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

Department of State

Commonwealth of Pennsylvania,
Bureau of Charitable Organizations

v.

Rise and Shine, Inc.,
Respondent

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Docket no. 0002-98-02
DOS File no. 01-98-07017

ADJUDICATION AND ORDER

Pedro A. Cortés
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 May 9, 2002, alleging that Rise and Shine, Inc. (Respondent), a domestic nonprofit corporation, is subject to administrative sanctions under the Solicitation of Funds for Charitable Purposes Act (Solicitation Act), the Act of December 19, 1990, P.L. 1200, No. 202, *as amended*, 10 P.S. § 162.1 *et seq.* Respondent filed an answer to the OSC June 10, 2002. On November 15, 2002, the parties filed stipulations addressing the factual averments of the OSC and requesting a hearing for the purpose of allowing Respondent to present evidence in mitigation. A formal administrative hearing was held in Harrisburg March 11, 2003, before Frank C. Kahoe, Jr., Esquire, hearing examiner for the Department of State. Bridget K. Guilfoyle, Esquire represented the Commonwealth as prosecuting attorney. Respondent was represented at the hearing by Charles W. Proctor, III, Esquire and Marnie Burk, Esquire. The record was closed with the filing of the notes of testimony March 28, 2003.

FINDINGS OF FACT

1. Respondent was incorporated as a domestic nonprofit corporation under the Nonprofit Corporation Law of 1988 at 15 Pa.C.S. § 5507 on July 27, 1998. (Stipulation)
2. Respondent's current registered business address on file with the Department of State is 106 Jumper Lane, West Chester, PA 19282. (Stipulation)
3. Respondent's registered business address until May 7, 2001, was 1026 Kennett Way, West Chester, PA 19380. (Stipulation)
4. William Bresnahan serves as the Chief Executive Officer, Secretary, and Treasurer of Respondent. (Stipulation)
5. Since July 27, 1998, Respondent has solicited charitable contributions from organizations and individuals in the Commonwealth of Pennsylvania. (Stipulation)
6. According to Respondent's registration statement for the fiscal year ending December 31, 1998, Respondent first received gross charitable contributions totaling more than \$25,000.00 on or about November 1, 1998. (Stipulation)
7. In 1999, Respondent maintained a checking account at National Penn Bank in Boyertown, PA, account number 816-831-8. (Stipulation)
8. RVI, Inc. ("RVI") was incorporated as a for-profit domestic corporation, business-stock, under the Business Corporation Law of 1988 at 15 Pa.C.S. § 1306 on February 7, 1998. (Stipulation)
9. The address of RVI on file with the Department of State is 1026 Kennett Way, West Chester, PA 19380. (Stipulation)

10. Due to confusion surrounding RVI's actual business name, RVI has also done business under the names "RVI II, Inc." and "RVI II." (Stipulation)

11. The mission of RVI, as stated on its official website, www.rvi2.com, and in various advertising and marketing pamphlets, is to manufacture and distribute new and innovative, high-quality products into the advertising specialty, licensed product, and non-licensed product markets both domestically and internationally. (Stipulation)

12. William Bresnahan has represented himself and held himself out as the "President" and "CEO" of RVI. (Stipulation)

13. The Chief Executive Officer of RVI on file with the Department of State is Christopher Bresnahan. (Stipulation)

14. Christopher Bresnahan is the son of William Bresnahan. (Stipulation)

15. In 1999, RVI maintained a checking account at National Penn Bank in Boyertown, PA, account number 816-836-9. (Stipulation)

**FAILURE TO APPLY
CHARITABLE CONTRIBUTIONS
IN A MANNER CONSISTENT WITH
RESPONDENT'S CHARITABLE PURPOSE**

16. On or about September 20, 2000, the Commonwealth issued an Investigative Subpoena directing Respondent to provide certain information to the Bureau of Charitable Organizations ("Bureau"). (Stipulation)

17. The Investigative Subpoena required Respondent to provide to the Bureau a copy of its IRS Form 990 Tax Return ("Form 990") for the fiscal year 1999. (Stipulation)

18. Form 990, Schedule A, Part III, Line 2 asks the following:

[H]as the organization, either directly or indirectly, engaged in any of the following acts with any of its trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any

such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary:

- a. Sale, exchange, or leasing of property?
- b. Lending of money or other extension of credit?
- c. Furnishing of goods, services, or facilities?
- d. Payment of compensation (or payment or reimbursement of expenses if more than \$1000)?
- e. Transfer of any part of its income or assets?

