

COPY

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

PROHIBITED
OCT 13 PM 12:19
Department of State

Commonwealth of Pennsylvania	:	
Bureau of Corporations and	:	
Charitable Organizations	:	
	:	
vs.	:	Docket No. 0034-98-16
	:	File No. 16-98-08351
Global Textile Recycling, LLC,	:	
Respondent	:	

AMENDED ORDER²

AND NOW, this 19th day of October, 2017, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby ordered as follows:

1. An **administrative fine** in the amount of \$61,000.00 shall be imposed upon Global Textile Recycling, LLC in accordance with 10 P.S. § 162.17(b)(3). This amount shall be remitted by certified check or U.S. Postal Service money order made payable to "Commonwealth of Pennsylvania" within thirty days of the effective date of this order and mailed to:

Martha Brown, Assistant Counsel
Pennsylvania Department of State
Office of Chief Counsel
306 North Office Building
Harrisburg, PA 17120

2. Respondent shall be **prohibited from registering** as a professional solicitor in the Commonwealth of Pennsylvania unless and until the above penalty is paid.

3. Global Textile Recycling, LLC, its successors, agents or affiliates, shall **CEASE and DESIST** from all manner of solicitation activities in this Commonwealth in accordance with 10 P.S. § 162.17(b)(2), until such time as all information requested by the Bureau has been provided, all penalties imposed have been paid in full and Global Textile Recycling, LLC comes into full compliance with all provisions of the Act, including proper registration.

Appeal may be taken pursuant to section 17(c) of the Act, 10 P.S. §162.17(c), and 2 Pa. C.S. §702, within 30 days of the date of mailing of this Adjudication and Order as indicated below.

² This order was amended on October 6, 2017 to correct the mailing address of Respondent on the order page. This order was amended on October 16, 2017 to correct the file and docket numbers on the order page.

This order shall take effect thirty days from the date it is deposited in the mail.

BY ORDER:



Robert Torres
Acting Secretary of the Commonwealth

Respondent:

Global Textile Recycling, LLC
Attn: Vincent Mancini
200 Christian Street, Unit 21
Philadelphia, PA 19147

For the Commonwealth

Michael Gennett, Esquire
Prosecuting Attorney
Commonwealth of Pennsylvania
Department of State
306 North Office Building
Harrisburg, PA 17120

Date of Mailing: 10.19.17

HISTORY

This matter comes before the Secretary of the Commonwealth (Secretary) from an Order to Show Cause filed December 20, 2016, alleging that Global Textile Recycling, LLC (Respondent), a professional solicitor not currently registered in the Commonwealth of Pennsylvania, is subject to administrative sanctions under the Solicitation of Funds for Charitable Purposes Act (hereafter referred to as 'Act').¹ The Order to Show Cause alleges that Respondent violated the Act at 10 P.S. §162.15(a)(1), because Respondent provided services as a professional solicitor prior to, and in the absence of, obtaining Department of State approval of registration statements as required by Section 9(a) of the Act, 10 P.S. § 162.9(a). The Order to Show Cause also alleges that Respondent violated the Act at 10 P.S. §162.15(a)(1), because Respondent provided services as a professional solicitor prior to, and in the absence of, obtaining Department of State approval of a bond as required by Section 9(c) of the Act, 10 P.S. §162.9(c). The Order to Show Cause alleges that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through Section 9(e) of the Act, 10 P.S. § 162.9(e), by failing to file with the Department of State each written contract between the organization and a charitable organization for professional solicitation services and for providing those services prior to the approval by the Department of State of each contract; and by failing to file with the Department of State a written solicitation notice with each written contract. The Order to Show Cause alleges that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through Section 9(f) of the Act, 10 P.S. §162.9(f), by performing professional solicitation services pursuant to contracts with a charitable organization which did not contain all the required signatures from the organization. The Order to Show Cause alleges that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through Section 9(l) of the Act,

¹ Act of December 19, 1990, P.L. 1200, No. 202, *as amended*, 10 P.S. § 162.1 *et seq.*

10 P.S. §162.9(l), by failing to submit to the Department of State the required financial reports after each campaign was completed. The Order to Show Cause alleges that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through Section 9(h) of the Act, 10 P.S. §162.9(h), by failing to clearly and conspicuously provide the disclosures on the donation bins as required. The Order to Show Cause alleges that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through Section 9(k) of the Act, 10 P.S. §162.9(k), by failing to conspicuously state the notice on the donation bins as required. Lastly, the Order to Show Cause alleges that Respondent violated the Act at 10 P.S. §162.15(a)(1), in that Respondent operated in violation or failed to comply with an Order of the Secretary directing Respondent to Cease and Desist.

