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

PROCESSED
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Department of State

In the Matter of the Appeal	:	Docket No.	0162-98-17
of Emanuel Apostle Church, House of	:		
Mercy From the Acting Secretary's	:		
November 30, 2017 Cease and Desist Order	:	File No.	16-98-08964

ADJUDICATION AND ORDER

Robert Torres
Acting Secretary of the Commonwealth

401 North Street, Room 302
Harrisburg, PA 17120

HISTORY

This case comes before the Acting Secretary of the Commonwealth (the “Acting Secretary”) on the appeal by the Emanuel Apostle Church, House of Mercy (“Appellant”) from a November 30, 2016 Order of the Acting Secretary (the “Cease and Desist Order”), finding that Appellant was not registered with the Department of State (the “Department”), Bureau of Charitable Organizations (the “Bureau”), and/or that it had failed to respond to the Bureau’s request for information 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 Acting Secretary’s Order further directed Appellant to cease and desist from soliciting contributions in Pennsylvania until such time as it 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 December 11, 2017, Appellant appealed from the Acting Secretary’s Cease and Desist Order. Thereafter, a Notice of Hearing was served upon Appellant on February 22, 2018, at the address it provided to the Bureau through its letter of appeal, 564 West Park Avenue, Titusville, PA 16354. The Notice scheduled the hearing for April 5, 2018 to be held at 2601 North Third Street, One Penn Center, Harrisburg, PA at 1:30 p.m.

The formal administrative hearing occurred at the appointed place and time. Michael J. Gennett, Esquire represented the Commonwealth. Appellant did not appear for, or attend the hearing. At the hearing, the Bureau moved to dismiss Appellant’s appeal based upon its failure to appear for the hearing and offer any evidence to support the merits of the appeal.

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. The Secretary of the Commonwealth issued a Cease and Desist Order to the Emanuel Apostle Church, House of Mercy on November 30, 2017. The Order was properly served upon the Appellant by Certified Mail, item number 9171969009350158952135, on December 11, 2017. (Official Notice-Department records).¹
3. The Cease and Desist Order was based, in part, upon the Acting Secretary's finding that Emanuel Apostle Church, House of Mercy was not registered with the Department's Bureau of Charitable Organizations, and/or that it had not responded to the Bureau's request for information. (Official Notice-Department records).
4. The Acting Secretary's November 30, 2017 Cease and Desist Order took effect

¹Official 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 §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. See also, *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.

immediately upon its issuance and filing. (Official Notice-Department records).

5. Emanuel Apostle Church, House of Mercy appealed from the Acting Secretary's Cease and Desist Order way of letter dated December 11, 2017. (Official Notice-Department records).

6. Emanuel Apostle Church, House of Mercy is not registered as a charitable organization with the Bureau. (Official Notice-Department records).

7. At no time did Emanuel Apostle Church, House of Mercy provide the Bureau with evidence that it was either excluded, or exempt, from the Act's requirements. (Official Notice-Department records).

8. A Notice of Hearing was served upon Emanuel Apostle Church, House of Mercy by First-Class Mail on February 22, 2018, at the address it provided to the Bureau through the its letter of Appeal, 564 West Park Avenue, Titusville, PA 16354. The Notice scheduled the hearing for April 5, 2018, to be held at 2601 North Third Street, One Penn Center, Harrisburg, PA at 1:30 p.m. (Official Notice-Department records).

9. The February 22, 2018 Notice of Hearing was not returned for being undelivered, or for being undeliverable. (Official Notice-Department records).

10. Emanuel Apostle Church, House of Mercy did not appear for the April 5, 2018. (Notes of Testimony, 5-9).

CONCLUSIONS OF LAW

1. The Acting Secretary has jurisdiction in this matter. 10 P.S. §162.4.
2. Emanuel Apostle Church, House of Mercy 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. (Finding of Fact, Nos. 8-10).
3. The November 30, 2017 Cease and Desist Order issued against Appellant by the Acting Secretary was properly entered under the Act at 10 P.S. §162.17 because, as of that date, Appellant was not registered with the Department of State, Bureau of Charitable Organizations, and/or had failed to respond to the Bureau's request for information. (Finding of Fact, Nos. 1-7).
4. The November 30, 2017 Cease and Desist Order issued by the Acting Secretary remains in effect based upon Appellant's failure to pursue its appeal at the April 5, 2018 formal administrative hearing. (Finding of Fact, Nos. 8-10).

DISCUSSION

This case involves an appeal by Emanuel Apostle Church, House of Mercy from a Cease and Desist Order issued by the Acting Secretary on November 30, 2017, based upon Appellant not being registered with the Department of State, Bureau of Charitable Organizations, and its failure to respond to the Bureau's request for information. The Cease and Desist Order was effective immediately upon its issuance and filing. A hearing on Appellant's appeal was held on April 5, 2018.

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 service of the Notice of Hearing upon Appellant, a threshold analysis is warranted to determine whether Appellant was adequately provided notice of the April 5, 2018 hearing so as to comport with due process.

Due process is adequately provided 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 served the Notice of Hearing upon Appellant on February 22, 2018, at the address it provided to the Bureau through its December 11, 2017 appeal letter. The Notice scheduled the hearing for April 5, 2018, to be held at 2601 North Third Street, One Penn Center, Harrisburg, PA at 1:30 p.m. The General Rules of Administrative Practice and Procedure at 1 Pa.Code §33.31 authorize service by mail. The Rule provides as follows:

Orders, notices, and other documents originating with an agency, including all forms of agency action, complaints, and similar process, and other documents designated by the agency for this purpose, shall be served by the office of the agency by mail, except when service by another method shall be specifically required by the agency, by mailing a copy thereof to the person to be served,

addressed to the person or persons designated in the initial pleading or submittal at his or its principal office or place of business...

