

COPY

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

In the Matter of the Appeal : Docket No. 0003-98-14  
of the Brecht Forum, from the :  
Secretary's Cease and Desist Order : File No. 14-98-03557  
Dated March 3, 2014 :

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FINAL ADJUDICATION AND ORDER

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PROTHONOTARY  
2015 AUG 14 PM 3:39  
Department of State

Pedro A. Cortés  
Secretary of the Commonwealth

401 North Street, Room 302  
Harrisburg, PA 17120

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## HISTORY

This case comes before the Secretary of the Commonwealth (the "Secretary") on the appeal by the Brecht Forum ("Appellant") from a March 3, 2014 Order of the Secretary (the "Cease and Desist Order"), finding that Appellant was not registered with the Department of State (the "Department"), Bureau of Corporations and Charitable Organizations (the "Bureau"), that it had failed to respond to the Bureau's request for information, and that it solicited contributions in Pennsylvania while it was not registered, in violation of the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990, P.L. 1200, No. 202 (the "Act"), *as amended*, 10 P.S. §§ 162.1 *et. seq.* The Secretary's Order further directed the Brecht Forum to cease and desist from soliciting contributions in Pennsylvania until such time as the Brecht Forum has duly registered with the Bureau or until it has provided the Bureau with information demonstrating that it is excluded or exempt from registration.

By letter dated March 18, 2014, the Brecht Forum appealed from the Secretary's Cease and Desist Order and asserted that it was in the process of "gathering all the documents required to register with the state." The letter further stated that the Appellant's freelance bookkeeper was "nearing completion of compiling the necessary documents and filling out the initial registration form." The Brecht Forum, therefore, requested an additional two weeks "to complete the registration process." The Bureau received no further information from the Brecht Forum related to its registration.

Thereafter, a Notice of Hearing was served upon the Brecht Forum on April 7, 2014, at the address provided to the Bureau through the Brecht Forum's March 18, 2014 appeal letter. The Notice scheduled the hearing for June 6, 2014. By letter dated April 21, 2014, the Brecht Forum requested a continuance of the June 6, 2014 hearing on the ground that it was in the process of formal dissolution

under New York state law. The hearing was, thereafter, continued by Order dated June 2, 2014, which was served upon Appellant at the same address at which service of the April 7, 2014, Notice of Hearing was made, 388 Atlantic Avenue, Brooklyn, NY 11217. However, the Order was returned to the Department of State, Office of the Prothonotary on July 21, 2014 as "Not Deliverable as addressed, unable to forward". The Department of State, Office of Prothonotary made several more unsuccessful attempts to serve the Brecht Forum with Rescheduled Notices of Hearing.

By Order dated August 26, 2014, the Hearing Examiner authorized service upon Appellant by publication of legal notice in the *Pennsylvania Bulletin* and in the legal notice section of a newspaper of general circulation within the same county as New York City, New York. A hearing on this matter was convened on October 17, 2014. However, the Hearing Examiner continued the matter by Order dated October 20, 2014, based upon uncertainty about whether the Brecht Forum had received adequate notice of the hearing through publication.

The Notice of Rescheduled Hearing scheduling the hearing for February 2, 2015 was, thereafter, served upon the Brecht Forum via publication in the New York Daily News on October 24, 2014. Notice of the hearing was similarly published in the *Pennsylvania Bulletin* on October 31, 2014. Notices were additionally mailed to the Brecht Forum at 388 Atlantic Avenue, Brooklyn, NY 11217, and at P.O. Box 170230, Brooklyn, NY 11217-0230 on October 21, 2014. However, both Notices were once again returned as being undelivered.

The formal administrative hearing occurred, as scheduled, on February 2, 2015. Robert B. Armour, Esquire represented the Commonwealth. No representative for Brecht Forum appeared or attended the hearing. At the hearing, the Commonwealth moved to quash the appeal based upon Appellant's failure to appear and offer any evidence in support of the appeal. The Hearing Examiner deferred ruling on the Commonwealth's Motion in favor of the issuance of an Adjudication and

Order by the Secretary (N.T. 18). Accordingly, the Commonwealth presented testimony and documentary evidence which addressed the procedural history and basis for the Secretary's March 3, 2014 Cease and Desist Order. The Commonwealth waived the filing of a post-hearing brief, and the record closed with the filing of the hearing transcripts (hereinafter "N.T.") on February 11, 2015.

