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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE SECRETARY OF THE COMMONWEALTH
Department of State

Commonwealth of Pennsylvania,
Bureau of Corporations and
Charitable Organizations

v.

Presbyterian Homes, Inc.,
Respondent

Docket No.: 0078-98-17

File No.: 16-98-06032

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Corporations and Charitable Organizations (“Bureau”), by and through its undersigned prosecuting attorney, Michael J. Gennett and Presbyterian Homes, Inc., (“Respondent”), by and through its undersigned counsel, McNees, Wallace & Nurick, LLC, stipulate as follows in settlement of the above-captioned matter:

JURISDICTION

1. This matter is before the Acting 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, Respondent, acted as a charitable organization as defined by the Act.

STIPULATED FACTS

3. Respondent’s last known address on file with the Bureau is One Trinity Drive East, Suite 201, Dillsburg, PA.

4. Respondent was issued Certificate of Registration number 22111 by the Bureau which expires on November 15, 2018.

5. Respondent admits that the following allegations are true:

a. As a charitable organization, Respondent operates approximately thirty-three (33) retirement and senior care facilities throughout the Mid-Atlantic region.

b. One such facility is St. Andrew's Village ("SAV"), located at 1155 Indian Springs Road, Indiana, PA 15701.

c. SAV provides, in part, through its Hearthlands Memory Support Unit, services for patients afflicted with Alzheimer's disease and other types of memory impairment disorders.

d. On or about February/March 2010, family members of patients housed at the SAV Hearthlands Memory Support Unit began a SAV fundraising project named the Hearthlands Renaissance Fund ("Fund") (also known as the Memory Support Renaissance Fund) for the purpose of raising funds for the renovation and expansion of the then existing Hearthlands Memory Support Unit.

e. One family member, G. Andrew Voytus, volunteered to become a Fund committee member. In addition, Mr. Voytus made a \$100,000.00 restricted donation to the Fund on March 10, 2010 on the condition that his donation be used solely for the purpose of renovating and expanding the Hearthlands Memory Support Unit.

f. Approximately one (1) year later, Mr. Voytus was asked by SAV Executive Director, Brian Parks, if a portion of the Voytus donation could be utilized to purchase carpeting in another area of Presbyterian Homes. Mr. Voytus declined that request. At the time

of his request, no plan existed to replace the existing Hearthlands Unit with a new Hearthlands Unit.

g. In 2012, Respondent determined it could best serve its Hearthlands Unit residents by relocating the unit into a completely new facility, rather than continuing to renovate the existing Hearthlands Unit. Construction began on the new Hearthlands Unit in October 2013.

h. Subsequently, Mr. Voytus requested that SAV provide him with an accounting of how his donation was being used. On or about October 7, 2014, Mr. Voytus received an e-mail from SAV Vice President of Mission Support, Laurel Shaffer, who advised that “the remaining money from your gift to renovate the former Hearthlands Unit has been retrieved and saved for use in the new project. The balance remaining is \$49,169.”

i. On or about December 12, 2014, Mr. Voytus e-mailed Ms. Shaffer and advised that he was not interested in having his donation used in the new project and requested that the \$49,169 balance be refunded to him in the form of a check.

j. Although intending in good faith to provide Mr. Voytus with information about the use of his donation, Ms. Shaffer did not have access to the complete and accurate information relating to Mr. Voytus’s donation at the time of her December 12, 2014 response to him.

k. On or about January 5, 2015, Ms. Shaffer e-mailed Mr. Voytus stating that the balance of Mr. Voytus’ donation had been used to fund the renovations and the new Hearthlands Memory Support Unit at SAV.

l. On or about January 28, 2015, Mr. Voytus filed a complaint with the Department of State’s Bureau of Enforcement and Investigation, Charities Investigation Unit (CIU).

m. On or about January 12, 2015, the CIU sent a letter via e-mail to Presbyterian Homes Senior Vice President/Chief Financial Officer Jeffrey Davis outlining the Voytus complaint and requesting records and information relative to the expenditure of the Voytus donation.

n. The Solicitation of Funds for Charitable Purposes Act requires records to be maintained for a period of at least three years after the end of the period of registration to which they relate (10 P.S. § 162.12). Mr. Voytus' donation was made in March 2010 (more than three years before the January 12, 2015 request). In 2014, after the record maintenance period had expired for Mr. Voytus' donation, Respondent instituted a new computer system to comply with government regulations and because the prior system was no longer supported by the vendor. Due to the new system, Respondent's ability to ensure production of all records was hampered.

