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

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2019 FEB 19 PM 3:26
Department of State

Commonwealth of Pennsylvania
Bureau of Charitable Organizations

vs.

Fureverhomes Doberman Rescue, Inc. and
Sue Ann Kutzman, A/K/A Suzi Kutzman
Respondent

File No. 19-98-01053

FINAL ADJUDICATION AND ORDER

9171 9690 0935 0196 2226 03

2945 Whitetail Deer Dr.

9171 9690 0935 0196 2225 97

P.O. Box 298

9171 9690 0935 0196 2225 80

White Hall, PA

Kathy Boockvar
Secretary of the Commonwealth

302 North Office Building
Harrisburg, PA 17120

HISTORY

This matter comes before the Secretary of the Commonwealth (Secretary) from an order to show cause filed February 14, 2019, alleging that Fureverhomes Doberman Rescue, Inc. and Sue Ann Kutzman a/k/a Suzi Kutzman (Respondent)¹, a charitable organization not currently registered in the Commonwealth of Pennsylvania, is subject to administrative sanctions under the Solicitation of Funds for Charitable Purposes Act (“Act”).² The order to show cause alleges that Respondent violated the Act at 10 P.S. §162.15(a)(1), because Respondent continued to solicit contributions in violation of an order issued by the Secretary of the Commonwealth.

On April 23, 2019, 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 granted the motion to deem facts admitted by order issued September 17, 2019, and now issues this adjudication and order in final disposition of this matter.

¹ Although Respondent’s name is spelled “Katzman” on the Cease and Desist Order, the pleadings and the signature on the proof of delivery document indicate that it is “Kutzman.”

² 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* (here and after referred to as 'the Act'), 10 P.S. §§ 162.1-162.24. (Order to show cause ¶ 1)

2. Respondent is Fureverhomes Doberman Rescue, Inc. and Sue Ann Kutzman, a/k/a Suzi Kutzman. (File no. 19-98-01053)

3. At all relevant and material times, Respondent conducted business in Pennsylvania as a charitable organization, as defined by the Act. (Order to show cause ¶ 2)

4. Respondent has never held a registration to solicit charitable contributions within the Commonwealth of Pennsylvania. (Order to show cause ¶ 3)

5. At all relevant and material times, Respondent was not exempt or excluded from the requirements of the Act. (Order to show cause ¶ 4)

6. The last known mailing address for Respondent is 2945 Whitetail Deer Drive, Bath, PA 18014. (Order to show cause ¶ 5)

7. On or about December 15, 2017, the Bureau of Corporations and Charitable Organizations, Special Investigations Unit (Bureau) notified Respondent by registered and first-class mail that it may be required to register pursuant to the Act and that it had thirty (30) days to respond by becoming properly registered or providing evidence that it is exempt or excluded from registering under the Act. (Order to show cause ¶ 7)

8. This certified letter was signed for by Respondent on or about December 21, 2017. (Order to show cause ¶ 8; attached exhibit A)

9. Respondent failed to respond to the Bureau's December 15, 2017 letter. (Order to show cause ¶ 9)

10. As a result, on or about May 18, 2018, the Secretary of the Commonwealth (Secretary) issued an Order directing Respondent to cease and desist from soliciting contributions in the Commonwealth until such time as the organization responds to the Bureau and becomes duly registered or provides information confirming that it is exempt or excluded from the registration requirements of the Act. (Order to show cause ¶ 10; attached Exhibit B)

11. Subsequent to the issuance of the May 18, 2018 Cease and Desist Order by the Secretary, Respondent continued to solicit contributions in the Commonwealth. (Order to show cause ¶ 11)

12. On or about February 14, 2019, the Commonwealth served the notice and 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: 2945 Whitetail Deer Drive, Bath, PA 18014. (Motion to deem facts admitted (MDFA) at ¶ 2)

13. The notice and order to show cause sent by certified mail was delivered to and signed for by Sue Kutzman at 2945 Whitetail Deer Drive, Bath, PA 18014 on February 20, 2019. (MDFA at ¶ 3; attached Exhibit B)

14. The copy of the notice and order to show cause sent via first class mail, postage prepaid, was not returned to the Commonwealth by the U.S. Postal Service and is, therefore presumed to have been delivered to and received by Respondent. (MDFA at ¶ 5)

15. The notice and order to show cause directed Respondent to file an answer thereto within thirty days of its date. (MDFA at ¶ 6)

16. On or about March 7, 2019, Respondent retained Neil D. Ettinger, Esquire, who secured a 30-day continuance to file a written answer, with said answer being due not later than April 12, 2019. (MDFA at ¶ 7; attached Exhibit C)

17. The Commonwealth filed a Motion to Deem Facts Admitted and Issue Adjudication on April 23, 2019 and served this on Attorney Ettinger. (File no. 19-98-01053)

18. Respondent did not file a response to the order to show cause or the motion to enter default and deem facts admitted. (Docket number 0003-98-16)

19. On September 17, 2019, the Secretary granted the motion to deem facts admitted. (File no. 19-98-01053)

20. Respondent was served with all pleadings, orders and notices filed of record in this matter. (File no. 19-98-01053)

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Findings of Fact 1-3)
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 6-9, 12-20)
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 6-9, 12-20)
4. Respondent is subject to disciplinary action under section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), in that it continued to solicit contributions in violation of an Order issued by the Secretary of the Commonwealth. (Findings of fact 7-11)

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 one count, alleging that Respondent violated the Act at 10 P.S. §162.15(a)(1) which 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 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.