(Stipulation)

19. RVI is a related taxable organization with which Respondent is affiliated for purposes of Form 990, Schedule A, Part III, Line 2. (Stipulation)

20. Respondent answered “no” to **Line 2.a**, indicating that there were no sales, exchanges, or leases of property between Respondent and related taxable organizations in 1999.

(Stipulation)

21. Respondent answered “no” to **Line 2.b**, indicating that there was no lending of money or other extension of credit between Respondent and related taxable organizations in 1999. (Stipulation)

22. Respondent answered “no” to **Line 2.c**, indicating that there was no furnishing of goods, services, or facilities between Respondent and related taxable organizations in 1999.

(Stipulation)

23. Respondent answered “no” to **Line 2.d**, but indicated that the only compensation or reimbursement of expenses exchanged between Respondent and related taxable organizations in 1999 was the payment of salaries totaling \$67,827, as reported on Form 990, Part IV.

(Stipulation)

24. Respondent answered “no” to Line 2.e, indicating that there was no transfer of any income or assets between Respondent and related taxable organizations in 1999. (Stipulation)

25. According to Respondent’s 1999 Form 990, Part IV, Line 58, its 1999 Financial Statements, and its bank records, however, Respondent made “related company advances” and “loans” to RVI in 1999 totaling \$98,479.00, as outlined below:

Transaction #	Date of transfer from Respondent’s account to RVI’s account	Amount of transfer	Balance in RVI’s account before the transfer	Balance in RVI’s account after the transfer
1	Jan. 12, 1999	\$6,112	- \$6,051.90	\$60.10
2	Jan. 13, 1999	\$530	- \$499.90	\$30.10
3	Feb. 12, 1999	\$2,500	\$1,581.97	\$4,081.97
4	March 3, 1999	\$10,000	- \$6,047.30	\$3,952.70
5	March 9, 1999	\$6,000	- \$3,696.79	\$2,303.21
6	March 11, 1999	\$5,000	- \$1,064.31	\$3,935.69
7	March 15, 1999	\$6,000	\$2,293.07	\$8,293.07
8	March 22, 1999	\$5,000	- \$2,358.18	\$2,641.82
9	March 25, 1999	\$5,000	- \$3,681.09	\$1,318.91
10	March 29, 1999	\$15,500	\$1,228.91	\$16,728.91
11	March 31, 1999	\$6,000	\$10,177.66	\$16,177.66
12	April 29, 1999	\$1,300	- \$1,212.38	\$87.62
13	April 30, 1999	\$1,000	- \$505.98	\$494.02
14	May 11, 1999	\$1,500	- \$1,135.96	\$364.04
15	May 12, 1999	\$2,500	- \$259.56	\$2,240.44

Transaction #	Date of transfer from Respondent's account to RVI's account	Amount of transfer	Balance in RVI's account before the transfer	Balance in RVI's account after the transfer
16	May 17, 1999	\$500	- \$367.22	\$132.78
17	May 18, 1999	\$500	- \$397.22	\$102.78
18	May 19, 1999	\$650	- \$460.82	\$189.18
19	May 21, 1999	\$2,600	- \$2,340.82	\$259.18
20	June 3, 1999	\$5,000	- \$4,017.84	\$982.16
21	June 21, 1999	\$1,000	\$193.11	\$1,193.11
22	July 6, 1999	\$2,500	- \$1,752.40	\$747.60
23	July 8, 1999	\$5,000	\$717.60	\$5717.60
24	Oct. 22, 1999	\$300	- \$242.26	\$57.74
25	Oct. 26, 1999	\$1,700	\$27.74	\$1,727.74
26	Nov. 4, 1999	\$1,500	- \$1,151.81	\$348.19
27	Nov. 26, 1999	\$1,749.63	- \$1,719.63	\$30.00
28	Dec. 20, 1999	\$400	- \$879.20	- \$479.20
29	Dec. 21, 1999	\$1,200	- \$1,049.20	\$150.80

(Stipulation)

26. Each of these twenty-nine transfers constitutes a loan or advance from Respondent to RVI, a related taxable organization. (Stipulation)

