

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

PROHIBITORY
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Department of State

Commonwealth of Pennsylvania,
Bureau of Charitable Organizations

v.

Joseph Dwyer, d/b/a
Northeast Marketing Concepts
d/b/a Harvest Ministries

Docket No. 0083-~~98~~-01

File No. 01-98-04143

ADJUDICATION AND ORDER

C. Michael Weaver
Secretary of the Commonwealth

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

HISTORY

This matter comes before the Secretary of the Commonwealth (Secretary) on an order to show cause (OSC) filed July 26, 2001, by the Bureau of Charitable Organizations of the Department of State (Bureau) alleging that Joseph Dwyer, d/b/a Northeast Marketing Concepts, d/b/a Harvest Ministries (Respondent), is subject to administrative sanctions for violations of the Solicitation of Funds for Charitable Purposes Act (Solicitations Act), Act of December 19, 1990, P.L. 1200, *as amended*, 10 P.S. §§162.1-162.24.

Respondent filed an answer to the OSC in which he (1) contended that he was misled by Bureau agents to believe that he was not in violation of the Solicitations Act, and (2) that he did not engage in fraud or deception through his statements concerning the registration of Harvest Ministries.

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 Solicitations Act.¹ The hearing was held on the date and time scheduled before Joyce McKeever.² The Commonwealth was present and represented by Philip Zarone, prosecuting attorney. Respondent was not present, or represented, did not request a continuance, and did not notify the Bureau or the hearing examiner's office that he would not attend the hearing.

¹ The designation was issued by the then Secretary, Kim Pizzingrilli.

² The matter was consolidated for hearing with *Commonwealth of Pennsylvania, Bureau of Charitable Organizations v. Animal Recovery Center*, Docket No. 0010-99-01, File No. 01-98-03793.

FINDINGS OF FACT

1. Respondent is not and has never been registered as a professional solicitor under the Solicitations Act in the Commonwealth of Pennsylvania. (OSC, Answer 1)
2. Respondent's last known office address is 1007 North Webster Avenue, Scranton, PA 18510. (OSC, Answer 2)
3. From November 2000 to February 2001, Respondent using the fictitious name, Northeast Marketing Concepts, solicited charitable contributions on behalf of Animal Care Association and received compensation from Animal Care Association. (OSC para. 5, Answer para. 5)
4. Respondent solicited contributions on behalf of Harvest Ministries using coin drop canisters which were placed in retail stores in northeast Pennsylvania as of January 2001. (N.T. 17, Exhibits C-1-3)
5. Harvest Ministries is not registered with the Department of State as a charitable organization. (N.T. 12-14)
6. The Harvest Ministries coin drop canisters contained a printed statement that Respondent was "registered" with the Department of State. (N.T. 15)
7. Respondent received the OSC filed against him and filed an answer thereto. (Exhibits C-15, C-16)

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Finding of Fact No. 1)
2. Respondent has received notice of the charges against him and has 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. 7)
3. Respondent violated Section 15(a)(1) of the Solicitations Act, 10 P.S. §162.15(a)(1), by conducting fund raising for Animal Care Association and receiving compensation, without having registered prior thereto with the Bureau as a professional solicitor. (Finding of Fact No. 3, Count 1)
4. Respondent violated Section 15(a)(2) of the Solicitations Act, 10 P.S. §162.15(a)(2), by making deceptive statements to the public on its coin drop canisters that Harvest Ministries was registered with the Department of State when he knew that it was not in fact registered. (Findings of Fact Nos. 5-6, Count 2)

DISCUSSION

The OSC filed in this matter is brought under Section 4 of the Solicitations Act, 10 P.S. §162.4, which grants the Secretary authority over charitable organizations as follows:

Powers and duties of secretary

The secretary shall have the following powers and duties to:

- (1) Provide for and regulate the registration of charitable organizations, professional fundraising counselors and professional solicitors.
- (2) Decide matters relating to the issuance, renewal, suspension or revocation of registrations.
- (3) Promulgate, adopt and enforce the rules and regulations necessary to carry out this act.
- (4) Promulgate regulations altering fees and fines established in this act sufficient to meet expenditures of the bureau.
- (5) Take appropriate action to initiate any civil or criminal proceedings necessary to enforce this act, in accordance with the act of October 15, 1980 (P.L. 950, No. 164), known as the Commonwealth Attorneys Act.
- (6) Conduct hearings and make adjudications.
- (7) Keep a record showing the names and addresses of all registered charitable organizations, professional fundraising counsel and professional solicitors.
- (8) Submit annually, on or before September 30, to the Governor, to the State Government Committees of the House of Representatives and Senate, as well as to interested parties, a report on the number of registered charities, the number of charities ordered to cease and desist solicitation, the number of charities contracting with professional solicitors and the compensation of professional solicitors for each solicitation campaign in relation to the funds raised and administrative costs.