## FINDINGS OF FACT

1. A charitable organization, unless exempt, is required to file a registration statement with the Department. See, 10 P.S. § 162.5(a).

2. Department of State, Bureau of Enforcement and Investigation, Special Investigator, Andrew D. McCole ("Investigator McCole"), began an investigation into the Brecht Forum upon his receipt of a complaint regarding possible charitable solicitations by a Pennsylvania non-profit organization, the One People's Project. (Exhibit C-1; N.T. 20-21).

3. Brecht Forum, Inc. is a charitable organization incorporated in New York State as a nonprofit corporation with 501(c)(3) tax exempt status. (Exhibits C-2 and C-10)

4. Brecht Forum states a charitable purpose of "a cultural and educational center for people who are working for social justice, equality and a new culture that puts human needs first." (Exhibits C-2 and C-10)

5. One People's Project is a charitable organization located in Philadelphia, Pennsylvania, whose mission is to research and report on right-wing hate groups, individuals and activities and to encourage society to be vigilant against them in an effort to diminish their ability to function and cause that society. (Exhibits C-8 and C-9)

6. During his investigation into the complaint involving the One People's Project, Investigator McCole discovered a request for charitable donations in which the Brecht Forum was identified as the intended payee of "Tax Deductable" donation checks to One People's Project. (Exhibit C-8; Exhibit C-9; N.T. 22-25).

7. During his investigation into the complaint involving the One People's Project, Investigator McCole discovered information which appeared to be an internet web page of the Brecht Forum which caused Investigator McCole to believe that the Brecht Forum may be acting as a

charity in Pennsylvania for which registration with the Department was required. (Exhibit C-10; N.T. 25-27).

8. During his continuing investigation of the Brecht Forum, Investigator McCole learned from Appellant's 2009, 2010 and 2011 Federal Income Tax forms, 990-EZ, that the Brecht Forum identified itself as a 501(c)(3) charitable organization, and that the Brecht Forum reported more than \$25,000.00 in income during each year reflected on the income tax forms. (Exhibit C-2; N.T. 27-28).

9. Brecht Forum solicited contributions and/or had contributions solicited on its behalf in the Commonwealth, through One People's Project. (Exhibit C-8; Exhibit C-9; Exhibit C-10; N.T. 25-28).

10. By letter dated October 29, 2013, Investigator McCole informed Brecht Forum that it may be required to register with the Bureau pursuant to Pennsylvania's Solicitation of Funds for Charitable Purposes Act, (the "Act"), 10 P.S. § 162.1 *et. seq.* which requires organizations soliciting contributions in Pennsylvania to register with the Bureau unless they are specifically excluded or exempt from the Act's requirements (the "Due Process Letter"). (Exhibit C-3; N.T. 29-31).

11. The October 29, 2013 Due Process Letter requested that Brecht Forum respond to the letter within thirty (30) days from the date of the letter by either becoming properly registered with the Bureau, or by providing the Bureau with evidence that it was either excluded or exempt from the Act's requirements. (Exhibit C-3; N.T. 30-31).

12. Service of the Due Process letter was accomplished via Certified Mail on November 14, 2013. (Exhibit C-4; N.T. 30-31).

13. Brecht Forum did not respond to the October 29, 2013 Due Process Letter. (N.T. 32).

14. The Secretary of the Commonwealth issued a Cease and Desist Order to the Brecht Forum on March 3, 2014. The Order was properly served upon the Brecht Forum on March 12, 2013,

via Certified Mail and by First Class mail. (Exhibit C-5; Exhibit C-6; N.T. 32-34).