27. Respondent's charitable purpose, as set forth on its registration statement for the fiscal year ending December 31, 1998, is to assist needy individuals in the United States and

around the world by providing food, clothing, blankets, medical supplies and equipment, religious materials, and other items. (Stipulation)

28. The mission of RVI, as stated on its official website and in its marketing and advertising materials, is to manufacture and distribute new and innovative, high-quality products into the advertising specialty, licensed product, and non-licensed product markets both domestically and internationally. (Stipulation)

29. Respondent's provision of loans and/or advances to RVI did not advance Respondent's charitable purpose. (Stipulation)

30. On July 29, 1999, Respondent prepared Statement No. WT055, charging customer World Trade & Export Corporation \$5,875.00 for one "Choice Id." (Stipulation)

31. Statement No. WT055 includes a notation that the goods described on the statement were "pd Ck#1997." (Stipulation)

32. Check #1997 from World Trade & Export Corporation, dated July 29, 1999 for \$5,875.00, is made out to "CB Investments." (Stipulation)

33. The reverse side of check #1997 from World Trade & Export Corporation indicates that the check was "for deposit only" in the account of "C.B. Investments Corporation," but was transferred to account #8168369 belonging to RVI. (Stipulation)

34. Respondent's transfer of funds to RVI, a related for-profit organization whose stated mission is to manufacture and distribute new and innovative, high-quality products, did not advance Respondent's charitable purpose. (Stipulation)

**FAILURE TO REPORT TRANSACTIONS
WITH RELATED FOR-PROFIT ORGANIZATIONS
ON IRS FORM 990 TAX RETURN**

35. The Investigative Subpoena issued by the Bureau on or about September 20, 2000, directed Respondent to provide to the Bureau a copy of its Form 990 for 1999. (Stipulation)

36. Form 990, Schedule A, Part III, Line 2.b asks if Respondent has engaged in the “[l]ending of money or other extension of credit” with “any trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary.” (Stipulation)

37. Form 990, Schedule A, Part III, Line 2 states “[if] the answer to any question is ‘Yes,’ attach a detailed statement explaining the transactions.” (Stipulation)

38. Respondent answered “no” to Line 2.b, and therefore did not provide a detailed statement of any transactions involving the lending of money or other extension of credit to a related taxable organization. (Stipulation)

39. Respondent provided advances and/or loans to RVI, a related taxable organization, on twenty-nine separate occasions in 1999, as outlined in Finding of Fact no. 25. (Stipulation)

40. On or about August 12, 1999, Respondent received a donation of 18,000 pairs of shorts, valued at \$270,000.00, from the Pennsylvania United Medical Association. (Stipulation)

41. On or about August 12, 1999, Respondent donated the 18,000 pairs of shorts to Visuals Unlimited, Inc. (Stipulation)

42. Visuals Unlimited, Inc. was incorporated as a for-profit domestic corporation, business-stock, under the Business Corporation Law of 1988 at 15 Pa.C.S. § 1306 on January 11, 1999. (Stipulation)

43. The address of Visuals Unlimited, Inc., as on file with the Department of State, is 1209 Ward Avenue, Suite 100, West Chester, PA 19380. (Stipulation)

44. At all relevant and material times, William Bresnahan was an officer of Visuals Unlimited, Inc. (Stipulation)

45. Visuals Unlimited, Inc. is a related taxable organization for purposes of IRS Form 990, Schedule A, Part III, Line 2. (Stipulation)

46. Respondent did not report its furnishing of goods or assets to Visuals Unlimited, Inc. on its 1999 Form 990, Schedule A, Part III, Line 2. (Stipulation)

47. CB Investments Group, Inc. was incorporated as a for-profit domestic corporation, business-stock, under the Business Corporation Law of 1988 at 15 Pa.C.S. § 1306 on April 8, 1998. (Stipulation)

48. The address of CB Investments Group, Inc. on file with the Department of State is 1026 Kennett Way, West Chester, PA 19380. (Stipulation)

49. At all relevant and material times, the Chief Executive Officer and Treasurer of CB Investments Group, Inc. was Christopher Bresnahan. (Stipulation)

50. At all relevant and material times, the Secretary of CB Investments Group, Inc. was William Bresnahan. (Stipulation)

51. CB Investments Group, Inc. is a related taxable organization for purposes of IRS Form 990, Schedule A, Part III, Line 2. (Stipulation)

52. Respondent transferred income or assets to CB Investments Group, Inc. on thirteen separate occasions in 1999, as outlined below in paragraph 55. (Stipulation)

53. Respondent did not report its transfer of income or assets to CB Investments Group, Inc. on its 1999 Form 990, Schedule A, Part III, Line 2. (Stipulation)

**PAYMENT TO CB INVESTMENTS
FOR SALES OF GOODS DONATED TO RESPONDENT**

54. In 1999, CB Investments Group, Inc. maintained a checking account at National Penn Bank in Boyertown, PA, account number 8064-503-8.

