

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

Department of State

2014 NOV 12 AM 9:13

PROTHONOTARY

Commonwealth of Pennsylvania,
Bureau of Corporations and
Charitable Organizations

vs.

Diane Malcomson,
Respondent

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Docket No.

0007

-98-14

File No.

14-98-05022

CONSENT AGREEMENT AND ORDER

PARTIES

The Commonwealth of Pennsylvania, Department of State, Bureau of Corporations and Charitable Organizations (“Bureau”) and **Diane Malcomson** (“Respondent”) stipulate as follows in settlement of the above-captioned matter:

JURISDICTION

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

LICENSE AND REGISTRATION STATUS

2. Respondent does not deny the truth of the following averments:

a. On or about June 30, 2013, the Department of State, Bureau of Corporations and Charitable Organizations (here and after referred to as “Bureau”) received a Charitable Organization Registration Statement – Form BCO-10 from World Education, Inc., Registration Certificate No. 4935, for fiscal year ending June 30, 2012.

b. In response to Question 16 on the form, which requested the name, address and telephone number of all professional fundraising counsel used to provide services with respect to the solicitation of contributions from residents of the Commonwealth, World Education, Inc., provided the name of Respondent and the address of 9 Pinehurst Road, Belmont, MA 02478.

c. On a separate sheet attached to the form, World Education, Inc., provided in addition to the name and address identified in paragraph 3 above, the telephone number 617-484-2179 and a contract period of 07/23/2011 – 12/31/2011.

d. A review of records maintained by the Bureau confirmed that the Respondent was not registered with the Bureau as a professional fundraising counsel in the Commonwealth.

e. Contact by the Bureau with Respondent confirmed the existence of the contact between the Respondent and World Education, Inc.

f. The last known mailing address for the Respondent is: 9 Pinehurst Road, Belmont, MA 02478.

FACTUAL ALLEGATIONS

3. The Respondent admits that the following allegations are true:

a. Respondent provided professional fundraising counsel services to a charitable organization with regard to the solicitation of contributions from residents of the Commonwealth.

b. The professional fundraising counsel services provided by the Respondent occurred between July 23, 2011 and December 31, 2011.

c. The professional fundraising counsel services provided by Respondent to the charitable organization were provided in accordance with a written contract executed by the parties.

d. Respondent did not provide a copy of the written contract to the Department of State at any time prior to the performance of the professional fundraising counsel services set forth in the contract.

AGREED VIOLATIONS

4. The parties agree that by engaging in the foregoing activities, Respondent committed multiple violations of Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by having:

a. provided professional fundraising counsel services regarding the solicitation of contributions in the Commonwealth prior to obtaining approval by the Department of State of a registration statement as required by Section 8(a) of the Act, 10 P.S. § 8(a); and,

b. failed to file with the Department of State each written contract between the organization and a charitable organization for professional fundraising counsel services related to solicitations for charitable contributions within the Commonwealth and provided those services prior to the approval by the Department of each contract as required by Section 8(d) of the Act, 10 P.S. § 162.8(d).

TERMS OF BOARD ORDER

5. To address concerns raised by the Commonwealth and to resolve this matter on a compromise basis, the Commonwealth and the Respondent, intending to be legally bound, agree to the issuance by the Secretary of the following Order in settlement of this matter:

a. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), in that Respondent provided professional fundraising counsel

services regarding the solicitation of contributions in the Commonwealth prior to obtaining approval by the Department of State of a registration statement as required by Section 8(a) of the Act, 10 P.S. § 8(a).

b. 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 organization and a charitable organization for professional fundraising counsel services related to solicitations for charitable contributions within the Commonwealth and provided those services prior to the approval by the Department of each contract as required by Section 8(d) of the Act, 10 P.S. § 162.8(d).

ADMINISTRATIVE FINE

c. An **ADMINISTRATIVE FINE** in the amount of **FIVE-HUNDRED-DOLLARS (\$500.00)** is hereby levied upon Respondent.

(1) Respondent shall tender the full sum of the ADMINISTRATIVE FINE with the return of this executed Consent Agreement;

(2) Payment of the ADMINISTRATIVE FINE shall be by certified check, cashier's check, attorney's check, or money order issued by a usual, customary, and reputable issuer (e.g. U.S. Postal Money Order, Western Union Money Order, etc.).

(3) The instrument of payment shall be payable to the 'Commonwealth of Pennsylvania,' and shall be valid for a period of at least one hundred eighty (180) days.

FILING OF REGISTRATION DOCUMENTS

d. Respondent agrees not to provide professional fundraising counseling services with regard to the solicitation of charitable contributions in the Commonwealth of Pennsylvania without first being properly registered with the Bureau in accordance with Section 162.8 of the Act, 10 P.S. § 162.8.

e. Respondent acknowledges that failure to register with the Bureau when required to do so, may result in an administrative fine of \$1,000.00, and an additional penalty of \$100.00 for each day the violations continue.

f. Respondent acknowledges that failing to register with the Bureau when required to do so may result in a subsequent registrations being automatically suspended until the fine is paid or until the normal expiration date of the registration in accordance with Section 162.17 of the Act, 10 P.S. § 162.17.

g. Respondent acknowledges that no subsequent registration shall be renewed until the fine is paid.

