

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

Commonwealth of Pennsylvania,
Bureau of Charitable Organizations,

vs.

Jennie L. Wishnefsky,
Respondent

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: Docket No. 001 -98-0~~7~~⁷
: File No. 2005-98-09309
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Department of State

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PROTHONOTARY

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations ("Bureau") and Jennie L. Wishnefsky ("Respondent") 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. §§162.1-162.24.

STIPULATED FACTS

2. Respondent admits that the following allegations are true:
 - a. Respondent's last known address is 229 North Broad Mountain Avenue, Frackville, PA 17931-1404.
 - b. Frackville Elementary Parent Teacher Organization ("Frackville Elementary PTO") operates as a nonprofit organization but it is not registered with the Corporation Bureau.

c. Frackville Elementary PTO conducts business as a charitable organization as defined by the Act.

d. At all relevant and material times, Tina L. Dixon ("Dixon") was the president of Frackville Elementary PTO.

e. At all relevant and material times, Respondent was the treasurer of Frackville Elementary PTO.

f. At all relevant and material times, pursuant to Section 162.21 of the Act, Respondent, as treasurer, was deemed a fiduciary and acting in a fiduciary capacity for the Frackville Elementary PTO.

First Union Bank

g. At all relevant and material times, Frackville Elementary PTO maintained a checking account at First Union Bank (now Wachovia), account number 31000503.

h. From November 17, 2004 through January 5, 2005, Respondent, on four occasions, and in the total amount of \$4,000, issued checks made payable to "Jennie Wishnefsky" from the First Union Bank account, as follows:

Date	Check #	Payee	Amount
11/17/2004	1463	Jennie Wishnefsky	\$500.00
11/17/2005	1466	Jennie Wishnefsky	\$1,000.00
12/23/2004	1472	Jennie Wishnefsky	\$500.00
1/5/2005	1473	Jennie Wishnefsky	\$2,000.00

i. Respondent did not have check signing authority for the First Union Bank account until March 5, 2005.

j. The checks identified in paragraph 2(h) were signed by Respondent in the name of Dixon without the knowledge or consent of Dixon.

k. The checks identified in paragraph 2(h) were for Respondent's own personal use and benefit.

MBNA

l. Without the knowledge or consent of Frackville Elementary PTO, Respondent applied for and obtained two MBNA credit cards in the name of Frackville Elementary PTO, account numbers 4476196000611940 (for the use of Respondent) and 4476196000611957 (for the use of Dixon).

m. The address on both MBNA accounts was Respondent's home address as set forth in paragraph 2(a) above.

n. Respondent was not authorized to obtain credit accounts in the name of Frackville Elementary PTO or any individual associated with Frackville Elementary PTO.

o. Respondent incurred charges under both accounts in the total amount of \$2,821.97 (plus accrued interest), as follows: account number 4476196000611940 in the amount of \$372.97 (plus accrued interest); and account number 4476196000611957 in the amount of \$2,449.00 (plus accrued interest).

p. The charges incurred by Respondent were for not for the benefit of Frackville Elementary PTO.

AGREED VIOLATIONS

3. Respondent agrees that by engaging in the foregoing activities Respondent committed multiple violations of the Act as follows:

a. 10 P.S. § 162.15(a)(2), in that when Respondent issued 4 checks to herself for her own personal use and benefit, from an account in the name of the Frackville Elementary PTO, she utilized unfair and deceptive acts and engaged in fraudulent conduct which created a likelihood of confusion or of misunderstanding;

b. 10 P.S. § 162.15(a)(1), by and through § 162.13(a), in that when Respondent, as treasurer, issued 4 checks to herself for her own personal use and benefit, from accounts in the name of the Frackville Elementary PTO, she caused the Frackville Elementary PTO to apply contributions in a manner not consistent with its charitable purpose;

c. 10 P.S. § 162.15(a)(1), by and through § 162.21, in that when Respondent, as treasurer, issued 4 checks or disbursements to herself for her own personal use and benefit, from accounts in the name of the Frackville Elementary PTO, she breached the fiduciary duty she owed to the Frackville Elementary PTO;

d. 10 P.S. § 162.15(a)(2), in that when Respondent obtained the two MBNA credit accounts in the name of Frackville Elementary PTO and used those accounts for her own personal use and benefit, she utilized unfair and deceptive

acts and engaged in fraudulent conduct which created a likelihood of confusion or of misunderstanding;

e. 10 P.S. § 162.15(a)(1), by and through § 162.21, in that when Respondent, as treasurer, incurred charges in the MBNA credit accounts opened in the name of Frackville Elementary PTO, she breached the fiduciary duty she owed to the Frackville Elementary PTO.

PROPOSED ORDER

4. The participants, intending to be legally bound, consent to the issuance of the following Order in settlement of this matter:

a. Respondent violated the Act at 10 P.S. § 162.15(a)(2); § 162.15(a)(1), by and through 162.13(a); and § 162.15(a)(1), by and through § 162.21.

PUBLIC REPRIMAND

b. A PUBLIC REPRIMAND is hereby issued to Respondent.

COOPERATION WITH SCHUYLKILL CO. DISTRICT ATTORNEY

c. Respondent shall fully cooperate with the Schuylkill County District Attorney's Office in its efforts to achieve full restitution to the Frackville Elementary PTO.

ADDITIONAL PROVISIONS

d. Respondent shall not represent, either directly or indirectly, that by this Consent Agreement the Bureau of Charitable Organizations has sanctioned, condoned or approved any part or aspect of Respondent's activities.

e. Respondent shall not, either directly or indirectly, participate in any activities within the Commonwealth of Pennsylvania in violation of the Act.

f. Respondent shall not assume any position, whether voluntary or paid, in any charitable organization, which involves the solicitation, collection or expenditure of contributions.

CASE SETTLED AND DISCONTINUED

5. 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

6. Respondent waives 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 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

7. 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

8. 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

9. 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

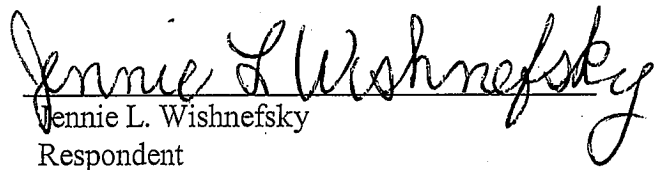
10. The parties acknowledge that other federal, state, and/or local agencies may have jurisdiction over the activities of, or representations made by, Respondent. Nothing in this

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.

VERIFICATION OF FACTS AND STATEMENTS

11. 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.


Tracy L. McCurdy, Esquire
Prosecuting Attorney
Department of State


Jennie L. Wishnefsky
Respondent

DATED: 1-17-07

DATED: 1-12-07

Attorney for Respondent:

Frederick J. Fanelli, Esquire
#1 Mahantongo Street
Pottsville, PA 17901



**IN THE MATTER OF
JENNIE L. WISHNEFSKY
FILE NO. 2005-98-09309**

ORDER

AND NOW, to wit, on this 11th day of January 2007, the terms of paragraph 4 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

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