010 contract. (Order to show cause ¶ 22)

14. Respondent did not file its contract with Ashley, Inc. with the Bureau. (Order to show cause ¶ 23)

15. Respondent has provided professional solicitor services to Ashley, Inc. since March 4, 2010. (Order to show cause ¶ 24)

16. Respondent provided professional solicitor services to Ashley, Inc. in the Commonwealth between July 1, 2010 and August 9, 2011. (Order to show cause ¶ 25)

17. On November 22, 2011, the Commonwealth filed an order to show cause in this matter. (Docket number 0047-98-11)

18. Pursuant to the Certificate of Service attached to the order to show cause, the Commonwealth served the order to show cause upon Respondent by mailing one copy via certified mail, return receipt requested and another copy via first class mail, postage prepaid, on November 22, 2011, to Respondent at the following address: 1771 East Flamingo Road, Suite 208B, Las Vegas, NV 89119. (Motion to enter default and deem facts admitted ¶ 1-2; Docket number 0047-98-11)

19. Respondent received the order to show cause on November 28, 2011, as evidenced by Postal Form 3811, Article 7010 2780 0001 9232 5447. (Motion to enter default and deem facts admitted ¶ 3, Exhibit B)

20. The order to show cause sent via first class mail, postage prepaid, was not returned to the Commonwealth. (Motion to enter default and deem facts admitted ¶ 4)

21. The order to show cause directed Respondent to file an answer thereto within thirty (30) days of its date. (Motion to enter default and deem facts admitted ¶ 5)

22. Thirty days from the date of the order to show cause expired on December 22, 2011. (Motion to enter default and deem facts admitted ¶ 6)

23. On December 29, 2011, Respondent was served with a copy of the motion to enter default and deem facts admitted. (Motion to enter default, Certificate of service; docket number 0047-98-11)

24. Respondent did not file a response to the order to show cause or the motion to enter default and deem facts admitted. (Docket number 0047-98-11)

25. Respondent was served with all pleadings, orders and notices filed of record in this matter. (Docket number 0047-98-11)

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Findings of Fact 1-2)
2. Respondent has been afforded reasonable notice of the charges against it and an opportunity to be heard in this proceeding in accordance with the Administrative Agency Law, 2 Pa.C.S. §504. (Findings of Fact 2, 17-25)
3. There is good cause to grant the Commonwealth's motion to deem facts admitted because Respondent failed to file a written answer to the order to show cause. (Findings of fact 25)
4. Respondent violated the Act at 10 P.S. §162.15(a)(1) by and through 10 P.S. §162.9(e) by failing to file Respondent's contract with the Associate Alumnae of Douglas College with the Bureau prior to rendering professional solicitor services. (Findings of Fact 7-9)
5. Respondent violated the Act at 10 P.S. §162.15(a)(1) by and through 10 P.S. §162.9(a) by providing professional solicitor services to the Associate Alumnae of Douglas College without being properly registered as a professional solicitor with the Bureau. (Findings of Fact 4-10)
6. Respondent violated the Act at 10 P.S. §162.15(a)(1) by and through 10 P.S. §162.9(e) by failing to file Respondent's contract with Ashley, Inc. with the Bureau prior to rendering professional solicitor services. (Findings of Fact 11-14)
7. Respondent violated the Act at 10 P.S. §162.15(a)(1) by and through 10 P.S. §162.9(a) by providing professional solicitor services to Ashley, Inc. without being properly registered as a professional solicitor with the Bureau. (Findings of Fact 11-16)
8. Respondent violated the Act at 10 P.S. §162.15(a)(1) by and through 10 P.S. §162.17(a)(1) by violating an Order issued by the Secretary of the Commonwealth, in that Respondent provided professional solicitor services to Ashley, Inc. during that time in which

Respondent was ordered to Cease and Desist from providing professional solicitor services in the Commonwealth. (Findings of Fact 5-6, 11-16)

DISCUSSION

I. STATUTORY AND REGULATORY PROVISIONS

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, *et seq.* The order to show cause issued in this matter comprises five counts, alleging that Respondent violated the Act at 10 P.S. 162.15(a)(1) by and through 10 P.S. § 162.9(e), 10 P.S. § 162.9(a), and 10 P.S. § 162.17(a)(1), 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 this 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 having been approved by the department.