55. In the following transactions, Respondent (a) sold goods to World Trade & Export Corporation, (b) directed that World Trade & Export Corporation make the check out to CB Investments Group, Inc., and (c) deposited the checks received into the checking account of CB Investments Group, Inc., rather than the checking account of Respondent:

Transaction #	Date	Statement Number	Description of Goods	Payment Amount
1	July 9, 1999	WT048	J & J products	\$6,000
2	July 13, 1999	WT049	Choice Ld	\$5,375
3	July 13, 1999	WT050	10 Lds bottled spring water	\$13,000
4	July 29, 1999	WT055	Choice Ld	\$5,875
5	Aug. 9, 1999	WT056	Choice Ld	\$5,875
6	Aug. 13, 1999	WT057	Choice Ld	\$5,875
7	Aug. 20, 1999	WT058	Choice Ld	\$5,875
8	Aug. 23, 1999	WT059	2 Choice Lds	\$11,750
9	Aug. 23, 1999	WT060	Banana Box Food Ld	\$3,500
10	Aug. 31, 1999	WT061	Choice Ld	\$5,875
11	Aug. 31, 1999	WT062	NuSkin Product Ld	\$7,000
12	Sept. 2, 1999	WT063	NuSkin Product Ld	\$7,000
13	Sept. 7, 1999	WT064	Choice Ld	\$5,875

(Stipulation)

**USE OF DECEPTIVE ACTS
IN SOLICITING CONTRIBUTIONS**

56. The Newport Assembly of God Church operates Bread of Life Outreach.
(Stipulation)

57. Bread of Life Outreach acts as a “broker” for corporations who wish to donate goods produced or obtained by that corporation; corporations donate goods to Bread of Life Outreach, and Bread of Life Outreach then donates those goods to a non-profit organization for distribution of the goods to the needy. (Stipulation)

58. Bread of Life Outreach will only donate goods to non-profit organizations that agree not to sell the goods. (Stipulation)

59. Early in 1999, Bread of Life Outreach began donating goods to Respondent for distribution to the needy. (Stipulation)

60. In February 1999, Bread of Life Outreach received information that goods that had been donated to it, and had then been donated to another charitable organization for distribution to the needy, had been sold. (Stipulation)

61. On or about February 15, 1999, representatives of Bread of Life Outreach met with William Bresnahan and asked if he knew anything about the sale of donated goods.
(Stipulation)

62. Mr. Bresnahan stated that he was unaware of the sale of donated goods, and that he personally would never sell donated goods. (Stipulation)

63. In reliance on Mr. Bresnahan’s assurances that he would never sell donated goods, Bread of Life Outreach continued to donate goods to Respondent for distribution to the needy. (Stipulation)

64. In each of the following transactions, Respondent sold goods that had been donated to it by Bread of Life Outreach:

Transaction #	Location of Goods Donated by Bread of Life to Respondent	Date of Sale of Goods from Respondent to World Trade and Export	Location of Goods Sold to World Trade and Export by Respondent	Date Goods Were Picked Up by World Trade and Export	Name Identified on Bill of Lading as the Party for Whom the Goods Were Being Picked Up
1	Choice – New England	3/22/99	Choice – New England	3/23/99	Bread of Life
2	Choice – Carolina	3/30/99	Choice – Carolina	3/30/99	Bread of Life
3	Choice – Carolina	4/5/99	Choice – Carolina	4/5/99	Bread of Life
4	Choice – Carolina	5/24/99	Choice – Carolina	5/24/99	Bread of Life
5	Choice – Carolina	6/8/99	Choice – Carolina	6/17/99	Bread of Life

(Stipulation)

65. In each of the foregoing five transactions, Bread of Life donated goods to Respondent because Respondent assured Bread of Life Outreach that the donated goods would not be sold. (Stipulation)

