

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

From: 12-03-57
2013 JAN -3 AM 11:50
Docket No. 0001

COMMONWEALTH OF PENNSYLVANIA, BUREAU OF CHARITABLE ORGANIZATIONS :
v. :
JAKE GITTLEN MEMORIAL GOLF TOURNAMENT and WARREN GITTLEN, Respondents :
Docket No. 0001 -98-13 :
File Nos. 12-98-06446 :
12-98-07367 :

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations (“Bureau”), and the JAKE GITTLEN MEMORIAL GOLF TOURNAMENT (“Tournament”) and WARREN GITTLEN (“Gittlen”), individually, and as president of the Tournament (“Respondents”), stipulate as follows in settlement of the above-captioned case.

JURISDICTION

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 (“Act”), 10 P.S. §§ 162.1 et. seq.

2. At all relevant and material times, Respondent Gittlen was the President of the Tournament.

3. At all relevant and material times, Respondent Tournament was a charitable organization, as defined by the Act.

STIPULATED FACTS

4. Respondents admit that the following allegations are true:

- a. Respondents' last known mailing address on file with the Bureau is 4331 South Victoria Way, Harrisburg, PA 17112.
- b. At all relevant and material times, the Jake Gittlen Cancer Research Institute ("Institute") was established as an institute to support cancer research at the Pennsylvania State University ("PSU"), College of Medicine, in Hershey, PA.
- c. On or about September 15, 2006, the then Secretary of the Commonwealth, Pedro A. Cortés, signed an Order accepting the Consent Agreement reached between the Commonwealth and Respondents Gittlen and Tournament.
- d. Within sixty (60) days of the date of the signing of the Agreement (September 15, 2006), Respondents paid over to PSU, for the benefit of the Institute, the amount of four million dollars (\$4,000,000).
- e. Since Respondents paid four million dollars (\$4,000,000) to PSU for the benefit of the Institute in 2006, Respondents did not make any additional contributions to PSU or the Institute until December 2011.
- f. Between 2007 and 2011, Respondents made fifty two (52) representations that it made at least eight hundred thousand dollars (\$800,000) in annual contributions to either PSU and/or the Institute.
- g. Paragraph 7(e) of the Agreement reads: "The Tournament shall not represent, either directly or indirectly, that it makes contributions to the Institute or any other organization in any amount other than those amounts paid by the Tournament."
- h. Respondents mistakenly believed that the four million dollars (\$4,000,000) that was paid as part of the previous Consent Decree could be counted as money paid over in its representations.

- i. Between 2007 and 2011, Respondents sent sixteen (16) written confirmations, receipts, and reminders of contributions to contributors to Respondent without the disclosure statement required by Section 13(c) of the Act.
- j. According to Respondents, this was a clerical error and an unintentional oversight.

AGREED VIOLATIONS

- 5. Respondents admit and agree that by engaging in the aforementioned activities:
 - a. Respondents violated the Act at 10 P.S. § 162.15(a)(1), in that Respondents violated the Order of the Secretary at paragraph 7(e) of the Agreement.
 - b. Respondents violated the Act at 10 P.S. § 162.13(c), in that Respondents produced written confirmations, receipts, and reminders of contributions without printing the disclosure statement required in Section 13(c).

PROPOSED ORDER

6. Without admitting or denying any specific violation of the Act and to address concerns raised by the Commonwealth, Respondents consent to the issuance of the following Order in settlement of this matter:

- a. Respondents violated the Act at 10 P.S. § 10 P.S. § 162.15(a)(1), and 10 P.S. § 162.13(c).

ADMINISTRATIVE FINE

b. An **ADMINISTRATIVE FINE** of twenty thousand dollars (\$20,000) is levied upon Respondents. Respondents shall tender the full sum of twenty thousand dollars (\$20,000), with this executed Consent Agreement which shall be paid by certified check, cashier's check, attorney's check, or U.S. Postal money order made payable to the "Commonwealth of Pennsylvania."

PAYMENTS TO THE FUND

c. No later than January 31, 2013, Jake Gittlen Memorial Golf Tournament (“Tournament”) shall contribute \$3,300,000 to the Jake Gittlen Memorial Golf Tournament Fund (the “Fund”). The Fund, pursuant to an agreement with PSU, is to be utilized solely to support the operations of the Jake Gittlen Cancer Research Foundation (the Foundation). The Foundation is an administrative branch of PSU dedicated to cancer research and education of students and physicians in the field of cancer research. The Tournament shall report the contribution to the Fund on its Form 990 filed for the year in which the contribution is made. All representations contained in Tournament solicitation and other fund raising materials shall be consistent with the information contained in the Form 990.

d. The Tournament shall continue to make its annual contribution of approximately \$800,000 to the Fund pursuant to the September 30, 2012, Agreement between the Tournament and the Pennsylvania State University (“PSU”) (the Fund Agreement), as amended.

e. The Tournament may continue to claim credit in its solicitation and other fund raising materials for contributions made to the Fund pursuant to the Fund Agreement for the years in which the contributions have actually been transferred from the Tournament to the Fund as reflected in its Form 990.