* * *

§ 162.9 Registration of professional solicitors; contract and disclosure requirements; bonds; records; books

(a) Registration and approval required.—No person shall act as a professional solicitor before obtaining department approval of a registration statement pursuant to subsection (d) or after the expiration, suspension or revocation of such registration.

* * *

(e) Contract filing.—No less than ten working days prior to the commencement of each solicitation campaign, event or services, a professional solicitor shall file with the department a copy of the contract described in subsection (f) and a written solicitation notice. No solicitation or services pursuant to the contract shall begin before the department has approved the contract pursuant to subsection (g). The solicitation notice shall be accompanied by a fee of \$25 and shall be signed and sworn to by the authorized contracting officer for the professional solicitor. If more than one event or campaign is conducted under a contract, then a solicitation notice addendum must be filed no less than ten working days prior to the commencement of each additional event or campaign.

* * *

§ 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 or employee thereof:

(1) Has violated or is operating in violation of any of the provisions of this act, the regulations of the department, or an order issued by the secretary.

(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.

(3) Has made a material false statement in an application, statement or report required to be filed under this act.

(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:

(1) Issue an order directing that the person cease and desist specified fundraising activities.

(2) 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.

The motion to enter default and deem facts admitted is in accordance with the General Rules of Administrative Practice and Procedure. The relevant provision of the General Rules of Administrative Practice and Procedure states as follows:

§ 35.37 Answers to order to show cause

Any person upon whom an order to show cause has been served . . . shall, if directed to do so, respond to the same by filing within the time specified in the order an answer in writing. The answer shall be drawn so as specifically to admit or deny the allegations or charges which may be in order, set forth the facts upon which respondent relies, and state concisely the matters of law relied upon.

. . . A respondent failing to file an answer within the time allowed shall be deemed in default, and relevant facts stated in the Order to show cause may be deemed admitted.

1 Pa. Code § 35.37.

II. THE CHARGES

In each of the five counts of the order to show cause, the Commonwealth charges Respondent with violating the Act at 10 P.S. § 162.15(a)(1). In count one, the Commonwealth specifically charges that Respondent violated the Act at 10 P.S. § 162.15(a)(1) by and through 10 P.S. § 162.9(e) by failing to file Respondent's contract with the Associate Alumnae of Douglas College with the Bureau prior to rendering professional solicitor services.

In count two, the Commonwealth specifically charges that Respondent violated the Act at 10 P.S. § 162.15(a)(1) by and through 10 P.S. § 162.9(a) by providing professional solicitor services to the Associate Alumnae of Douglas College without being properly registered as a professional solicitor with the Bureau.

In count three, the Commonwealth specifically charges that Respondent violated the Act at 10 P.S. § 162.15(a)(1) by and through 10 P.S. § 162.9(e) by failing to file Respondent's contract with Ashley, Inc. with the Bureau prior to rendering professional solicitor services.

In count four, the Commonwealth specifically charges that Respondent violated the Act at 10 P.S. § 162.15(a)(1) by and through 10 P.S. § 162.9(a) by providing professional solicitor services to Ashley, Inc. without being properly registered as a professional solicitor with the Bureau.

In count five, the Commonwealth specifically charges that Respondent violated the Act at 10 P.S. § 162.15(a)(1) by and through 10 P.S. § 162.17(a)(1) by violating an Order issued by the Secretary of the Commonwealth in that Respondent provided professional solicitor services to Ashley, Inc. during that time in which Respondent was ordered to Cease and Desist from providing professional solicitor services in the Commonwealth.