66. As a result of Respondent's sale of goods that had been donated to it by Bread of Life Outreach, Bread of Life Outreach's reputation among corporate donors has been damaged, adversely affecting its receipt of donations from certain corporate donors. (Stipulation)

FAILURE TO KEEP TRUE FISCAL RECORDS

67. Respondent's 1999 Form 990, Part II, Line 23 states that Respondent provided \$29,597,545.00 in "Specific assistance to individuals" in 1999. (Stipulation)

68. The Outgoing Donation List for 1999 provided by Respondent to the Bureau identifies specific recipients of Respondent's donations. (Stipulation)

69. According to the Outgoing Donation List for 1999, the "Total Estimated Value of 1999 Donations" made by Respondent was only \$20,238,735.00. (Stipulation)

70. Respondent's Outgoing Donation List for 1999 does not account for \$9,358,810.00 worth of donations that Respondent, on its 1999 Form 990, claims to have made in 1999 to advance its charitable purpose. (Stipulation)

**MATERIAL FALSE STATEMENT
ON DOCUMENT REQUIRED TO BE SUBMITTED
TO THE BUREAU**

71. The Investigative Subpoena issued by the Commonwealth on or about September 20, 2000, directed Respondent to provide to the Bureau a complete list of all non-cash donations made by Respondent. (Stipulation)

72. In response to the Investigative Subpoena, Respondent provided the Bureau with an Outgoing Donation List for 1999 which stated that the "Total Estimated Value 1999 Donations" was \$20,238,735.00. (Stipulation)

73. The Investigative Subpoena issued by the Commonwealth also directed Respondent to provide to the Bureau a copy of its 1999 Form 990 Tax Return. (Stipulation)

74. In response to the Investigative Subpoena, Respondent provided its 1999 Form 990 Tax Return which stated that Respondent provided \$29,349,028.00 in the form of "donated medicines, clothes, blankets, foods, medical equipment, cleaning supplies, building supplies, computers, toys to various charities, churches, relief organizations, and other people in need." (Stipulation)

75. Respondent was served with the OSC and all other pleadings, orders and notices filed of record in this matter. (Docket no. 0002-98-02; N.T. 3-5)

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Finding of Fact no. 1)
2. Respondent received notice of the charges against it 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. 75)
3. Respondent violated section 13(a) of the Solicitation Act, 10 P.S. § 162.13(a), on 30 occasions by failing to apply charitable contributions in a manner substantially consistent with its charitable purpose. (Findings of Fact nos. 4, 5, 8, 9, 12, 13, 14, 19-34)
4. Respondent violated section 17(a)(3) of the Solicitation Act, 10 P.S. § 162.17(a)(3), in that Form 990, Schedule A, Part III, Line 2 for 1999, which was required to be submitted to the Bureau, contained material false statements by failing to disclose and provide a detailed statement explaining Respondent's lending of money or other extension of credit to RVI, a related taxable organization, on 29 occasions in 1999. (Findings of Fact nos. 25, 26, 35-39)
5. Respondent violated section 17(a)(3) of the Solicitation Act, 10 P.S. § 162.17(a)(3), in that Form 990, Schedule A, Part III, Line 2 for 1999, which was required to be submitted to the Bureau, contained material false statements by failing to disclose and provide a detailed statement explaining Respondent's furnishing of goods or assets to Visuals Unlimited, Inc., a related taxable organization. (Findings of Fact nos. 40-46)
6. Respondent violated section 17(a)(3) of the Solicitation Act, 10 P.S. § 162.17(a)(3), in that Form 990, Schedule A, Part III, Line 2 for 1999, which was required to be

submitted to the Bureau, contained material false statements by failing to disclose and provide a detailed statement explaining Respondent's transfer of income or assets to CB Investments Group, Inc., a related taxable organization, on 13 occasions in 1999. (Findings of Fact nos. 47-53, 55)

7. Respondent violated section 5(s) of the Solicitation Act, 10 P.S. § 162.5(s), on 13 occasions by failing to maintain and administer contributions raised on its behalf through an account in the name of the charitable organization and under its sole direction and control. (Finding of Fact no. 55)

8. Respondent committed on at least five occasions violations of section 15(a)(2) of the Solicitation Act, 10 P.S. § 162.15(a)(2), in that Respondent's assurance that it would not sell donated goods constituted ongoing deceptive or fraudulent conduct that induced Bread of Life Outreach to continue to donate goods to Respondent in the mistaken belief that Respondent would not sell those goods. (Findings of Fact nos. 56-66)

