

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

PROTHONOTARY
MAR 14 1999
Department of State

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

v.

**William Bresnahan a/k/a
William Michael Bresnahan,
Respondent**

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**Docket no. 0006-98-04
DOS File no. 04-98-05630**

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 June 9, 2004, alleging that William Bresnahan, a/k/a William Michael Bresnahan (Respondent), an adult individual, 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.*, for his conduct as the sole officer of Rise and Shine, Inc., a domestic nonprofit corporation.¹ Respondent did not file an answer to the OSC and the Commonwealth, on August 31, 2004, filed a motion to enter default and deem facts admitted (MDFA) in accordance with 1 Pa. Code § 35.37. The Secretary entered an order August 31, 2004, granting the MDFA and stating that an adjudication and order would issue in due course.² On October 18, 2004, Respondent submitted a letter to the Secretary in which he did not answer the specific allegations of the OSC but raised certain issues in “challenge” to the charges. The Secretary subsequently issued an order October 19, 2004, reopening the record for a hearing, “for the exclusive purpose of determining whether there are any circumstances that mitigate the Respondent’s disciplinary sanctions.”³ Such a hearing was scheduled initially for December 22, 2004, and was continued twice at Respondent request. The hearing ultimately took place February 28, 2005, in Harrisburg before Frank C. Kahoe, Jr.,

¹ The registration of Rise and Shine as a Pennsylvania charitable organization expired November 11, 1999.

² The August 31, 2004 order was filed of record September 2, 2004.

³ The October 19, 2004 order was filed of record October 22, 2004.

Esquire, hearing examiner for the Department of State.⁴ Tracy L. McCurdy, Esquire represented the Commonwealth as prosecuting attorney. Respondent did not attend the hearing nor was he represented by counsel. The record was closed with the filing of the notes of testimony March 3, 2005.

⁴ Respondent filed his first request for continuance November 22, 2004, and the hearing was rescheduled for January 24, 2005. Respondent filed a second request for continuance January 20, 2005, and the Department of State Prothonotary issued a notice rescheduling the hearing for February 28, 2005, at 9:30 a.m.

FINDINGS OF FACT

1. The OSC in this matter was issued June 9, 2004, and was served upon Respondent by certified mail addressed as follows: William Michael Bresnahan, 1410 Brendwood Drive, Langhorne, PA 19047. (Docket no. 0006-98-04, OSC, Motion to Enter Default and Deem Facts Admitted)

2. On July 8, 2004, the Commonwealth sent Respondent a letter agreeing to Respondent's request for an extension of time to August 8, 2004, for Respondent to file an answer to the OSC. (Docket no. 0006-98-04, Motion to Enter Default and Deem Facts Admitted)

3. On August 31, 2004, the Commonwealth filed a Motion to Enter Default and Deem Facts Admitted (MDFA), which motion was granted by order of the Secretary filed September 2, 2004. (Docket no. 0006-98-04)

4. On October 18, 2004, correspondence from Respondent addressed to the Secretary was filed with the Prothonotary in which Respondent addressed but did not specifically admit or deny the factual averments of the OSC, and requested a hearing. (Docket no. 0006-98-04)

5. In response to Respondent's correspondence, the Secretary issued an order October 19, 2004, reopening the record and directing that a hearing be scheduled "for the exclusive purpose of determining whether there are any circumstances that mitigate the Respondent's disciplinary sanctions." (Docket no. 0006-98-04)

6. After two hearings were scheduled and continued at Respondent's request, the Prothonotary issued a notice January 25, 2005, scheduling a hearing for February 28, 2005, in Harrisburg.⁵ (Docket no. 0006-98-04)

7. Respondent did not attend the February 28, 2005 hearing. (N.T. 2)

8. Respondent is an adult individual whose last known address is 1410 Brendwood Drive, Langhorne, PA 19047. (OSC, ¶¶ 2, 3)

9. At all relevant and material times, Respondent was the sole officer of Rise and Shine, Inc., a Pennsylvania non-stock non-profit corporation, filed pursuant to 15 Pa.C.S. § 5507 on July 27, 1998. (Department records; OSC, ¶ 4)

