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PROCEEDINGS AGAINST :

RESPONDENTS LS0006291RCO

ORDER

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Marlene A. Cummings, Secretary
Department of Regulation and Licensing

DISCIPLINARY PROCEEDINGS AGAINST:

**CAROL SUE HARVEY, d/b/a MISSOURI
TASK FORCE ON CHILD ABUSE AND
NEGLECT, a/k/a WISCONSIN COALITION
ON CHILD ABUSE AND NEGLECT; MICHAEL
G. COSGRAVE, d/b/a COSGRAVE
FUNDING; and RICHARD GAETANO, d/b/a
CIVIC SERVICES, INC.,**

PROPOSED DECISION

RESPONDENTS

LS0006291RCO

SUMMARY

This is a disciplinary action against three out-of-state individuals and the organizations they represent, all of whom were alleged to have misrepresented the nature of a charitable organization. None of the respondents appeared at the scheduled hearing. The charges were proven based on a previous action in circuit court. The respondents are found to have violated laws regulating charitable organizations and professional fund-raisers. The respondent's registrations are revoked, forfeitures are imposed, and the respondents are ordered to pay the costs of the proceeding.

PARTIES

The parties in this matter under section 227.44 of the Statutes and section RL 2.037 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats. are:

Complainant:

Division of Enforcement

Department of Regulation and Licensing

1400 East Washington Ave.

Madison, WI 53708-8935

Respondents:

Carol Sue Harvey

d/b/a Missouri Task Force on Child Abuse and Neglect

a/k/a Wisconsin Coalition on Child Abuse and Neglect

10981 Panther Ridge Road

Saint Genevieve, MO 63670

Michael G. Cosgrave

d/b/a Cosgrave Funding

9852 West Katella Avenue

Anaheim, CA 92804

also P.O. Box 2243

Anaheim, CA 92814-2243

Richard Gaetano

d/b/a Civic Services, Inc.

c/o Kurt Lewis, Registered Agent

6624 Gateway Avenue

Sarasota, FL 43231

Disciplinary Authority:

Department of Regulation and Licensing

1400 East Washington Ave.

Madison, WI 53703

PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint (DOE case numbers 99-RCO-002 and 98-RCO-010) with the Department of Regulation and Licensing on June 29, 2000. A disciplinary proceeding (hearing) was scheduled for September 1, 2000.

B. Notice of Hearing was prepared by the department's Division of Enforcement. Pursuant to section 440.47 (5) of the Wisconsin Statutes, notices of hearing were delivered to the Department of Financial Institutions, which immediately sent the notices by registered mail, return receipt requested, to the three respondents at the last addresses known to the Department of Financial Institutions. A copy of the notice was received by Carol Sue Harvey. The notice mailed to Richard Gaetano d/b/a Civic Services, Inc., c/o Kurt Lewis was returned marked "refused". The copies sent to Michael G. Cosgrave d/b/a Cosgrave Funding at a physical address and at a post office box were both returned as "undeliverable".

C. An answer dated July 23, 2000, was filed by Carol Sue Harvey on July 31, 2000.

D. On approximately August 25, 2000, the administrative law judge called the phone number on Ms. Harvey's answer and left a message requesting to schedule a telephone conference with her and the attorney for the Division of Enforcement. On August 28th, Ms. Harvey called and left the following message with a receptionist: "They are trying to secure an attorney to straighten matters out. Call if questions." On August 29th, the ALJ called and left another message asking for further information: if Ms. Harvey had an attorney, the name and contact information for the attorney; if not, a time when a telephone conference could be held for procedural purposes related to the September 1st hearing only. Ms. Harvey did not call again.

E. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on September 1, 2000. Neither Carol Sue Harvey nor any of the other respondents appeared. The Department of Regulation and Licensing was represented by attorney Henry Sanders of the Department's Division of Enforcement. The hearing was recorded; no transcript was prepared. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

APPLICABLE STATUTES AND RULES

Statutes

440.475 Disciplinary actions.

(1) The department may deny, limit, suspend or revoke the registration of a charitable organization, fund-raising counsel or professional fund-raiser, or may reprimand a charitable organization, fund-raising counsel or professional fund-raiser that is registered under this subchapter, if the department finds that the charitable organization, fund-raising counsel or professional fund-raiser has made a false statement in any registration statement, annual report or other information required to be filed under, or has otherwise violated, this subchapter or the rules promulgated under this subchapter.

