

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
SECURITIES AND CHARITIES DIVISION**

IN THE MATTER OF:)	
)	Administrative Proceeding
DOMESTIC VIOLENCE PROJECT, INC.)	Number: <u>C-06-0045</u>
1298 North Lamar Blvd.)	
Oxford, MS 38655)	
)	
<i>Respondent</i>)	

**SUMMARY CEASE AND DESIST ORDER AND NOTICE OF INTENT TO DENY
REGISTRATION, IMPOSE ADMINISTRATIVE PENALTY AND
ADMINISTRATIVELY DISSOLVE**

COMES NOW Melanie Thomas, Senior Attorney for the Securities and Charities Division of the Mississippi Office of the Secretary of State (“Division”), on behalf of Secretary of State C. Delbert Hosemann, Jr., and issues this Summary Cease and Desist Order and Notice of Intent to Deny Registration, Impose Administrative Penalty and Administratively Dissolve (“SCDO”) against Respondent, Domestic Violence Project, Inc. (“DVP”) for violating provisions of both the Mississippi Charitable Solicitations Act (“Act”), Miss. Code Ann. Sections 79-11-501 *et seq.* (rev. 2009), and the binding Consent Agreement signed by DVP on March 16, 2009. In support thereof the Division respectfully submits as follows:

I. JURISDICTION

The Secretary of State is vested with the regulation of charitable organizations in the State of Mississippi pursuant to Miss. Code Ann. Sections 79-11-501, *et seq.* (2001) (“Act”). Respondent is a charitable organization as defined by Miss. Code Ann Section 79-11-501(a)(i)(B), to-wit:

- (B) Any person actually or purporting to be established for any voluntary health and welfare, benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other

eleemosynary purpose or for the benefit of law enforcement personnel, fire fighters, or other public safety organizations, or any person employing in any manner a charitable appeal as the basis of any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation and includes each local, county or area division within this state of such charitable organization, provided such local, county or area division has authority and discretion to disburse funds or property otherwise than by transfer to any parent organization [previously registered with the Secretary of State Business Regulation & Enforcement Division].

From June 5, 2002 until June 5, 2006, Respondent was registered with the Division as a charitable organization. Respondent's registration lapsed on June 5, 2006; Respondent attempted to renew its registration as a charity on June 5, 2008. On March 16, 2009, Respondent entered into a binding Consent Agreement with the Division. Pursuant thereto, Respondent's registration was renewed; Respondent also agreed to abide by the provisions of the Act "as currently in effect or as may be subsequently amended." For these reasons, the Secretary of State finds that he has jurisdiction over the subject matter and parties herein.

II. FINDINGS OF FACT

1. DVP is a charitable corporation located at 1298 North Lamar Blvd., Oxford, MS 38655. DVP may be served with this SCDO by serving its Executive Director, Talunja Eskridge, at the above-listed address.
2. On November 15, 2007, the Division began an examination into Respondent's business affairs.
3. The exam and subsequent investigation resulted in findings that:
 - a. Between June 5, 2006 and June 5, 2008, Respondent engaged in unregistered solicitation, in violation of the Act. Respondent allowed its charitable registration with the Division to expire June 5, 2006; despite continued solicitation, Respondent did not attempt to re-register with the Division until June 5, 2008.

b. Respondent engaged in dishonesty, fraud, deception or misrepresentation, in violation of the Act, by:

- i. failing to disclose the Executive Director's conviction of simple assault on a minor;
- ii. falsifying and/or providing falsified receipts to examiners;
- iii. providing payroll advances to officers without documentation;
- iv. failing to maintain proper documentation of transactions, income and receipts;
- v. failing to maintain adequate financial records and internal financial controls.

4. In addition to the exam findings, the Division discovered that as of June 30, 2007, Respondent owed an estimated total of one hundred fifty-six thousand, two hundred fifty dollars and zero cents (\$156,250.00) in outstanding payroll taxes, interest and fines to the Internal Revenue Service. DVP acknowledged payroll taxes had been delinquent between 1998 and 2001; and DVP admitted to having made no payments towards these back taxes. DVP could not provide the Division with an exact amount of its full and total debt.

5. On April 7, 2008, the Division issued a Notice of Intent to Issue a Cease and Desist Order, Deny Registration and Impose Administrative Penalty against DVP ("NOI"). On August 29, 2008, the Division issued an Amended Notice of Intent to Issue a Cease and Desist Order, Deny Registration, Impose Administrative Penalty and Administratively Dissolve ("Amended NOI") against DVP.

6. On June 5, 2008, the Division received Respondent's renewal registration application. The application was held in abeyance pending resolution of the Amended NOI.

7. After settlement negotiations, on March 16, 2009, DVP and the Division entered into a binding Consent Agreement to resolve the allegations contained in the Amended NOI.