10. Rise and Shine, Inc. was previously registered with the Pennsylvania Bureau of Charitable Organizations (Bureau) as a charitable organization, registration number 25137. (Department records; OSC, ¶ 5)

11. Rise and Shine's registration and all extensions expired on November 11, 1999. (Department records; OSC, ¶ 6)

12. Rise and Shine, by and through Respondent, solicited charitable contributions from organizations and individuals in the Commonwealth of Pennsylvania starting on July 27, 1998. (OSC, ¶ 7)

13. In 1999, Rise and Shine, by and through Respondent, maintained a checking account at National Penn Bank in Boyertown, Pennsylvania, account number 816-831-8. (OSC, ¶ 8)

⁵ The initial notice of hearing was issued November 3, 2004, scheduling the mitigation hearing for December 22, 2004. Respondent requested a continuance of that hearing in a letter addressed to Hearing Examiner Kahoe dated November 15, 2004. The Prothonotary issued a notice of rescheduled hearing December 7, 2004, setting the hearing for January 24, 2005. Respondent submitted a second request for continuance in a letter dated January 12, 2005, addressed to the Secretary. The Prothonotary subsequently issued a third notice January 25, 2005, rescheduling the hearing for February 28, 2005, at 9:30 a.m.

14. RVI, Inc. (RVI) was incorporated as a for-profit domestic corporation, business-stock, under 15 Pa.C.S. § 1306 on February 7, 1998. (Department records; OSC, ¶ 9)

15. The address of RVI on file with the Department of State is 1026 Kennett Way, West Chester, PA 19380. (Department records; OSC, ¶ 10)

16. In approximately 1999, RVI also conducted business under the names “RVI II, Inc.” and “RVI II.” (OSC, ¶ 11)

17. In 1999, the mission of RVI, as stated on its official website, www.rvi2.com, and in various advertising and marketing pamphlets, was 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. (OSC, ¶ 12)

18. Respondent represented himself as the “President” and the “CEO” of RVI II. (OSC, ¶ 13)

19. The Chief Executive Officer of RVI on file with the Department of State is Christopher Bresnahan. (Department records; OSC, ¶ 14)

20. Christopher Bresnahan is the son of Respondent. (OSC, ¶ 15)

21. In 1999, RVI maintained a checking account at National Penn Bank in Boyertown, Pennsylvania, account number 816-836-9. (OSC, ¶ 16)

22. On May 9, 2002, the Bureau filed an order to show cause against Rise and Shine, Docket no. 0002-98-04, DOS File No. 01-98-07017. (Department records; OSC, ¶ 17)

23. On June 10, 2002, Respondent, on behalf of Rise and Shine, filed an answer to the Bureau’s May 9, 2002 order to show cause, and on November 15, 2002, the Bureau and Respondent, on behalf of Rise and Shine, filed stipulations addressing the factual averments of the May 9, 2002 order to show cause. (Department records; OSC, ¶¶ 19, 21)

24. On September 23, 2002, the Secretary issued an adjudication and order against Rise and Shine at Docket no. 0002-98-02, File No. 01-98-07017. (Department records; OSC, ¶ 23)

25. Rise and Shine has ceased to conduct business in Pennsylvania. (OSC, ¶ 25)

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

COUNTS 1 – 29

26. Approximately September 20, 2000, the Commonwealth issued an investigative subpoena directing Rise and Shine to provide certain information to the Bureau, including a copy of its IRS Form 990 Tax Return (Form 990) for fiscal year 1999. (OSC, ¶¶ 27-28)

27. Form 990, Schedule A, Part III, Line 2 asks “has 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 \$1,000)?
- e. Transfer of any part of its income or assets?”

