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Dept of State

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

Commonwealth of Pennsylvania,  
Bureau of Charitable Organizations

vs.

Executive Marketing Concepts, Inc. and  
Elite Promotional Group, Inc.,  
Respondents

Docket No. 0005 -98-04  
File Nos. 04-98-01937  
04-98-01938

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations ("Bureau") and Executive Marketing Concepts, Inc. and Elite Promotional Group, Inc. ("Respondents") stipulate as follows in settlement of the above-captioned case:

JURISDICTION

1. This matter is before the Secretary of the Commonwealth ("Secretary") pursuant to the Solicitation of Funds for Charitable Purposes Act (the "Act"), Act of December 19, 1990, P.L. 1200, No. 202, as amended, 10 P.S. §§162.1-162.24.

STIPULATED FACTS

- 2. Respondents, Executive Marketing Concepts, Inc. and Elite Promotional Group, Inc. admit that the follow allegations are true:
  - a. Executive Marketing Concepts, Inc.'s last know business address is 50 Garrett Road, Upper Darby, PA 19082.
  - b. Elite Promotional Group, Inc.'s last known business address is 3 Penn

Center West, Suite 220, Pittsburgh, PA 15276.

c. At all relevant and material times, Executive Marketing Concepts, Inc. and Elite Promotional Group, Inc. were both sub-contractors for a California corporation that is a subsidiary of a Canadian-based holding company in the business of product distribution. The California corporation is in the business of selling products to designated sub-contractors, including Respondents, who administer direct sale marketing programs in the United States to resell these products.

d. Child Protection Education of America, Inc. (CPEA) is a charitable organization registered with the Bureau, certificate #28536

e. Executive Marketing Concepts, Inc. entered into a contract dated December 5, 2002 with CPEA.

f. Elite Promotional Group, Inc. entered into a contract dated March 18, 2003 with CPEA.

g. Respondents were never registered with the Bureau as professional solicitors.

h. The contracts between Respondents and CPEA were not submitted to or approved by the Bureau.

ADDITIONAL ALLEGATIONS BY COMMONWEALTH

3. The Commonwealth alleges, but Respondents deny, the following additional allegations:

a. The purpose of the December 5, 2002 contract between Executive Marketing Concepts, Inc. and CPEA was for Executive Marketing Concepts, Inc. to conduct solicitation activities on behalf of CPEA.

b. The purpose of the March 18, 2003 contract between Elite Promotional Group, Inc. and CPEA was for Elite Promotional Group, Inc. to conduct solicitation activities on behalf of CPEA.

c. Respondents solicited charitable donations in Pennsylvania on behalf of CPEA.

d. Respondents misrepresented and misled Pennsylvania residents during their solicitation campaign by representing that they were CPEA, and not professional solicitors on behalf of CPEA.

**STATEMENT BY RESPONDENT, ELITE PROMOTIONAL GROUP, INC.**

4. Elite Promotional Group, Inc. states, but the Commonwealth neither admits nor denies, that Elite Promotional Group, Inc. is no longer conducting business in the Commonwealth of Pennsylvania.

**VIOLATIONS**

5. The Commonwealth alleges that the Secretary is authorized to impose an administrative fine upon Respondents under Section 17(b)(3) of the Act, 10 P.S. §162.17(b)(3), because Respondents violated the Act as follows: 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(a), by providing services as professional solicitors for CPEA in the Commonwealth of Pennsylvania without first being approved by the Bureau as professional solicitors; 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(e), by failing to submit their contracts with CPEA to the Bureau for review and approval at least ten (10) days prior to soliciting under these contracts and performing professional solicitor services for CPEA without approved contracts on file with the Bureau; 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.10(a), by entering into a contract with CPEA at a time when Respondents were not registered as professional solicitors in

the Commonwealth of Pennsylvania; and 10 P.S. §162.15(a)(2), by and through 10 P.S. §162.9(h), by failing to clearly and conspicuously disclose to Pennsylvania donors that they were paid professional solicitors on behalf of CPEA, and were not the charity itself.

**PROPOSED ORDER**

6. Without admitting or denying any specific violation of the Act and to address concerns raised by the Commonwealth and to resolve this matter on a compromise basis, Respondents agree to not contest the issuance of the following Order in settlement of this matter:

- a. Respondents violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §§162.9(a) and (e) and §162.10(a).
- b. Respondents violated the Act at 10 P.S. §162.15(a)(2), by and through 10 P.S. §162.9(h).

**ADMINISTRATIVE FINE**

c. An ADMINISTRATIVE FINE of fifteen thousand dollars (\$15,000.00) is levied upon Respondents, jointly and severally. The full sum of fifteen thousand dollars (\$15,000.00) shall be tendered with this executed Consent Agreement and shall be paid by certified check, cashier's check, attorney's check, or U.S. Postal money order made payable to the "Commonwealth of Pennsylvania."

**FILING OF REGISTRATION DOCUMENTS**

- d. Respondents shall submit to the Bureau all documents required to register as professional solicitors and await approval by the Bureau before conducting any solicitation activities in the Commonwealth of Pennsylvania.
- e. Respondents shall submit to the Bureau all unapproved contracts with charitable organizations and for solicitation campaigns that directly or indirectly imply a

charitable appeal before conducting any solicitation activities in the Commonwealth of Pennsylvania.

f. Respondents are prohibited from providing professional solicitor services to charitable organizations soliciting contributions in Pennsylvania or for solicitation campaigns that directly or indirectly imply a charitable a charitable appeal unless and until the Bureau receives and approves all contracts and registrations submitted by Respondents.

#### ACKNOWLEDGEMENT OF NOTICE AND WAIVER OF HEARING

7. Respondents waive the filing of an Order to Show Cause in this matter. Respondents knowingly and voluntarily waive the right to an administrative hearing in this matter, and to the following rights related to that 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

8. This Consent Agreement is between the Bureau and Respondents only. It does not bind any other administrative 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

9. 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**

10. 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**

11. The parties acknowledge that other federal, state, and/or local agencies may have jurisdiction over the activities of, or representations made by, Respondents and their 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 Respondents or any officer, director, agent, employee or independent contractor of Respondents.

VERIFICATION OF FACTS AND STATEMENTS

12. Respondents verify that the facts and statements set forth in this Agreement are true and correct to the best of Respondents' knowledge, information and belief. Respondents understand that statements in this Agreement are made subject to the criminal penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

*Tracy L. McCurdy*

Tracy L. McCurdy, Esquire  
Prosecuting Attorney  
Department of State  
DATED: 05-14-04

EXECUTIVE MARKETING CONCEPTS, INC.

By: *Samuel Hines*  
Title: PRESIDENT

DATED: 05-10-04

ELITE PROMOTIONAL GROUP, INC.

By: *Jim Perso*  
Title: \_\_\_\_\_  
DATED: \_\_\_\_\_



IN THE MATTER OF  
**EXECUTIVE MARKETING CONCEPTS, INC. AND  
ELITE PROMOTIONAL GROUP, INC.**  
**FILE NOS. 03-98-01937 and 03-98-01938**  
**ORDER**

AND NOW, this 14<sup>th</sup> day of May, 2004, the terms of Paragraph 6 of the foregoing Consent Agreement are hereby adopted and incorporated as the Order of the Secretary of the Commonwealth in resolution of this matter. This Order shall take effect immediately.

BY ORDER

A handwritten signature in black ink, appearing to read "K. Rapp", written over a horizontal line.

Kenneth A. Rapp, Deputy Secretary  
for Regulatory Programs  
on behalf of the  
Secretary of the Commonwealth