

COPY

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

Commonwealth of Pennsylvania,	:	
Bureau of Corporations	:	
and Charitable Organizations	:	Docket No. 0015 -98-14
v.	:	
	:	
Catholic Marketing Company, LLC,	:	File No. 13-98-07587
Respondent	:	

FINAL ADJUDICATION AND ORDER

PROTHONOTARY
2015 AUG 14 PM 3:39
Department of State

Pedro A. Cortés
Secretary of the Commonwealth

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

9171 9690 0935 0081 3712 87

HISTORY

This matter comes before the Secretary of the Commonwealth (Secretary) from an order to show cause filed December 2, 2014, alleging that Catholic Marketing Company, LLC (Respondent), a professional fundraising counsel not currently registered 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. §162.8(a), by acting as a professional fundraising counsel in the absence of an approved registration. The order to show cause further alleges that Respondent violated the Act at 10 P.S. § 162.15(a)(1), by and through 10 P.S. § 162.8(d), by acting as a professional fundraising counsel before contracts filed with the Bureau of Corporations and Charitable Organizations (“Bureau”) had been approved.

On January 29, 2015, 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. 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.*

2. At all relevant and material times, Respondent acted as a professional fundraising counsel as defined by the Act. (Order to show cause ¶ 1)

3. Respondent obtained a registration to provide professional fundraising counsel services to charitable organizations in the Commonwealth of Pennsylvania, registration number 39066, on September 4, 2012. (Order to show cause ¶ 2)

4. Respondent's registration to provide professional fundraising counsel services to charitable organizations in the Commonwealth of Pennsylvania expired on September 4, 2013. (Order to show cause ¶ 3)

5. Respondent's last known address on file with the Bureau is 636 Old South 5, Unit B, Camdenton, MO 65020. (Order to show cause ¶ 4)

6. Respondent is a professional fundraising counsel as defined by the Act. (Order to show cause ¶ 5)

7. On or about July 12, 2010, a Consent Agreement and Order was approved by the Secretary, which found Respondent to be in violation of the Act for providing services as a professional fundraising counsel without first being registered with the Bureau, failing to file a written contract with a charitable organization prior to rendering professional fundraising counsel services, and failing to verify whether the charitable organization was registered with the Bureau before entering into a contract with the organization. (Order to show cause ¶ 7)

8. The July 12, 2010, Consent Agreement and Order ordered Respondent to pay a

\$5,000.00 civil penalty and file with the Bureau any and all current contracts to provide professional fundraising services within thirty (30) days of the date of the Secretary's Order. (Order to show cause ¶ 8)

9. On or about June 9, 2011, the Bureau notified Respondent that a written contract, which it had filed with the Bureau, could not be approved because it failed to contain a second signature of an authorized official of the charitable organization. (Order to show cause ¶ 10)

10. On or about November 23, 2011, the Secretary issued an Order directing Respondent to Cease and Desist from soliciting contributions in Pennsylvania until such time as Respondent responds to the Bureau and duly registers or provides information that it is excluded or exempt from registration. (Order to show cause ¶ 12)

11. On or about September 4, 2012, Respondent became registered with the Bureau as a professional fundraising counsel. (Order to show cause ¶ 14)

12. On or about September 4, 2012, the Bureau notified Respondent that a written contract, which it had filed with the Bureau, could not be approved because it failed to contain a second signature of an authorized official of the charitable organization. (Order to show cause ¶ 15)

13. On or about July 10, 2013, the Secretary issued an Investigative Subpoena to Respondent, which commanded that Respondent provide to the Bureau all expired contracts with the charitable organization, Priests for Life, with respect to solicitations sent into the Commonwealth; all current and expired contracts with any other Pennsylvania based charities; and, any and all current and expired contracts with any other charities conducting solicitation activities in Pennsylvania. (Order to show cause ¶ 17)

14. On or about July 31, 2013, the Bureau received Respondent's response to the

July 10, 2013 subpoena, which contained one contract with the charitable organization, Priests for Life, effective January 1, 2013. (Order to show cause ¶ 19)

15. As of the date of the order to show cause, Respondent did not have any approved contracts on file with the Bureau. (Order to show cause ¶ 21)

16. Respondent's contract with Priests for Life received by the Department on July 31, 2013 was in effect from January 1, 2013; however, the contract had not yet been approved by the Bureau. (Order to show cause ¶ 24)

17. 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, to Respondent at the following address: Catholic Marketing Company, LLC, 636 Old South 5, Unit B, Camdenton, MO 65020. (MDFA ¶ 4)

18. The order to show cause was delivered to Respondent on or about December 8, 2014, as evidenced by United States Post Office Electronic Return Receipt No. 9171 9690 0935 0047 4661 63. (MDFA ¶ 5)