15. The Cease and Desist Order was based, in part, upon the Secretary finding that the Brecht Forum was not registered with the Department's Bureau of Corporations and Charitable Organizations, that the Brecht Forum had not responded to the Bureau's request for information, and that the Brecht Forum had solicited contributions in Pennsylvania while it was not registered. (Exhibit C-5; Official Notice-Department records)<sup>1</sup>.

16. The Brecht Forum appealed from the Secretary's Cease and Desist Order way of letter dated March 18, 2013. (Exhibit C-7; N.T. 34; Official Notice-Department records).

17. The Brecht Forum is not registered as a charitable organization with the Bureau. (Official Notice-Department records; Exhibit C-7).

18. At no time did the Brecht Forum respond to the Due Process Letter or provide the Bureau with evidence that it was either excluded, or exempt, from the Act's requirements. (N.T. 33).

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<sup>1</sup> Official notice of such matters as might be judicially noticed by courts is permissible under the General Rules of Administrative Practice and Procedure, 1 Pa. Code §31.1 *et. seq.*, at §35.173, which provides, in pertinent part, as follows:

§35.173. Official notice of facts.

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or any matters as to which the agency by reason of its functions is an expert. . . .

1 Pa. Code §35.173.

Official notice is also permitted under case law. *See, for example, Falasco v. Commonwealth of Pennsylvania, Board of Probation and Parole*, 521 A. 2d 991 (Pa. Cmwlth. 1987), in which the Commonwealth Court explained:

"Official notice" is the administrative counterpart of judicial notice and is the most significant exception to the exclusiveness of the record principle. The doctrine allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency's field and those facts contained in reports and records in the agency's files, in addition to those facts which are obvious and notorious to the average person. Thus, official notice is a broader doctrine than is judicial notice and recognizes the special competence of the administrative agency in its particular field and also recognizes that the agency is a storehouse of information on that field consisting of reports, case files, statistics and other data relevant to its work.

521 A. 2d at 994 n. 6.

19. A Notice of Hearing was served upon the Brecht Forum on April 7, 2014, at the address provided to the Bureau through the Brecht Forum's March 18, 2014 appeal letter. The Notice scheduled the hearing for June 6, 2014. (Official Notice-Department records).

20. By letter dated April 21, 2014, the Brecht Forum requested a continuance of the June 6, 2014 hearing on the ground that it was in the process of formal dissolution under New York state law. (Official Notice-Department records).

21. The hearing was, thereafter, continued by Order dated June 2, 2014, which was served upon the Brecht Forum on that same date at the same address at which service of the April 7, 2014, Notice of Hearing was served, 388 Atlantic Avenue, Brooklyn, NY 11217. (Official Notice-Department records).

22. On June 3, 2014, a Notice of Rescheduled Hearing which rescheduled the hearing for September 3, 2014, was served upon the Brecht Forum at Appellant's address, 388 Atlantic Avenue, Brooklyn, NY 11217. (Official Notice-Department records).

23. On July 21, 2014, the June 2, 2014, Order granting the continuance was returned to the Department of State, Office of the Prothonotary as "Not Deliverable as addressed, unable to forward". The Postal Service's return envelope also contained the notification "Notify Sender of New Address: the Brecht Forum, P.O. Box 170230, Brooklyn, NY 11217-0230." (Official Notice-Department records).

24. On August 14, 2014, a Notice of Rescheduled Hearing was mailed to the Brecht Forum at 388 Atlantic Avenue, Brooklyn, NY 11217, and at its forwarding address, P.O. Box 170230, Brooklyn, NY 11217-0230. The Notice rescheduled the hearing for October 17, 2014. (Official Notice-Department records).

25. The Notice mailed to the Brecht Forum at P.O. Box 170230, Brooklyn, NY 11217-

0230 was returned on August 26, 2014, as "Not Deliverable as Addressed, Unable to Forward." The Notice mailed to the Brecht Forum at 388 Atlantic Avenue, Brooklyn, NY 11217, was returned on September 19, 2014 as "Insufficient Address, Unable to Forward" with an annotation that Appellant had moved from the P.O. Box 170230, Brooklyn, NY 11217-0230 address. (Official Notice-Department records).

