

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

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**In the matter of Mediation Ministries
and Litigation Alternatives,
Respondent**

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File No. 18-98-04099

FINAL ADJUDICATION AND ORDER

The Honorable Kathy Boockvar
Acting Secretary of the Commonwealth

401 North Street, Rm 302
Harrisburg, PA 17120

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HISTORY

This matter comes before the Secretary of the Commonwealth (“Secretary”) pursuant to the Solicitation of Funds for Charitable Purposes Act (the “Act”), *infra*, under which a Cease and Desist Order (“C&D Order”) was issued to Mediation Ministries and Litigation Alternatives (“Respondent”) on June 26, 2018.¹ The C&D Order was based on a finding that Respondent is not registered with the Department of State’s Bureau of Corporations and Charitable Organizations (“BCCO”) and/or has failed to submit requested documentation to the BCCO in accordance with the Act. On May 2, 2018, an agent of the BCCO had mailed a certified letter to Respondent formally requesting documentation regarding its financial status and efforts to solicit charitable contributions from the public, but Respondent did not fully comply with that request. Therefore, the C&D Order directed Respondent to immediately cease any and all solicitation of charitable contributions in the Commonwealth until such time as it would provide the BCCO with all of the requested documentation. The C&D Order further notified Respondent of its right to file an appeal of the Order by requesting a hearing.

On July 9, 2018, a request for a hearing was received in the Office of the Prothonotary of the Department of State (the “Department”) which had been submitted by Respondent’s Executive Director, Margaret McGann Fitzpatrick (“Fitzpatrick”), who is not licensed as an attorney. On September 20, 2018, the Prothonotary issued a Notice setting a hearing to be held before the undersigned Hearing Examiner on October 19, 2018. On October 2, 2018, Fitzpatrick requested a continuance of the hearing until a date after November 12, 2018. The continuance was granted by Order dated October 18, 2018.

On November 26, 2018, the Prothonotary issued a Notice rescheduling the hearing to be

¹ On the date of the C&D Order, the Honorable Robert Torres was the Acting Secretary of the Commonwealth.

held on January 29, 2019 and a hearing was duly convened on that date. However, Fitzpatrick herself appeared without counsel on behalf of Respondent nonprofit corporation. Other than permitted by the agency in a specific case, associations (such as nonprofit corporations) must be represented in a proceeding by an attorney at law admitted to practice before the Supreme Court of Pennsylvania in an adversary proceeding under the General Rules of Administrative Practice and Procedure ("GRAPP") (see 1 Pa. Code § 31.21 – § 31.23). Therefore, the hearing did not proceed but was rescheduled to be held on May 23, 2019 in order to enable Respondent to obtain legal representation.

The matter was reconvened as scheduled on May 23, 2019. As Respondent's purported Executive Director and sole member of Board of Directors, Fitzpatrick appeared for the hearing. However, citing financial constraints, she stated that Respondent had not retained counsel to represent it. Fitzpatrick was advised that the corporation's inability to retain counsel could not impair or prejudice the Commonwealth's ability to proceed with its case, which Fitzpatrick acknowledged. Accordingly, the hearing went forward as scheduled. The Commonwealth appeared at the hearing and was represented by Michael J. Gennett, Esquire, who presented its case in the form of testimony from an Investigator for the BCCO along with certain documentation described *infra*. Although in light of its lack of representation Respondent was precluded from objecting to the Commonwealth's evidence and from presenting argument in the case, for the sake of a full and complete record Fitzpatrick was permitted to provide sworn testimony on Respondent's behalf. The Department waived the filing of a post-hearing brief and the record closed on June 11, 2018 with the submission of notes of testimony ("N.T."). The matter is ready for decision.

FINDINGS OF FACT

1. This case comes before the 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.*

2. Service of the C&D Order was made on Respondent at P.O. Box 109, 1 South College Avenue, Grantham, PA 17027. (Exhibits C-2, C-3)

3. Respondent Mediation Ministries and Litigation Alternatives was incorporated by Margaret McGann Fitzpatrick as a Pennsylvania nonprofit corporation on June 25, 2003. (Official Notice-Bureau Records)²

4. The articles of incorporation filed with the Department of State in 2003 state that the purpose of the corporation was “to provide alternative to the litigation system and agencies by empowering the disabled, elderly, veterans community and working poor with the tools and skills

² Official 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 §31.1 *et. seq.*, at §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.

