

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

PROTHONOTARY
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Department of State

Commonwealth of Pennsylvania, :
Bureau of Corporations and :
Charitable Organizations :
 :
vs. : Docket No. 0026 -98-16
 :
 : File No. 14-98-05601
National Canine Cancer Foundation, :
Respondent :

CONSENT AGREEMENT AND ORDER

PARTIES

The Commonwealth of Pennsylvania, Department of State, Bureau of Corporations and Charitable Organizations (“Bureau”) and **National Canine Cancer Foundation** (“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 (“Act”), Act of December 19, 1990, P.L. 1200, No. 202, *as amended*, 10 P.S. §§ 162.1-162.24.

REGISTRATION STATUS

2. Respondent does not deny the truth of the following averments regarding its registration status with the Bureau:

a. Respondent is an organization dedicated to the elimination of cancer as a major health problem in dogs, through education, outreach and research.

b. Respondent is located at 40 N. Central Avenue, Suite 1400, Phoenix, AZ 85004.

- c. Respondent solicits contributions through charitable appeals and promotions.
- d. Respondent accepts donations submitted to 13835 N. Tatum BLVD., Suite 9448, Phoenix, AZ 85032.
- e. Respondent is a "Charitable Organization" as that term is defined in Section 3 of the Act, 10 P.S. § 162.3.
- f. Respondent has solicited contributions in the Commonwealth of Pennsylvania.
- g. On or about November 5, 2012, the Respondent submitted to the Bureau of Charitable Organizations (now the Bureau of Corporations and Charitable Organizations) (hereafter referred to as 'Bureau') information from its fiscal year January 1, 2011 through December 30, 2011, as required by the Act so that it could become registered with the Bureau.
- h. Following receipt of the information submitted in November 2012, the Bureau assigned to Respondent a Charity Entity number, 41992.
- i. Respondent was registered with the Bureau in accordance with the Act until November 11, 2013.
- j. In order to remain registered with the Bureau, Respondent was required to file with the Bureau information required by the Act for its fiscal year ending December 2012 prior to November 11, 2013.
- k. Respondent failed to timely file the information required by the Act and the Respondent's registration with the Bureau expired November 11, 2013, without being renewed.

1. As of November 29, 2016, the date the Commonwealth filed this action against the Respondent for having solicited contributions in the Commonwealth without being registered, Respondent had not filed information required by the Act to become registered with the Bureau since the registration expired on November 11, 2013.

FACTUAL ALLEGATIONS

3. The Respondent admits that the following allegations are true:
- a. Respondent maintains an internet website at '<http://wearethecure.org>'.
 - b. On the website, Respondent provides a link through which groups can organize an event for the solicitation of funds to benefit the Respondent charitable organization.
 - c. On the website, there is a link to a calendar of events that are presented by, hosted by or supported by Respondent.
 - d. The calendar of events provides a link to the events listed on the website.
 - e. The website, through links provided, offers the opportunity for visitors to the website to donate to the Respondent or to organizations affiliated with Respondent.
 - f. Subsequent to November 11, 2013, and during the period it was not registered with the Bureau, Respondent continued to solicit contributions in the Commonwealth by presenting, hosting and/or supporting solicitation events in the Commonwealth held for the benefit of the Respondent.
 - g. Respondent advertised the events it presented, hosted and/or supported in the Commonwealth, held for the benefit of the Respondent, by listing those events on its website.

h. Such events presented, hosted and/or supported by the Respondent in the Commonwealth, held for the benefit of the Respondent, included, but are not limited to:

- i. The 'Bark and Bowl' in Philadelphia, PA, held on March 4, 2014;
- ii. The 'Bark and Bowl 3.0' in Pittsburgh, PA, held November 14, 2014;
- iii. The "3rd Annual Gulliver's Run" held November 1, 2015, at Gifford Pinchot State Park, in Central Pennsylvania;
- iv. The 'Bark and Bowl' at Thunderbird Lanes, 1130 York Road, Willow Grove, PA 19090, held April 2, 2016; and,
- v. The 'Bark and Bowl' in Pittsburgh, PA, held November 11, 2016.

i. Respondent maintained a chapter in the Commonwealth, known as the "Pittsburgh Chapter of the National Canine Cancer Foundation", which maintains a page on Facebook under that name.

j. The Pittsburgh Chapter is the organization responsible for some of the solicitation activity in the Commonwealth as set forth in subparagraph h. above.

k. The Pittsburgh Chapter solicited donations in the Commonwealth on behalf of the Respondent by direct solicitation and by the offering the sale or raffling of merchandise on its Facebook page.

l. The Pittsburgh Chapter is an affiliate of the Respondent as that term is defined in Section 3 of the Act, 10 P.S. § 162.3.

m. The Pittsburgh Chapter was not registered with the Bureau.

- n. By letter dated June 26, 2013, Respondent advised the Bureau that it maintains multiple Donor Advised Funds/programs in the Commonwealth through which donations are solicited.
- o. Respondent advised the Bureau that entities known as 'Chase Away K9 Cancer' and 'Bruiser 5K Memorial Fund' are Donor Advised Funds/programs of the Respondent.
- p. The entities known as 'Chase Away K9 Cancer' and 'Bruiser 5K Memorial Fund' have solicited charitable donations in the Commonwealth.
- q. Respondent failed to list these Donor Advised Funds/programs on the application for registration it submitted to the Bureau on or about November 5, 2012.
- r. Respondent failed to subsequently amend their application to include the Donor Advised Funds/programs.
- s. The Donor Advised Funds/programs have solicited donations in the Commonwealth without being registered with the Bureau.
- t. The Donor Advised Funds/programs are an affiliate of the Respondent as that term is defined in Section 3 of the Act, 10 P.S. § 162.3.
- u. The Donor Advised Funds have solicited donations in the Commonwealth for fiscal years ending December 31, 2009 through December 31, 2014 without being registered as an affiliate of the Respondent and without being registered as separate charitable organizations.
- v. Subsequent to November 11, 2013, Respondent solicited contributions in the Commonwealth on multiple and/or continuous occasions without being registered as a charitable organization as required by the Act by having on its

website a “donate” button which provided for donations to the organization and to the unregistered affiliate organizations.