26. By Order dated August 26, 2014, the Hearing Examiner authorized service upon the Brecht Forum by publication of legal notice in the *Pennsylvania Bulletin*, and by publication in the legal notice section of a newspaper of general circulation within the same county as New York City, New York. (Official Notice-Department records).

27. A Notice of Rescheduled Hearing scheduling the hearing for February 2, 2015 was served upon the Brecht Forum via publication in the New York Daily News on October 24, 2014. Notice of the February 2, 2015 Hearing was similarly published in the *Pennsylvania Bulletin* on October 31, 2014. Notices were additionally mailed to the Brecht Forum at 388 Atlantic Avenue, Brooklyn, NY 11217, and at P.O. Box 170230, Brooklyn, NY 11217-0230 on October 21, 2014. However, both Notices were once again returned as being undelivered. (Official Notice-Department records; Exhibit C-11; Exhibit C-12; Exhibit C-13; Exhibit C-14; N.T. 9-13).

## CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. 10 P.S. § 162.4.
2. The Brecht Forum was served with all Notices, pleadings, and Orders filed of record in this matter in accordance with Administrative Agency Law, 2 Pa.C.S. § 504. (Findings of Fact, Nos. 19-27).
3. The Secretary of the Commonwealth properly issued the March 3, 2014 Cease and Desist Order to the Brecht Forum under the Act at 10 P.S. § 162.17 because, as of that date, the Brecht Forum was not registered with the Department of State, Bureau of Corporations and Charitable Organizations, had failed to respond to the Bureau's request for information, and had solicited contributions in Pennsylvania while it was not registered, in violation of the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990, P.L. 1200, No. 202 (the "Act"), *as amended*, 10 P.S. §§ 162.1 *et. seq.* (Findings of Fact, Nos. 1 – 18).

## DISCUSSION

This case involves an appeal by the Brecht Forum from a Cease and Desist Order issued by the Secretary on March 3, 2014, resulting from the Brecht Forum's failure to provide the Bureau with requested information in response to an October 29, 2013 letter from the Bureau requesting information regarding whether the Brecht Forum was excluded or exempt from the registration requirements of the Solicitation of Funds for Charitable Purposes Act, 10 P.S. §§ 162.1 *et. seq.* The Bureau's request for the information on October 29, 2013 resulted from an investigation of the Brecht Forum by the Bureau through which the Bureau preliminarily determined that the Brecht Forum may be required to register under the Act. A hearing on the Brecht Forum's appeal was held on February 2, 2015.

### 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. Dept. of Banking*, 300 A.2d 823, 824 (Pa. Cmwlth. 1973). Based upon the procedural history surrounding the efforts to serve the Brecht Forum with notice of the February 2, 2015 hearing, a threshold analysis is warranted to determine whether the Brecht Forum was adequately provided notice of the hearing so as to comport with due process.

Due process is afforded to a party when the party is informed of the nature of the allegations with reasonable certainty, is provided timely notice and opportunity to answer the charges and defend against the accusations, and when proceedings are conducted in a fair and impartial manner. *Clark v. Department of Public Welfare* 427 A.2d 712 (Pa. Cmwlth. 1981); *Celane v. Insurance Commissioner*, 415 A.2d 130 (Pa. Cmwlth. 1980); *Gaudenzia, Inc. v. Zoning Bd. of Adjustment of City of Philadelphia*, 287 A.2d 698 (Pa. Cmwlth. 1972). See, also *Gutman v. State Dental Council*

*and Examining Board*, 463 A.2d 114 (Pa. Cmwlth. 1983). Due process does not confer an absolute right to be heard, but only that a party be provided an opportunity to be heard. *Goetz v. Dept. of Environmental Resources*, 613 A.2d 65, 67 (Pa. Cmwlth. 1992), *app. den.*, 533 Pa. 663, 625 A.2d 1196 (1993).