(OSC, ¶ 29)

28. RVI was a related taxable organization with which Rise and Shine was affiliated for purposes of Form 990, Schedule A, Part III, Line 2. (OSC, ¶ 30)

29. Respondent, on behalf of Rise and Shine, answered “no” to Line 2.a, indicating that there were no sales, exchanges, or leases of property between Rise and Shine and related taxable organizations in 1999. (OSC, ¶ 31)

30. Respondent, on behalf of Rise and Shine, answered “no” to Line 2.c, indicating that there was no furnishing of goods, services, or facilities between Rise and Shine and related taxable organizations in 1999. (OSC, ¶ 32)

31. Respondent, on behalf of Rise and Shine, answered “yes” to Line 2.d, but indicated that the only compensation or reimbursement of expenses exchanged between Rise and Shine and related taxable organizations in 1999 was the payment of salaries totaling \$67,827 as reported on Form 990, Part IV. (OSC, ¶ 33)

32. Respondent, on behalf of Rise and Shine, answered “no” to Line 2.e, indicating that there was no transfer of any income or assets between Rise and Shine and related taxable organizations in 1999. (OSC, ¶ 34)

33. Respondent, on behalf of Rise and Shine, answered “no” to Line 2.b, indicating that there was no lending of money or other extension of credit between Rise and Shine and related taxable organizations in 1999. (OSC, ¶ 35)

34. According to Rise and Shine’s 1999 Form 990, Part IV, Line 58, its 1999 Financial Statements, and its bank records, however, Rise and Shine, by and through Respondent, made “related company advances” and “loans” to RVI in 1999 totaling \$98,479, as outlined below:

Count #	Date of transfer from Rise and Shine'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
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

Count #	Date of transfer from Rise and Shine'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
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

(OSC, ¶ 36)

35. Each of the transfers in Counts 1 through 29 constituted a loan or an advance from Rise and Shine, by and through Respondent, to RVI, a related taxable organization.

(OSC, ¶ 37)

36. Rise and Shine's charitable purpose, as set forth on its registration statement for the fiscal year ending December 31, 1998, was 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. (Department records; OSC, ¶ 38)

37. In 1999, the mission of RVI, as stated on its official website and in its marketing and advertising materials, was 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. (OSC, ¶ 39)

38. Rise and Shine's provision of loans or advances, by and through Respondent, to RVI did not advance Rise and Shine's charitable purpose. (OSC, ¶ 40)

COUNT 30

39. On July 29, 1999, Respondent, on behalf of Rise and Shine, prepared Statement No. WT055, charging customer World Trade & Export Corporation \$5,875 for one "Choice Id." (OSC, ¶ 43)

40. Statement No. WT055 includes a notation that the goods described on the statement were "pd Ck#1997." (OSC, ¶ 44)

41. Check # 1997 from World Trade & Export Corporation, dated July 29, 1999 for \$5,875, is made out to "CB Investments." (OSC, ¶ 45)

42. 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. Investment Corporation," but was transferred to account # 8168369 belonging to RVI. (OSC, ¶ 46)

43. Rise and Shine's transfer of funds, by and through Respondent, to RVI, a related for-profit organization whose stated mission was to manufacture and distribute new and innovative, high-quality products, did not advance Respondent's charitable purpose. (OSC, ¶ 47)

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

COUNTS 31 - 59

44. The investigative subpoena issued by the Bureau approximately September 20, 2000 directed Rise and Shine to provide to the Bureau a copy of its Form 990 for 1999. (OSC, ¶ 50)

45. Form 990, Schedule A, Part III, Line 2.b asks if Rise and Shine engaged in the “[l]ending of money or other extension of credit” 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.” (OSC, ¶ 51)

46. Form 990, Schedule A, Part III, Line 2 states “[if] the answer to any question is ‘Yes,’ attach a detailed statement explaining the transactions.” (OSC, ¶ 52)

47. Respondent, on behalf of Rise and Shine, answered “no” to Line 2.b, and therefore did not provide a detailed statement of transactions involving the lending of money or other extension of credit to a related taxable organization. (OSC, ¶ 53)

48. Respondent, on behalf of Rise and Shine, provided advances or loans to RVI, a related taxable organization, on twenty-nine separate occasions in 1999, as outlined in Finding of Fact no. 34 above. (OSC, ¶ 54)

COUNT 60

49. Approximately August 12, 1999, Respondent, on behalf of Rise and Shine, received a donation of 18,000 pairs of shorts, valued at \$270,000, from the Pennsylvania United Medical Association. (OSC, ¶ 57)

50. Approximately August 12, 1999, Respondent, on behalf of Rise and Shine, donated the 18,000 pairs of shorts to Visuals Unlimited. (OSC, ¶ 58)