CASE SETTLED AND DISCONTINUED

h. This case shall be deemed settled and discontinued upon the Secretary issuing an Order approving and adopting this Consent Agreement and upon the Respondent's successful completion of the requirements of this Order.

i. 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.

ADMISSIBILITY OF CONSENT AGREEMENT IN FUTURE PROCEEDINGS

6. Respondent agrees that if Respondent is charged with a violation of an Act enforced by this Board in the future, this Consent Agreement and Order shall be admitted into evidence without objection in that proceeding.

ACKNOWLEDGMENT OF NOTICE AND WAIVER OF HEARING

7. Respondent waives the filing of an Order to Show Cause in this matter.

8. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and knowingly and voluntarily waives the following rights related to that 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 Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

ACKNOWLEDGMENT OF RIGHT TO ATTORNEY

9. Respondent acknowledges that it is aware that it has the right to consult with, and be represented by, private legal counsel of Respondent's choosing and at Respondent's expense when reviewing, considering and accepting the terms of this Consent Agreement.

10. To the extent that Respondent is not represented by legal counsel, Respondent has knowingly elected to proceed in this matter without the assistance of legal counsel.

WAIVER OF CLAIM OF COMMINGLING AND OTHER CONSTITUTIONAL CLAIMS

11. Respondent expressly waives any constitutional rights and issues, such as commingling of prosecutorial and adjudicative functions by the Secretary or her counsel, which may arise or have arisen during the negotiation, preparation and/or presentation of this Consent Agreement. This paragraph is binding on the participants even if the Secretary does not approve this Consent Agreement.

NO MODIFICATION OF ORDER

12. Respondent agrees, as a condition of entering into this Consent Agreement, not to seek modification at a later date of the Stipulated Order adopting and implementing this Consent Agreement without first obtaining the express written concurrence of the Prosecution Division.

AGREEMENT NOT BINDING ON OTHER PARTIES

13. This Consent Agreement is between the Bureau and Respondent only. It does not bind any other governmental or administrative entity of the Commonwealth of Pennsylvania, including any other bureau within the Department of State.

14. The Office of General Counsel has approved this Consent Agreement as to form and legality; however, this Consent Agreement shall have no legal effect unless and until the Secretary issues an Order approving and adopting this Consent Agreement.

EFFECT OF SECRETARY'S REJECTION OF CONSENT AGREEMENT

15. 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.

AGREEMENT DOES NOT PREVENT REFERRAL TO OTHER AGENCIES

16. The parties acknowledge that other federal, state, and/or local agencies may have jurisdiction over the activities of, or representations made by, Respondent 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

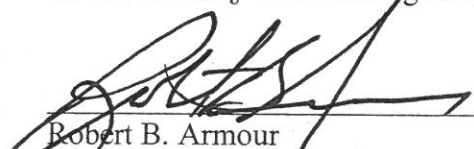
agency or governmental unit having jurisdiction over the activities of Respondent or any officer, director, agent, employee or independent contractor of the Respondent.


ENTIRE AGREEMENT

17. This agreement contains the whole agreement between the participants; 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.

VERIFICATION OF FACTS AND STATEMENTS

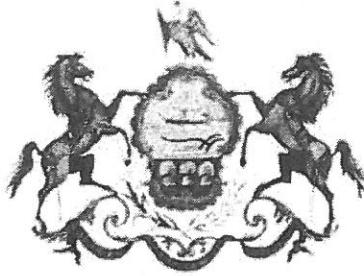
18. Respondent verifies that the facts and statements set forth in this Consent Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Consent Agreement are made subject to the criminal penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.


Robert B. Armour
Prosecuting Attorney
Department of State


Diane Malcomson
Respondent

DATED: 10/30/14

DATED: 9/10/2014



DIANE MALCOMSON

DOCKET NO. 0007-98-14

FILE NO. 14-98-05022

ORDER

AND NOW, this 10th day of November 2014 the foregoing Consent Agreement is approved and the terms set forth in paragraph 5 are hereby adopted and incorporated herein as the Order of the Secretary of the Commonwealth issued in resolution of this matter.

THIS ORDER shall take effect immediately.

BY ORDER

A handwritten signature in cursive script, appearing to read "Carol Aichele".

Carol Aichele
Secretary of the Commonwealth

For the Commonwealth:

Robert B. Armour, Esquire
2601 North Third Street
P. O. Box 2649
Harrisburg, PA 17105-2649

Respondent:

Diane Malcomson
9 Pinchurst Road
Belmont, MA 02478

Date of mailing:

11/12/14