

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

Commonwealth of Pennsylvania,
Bureau of Charitable Organizations

v.

Car Program, LLC,
Respondent

:
:
: Docket No. 0015-98-06
:
: File No. 06-98-07382
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Office of Chief Counsel

ADJUDICATION AND ORDER

Pedro A. Cortés
Secretary of the Commonwealth

302 North Office Building
Harrisburg, PA 17120
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HISTORY

This case comes before the Secretary of the Commonwealth (Secretary) to determine whether the Secretary has good cause to impose administrative sanctions upon Respondent for violations of the Solicitation of Funds for Charitable Purposes Act (Act), Act of December 19, 1990 (P.L. 1200, No. 202) *as amended*, 10 P.S. §§ 162.1-162.24.

The matter commenced on August 24, 2006, with the issuance of an order to show cause, alleging that Respondent was subject to discipline under section 17 of the Act, 10 P.S. §162.17, for violation of two provisions of the Act. Specifically, Respondent was charged with forty-two counts of violating section 15(a)(1), by and through violation of section 9(e) of the Act, 10 P.S. §§ 162.15(a)(1) and 162.9(e), in that Respondent failed to submit its contracts with charitable organizations to the Bureau for review and approval at least ten (10) working days prior to performing services under that contract, and performed professional solicitor services without approved contracts. Respondent was also charged with thirty-nine violations of section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.17(a)(1), in that Respondent solicited contributions while under an order to cease and desist such solicitation.

On October 31, 2006, the Commonwealth filed a motion to enter default and deem facts admitted in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code § 35.37.

Respondent did not submit a reply to either pleading. The Secretary now issues this adjudication and order in final disposition of this matter

FINDINGS OF FACT

1. Respondent registered as a professional solicitor in the Commonwealth of Pennsylvania on June 30, 2006, registration number 31690, but failed to file the contracts it has with charitable organizations. (Order to show cause ¶ 2)

2. Respondent's last known business address on file with the Bureau is 3755 Omec Circle #4, Rancho Cordova, California 95742. (Order to show cause ¶ 3)

3. After repeated requests by the Bureau, Respondent was advised by the Bureau, by letter dated June 5, 2006, that it must register as a professional solicitor by June 30, 2006 to avoid formal action under the Act. (Order to show cause ¶ 5)

4. On June 30, 2006, Respondent became registered as a professional solicitor. (Order to show cause ¶ 6)

5. Upon registration as a professional solicitor, Respondent did not file with the Bureau any of the written contracts that it is required to have with the charitable organizations for which it solicits. (Order to show cause ¶ 6)

6. The Bureau made repeated requests to Respondent to file the contracts. (Order to show cause ¶ 7)

7. On August 3, 2006, the Bureau issued a Cease and Desist Order prohibiting Respondent from soliciting in Pennsylvania until Respondent filed all contracts with the Bureau. (Order to show cause ¶ 8)

8. The Bureau has not received any contracts from Respondent. (Order to show cause ¶ 9)

9. Respondent solicits for over six-hundred charities, fifteen of which are Pennsylvania based charities and twenty-seven of which are national charities with offices based in Pennsylvania. (Order to show cause ¶ 10)

10. Respondent solicits donations through the website www.donateacar.com. (Order to show cause ¶ 11)
11. When a charity is selected on the website, a “Donate Now” link appears, which allows a donor to make a donation to the selected charity. (Order to show cause ¶ 12)
12. After the Cease and Desist Order issued on August 3, 2006, the Bureau received information that Respondent continued to solicit in Pennsylvania. (Order to show cause ¶ 13)
13. On August 24, 2006, the Commonwealth mailed a copy of the order to show cause to Respondent at its last known office address on file with the Bureau of Charitable Organizations by certified mail, return receipt requested. (Docket no. 0015-98-06; Order to show cause certificate of service).
14. The copy of the order to show cause sent by certified mail was received by the Respondent or Respondent’s agent as evidenced by postal form 3811, article number 7003 1670 0006 3334 5621, and returned to the Department of State on September 5, 2006. (Docket no. 0015-98-06; Motion to enter default, attached Exhibit 1)
15. On October 31, 2006, the Commonwealth mailed a copy of the motion to enter default and deem facts admitted to Respondent at its last known address on file with the Department of State, as well as to Errol Copilevitz, Esquire, at Copilevitz & Canter, LLC, by first class mail, postage prepaid. (Docket no. 0015-98-06).
16. Respondent did not file a response to the order to show cause or the motion to enter default and deem facts admitted. (Docket no. 0015-98-06; Motion to Enter Default).
17. Respondent was served with all pleadings, orders and notices filed of record in this matter. (Docket no. 0015-98-06).

