## COMMONWEALTH OF PENNSYLVANIA 231 8: 14 DEPARTMENT OF STATE BEFORE THE SECRETARY OF THE COMMONWEALTH

Commonwealth of Pennsylvania,

**Bureau of Charitable Organizations,** 

VS.

File No.

03-98-08215

TeleService U.S.A., Respondent

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations ("Bureau") and TeleService U.S.A. ("Respondent") stipulate as follows in settlement of the above-captioned case.

#### **JURISDICTION**

- This matter is before the Secretary of the Commonwealth ("Secretary") pursuant to 1. the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990, P.L. 1200, No. 202, as amended ("Act"), 10 P.S. §§162.1-162.24.
- At all relevant and material times, Respondent was registered as a professional 2. solicitor, registration number 28969.

### STIPULATED FACTS

- Respondent admits that the following allegations are true: 3.
- Respondent's last known business address, as on file with the Department of State, is 100 N. Crooks, Suite 102, Clawson, MI 48017.

- b. Save A Child Foundation ("Save A Child") is a nonprofit corporation with a business address of 5154 Miller Road, Suite D, Flint, MI 48507.
- c. At all relevant and material times, Save A Child was registered with the Bureau as a charitable organization, registration number 28137.
- d. On or about March 30, 2000, Respondent and Save A Child entered into an Agreement for fundraising services to be provided by Respondent on behalf of Save A Child. The term of the contract was April 1, 2000 until March 31, 2001.
- e. By Addendums executed by Respondent and Save A Child, the term of the contract was extended to March 31, 2003.
- f. On December 12, 2002, Respondent filed its initial registration statement with the Bureau.
- g. On December 24, 2002, Respondent filed with the Bureau its Solicitation Notice, Bureau Form BCO-170, which stated, among other things, that Respondent would be soliciting charitable contributions in the Commonwealth on behalf of Save A Child for the period of January 7, 2003, to March 31, 2003.
- h. On December 24, 2002, Respondent filed with the Bureau copies of the March 30, 2000, Agreement, the addendums extending the term to March 31, 2003, and a Contract Addendum dated December 17, 2002, which provided, among other things, that Respondent would be soliciting in the Commonwealth on behalf of Save A Child for the period of January 7, 2003, to March 31, 2003.
  - i, The Contract and all addendums expired on March 31, 2003.

- j. On June 13, 2003, Respondent filed with the Bureau an Amendment to the March 30, 2000 Contract, dated March 14, 2003, which purported to extend the contract term to March 31, 2004.
- k. The March 14, 2003, Amendment also provided that Respondent would not begin soliciting charitable contributions on behalf of Save A Child until July 28, 2003.
- 1. The March 14, 2003, Amendment was rejected by the Bureau on June 27, 2003.
  - m. On July 24, 2003, the March 14, 2003 Amendment, was resubmitted.
- n. On August 7, 2003, the March 14, 2003 Amendment was again rejected by the Bureau.
- o. As of April 1, 2003, Respondent did not have an approved contract on file with the Bureau to solicit charitable contributions on behalf of Save A Child.
- p. The Bureau has evidence that Respondent actively solicited contributions on behalf of Save A Child for the period of April 2003 to on or about July 2003.

### AGREED VIOLATION

4. Respondent further agrees that, based upon the foregoing, the Secretary is authorized by the Act at 10 P.S. §162.17 to suspend or revoke, or otherwise restrict Respondent's registration and/or impose an administrative fine in that Respondent violated the Act at 10 P.S. §162.17(a)(3) by making a material false statement in the March 14, 2003 Amendment filed with the Bureau.

#### PROPOSED ORDER

- 5. The participants consent to issuance of the following Order in settlement of this matter:
  - a. Respondent violated the Act at 10 P.S. §162.17(a)(3).

#### ADMINISTRATIVE FINE

b. An ADMINISTRATIVE FINE of one thousand dollars (\$1,000) is levied upon Respondent. Respondent shall tender the full sum of one thousand dollars (\$1,000) 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."

# FILING OF AMENDED CONTRACT ADDENDUM

Addendum which accurately states the date Respondent began soliciting charitable contributions in the Commonwealth on behalf of Save A Child under the terms of the March 14, 2003 Addendum. Upon receipt and approval of Respondent's Amended Contract Addendum, Respondent will be permitted to solicit charitable contributions in the Commonwealth on behalf of Save A Child. Respondent may not solicit charitable contributions in the Commonwealth on behalf of Save A Child. Respondent may not solicit charitable contributions in the Commonwealth on behalf of Save A Child until the Amended Contract Addendum is approved by the Bureau.