Official notice is also permitted under case law. See, for example, *Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A. 2d 991 (Pa. Cmwlth. 1987), in which the Commonwealth Court explained:

“Official notice” is the administrative counterpart of judicial notice and is the most significant exception to the exclusiveness of the record principle. The doctrine allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency’s field and those facts contained in reports and records in the agency’s files, in addition to those facts which are obvious and notorious to the average person. Thus, official notice is a broader doctrine than is judicial notice and recognizes the special competence of the administrative agency in its particular field and also recognizes that the agency is a storehouse of information on that field consisting of reports, case files, statistics and other data relevant to its work.

521 A. 2d at 994 n. 6.

necessary to resolve problems in a peaceful manner and become better focused working individuals in the community for the same group, and/or advocate on their behalf when necessary.”

(Official Notice-Bureau Records)

5. Margaret McGann Fitzpatrick has represented herself as both the Executive Director and the sole Director of the Board of Director of Mediation Ministries and Litigation Alternatives. (Official Notice-Bureau Records)

6. Respondent corporation has never been registered as a charitable organization with the Bureau. (Official Notice-Bureau Records)

7. On May 2, 2018, Drew A. Koser (“Koser”) a Special Investigator for the BCCO sent a four-page letter (“Investigative Letter”) to Respondent by certified mail to its Grantham, PA address seeking several specified items of information regarding its financial affairs, charitable solicitation efforts, materials and proceeds, officers, disbursements and affiliates, if any. The letter called for a reply to be filed within thirty (30) days. (Exhibit C-1; N.T. 9)

8. The kinds of documents requested by the Investigative Letter were similar in nature and volume to the kinds of documents that a charitable organization is required to file with the BCCO in order to properly register as a charitable organization in Pennsylvania. (Exhibit C-1: Official notice of the provisions of the Act at 10 P.S. § 162.5)

9. The letter put Respondent on specific notice that a C&D Order could result if all requested materials were not provided in a timely fashion. (Exhibit C-1, p. 4)

10. Identifying herself as the Executive Director of Respondent, Fitzpatrick replied by telephone to Koser in response to the Investigative Letter. (N.T. 10)

11. Fitzpatrick contacted Koser by telephone on a number of occasions thereafter. (N.T. 11)

12. Fitzpatrick provided Koser with certain documents such as Respondent's IRS determination letter, Articles of Incorporation, and a two-page listing of certain financial information pertaining to the period between 2012 and 2017. However, Fitzpatrick did not provide all of the documents and data requested by the Investigative Letter.³ (N.T. 11 – 12)

13. As a result of Respondent's failure to provide all of the information required by the Investigative Letter, the C&D Order was issued. (N.T. 14)

14. Since the issuance of the C&D Letter and up to and including the date of the hearing, Respondent has failed to provide all of the information required by Investigative Letter. (N.T. 14 – 15; Record, *passim*)

15. Respondent was served with all pleadings, orders and notices filed of record in this matter. (Docket entries)

16. Respondent was advised of GRAPP's requirement that, except as permitted by the agency in a specific case, corporate entities must be represented by counsel in proceedings before the Secretary, and it was given ample opportunity to retain an attorney, but Respondent failed to obtain representation as required. (Docket entries; N.T. 5-6)

³ The Commonwealth did not offer into evidence any of the documents produced to Koser by Respondent. However, since Koser testified that whatever she produced was insufficient to meet all requirements of the Investigative Letter, and Respondent did not successfully challenge or rebut Koser, it was not essential for the Commonwealth to offer them into the record.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Section 4 of the Act, 10 P.S. § 162.4)
(Findings of Fact 1- 6)
2. Respondent received notice of the C&D Order and was afforded an opportunity to be heard in this proceeding in accordance with Administrative Agency Law, 2 Pa.C.S. § 504.
(Findings of Fact 2, 15-16)
3. The evidence presented by the Commonwealth established by a preponderance of evidence that Respondent failed to provide requested information to the BCCO as required by the Investigative Letter and the C&D Order, in violation of Section 17(a)(2) of the Act, 10 P.S. §162.17(a)(2). (Findings of Fact 7 - 14).

DISCUSSION

This matter comes before the Secretary of the Commonwealth based on a C&D Order issued pursuant to section 17 of the Act which provides, in pertinent part as follows:

(a) General rule.--The secretary may refuse to register ... any charitable organization, ... whenever he finds that a charitable organization, ... 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:

(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.

In the instant case, the C&D Order was based on Respondent's failure to comply with a request issued under Section 5 of the Act, 10 P.S. § 162.5, which requires the president, chair or principal officer of a charitable organization to file certain financial information with the BCCO.