III. DUE PROCESS

“It is well established that the requirements of due process of law apply to administrative proceedings.” First National Bank of Pike County v. Department of Banking and Bank of Matamoras, Intervening, 300 A.2d 823, 824 (Pa. Cmwlth. 1973) (citation omitted). “Due process requires that a person be provided notice and an opportunity to be heard prior to an adjudication, affecting that person’s rights.” Goetz v. Department of Environmental Resources, 613 A.2d 65, 67 (Pa. Cmwlth. 1992) (citation omitted), appeal denied, 625 A.2d 1196 (Pa. 1993). “Notice of administrative action which is mailed to the interested party’s last known address has been found to be reasonable notice.” Kobylski v. Commonwealth of Pennsylvania, Milk Marketing Board, 516 A.2d 75, 77 (Pa. Cmwlth. 1986), citing Yarbrough v. Department of Public Welfare, 478 A.2d 956 (Pa. Cmwlth. 1984).

A copy of the order to show cause was mailed to Respondent at its last known address by certified mail, return receipt requested and by first class mail, postage prepaid. The order to show cause sent via certified mail was signed for by an individual at that address, as evidenced by the United States Postal Service Form 3811, attached as Exhibit B in the motion to enter default and deem facts admitted. Additionally, the order to show cause mailed by first class mail has not been returned to the Commonwealth. Therefore, the Secretary finds that Respondent received actual notice of the action and allegations against it. The order to show cause clearly and specifically stated the charges against Respondent. The order to show cause directed Respondent to file an answer or risk disciplinary action without a hearing. The order to show cause explained the procedures to request a hearing. Further, the order to show cause warned Respondent that if it failed to request a hearing it would be deemed to have waived its right to a hearing and final judgment might be entered without a hearing. Due process does not confer an absolute right to be heard, but only that a party be provided with an opportunity to be heard.

Goetz, 613 A.2d at 67. The Secretary finds that Respondent was given an opportunity to be heard and failed to take advantage of that opportunity. Therefore, the Secretary of the Commonwealth deems the factual allegations contained in the order to show cause admitted, and grants the motion to enter default and deem facts admitted against Respondent.

IV. ANALYSIS AND SANCTION

In each count of the order to show cause, the Commonwealth alleges that Respondent violated the Act at 10 P.S. § 162.15(a)(1), which generally prohibits solicitors from operating in violation of, or failing to comply with, any of the requirements of the Act.

In count one, the Commonwealth specifically charges Respondent with violating 10 P.S. § 162.9(e). This section of the act requires a professional solicitor to file with the Department a copy of the contract described in subsection 162.9(f) and a written solicitation notice. The facts deemed admitted show that on July 1, 2008, Respondent entered into a contact with the Associate Alumnae of Douglas College, a registered charitable organization, to provide professional solicitor services. Respondent failed to file the contract with the Associate Alumnae of Douglas College with the Department until July 27, 2011. Therefore, Respondent violated the Act at 10 P.S. § 162.15(a)(1) by and through violation of 10 P.S. § 162.9(e) by failing to file the professional solicitor contract with the Department prior to rendering solicitor services.

In count two, Respondent was charged with violating 10 P.S. § 162.9(a), by contracting with the Associate Alumnae of Douglas College without being properly registered as a professional solicitor. Respondent's registration with the Department expired on September 5, 2005 and was not renewed until August 9, 2011. Respondent entered a solicitation contact with Associate Alumnae of Douglas College on or about July 1, 2008. This occurred after the date of expiration and before renewal. In addition, Respondent provided professional solicitor services

to the Associate Alumnae of Douglas College in the Commonwealth since July 1, 2008. Therefore, Respondent violated the Act at 10 P.S. §162.15(a)(1) by and through 10 P.S. §162.9(a) by providing professional solicitor services to the Associate Alumnae of Douglas College without being properly registered as a professional solicitor with the Department.

In count three, Respondent was again charged with violating 10 P.S. §162.9(e) by failing to file the professional solicitor contract with the Department prior to rendering solicitor services. The facts deemed admitted establish that on March 4, 2010, Respondent entered into a contract with Ashley, Inc., a charitable organization that is registered with the Department, to provide professional solicitor services in the Commonwealth. Respondent failed to file the contract with the Department. In addition, Respondent provided professional solicitor services to Ashley, Inc., between July 1, 2010 and August 9, 2011. Therefore, Respondent violated the Act at 10 P.S. § 162.15(a) (1) by and through violation of 10 P.S. § 162.9(e) by failing to file with the Department the professional solicitor contract prior to rendering solicitor services.

