

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

**Commonwealth of Pennsylvania,
Bureau of Charitable Organizations**

vs.

**Disabled American Workers, Inc./
Disabled Workers of America,
Respondent**

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:
: **Docket No. 0006-98-02**
: **File No. 02-98-01471**
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ADJUDICATION AND ORDER

PROTHONOTARY
2003 FEB -3 PM 2:45
Department of State

Benjamin Ramos
Acting Secretary of the Commonwealth

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

HISTORY

This case comes before the Secretary of the Commonwealth (Secretary) to determine whether good cause exists for the Secretary to grant the Commonwealth's Motion to Enter Default and Deem Facts Admitted (MDFA) against Respondent.

The Bureau of Charitable Organizations (Bureau) received information in June 2000 that Respondent was utilizing a charitable appeal to sell products by soliciting Pennsylvania residents by telephone without being properly registered under the Solicitation of Funds for Charitable Purposes Act (Act), an Act of December 19, 1990, P.L. 1200, No. 202, *as amended*, 10 P.S. §§ 162.1-162.24. On June 23, 2000, the Bureau sent a certified letter to the Respondent, notifying it of the registration requirements of the Act. Although Respondent accepted and signed for the certified letter on June 27, 2000, it failed to respond or become properly registered with the Bureau as a charitable organization.

On January 3, 2001, the Bureau hand delivered a second letter to the Respondent informing Respondent of its registration obligations under the Act, and providing Respondent with an application packet to register as a charitable organization in the Commonwealth of Pennsylvania. Respondent still failed to register with the Bureau.

On February 23, 2001, the Secretary of the Commonwealth issued a Cease and Desist Order, prohibiting Respondent from soliciting contributions in Pennsylvania using a charitable appeal until it had registered or had provided information requested by the Bureau. Respondent did not appeal the Cease and Desist Order. In January 2002, the Bureau received evidence that Respondent had continued to utilize a charitable appeal to solicit Pennsylvania residents by telephone in December 2001 and January 2002.

The prosecuting attorney filed an Order to Show Cause (OSC) on June 20, 2002 charging that Respondent violated two provisions of the Act. Specifically, Respondent was charged with one count each of violating Sections 15(a)(1) and 17(a)(1) of the Act, 10 P.S. §§ 162.15(a)(1) and 162.17(a)(1), in that: (1) Respondent used a charitable appeal to solicit contributions by telephone from Pennsylvania residents in 2001 and 2002 without being properly registered under the Act and (2) Respondent continued to utilize a charitable appeal to solicit Pennsylvania residents by telephone in December 2001 and January 2002 in direct violation of a Cease and Desist Order issued by the Secretary of the Commonwealth on February 23, 2001.

The prosecuting attorney served the OSC upon Respondent by certified mail, return receipt requested and first class mail, postage pre-paid and directed the Respondent to file an Answer thereto within thirty (30) days of its date or by no later than July 20, 2002. On or about June 25, 2002, Respondent received the OSC as evidenced by P.S. Form 3811.

Although the parties attempted to negotiate a resolution to this matter, those efforts failed to result in a Consent Agreement. On August 28, 2002, the prosecuting attorney sent Respondent a letter advising Respondent that it had thirty (30) days from the date of the letter to file an Answer to the June 20, 2002 OSC. Respondent failed to answer and on September 23, 2002, the Commonwealth filed the MDFA.

FINDINGS OF FACT

1. At all relevant and material times, Respondent did not hold a registration to solicit contributions within the Commonwealth of Pennsylvania. (OSC ¶ 4)

2. Respondent's last known business address, as on file with the Department of State is 5605 Livingston Road, Oxon Hill, MD, 20745. (OSC ¶ 2)

3. Respondent is a for-profit company that sells various products by soliciting individuals by telephone through the use of telemarketing. (OSC ¶¶ 2-3)

4. In June 2000, the Bureau learned that Respondent was using a charitable appeal to solicit contributions without being properly registered as a charitable organization, as required by Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1). (OSC ¶¶ 5, 14)

5. On June 23, 2000, the Bureau sent a certified letter to Respondent notifying it of the registration requirements of the Act. (OSC ¶ 5)

6. Although Respondent received and signed for the Bureau's June 23, 2000 certified letter, it failed to respond or become properly registered with the Bureau as a charitable organization. (OSC ¶ 6)

7. On January 3, 2001, the Bureau hand delivered a second letter to the Respondent informing Respondent of its registration obligations under the Act, and providing Respondent with an application packet to register as a charitable organization in the Commonwealth of Pennsylvania. (OSC ¶ 7)

8. Respondent, nonetheless, failed to register with the Bureau and on February 23, 2001, the Secretary of the Commonwealth issued a Cease and Desist Order, prohibiting Respondent from soliciting contributions in Pennsylvania using a charitable appeal until it had registered or had provided information requested by the Bureau. (OSC ¶ 8)

9. Respondent did not appeal the Cease and Desist Order. (OSC ¶ 9)

10. On January 2002, the Bureau received evidence that Respondent had continued to utilize a charitable appeal to sell products by soliciting Pennsylvania residents by telephone in December 2001 and January 2002. (OSC ¶ 10)

11. The prosecuting attorney filed an OSC on or about June 20, 2002 charging that Respondent violated two provisions of the Act. Specifically, Respondent was charged with one count each of violating Sections 15(a)(1) and 17(a)(1) of the Act, 10 P.S. §§ 162.15(a)(1) and 162.17(a)(1), in that: (1) Respondent used a charitable appeal to sell products by soliciting contributions from Pennsylvania residents by telephone in 2001 and 2002 without being properly registered under the Act and (2) Respondent continued to utilize a charitable appeal to sell products by soliciting Pennsylvania residents by telephone in December 2001 and January 2002 in direct violation of a Cease and Desist Order issued by the Secretary of the Commonwealth on February 23, 2001. (OSC ¶¶ 12, 14, MDFA ¶ 1)