On May 25, 2017, 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 FACTS

1. This matter is before the Secretary of the Commonwealth (Secretary) pursuant to the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990, P.L. 1200, No. 202, *as amended* (hereafter referred to as 'Act'), 10 P.S. §§ 162.1-162.24. (Order to Show Cause ¶ 1).

2. Global Textile Recycling, LLC ("Respondent") is a foreign limited liability company, incorporated in the state of Delaware on June 25, 2014. (Order to Show Cause ¶ 2).

3. Respondent is registered with the Department of State as a foreign limited liability company, entity number 4291955. (Order to Show Cause ¶ 3).

4. Respondent's last known address on file with the Department is 200 Christian St., Unit 21, Philadelphia, Pennsylvania, 19147. (Order to Show Cause ¶ 4).

5. Respondent is a professional solicitor as defined by the Act. (Order to Show Cause ¶ 5 and ¶ 78).

6. Respondent is not currently, nor has been previously, registered with the Pennsylvania Department of State's Bureau of Corporations and Charitable Organizations (hereafter referred to as "Bureau") as a professional solicitor. (Order to Show Cause ¶ 6 and ¶ 44).

7. As a professional solicitor, Respondent operates clothing bins, in which contributions on behalf of a charity are solicited. (Order to Show Cause ¶ 7).

8. Clothing bins owned and operated by Respondent are placed in locations across a tri-state region, including Pennsylvania, New Jersey and Delaware. (Order to Show Cause ¶ 8, Exhibit A).

9. The Bureau received a complaint regarding clothing bins located in Philadelphia and the surrounding area soliciting contributions for the Philadelphia Affiliate of the Susan G. Komen Breast Cancer Foundation, Inc., (SGK Philadelphia). (Order to Show Cause ¶ 10).

10. SGK Philadelphia is a charitable organization that is registered with the Bureau, registration number 28112. (Order to Show Cause ¶ 11).

11. The complainant advised the Bureau that the phone number listed on the bin belonged to Respondent, Global Textile Recycling, LLC, a for-profit clothing recycling company. (Order to Show Cause ¶ 12, Exhibit A).

12. On or about November 24, 2015, the Bureau contacted SGK Philadelphia to determine whether the clothing bins were authorized by the charity. (Order to Show Cause ¶ 13).

13. SGK Philadelphia confirmed that Respondent was authorized to use the organization's name and logo as part of a contract for professional solicitation of contributions in the Commonwealth through the use of clothing bins. (Order to Show Cause ¶ 14, Exhibit B).

14. In 2014, Respondent entered into a contract with SGK Philadelphia, under which Respondent agreed to provide SGK Philadelphia with professional solicitation services in the Commonwealth of Pennsylvania for the period of one year, from August 26, 2014 to August 25, 2015. (Order to Show Cause ¶ 16, Exhibit C).

15. As of the date of the filing of the Order to Show Cause, Respondent has not filed this contract with the Bureau. (Order to Show Cause ¶ 18).

16. In September 2015, Respondent's contract for professional solicitation services with SGK Philadelphia was renewed, effective for the period of September 26, 2015 through August 25, 2016. (Order to Show Cause ¶ 19, Exhibit D).

17. Respondent submitted to the Bureau a copy of this contract on or about March 16, 2016 – six months following the effective date of the contract. (Order to Show Cause ¶ 21)

18. As of the date of this filing, the contract has not been approved by the Bureau. (Order to Show Cause ¶ 22).

19. On or about December 4, 2015, the Bureau sent, via first class and certified mail, a letter to Respondent advising of the registration requirements of the Act and requesting that Respondent submit those requirements within thirty days. (Order to Show Cause ¶ 23).

20. Certified and first class mail delivery were executed on December 9, 2015 (Order to Show Cause ¶ 24, Exhibit E).

21. Respondent failed to respond to the Bureau's letter and further failed to submit the registration requirements. (Order to Show Cause ¶ 26).

22. As a result of Respondent's failure to respond to the Bureau's letter and failure to submit registration requirements, the Secretary issued an Order on March 4, 2016, directing Respondent to Cease and Desist from all manner of solicitation activity in the Commonwealth. (Order to Show Cause ¶ 27, Exhibit F).

23. On or about March 16, 2016, Respondent submitted to the Bureau, a copy of its contract with SGK Philadelphia and a check in the amount of \$250.00. (Order to Show Cause ¶ 29).