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:

a. by soliciting charitable contributions without being registered in the Commonwealth as required;

b. by soliciting contributions in the Commonwealth after the registration with the Department had expired;

c. by operating in violation of Section 5(m), 10 P.S. § 162.5(m), by failing to register its affiliates with the Bureau for each of the years that solicitations occurred; and,

d. by soliciting donations by its affiliates and for its affiliates without the affiliates being registered with the Bureau.

TERMS OF BOARD ORDER

5. To address the violations of the Act 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. The Secretary finds that the Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), on multiple and repeated occasions by:

i. soliciting charitable contributions without being registered in the Commonwealth as required;

ii. soliciting contributions in the Commonwealth after the registration with the Department had expired;

- iii. operating in violation of Section 5(m), 10 P.S. § 162.5(m), by failing to register its affiliates with the Bureau for each of the years that solicitations occurred; and,
- iv. soliciting donations by its affiliates and for its affiliates without the affiliates being registered with the Bureau.

ADMINISTRATIVE FINE

b. An **ADMINISTRATIVE FINE** in the amount of **TWO-THOUSAND-FIVE-HUNDRED-DOLLARS (\$2,500.00)** is hereby levied upon Respondent.

- i. Respondent shall tender the full sum of the **ADMINISTRATIVE FINE** with the return of this executed Consent Agreement;
- ii. 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.).
- iii. 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.
- iv. Respondent agrees that payment shall only be made by one of the methods indicated above and shall not be made by uncertified personal or corporate check.

FILING OF REGISTRATION DOCUMENTS

c. Respondent agrees not to solicit charitable contributions in the Commonwealth of Pennsylvania without first being properly registered with the Bureau in accordance with Section 162.5 of the Act, 10 P.S. § 162.5.

d. Respondent agrees not to solicit charitable donations in the Commonwealth of Pennsylvania through its affiliates, branches, programs or Donor Advised Funds without the soliciting entity being properly registered with the Bureau in accordance with Section 162.5 of the Act, 10 P.S. § 162.5.

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

f. Respondent acknowledges that the failure to register with the Bureau when required to do so may result in a subsequent registration being automatically suspended until any fine imposed 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 any fine imposed is paid.

h. Respondent shall not enter into any contract or agreement or employ any professional fundraising counsel or professional solicitor unless that professional fundraising counsel or professional solicitor is registered with the Bureau in accordance with the Act.

CASE SETTLED AND DISCONTINUED

i. 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.

j. Nothing in this Consent Agreement and Order shall preclude the Prosecuting Attorney for the Bureau from filing charges, or preclude 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 the Act 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 acknowledges the receipt 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 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 his 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 any Order issued by the Secretary 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 the 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

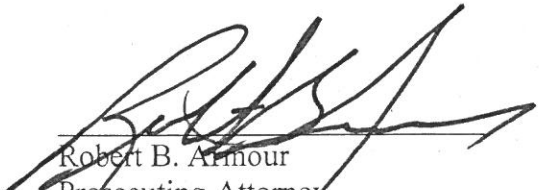
16. The parties acknowledge that other federal, state, and/or local agencies may have jurisdiction over the activities of, or representations made by, Respondent and its officers, directors, agents, employees or independent contractors. Nothing in this Consent Agreement or the Order based upon this Consent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

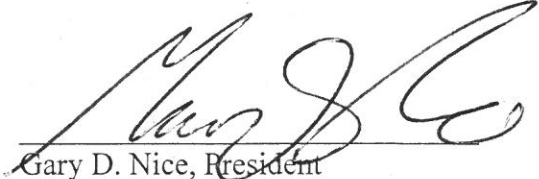
ENTIRE AGREEMENT

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

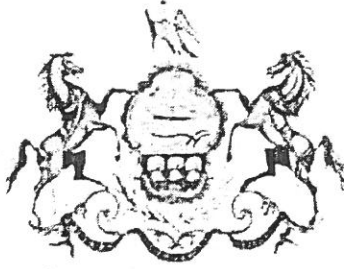
18. Respondent verifies that the facts and statements set forth in this Consent Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Consent Agreement are made subject to the criminal penalties of 18 Pa.C.S. § 4904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


Robert B. Armour
Prosecuting Attorney
Department of State


Gary D. Nice, President
National Canine Cancer Foundation,
Respondent

DATED: 3/29/17

DATED: 3/28/17



NATIONAL CANINE CANCER FOUNDATION

DOCKET NO. 0026-98-16
FILE NO. 14-98-05601

ORDER

AND NOW, this 12th day of April 2017 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 that reads "Pedro A. Cortés".

Pedro A. Cortés
Pedro A. Cortés
Secretary of the Commonwealth

For the Commonwealth:

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

For Respondent:

Gary D. Nice, President
National Canine Cancer Foundation
40 N. Central Avenue, Suite 1400
Phoenix, AZ 85004

Date of mailing:

April 13, 2017