

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

PROF. NOTARY
2017 MAR -2 AM 11:43
Department of State

Commonwealth of Pennsylvania, :
Bureau of Corporations and :
Charitable Organizations :
 :
vs. :
 :
West Philadelphia Cultural Alliance, :
Respondent :

Docket No. 0005-98-15
File No. 14-98-02566

RECORDED
2017 MAR -3 AM 9:13
Department of State

CONSENT AGREEMENT AND ORDER

PARTIES

The Commonwealth of Pennsylvania, Department of State, Bureau of Corporations and Charitable Organizations (“Bureau”) and West Philadelphia Cultural Alliance (“Respondent”), stipulate as follows in settlement of the above-captioned case:

JURISDICTION

1. This case 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.

REGISTRATION STATUS

2. Respondent does not deny the truth of the following averments regarding the founding and registration history of Respondent as a charitable organization:

a. Respondent was founded in 1984 and became incorporated in March of 1985; shortly thereafter Respondent began soliciting contributions as a charitable organization in the Commonwealth of Pennsylvania.

b. The last known mailing address on file with the Bureau for the Respondent is: 4949 Walnut Street, Philadelphia, PA 19139.

c. In 1988, Respondent became registered with the Department of State, Bureau of Charitable Organizations, registration no. 5875 (the Bureau of Charitable Organizations was the predecessor to the current Bureau of Corporations and Charitable Organizations; since they represent the same entity, they will hereinafter be referred to as "Bureau").

d. Under the Act, Respondent was required to maintain its registration with the Bureau on a year-to-year basis, within a fixed period of time, following the close of its fiscal year on August 31st.

e. No registration information for Respondent is on file with the Bureau for fiscal year ending August 31, 1990, nor is registration information on file with the Bureau for each fiscal year ending August 31, 1994 through 1998.

f. Registration information for fiscal year ending August 31, 1999, is on file with the Bureau, with Respondent having received an audit waiver of the required audited financial statement for that fiscal year.

g. No registration information for the Respondent is on file with the Bureau for fiscal year ending August 31, 2000.

h. For each fiscal year ending August 31, 2001 through 2008, Respondent provided the required information and maintained the year-to-year registration with the Bureau.

i. Registration information for fiscal year ending August 31, 2009, was required to be filed by July 17, 2010, however complete registration information

was not received and the registration expired on July 17, 2010, without being timely renewed.

j. Registration information for fiscal years ending August 31, 2010 through 2012, was submitted to the Bureau in April 2014 resulting in Respondent being considered "in good standing" for fiscal years ending August 31, 2010 and 2011, and being "registered" through July 12, 2014.

k. Respondent failed to submit to the Bureau registration information for fiscal year ending August 31, 2013, prior to July 12, 2014, and the Respondent's registration with the Bureau expired without being renewed.

l. Registration information for fiscal year ending August 31, 2013, was received by the Bureau on January 14, 2016, which resulted in the organization being considered "in good standing" for fiscal year ending August 31, 2013.

m. Registration information for fiscal year ending August 31, 2014, was also received January 14, 2016, resulting in the organization being "registered" with the Bureau through July 31, 2016.

n. Respondent failed to submit to the Bureau registration information for fiscal year ending August 31, 2015, prior to July 12, 2016, and the registration with the Bureau expired without being renewed.

o. Registration information for fiscal year ending August 31, 2015, was received by the Bureau on November 3, 2016, resulting in the organization being "registered" with the Bureau through July 31, 2017.

p. Respondent is currently registered with the Bureau through July 15, 2017.

FACTUAL ALLEGATIONS

3. The Respondent admits that the following factual allegations are true:
 - a. Respondent solicited contributions in the Commonwealth after its registration with the Bureau expired on July 12, 2010, and during the period it was not registered with the Bureau.
 - b. In March 2013, the Bureau learned that Respondent was soliciting charitable contributions on the website it maintained, www.wpc-alliance.org, while Respondent was not properly registered with the Bureau.
 - c. Records maintained by the Bureau confirmed in March 2013 that Respondent had not renewed its registration with the Bureau after the registration had expired on July 12, 2010.
 - d. The website operated by Respondent, www.wpc-alliance.org, contained a statement advising that registration information could be obtained by contacting the PA Department of State.
 - e. The statement on the website was in accordance with the statement required by Section 13(c) of the Act, 10 P.S. § 162.13(c), for use by charitable organizations in the Commonwealth on all printed solicitations.
 - f. The statement remained on the website during the period that Respondent was not registered.
 - g. The Bureau made efforts over a period of several months to secure information to determine the registration requirement of the Respondent.
 - h. Respondent failed to provide the requested financial information necessary to assist the Bureau in its determination of the registration requirements in a timely manner.