24. The Bureau processed Respondent's submission of the \$250.00 registration fee and subsequently rejected the registration as it was deficient. (Order to Show Cause ¶ 30).

25. Specifically, Respondent failed to complete and submit the BCO-155 Professional Solicitor Registration Statement as well as the BCO-160 Bond form. (Order to Show Cause ¶ 31).

26. The Bureau processed and subsequently disapproved Respondent's contract for professional solicitation services, as the contract was deficient. (Order to Show Cause ¶ 32).

27. Specifically, the Contract was not approved because Respondent failed to submit a solicitation notice form BCO-170 and corresponding filing fee (\$25.00), the contract did not contain a termination date (or alternatively contain a clause allowing either party a reasonable period to terminate), and finally, the contract was not signed by an authorized official of the charitable organization as required. (Order to Show Cause ¶ 33).

28. On or about March 30, 2016, the Bureau mailed two deficiency letters – one regarding Respondent's registration and the second regarding Respondent's contract for professional solicitor services. (Order to Show Cause ¶ 34).

29. The deficiency letters advised Respondent of the registration rejection and contract disapproval, set forth the specific reasons the registration and contract were not approved and detailed the actions and documents required for approval of each. (Order to Show Cause ¶ 35, Exhibit G).

30. On or about April 15, 2016, Respondent submitted to the Bureau a Solicitation Notice-Form BCO-170. (Order to Show Cause ¶ 37).

31. On or about April 19, 2016, the Bureau mailed Respondent another deficiency letter to inform Respondent that its submission was not approved as the the BCO-160 Bond form was not submitted, the Professional Solicitation Registration BCO-155 form was not completed and further informing Respondent of the document's required to receive an approval of the contract as well as registration. (Order to Show Cause ¶ 38, Exhibit H).

32. On or about June 10, 2016, Respondent responded via email, to the Bureau's information request by providing the locations of the clothing bins it operated on behalf of SGK Philadelphia. (Order to Show Cause ¶ 40).

33. Per Respondent's email, clothing bins operated pursuant to Respondent's contract with SGK Philadelphia were located in twenty-three (23) locations in the Commonwealth, as follows:

- a. 1085 Hook Rd, Sharon Hill, PA
- b. 34 N Garfield Rd, Glenolden, PA
- c. 1201 N. Broad St, Philadelphia, PA
- d. 7554 City Ave, Philadelphia, PA
- e. 6800 Baltimore Ave, Fernwood, PA

- f. 4800 Girard Ave, Philadelphia, PA
- g. 52nd and Lancaster Ave, Philadelphia, PA
- h. 5748 Walnut St, Philadelphia, PA
- i. 5748 Baltimore Ave, Philadelphia, PA
- j. 6243 Chestnut St, Philadelphia, PA
- k. 800 E Washington Ln, Philadelphia, PA
- l. 6601 Market St, Upper Darby, PA
- m. 8005 Ogontz Ave, Philadelphia, PA
- n. 2800 Ridge Pike, Norristown, PA
- o. 1594 West Chester Pike, West Chester, PA
- p. 800 Chester Pike, Prospect Park, PA
- q. 193 Middletown Rd, Media, PA
- r. 1201-1217 Kerlin St, Chester, PA
- s. 2211 Stenton Ave, Philadelphia, PA
- t. 4131 Whitakar Ave, Philadelphia, PA
- u. 1118 Edgemont Ave, Chester, PA
- v. 704 Garrett Rd, Upper Darby, PA
- w. 223 W Main St, Norristown, PA

(Order to Show Cause ¶ 41).

34. On or about July 12, 2016, the Bureau processed additional materials received from Respondent, and mailed two additional deficiency letters advising Respondent of the registration rejection and contract disapproval, the reasons and steps necessary for approval of both the registration and professional solicitation contract. (Order to Show Cause ¶ 42, Exhibit I).

35. Respondent has not received approval from the Bureau for any contracts for professional solicitation services in the Commonwealth. (Order to Show Cause ¶ 45).

36. The Order of the Secretary directing Respondent to cease and desist all manner of solicitation in the Commonwealth remains, at the time of this filing, in full force and effect. (Order to Show Cause ¶ 46).

37. Respondent provided professional solicitation services to a charitable organization with regard to the solicitation of contributions from residents of the Commonwealth of Pennsylvania. (Order to Show Cause ¶ 48).

38. The professional solicitation services provided by the Respondent occurred under contract from August 26, 2014 through August 25, 2015 and renewal contract from September 26, 2015 through August 25, 2016. (Order to Show Cause ¶ 49).

