

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

COPY

Commonwealth of Pennsylvania,
Bureau of Charitable Organizations

v.

Mandy Lee Klinkner,
Respondent

Docket No. 0018-98-15

File No. 14-98-03611

Department of State

2016 APR 29 11:03:45

PROTHONOTARY

FINAL ADJUDICATION AND ORDER

Pedro A. Cortés
Secretary of the Commonwealth

302 North Office Building
401 North Street
Harrisburg, PA 17120

HISTORY

This case comes 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.* On October 20, 2015, the Department of State (Department), Bureau of Charitable Organizations (Bureau) filed an order to show cause charging Mandy Lee Klinkner (Respondent) with several violations of the Act, 10 P.S. §§ 162.1 *et seq.*

The order to show cause alleged that Respondent violated 10 P.S. §162.15(a)(1), by and through §162.13(a), by failing to apply contributions in a manner consistent with the represented charitable purpose, by misappropriating the contributions. The Commonwealth also alleged that Respondent violated 10 P.S. §162.15(a)(1), by and through §162.21, by failing to apply contributions in a manner substantially consistent with the organization's charitable purpose. The order to show cause directed Respondent to file a written answer to the charges within thirty days of the date the order to show cause was issued and notified Respondent that failure to file an answer within the time allowed may result in the factual allegations deemed admitted.

On March 21, 2016, 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

FINDINGS OF FACT

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, Mandy Lee Klinkner (Respondent) made direct and/or indirect requests for a contribution on the representation that the contribution would be used in whole or in part for a charitable purpose. (Order to show cause ¶ 2)

3. The last known mailing address for the Respondent is 174 Old Hickory Flat, Somerset, PA 15501. (Order to show cause ¶ 3)

4. On or about October 4, 2013, a Criminal Complaint was filed in the Magisterial District Court 16-3-03 at docket number CR413-2014, charging Respondent with:

- one (1) Count of violating 18 Pa. C.S.A. § 3921(a), Theft by Unlawful Taking, a Felony of the Third Degree;
- one (1) Count of violating 18 Pa. C.S.A. § 3922(a)(1), Theft by Deception, a Felony of the Third Degree; and
- one (1) Count of violating 18 Pa. C.S.A. § 3925(a), Receiving Stolen Property, a Felony of the Third Degree. (Order to show cause ¶ 5)

5. The Affidavit of Probable Cause, filed on or about October 4, 2013, alleged the following:

- Respondent conducted fundraising activities in the name of a four year-old child suffering from cancer in Somerset, PA:
- In particular, Respondent sold Sheetz coupon booklets.
- Respondent did not deliver any of the contributions that she raised through the sale of the Sheetz coupon booklets to the four year-old child suffering from cancer.

(Order to show cause ¶ 6)

6. On or about January 16, 2014, a Criminal Information was filed in the Court of Common Pleas of Somerset County at Criminal Action No. 0715-13-CR, charging Respondent with:

- one (1) Count of violating 18 Pa. C.S.A. § 3921(a), Theft by Unlawful Taking-Movable Property, a Felony of the Third Degree;
- one (1) Count of violating 18 Pa. C.S.A. § 3922(a)(1), Theft by Deception, a Felony of the Third Degree; and
- one (1) Count of violating 18 Pa. C.S.A. § 3925(a), Receiving Stolen Property, a Felony of the Third Degree. (Order to show cause ¶ 7, Exhibit A)

7. On or about April 14, 2014, Respondent entered a plea of guilty, in the Court of Common Pleas of Somerset County at docket number CP-56-CR-000715-2013, to one count of violation 18 Pa. C.S.A. §5503(a)(4), Disorderly Conduct-Hazardous or Physically Offensive Condition, a Misdemeanor of the Third Degree. (Order to show cause ¶ 9)

8. On or about July 10, 2014, Respondent was sentenced at docket number CP-56-CR-000715-2013, to one year of probation; pay costs, fines and restitution; and complete Moral Reconciliation Therapy. (Order to show cause ¶ 10, Exhibit B)

