

HISTORY

This matter comes before the Secretary of the Commonwealth (Secretary) on an order to show cause (OSC) filed October 27, 2003, by the Bureau of Charitable Organizations of the Department of State alleging that Veterans Community Involvement (VCI) and Wayne Cullison, (Respondents herein) individually and as the principal officer of VCI, are subject to administrative sanctions for violations of the Solicitation of Funds for Charitable Purposes Act (Act), Act of December 19, 1990, P.L. 1200, *as amended*, 10 P.S. §§162.1-162.24. Collision filed an answer to the OSC on December 1, 2003, in which he denied the charges set forth in the OSC, and contended he was at all times within his legal rights to solicit the contributions.

A notice of hearing was issued scheduling a hearing for February 8, 2002, before a hearing examiner designated by the Secretary of the Commonwealth to conduct hearings brought under the Act. The hearing in the matter was held before Joyce McKeever. The Commonwealth was present and represented by Tracy L. McCurdy, Esquire. Respondent was not present, or represented, did not request a continuance, and did not notify the Bureau of Charitable Organizations or the hearing examiner's office that he would not attend the hearing.

FINDINGS OF FACT

1. VCI was incorporated as a domestic nonprofit corporation pursuant to 15 Pa.C.S. § 5507 on September 30, 2002. (OSC ¶ 2/ Exhibit C-1)
2. VCI's current address on file with the Department of State, Corporations Bureau, is 216 Albert Street, Pittsburgh, Pennsylvania 15211; however, it is believed that the actual physical address of VCI is 100 Mackey Street, Butler, Pennsylvania 16001. (OSC ¶ 4/ Exhibit C-1)
3. Wayne S. Cullison serves as the principal and sole officer of VCI and controls and directs all activities of VCI. (OSC ¶ 5/ Exhibit C-1)
4. Respondent's address is 110 Mackey Street, Butler, Pennsylvania 16001. (OSC ¶ 4/ Exhibit C-1)
5. VCI is not registered as a charitable organization with the Department of State, Bureau of Charitable Organizations (Bureau). (N.T. 10)
6. On November 25, 2002, the Bureau received evidence that VCI, at the direction of the Respondent, was soliciting charitable contributions in Pennsylvania. (N.T. 9)
7. On November 27, 2002, the Bureau forwarded a letter, via certified mail, to Respondent's Albert Street address; the letter was returned unclaimed. (OSC ¶ 10/ Exhibit 1)
8. On April 23, 2003, the Bureau learned of the Mackey Street address and forwarded a letter, via certified mail, to Respondents at the Mackey Street address; the letter was successfully delivered. (OSC ¶ 11 / Exhibit C-1)

9. In the letter, Cullison, on behalf of VCI, was informed that he was not permitted to solicit charitable contributions unless he was first registered with the Bureau, or unless VCI was exempt from registration under the Act, in which case he was advised to submit records showing that VCI was exempt. (OSC ¶ 12 / Exhibit C-1)
10. On June 30, 2003, an Investigative Subpoena was issued and forwarded to VCI, via certified mail; the Respondents received the Subpoena. (Exhibit C-4)
11. On July 1, 2003, a Cease and Desist Order was signed by the Secretary and forwarded to VCI, via certified mail; Respondents received the Order. (Exhibit C-3)
12. On September 10, 2003, Respondents provided solicitation information for the period of October 15, 2002, through May 31, 2003, that indicated Respondent solicited on (75) separate occasions during that period and received total contributions in the amount of \$7,605.43 (OSC ¶ 16 / Exhibit 1)
13. On September 3, 2003, Cullison was soliciting contributions when the police arrived, informing him that he was soliciting in violation of the law, and further confiscated his solicitation materials. (Answer/ Exhibit C-2)
14. On seven separate occasions between September 2, 2003, and October 8, 2003, Respondents continued to solicit in violation of the Cease and Desist Order. (N.T. 16, 17)
15. On three occasions, specifically, November 25, 2002, March 26, 2003, and April 15, 2003, VCI through Cullison, solicited charitable contributions, although their records indicated that they did not. (N.T.20/ Exhibit C-6)

16. In the month of December 2002, Respondents' records indicated that a total of \$706.21 was collected; however, only \$120.00 was deposited into VCI's account.
(N.T. 22)
17. VCI maintains a bank account in the name of VCI; however, VCI does not deposit all of the cash collected into the account. (N.T. 22)
18. In response to the Bureau's subpoena, Respondents were required to provide *inter alia* complete records of VCI's solicitation activities and financial statements.
(Exhibit C-4)
19. Respondents' response did not include solicitation information for the period of June 1, 2003, to September 10, 2003, or bank statements for the period of December 31, 2002 to September 2003. (N.T. 22)
20. Respondents were served with the OSC and all subsequent pleadings, orders, and motions of record in the matter. (Docket No. 005-98-03)