39. Respondent was not registered with the Department at anytime from August 2014 through August 2015. (Order to Show Cause ¶ 50).

40. At the time of making application to register and renewal of registration, professional solicitors are required to file with and have approved by the Department a bond, in which it shall be the principal obligor in the sum of \$25,000 and which shall have one or more sureties satisfactory to the Department. (Order to Show Cause ¶ 53).

41. Professional solicitors are required to maintain the bond in effect as long as the registration is in effect. (Order to Show Cause ¶ 54).

42. The Bureau has neither received nor approved a bond in which Respondent is the principal obligor. (Order to Show Cause ¶ 57).

43. Respondent provided professional solicitation services to a charitable organization in accordance with written contracts executed by the parties. (Order to Show Cause ¶ 60).

44. Respondent did not provide a copy of the written contract covering the period of August 26, 2014 through August 25, 2015, to the Department of State at any time prior to or at anytime during the performance of the services as a professional solicitor set forth in the contract. (Order to Show Cause ¶ 61).

45. Respondent failed to obtain the Department's approval of the contract notice prior or at any time during performance of the professional solicitation services set forth in the contract. (Order to Show Cause ¶ 62).

46. Respondent did not provide a copy of the written contract covering the period September 26, 2015 through August 25, 2016 to the Department of State prior to the commencement of services and solicitation pursuant to that contract. (Order to Show Cause ¶ 63).

47. Respondent failed to obtain the Department's approval of the contract prior to or at any time during the performance of professional solicitation services set forth in the contract. (Order to Show Cause ¶ 64).

48. For each professional solicitation contract, a written solicitation notice must be submitted to and approved by the Department prior to the commencement of services pursuant to the contract. (Order to Show Cause ¶ 68).

49. Respondent did not submit a written solicitation notice to the Department prior to the commencement of services and solicitation pursuant to each contract with a charitable organization. (Order to Show Cause ¶ 69).

50. Pursuant to the Act, a written contract between a professional solicitor and a charitable organization must 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. (Order to Show Cause ¶ 72).

51. Respondent's contracts with a charitable organization were signed by one authorized official of the charitable organization. (Order to Show Cause ¶ 74).

52. The Act requires a professional solicitor to file with the Department a financial report within ninety (90) days after a solicitation campaign or event has been completed. (Order to Show Cause ¶ 77).

53. Per the contracts, the event named "Recycling – clothing and shoe donation bins" occurred from August 26, 2014 to August 25, 2015, and a second event of the same name occurred from September 26, 2015 through August 25, 2016. (Order to Show Cause ¶ 80).

54. Respondent failed to submit to the Department, a financial report within ninety (90) days following each event. (Order to Show Cause ¶ 81).

55. A professional solicitor is required to make clear and conspicuous disclosures contemporaneously with a written request for a contribution. (Order to Show Cause ¶ 84).

56. Specifically, the professional solicitor is responsible for disclosing;

a. The name of the professional solicitor and that the solicitation is being conducted by a professional solicitor who is being paid for his services; and

b. The legal name of the charitable organization and a description of how the contributions raised by the solicitation will be utilized for a charitable purpose.

(Order to Show Cause ¶ 85).

57. Pursuant to the contract, Respondent solicited contributions on behalf of a charity through the operation of clothing bins in twenty three (23) locations in the Commonwealth of Pennsylvania. (Order to Show Cause ¶ 88).

58. The clothing bins operated by Respondent at twenty-three different locations in the Commonwealth did not include the required disclosures, including only the name of the

organization and a phone number belonging to Respondent. (Order to Show Cause ¶ 89, Exhibit A).

59. A professional solicitor, in addition to the required disclosures, is required, on any written solicitation, to conspicuously state verbatim “The official registration and financial information of [legal name of the charity as registered with the Department] may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania, 1 (800) 732-0999. Registration does not imply endorsement. (Order to Show Cause ¶ 92).

60. Pursuant to the contract, Respondent solicited contributions on behalf of a charity through the operation of clothing bins in twenty three (23) locations in the Commonwealth of Pennsylvania. (Order to Show Cause ¶ 95).

61. The clothing bins operated by Respondent at twenty-three different locations in the Commonwealth did not include the required notice, including only the name of the organization and a phone number belonging to Respondent. (Order to Show Cause ¶ 96, Exhibit A).

62. On or about March 4, 2016, the Secretary of the Commonwealth issued an Order directing Respondent to Cease and Desist all manner of solicitation activity in the Commonwealth of Pennsylvania. (Order to Show Cause ¶ 99, Exhibit D).