12. Although the parties attempted to negotiate a resolution to this matter, those efforts failed to result to result in a Consent Agreement. (MDFA ¶ 5)

13. On August 28, 2002, the prosecuting attorney sent Respondent a letter advising Respondent that it had thirty (30) days from the date of the letter to file an Answer to the June 20, 2002 OSC. (MDFA ¶ 6)

14. Respondent again failed to file an answer to the OSC. (MDFA ¶ 7)

15. On September 23, 2002, the Commonwealth filed the MDFA.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this matter. (Findings of Fact, nos. 3-4)
2. Respondent received notice of the charges against it and has been given an opportunity to be heard in this proceeding in accordance with Administrative Agency Law, 2 Pa.C.S. § 504. (Findings of Fact, nos. 5, 7, 11-13)
3. Respondent violated Sections 15(a)(1) and 17(a)(1) of the Act because it used a charitable appeal to solicit contributions from Pennsylvania residents by telephone in 2001 and 2002 without being properly registered under the Act, and it continued to utilize a charitable appeal to sell products by soliciting Pennsylvania residents by telephone in December 2001 and January 2002 in direct violation of the Cease and Desist Order issued by the Secretary of the Commonwealth on February 23, 2001. (Finding of Fact, no. 11)
4. There is good cause to grant the Commonwealth's MDFA in that Respondent failed to respond to either the OSC or the MDFA. In addition, the Commonwealth has presented ample evidence that the Respondent is guilty of two counts of violating the Act. (Findings of Fact, nos. 14-15)

DISCUSSION

This case is brought before the Secretary of the Commonwealth pursuant to Section 15(a)(1) and Section 17(a)(1) of the Solicitation of Funds for Charitable Purposes Act at 10 P.S. §§ 162.15(a)(1) and 162.17(a)(1), 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 the 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.

§ 162.17. 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 to 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.

In Count One, the Commonwealth alleged that Respondent continued to utilize a charitable appeal to sell products by soliciting Pennsylvania residents by telephone in December 2001 and January 2002 in violation of the Cease and Desist Order issued by the Secretary on February 23, 2001. Respondent did not appeal or respond to the Cease and Desist Order issued by the Secretary. Nevertheless, in January 2002, the Bureau received evidence that Respondent had violated the Cease and Desist Order by soliciting Pennsylvania residents by telephone in December 2001 and January 2002.

In Count Two, the Commonwealth alleged that Respondent used a charitable appeal to solicit contributions in Pennsylvania in 2001 and 2002 without being properly registered under the Act. At all relevant and material times, Respondent did not hold a registration to solicit contributions using a charitable appeal within Pennsylvania.

Given that the Respondent failed to respond to the Commonwealth's OSC and MDFA and the fact that the Commonwealth has proven both counts it brought against Respondent, the Respondent is in default and the Commonwealth's MDFA should issue.

The only other question to be determined here is the appropriate sanction to be imposed. The obligations that Respondent failed to perform are critical requirements to which a charitable organization must adhere under the Act and Respondent did not provide any mitigating evidence in this matter.

Accordingly, based on the foregoing findings of fact, conclusions of law and discussion, and in the absence of mitigation, the following order shall issue.

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DEPARTMENT OF STATE
BEFORE THE SECRETARY OF THE COMMONWEALTH

Commonwealth of Pennsylvania,
Bureau of Charitable Organizations

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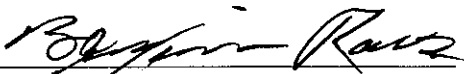
vs.

Disabled American Workers, Inc./
Disabled Workers of America,
Respondent

ORDER

AND NOW, this 31st day of January, 2003, in accordance with the foregoing findings of fact, conclusions of law and discussion, the Secretary of the Commonwealth hereby grants the Commonwealth's Motion to Enter Default and Deem Facts Admitted and **ORDERS** that Respondent Disabled American Workers, Inc. immediately **Cease and Desist** from all fundraising activities in the Commonwealth and that it pay an administrative fine in the amount of **\$2,000** or \$1,000 per violation. It is further ordered that no registration shall be accepted on behalf of Respondent Disabled American Workers, Inc. until the fine is paid in full.

BY ORDER


Benjamin Ramos
Acting Secretary of Commonwealth

Date of Mailing:

For the Commonwealth:
Bridget K. Guilfoyle, Esq.
Department of State
116 Pine Street
P.O. Box 2649
Harrisburg, PA 17105-2649

Respondent:
Disabled American Workers, Inc./
Disabled Workers of America
5605 Livingston Road
Oxon Hill, MD 20745

Date of Mailing 2/3/03

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CERTIFICATE OF SERVICE

I, Christal Pike-Nase, Esq., certify that I have this 3rd day of February 2003, served a true and correct copy of the foregoing Adjudication and Order upon all parties of record in this proceeding in accordance with the requirements of § 33.31 of the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 33.31 (relating to service by the agency).

FIRST CLASS MAIL – POSTAGE PREPAID

Disabled American Workers, Inc./
Disabled Workers of America
5605 Livingston Road
Oxon Hill, MD 20745

Respondent

Bridget K. Guilfoyle, Esq.
Department of State
116 Pine Street
P.O. Box 2649
Harrisburg, PA 17105-2649

Attorney for the Commonwealth

By: Christal Pike-Nase
Christal Pike-Nase, Esquire
Pa. Supreme Court ID#: 79768
Office of General Counsel Assigned to the
Department of State

**Counsel for Bureau of Charitable
Organizations**

302 North Office Building
Harrisburg, PA 17120
(717) 787-6802

Mailing Date: 2/3/03