(9) Delegate to a division director of his office such powers and duties under this act as he may deem appropriate.

(10) Exercise all other authority accorded to him by this act.

Respondent was alleged to have committed two counts of violations of the Solicitations Act. Count 1 alleges that Respondent acted as a professional solicitor under the name "Northeast Marketing Concepts" to raise funds on behalf of Animal Care Association, without being registered under the Solicitations Act. Count 2 alleges that Respondent conducted charitable solicitations on behalf of Harvest Ministries using coin drop canisters which contained a label stating that Harvest Ministries was registered with the Department of State as a charitable organization when in fact it was not.

Respondent was charged with violating Section 15 (a), subsections (1) and (2) of the Solicitations Act which state:

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.

(2) Utilizing any unfair or deceptive acts or practices or engaging in any fraudulent conduct which creates the likelihood of confusion or of misunderstanding.

The Commonwealth's evidence consisted of the pleadings and the testimony of Steven L. Uhlrich, investigator in the Special Investigations Unit of the Bureau. In his answer Respondent admitted that, using the name Northeast Marking Concepts, he was compensated by Animal Care Association for fundraising efforts on behalf of Animal Care Association. Respondent also admitted that he had not registered with the Department of State prior to acting as a solicitor for Animal Care Association. (Exhibit C-16)

Section 2 of the Solicitations Act, 10 P.S. § 162.2, defines a "Professional Solicitor" as "Any person who is retained for financial or other consideration by a charitable organization to solicit in this Commonwealth charitable contributions for charitable purposes..." Section 9(a) of the Solicitations Act, 10 P.S. § 162.9(a), provides that "No person shall act as a professional solicitor before obtaining department [of State] approval of a registration statement..." Therefore, Count 1 of the OSC against Respondent Joseph Dwyer has been proven in that Respondent failed to comply with a registration requirement of the Solicitations Act in violation of 15(a)(1) of the Solicitations Act, 10 P.S. §162.15(a)(1).

With regard to Count 2, Respondent admitted that he affixed a label to the Harvest Ministries stating that Harvest Ministries was registered with the Department of State. Respondent also stated in his answer that he founded Harvest Ministries in order to benefit religious organizations. (Exhibit C-16) Inspector Uhlrich testified that the canisters were first reported to the Bureau on January 23, 2001 under the name "Harvest Ministries and Feed the Children." (N.T. 15) Therefore, the Commonwealth has established that Respondent violation Section 15(a)(2) of the Solicitations Act,

10 P.S. § 62.15(a)(2), by making a false statement which created a likelihood of confusion or misunderstanding that Harvest Ministries was registered with the Department when in fact it was not.

Under Section 17 of the Solicitations Act, the Secretary is authorized to impose penalties for the above violations of the Act. Section 17(a) states as pertinent:

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.

* * *

(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:

* * *

(3) 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.

10 P.S. §162.17(a).

Based upon the above facts and conclusions of law, Respondent violated Section 15(a) the Solicitations Act, 10 P.S. § 162.15(a), by falsely representing that Harvest ministries was registered in Pennsylvania. Therefore, Respondent is subject to the imposition of administrative fines and other penalties in accordance with Section 17 of the Solicitations Act, 10 P.S. § 162.17. Respondent filed an answer, but did not appear at the hearing to present evidence in his behalf. The record is devoid of any evidence in defense of Respondent's acts or in mitigation of a sanction. Therefore, the Secretary determines that the maximum administrative fine, \$2,000, or \$1,000 per count as alleged in the OSC, should be imposed. Accordingly, the following order shall issue.

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ORDER

AND NOW, this 11th day of July, 2002, 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 \$2,000, \$1,000 per violation of the Solicitations Act, be and hereby is, imposed upon Respondent **Joseph Dwyer, d/b/a Northeast Marketing Concepts, d/b/a Harvest Ministries**. It is further ordered that no registration shall be accepted on behalf of Respondent **Joseph Dwyer, d/b/a Northeast Marketing Concepts, d/b/a Harvest Ministries** until the fine is paid in full.

BY ORDER


C. Michael Weaver
Secretary of Commonwealth

Date of Mailing:

For the Commonwealth:
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P.O. Box 2649
Harrisburg, PA 17105-2649

Respondent:
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Scranton, PA 18510