

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

FROTHMONTARY  
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Department of State

Commonwealth of Pennsylvania,  
Bureau of Charitable Organizations

vs.

American Conservative Union, Inc.,  
Respondent

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Docket No. 0002 -98-03  
File No. 03-98-08216

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DEPARTMENT OF STATE-SIU

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations (“Bureau”) and American Conservative Union, Inc., (“Respondent”) stipulate as follows in settlement of the above-captioned case:

JURISDICTION

1. This matter is before the Secretary of the Commonwealth (“Secretary”) pursuant to the Solicitation of Funds for Charitable Purposes Act (“the Act”), Act of December 19, 1990, P.L. 1200, No. 202, *as amended*, 10 P.S. §§162.1-162.24.
2. Respondent was registered as a charitable organization in the Commonwealth of Pennsylvania from April 5, 2001 to November 11, 2002, registration number 15768, but failed to renew its registration thereafter.
3. At all relevant and material times, American Conservative Union, Inc. did not hold a registration to solicit charitable contributions within the Commonwealth of Pennsylvania.

## **STIPULATED FACTS**

4. Respondent's last known business address on file with the Bureau is 1007 Cameron Street, Alexandria, VA 22314.

5. Respondent's registration as a charitable organization expired on November 11, 2002, and was not renewed thereafter.

6. On June 11, 2003, the Bureau received evidence that Respondent was soliciting charitable contributions from Pennsylvania residents without an approved registration with the Bureau.

7. Respondent printed the disclosure statement indicated in Section 13(c) on its solicitations stating it was registered as a charitable organization in Pennsylvania when it was not.

8. On June 16, 2003 the Secretary issued a Cease and Desist Order against Respondent.

9. On June 16, 2003 the Bureau issued an Investigative Subpoena to Respondent.

10. In response to the subpoena, Respondent provided copies of current contracts it has with two (2) professional fundraising counsels: American Target Advertising and The Richard Norman Company.

11. The Richard Norman Company is not registered as a professional fundraising counsel with the Bureau, which Respondent failed to verify before entering into the contract.

12. Respondent received contributions from 955 Pennsylvania residents totaling \$16,765.55 from The Richard Norman Company direct mail campaign from November 11, 2002 to July 17, 2003.

13. Respondent received contributions from 3,589 Pennsylvania residents totaling \$67,013.46 from the American Target Advertising direct mail campaign from November 11, 2002 to July 17, 2003.

14. Despite Respondent's lack of registration as a charitable organization with the Bureau and in direct violation of a Cease and Desist Order, Respondent received contributions from at least 4,544 Pennsylvania residents totaling \$83,779.01 from November 11, 2002 to July 17, 2003.

15. On April 5, 2001, after acknowledging that it had violated the Act by soliciting charitable contributions in the Commonwealth without first being registered, Respondent paid an administrative fine in the amount of \$4,000 and became registered with the Bureau as a charitable organization.

#### **AGREED VIOLATIONS**

16. The parties agree that by engaging in the foregoing activities, Respondent committed multiple violations of the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.5, by soliciting charitable contributions in Pennsylvania after its registration had expired and in direct violation of a Cease and Desist Order.

17. The parties agree that by engaging in the foregoing activities, Respondent committed multiple violations of the Act at 10 P.S. §162.15(a)(2), by and through 10 P.S. §162.13(c), by printing the disclosure notice on its solicitations stating that it was registered with the Bureau, when in fact it was not.

18. The parties agree that by engaging in the foregoing activities, Respondent committed multiple violations of the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S.

§162.13(f), by entering into a contract with a professional fundraising counsel that was not registered with the Bureau.

### **PROPOSED ORDER**

19. To address concerns raised by the Commonwealth and to resolve this matter on a compromise basis, the Commonwealth and the Respondent agree to the issuance of the following Order in settlement of this matter:

a. Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.5, by soliciting charitable contributions in Pennsylvania after its registration had expired and in direct violation of a Cease and Desist Order.

b. Respondent violated the Act at 10 P.S. §162.15(a)(2), by and through 10 P.S. §162.13(c), by printing the disclosure notice on its solicitations stating that it was registered with the Bureau, when in fact it was not.

c. Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.13(f), by entering into a contract with a professional fundraising counsel that was not registered with the Bureau.

### **ADMINISTRATIVE FINE**

d. An **ADMINISTRATIVE FINE** of fifteen thousand dollars (\$15,000.00) is levied upon Respondent. Respondent shall tender the full sum of fifteen thousand dollars (\$15,000.00) with this executed Consent Agreement which shall be paid by **certified check, cashier's check, attorney's check, or U.S. Postal money order made payable to the "Commonwealth of Pennsylvania."**

### **FILING OF REGISTRATION DOCUMENTS**

e. Respondent shall submit to the Bureau all documents required to renew its

registration within fifteen (15) days of the date of the Secretary's Order adopting this Consent Agreement. Respondent is prohibited from providing soliciting contributions in Pennsylvania until such time as the Respondent becomes properly registered with the Bureau.

f. Respondent shall not enter into any contract or agreement or employ any professional fundraising counsel or professional solicitor unless that professional fundraising counsel or professional solicitor is registered with the Bureau.

#### **VIOLATION OF THE SECRETARY'S ORDER**

g. Notification of a violation of the terms and conditions of this Consent Agreement and Order shall result in the imposition of additional penalties as follows:

(1) The prosecuting attorney for the Bureau shall file with the Secretary a Petition which indicates that Respondent has violated the terms and conditions of this Consent Agreement and Order.