9. Respondent violated section 12 of the Solicitation Act, 10 P.S. § 162.12, in that Respondent failed to keep records sufficient to demonstrate that Respondent complied with the Act by applying charitable contributions in a manner consistent with its charitable purpose. (Findings of Fact nos. 67-70)

10. Respondent violated section 17(a)(3) of the Solicitation Act, 10 P.S. §162.17(a)(3), in that Respondent's 1999 Form 990, which was prepared by Respondent and required to be submitted to the Bureau, contained a material false statement of the value of non-cash donations made by Respondent in 1999. (Findings of Fact nos. 71-74)

11. Respondent violated section 17(a)(3) of the Solicitation Act, 10 P.S. §162.17(a)(3), in that Respondent's Outgoing Donation List for 1999, which was prepared by Respondent and required to be submitted to the Bureau, contained a material false

statement of the value of non-cash donations made by Respondent in 1999. (Findings of Fact nos. 67-70)

DISCUSSION

The OSC filed in this matter comprises 94 counts, each alleging violations of the Solicitation Act by Respondent in 1999 and 2000. The Commonwealth's case in this matter comprised stipulations of the parties, filed of record November 19, 2002, and admitted into evidence at the March 11, 2003 hearing, in which Respondent admitted each of the averments of the OSC. The 94 counts of the OSC will be discussed *seriatim*.

Counts 1 through 30 - *Failure to apply charitable contributions in a manner consistent with Respondent's charitable purpose.*

In Counts 1 through 30, the Commonwealth alleges that Respondent violated section 13(a) of the Solicitation Act, 10 P.S. §162.13(a), by failing to apply charitable contributions in a manner substantially consistent with its charitable purpose. Section 13(a) of the Solicitation Act provides as follows:

§ 162.13. Limitation on activities of charitable organizations; disclosure requirements

(a) Solicitation limitation.—A charitable organization may only solicit contributions for the charitable purpose expressed in solicitations or the registration statement of the charitable organization and may only apply contributions in a manner substantially consistent with that purpose.

In the parties' stipulation, Respondent admitted that between January 12 and December 21, 1999, it transferred a total of \$104,354.00 to RVI, a for-profit corporation of which Respondent's CEO,

William Bresnahan, was also president.¹ These payments to Bresnahan's for-profit corporation were clearly not consistent with Respondent's charitable purpose of "assist[ing] needy individuals in the United States and around the world by providing food, clothing, blankets, medical supplies and equipment, religious materials, and other items."² Respondent therefore violated section 13(a) of the Solicitation Act as alleged in Counts 1 through 30.

Counts 31 through 73 – *Failure to report transactions with related for-profit organizations on IRS form 990 tax return.*

In Counts 31 through 73 of the OSC, the Commonwealth alleges that Respondent violated section 17(a)(3) of the Solicitation Act, 10 P.S. § 162.17(a)(3), which provides that the Secretary may impose sanctions upon a charitable organization which has "made a material false statement in an application, statement or report required to be filed under" the Solicitation Act. These 43 counts relate to false statements by Respondent in a 1990 federal tax form, IRS Form 990, which Respondent was required to submit to the Bureau pursuant to a subpoena issued in September 2000. Specifically, it is alleged and Respondent admitted that in Schedule A, Part III, Line 2 of Form 990, Respondent answered "no" to the question whether it had engaged in any "[l]ending of money or other extensions of credit" to "any of its trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which such person is affiliated as an officer, director, trustee, majority owner, or principal

¹ Twenty-nine of the transfers, totaling \$98,479.00, were direct "advances" or "loans" from Respondent to RVI. A thirtieth transfer involved a check in the amount of \$5,875.00 in payment of a debt owed to Respondent, which Respondent caused to be deposited into RVI's account.

² Stipulations, ¶ 27, from Respondent's registration statement for the fiscal year ending December 31, 1998.

beneficiary.”³ In fact, Respondent had transferred cash and other assets to business enterprises related to Bresnahan or members of his family, constituting loans or other extensions of credit.