In this case, the Department of State Prothonotary made multiple attempts to serve the Brecht Forum with several Notices of Rescheduled hearing, only to have the Notices returned as being undeliverable. Specifically, a Notice of Hearing was served upon the Brecht Forum on April 7, 2014, at the address provided to the Bureau through the Brecht Forum's March 18, 2014 appeal letter. The Notice scheduled the hearing for June 6, 2014. By letter dated April 21, 2014, the Brecht Forum requested a continuance of the June 6, 2014 hearing on the ground that it was in the process of formal dissolution under New York State Law. The hearing was, thereafter, continued by Order dated June 2, 2014, which was served upon Appellant at the same address service of the April 7, 2014, Notice of Hearing was made, 388 Atlantic Avenue, Brooklyn, NY 11217.

The Order granting the continuance was returned to the Department of State, Office of the Prothonotary on July 21, 2014 as "Not Deliverable as addressed, unable to forward." The Postal Service's return envelope contained the notification "Notify Sender of New Address: The Brecht Forum, P.O. Box 170230, Brooklyn, NY 11217-0230". In the interim, a June 3, 2014, Notice of Rescheduled Hearing scheduling the hearing for September 2, 2014 was served upon the Brecht Forum at Appellant's previous address.

Upon receiving notice of Appellant's forwarding address from the Postal Service, a Notice of Rescheduled Hearing was served upon the Brecht Forum at both addresses on August 14, 2014, *i.e.*, 388 Atlantic Avenue, Brooklyn, NY 11217, **and** at P.O. Box 170230, Brooklyn, NY 11217-0230. The Notice rescheduled the hearing for October 17, 2014. However, the Notice sent to the Brecht

Forum at P.O. Box 170230, Brooklyn, NY 11217-0230 was returned on August 26, 2014, as “Not Deliverable as Addressed, Unable to Forward.” The Notice sent to the Brecht Forum at 388 Atlantic Avenue, Brooklyn, NY 11217, was returned on September 19, 2014 as “Insufficient Address, Unable to Forward” with an annotation that Appellant had moved from the P.O. Box 170230, Brooklyn, NY 11217-0230 address.

Section 33.31 of the General Rules of Administrative Practice and Procedure, 1 Pa.Code § 33.31 authorizes service by mail. However, Section 33.31 further provides “If service is not accomplished by mail, it may be effected by anyone authorized by the agency in the manner provided in 231 Pa.Code Rules 400-441...” [the Pennsylvania Rules of Civil Procedure relating to Service of Original Process.]. In turn, 231 Pa.Code §430, provides as follows:

**Rule 430. Service Pursuant to Special Order of Court. Publication.**

(a) If service cannot be made under the applicable rule the plaintiff may move the court for a special order directing the method of service. The motion shall be accomplished by an affidavit stating the nature and extent of the investigation which has been made to determine the whereabouts of the defendant and the reasons why service cannot be made.

Based on repeated, unsuccessful attempts to obtain service upon the Brecht Forum at either address known to the Commonwealth, the Hearing Officer authorized service upon Appellant by publication of legal notice in the *Pennsylvania Bulletin*, and in the legal notice section of a newspaper of general circulation within the same county as New York City, New York, by Order dated August 26, 2014. The Notices of Rescheduled Hearing scheduling the hearing for February 2, 2015 were, thereafter, served upon the Brecht Forum via publication in the *New York Daily News* on October 24, 2014. Notice of the February 2, 2015 Hearing was similarly published in the *Pennsylvania Bulletin* on October 31, 2014. Notices were also mailed to the Brecht Forum at 388 Atlantic Avenue, Brooklyn, NY 11217, and at P.O. Box 170230, Brooklyn, NY 11217-0230 on

October 21, 2014. However, both Notices were once again returned as being undelivered.

It should also be noted that section 16(g) of the Solicitation of Funds for Charitable Purposes Act, 10 P.S. § 162.16(g),<sup>2</sup> permits service of any summons or other process directed to a charitable organization having its principal place of business other than within this Commonwealth, or organized under and by virtue of the laws of a foreign state, which is subject to the provisions of the Act, on the Secretary. The Secretary must provide notice of such service and a copy of such process to the charitable organization, with return receipt requested, at the last address known to the Secretary. There is no question that this was done in the instant matter.

