

ORIGINAL

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

Commonwealth of Pennsylvania :
Bureau of Corporations and :
Charitable Organizations :
: **Docket No.: 0006-98-14**
v. :
: **File No.: 13-98-10726**
The Novis Group, Inc., :
Respondent :

FINAL ADJUDICATION AND ORDER

PROTHONOTARY
2015 AUG -4 PM 12:47
Department of State

Pedro A. Cortés
Secretary of the Commonwealth

401 North Street, Room 302
Harrisburg, PA 17120

HISTORY

This case comes before the Secretary of the Commonwealth (“Secretary”) on a three-count Order to Show Cause (“OTSC”) filed on July 29, 2014, wherein the Commonwealth alleged that The Novis Group, Inc. (“Respondent”) violated the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990, P.L. 1200, No. 202 (“Act”), *as amended*, 10 P.S. §§ 162.1-162.24. In Count One, the Commonwealth alleged that Respondent acted as a Professional Fundraising Counsel (“PFC”) in the Commonwealth of Pennsylvania prior to obtaining Department of State approval of a registration statement as required by section 8(a) of the Act, 10 P.S. § 162.8(a). The Commonwealth charged in Count Two that Respondent failed to pay the registration fee of \$250.00 as required by section 8(b) of the Act, 10 P.S. §162.8(b), in the year Respondent provided PFC services in the Commonwealth. In Count Three, the Commonwealth alleged that Respondent failed to file a copy of a written contract between Respondent and the National Association of Watch & Clock Collectors (“W & C Collectors”), a charitable organization, with the Bureau of Corporations and Charitable Organizations (“Bureau”) at least ten (10) working days prior to the performance of any services, a violation of section 8(d) of the Act, 10 P.S. § 162.8(d).

On September 2, 2014, the Commonwealth filed an Amended Certificate of Service, which indicated Respondent was sent the Order to Show Cause at the following address: John T. Bentz, President, The Novis Group, P.O. Box 1738, Warren, OH 44482. On October 30, 2014, a faxed copy of Respondent’s Answer¹ was filed in response to the *OTSC*.

The Prothonotary’s Office issued a Notice of Hearing, scheduling the matter for hearing on February 3, 2014. A formal administrative hearing was held before Department of State

¹ Respondent’s Answer was in the form of letter dated September 16, 2014. On November 3, 2014, the original Answer sent via U.S. mail was filed in this matter.

("Department") Hearing Examiner Maria Battista in Harrisburg, Pennsylvania on February 3, 2015. Robert B. Armour, Esquire, represented the Commonwealth as prosecuting attorney. Respondent was not present at the hearing nor was anyone present on its behalf. At the hearing, the Commonwealth presented testimonial and documentary evidence in support of the allegations in the Order to Show Cause. The Commonwealth waived the filing of a post-hearing brief. The record closed on February 12, 2015, with the filing of the hearing transcript ("N.T."²).

²N.T. refers to the notes of testimony of the administrative hearing held on February 3, 2015.

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. Respondent is a national fundraising consulting firm specializing in fundraising for non-profit institutions of all types and sizes. (Commonwealth Exhibits C-1, C-2, C-3, C-4, C-5, C-6, C-8, and C-9)

3. Respondent operates its business from the following location: 303 Washington Street, NW, Warren, Ohio 44483. (Commonwealth Exhibits C-1, C-3, and C-4)

4. Respondent receives correspondence at the following address: John T. Bentz, President, The Novis Group, P.O. Box 1738, Warren, OH 44482. (Docket No. 0006-98-14; Commonwealth Exhibits C-1 and C-2)

5. For the past eight years, Andrew D. McCole (“McCole”) has been employed with the Commonwealth of Pennsylvania, Bureau of Enforcement and Investigation, as a special investigator. (N.T. 10-11)

6. Part of McCole’s duties is to conduct investigations related to professional fundraising counsels, charitable organizations and professional solicitors, all of which are required to be registered with the Bureau when doing business in the Commonwealth. (N.T. 11)

7. For fiscal year ending December 31, 2011, the James M. Steward Museum Foundation (“Museum”), a charitable organization, submitted a *Charitable Organization Registration Statement-Form BCO-10*, with the Bureau. (Commonwealth Exhibit C-3)

8. Question #16 of the BCO-10 form asks the following question:

Names, addresses, and telephone numbers of all professional fundraising Counsels you use or intend to use to provide services with respect to the solicitation of contributions from Pennsylvania residents. For each entry, include the beginning and ending dates of all contracts, and dates services began, or will begin, with respect to soliciting contributions from Pennsylvania residents: (Commonwealth Exhibit C-3 at question 16)