8. DVP stipulated to the Division's jurisdiction as to all matters contained in the Consent Agreement. DVP also agreed, in pertinent part:

a. to "present evidence to the Division," no later than one hundred twenty (120) days after execution of the Consent Agreement, of a "finalized payment plan with the Internal Revenue Service, for repayment or forgiveness of all outstanding payroll taxes, penalties and interest." In the event an agreement had not been reached by this deadline, DVP agreed to provide written evidence that such a plan "has been proposed in good faith by DVP" and that the IRS "has not yet acted on DVP's proposal[;]"

b. to notify the Division "upon each payment being made to the IRS," and to inform the Division "as to whether said payment was made timely and fully[;]"

c. that no donation monies would be used to pay "any penalties or interest imposed against DVP as a result of the outstanding payroll taxes to the IRS; or any other late fees or penalties, including but not limited to late fees imposed on utilities or rent[;]" and

d. to comply with the provisions of the Act.

9. In return, the Division agreed to withdraw the NOI and Amended NOI against DVP. The Division also agreed to process DVP's June 5, 2008 application for renewal registration as a charity. The Consent Agreement noted, "DVP's renewal registration shall become effective on approval by the Division (in accordance with Section 79-11-509(3)) and shall expire on June 5, 2009, unless DVP can show good cause why the expiration date should be amended."

10. The Consent Agreement states that "should DVP commit any future violation of the Act or Rules [...] the Division will take immediate steps to revoke DVP's charitable registration and administratively dissolve DVP as a non-profit corporation in the State of Mississippi [...]"

11. The Consent Agreement also states:

In the event Respondent fails to comply with the terms of this Consent Agreement, or commits any future violation of the Act or Rules promulgated thereunder, the Division will provide written notice of same to DVP, and notify DVP of the Division's option to rescind this Agreement and institute legal or administrative proceedings it deems appropriate, including but not limited to, proceedings to address the matters set forth herein and within the authority of the Division as codified in the Act. DVP reserves its right to an administrative hearing should the Division take such legal or administrative action.

12. As the Consent Agreement between the parties was properly executed, DVP's registration as a charity was renewed. DVP was recognized as being registered with the Division between June 5, 2008 and June 5, 2009—thereby making all solicitations which occurred between those dates lawful under the Act.

13. DVP's registration expired on June 5, 2009. DVP did not renew its registration with the Division. As of the date of this SCDO, DVP remains unregistered.

14. Nevertheless, DVP remains in operation and continues to solicit for charitable donations in and from Mississippi. Therefore, DVP's actions constitute violations of the terms of both the Act and the Consent Agreement.

15. To date, DVP also has failed under the terms of the Consent Agreement to provide the Division with evidence of a payment plan with the IRS for unpaid payroll taxes, penalties and interest. DVP has, as well, failed to provide the Division with evidence of payments being timely and fully made pursuant to the terms of the payment plan.

III. APPLICABLE LAW

16. Pursuant to Miss. Code Ann. Section 79-11-519(4)(f), it shall be a violation of the Act for any charity to fail to comply with the requirements of the Act or any rule or order thereunder.

17. Pursuant to Miss. Code Ann. Section 79-11-519(4)(a), it shall be a violation of the Act for any charity to engage in any financial transaction which is not related to the accomplishment

of a charitable purpose, or which jeopardizes or interferes with the charity's ability to accomplish its charitable purpose.

18. According to Miss. Code Ann. Section 79-11-503(1):

[P]rior to any solicitation of contributions, every charitable organization which solicits or intends to solicit contributions by any means whatsoever shall file a registration statement with, and pay a filing fee of Fifty Dollars (\$50.00) to, the Secretary of State. A registration that contains false, misleading, deceptive, or incomplete information or documentation shall not be considered sufficient.

19. Pursuant to Miss. Code Ann. Section 79-11-509(1):

The Secretary of State shall deny, suspend or revoke a registration or an exemption for the following reasons:

(e) The applicant or registrant has violated or failed to comply with any provision of this chapter or any rule or order thereunder.

(g) The applicant or registrant has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense

(j) the applicant or registrant has engaged in other forms of misconduct as may be determined by the rules adopted by the Secretary of State.

20. Pursuant to Miss. Code Ann. Section 79-11-509(4):

Whenever it appears to the Secretary of State that any person has engaged in or is about to engage in any act or practice constituting a violation of this chapter or any rule or order, he may issue a cease and desist order and impose an administrative penalty up to a maximum of Twenty-Five Thousand Dollars (\$25,000.00) for each violation of the Act.

