

HISTORY

This case comes 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. On December 20, 2017, the Department of State (Department), Bureau of Charitable Organizations (Bureau) filed an Order to Show Cause ("OSC") charging Hearts 2 Heros (sic) d/b/a/ Active Duty Support Service, and its owners Christopher L. Engle and Kayla N. Engle a/k/a Kayla N. D'Angelo (Respondents) with several violations of the Act, 10 P.S. §§ 162.1 *et seq.*

On January 8, 2018, Respondents filed a response to the OSC, denying the allegations contained in the OSC. A formal administrative hearing was held May 3, 2018, as scheduled. Michael J. Gennett, Esquire represented the Commonwealth. Respondent Christopher Engle appeared without counsel, testified, and presented evidence. Respondent Kayla N. Engle did not appear. The notes of testimony ("N.T.") were filed on May 22, 2018, and the record subsequently closed on June 26, 2018.

The Secretary now issues this Adjudication and Order in final disposition of this matter.

FINDINGS OF FACT

1. This case comes 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.
2. Christopher L. Engle and Kayla N. Engle, a/k/a Kayla N. D'Angelo, are the sole partners in a for-profit business known as Hearts 2 Heros [sic] d/b/a Active Duty Support Services, L.L.P. (ADSS) (Docket No. 0175-98-17; Exhibits C-1 and C-2; Bureau records; N.T. 19, 35-36)
3. Respondents' last known address is 166 Lusitano Lane, Martinsburg, WV 25405. (Docket No. 0175-98-17)
4. Respondent Hearts 2 Heros d/b/a Active Duty Support Services is a charitable organization pursuant to the Solicitation of Funds for Charitable Purposes Act, in that it employs a charitable appeal as the basis of its solicitations or employs an appeal which has a tendency to suggest there is a charitable purpose to its solicitations. (Exhibit C-3)
5. Respondent Hearts 2 Heros/ADSS was a registered charitable organization in Pennsylvania between December 17, 2015 and November 15, 2016. (Exhibits C-12 and C-13; N.T. 52)
6. Respondent ADSS has not been registered as a charitable organization in Pennsylvania since November 15, 2016. (Bureau records; Exhibits C-12 and C-15)
7. Between November 16, 2016 and September 12, 2017, employees for Respondents collected money from Pennsylvania residents by sending hired solicitors door-to-door and asking people to contribute money for care packages that would be mailed to active military personnel. (Exhibits C-14; N.T. 36-42, 51)
8. Approximately one hundred and seventy-seven (177) Pennsylvania residents

purchased care packages from Respondents totaling \$7,150.00. (Exhibits C-8 and C-9; N.T. 36-42)

9. The Bureau received a complaint that Respondents' employees indicated that Respondent ADSS was affiliated with the United Service Organization (USO). (Exhibit C-4; N.T. 22)

10. During their door-to-door presentations, Respondents' employees, also called solicitors, (see Exhibit C-16), told Pennsylvania residents that the care packages would be delivered to the USO or that Respondents partnered with the USO in providing the care packages. (Exhibit C-3; N.T. 82, 83, 93, 104)

11. Respondents are not affiliated with the USO. (Exhibit C-3; N.T. 83, 85)

12. According to Respondent Christopher Engle, the only connection it has to the USO is that the USO aids with the shipment of the packages to active duty military, and Respondents' website states that they are not affiliated with the USO. (Exhibits C-3 and R-1)

13. During a two-day, approximately 10-hour training, Respondent Christopher Engle provides employees with a script to use while in the field going door-to-door. (Exhibit C-3; N.T. 128-131)

14. The script asks if the person is a military family, states that Respondent ADSS is a group of military families and "vets" facilitating a care package drive for currently deployed troops who do not receive correspondence or care packages, and informs that listener that the packages are shipped to soldiers at local army bases and USOs. (Exhibit C-3)

15. Respondent ADSS is a for-profit partnership registered in West Virginia. (N.T. 77, 100-101, 103, 119, 124-125)

16. No money given to Respondents for the purchase of care packages is tax deductible.

(Exhibit C-3; N.T. 90)

17. Respondents' employees are trained to tell customers that the money given to Respondent ADSS is not tax deductible. (Exhibit C-3)

18. Respondents' website states that the money given to Respondent ADSS is not tax deductible. (Exhibits C-3 and R-2)

19. Literature distributed by Respondents indicates that money given to Respondent ADSS is not tax deductible. (Exhibits C-3)

20. Respondents' receipts state that "gift/contributions made to Active Duty Support Services are not tax deductible." (Exhibit C-3)

21. Respondent Christopher Engle does not consider ADSS a charitable organization. (Exhibit C-3)

22. Some of the checks given by Pennsylvania residents to Respondents between November 16, 2016 and September 12, 2017, have "donation" written on the memo line of the check. (Exhibit C-8)

23. In the script, the employees are to state that Respondent ADSS is a grass roots organization. (Exhibit C-3)

24. The script does not specifically say that the employees are selling care packages, even though Respondent Christopher Engle classifies Respondents' business as selling packages. (Exhibit C-3; N.T. 132-133)

25. According to the script, the employee is to say that they need support to send care packages, and the solicitors ask for contributions. (Exhibit C-3; N.T. 127-128)

26. The last line of the script says, "I'm not out here trying to sell you anything sir/ma'am." (Exhibit C-3)

27. The script does not mention Respondent ADSS's for-profit status; however, the training materials contains a rebuttal answer for the solicitors to use with potential contributors if someone should ask whether Respondent ADSS is a non-profit 501(c)(3) organization. (Exhibit C-3)

28. Respondents were served with all pleadings, orders and notices filed of record in this matter. (Docket No. 0175-98-17)

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Section 4 of the Act, 10 P.S. § 162.4, and Findings of Fact 1-2, 4))
2. Respondents received notice of the charges and an opportunity to be heard in this proceeding in accordance with Administrative Agency Law, 2 Pa.C.S. § 504. (Finding of Fact 28)
3. Respondents violated the Solicitation of Funds for Charitable Purposes Act at 10 P.S. § 162.15(a)(1), in that the organization solicited contributions after registration with the department expired or had been suspended or revoked. (Findings of Fact 4-8)
4. Respondents utilized unfair or deceptive acts or practices and engaged in fraudulent conduct which created likelihood of confusion or misunderstanding, in violation of 10 P.S. § 162.15(a)(2). (Findings of Fact 7-27)
5. Respondents did not violate 10 P.S. § 162.15(a)(5), by misrepresenting or misleading the public to believe that contributions to Respondent ADSS were tax deductible. (Findings of Fact 15-20)

DISCUSSION

This case comes before the 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.* On December 20, 2017, the Bureau filed an OSC charging Respondent with three violations of the Act. The Commonwealth alleged that Respondents violated the Act by soliciting contributions after their registration expired; by misleading potential donors to believe that Respondent ADSS was affiliated with the USO; and by misrepresenting or misleading others by advising potential donors that their donations were tax deductible. Specifically, the Commonwealth charged violations of the Act at 10 P.S. §162.15(a)(1), 10 P.S. § 162.15(a)(2), and 10 P.S. § 162.15(a)(5), which read as follows:

(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.

(2) Utilizing any unfair or deceptive acts or practices or engaging in any fraudulent conduct which creates a likelihood of confusion or of misunderstanding.

* * *

(5) Misrepresenting or misleading anyone in any manner to believe that the person on whose behalf a solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of such solicitation or charitable sales promotion will be used for charitable purposes when such is not the fact.

10 P.S. §162.15(a)(1), (2), and (5).

Only Respondent Christopher Engle appeared on behalf of Respondent ADSS; Respondent Kayla failed to appear at the hearing. The Commonwealth moved for a default judgment against Respondent Kayla. Although Respondent Kayla Engle received notice of the hearing and did not appear, the hearing examiner denies the Commonwealth's motion for a default judgment. The proceeding, as it pertains to Respondent Kayla Engle, was held in absentia, and the findings in this proposed decision apply to all Respondents.

The Bureau's evidence consisted of testimony from Andrew McCole, a Special Investigator with Bureau, and seventeen exhibits. The first issue here is whether Respondent ADSS, who has not been registered as a charitable organization since November 15, 2016, solicited contributions in Pennsylvania. Respondents claim that they do not ask for donations, but rather, they are asking people to buy care packages for active military personnel. Respondent Christopher Engle asserts that he takes measures to ensure that his for-profit business does not conduct itself like a charitable organization. The Commonwealth asserts that employees acting on Respondents' behalf made charitable appeals to citizens of Pennsylvania between November 16, 2016 and September 12, 2017, which constitutes the actions of a charitable organization and thus subject to the provisions of the Act and requirement that the entity be duly registered with the Bureau.

Section 3 of the Act, 10 P.S. § 162.3¹ defines "charitable organization," among other

¹ § 162.3. Definitions

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"CHARITABLE ORGANIZATION." Any person granted tax exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514 , 26 U.S.C. § 501(c)(3)) or any person who is or holds himself out to be established for any charitable purpose *or any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal which has a tendency to suggest there is a charitable purpose to any solicitation.*

* * *

"SOLICITATION." Any direct or indirect request for a contribution on the representation that such contribution will be used in whole or in part for a charitable purpose, including, but not limited to, any of the following:

- (1) Any oral request that is made in person, by telephone, radio or television or other advertising or communication media.

things, as any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal which has a tendency to suggest there is a charitable purpose to any solicitation. In addition, the Act's definition of "solicitation," includes any direct or indirect request for a contribution on the representation that such contribution will be used in whole or in part for a charitable purpose, and includes any oral request made in person or by telephone.

In this case, Respondent Christopher Engle mailed a letter to a supervisor for the Division of Registration and Compliance, Department of State, on November 14, 2016, in response to a letter sent by the Bureau regarding its registration status. (See Exhibits C-15 and C-16; N.T. 63-64.) Although Respondent ADSS is a for-profit partnership, in the letter, Respondent Christopher Engle refers to ADSS employees as "solicitors," and he compensates the solicitors for their work. Respondent Christopher Engle refers to the money his company receives as "contributions." He tries to steer away from using the term "donation" because he thinks that term is too closely related to the work of a charitable organization, which ADSS is not. However, the language of the statute regarding what is charitable organization or a solicitation is not a subjective definition where Respondent Christopher Engle's beliefs would hold sway. The definition of these terms is an objective one. In other words, would the direct or indirect request for a contribution made by Respondents' employees tend to suggest (to the listener) that ADSS has a charitable purpose? Absolutely.

Respondents have a script that is used to train their employees. The expectation is that the

(2) Any written or otherwise recorded or published request that is mailed, sent, delivered, circulated, distributed, posted in a public place or advertised or communicated by press, telegraph, television or any other media.

(3) Any sale of, offer or attempt to sell any advertisement, advertising space, sponsorship, book, card, chance, coupon, device, food, magazine, merchandise, newspaper, subscription, ticket or other service or tangible good, thing or item of value.

(4) Any announcement requesting the public to attend an appeal, assemblage, athletic or competitive event, carnival, circus, concert, contest, dance, entertainment, exhibition, exposition, game, lecture, meal, party, show, social gathering or other performance or event of any kind.

employees will use those materials. Respondent Engle testified that employees are trained on the materials for ten hours. Nowhere in the script is it written that Respondent is selling care packages for soldiers. Actually, there is a line in the script that says, "I'm not out here trying to sell you anything... ." Respondent Christopher Engle mentioned several times in his testimony that Respondent ADSS is a for-profit business, and it is selling care packages. However, his employees are instructed to tell potential donors that they are not selling anything. If Respondent ADSS is not selling anything, then the request made by solicitors to potential donors for money for active military would tend to suggest that Respondent ADSS is a charitable organization making an appeal for money to be given towards a charitable purpose. The apparent appeal is made to benefit a venerable segment of our society, our active military personnel. It does not matter that Respondents' intent is sell care packages. The issue is whether Respondents or their employees made a request for contributions that tends to suggest that there is a charitable purpose to the solicitation or that ADSS is a charity or has a charitable purpose. Based upon the evidence, it is difficult to see how any other conclusion could be reached by potential donors.

With respect to Count One of the OSC, the evidence shows that Respondents, including their employees, solicited contributions after their registration with the Bureau expired on November 15, 2016. The donations received from one hundred and seventy-seven (177) Pennsylvania citizens totaling \$7,150.00, were collected by Respondents between November 16, 2016, and September 12, 2017. The Commonwealth has met its burden of proof² for Count One.

²The degree of proof required to establish a case before an administrative tribunal in an action of this nature is a preponderance of the evidence. Lansberry v. Pennsylvania Public Utility Commission, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Commonwealth's case must weigh slightly more than the opposing evidence. Se-Ling Hosiery, Inc. v. Margulies, 70 A.2d 854, 856 (Pa. 1950). The Commonwealth therefore has the burden of proving the charges against Respondents with evidence that is substantial and legally credible, not by mere "suspicion" or by only a "scintilla" of evidence. Lansberry, 578 A.2d at 602.