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 received and signed for by Respondent. The order to show cause sent via first class mail, postage prepaid, 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. Respondent secured an attorney and was provided additional time to respond to the order to show cause, but failed to do so. The Secretary found that Respondent was given an opportunity to be heard and failed to take advantage of that opportunity. Therefore, the Secretary granted the motion to enter default and deem facts admitted and deemed admitted the factual allegations contained in the order to show cause.

III. ANALYSIS AND SANCTION

The Commonwealth alleges that Respondent violated the Solicitation of the Act at 10 P.S. § 162.15(a)(1), which prohibits persons from operating in violation of, or failing to comply with, an order of the Secretary.

The Cease and Desist Order issued by the Secretary of the Commonwealth on May 18, 2018, required that Respondent refrain from soliciting charitable contributions in the commonwealth until the organization responds to the Bureau of Corporations and Charitable Organizations, and becomes duly registered *or* provides information confirming that it is exempt or excluded from the registration requirements of the Act. The facts deemed admitted indicate that Respondent failed to submit any registration or proof of exemption to the Bureau and continued to solicit contributions within the Commonwealth in violation of the Secretary's Cease and Desist Order.

In assigning a sanction, the Secretary weighs the number and seriousness of the violations against any mitigating evidence. Respondent did not offer any mitigating evidence. The Commonwealth requests that the Secretary impose upon Respondent an appropriate penalty for the actions set forth in the order to show cause. Section 17(b)(3) of the Act, 10 P.S. §162.17(b)(3), authorizes the Secretary to "impose an administrative fine not to exceed \$1,000 for each act or omission which constitutes a violation of [the] Act." Respondent failed to respond to the Bureau's request for information and without properly being registered as a charitable organization. Further, Respondent solicited charitable contributions in the Commonwealth in violation of the Secretary's Cease and Desist Order.

The legislative intent behind the Act is not merely to require proper registration of charitable organizations, professional fundraisers and professional solicitors, but to protect the citizens of this Commonwealth by requiring full public disclosure of the identity of persons who solicit contributions from the public, the purposes for which such contributions are solicited and the manner in which they are actually used. 10 P.S. §162.2. Failure to respond to the Bureau or register and then continuing to solicit funds from Pennsylvania citizens in the face of an Order to Cease and Desist is precisely the conduct the Act is intended to curtail and penalize. Respondent

has failed to respond to the Bureau on several occasions, from the Order to Cease and Desist to the charges filed in the instant matter. There would appear to be little reason to mitigate any administrative fine.

Accordingly, based on the foregoing findings of fact, 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 Charitable Organizations	:	
	:	
vs.	:	
	:	File No. 19-98-01053
Fureverhomes Doberman Rescue, Inc. and	:	
Sue Ann Kutzman, A/K/A Suzi Kutzman	:	
Respondent	:	

ORDER

AND NOW, this 19th day of **February, 2020**, 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 **\$1,000.00** shall be imposed upon Fureverhomes Doberman Rescue, Inc. and Sue Ann Kutzman, a/k/a Suzi Kutzman 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
306 North Office Building
Harrisburg, PA 17120

2. Respondent shall be **prohibited from registering** as a charitable organization in the Commonwealth of Pennsylvania unless and until the above penalty is paid.

3. Fureverhomes Doberman Rescue, Inc. and Sue Ann Kutzman, a/k/a Suzi Kutzman, its successors, agents or affiliates, shall **CEASE and DESIST** from all manner of solicitation activities in this Commonwealth in accordance with 10 P.S. § 162.17(b)(2), until such time as all information requested by the Bureau has been provided, all penalties imposed have been paid in full and Respondent comes into full compliance with all provisions of the Act, including proper registration, if required.

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:



Kathy Boockvar
Secretary of the Commonwealth

Respondent:

**Fureverhomes Doberman Rescue, Inc. and
Sue Ann Kutzman, a/k/a Suzi Kutzman
2945 Whitetail Deer Drive
Bath, PA 18014**

**Fureverhomes Doberman Rescue, Inc. and
Sue Ann Kutzman, a/k/a Suzi Kutzman
P.O. Box 298
Bath, PA 18014**

**Neil D. Ettinger, Esquire
Ettinger & Associates, LLC
1815 Schadt Ave.
Whitehall, PA 18052**

For the Commonwealth:

**Michael J. Gennett
Prosecuting Attorney
Commonwealth of Pennsylvania
Department of State
401 North Street, Room 306
Harrisburg, PA 17120**

Date of Mailing: 2.20.20

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