(2) In addition to or in lieu of a reprimand or a denial, limitation, suspension or revocation of a certificate under sub. (1), the department may assess against any person who violates this subchapter or the rules promulgated under this subchapter a forfeiture of not less than \$100 nor more than \$1,000 for each violation.

440.46 Prohibited acts.

(1) No person may, in the planning, management or execution of a solicitation or charitable sales promotion, do any of the following:

(a) Use an unfair or deceptive act or practice.

(b) Imply that a contribution is for or on behalf of a charitable organization or use any emblem, device or printed matter belonging to or associated with a charitable organization without first being authorized in writing to do so by the charitable organization.

(c) Use a name, symbol or statement so closely related or similar to that used by another charitable organization that the use of the name, symbol or statement would tend to confuse or mislead a person being solicited.

(d) Represent or lead anyone in any manner to believe that the person on whose behalf a solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of the solicitation or charitable sales promotion will be used for charitable purposes if that is not the fact.

(e) Lead anyone in any manner to believe that another person sponsors, endorses or approves a solicitation or charitable sales promotion if the other person has not sponsored, endorsed or approved the solicitation or charitable sales promotion in writing.

(f) Use the fact of registration to lead any person to believe that the registration constitutes an endorsement or approval by the state.

(g) Represent directly or by implication that a charitable organization will receive a fixed or estimated percentage of the gross revenue raised greater than that established under s. 440.44 (4).

(2) In deciding whether an act or practice is unfair or deceptive within the meaning of sub. (1) (a), definitions, standards and interpretations relating to unfair or deceptive acts or practices under chs. 421 to 427 apply.

440.47 Administration and investigations.

...

(5) SUBSTITUTE SERVICE UPON DEPARTMENT OF FINANCIAL INSTITUTIONS. A charitable organization, fund-raising counsel, professional fund-raiser or commercial coventurer that has its principal place of business outside of this state or is organized under laws other than the laws of this state and that is subject to this subchapter shall be considered to have irrevocably appointed the department of financial institutions as its agent for the service of process or notice directed to the charitable organization, fund-raising counsel, professional fund-raiser or commercial coventurer or to any of its partners, principal officers or directors in an action or proceeding brought under this subchapter. Service of process or notice upon the department of financial institutions shall be made by personally delivering to and leaving with the department of financial institutions a copy of the process or notice. That service shall be sufficient service if the department of financial institutions immediately sends notice of the service and a copy of the process or notice to the charitable organization, fund-raising counsel, professional fund-raiser, commercial coventurer or other person to whom it is directed by registered mail, with return receipt requested, at the last address known to the department of financial institutions.

FINDINGS OF FACT

1. The respondent Carol Sue Harvey, d/b/a Missouri Task Force on Child Abuse and Neglect, a/k/a Wisconsin Coalition on Child Abuse and Neglect, is registered as a charitable organization in the state of Wisconsin. The registration has expired, but Ms. Harvey retains a right to renew the registration. The last address of record with the department for Ms. Harvey, Missouri Task Force on Child Abuse and Neglect, and Wisconsin Coalition on Child Abuse and Neglect is 10981 Panther Ridge Road, Saint Genevieve, MO 63670.

2. The respondent Michael G. Cosgrave, d/b/a Cosgrave Funding, is registered as a professional fund-raiser in the state of Wisconsin. The last addresses of record with the department for Mr. Cosgrave and Cosgrave Funding are 9852 West Katella Avenue, Anaheim, CA 92804, and P.O. Box 2243, Anaheim, CA 92814-2243.

3. The respondent Richard Gaetano, d/b/a Civic Services, Inc., is registered as a professional fund-raiser in the state of Wisconsin. The last address of record with the department for Mr. Gaetano and Civic Services, Inc., is in

care of Kurt Lewis, Registered Agent, 6624 Gateway Avenue, Sarasota, FL 43231.

4. On March 25, 1999, a document entitled "Findings of Fact, Conclusions of Law, Default Judgment and Order" was entered in case number 98-CV-992 in Outagamie County Circuit Court. The conclusions of law were as follow:

- Defendants Harvey, Cosgrave and Civic Services have violated Wis. Stat. § 440.46(1)(a), by misrepresenting that

A. The Coalition on Child Abuse and Neglect is a local Wisconsin charity;

B. Money contributed would be used locally in Wisconsin;

C. The caller and/or the company are calling from or located in Appleton or another Wisconsin community;

D. The funds collected will be used to help children, or local elementary schools, in the donor's community;

E. The funds collected will be used to fund charities that deal with child abuse; and

F. The funds collected will be used to train parents.

- Defendants Harvey, Cosgrave and Civic Services have violated Wis. Stat. § 440.455(1)(a) and (b), by failing to disclose the name and address of the charitable organization and the availability of a financial statement.