10 P.S. § 162.5(b) – (d).⁴ In the course of the BCCO's investigation, Respondent produced a

⁴ **b) Filing of statement.**--It shall be the duty of the president, chairman or principal officer of each charitable organization to file the registration statement, financial report and fee required under this section. The registration statement shall be made by two authorized officers subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), including the chief fiscal officer of the organization, and shall contain all of the following information:
(1) The name of the organization and any other name or names under which it intends to solicit contributions.
(2) The principal address and telephone number of the organization and the addresses and telephone numbers of any offices in this Commonwealth. If the organization does not maintain an office, the name and address of the individual having custody of its financial records.

Determination Letter issued by the United States Internal Revenue Service ("IRS") exempting Respondent from federal income tax. (N.T. 11). Under section 3 of the Act, a "charitable organization" is defined to include any person or entity that has been granted tax exempt status under the Internal Revenue Code. 10 P.S. § 163.3. Thus it is clear that Respondent is a charitable organization as defined in the Act and was appropriately subject to the Secretary's statutory

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- (3) The names and addresses of any affiliates which share in the contributions or other revenue raised in this Commonwealth.
 - (4) The names and addresses of the officers, directors and trustees and the principal salaried executive staff officers.
 - (5) A copy of the financial report required under subsection (e).
 - (6) A copy of any determination of the organization's tax-exempt status under the Internal Revenue Code of 1986 (Public Law 99-514) and, for organizations granted tax-exempt status under section 501(c)(3), a copy of the last filed Internal Revenue Service Form 990 and Schedule A for every charitable organization and parent organization.
 - (7) The date when the organization's fiscal year begins.
 - (8) Whether:
 - (i) the organization is authorized by any other governmental authority to solicit contributions;
 - (ii) the organization or any of its present officers, directors, executive personnel or trustees are or have ever been enjoined in any jurisdiction from soliciting contributions or have been found to have engaged in unlawful practices in the solicitation of contributions or administration of charitable assets;
 - (iii) the organization's registration or license has been denied, suspended or revoked by any governmental agency together with the reasons for such denial, suspension or revocation; and
 - (iv) the organization has voluntarily entered into an assurance of voluntary discontinuance or agreement similar to that set forth in section 19(b),² together with a copy of that agreement.
 - (9) A clear description of the specific programs for which contributions will be used and a statement whether such programs are planned or in existence.
 - (10) The names and addresses of any professional solicitors, professional fundraising counsels and commercial coventurers who are acting or have agreed to act on behalf of the organization.
 - (11) The names of the individuals or officers of the organization who are in charge of any solicitation activities, who will have final responsibility for the custody of the contributions and who will be responsible for the final distribution of the contributions.
 - (12) Whether any of the organization's officers, directors, trustees or employees are related by blood, marriage or adoption to each other or to any officers, agents or employees of any professional fundraising counsel or professional solicitor under contract to the organization or to any supplier or vendor providing goods or services to the organization, and the names and business and residence addresses of any such related parties. Where the number of employees or vendors renders it impractical for the registrant to contact them on an individual basis regarding the existence of any of the relationships set forth under this section, the registrant may file an affidavit stating which relationships, if any, exist to the best of the affiant's information and belief.
 - (13) Any other information required by the regulations of the department.
- (c) Additional filings.**--With the initial registration only, each charitable organization required to be registered shall also file with the department the following documents:
- (1) A copy of the organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument and bylaws.
 - (2) A statement setting forth where and the date when the organization was legally established, the form of its organization and its tax-exempt status together with a copy of the letter of exemption, if any, issued by the Internal Revenue Service.
- (d) Federal tax exemption determination.**--Each charitable organization registered with the department shall file with the department a copy of any Federal tax exemption determination letter received after the initial registration within 30 days after receipt, and any amendments to its organizational instrument within 30 days after adoption.

authority to request information about its financial status and charitable solicitation program.

Although procedurally this matter is an appeal filed by Respondent, the burden of proof regarding the C&D Order rested on the Commonwealth in this case. The degree of proof required to establish a case in an administrative proceeding is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A. 2d 600 (Pa. Cmwlth. 1990). A preponderance of evidence is that amount of proof showing that the existence of a fact is more likely than not to be true. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854, 856 (Pa. Supreme 1950). In weighing evidence, a fact-finder “may rely on his or her experience, common sense, and/or expert testimony” to arrive at a proper conclusion. *Commonwealth v. Segida*, 985 A.2d 871, 879 (Pa. 2009).