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Findings of Fact No. 1)
2. Respondents received notice of the charges against them and have been given an opportunity to be heard in this proceeding in accordance with Administrative Agency Law, 2 Pa.C.S. § 504. (Finding of Fact No. 20)
3. Respondents did not violate Section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by and through § 162.5 (a) by soliciting charitable contributions on behalf of VCI on at least (75) occasions without being registered with the Bureau. Counts 1-150 are dismissed. (Findings of Fact 6-12, Counts 1-150)
4. Respondents violated Section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1) by and through § 162.17 (a) (1) for soliciting charitable contributions in violation of the Secretary's Cease and Desist Order. (Findings of Fact Nos. 13,14, Counts 151-164)
5. Respondents violated Section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1) by and through § 162.17 (a) (3) by making material false statements to the Bureau. (Finding of Fact No. 15, Counts 165-170)
6. Respondents violated Section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1) by and through § 162.5 (s), by failing to administer all contributions through an account in the name of VCI and under VCI's sole control. (Finding of Fact No.16, Count 171)
7. Respondents violated Section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1) by and through § 162.12, by failing to keep true and accurate records of its solicitation

activities in the Commonwealth of Pennsylvania. (Finding of Fact No. 19, Count
172)

DISCUSSION

Counts 1-150

The Commonwealth alleges in the OSC that VCI, and Cullison, individually and as principal officer of VCI, committed multiple violations of sections 15 and 5 of the Act 10 P.S. § 162.15 (a) (1), and § 162.5 (a) by soliciting contributions on (75) different occasions without first registering with the Bureau. Those sections provide in relevant part as follows:

(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.

(a) Registration and approval required.--A charitable organization, unless exempted from registration requirements pursuant to section 6, shall file a registration statement with the department. This statement must be refiled annually within 135 days after the close of its fiscal year in which the charitable organization was engaged in solicitation activities. The department shall review the statement pursuant to subsection (r). No charitable organization shall solicit contributions or have contributions solicited in its behalf before approval of its registration statement by the department.

The Commonwealth charges in the OSC that VCI is not registered as a charitable organization with the Department of State, Bureau of Charitable Organizations, but that on (75) occasions it solicited contributions, notwithstanding the fact that it wasn't registered. On April 23, 2003, a letter was sent to Cullison, on behalf of VCI, informing him that he was not permitted to solicit charitable contributions unless he was first

registered with the Bureau, or unless VCI was exempt under the Act, in which case he was advised to file papers proving VCI was exempt.

One possible registration exemption is found under section 6 of the Act 10 P.S. § 162.6, which allows an exemption for charities collecting less than \$25,000 annually.

That section states in relevant part as follows:

(a) General rule.--The following charitable organizations shall be exempt from the registration requirements of this act:

(8) Any charitable organization which receives contributions of \$25,000 or less annually, provided that such organization does not compensate any person who conducts solicitations. Charitable organizations which receive more than \$25,000 in contributions shall file the appropriate registration statement within 30 days after the contributions are received.

After Respondent was served a Subpoena and a Cease and Desist Order, he submitted limited solicitation information. The information Respondent submitted accounted for solicitations on (75) separate occasions that resulted in the collection of \$7,605.43.

Through its introduction of blank records for dates in which Respondents were witnessed soliciting contributions, the Commonwealth has shown that the records submitted by the Respondents are incomplete. However, it has not shown that the Respondents had collected contributions in excess of \$25,000.

The Commonwealth asks that the Secretary draw an adverse inference, in light of the records being incomplete, that Respondents have met the \$25,000 mark. However, while the Respondents have not provided evidence that indicates they are exempt; the Commonwealth has failed to show that Respondents met the \$25,000 threshold making registration necessary. Therefore, due to the lack of proof that Respondents were required to register, counts 1-150 are dismissed.

Counts 151-164

In Counts 151-164, the Commonwealth charges that VCI, and Cullison, individually and as the principal officer of VCI, committed multiple violations of sections 15 and 17 of the Act, 10 P.S. §162.15 (a) (1), and § 162.17 (a) (1), by soliciting charitable contributions on behalf of VCI on at least seven separate occasions in violation of the Secretary's Cease and Desist Order. Those sections provide in relevant part as follows:

(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.

(b) 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.

The Commonwealth charges in the OSC that after the Cease and Desist Order was issued, the Respondents on at least seven different occasions continued to solicit contributions. In support of its position, the Commonwealth called Special Investigator Drew Koser from the Bureau, who testified that he had a telephone conversation with

Cullison, in which he acknowledged that he had received the Cease and Desist Order dated July 1, 2003. Thereafter, on September 3, 2003, Special Investigator Koser received a tip that Cullison was soliciting contributions at a West Newton supermarket.

Investigator Koser testified that when he went to the supermarket to investigate, he observed Cullison soliciting contributions. Moreover, upon questioning by Investigator Koser, Respondents confirmed that two other individuals were soliciting, on behalf of VCI, at a nearby supermarket that same day. Further investigation revealed that VCI was also soliciting at two other locations on September 2, a day before Investigator Koser observed Cullison soliciting. Investigator Koser also testified that the Cullison, or others acting through him for VCI, were observed soliciting contributions on September 15, 2003, September 29, 2003, and October 8, 2003. The evidence presented at the hearing and the uncontested testimony of Investigator Koser support the Commonwealth's disputation that Respondents continued to solicit after the Cease and Desist Order was issued. Therefore, Respondents are guilty on counts 151-164, of soliciting contributions in violation of the Secretary's Cease and Desist Order.