Therefore, in light of the foregoing procedural history, the Secretary finds that notice of the February 2, 2015 hearing was properly served upon the Brecht Forum.

### Merits of Appeal

This matter originated from an investigation by Special Investigator Andrew D. McCole into the affairs of the Brecht Forum following his receipt of a complaint regarding possible charitable

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<sup>2</sup> § 162.16. Investigation; subpoenas; injunctions; court orders

\* \* \*

(g) SERVICE.-- Service of a subpoena may be made in any one of the following ways:

- (1) Delivering a duly executed copy thereof to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person.
- (2) Delivering a duly executed copy thereof to the principal place of business in this Commonwealth of the person to be served.
- (3) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at his principal place of business in this Commonwealth or if said person has no place of business in this Commonwealth, to the last address of such person known to the secretary.
- (4) Any charitable organization, fundraising counsel, or professional solicitor having its principal place of business other than within this Commonwealth, or organized under and by virtue of the laws of a foreign state, which is subject to the provisions of this act, shall be deemed to have irrevocably appointed the Secretary of State as its agent upon whom may be served any summons, subpoena duces tecum or other process directed to such charitable organization, fundraising counsel, professional solicitor, or any partner, principal officer or director of any of them, in any action or proceeding brought under the provisions of this act. Service of such process upon the Secretary of State shall be made by personally delivering to and leaving with him a copy thereof at his office in the city of Harrisburg, Pennsylvania, and such service shall be sufficient service, provided notice of such service and a copy of such process shall be forthwith sent by said secretary to such charitable organization, fundraising counsel, professional solicitor or other person to whom it is directed by registered mail, with return receipt requested, at the last address known to said secretary.

solicitations by a separate Pennsylvania non-profit organization, the One People's Project. During his investigation, Investigator McCole discovered a request for charitable donations by the One's People Project in which the Brecht Forum was identified as the intended payee of "Tax Deductable" donation checks intended for One People's Project. Investigator McCole's investigation into the Brecht Forum also involved obtaining Appellant's 2009, 2010 and 2011 Federal Income Tax forms, 990-EZ, which indicated that the Brecht Forum identified itself as a 501(c)(3) charitable organization, and had reported more than \$25,000.00 in annual income during each year reflected on the tax forms. Based upon the information he had obtained, Investigator McCole believed the Brecht Forum was engaged in the solicitation of charitable donations, and preliminarily determined that the Brecht Forum may be subject to the registration requirements of the Act by virtue of its activities.

By letter dated October 29, 2013, the Bureau provided the Brecht Forum notice of its preliminary determination, through which it provided the Brecht Forum thirty (30) days to provide the Bureau evidence that it is exempt or excluded from the Act's registration requirements. The Bureau's correspondence additionally advised the Brecht Forum of the documents and information it was required to produce in the event it was required to register with the Bureau, and informed the organization that a Cease and Desist Order would be issued ordering the Brecht Forum to immediately stop all fundraising activities in Pennsylvania if, within thirty (30) days, it did not return the appropriate registration documents or provide evidence that it is excluded or exempt under the Act.

The Brecht Forum did not respond to the Bureau's letter in any manner. Based upon the Brecht Forum's lack of response, the Secretary issued the Cease and Desist Order dated March 3, 2014. The Brecht Forum, thereafter, requested a hearing and asserted that it was in the process of gathering the documents necessary to register with the Bureau.