51. Visuals Unlimited, Inc. was incorporated as a for-profit domestic corporation, business-stock, under 15 Pa.C.S. § 1306 on January 11, 1999. (Department records; OSC, ¶ 59)

52. The address of Visuals Unlimited on file with the Department is 1209 Ward Ave., Suite 100, West Chester, PA 19380. (Department records; OSC, ¶ 60)

53. At all times relevant to matter, Respondent was an officer of Visuals Unlimited. (OSC, ¶ 61)

54. Visuals Unlimited was a related taxable organization for purposes of IRS Form 990, schedule A, Part III, Line 2. (OSC, ¶ 62)

55. Respondent, on behalf of Rise and Shine, did not report its furnishing of goods or assets to Visuals Unlimited on its 1999 Form 990, Schedule A, Part III, Line 2. (OSC, ¶ 63)

COUNTS 61 - 73

56. CB Investment Group, Inc. was incorporated as a for-profit domestic corporation, business-stock, under 15 Pa.C.S. § 1306 on April 8, 1998. (Department records; OSC, ¶ 66)

57. The address of CB Investment Group on file with the Department is 1026 Kennett Way, West Chester, PA 19380. (OSC, ¶ 67)

58. At all times relevant to this matter, the Chief Executive Officer and Treasurer of CB Investment Group was Christopher Bresnahan. (OSC, ¶ 68)

59. At all times relevant to this matter Secretary of CB Investment Group was Respondent. (OSC, ¶ 69)

60. CB Investment Group was a related taxable organization for purposes of IRS Form 990, schedule A, Part III, Line 2. (OSC, ¶ 70)

61. Respondent, on behalf of Rise and Shine, transferred income or assets to CB Investment Group on thirteen separate occasions in 1999, as outlined below in Paragraph 76. (OSC, ¶ 71)

62. Respondent, on behalf of Rise and Shine, did not report its transfer of income or assets to CB Investment Group on its 1999 Form 990, Schedule A, Part III, Line 2. (OSC, ¶ 72)

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

COUNTS 74 – 86

63. In 1999, CB Investments maintained a checking account at National Penn Bank in Boyertown, Pennsylvania, account number 8064-503-8. (OSC, ¶ 75)

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

Count #	Date	Statement Number	Description of Goods	Payment Amount
74	July 9, 1999	WT048	J & J products	\$6,000
75	July 13, 1999	WT049	Choice Ld	\$5,375
76	July 13, 1999	WT050	10 Lds bottled spring water	\$13,000
77	July 29, 1999	WT055	Choice Ld	\$5,875
78	Aug. 9, 1999	WT056	Choice Ld	\$5,875
79	Aug. 13, 1999	WT057	Choice Ld	\$5,875
80	Aug. 20, 1999	WT058	Choice Ld	\$5,875
81	Aug. 23, 1999	WT059	2 Choice Lds	\$11,750
82	Aug. 23, 1999	WT060	Banana Box Food Ld	\$3,500
83	Aug. 31, 1999	WT061	Choice Ld	\$5,875
84	Aug. 31, 1999	WT062	NuSkin Product Ld	\$7,000
85	Sept. 2, 1999	WT063	NuSkin Product Ld	\$7,000
86	Sept. 7, 1999	WT064	Choice Ld	\$5,875

(OSC, ¶ 76)

**USE OF DECEPTIVE ACTS
IN SOLICITING CONTRIBUTIONS**

COUNTS 87 – 91

65. In approximately 1999, the Newport Assembly of God church operated Bread of Life Outreach. (OSC, ¶ 79)

66. Bread of Life Outreach acted as a “broker” for corporations who wished to donate goods produced or obtained by that corporation; corporations donated goods to Bread of Life Outreach, and Bread of Life Outreach then donated those goods to a non-profit organization for distribution of the goods to the needy. (OSC, ¶ 80)

67. Bread of Life Outreach will only donate goods to non-profit organizations that agree not to sell the goods. (OSC, ¶ 81)

68. Early in 1999, Bread of Life Outreach began donating goods to Respondent, on behalf of Rise and Shine, for distribution to the needy. (OSC, ¶ 82)