In count four, Respondent was again charged with violating 10 P.S. § 162.9(a) by providing professional solicitor services to Ashley, Inc. without being properly registered as professional solicitor. Respondent's registration with the Bureau expired on September 5, 2005 and was not renewed until August 9, 2011. Respondent entered a solicitation contact with Ashley, Inc. on March 4, 2010, after the expiration date of the registration and before the renewal of the registration by Respondent. In addition, Respondent was still providing professional solicitor services to Ashley, Inc. as of June 2011, pursuant to the terms of the March 4, 2010 contract. Respondent again provided professional solicitor services to Ashley, Inc. between July 1, 2010 and August 9, 2011. Therefore, Respondent failed to be properly registered as a profession solicitor with Department when it entered into a contract and performed services as a

professional solicitor, in violation of the Act at 10 P.S. § 162.15(a)(1) by and through 10 P.S. §162.9(a).

Finally, in count five, Respondent was charged with having violated the Act at 10 P.S. §162.17(a)(1) by violating an Order issued by the Secretary of the Commonwealth, in that Respondent provided professional solicitor services to Ashley, Inc. during that time in which Respondent was ordered to Cease and Desist. The facts deemed admitted establish that on or about July 1, 2010, the Secretary of the Commonwealth issued an order, ordering Respondent to cease and desist from providing professional solicitor services in the Commonwealth. The Cease and Desist Order was served on Respondent by certified mail. Nonetheless, Respondent continued to provide professional solicitor services to Ashley, Inc. between July 1, 2010 and August 9, 2011. Therefore, Respondent violated the Act at 10 P.S. § 162.15(a)(1) by and through 10 P.S. § 162.17(a)(1).

The Secretary of the Commonwealth finds that Respondent has violated the Act on five occasions in not complying with proper professional solicitor registration, not filing professional solicitor contracts with the Department and continuing solicitation services after notice of Cease and Desist order was issued. The obligations that Respondent failed to perform are critical requirements to which a professional solicitor must adhere under the Act. Based on the foregoing findings of facts, conclusions of law and discussion, and in the absence of mitigation, the following order shall issue:

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

| | | |
|---|---|-----------------------|
| Commonwealth of Pennsylvania, | : | |
| Bureau of Charitable Organizations | : | |
| | : | Docket No. 0047-98-11 |
| v. | : | File No. 11-98-09425 |
| | : | |
| Advantage Fund-Raising Consulting, Inc, | : | |
| Respondent | : | |

ORDER

AND NOW, this 26th day of April, 2012, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ordered** as follows:

1. An **administrative fine** in the amount of **\$5,000.00** shall be imposed upon the Advantage Fund-Raising Consulting, Inc. in accordance with 10 P.S. § 162.17(b)(3). This amount shall be remitted by certified check or U.S. Postal Service money order made payable to "Commonwealth of Pennsylvania" within thirty days of the effective date of this order and mailed to:

Martha Brown, Assistant Counsel
Pennsylvania Department of State
301 North Office Building
Harrisburg, PA 17120

2. Respondent shall be **prohibited from renewing** its registration as a professional solicitor in the Commonwealth of Pennsylvania unless and until such time as all penalties are paid, including the fine assessed by this order.

Appeal may be taken pursuant to 2 Pa.C.S. §702 within thirty days of the date of mailing of this adjudication and order shown below.

This order shall take effect thirty days from the date it is deposited in the mail.

BY ORDER:



Carol Aichele
Secretary of the Commonwealth

Respondent:

Advantage Fund-Raising Consulting, Inc
1771 East Flamingo Road
Suite 208B
Las Vegas, NV 89119

For the Commonwealth

Eric Spada, Esquire
Prosecuting Attorney
Commonwealth of Pennsylvania
Department of State
212 North Office Building
Harrisburg, PA 17120

Date of Mailing:

April 26, 2012

NOTICE

The attached Adjudication and Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Secretary of the Commonwealth with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Pennsylvania Department of State
Office of Chief Counsel
Legal Counsel, Bureau of Charitable Organizations
401 North Street
Room 301
Harrisburg, PA 17120