21. Pursuant to Miss. Code Ann. Section 79-11-347(a), the Secretary of State may commence a proceeding under Section 79-11-349 "to administratively dissolve a corporation if the corporation does not pay within sixty (60) days after they were due any taxes or penalties imposed by Sections 79-11-101 et seq. or other law." Notice is hereby given to Respondent of the Division's determination that grounds for administrative dissolution exist under Section 79-11-347(a). Such notice is in accordance with the requirements of Section 79-11-349, which sets

forth the procedure for administrative dissolution of a non-profit corporation such as Respondent, as well as the remedies available to Respondent to reverse the dissolution process:

(1) Upon determining that one or more grounds exist under Section 79-11-347 for dissolving a corporation, the Secretary of State shall serve the corporation with written notice of that determination under Section 79-11-169.

(2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within at least sixty (60) days after service of the notice is perfected under Section 79-11-169, the Secretary of State may administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under Section 79-11-169.

IV. CONCLUSIONS

DVP allowed its registration to expire on June 5, 2009. Despite having entered into a Consent Agreement (to resolve serious violations of the Act) less than three months earlier, DVP once again failed to renew its charitable registration. This was not only a violation of the Act, it also was a violation of the Consent Agreement itself. Moreover, DVP repeatedly violated the terms of the Consent Agreement by failing to provide the Division with evidence of its payment plan with the IRS, and by failing to provide the Division with evidence of payments being timely and fully made pursuant to that plan.

The Division engaged in extensive and intensive settlement negotiations with DVP; in return, DVP violated the terms of that settlement within weeks. DVP has demonstrated a persistent and willful refusal to comply with the Act, as well as a nonchalant attitude with respect to remedying its serious tax situation with the Internal Revenue Service. The Division has attempted to work with DVP, to no avail. The Division can no longer afford for this type of charity to remain in operation.

V. NOTICE OF INTENDED ACTIONS

The previous paragraphs are incorporated herein by reference. As provided in Miss. Code Ann. Sections 79-11-509(1)(c) and (4), the Secretary of State intends to take the following action:

- a. Issue a Cease and Desist Order against Respondent.
- b. Deny any renewal registration application submitted by Respondent.
- c. Impose an administrative penalty of up to \$25,000.00 for each violation of Miss. Code Ann. Section 79-11-501 *et seq.*
- d. Administratively dissolve Respondent as a licensed non-profit Mississippi corporation.

This order shall remain in effect until further directive of the Secretary of State.

PUBLIC INTEREST

The actions taken and proposed to be taken herein by the Secretary of State are in the public interest and are consistent with the purposes set forth in Miss. Code Ann. Sections 79-11-501, *et seq.*

AMENDMENTS

The Division reserves the right to amend this Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty.

RIGHT TO ADMINISTRATIVE HEARING

An administrative hearing may be requested in this matter. NOTICE is hereby given that Respondent has thirty (30) days from the date of receipt of this Summary Cease and Desist Order and Notice of Intent to Deny Registration, Impose Administrative Penalty and Administratively Dissolve to provide written notice of their request for an administrative hearing to Melanie

Thomas, Senior Attorney for the Securities and Charities Division, Office of the Secretary of State, Post Office Box 136, 700 North Street, Jackson, Mississippi 39205-0136.

If such hearing is requested, written notice of the date, time and place of such hearing, as well as a designation of the Hearing Officer, will be provided to all parties via certified mail, return receipt requested. Respondent may appear at the hearing with or without the assistance of counsel. Respondent will have the right to cross-examine witnesses and present testimony, evidence and argument relating to the matters contained herein. Upon request, subpoenas may be issued for the attendance of witnesses and for the production of books and papers on Respondent's behalf.

In the event such written notice for a hearing is not received within thirty (30) days, a FINAL CEASE AND DESIST ORDER AND ORDER DENYING REGISTRATION, IMPOSING ADMINISTRATIVE PENALTY AND ADMINISTRATIVELY DISSOLVING Domestic Violence Project, Inc. may be entered in this proceeding without further notice.

ORDER

IT IS, THEREFORE, ORDERED AND ADJUDGED, pursuant to the authority set forth in Miss. Code Ann. Sections 79-11-501 *et seq.*, that Respondent shall immediately CEASE AND DESIST FROM ANY FURTHER ILLEGAL ACTIVITY IN, OR ORIGINATING FROM, the State of Mississippi in connection with solicitations of charitable contributions.

Respectfully submitted this the 28th day of March, 2011.

C. DELBERT HOSEMANN, JR.
Secretary of State
State of Mississippi

By: Melanie Thomas
MELANIE THOMAS
Senior Attorney
Securities and Charities Division

Melanie Thomas, MSB #101016
Mississippi Secretary of State's Office
P.O. Box 136
700 North Street
Jackson, MS 39205-0136
(601) 359-1650

CERTIFICATE OF SERVICE

I, Melanie Thomas, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing document, via certified mail postage pre-paid, to the following:

Talunja Eskridge
Domestic Violence Project, Inc.
1298 North Lamar Blvd.
Oxford, MS 38655

This the 28th day of March, 2011.

Melanie Thomas
MELANIE THOMAS
Senior Attorney