63. Respondent continued solicitation activity in the Commonwealth following the issuance of the Secretary’s Order. (Order to Show Cause ¶ 100).

64. On December 4, 2016, the Commonwealth filed an Order to Show Cause in this matter. (Docket number 0034-98-16).

65. The Order to Show Cause was sent to Respondent care of Vincent Mancini, the stated principal for Respondent at their last known address on file with the Department of State. (Motion to enter default and deem facts admitted ¶ 3).

66. Pursuant to the Certificate of Service attached to the Order to Show Cause, the Commonwealth served the Order to Show Cause upon the Respondent by mailing one copy via Certified Mail, Return Receipt Requested and another copy via First Class Mail, Postage Prepaid, to the Respondent, Attn: Vincent Mancini, at the following address: 200 Christian Street, Meadville, PA 16335. (Motion to enter default and deem facts admitted ¶ 4)

67. A true and correct copy of the Cover letter sent with the Order to Show Cause mailed to the Respondent by Certified Mail, Return Receipt Requested, was marked as item number 9171 9690 0935 0131 3993 08. (Motion to enter default and deem facts admitted ¶ 5).

68. Respondent received the Order to Show Cause on December 24, 2016, as evidenced by the delivery record from the U.S. Postal Service website, tracking Certified Mail item number 9171 9690 0935 0131 3993 08. (Motion to enter default and deem facts admitted ¶ 6).

69. The Order to Show Cause sent to Respondent via First Class Mail, Postage Prepaid, was not returned to the Commonwealth. (Motion to enter default and deem facts admitted ¶ 7).

70. The Order to Show Cause directed Respondent to file an Answer thereto within thirty (30) days of the date upon the face of the Order (December 20, 2016). (Motion to enter default and deem facts admitted ¶ 8).

71. Thirty (30) days from the date upon the face of the Order to Show Cause expired on January 19, 2017. (Motion to enter default and deem facts admitted ¶ 9).

72. No response was received from the Respondent by January 19, 2017. (Docket number 0034-98-16).

73. Respondent did not file a response to the Order to Show Cause or the Motion to Enter Default and Deem Facts Admitted. (Docket number 0034-98-16).

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Findings of Fact 1-5)
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 4, 64-73)
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 64-73)
4. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), in that Respondent provided services as a professional solicitor regarding the solicitation of contributions in the Commonwealth prior to and in the absence of, approval by the Department of State of registration statements as required by Section 9(a) of the Act, 10 P.S. § 162.9(a). (Findings of Fact 5-39)
5. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), in that Respondent provided services as a professional solicitor regarding the solicitation of contributions in the Commonwealth prior to and in the absence of, approval by the Department of State of a bond as required by Section 9(c) of the Act, 10 P.S. § 162.9(c). (Findings of Fact 5-38, 40-42)
6. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), in that Respondent failed to file with the Department of State each written contract between the Respondent and a charitable organization for professional solicitation services related to solicitations within the Commonwealth, and further provided those services prior to the approval by the Department of each contract as required by Section 9(e) of the Act, 10 P.S. § 162.9(e). (Findings of Fact 5-39, 43-47)

7. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), in that Respondent failed to file with the Department of State a written solicitation notice with each written contract between the Respondent and a charitable organization for professional solicitation services related to solicitations within the Commonwealth, as required by Section 9(e) of the Act, 10 P.S. § 162.9(e). (Findings of Fact 5-39, 48-49)

8. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), in that Respondent performed services pursuant to contracts with a charitable organization for professional solicitation services related to solicitations within the Commonwealth, which did not contain the signatures required by Section 9(f) of the Act, 10 P.S. § 162.9(f). (Findings of Fact 5-39, 50-51)

9. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), in that Respondent failed to submit to the Department, the financial reports required by Section 9(l) of the Act, 10 P.S. § 162.9(l). (Findings of Fact 5-39, 52-54)

10. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), in that Respondent failed to clearly and conspicuously provide the disclosure required by Section 9(h) of the Act, 10 P.S. § 162.9(h). (Findings of Fact 5-39, 55-58).

11. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), in that Respondent failed to conspicuously state the notice on the donation bins as required by Section 9(k) of the Act, 10 P.S. § 162.9(k). (Findings of Fact 5-39, 59-61)

12. Respondent repeatedly and continually violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), in that Respondent operated in violation or failed to comply with an Order of the Secretary directing Respondent to Cease and Desist, with the violation repeating daily through at least August 25, 2016. (Findings of Fact 5-39, 62-63)

DISCUSSION

I. STATUTORY AND REGULATORY PROVISIONS

This matter is before the Secretary of the Commonwealth (Secretary) pursuant to the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990, P.L. 1200, No. 202, *as amended* ("Act"), 10 P.S. §§ 162.1, *et seq.* The Order to Show Cause issued in this matter comprises fifty-nine counts, alleging that Respondent violated the Act at 10 P.S. §162.15(a)(1) outright, and by and through 10 P.S. §162.9(a), (c), (e), (f), (h), (k), and (l), which provide in pertinent part 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:

(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 having been approved by the department.

