

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

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Department of State

Commonwealth of Pennsylvania,
Bureau of Charitable Organizations

vs.

Municipal Marketing Services, Inc.,
Respondent

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Docket No. 000 1 -98-03
File No. 2003-98-05108

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations (“Bureau”) and
Municipal Marketing Services, Inc., (“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 (“the Act”), Act of December 19, 1990,
P.L. 1200, No. 202, *as amended*, 10 P.S. §§162.1-162.24.

2. Respondent was registered as a professional fundraising counsel in the
Commonwealth of Pennsylvania since at least 1993 to May 30, 2002, registration number 10188.

3. At all relevant and material times to the Stipulated Facts contained herein, the
Respondent did not hold a registration to provide professional fundraising counsel services
within the Commonwealth of Pennsylvania.

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BUREAU OF CHARITABLE ORGANIZATIONS
DEPARTMENT OF STATE

STIPULATED FACTS

4. Respondent's last known business address on file with the Bureau is 1038 Perry Highway, Pittsburgh, PA 15237.

5. Respondent's registration as a professional fundraising counsel expired on May 30, 2002, and was not renewed thereafter.

6. On April 1, 2002, the Bureau sent a renewal packet to Respondent, which contained, among other things, a registration form.

7. On June 27, 2002, the Bureau sent to Respondent a delinquent letter notifying it of the requirement to renew its registration as a professional fundraising counsel or to provide written notification stating the reason(s) for not doing so.

8. The Bureau has received evidence that Respondent has been providing professional fundraising counsel services for at least nine (9) charitable organizations without being properly registered.

9. Respondent provided professional fundraising counsel services for at least nine (9) charitable organizations without submitting the contracts to the Bureau at least ten (10) working days prior to the performance of any service as required by 10 P.S. § 162.8(d).

10. Respondent printed the disclosure statement indicated in Section 13(c) on solicitations for at least three (3) charitable organizations that are not registered with the Bureau; and therefore, are not permitted to use the disclosure statement.

11. On March 3, 2003, the Bureau sent an Investigative Subpoena to Respondent.

12. In response to the subpoena, Respondent provided contracts which established that Respondent performed professional fundraising counsel services for at least three (3)

charitable organizations soliciting in the Commonwealth of Pennsylvania after its registration had expired on May 30, 2002, and absent contracts approved by the Bureau.

13. On April 16, 2003, the Bureau received from Respondent sixty-two (62) contracts, which were submitted to the Bureau for approval, all of which were rejected because Respondent was not properly registered as a professional fundraising counsel and at least three (3) contracts previously unapproved remained outstanding.

14. Despite Respondent's lack of registration as a professional fundraising counsel and failure to submit the sixty-five (65) contracts at least ten working days prior to the performance of any service, Respondent has provided and continues to provide professional fundraising counsel services to at least nine (9) organizations, in violation of 10 P.S. §162.8(a) and 10 P.S. §162.8(d) respectively.

AGREED VIOLATIONS

15. The parties agree that by engaging in the foregoing activities, Respondent committed multiple violations of the Act at 10 P.S. §162.15(a)(1), by and through violations of 10 P.S. §162.8(a), in that Respondent acted as a professional fundraising counsel for at least nine (9) charitable organizations which are soliciting contributions in the Commonwealth of Pennsylvania after Respondent's registration had expired.

16. The parties agree that by engaging in the foregoing activities, Respondent committed multiple violations of the Act at 10 P.S. §162.15(a)(1), by and through violations of 10 P.S. §162.8(d), in that Respondent failed to submit sixty-five (65) contracts with charitable organizations to the Bureau for review and approval at least ten (10) working days prior to performing services under those contracts, and performed professional fundraising counsel services for at least nine (9) charitable organizations without approved contracts.

17. The parties agree that by engaging in the foregoing activities, Respondent committed multiple violations of the Act at 10 P.S. §162.15(a)(1), by and through violations of 10 P.S. §162.10(a), in that Respondent contracted with at least sixty-five (65) charitable organizations which are soliciting contributions in the Commonwealth of Pennsylvania at a time when the Respondent was not properly registered as a professional fundraising counsel in the Commonwealth of Pennsylvania.

18. The parties agree that by engaging in the foregoing activities, Respondent committed multiple violations of the Act at 10 P.S. §162.15(a)(1), by and through violations of 10 P.S. §162.13(c), in that Respondent printed the disclosure notice on solicitations for at least three (3) charitable organizations that are not permitted to print the disclosure notice because they are not registered with the Bureau.