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Findings of fact 1, 7, 12).
2. Respondent has been afforded reasonable notice of the charges against it and an opportunity to be heard in this proceeding in accordance with the Administrative Agency Law, 2 Pa. C.S. § 504. (Findings of fact 2, 13-17).
3. There is good cause to grant the Commonwealth's motion to deem facts admitted because Respondent failed to file a written answer to the order to show cause. (Findings of fact 13-17).
4. Respondent committed at least forty-two violations of section 15(a)(1) of the Solicitation of Funds for Charitable Purposes Act, at 10 P.S. § 162.15(a)(1), by and through violations of 10 P.S. §162.9(e), in that Respondent failed to submit its contracts with 42 charitable organizations to the Bureau for review and approval at least ten (10) working days prior to performing services under that contract, and performed professional solicitor services without approved contracts. (Findings of fact 3-11)
5. Respondent violated section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), in that Respondent solicited contributions while under a Cease and Desist Order. (Findings of fact 7-12)
6. Based on the above-cited violation of the Act, the Secretary is authorized to impose administrative sanctions upon Respondent under section 17 of the Act, 10 P.S. §162.17. (Findings of fact 3-12)

DISCUSSION

I. STATUTORY AND REGULATORY PROVISIONS

This action is brought before the Secretary of the Commonwealth pursuant to the Solicitation of Funds for Charitable Purposes Act (Act), Act of December 19, 1990 (P.L. 1200, No. 202) *as amended*, 10 P.S. §§ 162.1-162.24. The relevant provisions of the Act are as follows:

§ 162.9. Registration of professional solicitor; contract and disclosure requirements; bonds; records; books

* * *

(e) Contract filing. - No less than ten working days prior to the commencement of each solicitation campaign, event or services, a professional solicitor shall file with the department a copy of the contract described in subsection (f) and a written solicitation notice. No solicitation or services pursuant to the contract shall begin before the department has approved the contract pursuant to subsection (g)....

(f) Written contract.—There shall be a written contract between a professional solicitor and a charitable organization for each solicitation campaign which shall be signed by two authorized officials of the charitable organization, one of whom must be a member of the organization's governing body, and the authorized contracting officer for the professional solicitor

§ 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:

(1) Operating in violation of, or failing to comply with, any of the requirements of this act, regulations of the department or an order of the secretary, or soliciting contributions after registration with the department has expired or has been suspended or revoked or soliciting contributions prior to the solicitation notice and contract have been approved by the department.

* * *

§ 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.

(2) Has refused or failed or any of its principal officers has refused or failed, after notice, to produce any records of such organization or to disclose any information required to be disclosed under this act or the regulations of the department.

(3) Has made a material false statement in an application, statement or report required to be filed under this act.

(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:

(1) Issue an order directing that the person cease and desist specified fundraising activities.

(2) 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.

The motion to enter default and deem facts admitted is in accordance with the General Rules of Administrative Practice and Procedure. The relevant provision of the General Rules of Administrative Practice and Procedure states as follows:

Section 35.37. Answers to order to show cause.

Any person upon whom an Order to show cause has been served . . . shall, if directed to do so, respond to the same by filing within the time specified in the order an answer in writing. The answer shall be drawn so as specifically to admit or deny the allegations or charges which may be in the order, set forth the facts upon which respondent relies and state concisely the matters of law relied upon. . . . A respondent failing to file an answer within the time allowed shall be deemed in default, and relevant facts stated in the Order to show cause may be deemed admitted. 1 Pa. Code § 35.37.

II. DUE PROCESS

“It is well established that the requirements of due process of law apply to administrative proceedings.” First National Bank of Pike County v. Department of Banking and Bank of Matamoras, Intervening, 300 A.2d 832, 824 (Pa. Cmwlth. 1973) (citation omitted). “Due process requires that a person be provided notice and an opportunity to be heard prior to an

adjudication, affecting that person's rights." Goetz v. Department of Environmental Resources, 613 A.2d 65, 67 (Pa. Cmwlth. 1992) (citation omitted), appeal denied, 533 Pa. 663, 625 A.2d 1196 (1993). "Notice of administrative action which is mailed to the interested party's last known address has been found to be reasonable notice." Kobylski v. Commonwealth of Pennsylvania, Milk Marketing Board, 516 A.2d 75, 77 (Pa. Cmwlth. 1986), citing Yarbrough v. Department of Public Welfare, 478 A.2d 956 (Pa. Cmwlth. 1984).