ANALYSIS

This is a disciplinary proceeding conducted under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. The Division of Enforcement in the Department of Regulation and Licensing filed a complaint with the Department of Regulation and Licensing alleging that the respondents, Carol Sue Harvey, Michael G. Cosgrave, and Richard Gaetano, violated laws regulating the practice of charitable organizations and professional fund-raisers in Wisconsin. The burden of proof is on the Division of Enforcement to prove the allegations of the complaint by a preponderance of the evidence. Sec. 440.20(3), Stats.; 75 Att. Gen. 76; Gandhi v. Medical Examining Board, 168 Wis.2d 299, 483 N.W.2d 295 (Ct.App. 1992). I conclude that the allegations were proven and that disciplinary action is appropriate.

A judgment was entered in Circuit Court in Outagamie County finding that the respondents violated sections 440.46(1)(a) and 440.455(1)(a) and (b), Stats. The judgment was based on a failure of the respondents to participate in the process and the respondents are also in default in this proceeding. Ms. Harvey did file an answer to the complaint in this case in which she implied that certain defenses had not been raised, but she did not detail them, and there is no reason for this tribunal not to accept the circuit court's conclusions of law.

Discipline.

The purposes of professional discipline have been set forth by the Wisconsin Supreme Court in various cases involving attorneys, such as State v. Kelly, 39 Wis.2d 171, 158 N.W.2d 554 (1968), State v. MacIntyre, 41 Wis.2d 481, 164 n.w.2d 235 (1969), State v. Cory, 51 Wis.2d 124, 186 N.W.2d 325 (1970), and State v. Aldrich, 71 Wis.2d 206, 237 N.W.2d 689 (1976). Those purposes are (1) to rehabilitate the offender, (2) to protect the public, by assuring the moral fitness and professional competency of those privileged to hold licenses, and (3) to deter others in the profession from similar unprofessional conduct. That framework has been adopted by regulatory agencies, including the Department of Regulation and Licensing, for disciplinary proceedings for other professions.

1. Protection of the Public.

Given the unwillingness of the respondents to participate in the process either in Outagamie County or here, and therefore the lack of any evidence explaining or ameliorating the offenses, the protection of the public requires the revocation of any and all privileges granted by the State of Wisconsin to the individuals or the entities they represent.

2. Deterrence of Other Professionals

The imposition of discipline serves the purpose of publicizing prohibited behavior in a profession, and of informing other professionals, in this case other charitable organizations and professional fund-raisers, of the consequences

of engaging in similar misconduct. For an out-of-state individual or organization, mere loss of Wisconsin privileges may be a weak deterrent. Consequently, the imposition of a forfeiture would seem appropriate for this purpose. In setting the amount of that forfeiture, it is worth noting that forfeitures, penalty assessments, and costs totalling \$234,033.99 have already been imposed in the circuit court action.

3. Rehabilitation.

The third purpose of discipline is rehabilitation of the offender. Such an effect seems unlikely here, given that two of the three respondents have completely ignored the court and administrative proceedings. However, in my reading of various attorney discipline cases, the term "rehabilitation" means what is necessary to make a person conform his or her behavior to the requirements of the profession, and it covers both positive and negative reinforcement to deter the offender from similar behavior in the future. See, for example, *State v. Postorino*, 53 Wis.2d 412, 193 N.W.2d 1 at 4 (1972). Thus, even though the purpose of discipline is not to impose punishment *per se*, appreciating the unpleasant consequences of unprofessional behavior is part of rehabilitation. This becomes another reason for imposing forfeitures on the respondents, while a lower forfeiture is recommended for the one respondent who bothered to file an answer.

Costs.