Celane, 415 A.2d at 132. In light of the foregoing procedural history, the Acting Secretary finds that notice of the April 5, 2018 hearing was properly served upon the Emanuel Apostle Church, House of Mercy.

Dismissal of Appeal

In this case, the Acting Secretary had initial jurisdiction to determine whether the Act applied to Appellant pursuant to the investigatory powers provided to him under the Act. See, 10 P.S. §§162.4 and 162.16 (a); *Pennsylvania Human Relations Commission v. Landsdowne Swim Club*, 526 A. 2d 758 (Pa. 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:

(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.

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 Acting 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.

(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.

(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.

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.

(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:

- (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....

The record in this case shows that the Acting Secretary issued a Cease and Desist Order, effective November 30, 2017, after finding that Appellant was not registered with the Department of State, Bureau of Charitable Organizations, and that it had failed to respond to the Bureau's request for information. The Acting Secretary's Order directed Appellant to cease and desist from soliciting contributions in Pennsylvania until such time as it has duly registered with the Bureau, or until it has provided the Bureau with information demonstrating that it is excluded

or exempt from registration. The Acting Secretary's Order remained in full force and effect as of the April 5, 2018 hearing.

Notwithstanding its appeal from the Acting Secretary's Order, Appellant failed to present any evidence to support its appeal. Because it failed to attend the April 5, 2018 hearing, Appellant not only failed to identify or establish the purported grounds for its appeal, it also failed to produce evidence necessary to support such grounds, if any exist. Appellant has similarly failed to produce any evidence to rebut the Acting Secretary's finding that it is not registered with the Commonwealth or, alternatively, that it is exempt from the registration requirements of the Act. Appellant has also failed to establish that it had complied with the Bureau's request for information.

As set forth above, the Acting Secretary is expressly authorized to enforce the Act against Appellant pursuant to 10 P.S. §162.17, when he finds that it 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 fundraising activities. See, 10 P.S. §162.17(b)(2).

The General Rules of Administrative Practice and Procedure, 1 Pa.Code §§31.1 *et. seq.*, provide, in pertinent part, as follows:

§35.177. Scope and contents of motions.

After a hearing has commenced in a proceeding, a request may be made by motion for any procedural or interlocutory ruling or relief desired, except as may be otherwise expressly provided in this chapter. . . .

1 Pa. Code §35.177.

§35.178. Presentation of motions.

. . . motions made during hearings may be stated orally upon the record, or the presiding officer may require that such oral motions be reduced to writing and filed separately.

1 Pa. Code §35.178.

§35.180. Action on motions.

(a) The presiding officer designated to preside at a hearing is authorized to rule. . . upon any motion filed or made after the commencement of the hearing and prior to the submission of his proposed report in the proceedings, except that no motion made. . . during a hearing, a ruling upon which would involve or constitute a final determination of the proceeding, shall be ruled upon by a presiding officer except as a part of his proposed report submitted after the conclusion of the hearing. . . .

§1 Pa.Code §35.180.

Here, after commencement of the hearing and, in accordance with the General Rules of Administrative Practice and Procedure, the Bureau appropriately moved for dismissal of Claimant's appeal based upon Appellant's failure to appear at the hearing and present evidence in support of its appeal. In accordance with 1 Pa.Code §35.180, and as part of this proposed Adjudication and Order, the following Order shall, therefore, issue:

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

In the Matter of the Appeal	:	Docket No.	0162-98-17
of Emanuel Apostle Church, House of	:		
Mercy From the Acting Secretary's	:		
November 30, 2017 Cease and Desist Order	:	File No.	16-98-08964


ORDER

AND NOW, this 25th day of *May*, 2018, upon consideration of the failure by the Emanuel Apostle Church, House of Mercy to appear for the April 5, 2018 hearing in furtherance of its appeal from the Acting Secretary's November 30, 2017 Cease and Desist Order, and the Bureau's oral Motion to Dismiss Appellant's appeal, it is hereby **ORDERED** that the Bureau's Motion is **GRANTED**, and that Appellant's appeal is **DISMISSED**. It is further **ORDERED** that the November 30, 2017 Cease and Desist Order of the Acting Secretary, and the findings set forth therein, remain in full force and effect, including the Acting Secretary's Order that the Emanuel Apostle Church, House of Mercy **CEASE AND DESIST** from soliciting contributions in the Commonwealth of Pennsylvania until such time as it has duly registered with the Bureau of Charitable Organizations.

Additionally, the Emanuel Apostle Church, House of Mercy may be subject to administrative fines of up to \$1,000.00 per violation of the Act, and \$100.00 for each day violations continue, and its failure to comply with this Order shall constitute a violation of an order issued by the Secretary/Acting Secretary, subjecting the Emanuel Apostle Church, House of Mercy 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



Robert Torres
Acting Secretary of the Commonwealth

For the Commonwealth: Michael J. Gennett, Esquire
Department of State
Prosecution Division
306 North Office Building
Harrisburg, PA 17120

Appellant: Emanuel Apostle Church, House of Mercy
564 West Park Avenue
Titusville, PA 16354

Date of mailing: 5.25.18

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