A copy of the order to show cause was mailed to Respondent at its business address on file with the Bureau on August 24, 2006, by certified mail, return receipt requested. An individual at Respondent's address signed for the copy of the order to show cause sent by certified mail and the return receipt was received by the Department of State on September 5, 2006. Therefore, the Secretary finds that Respondent received actual notice of the pendency of the action and allegations against it. The order to show cause clearly and specifically stated the charges against Respondent. The order to show cause directed Respondent to file an answer or risk disciplinary action without a hearing. The order to show cause explained the procedures to request a hearing. Further, the order to show cause warned Respondent that if it failed to request a hearing, Respondent would be deemed to have waived its right to a hearing and final judgment might be entered without a hearing. Due process does not confer an absolute right to be heard, but only that a party be provided with an opportunity to be heard. Goetz, 613 A.2d at 67. The Secretary finds that Respondent was given an opportunity to be heard and failed to take advantage of that opportunity. Therefore, the Secretary of the Commonwealth properly granted the motion to enter default and deem facts admitted against Respondent and deemed the factual allegations contained in the order to show cause admitted.

III. ANALYSIS AND SANCTION

In counts 1 through 42, the Commonwealth alleged that, although Respondent registered as a professional solicitor with the Bureau, Respondent failed to file the numerous written contracts it had with charitable organizations which were Pennsylvania-based or had offices based in Pennsylvania. Section 9(e) of the Act, 10 P.S. §162.9(e) requires that a professional solicitor submit its written contracts with charitable organizations to the Bureau for review and approval at least ten working days prior to performing services under the contract. No solicitation or services pursuant to the contract are to begin before the Department of State has approved the contract. 10 P.S. §162.9(e) and (g). The facts deemed admitted indicate that Respondent solicits for hundreds of charities, fifteen of which are based in Pennsylvania and twenty-seven of which are national charities with offices based in Pennsylvania. Respondent filed none of the written agreements it has with these 42 charities and thus is in violation of 10 P.S. §162.9(e) at least 42 times.

In counts 43 through 84, the Commonwealth alleged that Respondent solicited contributions in direct violation of a Cease and Desist Order. The Cease and Desist Order was issued August 3, 2006, and prohibited Respondent from soliciting contributions in Pennsylvania until Respondent filed all written contracts with the Bureau. After the Cease and Desist Order issued, the Bureau received information that Respondent continued to solicit in Pennsylvania. Thus, Respondent is in violation of section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1).¹

The only other question to be determined here is the appropriate sanction to be imposed. Respondent will be assessed an administrative fine in the amount of \$43,000 or \$1,000 per contract not filed with the Bureau and \$1,000 for violation of the Cease and Desist Order.

¹ The Commonwealth does not specify how many acts of solicitation occurred after the Cease and Desist Order issued on August 3, 2006, but charges in paragraph 16 of the Order to show cause that “based on the foregoing, Respondent committed at least thirty-nine violations of the Act.”

The obligations that Respondent failed to perform are critical requirements to which a professional solicitor must adhere under the Act. The Legislative intent behind the Solicitation of Funds for Charitable Purposes Act was to not merely require proper registration of charitable organizations, professional fundraisers and professional solicitors, but to protect the citizens of this Commonwealth by requiring full public disclosure of the identity of persons who solicit contributions from the public, the purposes for which such contributions are solicited and the manner in which they are actually used. 10 P.S. § 162.2. The requirements of the Act have been upheld by the courts as narrowly tailored to further a constitutionally valid interest. American Ass'n of State Troopers, Inc. v. Preate, 825 F. Supp. 1228 (M.D. Pa. 1993), *reconsideration den.*, American Ass'n of State Troopers v. Preate, 832 F. Supp. 894 (M.D. Pa. 1993). Failure to file written contracts and then continuing to solicit funds from Pennsylvania citizens in the face of the Cease and Desist Order is precisely the conduct the Act is intended to curtail and penalize. Furthermore, Respondent did not provide any mitigating evidence in this matter.

Accordingly, based on the foregoing findings of fact, conclusions of law and discussion, and in the absence of mitigation, the following order shall issue.


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

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Bureau of Charitable Organizations :
 : Docket No. 0015-98-06
v. :
 : File No. 06-98-07382
Car Program, LLC, :
Respondent :

ORDER

AND NOW, this 16th day of January, 2008, in accordance with the foregoing findings of fact, conclusions of law and discussion, the Secretary of the Commonwealth hereby **ORDERS** that Car Program, LLC, be assessed an administrative fine in the amount of **\$43,000**. It is further ordered that Car Program, LLC, immediately **CEASE and DESIST** from all fundraising activities in the Commonwealth until such time as all penalties are paid and Respondent comes into full compliance with all provisions of the Act, including the filing of all written contracts under section 9(e) of the Act, 10 P.S. §162.9(e).

BY ORDER


Pedro A. Cortés
Secretary of Commonwealth

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Date of Mailing: January 16, 2008