9. The Museum listed the following organizations in response to question 16 on the BCO-10 form:

The Bentz Group, 303 Washington Street NW, Warren, OH 44481-
Telephone (234) 600-5075 – Contract period January 2011-April 2011

The Novis Group, 303 Washington Street NW, Warren, OH 44481 –
Telephone (234) 600-5429 Contract period April 2011-June 2012

(Commonwealth Exhibit C-3 at answer to question 16; N.T. 16, 18)

10. The Museum's response raised an issue as to the status of Respondent in the Commonwealth of Pennsylvania, which began the investigation of Respondent. (N.T. 11-12, 16, 18)

11. As a part of McCole's investigation of Respondent, he performed a search of the records of the Bureau to see if Respondent was registered. (N.T. 13-14)

12. McCole's database search revealed that Respondent is not registered and has never been registered with the Bureau in the Commonwealth of Pennsylvania as a PFC as required by the Act. (N.T. 13-14, 24-25)

13. When an organization is not registered with the Bureau and an investigation is opened by the Special Investigations Unit, a tracking number is assigned to that organization since it does not have a certificate number; a tracking number allows the Special Investigations Unit to know if the organization attempts to file anything after the system is locked to allow it to register. (N.T. 17)

14. Respondent was assigned a tracking number to ensure if it attempted to register with the Bureau after the investigation began, the Special Investigations Unit would be notified. (N.T. 17-

18)

15. As of the date of the hearing, Respondent never attempted to register with the Bureau as a Professional Fundraising Counsel (PFC) in the Commonwealth of Pennsylvania. (N.T. 17-18, 32-34)

16. McCole also did an internet search of the name "The Novis Group" and discovered Respondent had a website. (N.T. 14-19)

17. McCole printed thirty-three pages of website information about Respondent, which, among other things, revealed the following in McCole's investigation:

- a. Respondent identifies itself on its homepage and other webpages as "fundraising counsel" (Commonwealth Exhibit C-4, pp. 1, 3, 5, 7, 9, 11, 13, 15, 17, 32; N.T. 16-17)
- b. Respondent "specializes in fundraising for nonprofit institutions of all types and sizes, with a particular focus on capital and endowment campaigns." (Commonwealth Exhibit C-4, p.3)
- c. Respondent has a list of its clients on its client webpage, including a listing of three Pennsylvania clients as follows:

The following are clients served by John Bentz and other members of the management team:

Adams Historical Society, Gettysburg, PA

The National Watch & Clock Museum, Columbia, PA

Westmoreland County Historical Society, Greensburg, PA

(Commonwealth Exhibits C-4, p. 7 and C-9; N.T. 15-19, 26-27)

18. As a part of McCole's investigation, he communicated with Steve Humphrey, Executive Director of the National Association of Watch & Clock Collectors ("W & C Collectors"). (Commonwealth Exhibits C-5 and C-6; N.T. 19-21)

19. W & C Collectors is a charitable organization that is registered with the Bureau, Certificate number 14488. (Department Records; Commonwealth Exhibit C-1)

20. W & C Collectors is located in the Commonwealth at: 514 Poplar Street, Columbia, PA. (Department Records; Commonwealth Exhibit C-1)

21. By campaign planning proposal prepared by Respondent for W & C Collectors, dated November 17, 2011, and signed on November 28, 2011 by John T. Bentz, President of The Novis Group and accepted on December 8, 2011 by Steve Humphrey, Executive Director, on behalf of W & C Collectors, the parties entered into a contract (“W & C Contract”) in which Respondent was to provide professional fundraising counsel services in the Commonwealth of Pennsylvania to W & C Collectors for a period of 12 to 14 weeks, which began on or about December 8, 2011 until March 15, 2012. (Commonwealth Exhibits C-5 and C-6; N.T. 19-21)

22. Under the W & C Contract, the billing schedule for the campaign planning process for which Respondent was to be paid is as follows:

Upon Signing Contract:	\$6,000
Upon Approval of the Case Statement:	\$5,000
Upon Completion of the Board Interviews:	\$5,000
Upon Completion of Campaign Planning:	\$2,000

(Commonwealth Exhibit C-5)

23. Respondent received payment for the services it rendered to W & C Collectors as follows:

\$6,000	12/7/2011
\$ 500	1/30/2012 plus \$584.24 expenses
\$4,500	1/31/2012
\$5,000	2/24/2012 plus \$12.22 expenses
\$2,000	3/15/2012
Total	\$18,000

(Commonwealth Exhibit C-5; N.T. 19-20)