An administrative agency, or authority such as the Secretary, which has been granted investigatory powers, has initial jurisdiction to determine the applicability of the authorizing statute. See, 10 P.S. §§162.4 and 162.16 (a); *Pennsylvania Human Relations Commission v. Landsdowne Swim Club*, 515 Pa. 1, 526 A. 2d 758 (1987). Under the Act at 10 P.S. § 162.5(a), a charitable organization is required to file a registration statement with the Department unless the charitable organization is exempt from the Act's registration requirements. The Act at 10 P.S. § 162.5(a), provides in pertinent part as follows:

**§ 162.5. Registration of charitable organizations; financial reports; fees; failure to file**

**(a) Registration and approval required.**—A charitable organization, unless exempted from registration requirements pursuant to section 6, shall file a registration statement with the department. This statement must be refiled annually within 135 days after the close of its fiscal year in which the charitable organization was engaged in solicitation activities. The department shall review the statement pursuant to subsection (r). No charitable organization shall solicit contributions or have contributions solicited in its behalf before approval of its registration statement by the department.

\* \* \*

Section 162.3 of the Act defines "solicitation", in pertinent part, as follows:

**"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:

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(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.

Under the Act at 10 P.S. § 162.5(a), a charitable organization is required to file a registration statement with the Department, unless it is exempt from the Act's registration requirements. Moreover, no charitable organization is permitted to solicit contributions or have contributions solicited on its behalf before approval of its registration statement by the Department.

The Act at 10 P.S. §162.16 grants the Secretary the authority to conduct investigations into the activities of possible charitable organizations as follows:

**§162.16. Investigation; subpoenas; injunctions; court orders**

(a) **Permissible investigations.**-The Attorney General, the secretary or the district attorney may make or cause to be made an investigation of any person as deemed necessary. In conducting such an investigation, he may:

(1) Require or permit any person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the manner to be investigated.

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(4) Require ... the production of any books, accounts, papers, records, documents, audits and files relating to any solicitation or any practice subject to this act or the regulations of the department.

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(7) Examine witnesses and receive evidence during any investigation....

10 P.S. §162.16(a). The Act at 10 P.S. §162.15(a) further provides, 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 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 prior to the solicitation notice and contract having been approved by the department.

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In terms of enforcement, the Act at 10 P.S. §162.17 provides, in pertinent part, as follows:

**§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.

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**(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:

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

(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....

In this case, the Commonwealth established that the Brecht Forum was soliciting as a charity and, therefore, was required to register under the Act; that it was not registered with the Bureau; and that it failed to comply with the Bureau's investigation by providing evidence that it was either excluded or exempt from the Act's registration requirements. The degree of proof required to establish a case before an administrative tribunal is a preponderance of the evidence. *Lansberry, Inc. 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 must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950).

In light of the complete absence of any evidence by the Brecht Forum to support the basis for

its appeal from the Secretary's March 3, 2014 Cease and Desist Order, this case is relatively straight forward. The Commonwealth's evidence consisted of testimony from Special Investigator Andrew McCole in conjunction with the admission of ten documents into evidence, many of which formed the predicate for his issuance of the October 29, 2013 letter through which he requested documents and information pertaining to his investigation. Mr. McCole's testimony and supporting documentary evidence is uncontroverted, and demonstrates that he personally observed the Brecht Forum making charitable solicitations and observed charitable solicitations being made on its behalf, online. Admissions by the Brecht Forum and Department records additionally establish that the Brecht Forum is not registered as a charitable organization with the Bureau.

The evidence equally demonstrates that the Bureau conducted an investigation into the Brecht Forum's activities and, on October 29, 2013, wrote to the Brecht Forum as part of its investigation for the purpose of obtaining documents and information regarding whether the Brecht Forum is either excluded or exempt from registration. The record also shows that the Brecht Forum subsequently failed to provide any response to the Bureau prior to the Secretary issuing the March 3, 2014 Cease and Desist Order.

Because the Brecht Forum failed to attend the hearing, it not only failed to identify or establish the purported grounds for its appeal, it also failed to produce evidence necessary to support any such grounds, should any exist. The Brecht Forum has similarly failed to produce any evidence to rebut the Secretary's finding that it solicited charitable contributions, that it is not registered with the Commonwealth or, alternatively, that it is exempt from the provisions of 10 P.S. § 162.15(a)(1) which require the Brecht Forum to register with the Department and to refrain from soliciting contributions until the Department has approved its registration statement.