* * *

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

(a) **Registration and approval required.**—No person shall act as a professional solicitor before obtaining department approval of a registration statement pursuant to subsection (d) or after the expiration, suspension or revocation of such registration. ...

* * *

(c) A professional solicitor shall, at the time of making application for registration and renewal of registration, file with and have approved by the department a bond, in which it shall be the principal obligor in the sum of \$ 25,000, or a greater amount as prescribed by the regulations of the department and which shall have one or more sureties satisfactory to the department whose liability in the aggregate as such sureties will at least equal that sum and maintain the bond in effect as long as the registration is in effect.

* * *

(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). The solicitation notice shall be accompanied by a fee of \$ 25 and shall be signed and sworn to by the authorized contracting officer for the professional solicitor. If more than one event or campaign is conducted under a contract, then a solicitation notice addendum must be filed no less than ten working days prior to the commencement of each additional event or campaign. No additional fee is required to file the addendum. The solicitation notice and addendum shall contain all of the following information:

- (1) A description of the solicitation event or campaign.
- (2) Each location and telephone number from which the solicitation is to be conducted.
- (3) The legal name and resident address of each person responsible for directing and supervising the conduct of the campaign and each person who is to solicit during such campaign.
- (4) A statement as to whether the professional solicitor will at any time have custody or control of contributions.
- (5) The account number and location of each bank account where receipts from the campaign are to be deposited.
- (6) A full and fair description of the charitable program for which the solicitation campaign is being carried out.
- (7) The date the solicitation campaign or event will begin or be held within this Commonwealth and the termination date for each campaign or event.
- (8) Any other information required by the regulations of the department.

(f) 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 and which shall contain all of the following provisions:

- (1) The legal name and address of the charitable organization as registered with the department, unless that charitable organization is exempt from registration.
- (2) A statement of the charitable purpose for which the solicitation campaign is being conducted.
- (3) A statement of the respective obligations of the professional solicitor and the charitable organization.
- (4) A statement of the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to or retained by the charitable organization, if any, or, if the solicitation involves the sale of goods, services or tickets to a fundraising event, the percentage of the purchase price which will be remitted to the charitable organization, if any. Any stated percentage shall exclude any amount which the charitable organization is to pay as fundraising costs.
- (5) A statement of the percentage of the gross revenue which the professional solicitor will be compensated. The stated percentage shall include any amount which the professional solicitor is to be reimbursed as payment for fundraising costs. If the compensation of the professional solicitor is not

contingent upon the number of contributions or the amount of revenue received, his compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The stated assumptions shall be based upon all of the relevant facts known to the professional solicitor regarding the solicitation to be conducted by the professional solicitor.

(6) The effective and termination dates of the contract, or, if the contract does not have a set termination date, the contract shall contain a clause allowing either party a reasonable period to terminate the contract or notify the other party if either party chooses not to renew. The contract shall also contain the date solicitation activity is to commence within this Commonwealth.

(7) Any other information required by the regulations of the department.

* * *

(h) Prior to orally requesting a contribution or contemporaneously with a written request for a contribution, a professional solicitor shall be responsible for clearly and conspicuously disclosing:

(1) The name of the professional solicitor as on file with the department and that the solicitation is being conducted by a professional solicitor who is being paid for his services.

(2) If the individual acting on behalf of the professional solicitor identifies himself by name, the individual's legal name.

(3) The legal name of the charitable organization as registered with the department and a description of how the contributions raised by the solicitation will be utilized for a charitable purpose or, if there is no charitable organization, a description as to how the contributions raised by the solicitation will be utilized for a charitable purpose.

* * *

(k) In addition to the information required by subsection (j), any written confirmation, receipt and reminder of a contribution made pursuant to an oral solicitation and any written solicitation shall conspicuously state verbatim:

"The official registration and financial information of (insert the legal name of the charity as registered with the department) may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania, 1 (800) 000-0000. Registration does not imply endorsement."

(l) Within 90 days after a solicitation campaign or event has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, a professional solicitor shall file with the department a financial report for the campaign, including gross revenue and an itemization of all expenses incurred. This report shall be signed and sworn to by the authorized contracting agent for the professional solicitor and two authorized officials of the charitable organization.

