

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

PROTHONOTARY

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Department of State

Commonwealth of Pennsylvania  
Bureau of Charitable  
Organizations

v.

Lynne Workinger,  
Respondent

Docket No. 0022-98-10  
File No. 10-98-03595

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FINAL ADJUDICATION AND ORDER

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Basil L. Merenda  
Acting Secretary of the Commonwealth

302 North Office Building  
Harrisburg, PA 17120  
(717) 787-7630

DATE DISTRIBUTED 7-1-10  
PROSECUTION \_\_\_\_\_  
COUNSEL \_\_\_\_\_  
HEARING EXAMINER \_\_\_\_\_  
OTHER \_\_\_\_\_

## HISTORY

This matter comes before the Secretary of the Commonwealth (Secretary) on an order to show cause filed May 3, 2010, alleging that Respondent Lynne Workinger, as Administrator/Secretary of Team Demarini, a non-profit organization conducting business in Pennsylvania as a charitable organization, is subject to administrative sanctions under the Solicitation of Funds for Charitable Purposes Act ("Act").<sup>1</sup> The order to show cause alleges that Respondent violated the Act at 10 P.S. 162.15(a)(1), by and through 10 P.S. § 162.12, by failing to provide Team Demarini's fiscal records for inspection when requested both by letter and subpoena by the Bureau. The order to show cause also alleges that Respondent violated the Act at 10 P.S. 162.15(a)(1), by and through 10 P.S. § 162.21, by breaching a fiduciary duty owed to Team Demarini when she failed to provide the Bureau with the information requested.

On June 10, 2010, 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.

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<sup>1</sup> Act of December 19, 1990, P.L. 1200, No. 202, *as amended*, 10 P.S. § 162.1 *et seq.*

## FINDINGS OF FACT

1. Respondent Lynne Workinger's last known home address is 3673 Coventry Court, York, PA 17406. (Order to show cause ¶ 2).
2. Team Demarini operates as a non-profit organization that benefits a little league baseball team. (Order to show cause ¶ 3).
3. Team Demarini conducts business as a charitable organization as defined by the Act. (Order to show cause ¶ 4).
4. At all relevant and material times, Respondent opened and maintained two non-profit checking accounts at the Commerce Bank in the name of Team Demarini. (Order to show cause ¶ 5, Exhibit A)
5. Respondent is listed as the "primary owner or signer for business" on the signature cards for both Team Demarini accounts maintained at Commerce Bank. (Order to show cause ¶ 6, Exhibit A).
6. Respondent's home address is listed as Team Demarini's business address. (Order to show cause ¶ 7, Exhibit A).
7. Respondent is listed as the Administrator/Secretary for Team Demarini. (Order to show cause ¶ 8, Exhibit A).
8. From on or about March 2007 until on or about the fall of 2009, Respondent and her husband, Ronald K. Workinger, were the only authorized signers on Team Demarini's two bank accounts at Commerce Bank. (Order to show cause ¶ 10).
9. From on or about April 2007 until September 2009, Respondent made numerous debits to both Team Demarini checking accounts totaling \$17,859.52. (Order to show cause ¶ 11).

10. Between on or about June 14, 2007 and June 28, 2007, Respondent made several checkcard debits totaling \$2,567.00 to the Walt Disney Resort in Florida. (Order to show cause ¶ 12).

11. On or about December 4, 2009, the Bureau sent Respondent a letter requesting among other things, a complete list of all officers, directors, board members and employees of Team Demarini, copies of financial statements or similar financial documents showing Team Demarini's annual income, expenditures, assets and liabilities, and a complete list of all accounts maintained by Team Demarini. (Order to show cause ¶ 13, Exhibit B).

12. Respondent did not respond to the Bureau's December 4, 2009 request. (Order to show cause ¶ 14).

13. On or about January 4, 2010, the Bureau sent an investigative subpoena to Respondent requesting among other things, a complete list of all officers, directors, board members and employees of Team Demarini, copies of financial statements or similar financial documents showing Team Demarini's annual income, expenditures, assets and liabilities, and a complete list of all accounts maintained by Team Demarini. (Order to show cause ¶ 16, Exhibit C).

14. Respondent has not provided the Bureau with the information subpoenaed in the Bureau's January 4, 2010 investigative subpoena. (Order to show cause ¶ 18).