69. In February 1999, Bread of Life Outreach received information that goods that it had donated to another charitable organization for distribution to the needy had been sold. (OSC, ¶ 83)

70. Approximately February 15, 1999, representatives of Bread of Life Outreach met with Respondent and asked if he knew anything about the sale of donated goods. (OSC, ¶ 84)

71. Respondent stated that he was unaware of the sale of donated goods, and that he personally would never sell donated goods. (OSC, ¶ 85)

72. In reliance on Respondent’s assurances that he would never sell donated goods, Bread of Life Outreach continued to donate goods to Rise and Shine for distribution to the needy. (OSC, ¶ 86)

73. In each of the following transactions, Respondent, on behalf of Rise and Shine, sold goods that had been donated to it by Bread of Life Outreach.

Count #	Location of Goods Donated by Bread of Life to Rise and Shine	Date of Sale of Goods from Rise and Shine to World Trade and Export	Location of Goods Sold to World Trade and Export by Rise and Shine	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
87	Choice – New England	3/22/99	Choice – New England	3/23/99	Bread of Life
88	Choice – Carolina	3/30/99	Choice – Carolina	3/30/99	Bread of Life
89	Choice – Carolina	4/5/99	Choice – Carolina	4/5/99	Bread of Life
90	Choice – Carolina	5/24/99	Choice – Carolina	5/24/99	Bread of Life
91	Choice – Carolina	6/8/99	Choice – Carolina	6/17/99	Bread of Life

(OSC, ¶ 87)

74. In each of the transactions in Finding of Fact no. 73, Bread of Life Outreach donated goods to Rise and Shine because Respondent, individually and on behalf of Rise and Shine, assured Bread of Life Outreach that the donated goods would not be sold. (OSC, ¶ 88)

75. As a result of Respondent's sale of goods that had been donated to Rise and Shine 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.

(OSC, ¶ 89)

FAILURE TO KEEP TRUE FISCAL RECORDS

COUNT 92

76. Rise and Shine's 1999 Form 990, Part II, Line 23 states that Rise and Shine provided \$29,597,545 in "Specific assistance to individuals" in 1999. (OSC, ¶ 92)

77. The Outgoing Donation List for 1999 provided by Respondent, on behalf of Rise and Shine, to the Bureau identifies specific recipients of Rise and Shine's donations. (OSC, ¶ 93)

78. According to the Outgoing Donation List for 1999, the "Total Estimated Value of 1999 Donations" made by Rise and Shine was only \$20,238,735. (OSC, ¶ 94)

79. Rise and Shine's Outgoing Donation List for 1999 does not account for \$9,358,810 worth of donations that Rise and Shine, on its 1999 Form 990, claims to have made in 1999 to advance its charitable purpose. (OSC, ¶ 95)

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

COUNTS 93 - 94

80. The Investigative Subpoena issued by the Commonwealth approximately September 20, 2000 directed Rise and Shine to provide to the Bureau a complete list of all non-cash donations made by Rise and Shine. (OSC, ¶ 98)

81. In response to the investigative subpoena, Respondent, on behalf of Rise and Shine, provided the Bureau with an Outgoing Donation List for 1999 which stated that the "Total Estimated Value 1999 Donations" was \$20,238,735. (OSC, ¶ 99)

82. The investigative subpoena issued by the Commonwealth also directed Rise and Shine to provide to the Bureau a copy of its 1999 Form 990 Tax Return. (OSC, ¶ 100)

83. In response to the investigative subpoena, Rise and Shine, by and through Respondent, provided its 1999 Form 990 Tax Return which stated that Rise and Shine provided \$29,349,028 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.” (OSC, ¶ 101)

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Findings of Fact nos. 8, 9, 10, 11, 12)

2. Respondent received notice of the charges against him and has been given an opportunity to be heard in this proceeding in accordance with Administrative Agency Law, 2 Pa.C.S. § 504. (Findings of Fact nos. 1, 2, 3, 4, 5, 6, 7)

3. Respondent, individually, as sole officer of Rise and Shine, and on behalf of Rise and Shine, 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. (Counts 1-30; Findings of Fact nos. 9, 10, 12-43)

4. Respondent, individually, as sole officer of Rise and Shine, and on behalf of Rise and Shine, 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 a total of 45 material false statements:

a) 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;

b) By failing to disclose and provide a detailed statement explaining Rise and Shine's furnishing of goods or assets to Visuals Unlimited, a related taxable organization;

c) By failing to disclose and provide a detailed statement explaining Rise and Shine's transfer of income or assets to CB Investment Group, a related taxable organization; and

d) By misstating the value of non-cash donations made by Rise and Shine in 1999.