The specific transactions outlined in these counts are described as follows:

- Counts 31 through 59 relate to the 29 transactions set forth in Finding of Fact no. 25 where Respondent advanced money to RVI, a corporation with which Bresnahan was affiliated as an officer.
- Count 60 involves a transaction where Respondent transferred ownership of clothing valued at \$270,000.00 to Visuals Unlimited, Inc., another for-profit corporation of which Bresnahan was an officer.⁴
- Counts 61 through 73 involve money owed to Respondent for goods it had sold to World Trade & Export Corporation. On 13 occasions from July to September 1999, Respondent directed World Trade & Export Corporation to make payments for these goods payable to CB Investments Group, Inc., a for-profit corporation whose CEO and Treasurer was Bresnahan’s son, Christopher Bresnahan. These payments of money owed to Respondent, totaling \$88,875.00, constituted a transfer of income or assets of Respondent to CB Investments.⁵

Because Respondent failed to disclose these transfers of money and other assets in its tax form submitted to the Bureau, Respondent violated section 17(a)(3) of the Solicitation Act as alleged in Counts 31 through 73.

³ According to the parties’ Stipulations, Schedule A, Part III, Line 2 of Form 990 also directed Respondent to provide a detailed statement explaining any such transaction. Respondent provided no explanatory statement since it denied that any such transaction occurred.

⁴ The clothing, 18,000 pairs of shorts, had been donated to Respondent by the Pennsylvania United Medical Association. (Findings of Fact nos. 40-45)

⁵ Findings of Fact nos. 47-52, 55.

Counts 74 through 86 – *Payment to CB Investments for sales of goods donated to Respondent.*

Counts 74 through 86 of the OSC are based upon the 13 transactions detailed above in which Respondent directed World Trade & Export Corporation to satisfy debts it owed to Respondent by remitting checks totaling \$88,875.00 to CB Investments, which were deposited into CB Investments' bank account rather than that of Respondent.⁶ The Commonwealth alleges in these counts that in these transactions, Respondent violated section 5(s) of the Solicitation Act, 10 P.S. § 162.5(s), which provides in as follows:

§ 162.5. Registration of charitable organizations; financial reports; fees; failure to file

* * *

(s) Administration of charitable contributions.—A charitable organization shall maintain and administer all contributions raised on its behalf through an account in the name of the charitable organization and under its sole control.

These facts support a finding that Respondent failed to administer Respondent's assets through an account in Respondent's name in violation of section 5(s) of the Solicitation Act.

Counts 87 through 91 – *Use of deceptive acts in soliciting contributions.*

In Counts 87 through 91, the Commonwealth charges that Respondent violated section 15(a)(2) of the Solicitation Act, 10 P.S. § 162.15(a)(2), which provides as follows:

§ 162.15. 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:

⁶ Findings of Fact nos. 47-52, 55.

* * *

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

These counts are based upon the Respondent's sale on five occasions of goods it received from Bread of Life Outreach, a broker of goods donated for charitable purposes, which were intended for distribution to the needy. Respondent sold such donated goods after Bresnahan directly told officials from Bread of Life that he "would never sell donated goods."⁷ This constitutes fraudulent conduct which created a likelihood of misunderstanding in violation of section 15(a)(2) of the Solicitation Act

Count 92 through 94 – *Failure to keep true fiscal records; Material false statements to the Bureau.*

The final three counts of the OSC relate to discrepancies in reports Respondent made concerning the value of donations it claimed to have made in 1999. In Respondent's 1999 tax Form 990, Part II, Line 23, Respondent states that it provided \$29,597,545.00 in "Specific assistance to individuals" in 1999. In its 1999 Outgoing Distribution List, a separate report made to the Bureau, Respondent claimed that the "Total Estimated Value 1999 Donations" was \$20,238,735.00. Thus, Respondent's Outgoing Donation List for 1999 does not account for \$9,358,810.00 worth of donations that Respondent, on its 1999 Form 990, claims to have made in 1999 to advance its charitable purpose.

In Count 92, the Commonwealth alleged that Respondent violated section 12 of the Solicitation Act, 10 P.S. § 162.12, which requires that charitable organizations "keep true fiscal

⁷ Findings of Fact nos. 56-66.

records as to [their] activities in the Commonwealth . . .” In Counts 93 and 94, the Commonwealth alleged that Respondent violated section 17(a)(3) of the Solicitation Act, 10 P.S. § 162.17(a)(3), *supra*, in that its 1999 Form 990, Part II, Line 23, and its Outgoing Donation List for 1999 contained material false statements as to the value of non-cash donations Respondent made in 1999. The record presented supports a finding of violations under each of these three counts.