9. Based on the facts averred in the Affidavit of Probable Cause for which Respondent pleaded guilty to a Misdemeanor of the Third Degree, Respondent failed to apply the collected contributions in a manner consistent with the represented charitable purpose of raising money for a four year-old cancer patient. (Order to show cause ¶ 12)

10. Respondent solicited funds for the represented charitable purpose of benefitting a four year-old cancer patient. (Order to show cause ¶ 15)

11. As such, Respondent is deemed to be a fiduciary. (Order to show cause ¶ 16)

12. Respondent is required to act in a fiduciary capacity in regards to soliciting, collecting and expending contributions for the charitable purpose of raising contributions for a four year-old cancer patient. (Order to show cause ¶ 17)

13. Respondent violated her fiduciary duty by failing to apply the collected contributions in a manner consistent with the represented charitable purpose. (Order to show cause ¶ 18)

14. 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: 174 Old Hickory Flat, Somerset, PA 15501. (MDFA at ¶ 3)

15. The copies of the Order to Show Cause sent to the Respondent by Certified Mail, Return Receipt Requested, was returned to the Commonwealth, with the envelope marked by the U.S. Postal Service to reflect that it was "Unclaimed." (MDFA at ¶ 5)

16. The copy of the Order to Show Cause sent via First Class Mail, Postage Prepaid, was not returned to the Commonwealth. (MDFA at ¶ 8)

17. The order to show cause directed Respondent to file an answer thereto within thirty days of its date. (MDFA at ¶ 9)

18. Thirty days from the date of the order to show cause expired on November 19, 2015. (MDFA at ¶ 1 and 10)

19. Respondent did not file a response to the order to show cause or the motion to enter default and deem facts admitted. (Docket number 0018-98-15)

20. Respondent was served with all pleadings, orders and notices filed of record in this matter. (Docket number 0018-98-15)

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Section 4 of the Act, 10 P.S. §162.4).

(Findings of Fact 1-2)

2. Respondent has received notice of the charges and an opportunity to be heard in this proceeding in accordance with Administrative Agency Law, 2 Pa.C.S. §504. (Findings of Fact 3, 14-20)

3. Respondent violated 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.13(a), in that Respondent used failed to apply contributions in a manner consistent with the represented charitable purpose by misappropriating the contributions. (Findings of Fact 4-13)

4. Respondent violated 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.21, in that Respondent violated her fiduciary duty by failing to apply contributions in a manner substantially consistent with the charitable organization's purpose. (Findings of Fact 4-13)

DISCUSSION

I. STATUTORY AND REGULATORY PROVISIONS

This case comes before the 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 pertinent provisions are as follows:

§162.13. Limitation on activities of charitable organizations; disclosure requirements

(a) Solicitation limitation.--A charitable organization may only solicit contributions for the charitable purpose expressed in solicitation for contributions or the registration statement of the charitable organization and may only apply contributions in a manner substantially consistent with that purpose.

* * *

§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.

* * *

§162.17. 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.

* * *

(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. Registration will be automatically suspended upon final affirmation of an administrative fine until the fine is paid or until the normal expiration date of the registration. No registration shall be renewed until the fine is paid.

* * *

§162.21. Charitable organizations deemed fiduciary

Every person soliciting, collecting or expending contributions for charitable purposes and every officer, director, trustee and employee of any such person concerned with the solicitation, collection or expenditure of such contribution shall be deemed to be a fiduciary and acting in a fiduciary capacity.

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 were mailed to Respondent at her last known mailing address by certified mail, return receipt requested and by first class mail, postage prepaid. The order to show cause sent via certified mail, which was marked as item 9171 9690 0935 0109 5450 27, was returned to the Commonwealth, with the envelope marked by the U.S. Postal Service that it was "Unclaimed." The copy of the order to show cause mailed by first class mail has not been returned to the Commonwealth and is presumed to have been delivered to and received by Respondent. Therefore, the Secretary finds that Respondent received reasonable notice of the action and allegations against her. 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 she failed to request a hearing she would be deemed to have waived his 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 be 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.