(Counts 31-73, 93-94; Findings of Fact nos. 26-62, 80-83)

5. Respondent, individually, as sole officer of Rise and Shine, and on behalf of Rise and Shine, violated section 5(s) of the Solicitation Act, 10 P.S. § 162.5(s), 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 control. (Counts 74-86; Findings of Fact nos. 56-64)

6. Respondent, individually, as sole officer of Rise and Shine, and on behalf of Rise and Shine, committed multiple violations of section 15(a)(2) of the Solicitation Act, 10 P.S. § 162.15(a)(2) in that Respondent's assurance that he would not sell donated goods constituted ongoing deceptive or fraudulent conduct that induced Bread of Life Outreach to continue to donate goods to Rise and Shine in the mistaken belief that Respondent would not sell those goods. (Counts 87-91; Findings of Fact nos. 65-75)

7. Respondent, individually, as sole officer of Rise and Shine, and on behalf of Rise and Shine, violated the section 12 of the Solicitation Act, 10 P.S. § 162.12, in that Rise and Shine failed to keep records sufficient to demonstrate that Rise and Shine complied with the Act by applying charitable contributions in a manner consistent with its charitable purpose. (Count 92; Findings of Fact nos. 76-79)

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 104 factual averments contained in the OSC which are deemed admitted.⁶ 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 in his capacity as sole officer of Rise and Shine and individually 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.

The Commonwealth charges and it is deemed admitted that in the calendar year 1999, Respondent and Rise and Shine transferred a total of \$104,354.00 to RVI, a for-profit corporation of which Respondent said he was president and CEO.⁷ These payments to

⁶ See: Orders issued August 31, 2004, October 19, 2004.

⁷ 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

Respondent's for-profit corporation were clearly not consistent with Rise and Shine's charitable purpose. Respondent therefore violated section 13(a) of the Solicitation Act as alleged in Counts 1 through 30.

Counts 31 through 73, 93 and 94 – *Failure to report transactions with related for-profit organizations on IRS form 990 tax return and misstating the value of non-cash donations.*

In Counts 31 through 73, 93 and 94 of the OSC, the Commonwealth alleges and it is deemed admitted that Respondent in his capacity as sole officer of Rise and Shine and individually 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 45 counts relate to false statements by Respondent in a 1990 federal tax form, IRS Form 990, which Respondent, as sole officer of Rise and Shine, was required to submit to the Bureau pursuant to a subpoena issued in September 2000. Specifically, it is alleged and deemed admitted that in Schedule A, Part III, Line 2 of Form 990, Respondent answered “no” to the question whether Rise and Shine 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 beneficiary.”⁸ In fact, Rise and Shine had transferred cash and other assets to business enterprises related to Respondent individually

payment of a debt owed to Respondent, which Respondent caused to be deposited into RVI's account.

⁸ Schedule A, Part III, Line 2 of Form 990 also directed Rise and Shine to provide a detailed statement explaining any such transaction. Respondent provided no explanatory statement since he denied that any such transaction occurred.

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. 34 where Respondent, through Rise and Shine, advanced money to RVI, a for-profit corporation with which Respondent was affiliated as an officer.
- Count 60 involves a transaction where Respondent, through Rise and Shine, transferred ownership of clothing valued at \$270,000.00 to Visuals Unlimited, Inc., another for-profit corporation of which Respondent was an officer.⁹
- Counts 61 through 73 involve money owed to Rise and Shine 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 Respondent's son, Christopher Bresnahan. These payments of money owed to Rise and Shine, totaling \$88,875.00, constituted a transfer of income or assets of Rise and Shine by Respondent to CB Investments.¹⁰
- Counts 93 and 94 involve Respondent's misstatement of the value of non-cash donations Respondent made in 1999.