Mitigation

At the hearing held March 11, 2003, Respondent offered as mitigation letters attesting to character of William Bresnahan, Respondent’s CEO, Secretary and Treasurer.⁸ These included correspondence from David Wiedis, who identified himself as an attorney who is also an elder at Covenant Presbyterian Church currently pursuing a graduate degree in “Christian Counseling” from Philadelphia Biblical University. Mr. Wiedis related that he had provided “pastoral counseling services” to Bresnahan since April 2002. In his letter, Mr. Wiedis described Bresnahan’s personal and family history which he explained led to Bresnahan’s “grandiose pattern of thoughts” which resulted in a tendency “to make false or exaggerated statements.” Bresnahan had previously been diagnosed as having bipolar disorder, Mr. Wiedis reported, although Bresnahan discontinued taking medication for that condition “when he became a Christian in 1990.”

While the letters introduced at hearing on Respondent’s behalf offer some insight into the character and psyche of its CEO, Bresnahan, their value as mitigating evidence is limited when the nature and extent of Respondent’s and Bresnahan’s deceit is considered. As a nonprofit

⁸ Bresnahan attended the hearing but did not testify.

corporation whose charitable purpose is “to assist needy individuals . . . by providing food, clothing, blankets, medical supplies and equipment, religious materials, and other items,” Respondent began soliciting charitable contributions of goods and money in 1998. In 1999, it claimed to have donated between \$20,000,000.00 and \$30,000,000.00 in goods to organizations and individuals in accordance with its stated charitable purpose.⁹ At the same time, Respondent directly or indirectly transferred money and goods with a value of \$463,220.00 to for-profit corporations affiliated with Bresnahan or his son.¹⁰ Respondent compounded its duplicity by attempting to cover-up these illicit transfers by lying in tax and other reporting forms submitted to the Bureau. Respondent, through Bresnahan, also made direct misrepresentations to a Christian charity which had donated items to Respondent, when Bresnahan falsely denied that Respondent had sold some of its donated items to non-charitable organizations.

Under section 17 of the Solicitation Act, the Secretary is authorized to impose sanctions upon charitable organizations which have been found to have violated provisions of the Solicitation Act. Section 17 provides as follows:

§ 162.17. 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:

⁹ Respondent claimed in various 1999 tax forms that it had donated goods in valued at \$29,597,545.00 and \$29,349,028.00, while in a filing with the Bureau it assigned a value of \$20,238,735.00 to the goods it donated in 1999. (Findings of Fact nos. 67, 72, 74) The accuracy of these values is therefore uncertain.

¹⁰ Findings of Fact nos. 25, 30-33, 55.

(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.

* * *

(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.

At the conclusion of the hearing, the Commonwealth recommended "that the Secretary impose the maximum penalty available of \$94,000.00, \$1,000.00 for each act of fraud committed by the Respondent."¹¹ We find that the Commonwealth's recommended sanction is supported by the record and appropriate under these circumstances. Accordingly, the following order shall issue.

¹¹ N.T. 23.

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

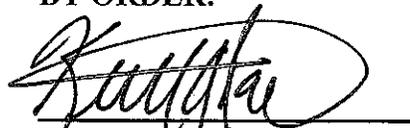
Commonwealth of Pennsylvania, Bureau of Charitable Organizations	:	
	:	
v.	:	Docket no. 0002-98-02
	:	DOS File no. 01-98-07017
	:	
Rise and Shine, Inc., Respondent	:	

ORDER

NOW, this 24th day of **September, 2003**, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ordered** that an **administrative fine** in the amount of **\$94,000.00** shall be imposed upon Respondent in accordance with 10 P.S. § 162.17(b)(3). This amount shall be remitted by money order or certified check made payable to the Commonwealth of Pennsylvania and forwarded to Christal Pike-Nase, Bureau Counsel, 302 North Office Building, Harrisburg, PA 17120 within 30 days of the date of this order.

Appeal of this decision to the Commonwealth Court may be taken pursuant to 2 Pa.C.S. § 702 within 30 days of the date of mailing shown below.

BY ORDER:



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

For the Commonwealth:

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For Respondent:

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Date of mailing: 9.24.03