

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

PROTHONOTARY
2011 JUL 11 12:21
Department of State

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

vs.

**The Gorilla Foundation,
Respondent**

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: Docket No. 0007 98-01
:
: File No. 01-98-01356
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:

COPY

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations ("Bureau") and **The Gorilla Foundation** ("Respondent") 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, Act of December 19, 1990, P.L. 1200, No. 202, *as amended* ("Act"), 10 P.S. §§162.1-162.24.
2. At all material times, Respondent solicited charitable contributions in the Commonwealth of Pennsylvania.
3. At all relevant and material times, Respondent did not hold a registration to solicit charitable contributions within the Commonwealth of Pennsylvania.

FACTUAL ALLEGATIONS

4. The Respondent admits that the following allegations are true:
 - a. Respondent's last known business address, as on file with the Department of State, is 1733 Woodside Road, Suite 330 Redwood City, CA 94061.
 - b. On or about August 3, 1998 the Bureau received evidence of charitable solicitation materials sent to a Pennsylvania Resident by Respondent.
 - c. On or about August 5, 1998 the Bureau sent Respondent a letter via certified mail, Article Number P482 103 280, informing it of its registration requirements.
 - d. The Bureau never received Postal Service Form 3811 ("green card") back, however the envelope was never returned to the Bureau.
 - e. Because the Bureau did not receive a response to the August 5, 1998 letter, on or about November 23, 1998, it sent a second letter via certified mail, Article number Z233 138 124, informing Respondent of its registration requirements and requesting a response within seven days or a Cease and Desist Order would be issued.
 - f. Because Respondent did not respond to the Bureau's correspondence, on or about January 15, 1999 the Secretary issued a Cease and Desist Order against Respondent directing it to cease and desist soliciting in Pennsylvania until such time as it became duly registered or provided the Bureau evidence of exemption or exclusion from the requirement of the Solicitation Act.

g. On or about May 10, 1999 Respondent received the Cease and Desist Order according to the stamp on the green card.

h. On or about January 30, 2001 the Bureau served a subpoena on Respondent via certified mail, Article Number 7000 0600 0024 5115 5066.

i. On or about February 9, 2001 Respondent received the subpoena according to the stamp on the green card.

j. On or about February 28, 2001 Respondent responded to the subpoena. In response to the subpoena Respondent represented that it began soliciting contribution from residents of Pennsylvania in 1985. Respondent stated that the amount of money raised from Pennsylvania residents totaled \$118,842.59 through February 21, 2001.

AGREED VIOLATIONS

5. Respondent agrees that by engaging in the foregoing activities it violated the Act at 10 P.S. §162.15(a)(1) multiple times by soliciting charitable contributions without registering with the Bureau and soliciting charitable contributions after a Cease and Desist Order had been issued.

PROPOSED ORDER

6. The participants consent to issuance of the following Order in settlement of this matter:

a. Respondent violated the Act at 10 P.S. §162.15(a)(1) multiple times by soliciting charitable contributions without registering with the Bureau and soliciting charitable contributions after a Cease and Desist Order had been issued.

b. Respondent shall submit a completed registration statement along with any required supporting documents to the Bureau within thirty (30) days of the date of the Secretary's Order adopting this Consent Agreement. Upon receipt of the administrative fine and completed registration statements, the Bureau will approved Respondent's registration to solicit charitable contribution in Pennsylvania.

c. Respondent shall not commence solicitation until it has an approved registration statement on file with the Bureau.

ADMINISTRATIVE FINE

d. An **ADMINISTRATIVE FINE** of ~~five~~ ^{THREE} thousand dollars (~~\$5,000~~) is levied upon Respondent. Respondent shall tender the full sum of ~~five~~ ^{THREE} thousand dollars (~~\$5,000~~) with this executed Consent Agreement which 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."**

Handwritten notes:
AP/IC 4/30/01 cc 4/12/01 ASK 4/30/01
THREE \$3,000 cc 4/12/01
THREE cc 4/12/01
AP/IC 4/30/01 cc 4/12/01

VIOLATION OF THE SECRETARY'S ORDER

e. Notification of a violation of the terms or conditions of this Consent Agreement and Order shall result in the imposition of additional penalties as follows:

(1) The prosecuting attorney for the Bureau shall file with the Secretary a Petition which indicates that Respondent has violated the terms or conditions of this Consent Agreement and Order.