(2) Upon a probable cause determination that Respondent has violated the terms and conditions of this Consent Agreement and Order, the Secretary, or his designee, shall, without holding a formal hearing, issue a Preliminary Order, effective thirty (30) days after its mailing, which imposes a sixty (60) day period of suspension on Respondent's registration to act as a professional solicitor.

(3) Respondent shall be notified of the Preliminary Order within three (3) days of its issuance by certified mail and first class mail postage prepaid, sent to the last registered address on file with the Bureau by facsimile or first class mail.

(4) Within fifteen (15) days of mailing of the notification of the

Preliminary Order, Respondent may answer the Commonwealth's petition, request that a formal hearing be convened concerning Respondent's alleged violation of the terms of this Agreement, and move that the period of suspension be stayed until the Secretary or his designee issues a final order. Respondent shall file all answers and subsequent filings with the Prothonotary for the Department of State, 2601 North Third Street, Harrisburg, PA 17110. Respondent shall serve the prosecuting attorney for the Bureau with a copy of the answer and all subsequent filings in this matter.

(5) If the Respondent moves for a stay of the period of suspension, Respondent shall set forth properly verified facts and/or state concisely the matter of law which the Respondent believes justifies a stay of the period of suspension. The Secretary or his designee shall issue a ruling on the Respondent's motion within fifteen (15) days from the date of the mailing of the notification of the Preliminary Order. If the Secretary or his designee makes no ruling on the Respondent's motion within the fifteen (15) days from mailing of the notification of the Preliminary Order, the Respondent's motion shall be deemed denied.

(6) If a request for a formal hearing is received from Respondent, a formal hearing shall be convened within forty-five (45) days from the date of filing of Respondent's request for a formal hearing.

(7) The facts and averments in this Consent Agreement and Order shall be deemed admitted and uncontested at this hearing.

(8) If the Secretary, or his designee, after such hearing makes a determination adverse to Respondent, the Secretary or his designee will issue a

Final Order imposing any disciplinary measures he deems appropriate. The Secretary or his designee may, but is not required to, take into account any period of active suspension already served by the Respondent pursuant to the Preliminary Order.

(9) If a request for a formal hearing is not received from Respondent within the prescribed fifteen (15) day period, the Preliminary Order shall become a Final Order.

(10) Nothing in this Order shall preclude the Prosecuting Attorney for the Bureau from filing charges or the Secretary from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement; provided, however, the Bureau agrees to not re-open its investigation with regard to any Registration Statements or Contracts on file with the Secretary as of the date of this Consent Agreement and Order unless the Bureau becomes aware of material facts or omission of material facts which have previously not been disclosed to it and would give it probable cause that other violations existed during such period of time which it failed to uncover in its previous investigation.

20. This case shall be deemed settled and discontinued upon the Secretary issuing an Order adopting this Consent Agreement.

#### **ACKNOWLEDGEMENT OF NOTICE AND WAIVER OF HEARING**

21. Respondent waives the filing of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and to the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may

be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Bureau; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

**AGREEMENT NOT BINDING ON OTHER PARTIES**

22. This Consent Agreement is between the Bureau and Respondent only. It does not bind any other administrative entity of the Commonwealth of Pennsylvania, including any other bureau within the Department of State. Except as otherwise noted, this Agreement is to have no legal effect if a) the Office of General Counsel expresses an objection to the Agreement's form or legality and/or b) unless and until the Secretary issues the stipulated Order.

**EFFECT OF SECRETARY'S REJECTION**

23. Should the Secretary not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Secretary shall not prejudice the Secretary from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Secretary does not approve this Consent Agreement.

**ENTIRE AGREEMENT**

24. This Agreement contains the whole agreement between the parties; provided, however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever, concerning this Agreement.



**AGREEMENT DOES NOT PREVENT REFERRAL TO OTHER AGENCIES**

25. The parties acknowledge that other federal, state, and/or local agencies may have jurisdiction over the activities of, or representations made by, Respondent and its officers, directors, agents, employees or independent contractors. Nothing in this Consent Agreement or the Order based upon this Consent Agreement shall preclude representatives of the Bureau from referring any information or data produced as a result of this matter to any federal, state, or local agency or governmental unit having jurisdiction over the activities of Respondent or any officer, director, agent, employee or independent contractor of the Respondent.

**VERIFICATION OF FACTS AND STATEMENTS**

26. Respondent verifies that the facts and statements set forth in this Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Agreement are made subject to the criminal penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



Tracy L. McCurdy, Esquire  
Prosecuting Attorney  
Department of State

DATED: 9-18-03



For American Conservative Union, Inc.,  
Respondent

DATED: 9/17/03



IN THE MATTER OF  
AMERICAN CONSERVATIVE UNION, INC.  
FILE NO. 03-98-08216

**ORDER**

AND NOW, this 19<sup>th</sup> day of *SEPTEMBER* 2003, the terms of Paragraph 19 of the foregoing Consent Agreement are hereby adopted and incorporated as the Order of the Secretary of the Commonwealth in resolution of this matter. This Order shall take effect immediately.

BY ORDER

A handwritten signature in black ink, appearing to read "K. Rapp", written over a horizontal line.

Kenneth A. Rapp, Deputy  
Secretary for Regulatory Programs  
on behalf of the  
Secretary of the Commonwealth