15. Team Demarini is not defunct. (Order to show cause ¶ 19).

16. On or about May 3, 2010, the Commonwealth filed the order to show cause. (Order to show cause).

17. On or about May 5, 2010, Respondent received a copy of the order to show cause as evidenced by Form 3811, Article # 7001 0320 0004 9451 2651, which has been signed. (Motion to enter default and deem facts admitted, Exhibit A).

18. The order to show cause sent via first class mail, postage prepaid, was not returned to the Commonwealth. (Motion to enter default and deem facts admitted ¶ 4).

19. The order to show cause directed Respondent to file an answer thereto within thirty days of its date. (Motion to enter default and deem facts admitted ¶ 5).

20. Thirty days from the date of the order to show cause expired on June 2, 2010. (Motion to enter default and deem facts admitted ¶ 6).

21. The Commonwealth filed a motion to enter default and deem facts admitted on or about June 10, 2010. (Docket 0022-98-10).

22. As of the date of the motion to enter default and deem facts admitted, Respondent had not filed an answer to the order to show cause. (Motion to enter default and deem facts admitted ¶ 7).

23. Respondent did not file a response to the order to show cause or the motion to enter default and deem facts admitted. (Docket no. 0022-98-10; Motion to Enter Default).

24. Respondent was served with all pleadings, orders and notices filed of record in this matter. (Docket no. 0022-98-10).

## CONCLUSIONS OF LAW

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1. The Secretary has jurisdiction in this matter. (Findings of Fact 2, 3, 5, 7).
2. Respondent has been afforded reasonable notice of the charges against her and an opportunity to be heard in this proceeding in accordance with the Administrative Agency Law, 2 Pa.C.S. § 504. (Finding of fact 1, 16-24).
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. (Finding of fact 16-24).
4. Respondent is subject to disciplinary action under section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by and through section 12, for failing to provide Team Demarini's fiscal records when requested for inspection by the Bureau.
5. Respondent is subject to disciplinary action under section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by and through section 21, for breaching a fiduciary duty owed to Team Demarini when Respondent failed to provide the Bureau with the information requested in the Bureau's January 4, 2010 investigative subpoena.
6. Respondent is subject to disciplinary action under section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by and through section 21, for breaching a fiduciary duty owed to Team Demarini when Respondent failed to provide the Bureau with the information requested in the Bureau's December 4, 2009 letter.

## 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 of three counts, alleging that Respondent violated the Act at 10 P.S. § 162.15(a)(1), by and through 10 P.S. §§ 162.12, 162.21, and 162.21, which provide 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.

\* \* \*

#### § 162.12 Records to be kept by charitable organizations, professional fundraising counsels and professional solicitors; inspection; retention

Every charitable organization, professional fundraising counsel and professional solicitor subject to the provisions of this act shall, in accordance with the rules and regulations prescribed by the department, keep true fiscal records as to its activities in this Commonwealth as may be covered under this act, in such form as will enable them accurately to provide the information required under this act. Such records shall be made available for inspection upon demand by the department or the Office of Attorney General. However, names, addresses and identities of contributors and amounts contributed by them shall not be considered a matter of public record and, therefore, shall not generally be made available for public inspection, shall not be used for a purpose inconsistent with this act and shall be removed from the records in the custody of the department at such time that such information is no longer necessary for the enforcement of this act. Such records shall be maintained for a period of at least three years after the end of the period of registration to which they relate.

### **§ 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.

### **§ 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.

(3) Has made a material false statement in an application, statement or report required to be filed under this act.

(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:

(1) Issue an order directing that the person cease and desist specified fundraising activities.

(2) 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.

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. THE CHARGES

In each count of the order to show cause, the Commonwealth charges that Respondent violated the Act at 10 P.S. § 162.15(a)(1). In Count One, the Commonwealth specifically charges that Respondent violated the Act at 10 P.S. § 162.12, “by failing to provide Team Demarini’s fiscal records when requested for inspection by the Bureau.” In Count Two, the Commonwealth specifically charges that Respondent violated the Act at 10 P.S. § 162.21, “by breaching a fiduciary duty owed to Team Demarini when Respondent failed to provide the Bureau with the information requested in the Bureau’s January 4, 2010 investigative subpoena.” In Count Three, the Commonwealth specifically charges that Respondent violated the Act at 10 P.S. § 162.21, “by breaching a fiduciary duty owed to Team Demarini when Respondent failed to provide the Bureau with the information requested in the Bureau’s December 4, 2009 letter.”