## VIOLATION OF THE SECRETARY'S ORDER

d. Notification of a violation of the terms or conditions of this
 Consent Agreement and Order shall result in the imposition of additional penalties

as follows:

- (1) The prosecuting attorney for the Bureau shall file with the Secretary a Petition which indicates that Respondent has violated the terms or conditions of this Consent Agreement and Order.
- (2) Upon a probable cause determination that
  Respondent has violated the terms and conditions of this Consent
  Agreement and Order, the Secretary, or her designee, shall, without
  holding a formal hearing, issue a Preliminary Order, effective thirty
  (30) days after its mailing, which imposes a sixty (60) day period
  of suspension on Respondent's registration to solicit charitable
  contributions.
- (3) Respondent shall be notified of the Preliminary

  Order within three (3) days of its issuance by certified mail and

  first class mail postage prepaid, sent to the last registered address

  on file with the Bureau, together with a copy to Respondent's

  attorneys by facsimile or first class mail.
- (4) Within fifteen (15) days of mailing of the notification of the Preliminary Order, Respondent may answer the Commonwealth's petition, request that a formal hearing be convened concerning Respondent's alleged violation of this Consent Agreement, and move that the period of suspension be

stayed until the Secretary or her designee issues a final order.

Respondent shall file all answers and subsequent filings with the Prothonotary for the Department of State, 2601 North Front Street, Harrisburg, PA 17110. Respondent shall serve the prosecuting attorney for the Bureau with a copy of the answer and all subsequent filings in this matter.

- suspension, Respondent shall set forth properly verified facts and/or state concisely the matters of law which the Respondent believes justify a stay of the period of suspension. The Secretary or her designee shall issue a ruling on the Respondent's motion within fifteen (15) days from the date of the mailing of the notification of the Preliminary Order. If the Secretary or her designee makes no ruling on the Respondent's motion within the fifteen (15) days from mailing of the notification of the Preliminary Order, the Respondent's motion shall be deemed denied.
- (6) If a request for a formal hearing is received from Respondent, a formal hearing shall be convened within forty-five (45) days from the date of filing of Respondent's request for a formal hearing.
- (7) The facts and averments in this Consent Agreement and Order shall be deemed admitted and uncontested at this

hearing.

- (8) If the Secretary or her designee, after such hearing, makes a determination adverse to Respondent, the Secretary or her designee will issue a Final Order imposing any disciplinary measures she deems appropriate. The Secretary or her designee may, but is not required to, take into account any period of active suspension already served by the Respondent pursuant to the Preliminary Order.
- (9) If a request for a formal hearing is not received from Respondent within the prescribed fifteen (15) day period, the Preliminary Order shall become a Final Order.
- 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; provided, however, the Bureau agrees to not reopen its investigation with regard to any Registration Statements on file with the Secretary as of the date of this Consent Agreement and Order unless the Bureau becomes aware of material facts or omissions of material facts which have previously not been disclosed to it and would give it probable cause that other violations existed during such period of time which it failed to uncover in its previous investigation.

6. This case shall be deemed settled and discontinued upon the Secretary issuing an Order adopting this Consent Agreement and the Respondent's successful completion of any ordered discipline.

# ACKNOWLEDGEMENT OF NOTICE AND WAIVER OF HEARING

Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and to 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 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

8. This Consent Agreement is between the Bureau and Respondent only. It does not bind any other administrative 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

9. 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

10. 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

11. 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.

## VERIFICATION OF FACTS AND STATEMENTS

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

Steven V. Turner, Esquire Deputy General Counsel Office of General Counsel

DATED: 9/17/0\_3

For TeleService U.S.A., Respondent

DATED:

9/12/03.

Tracy L. McCurdy, Esquire

Prosecuting Attorney
Department of State

DATED: 9-22-03



## IN THE MATTER OF THE SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES BY TELESERVICE U.S.A., FILE NO. 03-98-08215

## **ORDER**

AND NOW, to wit, on this 25th day of Septembel 2003, the terms of paragraph 5 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

Kenneth A. Rapp, Deputy

Secretary for Regulatory Programs

on behalf of the

Secretary of the Commonwealth