19. The Order to Show Cause sent to Respondent via First Class Mail, Postage Prepaid, was not returned to the Commonwealth by the United States Postal Service and is, therefore, presumed to have been delivered to and received by Respondent. (MDFA ¶ 7)

20. The order to show cause directed Respondent to file an answer thereto within thirty days of its date. (MDFA at ¶ 8)

21. Thirty days from the date of the order to show cause expired on January 1, 2015. (MDFA at ¶ 9-10)

22. Respondent did not file a response to the order to show cause or the motion to enter default and deem facts admitted. (Docket number 0015-98-14)

23. Respondent was served with all pleadings, orders and notices filed of record in this matter. (Docket number 0015-98-14)

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Findings of Fact 1)
2. Respondent has been afforded actual 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 5, 17-19)
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 17-23)
4. Respondent violated the Act at 10 P.S. § 162.15(a)(1) by and through 10 P.S. §162.8(a) by acting as a professional fundraising counsel in the absence of an approved registration. (Findings of Fact 2-4, 6-16)
5. Respondent violated the Act at 10 P.S. § 162.15(a)(1) by and through 10 P.S. § 162.8(d), by acting as a professional fundraising counsel before contracts filed with the Bureau had been approved. (Findings of Fact 9, 12-16)

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 two counts. Count One alleges that Respondent violated the Act at 10 P.S. 162.15(a)(1) by and through 10 P.S. §162.8(a), 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.

* * *

§ 162.8. Registration of professional fundraising counsel and contracts

(a) Registration and approval required.--No person shall act as a professional fundraising counsel before obtaining department approval of a registration statement pursuant to subsection (c) or after the expiration, suspension or revocation of such registration. A registration application shall be signed and be made by the principal officer of the professional fundraising counsel subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) and shall contain all of the following information:

- (1) The address of the principal place of business of the applicant and any Pennsylvania addresses, if the principal place of business is located outside this Commonwealth.
- (2) The form of the applicant's business.
- (3) The names and residence addresses of all principals of the applicant, including all officers, directors and owners.
- (4) Whether any of the owners, directors, officers or employees of the applicant are related by blood, marriage or adoption to any other directors, officers, owners or employees of the applicant, any officer, director, trustee or employee of any charitable organization under contract to the applicant or any supplier or vendor providing goods or services to any charitable organization under contract to the applicant.
- (5) The name of any person who is in charge of any solicitation activity.
- (6) Any other information required by the regulations of the department.

* * *

(d) Written contract.--There shall be a written contract between a charitable organization and a professional fundraising counsel which shall be filed by the professional fundraising counsel with the department at least ten working days prior to the performance by the professional fundraising counsel of any service. No solicitation or services pursuant to the contract shall begin before the department has approved the contract pursuant to subsection (e). The contract must be signed by two authorized officials of the charitable organization, one of whom must be a member of the organization's governing body, and the authorized contracting officer for the professional fundraising counsel. The contract shall contain all of the following provisions:

(1) The legal name and address of the charitable organization as registered with the department unless that charitable organization is exempt from registration.

(2) A statement of the charitable purpose for which the solicitation campaign is being conducted.

(3) A statement of the respective obligations of the professional fundraising counsel and the charitable organization.

(4) A clear statement of the fees which will be paid to the professional fundraising counsel.

(5) The effective and termination dates of the contract, or if, the contract does not have a set termination date, the contract shall contain a clause allowing either party a reasonable period to terminate the contract or notify the other party if either party chooses not to renew. The contract shall also contain the date services will commence with respect to solicitation in this Commonwealth of contributions for a charitable organization.

(6) A statement that the professional fundraising counsel will not at any time have custody or control of contributions.

(7) A statement that the charitable organization exercises control and approval over the content and volume of any solicitation.

(8) Any other information required by the regulations of the department.

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. 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 (John Williams), as evidenced by the electronic receipt from the United States Postal Service, 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 is 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 the two counts 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 persons, including professional fundraising counsel, from operating in violation of, or failing to comply with, any of the requirements of the Act. The Commonwealth specifically charges Respondent with violating the Act at 10 P.S. §162.8(a) by acting as a professional fundraising counsel before obtaining the Department's approval of a registration statement pursuant to subsection (c) or after the expiration, suspension or revocation of such registration.

The facts deemed admitted establish that Respondent's registration to provide professional fundraising counsel services to charitable organizations in the Commonwealth of Pennsylvania expired on September 4, 2013. On or about July 10, 2013, the Secretary issued an Investigative Subpoena to Respondent, which commanded that Respondent provide to the Bureau (1) all expired contracts with the charitable organization, Priests for Life, with respect to solicitations sent into the Commonwealth, (2) all current and expired contracts with any other Pennsylvania based charities and (3) any and all current and expired contracts with any other charities conducting solicitation activities in Pennsylvania.