* * *

The Secretary is authorized pursuant to section 17 of the Act, 10 P.S. §162.17, to take the following actions to enforce the Act:

§ 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) Revoke a grant of exemption to any of the provisions of this act.

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

(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.

(4) Place the registrant on probation for such period of time and subject to such conditions as he may decide.

(c) Administrative procedures. - All actions of the secretary shall be taken subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

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:

§ 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 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 823, 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, 625 A.2d 1196 (Pa. 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 care of Vincent Mancini, the stated principal for Respondent at its last known address by certified mail, return receipt requested and by first class mail, postage prepaid. Respondent received the Order to Show Cause sent via certified mail as evidenced by the delivery record from the U.S. Postal Service website. The Order to Show Cause sent via first class mail, postage prepaid, has not been returned to the Commonwealth. Therefore, the Secretary finds that Respondent received reasonable notice 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 it 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 is 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 deems the factual allegations contained in the Order to Show Cause admitted, and grants the motion to enter default and deem facts admitted against Respondent.

IV. ANALYSIS AND SANCTION

The sixty-one counts of the Order to Show Cause can be separated into nine distinct violations.

The Commonwealth first alleges in counts 1 – 2 that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(a), by soliciting contributions in the Commonwealth prior to and in the absence of registration with the Department as a professional solicitor. Respondent provided professional solicitation services to a charitable organization by soliciting contributions from residents of the Commonwealth through clothing collection bins it operated on behalf of SGK Philadelphia. These services provided by the Respondent occurred under contract from August 26, 2014 through August 25, 2015 and a second contract from September 26, 2015 through August 25, 2016. The facts deemed admitted indicate that Respondent was not registered with the Department at any time from August 2014 through August 2015. Therefore, the Commonwealth has established that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(a), and counts 1 – 2 are sustained.

Counts 3 – 4 of the Order to Show Cause allege that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(c), by providing professional solicitation services prior to and in the absence of approval by the Department of a bond, in which Respondent shall be the principal obligor in the sum of \$25,000, and which shall have one or more sureties satisfactory to the Department. The facts deemed admitted indicate Respondent provided professional solicitation services to SGK Philadelphia under contract from August 26, 2014 through August 25, 2015, and a second contract from September 26, 2015 through August 25, 2016, without the Bureau having either received or approved of a bond in which Respondent was the principal obligor for either year. Therefore, the Commonwealth has established that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(c), and counts 3 – 4 are sustained.

Counts 5 – 6 of the Order to Show Cause allege that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(e), by failing to file with the Department of State copies of written contracts with the charitable organization prior to providing professional solicitor services to the charity. The facts deemed admitted establish that the services as a professional solicitor provided by Respondent to SGK Philadelphia were provided in accordance with two written contracts executed by the parties, but Respondent did not provide a copy of the written contracts to the Department at any time prior to the performance of the services as a professional solicitor set forth in the contracts. Therefore, the Commonwealth has established that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(e), and counts 5 – 6 are sustained.

Counts 7 – 8 of the Order to Show Cause allege that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(e), by failing to file with the Department a written solicitation notice with each written contract between Respondent and a charitable organization for professional solicitation services within the Commonwealth. The facts deemed admitted

indicate Respondent did not submit a written solicitation notice to the Department prior to the commencement of services and solicitation pursuant to each of the two contracts with SGK Philadelphia. Therefore, the Commonwealth has established that Respondent violated the Act at Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(e), and counts 7 – 8 are sustained.

Counts 9 – 10 of the Order to Show Cause allege that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(f), by performing professional solicitation services within the Commonwealth pursuant to contracts with a charitable organization which did not contain the required signatures. Pursuant to the Act, a written contract between a professional solicitor and a charitable organization must be signed by two authorized officials of the charitable organization. The facts deemed admitted indicate Respondent's contracts with SGK Philadelphia were signed by only one authorized official of the charitable organization. Therefore, the Commonwealth has established that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(f), and counts 9 – 10 are sustained.

Counts 11 – 12 of the Order to Show Cause allege that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(l), by failing to submit to the Department the required financial reports. The Act requires a professional solicitor to file with the Department a financial report within ninety (90) days after a solicitation campaign or event has been completed. The facts deemed admitted indicate that Respondent provided professional solicitation services to SGK Philadelphia in accordance with two year-long written contracts executed by the parties and failed to submit to the Department a financial report within ninety (90) days after the completion of each contracted event. Therefore, the Commonwealth has established that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(l), and counts 11 – 12 are sustained.