Because Respondent, as sole officer of Rise and Shine, 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. In Counts 93 and 94, the Commonwealth alleged and it is deemed admitted that Respondent violated section 17(a)(3) of the Solicitation Act in that Rise and Shine's 1999 Form 990, Part II, Line 23, and its Outgoing

⁹ The clothing, 18,000 pairs of shorts, had been donated to Rise and Shine by the Pennsylvania United Medical Association. (Finding of Fact no. 49)

¹⁰ Findings of Fact nos. 56-62.

Donation List for 1999 contained material false statements as to the value of non-cash donations Respondent made in 1999. The record supports a finding of violations under each of these counts as well.

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, in his capacity as sole shareholder of Rise and Shine, directed World Trade & Export Corporation to satisfy debts it owed to Rise and Shine by remitting checks totaling \$88,875.00 to CB Investments, which were deposited into CB Investments' bank account rather in that of Rise and Shine.¹¹ The Commonwealth alleges in these counts and it is deemed admitted 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 Rise and Shine's assets through an account in Rise and Shine's name in violation of section 5(s) of the Solicitation Act.

¹¹ Findings of Fact nos. 56-64.

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:

* * *

(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 Rise and Shine’s sale on five occasions of goods it received from Bread of Life Outreach, a broker of goods donated for charitable purposes, which goods were intended for distribution to the needy. Rise and Shine, under Respondent’s control, sold these donated goods after Respondent directly told officials from Bread of Life that he “would never sell donated goods.”¹² This constitutes fraudulent conduct by Respondent personally which created a likelihood of misunderstanding in violation of section 15(a)(2) of the Solicitation Act

Count 92 – Failure to keep true fiscal records.

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

¹² Findings of Fact nos. 65-75.

\$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 and it is deemed admitted that Respondent violated section 12 of the Solicitation Act, 10 P.S. § 162.12, which requires that charitable organizations “keep true fiscal records as to [their] activities in the Commonwealth . . .” In Counts 93 and 94, discussed *above*, the Commonwealth alleged and it is deemed admitted that Respondent violated section 17(a)(3) of the Solicitation Act in that Rise and Shine’s 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 supports a finding of violations under each of these counts as well.

Mitigation

After the entry of an order granting the Commonwealth’s MDFA August 31, 2004, Respondent submitted a letter in which he offered argument in opposition to the instant OSC. In consideration of this letter, the Secretary reopened the record to allow Respondent to present evidence which would “mitigate the Respondent’s disciplinary sanctions.” Mitigation hearings scheduled for December 22, 2004, and January 24, 2005, were continued at Respondent’s request. The hearing ultimately took place February 28, 2005, and Respondent did not appear.

Respondent, through Rise and Shine, began soliciting charitable contributions of goods and money in 1998. In 1999, Respondent directly or indirectly transferred money and goods with a value of \$463,220.00 from Rise and Shine to for-profit corporations affiliated with Respondent or his son. Respondent compounded his duplicity by attempting to cover-up these

illicit transfers by lying in tax and other reporting forms submitted to the Bureau. Respondent also made direct misrepresentations to a Christian charity which had donated items to Rise and Shine, when he falsely denied that Rise and Shine 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:

(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, as an agent of Rise and Shine. We find that the Commonwealth's recommended sanction is supported by the record and appropriate under these circumstances. Accordingly, the following order shall issue.

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

Commonwealth of Pennsylvania, Bureau of Charitable Organizations	:	
	:	
	:	Docket no. 0006-98-04
v.	:	DOS File no. 04-98-05630
	:	
William Bresnahan a/k/a William Michael Bresnahan, Respondent	:	

ORDER

NOW, this 11th day of **March, 2005**, 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 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:



**Pedro A. Cortés
Secretary of the Commonwealth**

For the Commonwealth:
Tracy L. McCurdy, Esquire
OFFICE OF GENERAL COUNSEL
302 North Office Building
Harrisburg, PA 17120

Respondent pro se:
William Bresnahan
1410 Brendwood Drive
Langhorne, PA 19047

Date of mailing: