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

PROHIBITIVE
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Department of State

Commonwealth of Pennsylvania, :
Bureau of Corporations and :
Charitable Organizations :
v. :
Godot Animal Sanctuary, a/k/a : **File No. 17-98-09069**
Godot Animal Foundation, :
Respondent :

FINAL ADJUDICATION AND ORDER

Robert Torres
Acting Secretary of the Commonwealth

302 North Office Building
401 North Street
Harrisburg, PA 17120

HISTORY

This matter comes 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* (the “Act”), 10 P.S. §§162.1-162.24. On December 7, 2017, the Department of State (the “Department”), Bureau of Charitable Organizations (the “Bureau”) filed a one-count Order to Show Cause (“OTSC”) which charges Respondent with having violated the Act at 10 P.S. §162.15(a)(1). The OTSC alleges that on or about December 20, 2016, the Bureau notified Respondent that it may be required to register under the Act, and that Respondent had thirty (30) days to respond by becoming properly registered or by providing evidence to the Bureau that it is was exempt or excluded from registering under the Act. Respondent failed to respond to the Bureau’s correspondence and, on or about July 20, 2017, the Secretary issued an Order which directed Respondent to cease and desist from soliciting contributions in the Commonwealth until it provided the Bureau with evidence that it was exempt from registering, or until it became duly registered. The OTSC asserts that despite the Secretary’s July 20, 2017 Order, Respondent continued to solicit charitable contributions in the Commonwealth in violation of 10 P.S. § 162.15(a)(1).

Respondent filed an Answer to the OTSC on February 14, 2018, through which Lana S. Laughbaum identified Godot Animal Sanctuary as having the address “Godot Animal Sanctuary, 391 Laughbaum Drive, Punxsutawney, PA 15767”. Respondent was notified that a formal administrative hearing on this matter was scheduled for May 2, 2018 by way of a Notice of Hearing served upon Respondent at the foregoing address. Respondent requested a continuance of the hearing by letter dated April 27, 2018. Respondent’s correspondence once again identified its address as “Godot Animal Sanctuary, 391 Laughbaum Drive, Punxsutawney, PA 15767”.

Respondent's request for a continuance was granted by Order dated April 30, 2018, and by way of a June 6, 2018 Notice of Rescheduled Hearing, the hearing was rescheduled for July 23, 2018. The Notice of Rescheduled Hearing was served upon Respondent at the foregoing address.¹ A formal administrative hearing was held, as scheduled, on July 23, 2018. Michael J. Gennett, Esquire represented the Commonwealth at the hearing. Respondent did not appear for the hearing. The Commonwealth waived the filing of a post-hearing brief, and the hearing record closed on August 8, 2018, with the filing of notes of testimony ("N.T.").

FINDINGS OF FACT

1. This matter comes before the Secretary of the Commonwealth pursuant to the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990, P.L. 1200, No. 202, as amended (the "Act"), 10 P.S. §§162.1, *et. seq.*
2. Respondent's last known address is 391 Laughbaum Drive, Punxsutawney, PA 15767. (Official Notice-Bureau Records²; Exhibit C-2).
3. Investigator Gail Leyder ("Investigator Leyder") was assigned to investigate Respondent in December 2016. (N.T. 14-15).

¹Respondent's address was believed to be 391 Laughbaum Drive, Punxsutawney, PA 15767 at the time of the hearing based upon her prior representations. Subsequent to the hearing, on July 30, 2018, the Notice of Rescheduled Hearing was returned to the Office of Prothonotary with the annotation "Return to Sender. Laughbaum, Lana moved. Left no address. Unable to Forward. Return to Sender."

²Official notice of such matters as might be judicially noticed by courts is permissible under the General Rules of Administrative Practice and Procedure, 1 Pa. Code §35.173, which provides, in pertinent part, as follows:

§35.173: Official notice of facts.

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or any matters as to which the agency by reason of its functions is an expert. . . .

¹ Pa. Code §35.173. See also, *Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A. 2d 991, 994 n. 6 (Pa. Cmwlth. 1987).

4. On or about July 20, 2017, the Secretary issued an Order which directed Respondent to cease and desist from soliciting contributions in the Commonwealth until it provided the Bureau with evidence that it was exempt from registering, or until it became duly registered. (Exhibit C-3; N.T. 16-17).

5. Investigator Leyder reviewed Respondent's internet website (the "website") on August 2, 2017 as part of her investigation to determine whether Respondent was soliciting funds. (Exhibit C-5; N.T. 14-15).

6. Respondent was soliciting funds through the website as of August 2, 2017. (Exhibit C-5; N.T. 15-17, 19).

7. On or about September 21, 2017, the Secretary issued a Cease and Desist Lift Order which permitted Respondent to solicit funds. (Exhibit C-4; N.T. 17-18).

8. Respondent was served with all pleadings, orders and notices filed of record in this matter. (Official Notice-Bureau Records).

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (10 P.S. §162.4).
2. Respondent received notice of the charges, and has had an opportunity to be heard in this proceeding in accordance with Administrative Agency Law, 2 Pa.C.S. § 504. (Finding of Fact No. 8)
3. Respondent solicited contributions from July 20, 2017 through September 21, 2017, in violation of the Secretary's July 20, 2017 Order, and thus in violation of the Act at 10 P.S. §162.15(a)(1). (Finding of Fact, Nos. 4-7).

DISCUSSION

This matter comes before the Secretary of the Commonwealth pursuant to the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990, P.L. 1200, No. 202, *as amended* (the “Act”), 10 P.S. §§162.1-162.24. On May 22, 2014, the Department of State, Bureau of Charitable Organizations filed a one-count Order to Show Cause which charges Respondent with having violated the Act 10 P.S. §162.15(a)(1) by continuing to solicit funds after it had been issued a July 20, 2017 Order of the Secretary which directed Respondent to cease and desist from soliciting contributions in the Commonwealth until it provided the Bureau with evidence that it was exempt from registering, or until it became duly registered.

The Bureau’s evidence consisted of testimony from Bureau Investigator Leyder, and the admission into evidence of the following Exhibits: (1) December 7, 2017 Notice and Order to Show Cause (Exhibit C-1); (2) Respondent’s Answer to the Order to Show Cause (Exhibit C-2); (3) Secretary’s July 20, 2017 Cease and Desist Order (Exhibit C-3); (4) Secretary’s September 21, 2017 Cease and Desist Lift Order (Exhibit C-4); and (5) Godot Animal Sanctuary website (Exhibit C-5). Respondent did not appear for the hearing.

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. Dept. of Banking*, 300 A.2d 823, 824 (Pa. Cmwlth. 1973). Based upon the procedural history surrounding the efforts to serve Respondent with notice of the July 23, 2018 hearing, a threshold analysis is warranted to determine whether Godot Animal Sanctuary was adequately provided notice of the hearing in order to comport with due process.

Section 33.31 of the General Rules of Administrative Practice and Procedure, 1 Pa. Code §33.31 authorizes service by mail. Due process is afforded to a party when the party is informed of the nature of the allegations with reasonable certainty, is provided timely notice and opportunity to answer the charges and defend against the accusations, and when proceedings are conducted in a fair and impartial manner. *Clark v. Department of Public Welfare* 427 A.2d 712 (Pa. Cmwlth. 1981); *Celane v. Insurance Commissioner*, 415 A.2d 130 (Pa. Cmwlth. 1980); *Gaudenzia, Inc. v. Zoning Bd. of Adjustment of City of Philadelphia*, 287 A.2d 698 (Pa. Cmwlth. 1972). See, also *Gutman v. State Dental Council and Examining Board*, 463 A.2d 114 (Pa. Cmwlth. 1983). Due process does not confer an absolute right to be heard, but only that a party be provided an opportunity to be heard. *Goetz v. Dept. of Environmental Resources*, 613 A.2d 65, 67 (Pa. Cmwlth. 1992), *app. den.*, 533 Pa. 663, 625 A.2d 1196 (1993).

In this case, Respondent filed an Answer to the Order to Show Cause and, therefore, was clearly notified of the allegations set forth by the Bureau. Respondent, thereafter, requested a continuance of the May 2, 2018 hearing. Both Respondent's Answer to the Order to Show Cause, and its request for a continuance, identified its place of business as 391 Laughbaum Drive, Punxsutawney, PA 15767. Pursuant to the granting of Respondent's continuance request, a June 6, 2018 Notice of Rescheduled Hearing was served upon Respondent at the identical address, and scheduled the hearing for July 23, 2018, to be held at 2601 North Third Street, One Penn Center, Harrisburg, PA at 1:30 p.m.

It is well established that constitutionally sufficient notice is that which is reasonably calculated, under all the circumstances, to inform the interested parties that action against them is pending. *Mullane v. Central Hanover Bank and Trust Company*, 339 U.S. 306, 70 S.Ct. 652, 94

L.Ed. 865 (1950); 427 A.2d 712 (Pa. Cmwlth. 1981). 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 (Pa. Cmwlth. 1986); *Yarbrough v. Department of Public Welfare*, 478 A.2d 956 (Pa. Cmwlth. 1984). Upon consideration of the foregoing procedural history, including Respondent's actual knowledge of the charges brought against it by the Bureau, the Acting Secretary finds that notice of the July 23, 2018 hearing was properly served upon Respondent in accordance with due process and the General Rules of Administrative Practice and Procedure.

Violation

The degree of proof required of the Bureau to establish its case is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that evidence demonstrating a fact is more likely to be true than not to be true or, if the burden were viewed as a balance scale, the evidence in support of a party's case must weigh slightly more than opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1949). The Bureau, therefore, has the burden of proving its allegations with evidence that is substantial and legally credible, not by mere "suspicion" or by only a "scintilla" of evidence. *Lansberry*, 578 A.2d at 602.

The issue to be addressed in this matter is whether Respondent continued to solicit contributions in the absence of an approved registration, and/or by continuing to solicit contributions after having been ordered to cease and desist from such activities by the Secretary on July 20, 2017. 10 P.S. § 162.15 provides, in pertinent part:

(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.

10 P.S. §162.15(a)(1).

In turn, “Solicitation” is defined by the Act at 10 P.S. §162.3 as the following:

Solicitation. Any direct or indirect request for a contribution on the representation that such contribution will be used in whole or in part for a charitable purpose, including, but not limited to, any of the following:

(2) Any written or otherwise recorded or published request that is mailed, sent, delivered, circulated, distributed, posted in a public place or advertised or communicated by press, telegraph, television or any other media...

10 P.S. §162.3.

The evidentiary record established at the hearing through Investigator Leyder’s testimony and Exhibit C-3 unequivocally establishes that the Secretary ordered Respondent to cease and desist from soliciting contributions in the Commonwealth until it provided the Bureau with all previously requested information, and until it became duly registered with the Bureau, or had provided information confirming that it was exempt or excluded from registration under the Act. Respondent was properly served with the July 20, 2017 Cease and Desist Order by regular and certified mail sent to Respondent’s last known address with the Bureau. See, *Kobylski v. Milk Marketing Board*, 516 A.2d 75 (Pa. Cmwlth. 1986), *infra*.

Despite the issuance of the Secretary’s cease and desist Order, the record clearly demonstrates through Investigator Leyder’s testimony and Exhibit C-3 that Respondent continued to solicit contributions after July 20, 2017. Specifically, Investigator Leyder testified

that Respondent continued to solicit contributions through its website as of August 2, 2017. Respondent's internet solicitations identify the organization as a "Federal and State Certified Charitable Organization for Animal Welfare and Rescue", and enabled the public to contribute funds through PayPal. Based upon Investigator Leyder's testimony and the supporting documentation of record, the Bureau has established by a preponderance of the evidence that Respondent violated the Act at 10 P.S. § 162.15(a)(1) by continuing to solicit contributions on behalf of Godot Animal Sanctuary after being ordered to cease and desist from such activities by the Secretary of the Commonwealth.

Sanction

When the Secretary finds that a person has violated any of the provisions of the Act, he is authorized to enforce the Act against such person pursuant to Section 17 of the Act, 10 P.S. §162.17, which provides as follows:

10 P.S. §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.

(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.

10 P.S. §162.17.

The registration requirements of the Act, as well as the Act's other provisions, are specifically designed to protect the public from unscrupulous organizations which prey upon the general public under the guise of pursuing charitable endeavors. In this case, Respondent clearly solicited funds in direct disregard of the Order by the Secretary to cease and desist from soliciting funds until it became registered and/or responded to the Bureau's request for information on whether it was excluded or exempted from registration.

The Commonwealth recommends that Respondent pay a \$1,000.00 fine commensurate with the period from July 20, 2017 through September 21, 2017, during which it continued to solicit funds in violation of the Secretary's Order (N.T. 20). Based upon the nature and scope of Respondent's conduct, the Secretary believes the Commonwealth's recommendation is reasonable. Should Respondent fail to comply with the Act and/or this Order, it may be subject to further action under Section 17(b)(3) of the Act, 10 P.S. §162.17. Accordingly, the following order shall issue:

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

Commonwealth of Pennsylvania,	:	
Bureau of Corporations and	:	
Charitable Organizations	:	
v.	:	
Godot Animal Sanctuary, a/k/a	:	File No. 17-98-09069
Godot Animal Foundation,	:	
Respondent	:	

ORDER

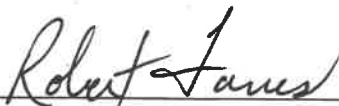
AND NOW, this 24th day of **October 2018**, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Discussion, it is hereby **ORDERED** that an administrative fine in the amount of **\$1,000.00** shall be imposed upon Respondent **Godot Animal Sanctuary, a/k/a Godot Animal Foundation**. This amount shall be remitted by certified check or U.S. postal Service money order made payable to Commonwealth of Pennsylvania" within thirty (30) days of the effective date of this Order and mailed to:

Martha H. Brown
Pennsylvania Department of State
Office of Chief Counsel
401 North Street, Room 306
Harrisburg, PA 17120

Failure to comply with this Order shall constitute a violation of an order issued by the Secretary, subjecting Respondent to additional penalties under Section 17 of the Act, 10 P.S. § 162.17.

Appeal of this decision to the Commonwealth Court may be taken pursuant to 10 P.S. §162.17(c) and 2 Pa. C.S. §702 within 30 days of the date of mailing show below.

BY ORDER:



Robert Torres
Acting Secretary of the Commonwealth

For the Commonwealth:

Michael J. Gennett, Esquire
Governor's Office of General Counsel
Department of State Office of Chief Counsel
306 North Office Building
Harrisburg, PA 17120

For Respondent:

Godot Animal Sanctuary
Attention: Lana S. Laughbaum
391 Laughbaum Drive
Punxsutawney, PA 15767

Date of mailing: 10.25.18