

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

PROTHONOTARY

2002 JUL 19 AM 11:42

Department of State

Commonwealth of Pennsylvania,  
Bureau of Charitable Organizations

v.

Animal Recovery Center

Docket No. 0010-98-01

File No. 01-98-03793

7-19-02

---

ADJUDICATION AND ORDER

---

C. Michael Weaver  
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) on an order to show cause (OSC) filed July 26, 2001, by the Bureau of Charitable Organizations of the Department of State (Bureau) alleging that Animal Recovery Center (Respondent) is subject to administrative sanctions for violations of the Solicitation of Funds for Charitable Purposes Act (Solicitations Act), Act of December 19, 1990, P.L. 1200, *as amended*, 10 P.S. §§162:1-162.24.

Respondent filed an answer to the OSC on November 27, 2001, through its Chief Executive Officer, Joseph Dwyer. In its answer Respondent admitted that it had violated the Solicitations Act, but averred that it was led to believe that it was not required to register by a representative of the Bureau, and that it had acted in good faith and without any intent to deceive.

A notice of hearing<sup>1</sup> was issued scheduling a hearing for February 8, 2002, before a hearing examiner designated by the Secretary of the Commonwealth to conduct hearings brought under the Solicitations Act.<sup>2</sup> The hearing was held on the date and time scheduled before Joyce McKeever. The Commonwealth was present and represented by Philip Zarone, prosecuting attorney. Respondent was not present, or represented by counsel, and did not notify the Bureau or the hearing examiner office that it would not attend.

---

<sup>1</sup> The case was consolidated administratively for hearing without formal motion with the case of *Commonwealth of Pennsylvania, Bureau of Charitable Organizations v. Joseph Dwyer, d/b/a/Northeast Marketing Concepts, d/b/a/ Harvest Ministries*, Docket No. 0083-98-01, File No. 01-98-04143.

<sup>2</sup> The designation was issued by the then Secretary, Kim Pizzigrilli.

## FINDINGS OF FACT

1. Respondent is not and has never been registered as a charitable organization in the Commonwealth. (OSC, Answer 1)
2. Respondent's last known office address is 1007 North Webster Avenue, Scranton, PA 18510. (OSC, Answer 2)
3. From November 11, 2000, Joseph Dwyer, Respondent's founder and chief executive officer, solicited charitable contributions on behalf of Respondent and received compensation from Respondent; as of December 31, 2000, Mr. Dwyer had received \$5,600 in compensation as an independent contractor from Respondent. (N.T. 8, Exhibits C-1-4, C-8, C-10)
4. Respondent solicited contributions using coin drop canisters that were placed in retail stores in northeast Pennsylvania. (N.T. 11-14, Exhibits C-1-4)
5. The Respondent's coin drop canisters contained a printed statement that Respondent was "registered" with the Department of State. (N.T. 10, Exhibits C-1-3)
6. From November 2000 to January 2001, funds obtained by Respondent through its charitable solicitations were deposited into an account titled Northeast Marketing Concepts, account number 1144285601, with Fidelity Deposit and Discount Bank, Dunmore, Pennsylvania. (Exhibit C-9)
7. On August 1, 2001, Respondent's gross annual contributions exceeded \$25,000. (Exhibit C-17)
8. More than 30 days after August 1, 2001, on November 27, 2001, Respondent attempted to register with the Bureau as a charitable organization; information

required to complete registration was not provided at that time or up to the date of the February 8, 2002 hearing. (N.T. 25)

9. Respondent received the OSC filed against it and pled an answer thereto.

(Exhibits C-13, 14)

## CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Findings of Fact No. 1)
2. Respondent has received notice of the charges against it and has been given an opportunity to be heard in this proceeding in accordance with Administrative Agency Law, 2 Pa.C.S. § 504. (Findings of Fact No. 7)
3. Respondent violated Section 15(a)(1) of the Solicitations Act, 10 P.S. §162.15(a)(1), by failing to register with the Bureau prior to making charitable solicitations in the Commonwealth between November 11, 2000 and December 31, 2000 when it provided compensation to Joseph Dwyer to solicit funds on its behalf, or within 30 days after August 31, 2001 when its gross annual contributions exceeded the sum of \$25,000, as required under Section 5 and Section 6(a)(8) of the Solicitations Act, 10 P.S. § §162.5, 6(a)(8). (Findings of Fact Nos. 3, 8, Count 1)
4. Respondent violated Section 5(a)(2) of the Solicitations Act, 10 P.S. §162.15(a)(2), by misrepresenting to the public on its coin drop canisters that it was registered with the Department of State when it knew that it was not in fact registered. (Findings of Fact Nos. 4, 5, Count 2)
5. Respondent violated Section 5(s) of the Solicitations Act, 10 P.S. §162.5(s), by depositing funds obtained through charitable solicitations in a bank account that was not in the name of and under the sole control of the Respondent. (Findings of Fact Nos. 10-11, Count 3)

## DISCUSSION

The OSC filed in this matter is brought under Section 4 of the Solicitations Act, 10 P.S. §162.4, which grants the Secretary authority over charitable organizations as follows:

### **Powers and duties of secretary**

The secretary shall have the following powers and duties to:

- (1) Provide for and regulate the registration of charitable organizations, professional fundraising counselors and professional solicitors.
- (2) Decide matters relating to the issuance, renewal, suspension or revocation of registrations.
- (3) Promulgate, adopt and enforce the rules and regulations necessary to carry out this act.
- (4) Promulgate regulations altering fees and fines established in this act sufficient to meet expenditures of the bureau.
- (5) Take appropriate action to initiate any civil or criminal proceedings necessary to enforce this act, in accordance with the act of October 15, 1980 (P.L. 950, No. 164), known as the Commonwealth Attorneys Act.
- (6) Conduct hearings and make adjudications.
- (7) Keep a record showing the names and addresses of all registered charitable organizations, professional fundraising counsel and professional solicitors.
- (8) Submit annually, on or before September 30, to the Governor, to the State Government Committees of the House of Representatives and Senate, as well as to interested parties, a report on the number of registered charities, the number of charities ordered to cease and desist solicitation, the number of charities contracting with professional solicitors and the compensation of professional solicitors for each solicitation campaign in relation to the funds raised and administrative costs.

(9) Delegate to a division director of his office such powers and duties under this act as he may deem appropriate.

(10) Exercise all other authority accorded to him by this act.

Respondent was alleged to have committed a total of three counts of violations of the Solicitations Act. Count 1 concerns charitable solicitations in various retail establishments in northeast Pennsylvania without being first registered to do so. The Commonwealth alleges in the OSC that Respondent in so doing violated Section 15 (a)(1) of the Solicitations Act. That section states:

**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.

10 P.S. §162.15(a)(1).

The Commonwealth presented evidence that the Respondent beginning in November 2000 solicited funds through coin drop canisters placed in retail establishments in Pennsylvania. This evidence included Respondent's filing statement with the Department in which Respondent claimed that it was exempt from registration because it received less than \$25,000 in annual income. (Exhibit C-4) At the same time and through the calendar year 2000, the Commonwealth showed that Respondent paid

Joseph Dwyer, identified as Respondent's founder in documents filed with the Bureau, \$700 weekly, or total compensation of \$5,600. (Exhibits- C 8, 10)

Section 5 of the Solicitations Act, 10 P.S. § 162.5, requires that a charitable organization file a registration statement with the Department of State and further provides that no charitable organization shall solicit contributions before approval of the registration statement by the Department. Respondent's claim of exemption from registration in its year end report for Fiscal Year 2000 under Section 6(a)(8) of the Solicitations Act, 10 P.S. § 162.6(a)(8), must fail because this provision exempts a charitable organization with less than \$25,000 annual income only if it does not pay a professional solicitor. As indicated above, Respondent paid Mr. Dwyer a total of \$5,600 in the months of November and December for fundraising activities. As such Mr. Dwyer was a professional solicitor under Section 3 of the Solicitations Act, 10 P. S. § 162.3. Accordingly, the evidence establishes that Respondent violated the Act and in so doing committed a prohibited act under Section 15 (a)(1) of the Solicitations Act, 10 P.S. §162.15(a)(1).

In Count Two of the OSC, the Commonwealth alleges that Respondent violated Section 15(a)(2) of the Solicitations Act, 10 P.S. §162.15(a)(2), which provides:

**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:

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

10 P.S. §162.15(a)(1).



The evidence on this count concerns the representation on the coin canisters. Steven L. Uhlrich, special investigator for the Special Investigations Unit of the Bureau, testified that in January 2001, in response to a complaint, he found coin drop canisters soliciting funds for Respondent at retail establishments throughout Lehigh and Luzerne counties. (N.T. 10-13, Exhibits C-1 - C-3) In the Lehigh Valley Mall, Mr. Uhlrich found approximately 19 canisters. Mr. Uhlrich testified that the following statement appeared on each coin drop canister:

The official registration and financial information of [Respondent] may be obtained from the Pennsylvania Department of State by calling toll free within Pennsylvania, 1-800-000-0000. Registration does not imply endorsement. (N.T. 10)

As set forth above, Respondent, through Joseph Dwyer, on a financial statement for the year 2000 filed with the Bureau on January 22, 2001 (Exhibit C-4), asserted that it was exempt from registration with the Department. This evidence taken together shows fraudulent conduct which tended to create confusion and misunderstanding in the minds of the charitable public as to the status of the Respondent as a charitable institution. Accordingly, the evidence establishes that Respondent violated Section 15 (a)(2) of the Solicitations Act, 10 P.S. §162.15(a)(2) as alleged in Count Two.

In Count Three, the Commonwealth alleges that Respondent violated Section 5(s) of the Solicitations Act, 10 P.S. §162.5(s), pertaining to the registration of charitable organizations which provides:

(s) ADMINISTRATION OF CHARITABLE CONTRIBUTIONS.—A charitable organization shall maintain and administer all contributions raised on its behalf through an account in the name of the charitable organization and under its sole control.

Respondent was served with the investigative subpoena which was issued by Karl Emerson, Director of the Bureau. (N.T. 17) Investigator Uhlrich examined the Respondent's financial records produced by Joseph Dwyer. Among the items produced by Mr. Dwyer was the account record of Northeast Marketing Concepts in the First Bank and Trust of Jermyn, Pennsylvania (Exhibit C-9) which showed deposits of charitable contributions. Also, Investigator Uhlrich identified a check drawn on a Northeast Marketing Concepts account with the Fidelity Bank of Dunmore Pa. purportedly on behalf of Respondent as a filing fee for Respondent (Exhibit 4). These documents establish that Respondent violated Section 5(s) of the Solicitations Act, 10 P.S. §162.5(s), as alleged in Count Three of the OSC.

Under Section 17 of the Solicitations Act, the Secretary is authorized to impose penalties for the above violations of the Act. Section 17(a) states as pertinent:

**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.

\* \* \*

(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:

\* \* \*

(3) 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.

10 P.S. §162.17(a).

Section 2 of the Solicitations Act, 10 P.S. §162.2, declares that it is

“the intention of the General Assembly that this act shall...protect the citizens of the Commonwealth by requiring full public disclosure of the identity of persons who solicit contributions from the public [and] the purposes for which ...contributions are used, ...[and] by providing civil and criminal penalties for deception and dishonest statements and conduct in the solicitation and reporting of contributions for or in the name of charitable purposes....”

Respondent did not attempt to register with the Bureau as a charitable organization, misrepresented that it was registered, and commingled its funds with a marketing entity. Its actions thwart the very intention of the General Assembly in enacting the Solicitations Act.

Based upon the above facts and conclusions of law, Respondent violated the Solicitations Act, 10 P.S. § 162.15(a), in three separate acts, by soliciting charitable contributions in Pennsylvania without first registering with the Bureau, by misrepresenting that it was in fact registered, and by commingling its funds in accounts of another entity. Therefore, Respondent is subject to the imposition of administrative fines and other penalties in accordance with Section 17 of the Solicitations Act, 10 P.S.

§162.17. Moreover, Investigator Uhlrich testified that as of February 4, 2002, coin drop canisters identical to those described in Finding of Fact Nos. 4 and 5 appeared in retail establishments in northeast Pennsylvania in direct violation of cease and desist orders issued against both Respondent and Mr. Dwyer. (N.T. 28-29, Exhibits 11, 12)

As noted in the History of this case, Respondent filed an answer in which it attempted to excuse its conduct. However, when afforded an administrative hearing, Respondent did not appear to defend against the charges or present evidence in its behalf. In the absence of any evidence in defense of the charges or in mitigation of a sanction, the Secretary determines that the maximum administrative fine, \$3,000, or \$1,000 per count as alleged in the OSC, should be imposed in order to deter Respondent and others from such conduct in the future. 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.

Animal Recovery Center

:  
:  
:  
:  
:  
:  
:

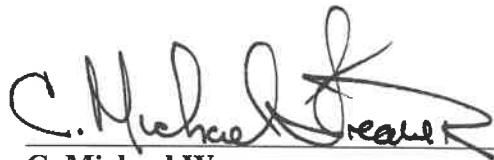
Docket No. 0010-98-01

File No. 01-98-03793

ORDER

AND NOW, this 11<sup>th</sup> day of July, 2002, in accordance with the foregoing findings of fact, conclusions of law and discussion, the Secretary of the Commonwealth hereby **ORDERS** that an administrative fine in the amount of \$3,000, \$1,000 per violation of the Solicitations Act, be and hereby is, imposed upon Respondent **Animal Recovery Center**. It is further ordered that no registration shall be accepted on behalf of Respondent **Animal Recovery Center** until the fine is paid in full.

BY ORDER



C. Michael Weaver  
Secretary of Commonwealth

Date of Mailing: 7-19-02

*For the Commonwealth:*  
Philip Zarone, Esquire  
Department of State  
116 Pine Street  
P.O. Box 2649  
Harrisburg, PA 17105-2649

*Respondent:*  
Animal Recovery Center  
1007 North Webster Avenue  
Scranton, PA 18510