PROPOSED ORDER

19. To address concerns raised by the Commonwealth and to resolve this matter on a compromise basis, the Commonwealth and the Respondent agree to the issuance of the following Order in settlement of this matter:

a. Based upon the above-referenced facts, the Secretary finds that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through violations of 10 P.S. §162.8(a), by acting as professional fundraising counsel for at least nine (9) charitable organizations, which are soliciting contributions in the Commonwealth of Pennsylvania after Respondent's registration had expired.

b. Based upon the above-referenced facts, the Secretary finds that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through violations of 10 P.S. §162.8(d), by failing to submit sixty-five (65) contracts with charitable

organizations to the Bureau for review and approval at least ten (10) working days prior to performing services under those contracts as a professional fundraising counsel and performing professional fundraising counsel services for at least nine (9) charitable organizations without approved contracts.

c. Based upon the above-referenced facts, the Secretary finds that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through violations of 10 P.S. §162.10(a), by contracting with at least sixty-five (65) charitable organizations which are soliciting contributions in the Commonwealth of Pennsylvania at a time when the Respondent was not properly registered as a professional fundraising counsel in the Commonwealth of Pennsylvania.

d. Based upon the above-referenced facts, the Secretary finds that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through violations of 10 P.S. §162.13(c), by printing the disclosure notice on solicitations for at least three (3) charitable organizations that are not permitted to print the disclosure notice because they are not registered with the Bureau.

e. An **ADMINISTRATIVE FINE** of nine thousand five hundred dollars (\$9,500.00) is levied upon Respondent. Respondent shall tender the full sum of nine thousand five hundred dollars (\$9,500.00) 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."**

f. Respondent shall submit to the Bureau all documents required to renew its registration within fifteen (15) days of the date of the Secretary's Order adopting this Consent Agreement. Respondent is prohibited from providing professional fundraising

counsel services until such time as the Respondent becomes properly registered with the Bureau.

g. Respondent shall submit with this signed Consent Agreement any contracts it has with charitable organizations that were previously rejected by the Bureau and any current contracts that have not yet been submitted to the Bureau. If the contracts were previously rejected, Respondent shall submit all documents requested by the Bureau, including but not limited to addendums.

h. Respondent's failure to submit any contracts (including requested addendums) it has with charitable organizations for which it performs services as a professional fundraising counsel in the Commonwealth of Pennsylvania shall be deemed a violation of this Consent Agreement and Order. Each contract Respondent fails to submit shall be a separate violation.

i. Respondent shall not perform services as a professional fundraising counsel pursuant to any contract it has with a charitable organization unless and until the contract has been approved by the Bureau.

j. Respondent shall submit the information requested in the Bureau's March 18, 2003 letter.

k. Respondent shall remove the disclosure notice printed on mail solicitations sent on behalf of charitable organizations that are not registered with the Bureau.

VIOLATION OF THE SECRETARY'S ORDER

1. Notification of a violation of the terms and 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 and 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 his 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 act as a professional solicitor.

(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 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 the terms of this Agreement, and move that the period of suspension be stayed until the Secretary or his designee issues a final order. Respondent shall file all answers and subsequent filings with the Prothonotary for the Department of State, 2601 North Third Street, Harrisburg, PA 17110. 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 matter

of law which the Respondent believes justifies a stay of the period of suspension. The Secretary or his 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 his 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 his designee, after such hearing makes a determination adverse to Respondent, the Secretary or his designee will issue a Final Order imposing any disciplinary measures he deems appropriate. The Secretary or his 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 re-open its investigation with regard to any Registration Statements or Contracts on file with the Secretary as of the date of this Consent Agreement and Order unless the Bureau becomes aware of material facts or omission 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.

m. This case shall be deemed settled and discontinued upon the Secretary issuing an Order adopting this Consent Agreement.

ACKNOWLEDGEMENT OF NOTICE AND WAIVER OF HEARING

20. Respondent waives the filing 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

21. 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

22. 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

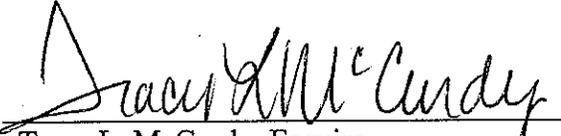
23. This Agreement contains the whole agreement between the parties; provided, however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever, concerning this Agreement.

AGREEMENT DOES NOT PREVENT REFERRAL TO OTHER AGENCIES

24. 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

25. 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.


Tracy L. McCurdy, Esquire
Prosecuting Attorney
Department of State

DATED: 7-23-03


for Municipal Marketing Services, Inc.,
Respondent

DATED: 7/10/03



IN THE MATTER OF
MUNICIPAL MARKETING SERVICES, INC.
FILE NO. 2003-98-05108

ORDER

AND NOW, this 1st day of August, 2003, the terms of Paragraph 19 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

Pedro A. Cortés

Pedro A. Cortés
Secretary of the Commonwealth