24. Based on McCole’s investigation, he determined that Respondent was acting as a Professional Fundraising Counsel (PFC) in the Commonwealth of Pennsylvania and was not

registered or ever registered as a PFC in the Commonwealth of Pennsylvania. (N.T. 13-14, 18, 24-25, 34; Commonwealth Exhibits C-3, C-4, C-5, C-6, C-7, C-8, C-9)

25. A professional fundraising counsel must be registered with the Bureau and pay the \$250 registration fee prior to being retained and signing a contract with a charitable organization in the Commonwealth of Pennsylvania. (Commonwealth Exhibit C-7; N.T. 24-25)

26. A contract between a charitable organization and a professional fundraising counsel must be filed with the Bureau ten (10) working days prior to the start of professional fundraising counsel services. While Respondent provided professional fundraising counsel services for W & C Collectors beginning on or about December 8, 2011 until March 15, 2012 under the W & C Contract, Respondent never filed the W & C Contract with the Bureau in 2011 or 2012. (Commonwealth Exhibits C-2, C-5, C-6, C-7, C-8; N.T. 18, 24-25, 34)

27. Respondent was not aware that it was required to register with the Bureau. (Commonwealth Exhibit C-2)

28. In 2012, despite some communications with a representative of the Bureau, Respondent did not believe it was required to register as it was not soliciting funds or providing solicitation guidance to its client. (Commonwealth Exhibit C-2)

29. By certified letter dated November 20, 2013, Special Investigator McCole advised Respondent of the requirements of a professional solicitor as well as a professional fundraising counsel. McCole also requested that Respondent submit the Pennsylvania registration documents as a professional fundraising counsel and copies of current and expired contracts it had with charitable organization operating in Pennsylvania. (Commonwealth Exhibit C-7)

30. By email dated November 25, 2013, Respondent submitted an unsigned copy of a

contract it had with W & C Collectors to McCole.³ (Commonwealth Exhibit C-8; N.T. 23-24)

31. Respondent was not present at the hearing nor was anyone present on its behalf.

(N.T. *passim*)

32. The *Notice of Hearing* was sent to Respondent at the following two address:

John T. Bentz, President
The Novis Group
303 Washington Street NW
Warren, OH 44481

John T. Bentz, President
The Novis Group
PO Box 1738
Warren, OH 44482⁴

33. The Notice of Hearing was not returned to the Prothonotary as undeliverable from either address and is therefore presumed to be delivered to Respondent. (Docket No. 0006-98-14)

34. Respondent was served with all pleadings, orders and notices filed of record in this matter. (Docket No. 0006-98-15; N.T. 6 and *passim*)

³The contract Respondent sent to McCole was similar to the signed copy that W & C Collectors provided to McCole, but with a different date on the contract. (Commonwealth Exhibits C-6 and C-8; N.T. 23-24)

⁴The PO Box 1738, Warren, OH address is the same address on the return envelope for which Respondent sent its Answer as well as on the Answer itself.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Act at § 4, 10 P.S. § 162.4; Finding of Fact 1)
2. Respondent has received notice of the charges and an opportunity to be heard in this proceeding in accordance with the Administrative Agency Law, 2 Pa.C.S.A. § 504. (Finding of Facts 31-34)
3. Respondent violated the Act at 10 P.S. § 162.15(a)(1), by acting as a professional fundraising counsel in the Commonwealth prior to obtaining Department of State approval of a registration statement as required by 10 P.S. § 162.8(a) and paying the registration fee of \$250, as required by 10 P.S. § 162.8(b). (Findings of Fact 1-30)
4. Respondent violated the Act at 10 P.S. § 162.15(a)(1), by failing to file with the Department the written contract with W & C Collectors for professional fundraising counsel services in the Commonwealth prior to rendering such professional fundraising counsel services, as required by 10 P.S. § 162.8(d). (Findings of Fact 1-30)

DISCUSSION

Violation

The Commonwealth's charges against the Respondent include three counts: 1) providing PFC services to a client without being properly registered; 2) failing to pay the appropriate registration fee as required by the Act for the year it provided services as a PFC; and 3) failing to file with the Bureau a contract it had with a client prior to performing PFC services for the client. The provisions of the Act under which these charges fall are 10 P.S. § 162.15(a)(1), by and through 10 P.S. § 162.8(a), (b) and (d). These provisions provide in pertinent part as follows:

Section 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.

Section 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.
- (b) **Registration fee.**--The application for registration shall be accompanied by a fee of \$250. A professional fundraising counsel which is a partnership or corporation may register for and pay a single fee on behalf of all of its partners, members, officers, directors, agents and employees. Each registration shall be valid for one year and may be renewed for additional one-year periods upon application to the department and payment of the registration fee.

- (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.