o. On or about February 19, 2015, Mr. Davis responded to the request by e-mailing various documents to show that during the period of June 3, 2010 to August 30, 2012, \$92,645.00 of the Voytus donation was spent on renovations to the original Hearthlands Memory Support Unit—despite Ms. Shaffer advising Mr. Voytus the previous month that a \$49,160.00 balance remained on his \$100,000.00 donation. The \$92,645.00 total expenditure on the original Hearthlands Memory Support Unit included (i) \$71,400.22 for painting, tile flooring, wood flooring, and new furniture; (ii) \$3,477.75 for draperies; (iii) \$3,500.00 expended on or about July 1, 2010 to pay Timothy A. Johnson for “labor;” and \$14,267.00 expended on or about August 30, 2012 to purchase a wireless nurse call system for installation in the Hearthlands Memory Support Unit

p. SAV, through Mr. Davis, provided an e-mail dated February 23, 2015 again acknowledging that a portion of the Voytus donation totaling \$7,355.00 was used for the new Hearthlands Unit, which the Bureau viewed as contrary to the specific intent of the donation because the new Hearthlands Unit did not exist at the time of the donation.

q. SAV provided an invoice, dated July 1, 2010, from Timothy A. Johnson, addressed to St. Andrew's Village, 1155 Indian Springs Road, Indiana, PA 15701, charging SAV for the purchase of twenty (20) framed paintings and twenty-five (25) unframed paintings at the price of \$3,500.00.

r. This expenditure was previously described by SAV as paid to Timothy Johnson for "labor," because Mr. Johnson's invoice stated that the final payment was due "when unframed paintings are framed and delivered," suggesting the payment was for his labor, but was actually for artwork for a project known as "Memory Lane" to be displayed in the Hearthlands Memory Support Unit.

s. Mr. Voytus indicated that he never paid for the Johnson watercolors/"Memory Lane" project, instead, the paintings had been paid for by another donor, Nancy Geary.

t. This was verified by an account provided by SAV in which it states, "another resident family member, Nancy Geary, paid for artwork done by a local artist to create a Memory Lane for residents of Hearthlands."

u. Nancy Geary, a Pennsylvania resident approached Mr. Parks and indicated that she wished to make a donation to the Hearthlands Unit in memory of her mother, who had been a resident of Hearthlands, but had since died. Mr. Parks informed her that a series of paintings SAV had commissioned by local watercolorist Tim Johnson, entitled "Memory Lane,"

which depicted local landmarks and were designed to aid the faltering memories of Hearthlands Unit patients, could be funded by her. Mr. Parks advised Ms. Geary that a donation of \$6,000.00 would be needed for the paintings, to which she agreed.

v. In response to CIU's investigation into the paintings donation, Respondent contacted Tim Johnson who recalled that he had selected 47 paintings, which without any framing would have been sold by Mr. Johnson at a price of \$100 to \$150 each, so the combined value of the paintings prior to framing was estimated to be between \$4,700 and \$6,000. Respondent originally planned to handle the framing of the unframed paintings itself, but Mr. Johnson offered to facilitate the framing and hanging of all paintings. Mr. Johnson recalls that it cost approximately \$1,600 for the framing at a Michael's store. When the framing was completed, Mr. Johnson picked up the paintings at Michael's and delivered all of the paintings to SAV. The paintings were then hung by a local art teacher as a favor to Mr. Johnson, with the assistance of a SAV maintenance man. Mr. Johnson decided to invoice Respondent a reduced amount of \$3,500 for the paintings, even though the actual value and price of the paintings with framing was higher. Mr. Johnson intended that the difference between the invoiced amount and the value of the paintings would be considered a donation to SAV.

w. SAV had solicited and accepted \$6,000.00 from Ms. Geary for these paintings, rather than the actual invoiced amount of \$3,500.00.

x. Mr. Voytus donated \$100,000.00 intending that his donation be used solely for the benefit of the Hearthlands Memory Support Unit.

y. Respondent has acknowledged that documentation supporting \$7,355.03 of the Voytus donation use could not be located beyond the required retention period. Respondent reported that it used the \$7,355.03 for construction of the new Hearthlands Memory Support

Unit, which did not exist at the time of his donation. Respondent advised Mr. Voytus in October 2014 that approximately \$49,169.00 of his donation had not yet been used by SAV.

z. In December 2014, Mr. Voytus requested Respondent return the unused \$49,169.00.

aa. In January 2015, weeks later, Respondent then advised Mr. Voytus that his entire donation had been expended.

bb. In response to CIU's request for records on how the Voytus donation was used, Respondent produced records showing that by August 30, 2012, approximately \$92,645.00 of the Voytus donation had already been spent, leaving a balance of only \$7,355.00 that Respondent reported was used to benefit the new Hearthlands Memory Support Unit.