ADDITIONAL REQUIREMENTS

f. The Tournament agrees that the statement required by Section 13(c) of the Charities Act will be printed verbatim on every solicitation or written confirmation.

g. The Tournament will make no representation in any of its solicitation and other fund raising materials that it pays no salaries.

h. No later than December 31, 2012, the Agreement entered into between Warren Gittlen and PSU dated June 15, 1989 will be terminated.

i. Beginning January 1, 2013, Respondent Warren Gittlen will assume the position of Chief Executive Officer of the Tournament and will be paid a salary as set by the Tournament Board of Directors (the "Board"). Thereafter, Gittlen will remain as a salaried officer of the Tournament, subject to the approval of the Board, and will receive no other compensation from the Tournament, PSU or the Foundation.

CASE SETTLED AND DISCONTINUED

7. This case shall be deemed settled and discontinued upon the Secretary issuing an Order adopting this Consent Agreement and the Respondents successful completion of the requirements of this Order. However, nothing in this Consent Agreement and Order shall preclude the Prosecuting Attorney for the Bureau from filing charges or the Secretary from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement and Order.

ACKNOWLEDGEMENT OF NOTICE AND WAIVER OF HEARING

8. Respondents waive the filing of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and to the following rights related to the hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Bureau; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

AGREEMENT NOT BINDING ON OTHER PARTIES

9. This Consent Agreement is between the Bureau and Respondents only. It does not bind any other administrative or governmental entity of the Commonwealth of Pennsylvania, including any other bureau within the Department of State. Except as otherwise noted, this Agreement is to have no legal effect if (a) the Office of General Counsel expresses an objection to the Agreement's form or legality and/or (b) unless and until the Secretary issues the stipulated Order.

EFFECT OF SECRETARY'S REJECTION

10. Should the Secretary not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Secretary shall not prejudice the Secretary from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Secretary does not approve this Consent Agreement.

ENTIRE AGREEMENT

11. This Agreement contains the whole agreement between the parties; provided, however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever, concerning this Agreement.

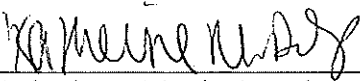
AGREEMENT DOES NOT PREVENT REFERRAL TO OTHER AGENCIES

12. The parties acknowledge that other federal, state, and/or local agencies may have jurisdiction over the activities of, or representations made by, Respondents and its officers, directors, agents, employees or independent contractors. Nothing in this Consent Agreement or the Order based upon this Consent Agreement shall preclude representatives of the Bureau from

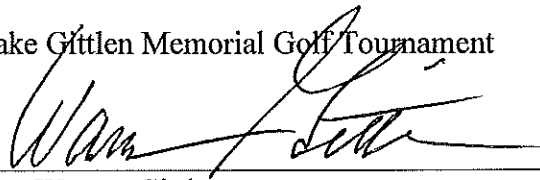
referring any information or data produced as a result of this matter to any federal, state, or local agency or governmental unit having jurisdiction over the activities of Respondents or any officer, director, agent, employee or independent contractor of the Respondent.

VERIFICATION OF FACTS AND STATEMENTS

13. Respondents verify that the facts and statements set forth in this Agreement are true and correct to the best of Respondents knowledge, information and belief. Respondents understand that statements in this Agreement are made subject to the criminal penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



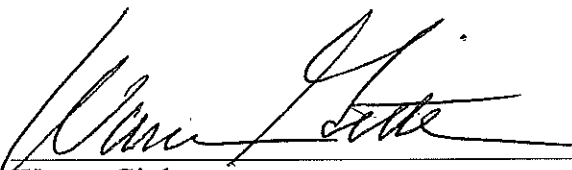
Katherine M. Delp, Esquire
Prosecuting Attorney
Department of State

Jake Gittlen Memorial Golf Tournament


By: Warren Gittlen
Title: Chairman, Board of Directors
Respondent

DATED:
1-4-13

DATED: 12/27/12



Warren Gittlen
Respondent

DATED: 12/27/12

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Docket No. 0001 -98-13

File Nos. 12-98-06446
12-98-07367

ORDER

AND NOW, to wit, on this 8th day of January, 2013, the terms of paragraph 6 of the foregoing Consent Agreement are hereby adopted and incorporated as the Order of the Secretary of the Commonwealth in resolution of this matter. This Order shall take effect immediately.

BY ORDER:



Carol Aichele
Secretary of the Commonwealth