Additionally, the Act at 10 P.S. § 162.15(a)(1) specifically prohibits a person from operating

in violation of, or failing to comply with, any of the requirements of the Act, such as the requirement to cooperate with the investigation conducted by the Bureau as authorized by the Act at 10 P.S. § 162.16. Based on the evidence presented at the hearing showing that the Brecht Forum failed to produce any documents or information requested by the Bureau as part of its investigation, the Brecht Forum has violated that provision of the Act as well.

As set forth above, the Secretary is expressly authorized to enforce the Act against the Brecht Forum pursuant to 10 P.S. § 162.17, when the Secretary finds that the organization has violated any provision of the Act. That Section provides, among other things, for the issuance of an order directing that the organization cease and desist specified fundraising activities. See, 10 P.S. § 162.17(b)(2). Therefore, the Secretary's March 3, 2014 Cease and Desist Order was properly issued in that the Act at § 162.17(b) authorizes the issuance of the Order under the facts and circumstances the Commonwealth has established in this matter.

The Act also authorizes the imposition of an administrative fine not to exceed \$1,000.00 for each act or omission which constitutes a violation of the Act, and an additional penalty, not to exceed \$100.00 for each day during which such violation continues. 10 P.S. § 162.17(b)(3). Consistent with the Secretary's March 3, 2014 Cease and Desist Order, and in order to allow the Brecht Forum the opportunity to come into compliance without further penalty, no civil penalty will be imposed at this time. However, should the Brecht Forum continue to fail to comply with the Act, it may be subject to further action under the Act at 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

In the Matter of the Appeal	:	Docket No.	0003-98-14
of The Brecht Forum, from the	:		
Secretary's Cease and Desist Order	:	File No.	14-98-03557
Dated March 3, 2014	:		

ORDER

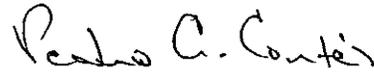
AND NOW, this 14<sup>th</sup> day of August, 2015, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Discussion, the Secretary **DISMISSES** the appeal of The Brecht Forum of the Cease and Desist Order issued March 3, 2014. The Secretary concludes that the Cease and Desist Order was properly issued, because Appellant was not registered with the Department of State (the "Department"), Bureau of Corporations and Charitable Organizations (the "Bureau"), Appellant failed to respond to the Bureau's request for information, and that Appellant solicited contributions in Pennsylvania while it was not registered, in violation of the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990, P.L. 1200, No. 202 (the "Act"), *as amended*, 10 P.S. §§ 162.1 *et. seq.* The Brecht Forum is, therefore, **ORDERED** to continue to **CEASE AND DESIST** from soliciting contributions in the Commonwealth of Pennsylvania until such time as the Brecht Forum has duly registered with the Bureau.

Additionally, the Brecht Forum may be subject to administrative fines of up to \$1,000.00 per violation of the Act, and \$100.00 for each day the violations continue, and its failure to comply with this Order shall constitute a violation of an order issued by the Secretary, subjecting the Brecht Forum to additional penalties under the Act at 10 P.S. § 162.17.

An appeal may be taken pursuant to the Act at 10 P.S. § 162.17(c), within 30 days of the date

of mailing of this Adjudication and Order as indicated below.

BY ORDER



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Pedro A. Cortés  
Secretary of the Commonwealth

*For the Commonwealth:* Robert Armour, Esquire  
DEPARTMENT OF STATE  
PROSECUTION DIVISION  
2601 North Third Street  
P.O. Box 2649  
Harrisburg, PA 17105-2649

*For The Brecht Forum:* Matt Birkhold, Executive Director  
The Brecht Forum  
388 Atlantic Avenue  
Brooklyn, N.Y. 11217

Matt Birkhold, Executive Director  
The Brecht Forum  
P.O. Box 170230  
Brooklyn, N.Y. 11217-0230

*Date of mailing:*

August 14, 2015

## 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 301  
Harrisburg, PA 17120