Counts 13 – 36 of the Order to Show Cause allege that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(h), by failing to clearly and conspicuously provide the disclosures on the donation bins as required by the Act. Specifically, the professional solicitor is responsible for disclosing the name of the professional solicitor and that the solicitation is being conducted by a professional solicitor who is being paid for his services; and the legal name of the charitable organization and a description of how the contributions raised by the solicitation will be utilized for a charitable purpose. The facts deemed admitted indicate that Respondent solicited contributions on behalf of SGK Philadelphia within the Commonwealth at twenty-three (23) different locations and did not provide the required disclosures on the 23 bins. The 23 collection bins indicated only the name of the charitable organization and a phone number belonging to Respondent. Therefore, the Commonwealth has established that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(l), and counts 13 – 36 are sustained.

Counts 37 – 60 of the Order to Show Cause allege that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(k), by failing to conspicuously state the notice on the donation bins as required by the Act. A professional solicitor, in addition to the required disclosures, is required, on any written solicitation, to conspicuously state verbatim

“The official registration and financial information of [legal name of the charity as registered with the Department] may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania, 1 (800) 732-0999. Registration does not imply endorsement.”

The facts deemed admitted indicate that the clothing bins operated by Respondent at twenty-three (23) different locations in the Commonwealth did not include the required notice on the donation bins. Instead, the bins indicated only the name of the charitable organization and a phone number belonging to Respondent. Therefore, the Commonwealth has established that Respondent violated

the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.9(k), and counts 37 – 60 are sustained.

Lastly, count 61 of the Order to Show Cause alleges that Respondent violated the Act at 10 P.S. §162.15(a)(1), in that Respondent operated in violation or failed to comply with an Order of the Secretary directing Respondent to Cease and Desist, with the violation repeating daily through at least August 25, 2016. On or about March 4, 2016, the Secretary of the Commonwealth issued an Order directing Respondent to Cease and Desist all manner of solicitation activity in the Commonwealth of Pennsylvania. The facts deemed admitted indicate that Respondent continued solicitation activity in the Commonwealth following the issuance of the Secretary's Order. Therefore, the Commonwealth has established that Respondent violated the Act at 10 P.S. §162.15(a)(1) and count 61 is sustained.

When the Secretary finds that a professional solicitor or an agent, servant or employee thereof has violated any of the provisions of the Act, the Secretary is authorized to enforce the Act against such person or company pursuant to Section 17(a)(1) of the Act, 10 P.S. §162.17(a)(1), and to levy discipline and administrative fines according to Section 17(b) of the Act, 10 P.S. §162.17(b). Under Section 17(b)(3), the Secretary may impose an administrative fine not to exceed \$1,000 for each act or omission which constitutes a violation of the Act.

The Secretary of the Commonwealth finds that Respondent has violated the Act by both violating and operating in violation of an Order issued by the Secretary, by not submitting a registration as required by the Order and by providing professional solicitor services to a charity while prohibited by Order from doing so. Respondent has also violated the Act by providing services as a professional solicitor in the Commonwealth for a charitable organization prior to obtaining approval by the Department of State of a registration statement; providing services as a professional solicitor in the Commonwealth prior to and in the absence of approval by the

Department of State of a required bond; failing to file with the Department of State each written contract between Respondent and a charitable organization for professional solicitation services within the Commonwealth, and further providing those services prior to the approval by the Department of each contract; failing to file with the Department of State a written solicitation notice with each written contract between Respondent and a charitable organization for professional solicitation services within the Commonwealth; performing professional solicitation services within the Commonwealth pursuant to contracts with a charitable organization which did not contain the required signatures; failing to submit to the Department required financial reports; failing to clearly and conspicuously provide required disclosures on each clothing bin; and finally, failing to conspicuously state the required notice on each clothing bin.

Despite being sent an Order to Cease and Desist, Respondent nonetheless continued to render professional solicitor services in the Commonwealth for a charitable organization. To date, Respondent remains unregistered as a professional solicitor in the Commonwealth of Pennsylvania. The obligations that Respondent failed to perform are critical requirements to which a professional solicitor must adhere under the Act. Based on the foregoing findings of facts, conclusions of law and discussion, and in the absence of mitigation, the following order shall issue:

NOTICE

The attached Adjudication and Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Secretary of the Commonwealth with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Pennsylvania Department of State
Office of Chief Counsel
Legal Counsel, Bureau of Corporations and Charitable Organizations
401 North Street
Room 306
Harrisburg, PA 17120