Regarding Count Two of the OSC, the evidence shows that Respondents used deceptive acts or practices, which created a likelihood of confusion or misunderstanding as it pertains to Respondents' connection to the USO. The script mentions that packages are sent to local USO's. Employees are not taught to say that Respondent ADSS has "no affiliation with the USO." Even if some of Respondents' printed material or website says they are not affiliated with the USO, a person answering their doorbell to an unexpected solicitor and hearing the solicitor's pitch for the first and probably only time, it is likely to confuse the listener or cause a misunderstanding. The one hundred and seventy-seven (177) donations made by Pennsylvania citizens appears to be the result of Respondents' employees going door-to-door. Therefore, they are not seeing the literature and website, they are hearing the presentation of the solicitor. Again, it is the objective view of a listener that prevails rather than Respondent Christopher Engle's intent. It does not seem that he has malicious intent in doing his work, but necessary steps were not taken to ensure that Respondents' solicitors presented the material in a clear and understandable way. The Commonwealth has met its burden for Count Two.

Lastly, regarding Count Three, the evidence shows that Respondent clearly informs potential donors that the money they give is not tax deductible. The employee must show the receipt during the presentation, and it unequivocally says that the donations are not tax deductible. Even the Bureau's complainant indicated that the employees who came to her home to solicit donations told her they were a for-profit entity. (See Exhibit C-4). The evidence does not support a finding that Respondent ADSS held itself out as a non-profit and/or tax-exempt organization. The Bureau did not meet its burden on Count Three; it is dismissed.

When the Secretary finds that a person has violated any of the provisions of the Act, the Secretary is authorized to enforce the Act against such person pursuant to Section 17 of the Act,

10 P.S. § 162.17, which provides, among other things, for the issuance of an order directing that the person cease and desist specified fundraising activities. *See* Section 17(b)(2) of the Act, 10 P.S. § 162.17(b)(2), above. The Act also authorizes the imposition of an administrative fine not to exceed \$1,000 for each act or omission which constitutes a violation of the Act, and an additional penalty, not to exceed \$100 for each day during which such violation continues. Section 17(b)(3) of the Act, 10 P.S. § 162.17(b)(3).

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.

**Active Duty Support Services,
Hearts 2 Heros d/b/a Active Duty
Support Services, Christopher L.
Engle, Kayla N. Engel a/k/a Kayla N.
D'Angelo,
Respondent**

File No. 17-98-08862

Docket No. 0175-98-17

ORDER

AND NOW, this 19th day of July, 2018, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ORDERED** that:

(1) Respondents, **Hearts 2 Heros d/b/a Active Duty Support Services, Christopher L. Engle, Kayla N. Engel a/k/a Kayla N. D'Angelo** shall **CEASE AND DESIST** from all manner of fundraising and solicitation activities in this Commonwealth, until all penalties imposed below are paid in full, and until such time as Respondent is duly registered as a charitable organization and authorized to solicit contributions pursuant to the Solicitation of Funds for Charitable Purposes Act.

(2) An administrative fine in the amount of **\$2,000.00** shall be imposed upon Respondents. This amount shall be remitted by certified check or U.S. postal Service money order made payable to Commonwealth of Pennsylvania" within thirty (30) days of the effective date of this Order and mailed to:

Martha H. Brown
Pennsylvania Department of State
Office of Chief Counsel
401 North Street, Room 306
Harrisburg, PA 17120

(3) Failure to comply with this Order shall constitute a violation of an order issued by the Secretary, subjecting Respondent to additional penalties under Section 17 of the Act, 10 P.S. § 162.17.

Appeal to this decision to the Commonwealth Court may be taken pursuant to 10 P.S. §162.17(c) and 2 Pa. C.S. §702 within 30 days of the date of mailing show below.

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

BY ORDER



Robert Torres
Acting Secretary of the Commonwealth

For Respondents:

Active Duty Support Services
Hearts 2 Heroes
Christopher L. Engle
Kayla N. Engle (D'Angelo)
166 Lusitano Way
Martinsburg, WV 25405

For the Commonwealth:

Michael J. Gennett, Esquire
Commonwealth of Pennsylvania
GOVERNOR'S OFFICE OF GENERAL COUNSEL
Department of State
306 North Office Building
Harrisburg, PA 17120

Date of Mailing:

7.20.18

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 Corporations and Charitable Organizations
401 North Street
Room 306
Harrisburg, PA 17120