## III. 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, 533 Pa. 663, 625 A.2d 1196 (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 her last known address by certified address, return receipt requested and by first class mail, postage prepaid. The order to show cause arrived at Respondent’s address on May 5, 2010, and was signed for by someone at the residence, as evidenced by the United States Postal Service Form 3811, attached as Exhibit A in the motion to enter default and deem facts admitted. Additionally, the order to show cause mailed by first class mail has not been returned to the Commonwealth. 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 her 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.

#### IV. ANALYSIS AND SANCTION

In each of the three counts of the order to show cause, the Commonwealth alleges that Respondent violated the Act at 10 P.S. § 162.15(a)(1), which generally prohibits charitable organizations from operating in violation of, or failing to comply with, any of the requirements of the Act. In count one, the Commonwealth specifically alleges that Respondent violated section 12 of the Act “by failing to provide Team Demarini’s fiscal records when requested for inspection by the Bureau.” Section 12 is explicit in requiring charitable organizations to not only keep accurate financial records, but to make such records available for inspection upon demand by the Bureau. The record establishes that Respondent failed to provide the requested records to the Bureau when requested in the December 4, 2009 letter. Because the Act requires records to be kept for at least three years, Respondent should have been able produce the requested documentation for the previous three fiscal years. The failure to respond to the Bureau’s request is a clear violation section 15(a)(1) of the act, by and through 10 P.S. § 162.12.

In count two, the Commonwealth alleges that Respondent violated section 21 of the Act, “by breaching a fiduciary duty owed to Team Demarini when Respondent failed to provide the Bureau the information requested in the Bureau’s January 4, 2009 investigative subpoena.” The record establishes that Respondent is the Administrator/Secretary for Team Demarini. Therefore, as an officer of the charitable organization, Respondent is a fiduciary and acts in a fiduciary capacity according to section 21 of the Act. The failure to respond to the legally obligatory request for documents in the Bureau’s subpoena was in direct opposition to the best interests of Team Demarini, and as such, was a breach in Respondent’s fiduciary duty toward the charity.

In count three, the Commonwealth alleges that Respondent violated section 21 of the Act, “by breaching a fiduciary duty owed to Team Demarini when Respondent failed to provide the Bureau the information requested in the Bureau’s December 4, 2009 letter.” Just as the failure to

respond to a subpoena was a breach of the fiduciary duty under section 21 in count two, so too the failure to respond to the Bureau's December letter was a breach of the fiduciary duty established in section 21.

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), sets the penalty for violations of the Act as a fine not to exceed \$1,000 for each act or omission which constitutes a violation of the Act. Respondent on two occasions failed to provide the Bureau with financial records for Team Demarini, for which she was Administrator/Secretary and for which she opened and maintained two non-profit checking accounts. The first request from the Bureau was made by letter and the second was made by investigative subpoena, both of which Respondent ignored. This was charged as, and may be reasonably found to constitute, three distinct violations of the Act.

As Administrator/Secretary, Respondent was deemed a fiduciary under the Act and had a fiduciary duty and obligation to act in the best interest of the charitable organization. As a fiduciary, Respondent must exercise all of the skill, care and diligence at her disposal when acting on behalf of Team Demarini. A person acting in a fiduciary capacity is held to a high standard of honesty and full disclosure in regard to the charitable organization. By ignoring lawful requests for documentation from charities regulators, Respondent was clearly acting in a manner adverse or contrary to the interests of team Demarini. Furthermore, Respondent did not provide any mitigating evidence in this matter as to her actions.

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 : Docket No. 0022-98-10  
v. : File No. 10-98-03595  
Lynne Workinger, :  
Respondent :

ORDER

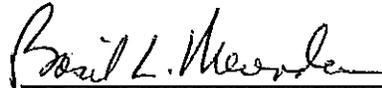
AND NOW, this 1<sup>st</sup> day of July, 2010, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ordered** that an **administrative fine** in the amount of **\$3,000.00** shall be imposed upon Lynne Workinger in accordance with 10 P.S. § 162.17(b)(3). 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 H. Brown, Assistant Counsel  
Pennsylvania Department of State  
Office of Chief Counsel  
301 North Office Building  
Harrisburg, PA 17120

Appeal may be taken pursuant to 2 Pa.C.S. §702 within thirty days of the date of mailing of this adjudication and order shown below.

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

BY ORDER:



**Basil L. Merenda**  
Acting Secretary of the Commonwealth

Respondent:

Lynne Workinger  
3673 Coventry Court  
York, PA 17406

For the Commonwealth

Jacquelyn E. Pfursich  
Prosecuting Attorney  
212 North Office Building  
Harrisburg, PA 17120

Date of Mailing: July 1, 2010