i. On August 9, 2013, the Secretary issued a Cease and Desist Order, which directed that Respondent cease and desist from soliciting contributions in the Commonwealth until such time as Respondent became duly registered or provided to the Bureau information that it was excluded or exempt from registration.

j. Respondent continued to solicit contributions after August 9, 2013, which included the continuation of a "donate" button on its website.

k. The presence of the "donate" button on the website constituted a daily violation of the Cease and Desist Order.

l. On April 3, 2014, the Bureau received registration information for Respondent and Respondent became registered through July 12, 2014.

m. As a result of the registration, the Cease and Desist Order issued August 9, 2013, was lifted effective April 3, 2014.

n. On July 12, 2014, the Respondent's registration expired without being renewed.

o. Respondent continued to solicit contributions after July 12, 2014, without being registered with the Department of State, until Respondent became properly registered again on January 14, 2016, by submitting registration information for fiscal year ending August 31, 2014.

p. Respondent failed to timely submit to the Bureau registration information for fiscal year ending August 31, 2015, and on July 12, 2016, the Respondent's registration with the Bureau expired without being renewed.

q. Respondent continued to solicit contributions until registration information for fiscal year ending August 31, 2015, was received by the Bureau on November 3, 2016.

AGREED VIOLATIONS

4. The parties agree that actions or inactions of the Respondent:
- a. violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by soliciting charitable contributions after its registration with the Department of State had expired, with each solicitation in following the expiration of each registration constituting a separate violation; and,
 - b. violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by operating in violation of an Order issued by the Secretary.

TERMS OF BOARD ORDER

5. To address the violations 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:
 - (1) violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by soliciting charitable contributions after its registration with the Department of State had expired, with each solicitation following the expiration of each registration constituting a separate violation; and,
 - (2) violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by operating in violation of an Order issued by the Secretary.

ADMINISTRATIVE FINE

- b. In accordance with the authority set forth in Section 162.17 of the Act, 10 P.S. § 162.17, the Secretary hereby imposes upon Respondent an

ADMINISTRATIVE FINE in the amount of TWO-THOUSAND-FIVE-HUNDRED-DOLLARS (\$2,500.00).

(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.

(4) Respondent agrees that payment shall only be made by one of the methods indicated above and shall not be made by uncertified personal, business 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 acknowledges that failure to register with the Bureau when required to do so, may result in the imposition of an administrative fine of \$1,000.00, and an additional penalty of \$100.00 for each day the violation continues.

e. Respondent acknowledges that failing to register with the Bureau when required to do so may result in a subsequent registration being automatically suspended until the fine is paid or until the normal expiration date of the registration.

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

g. Respondent shall not enter into any contract or agreement or employ any professional fundraising counsel or professional solicitor unless the professional fundraising counsel or professional solicitor is registered with the Bureau.

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 under the Act in the future, this Consent Agreement and Order shall be admitted into evidence without objection in any hearing held in that proceeding.

ACKNOWLEDGMENT OF NOTICE AND WAIVER OF HEARING

7. Respondent acknowledges the filing of an Order to Show Cause and an Amended 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 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 the 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 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 the Respondent, or of any


officer, director, agent, employee or independent contractor of the Respondent, as may otherwise be permitted by law.

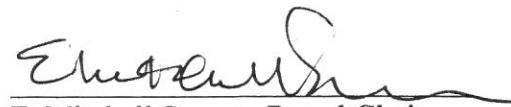
ENTIRE AGREEMENT

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

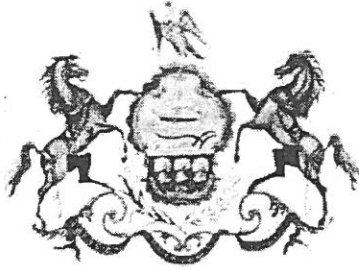
18. Respondent verifies that the facts and statements set forth in this Consent Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Consent Agreement are made subject to the criminal penalties of 18 Pa.C.S. § 4904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


Robert B. Armour
Prosecuting Attorney
Department of State


E. Mitchell Swann, Board Chair
on behalf of Respondent,
West Philadelphia Cultural Alliance

DATED: 02/15/2017

DATED: 11 FEB 2017



WEST PHILADELPHIA CULTURAL ALLIANCE

DOCKET NO. 0005-98-15

FILE NO. 14-98-02566

ORDER

AND NOW, this 1st day of MARCH 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

Secretary of the Commonwealth

For the Commonwealth:

Robert B. Armour, Esquire
2601 North Third Street
P. O. Box 69521
Harrisburg, PA 17106-9521

Respondent:

West Philadelphia Cultural Alliance
Attn: E. Mitchell Swann, Board Chair
4949 Walnut Street
Philadelphia, PA 19139

Date of mailing: March 2, 2017