In Pennsylvania, a professional fundraising counsel (PFC) must be registered with the Bureau and pay the necessary registration fees prior to being retained and signing a contract with a charitable organization. A PFC must file with the Bureau a copy of the written contract between the charitable organization and the PFC no less than ten (10) working days prior to the PFC performing any service.

The Commonwealth's case consisted of documentary evidence and the testimony of Special Investigator McCole.

The evidence reveals that on or about December 8, 2011, Respondent and W & C Collectors entered into the WC Contract wherein Respondent was to provide professional fundraising counsel services to W & C Collectors for a period of 12-14 weeks beginning on or about December 8, 2011 until March 15, 2012. Under the Act, Respondent was required to file the WC Contract with the Bureau ten (10) working days prior to December 8, 2011, the date Respondent was to begin engaging in PFC services for W & C Collectors. Respondent provided PFC services to W & C Collectors in 2011 and 2012. Respondent did not file its contract with the Bureau prior to engaging in PFC services with W & C Collectors and receiving compensation for its work. Further, Respondent never

registered as a PFC in the Commonwealth of Pennsylvania, including paying the necessary registration fee of \$250.00, prior to acting as a PFC in the Commonwealth of Pennsylvania.

Accordingly, the Commonwealth has established by a preponderance of the evidence⁵ that Respondent entered into a contract with a client and provided PFC services before being registered with the Bureau and paying the necessary fee.

Sanction

When the Secretary finds that a charitable organization has violated any of the provisions of the Act, the Secretary is authorized to enforce the Act against Respondent pursuant to 10 P.S. § 162.17, which provides, in relevant part, as follows:

Section 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:

⁵ The degree of proof required to establish a case before an administrative tribunal in an action of this nature is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwith. 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 in support of the Commonwealth's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1949). The Commonwealth therefore has the burden of proving the charges against Respondent with evidence that is substantial and legally credible, not by mere "suspicion" or by only a "scintilla" of evidence. *Lansberry*, 578 A.2d at 602.

- (1) Revoke a grant of exemption to any of the provisions of this act.
- (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.
- (4) Place the registrant on probation for such period of time and subject to such conditions as he may decide.

* * *

The Commonwealth recommended at the conclusion of the hearing that an administrative fine of \$1,000.00 be imposed upon Respondent for each violation, totaling a fine of \$3,000.00. No mitigating evidence was offered, as Respondent was not present at the hearing nor was anyone present on its behalf. Although Respondent's Answer was admitted into evidence, which confirms that it was not registered as a PFC in the Commonwealth, its rationale for not registering is not defensible. Despite Respondent thinking it did not need to register with the Bureau claiming it was not soliciting funds on behalf of its clients, Respondent made no affirmative steps to come into compliance with the Act as early as 2012 or after Special Investigator McCole a certified letter, dated November 20, 2013, regarding the distinctions between a professional solicitor and a PFC and requesting that Respondent register.

In addition, Respondent has made no efforts to register in the Commonwealth as a PFC since the time of the filing of its Answer on September 16, 2014, and as of the date of the hearing, continued to advertise on its website that it has provided PFC services to Pennsylvania charitable organizations. Accordingly, based on the foregoing, 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.: 0006-98-14
v.	:	
	:	File No.: 13-98-10726
The Novis Group, Inc.,	:	
Respondent	:	

ORDER

AND NOW, this 4th day of **August, 2015**, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ORDERED** that:

(1) The Novis Group, Inc. shall **CEASE and DESIST** from all manner of fundraising, fundraising counsel and solicitation activities in this Commonwealth, until such time as it is properly registered under the Act. No registration will be approved until all penalties imposed below are paid in full.

(2) An **administrative fine** in the amount of **\$3,000.00** shall be imposed upon **The Novis Group, Inc.** The amount shall be remitted by certified check or U.S. Postal Service money order made payable to "Commonwealth of Pennsylvania" within thirty (30) 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

Failure to pay the administrative fine in full within thirty (30) days of the effective date of this Order shall constitute a violation of an order issued by the Secretary, subjecting Respondent to additional penalties under the Act at § 17, 10 P.S. § 162.17.

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 thirty (30) days of the date of mailing of this Adjudication and Order as indicated below.

This Order shall take effect thirty (30) days from the date it is deposited in the mail.

BY ORDER

Pedro A. Cortés

Pedro A. Cortés
Secretary of the Commonwealth

For the Commonwealth: Robert B. Armour, Esquire
Prosecuting Attorney
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE OFFICE OF CHIEF COUNSEL
PROSECUTION DIVISION
P.O. Box 69521
Harrisburg, PA 17106-9521

For Respondent: John T. Bentz, President
The Novis Group, Inc.
P.O. Box 1738
Warren, OH 44482

Date of Mailing:

August 4, 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