

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

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DEPARTMENT OF STATE
MAY 15 2002

Commonwealth of Pennsylvania,
Bureau of Charitable Organizations

vs.

O'Brien McConnell & Pearson, Inc.,
Respondent

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: Docket No. 1582 -98-02
: File No. 02-98-05240
:
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:

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations ("Bureau") and O'Brien McConnell & Pearson, 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 from February 13, 1997 through February 14, 1999 and from March 23, 1999 through March 23, 2000.

STIPULATED FACTS

3. Respondent's last known business address, as on file with the Department of State, is 1726 M Street, NW, Suite 300, Washington, DC 20036.

4. Respondent's registration as a professional fundraising counsel expired on March 23, 2000 and was not renewed thereafter.

5. After receiving evidence that the Respondent had been acting as a professional fundraising counsel for charitable organizations soliciting in Pennsylvania without being properly registered and without having approved contracts, the Secretary of the Commonwealth issued a Cease and Desist Order against the Respondent on August 21, 2002.

6. On August 21, 2002, the Bureau served an Investigative Subpoena on the Respondent.

7. In response to the subpoena, Respondent provided documentation 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 March 23, 2000.

8. The documentation provided by Respondent in response to the subpoena also established that Respondent performed services for at least eleven (11) charitable organizations before their contracts had been submitted to the Bureau for review and approval.

9. Additionally, Respondent provided documentation which demonstrated that the Respondent contracted with at least three (3) charitable organizations mailing solicitations into Pennsylvania at a time when the Respondent was not properly registered as a professional fundraising counsel in the Commonwealth of Pennsylvania.

AGREED VIOLATIONS

10. 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 professional fundraising counsel for at least three (3) charitable organizations soliciting contributions in the Commonwealth of Pennsylvania after its registration had expired.

11. 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 eleven (11) contracts with charitable organizations to the Bureau for review and approval at least ten (10) days prior to performing services under those contracts and performed professional fundraising counsel services for those eleven (11) charitable organizations without approved contracts.

12. 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 three (3) charitable organizations mailing solicitations into Pennsylvania at a time when the Respondent was not properly registered as a professional fundraising counsel in the Commonwealth of Pennsylvania.

PROPOSED ORDER

13. 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 a violation of 10 P.S. §162.8(a), by acting as professional fundraising counsel for at least three (3) charitable organizations soliciting contributions in the Commonwealth of Pennsylvania after its 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 a violation of 10 P.S. §162.8(d), by failing to submit eleven (11) contracts with charitable organizations to the Bureau for review and approval at least ten (10) days prior to performing services under those contracts and performing professional fundraising counsel services for those eleven (11) 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 a violation of 10 P.S. §162.10(a), by contracting with at least three (3) charitable organizations mailing solicitations into Pennsylvania at a time when the Respondent was not properly registered as a professional fundraising counsel in the Commonwealth of Pennsylvania.

d. An **ADMINISTRATIVE FINE** of nine thousand dollars (\$9,000.00) is levied upon Respondent. Respondent shall tender the full sum of nine thousand dollars (\$9,000.00) 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."**

e. The Bureau shall approve Respondent's most recently submitted registration statement upon receiving the full amount of the administrative fine and upon payment of any necessary registration fees.

f. Respondent shall submit with this signed Consent Agreement any contracts it has with charitable organizations that were not previously submitted to the Bureau in response to the August 21, 2002 Investigative Subpoena.

g. Respondent's failure to submit all contracts 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.

VIOLATION OF THE SECRETARY'S ORDER

h. 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, 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 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.

i. 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

14. 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

15. 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

16. 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

17. 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.

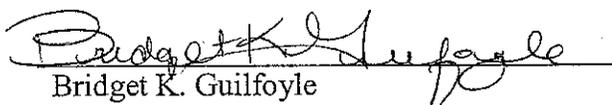
AGREEMENT DOES NOT PREVENT REFERRAL TO OTHER AGENCIES

18. 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

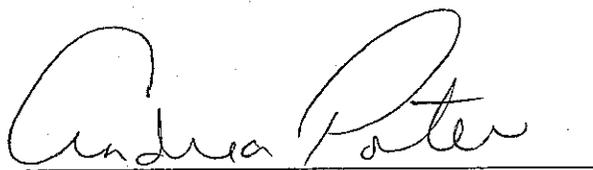
referring any information or data produced as a result of this matter to any federal, state, or local agency or governmental unit having jurisdiction over the activities of Respondent or any officer, director, agent, employee or independent contractor of the Respondent.

VERIFICATION OF FACTS AND STATEMENTS

19. 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.


Bridget K. Guilfoyle
Prosecuting Attorney
Bureau of Charitable Organizations

DATED: 11/12/02


O'Brien McConnell & Pearson, Inc.
Respondent

DATED:



**IN THE MATTER OF THE SOLICITATION OF
FUNDS FOR CHARITABLE PURPOSES BY
O'BRIEN MCCONNELL & PEARSON, INC.
FILE NO. 02-98-05240**

ORDER

AND NOW, this 18th day of NOVEMBER 2002, the terms of Paragraph 13 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 "C. Michael Weaver".

C. Michael Weaver
Secretary of the Commonwealth