On or about July 31, 2013, the Bureau received Respondent's response to the July 10, 2013, subpoena, which contained one contract ("Agreement") with the charitable organization, Priests for Life, effective January 1, 2013. The contract is attached to the order to show cause as

“Exhibit F.” Section 6 of the contract is entitled “Term, Termination, Cancellation and Survival.” Subsection A of Section 6 provides as follows: “This Agreement shall commence as of the day and year first written above [January 1, 2013], and shall remain in effect until cancellation by either party with a 60 day written notification.”

Respondent has offered no evidence that the contract was terminated on or after September 4, 2013, the date on which Respondent’s registration with the Department expired. Therefore, the Department concludes that the contract between Respondent and Priests for Life remains in effect and that Respondent is therefore continuing in its capacity as a professional fundraising counsel to Priests for Life. As such, Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by and through 10 P.S. § 162.8(a), by acting as a professional fundraising counsel in the absence of an approved registration.

The aforementioned contract between Respondent and Priests for Life went into effect on January 1, 2013, yet was not received by the Department until July 31, 2013. As such, the contract was in effect for seven months before it was received by the Department for approval by the Bureau. Therefore, Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by and through 10 P.S. § 162.8(d), by acting as a professional fundraising counsel before contracts filed with the Bureau had been approved.

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(a)(1) of the Act, 10 P.S. § 162.17(a)(1), and to levy administrative fines according to section 17(b)(3) of the Act, 10 P.S. § 162.17(b)(3). Under section 17(b)(3), the Secretary may impose an administrative fine not to exceed \$1,000 for each act or omission which constitutes a violation of the Act. The Secretary may also impose an additional penalty, not to exceed \$100 for each day during which such violation continues.

Based on the foregoing, it is clear that Respondent has neglected to abide by rules that are in place to protect Commonwealth residents who may choose to donate to charitable causes. Neither the Secretary nor the Department cast any aspersions upon the nature of the charitable work at issue in this case. Indeed, charities of all stripes add to the vitality of our civic life by harnessing and channeling the generosity of our citizens. Yet to ensure that the citizens' generosity is not exploited, Pennsylvania's lawmakers have put in place safeguards to ensure that charitable organizations and those for-profit companies that assist charities to raise funds live up to their stated mission. Most fundamentally, the Commonwealth requires professional fundraising counsel to register with the Department so that citizens may have confidence in the legitimacy of charitable solicitations.

Pennsylvanians are a generous people, but their generosity demands good faith on the part of charities and professional fundraisers which seek to solicit in this Commonwealth. Such a showing of good faith is most readily accomplished when solicitors and their professional fundraising counsel follow all applicable laws and regulations. When these laws and regulations are disregarded, the Commonwealth has a duty to restore public confidence in charitable giving by sanctioning those organizations which, by their lack of due diligence, have failed to keep faith with the citizens of the Commonwealth.

Therefore, 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 Corporations	:	
and Charitable Organizations	:	Docket No. 0015-98-14
v.	:	
	:	
Catholic Marketing Company, LLC,	:	File No. 13-98-07587
Respondent	:	

ORDER

AND NOW, this 14th day of August, 2015, 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 \$2,000.00 shall be imposed upon Catholic Marketing Company, LLC, 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
Office of Chief Counsel
301 North Office Building
Harrisburg, PA 17120

2. Respondent shall be prohibited from registering as a professional solicitor in the Commonwealth of Pennsylvania unless and until such time as all penalties are paid, including the \$2,000 fine assessed by this order.

3. Catholic Marketing Company, LLC, its successors, agents or affiliates, shall CEASE and DESIST from all manner of solicitation activities in this Commonwealth, until such time as all information requested by the Bureau has been provided, all penalties imposed have been paid in full and Catholic Marketing Company, LLC comes into full compliance with all provisions of the Act, including proper registration.

Appeal may be taken pursuant to section 17(c) of the Act, 10 P.S. §162.17(c), and 2 Pa.C.S. §702, within 30 days of the date of mailing of this Adjudication and Order as indicated below.

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

BY ORDER:

Pedro A. Cortés

Pedro A. Cortés
Secretary of the Commonwealth

Respondent:

Catholic Marketing Company, LLC.
636 Old South 5, Unit B
Camdenton, MO 65020

For the Commonwealth

Trrese Evancho, Esquire
Prosecuting Attorney
Commonwealth of Pennsylvania
P.O. Box 2649
Harrisburg, PA 17105-2649

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