Counts 165-170

The Commonwealth charges in counts 165-170 that VCI, and Cullison, individually and as the principal officer of VCI, committed multiple violations of section 17 of the Act 10 P.S. §162.17 (a) (3), by making false statements to the Bureau. That section provides in relevant part as follows:

(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:

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

The Commonwealth charges in counts 165-170, that the Respondents submitted material false statements to the Bureau. In particular, the Commonwealth entered into evidence several of Respondents' record keeping materials for the dates; November 25, 2002, March 6, 2003, and April 15, 2003, which indicated that no collections had been made on those dates. However, Investigator Koser testified that collections were in fact made on the dates that were left blank. By failing to attend the hearing, Respondents have augmented their lack of veracity in defending their contention. Therefore, Respondents are guilty of counts 165-170 for making material false statements to the Bureau.

Count 171

In count 171 the Commonwealth charges that, VCI, by and through Cullison, violated sections 15 and 5 of the Act at 10 P.S. § 162.15 (a) (1), and § 162.5(s), by failing to administer all contributions through an account in the name of VCI, and under VCI's sole control. Those sections state in relevant part as follows:

(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.

(s) Administration of charitable contributions.--A charitable organization shall maintain and administer all contributions raised on its behalf through an account in the name of the charitable organization and under its sole control.

The Commonwealth charges that VCI collected certain contributions under their name, but that, not all of the money collected on behalf of VCI, was deposited into VCI's account. Investigator Koser testified that he had spoken with Cullison regarding administering all contributions through VCI's bank account. During this conversation, Cullison admitted that he did not direct all contributions through VCI's bank account, but rather admitted that he works on a cash basis. While Cullison was given the opportunity to refute Investigator Koser's testimony and state his case, he chose not to attend the hearing. Therefore, it is deemed admitted that VCI, through Cullison, did not administer all contributions collected on its behalf through the bank account in VCI's name. Accordingly, VCI, through Cullison, is guilty of count 171.

Count 172

In count 172 the Commonwealth charges that VCI, by and through Cullison, violated sections 15 and 12 of the Act at 10 P.S. § 162.15 (a) (1), and § 162.12, by failing to keep accurate records of its solicitation activities in the Commonwealth of Pennsylvania. Those sections state in relevant part as follows:

(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.

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.

The Commonwealth contends that VCI, by and through Cullison, did not keep accurate records of their solicitations as required by statute. Specifically, Cullison's records did not include solicitation of records for the period of June 1, 2003, through September 10 2003. Also, Cullison failed to submit bank statements for the time period of December 31, 2002, to September 2003. Investigator Koser testified that when he asked Cullison why the records and statements s were not submitted, Cullison stated that he must have lost them. Regardless of why the records were not submitted, it is clear that they were not delivered in their entirety. Therefore, VCI, by and through Cullison, is guilty of count 172 for failing to keep accurate records as required by the Act.

The Commonwealth has failed to show that it was a requirement for VCI to register as a charitable organization with the Bureau. In light of this, Respondents cannot be found guilty of having solicited without being registered. Accordingly, counts 1-150 are dismissed. However, based upon the above facts and conclusions of law, Respondents violated various sections of the Act. Respondents filed an answer, but did not appear at the hearing to present evidence on their behalf. The Commonwealth's witness and evidence entered into the record were uncontested at the hearing.

For counts 151-176 the record is devoid of any evidence in defense of Respondents' acts. Some evidence of record supports Respondents' contention that the solicitation did not exceed \$25,000. However, the Solicitation Act does not give the Respondents leave to ignore a Subpoena from the Secretary, nor does it excuse erroneous or non-existent record keeping. To encourage Respondents to come into compliance, the Secretary determines that an administrative fine of \$1,000 should be imposed and Respondents are to Cease and Desist from soliciting charitable contributions in Pennsylvania. Accordingly 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. 005-98-03
v. :
 : File No. 03-98-09019
 : 03-98-11135
Veterans Community Involvement, :
And Wayne S. Cullison, individually :
And as principal officer of Veterans :
Community Involvement :
Respondents :

ORDER

AND NOW, this ^{5th} day of *August*, 2004, in accordance with the foregoing findings of fact, conclusions of law and discussion, the Secretary of the Commonwealth hereby **ORDERS** that an administrative fine in the amount of \$1,000, for violation of the Solicitations Act, be and hereby is, imposed upon Respondents **VETERANS COMMUNITY INVOLVEMENT** and **WAYNE S. CULLISON**. It is further ordered that **VCI** and **WAYNE S. CULLISON** Cease and Desist from soliciting contributions in Pennsylvania until such time as all penalties are paid and Respondents come into full compliance with all sections of the Solicitations Act.

BY ORDER

Pedro A. Cortés

Pedro A. Cortés
Secretary of Commonwealth

Date of Mailing: *8-9-04*

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Respondents:

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