The assessment of costs against a disciplined professional is authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code, but neither the statute nor the rule clearly indicates the circumstances in which costs are to be imposed. The department has the discretion to impose all, some, or none of the costs of the proceeding. One approach is routinely to impose the costs of investigating and prosecuting unprofessional conduct on the disciplined individual rather than on the profession as a whole. Another approach is to use costs as an incentive to encourage respondents to cooperate with the process, and thus to impose costs only if the respondent is uncooperative or dilatory. In this case, either approach leads to an order for costs. Respondents Cosgrave and Gaetano failed to cooperate in any way with the Department in this action, and failed to appear at the hearing. Respondent Harvey filed an answer but did not appear for hearing. Their lack of cooperation and disregard for these proceedings make an order for costs appropriate. Allocating undifferentiable costs against three payors presents a problem in accounting and collection for a departmental system which is not really designed for the enforcement of such claims. Rather than issue an order that each respondent be held liable "jointly and severally", each respondent will be responsible for a portion of the costs. Again, the fact that one respondent respected the process enough to even file an answer will be taken into consideration and the costs will be allocated as follows: Harvey, 20%; Cosgrave, 40%; Gaetano, 40%.

CONCLUSIONS OF LAW

I. The Department of Regulation and Licensing has personal jurisdiction over Carol Sue Harvey, d/b/a Missouri Task Force on Child Abuse and Neglect, a/k/a Wisconsin Coalition on Child Abuse and Neglect, based on her holding a credential issued by the department, and based on notice under sec. 801.04 (2), Stats.

II. The Department of Regulation and Licensing has personal jurisdiction over Michael G. Cosgrave, d/b/a Cosgrave Funding, based on his holding a credential issued by the department, and based on notice under sec. 801.04 (2), Stats., sec. 440.47 (5), Stats., and

sec. RL 2.08 (1), Wis. Admin. Code.

III. The Department of Regulation and Licensing has personal jurisdiction over Richard Gaetano, d/b/a Civic Services, Inc., based on his holding a credential issued by the department, and based on notice under sec. 801.04 (2), Stats., sec. 440.47 (5), Stats., and sec. RL 2.08 (1), Wis. Admin. Code.

IV. The Department of Regulation and Licensing is the legal authority responsible for issuing and controlling credentials for charitable organizations and professional fund-raisers, under subchapter III of chapter 440, Stats., and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sections 15.08(5)(c) and 440.475, Stats.

V. By failing to answer the complaint or appear at the hearing, respondents Michael G. Cosgrave and Richard Gaetano are in default. By failing to appear at the hearing, Carol Sue Harvey is in default. Under sec. RL 2.14, Wis. Admin. Code, the Department of Regulation and Licensing may enter an order on the basis of the complaint and other evidence.

VI. As previously determined by the Circuit Court for Outagamie County in case number 98 CV 922, the respondents failed to comply with section 440.555, Stats., and engaged in prohibited acts under section 440.46, Stats., and discipline is appropriate, under section 440.475, Stats.

ORDER

THEREFORE, IT IS ORDERED that the registration as a charitable organization issued to Carol Sue Harvey, d/b/a Missouri Task Force on Child Abuse and Neglect, a/k/a Wisconsin Coalition on Child Abuse and Neglect, and any right to renew the expired registration, is hereby revoked.

IT IS FURTHER ORDERED that the registration as a professional fund-raiser issued to Michael G. Cosgrave, d/b/a Cosgrave Funding, is hereby revoked.

IT IS FURTHER ORDERED that the registration as a professional fund-raiser issued to Richard Gaetano, d/b/a Civic Services, Inc., is hereby revoked.

IT IS FURTHER ORDERED that Carol Sue Harvey pay a forfeiture of \$1,000, as authorized by sec. 440.475 (2), Stats.

IT IS FURTHER ORDERED that Michael G. Cosgrave pay a forfeiture of \$2,000, as authorized by sec. 440.475 (2), Stats.

IT IS FURTHER ORDERED that Richard Gaetano pay a forfeiture of \$2,000, as authorized by sec. 440.475 (2), Stats.

IT IS FURTHER ORDERED that Carol Sue Harvey pay 20% of the costs of this proceeding, as authorized by sec. 440.22 (2), Stats., and sec. RL 2.18, Wis. Admin. Code

IT IS FURTHER ORDERED that Michael G. Cosgrave pay 40% of the costs of this proceeding, as authorized by sec. 440.22 (2), Stats., and sec. RL 2.18, Wis. Admin. Code

IT IS FURTHER ORDERED that Richard Gaetano pay 40% of the costs of this proceeding, as authorized by sec. 440.22 (2), Stats., and sec. RL 2.18, Wis. Admin. Code

Dated and signed: September 5, 2000

John N. Schweitzer

Administrative Law Judge

Department of Regulation and Licensing