III. ANALYSIS AND SANCTION

In count one, Respondent is charged with violating 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.13(a), making direct and/or indirect requests for a contribution on the representation that the contribution would be used in whole or in part for a charitable purpose and then failing to apply those contributions in a manner substantially consistent with that purpose. The facts deemed admitted establish that Respondent conducted fundraising activities in the name of a four year-old child suffering from cancer in Somerset, PA. Respondent sold Sheetz coupon booklets to benefit the child and her family, but did not deliver any of the \$400 in contributions that she raised through the sale of the Sheetz coupon booklets to the child or the child's family. These facts clearly indicate that when Respondent misappropriated the contributions, they were not applied in a manner consistent with the represented charitable purpose of cancer treatment for a minor child. Therefore, count one of the order to show cause is sustained.

In count two, Respondent is charged with violating 10 P.S. §162.15(a)(1), by and through 10 P.S. § 162.21, in that she violated her fiduciary duty by failing to apply contributions in a manner substantially consistent with the charitable organization's purpose. A fiduciary has a duty and obligation to act for a beneficiary in situations that require trust, integrity and honesty. As a person soliciting and collecting contributions for a charitable purpose, Respondent was thus a fiduciary for the funds she raised for the purpose of cancer treatment for a minor child. When Respondent misappropriated the contributions and failed to apply them in a manner consistent with the represented charitable purpose, she clearly violated her fiduciary duty. Therefore, count two of the order to show cause is sustained.

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.

Based on the foregoing, it is clear that the Respondent has taken advantage of the generosity of the good people of the Commonwealth of Pennsylvania, and has defrauded them of hard-earned dollars donated in good faith to the worthwhile charitable cause of supporting a child suffering from a terrible and potentially fatal disease. Furthermore, as the sentencing judge so aptly stated: "Victimizing a four-year-old cancer patient and her family ... is about as low as it gets." (Exhibit B) Reflecting on the troubling facts of this case, one is reminded of the words of the English writer, poet and critic Samuel Johnson: "Whoever commits a fraud is guilty not only of the particular injury to him who he deceives, but of the diminution of that confidence which constitutes not only the ease but the existence of society." Through her deceit, Respondent has measurably subtracted from that confidence. Thus, it is left to the people of the Commonwealth, acting through those they have charged with enforcing the law, to restore that confidence which sits as a cornerstone of civil society.

The appropriate penalty will be for Respondent not to engage in all manner of fundraising and solicitation activities in this Commonwealth for a period of three years. Additionally, a civil penalty of \$1,000 is imposed for each of Respondent's acts or omissions which constituted a violation of the Act.

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 Charitable Organizations :
 : Docket No. 0018-98-15
v. :
 : File No. 14-98-03611
Mandy Lee Klinkner, :
Respondent :

ORDER

AND NOW, this 29th day of April, 2016, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ORDERED** that:

(1) Mandy Lee Klinkner shall **CEASE and DESIST** from all manner of fundraising and solicitation activities in this Commonwealth, until such time as all penalties imposed below are paid in full, and in no case shall he engage in fundraising or solicitation activities for a period of three (3) years from the effective date of this Order.

(2) An **administrative fine** in the amount of **\$2,000.00** shall be imposed upon Mandy Lee Klinkner. 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 H. Brown, Assistant Counsel
Pennsylvania Department of State
Office of Chief Counsel
301 North Office Building
Harrisburg, PA 17120

Appeal of this decision to the Commonwealth Court may be taken pursuant to 10 P.S. §162.17(c) and 2 Pa.C.S. §702 within 30 days of the date of mailing shown below.

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

BY ORDER



Pedro A. Cortés
Secretary of the Commonwealth

For the Commonwealth:

Trrese Evancho
Commonwealth of Pennsylvania
Department of State
2601 North Third Street
P.O. Box 69521
Harrisburg, PA 17106-69521

Respondent:

Mandy Lee Klinkner
174 Old Hickory Flat
Somerset, PA 15501

Date of mailing: APRIL 29th, 2016

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