6. If this matter had gone to a hearing, Respondent would have put on mitigating evidence that:

a. The three year record retention period under the Act had expired with respect to Mr. Voytus' and Ms. Geary's donations.

b. Respondent expended over \$2 million to build the new Hearthlands Unit, and thus the funds received from Mr. Voytus were used consistent with Respondent's charitable purpose and the intent of Mr. Voytus's donation that was made before the original Hearthlands Unit was replaced with the new Hearthlands Unit, and used for both the original and new Hearthlands Unit.

c. In October 2014, when Laurel Shaffer initially responded to Mr. Voytus' inquiry as to the use of his 2010 donation with incorrect figures, Ms. Shaffer did not have immediate access to the records to show the use of the funds due to the passage of time (more than 3 years) and the change in Respondents' computer programs to comply with new government requirements.

d. Respondent received from Ms. Geary more than the invoiced cost of the artwork, because Mr. Johnson decided to make his own \$2,500 donation to SAV by reducing the invoice amount rather than invoicing Respondent for \$6,000 and writing his own \$2,500 check to SAV.

AGREED VIOLATIONS

7. To address concerns raised by the Commonwealth and to resolve this matter on a compromise basis without the expense of further defense, Respondent admits and agrees that by engaging in the aforementioned activities, Respondent committed violations of the Act as follows: Section 13(a) of the Act, 10 P.S. § 162.13(a), by applying contributions in a manner not substantially consistent with the charitable purpose expressed in a solicitation, in that the solicitation was for renovations to an existing memory care unit and funds were used in part for a newly constructed memory care unit.

PROPOSED ORDER

8. The participants, intending to be legally bound, consent to issuance of the following Order in settlement of this matter: Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), in that Respondent violated Section 13(a) of the Act, 10 P.S. § 162.13(a), by applying contributions in a manner not substantially consistent with the charitable purpose expressed in a solicitation, in that the solicitation was for renovations to an existing memory care unit and funds were used in part for a newly constructed memory care unit.

ADMINISTRATIVE PENALTIES AND RESTITUTION

9. 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.

10. Respondent agrees to pay former donor, G. Andrew Voytus the sum of Forty-Nine Thousand, One Hundred and Sixty-Nine Dollars (\$49,169.00).

11. Respondent agrees to pay former donor, Nancy T. Geary the sum of Two Thousand, Five Hundred Dollars (\$2,500.00).

12. Payments shall be by **certified check, cashier's check, attorney's check, or U.S. Postal money order.**

13. The instrument of payment for the administrative fine only shall be made payable to the "Commonwealth of Pennsylvania," and shall be valid for a period of at least one hundred eighty (180) days.

14. Respondent agrees that payment will be made by one of the methods indicated in Paragraph 10 above and that payment by uncertified personal check, corporate check or cash will not be accepted.

CASE SETTLED AND DISCONTINUED

14. This case shall be deemed settled and discontinued upon the Secretary issuing an Order adopting this Consent Agreement and the Respondent's successful completion of the requirements of this Order. However, nothing in this Consent Agreement and 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 and Order.

ACKNOWLEDGEMENT OF NOTICE AND WAIVER OF HEARING

15. 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 the 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

16. This Consent Agreement is between the Bureau and Respondent only. It does not bind any other administrative or governmental 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

17. 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

18. 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

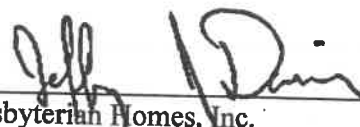
19. The parties acknowledge that other federal, state, and/or local agencies may have jurisdiction over the activities of, or representations made by, Respondent and its officers, directors, agents, employees or independent contractors. Nothing in this Consent Agreement or the Order based upon this Consent 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

20. 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.



Michael J. Gennett, Esquire
Prosecuting Attorney
Department of State



Presbyterian Homes, Inc.
Respondent
By: Jeffrey J. Davis
Title: Sr. VP/CFO

DATED: 24 JAN 2018

DATED: 1/19/2018



Helen L. Gemmill, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Attorney for Respondent

DATED: 1/22/2018



**IN THE MATTER OF
PRESBYTERIAN HOMES, INC.**

File No.: 16-98-06032

Docket No.: 0078-98-17

ORDER

AND NOW, this 30th day of January 2018, the foregoing Consent Agreement is hereby approved and the terms set forth herein are hereby adopted and incorporated herein as the Order of the Secretary of the Commonwealth, now issued in resolution of this matter.

THIS ORDER shall take effect immediately.

BY ORDER:

A handwritten signature in cursive script that reads "Robert Torres".

Robert Torres

Acting Secretary of the Commonwealth

For the Commonwealth:

Michael J. Gennett, Esquire
306 North Office Building
401 North Street
Harrisburg, PA 17120

For Respondent:

Helen L. Gemmill, Esquire
McNees Wallace & Nurick, LLC
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