The narrow issue to be addressed under the C&D Order is whether, after notice, Respondent refused or failed to produce its records or other information it was required to disclose under the Secretary’s authority as set forth in the Act. At the hearing, the Commonwealth produced credible evidence and testimony demonstrating that a certified letter was sent by a Special Investigator for the BCCO to Respondent seeking certain information that the Secretary was authorized by the Act to obtain. The credible and unrefuted testimony of the Special Investigator was that certain documentation was produced—including an IRS determination letter showing that Respondent is a charitable organization—but not all of the required information. Unrepresented at the hearing, Respondent did not challenge the Special Investigator’s testimony. The testimony presented by Respondent’s Executive Director, Fitzpatrick, did not refute or discredit the Commonwealth’s evidence in any way. Accordingly, in response to Respondent’s appeal, the Commonwealth met its burden of proving that Respondent failed to produce documents and records that it was required to produce under the Act, and therefore that the C&D Order was

justifiably issued in accordance with the Act.

Sanctions

Upon a finding that a charitable organization has failed, after notice, to produce records required to be produced or disclosed, the Secretary is authorized to enforce the Act pursuant to paragraphs (b)(2) and (3) of section 17, 10 P.S. § 162.17(b)(2) and (3), which provide respectively for the issuance of a C&D Order and the imposition of an administrative fine not to exceed \$1,000 for each act or omission which constitutes a violation of the Act, and an additional penalty, not to exceed \$100, for each day during which such violation continues. 10 P.S. § 162.17(b)(3). In the instant matter, the C&D Order has been issued and is being upheld in this Adjudication. The only other issue is whether or not a civil penalty is appropriate. At the conclusion of the hearing, the Commonwealth recommended the imposition of a civil penalty of \$500, "for filing a frivolous appeal," because she acknowledged before the hearing that she did not provide all the requested information and that the charity is no longer doing business. Unrepresented, Respondent could not make a legal argument against the Commonwealth's recommendation, and the testimony provided by Fitzpatrick did not provide a persuasive basis on which to modify that amount for any equitable or mitigatory reasons.⁵ Accordingly, the following Order will issue.

⁵ Rambling, disjointed and mostly irrelevant, Fitzpatrick's testimony provided little credible information. She testified that she has operated Respondent organization for twenty (20) years and that it provides pro bono services to homeless, disabled and senior citizens as well as to military veterans. (N.T. 18). However, she did not describe the exact nature of the services Respondent performs other than that "we go to our clients and we walk them through the services that they need." (N.T. 18). She named certain public and private entities who are Respondent's referral sources, but again did not state the purposes of such referrals. (N.T. 18). She did not deny Respondent's federal-tax-exempt status and admitted that it accepts charitable donations when offered, but denied that Respondent actively solicits funds. (N.T. 18). She provided further testimony regarding certain personal health issues and her own financial straits. (N.T. 19). None of this information refuted Koser's testimony or the Commonwealth's case for issuance of the C&D Order and the issuance of a civil penalty.

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

In the matter of Mediation Ministries :
and Litigation Alternatives, : **File No. 18-98-04099**
Respondent :

ORDER

AND NOW, this 17th day of July, 2019, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Discussion, the appeal filed by Mediation Ministries and Litigation Alternatives, in response to the Cease and Desist Order issued by the Secretary on June 26, 2018, is hereby **DENIED** and therefore the Cease and Desist Order shall remain **IN FULL FORCE AND EFFECT**.


The Secretary of the Commonwealth further **ORDERS** that Mediation Ministries and Litigation Alternatives shall pay an administrative fine of **\$500.00** pursuant to Section 17(b)(3) of the Act unless, within thirty (30) days of the date of this Order, it duly **REGISTERS** under the **SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES ACT**.

Mediation Ministries and Litigation Alternatives shall pay the administrative fine by certified check, cashier's check, or postal service money order, made payable to "Commonwealth of Pennsylvania." The full amount of the administrative fine shall be delivered to BCCO Counsel, Department of State, Office of Chief Counsel, 401 North Street, Room 306, Harrisburg, PA 17120, within 30 days of the date of mailing of this Order.

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

Appeal may be taken pursuant to the Act at § 17(c), 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.

BY ORDER


The Honorable Kathy Boockvar
Acting Secretary of the Commonwealth

For the Commonwealth: Michael Gennett, Esquire
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE OFFICE OF CHIEF COUNSEL
PROSECUTION DIVISION
P.O. Box 2649
Harrisburg, PA 17105-2649

For Respondents: Mediation Ministries and Litigation Alternatives
One S. College Ave
P.O. Box 109
Grantham, PA 17027

Date of mailing: 7.18.19

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