(2) Upon a probable cause determination that

Respondent has violated the terms and conditions of this Consent Agreement and Order, the Secretary, or her designee, shall, without holding a formal hearing, issue a Preliminary Order, effective thirty (30) days after its mailing, which imposes a sixty (60) day period of suspension on Respondent's registration to solicit charitable contributions.

(3) Respondent shall be notified of the Preliminary Order within three (3) days of its issuance by certified mail and first class mail postage prepaid, sent to the last registered address on file with the Bureau, together with a copy to Respondent's attorneys by facsimile or first class mail.

(4) Within fifteen (15) days of mailing of the notification of the Preliminary Order, Respondent may answer the Commonwealth's petition, request that a formal hearing be convened concerning Respondent's alleged violation of this Consent Agreement, and move that the period of suspension be stayed until the Secretary or her designee issues a final order. Respondent shall file all answers and subsequent filings with the Prothonotary for the Department of State, 124 Pine Street, Suite 200, Harrisburg, PA 17101. Respondent shall serve the prosecuting attorney for the Bureau with a copy of the answer and all subsequent filings in this matter.

(5) If the Respondent moves for a stay of the period of suspension, Respondent shall set forth properly verified facts and/or state concisely the matters of law which the Respondent believes justify a stay of the period of suspension. The Secretary or her designee shall issue a ruling on the Respondent's motion within fifteen (15) days from the date of the mailing of the notification of the Preliminary Order. If the Secretary or her designee makes no ruling on the Respondent's motion within the fifteen (15) days from mailing of the notification of the Preliminary Order, the Respondent's motion shall be deemed denied.

(6) If a request for a formal hearing is received from Respondent, a formal hearing shall be convened within forty-five (45) days from the date of filing of Respondent's request for a formal hearing.

(7) The facts and averments in this Consent Agreement and Order shall be deemed admitted and uncontested at this hearing.

(8) If the Secretary or her designee, after such hearing, makes a determination adverse to Respondent, the Secretary or her designee will issue a Final Order imposing any disciplinary measures she deems appropriate. The Secretary or her designee may, but is not required to, take into account any period of active

suspension already served by the Respondent pursuant to the Preliminary Order.

(9) If a request for a formal hearing is not received from Respondent within the prescribed fifteen (15) day period, the Preliminary Order shall become a Final Order.

(10) Nothing in this 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; provided, however, the Bureau agrees to not reopen its investigation with regard to any Registration Statements on file with the Secretary as of the date of this Consent Agreement and Order unless the Bureau becomes aware of material facts or omissions of material facts which have previously not been disclosed to it and would give it probable cause that other violations existed during such period of time which it failed to uncover in its previous investigation.

f. 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 any ordered discipline.

ACKNOWLEDGEMENT OF NOTICE AND WAIVER OF HEARING

7. Respondent waives the filing and service 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 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 Respondent 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, 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.

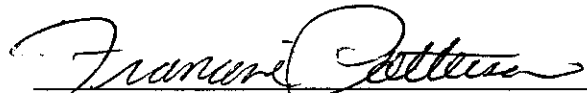
VERIFICATION OF FACTS AND STATEMENTS

12. 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.



Andrew B. Kramer
Prosecuting Attorney
Bureau of Charitable Organizations

DATED: 4/30/01



The Gorilla Foundation,
Respondent

DATED: 4/23/01




**IN THE MATTER OF THE SOLICITATION OF
FUNDS FOR CHARITABLE PURPOSES BY
THE GORILLA FOUNDATION
FILE NO. 01-98-01356**

ORDER

AND NOW, to wit, on this 5th day of June 2001, 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



Kim Pizzigrilli
Secretary of the Commonwealth