

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
BUSINESS REGULATION AND ENFORCEMENT DIVISION**

IN THE MATTER OF:)	
)	
Vietnam Veterans Legacy Foundation;)	Administrative Proceeding
Carlton Sherwood)	Number: <u>C-06-0181</u>
Post Office Box 95000-1655)	
Philadelphia, PA 19195-1655)	
)	
<i>Respondents</i>)	
)	

**SUMMARY CEASE AND DESIST ORDER
AND NOTICE OF INTENT TO IMPOSE ADMINISTRATIVE PENALTY**

The SECRETARY OF STATE OF MISSISSIPPI, by and through James O. Nelson, II, Assistant Secretary of State for the Business Regulation and Enforcement Division (hereinafter "Division"), hereby issues this SUMMARY CEASE AND DESIST ORDER AND NOTICE OF INTENT TO IMPOSE ADMINISTRATIVE PENALTY to VIETNAM VETERANS LEGACY FOUNDATION (hereinafter "VVLFF"), and CARLTON SHERWOOD (hereinafter "SHERWOOD") and in support hereof, states the following:

I. Jurisdiction

The Business Regulation and Enforcement Division of the Office of the Secretary of State (hereinafter "Division"), having the power to administer and to regulate charities under the Regulation of Charitable Solicitation Act, codified at Miss. Code Ann. Sections 79-11-501 to 79-11-529 (hereinafter "Act"), upon due consideration of the subject matter hereof, and having confirmed solicitation within the State of Mississippi, has determined the following:

II. Findings of Fact

1. VVLF, Post Office Box 95000-1655, Philadelphia, Pennsylvania 19195-1655, is an unregistered entity.
2. SHERWOOD is an individual soliciting on behalf of VVLF as of March, 2006.
3. VVLF is portraying itself as a charity and soliciting contributions in Mississippi from at least one (1) Mississippi resident for the purpose of educating and informing the public about the Vietnam War, its events, its history, and the men and women who sacrificed to serve their country in Vietnam. After diligent search of the records of the Division, no registration for VVLF has been located.
4. VVLF was not registered with the Division at the time of the solicitation, and has not been registered with the Division at any time prior to the issuance of this order.
5. SHERWOOD was not registered as a professional fundraiser, professional solicitor, fundraising counsel, or officer or director of any registered charitable organization at the time of the solicitation. SHERWOOD has not been registered with the Division at any time prior to the issuance of this order.
6. In March, 2006, a Mississippi resident received a letter from VVLF, purportedly authored by SHERWOOD, explaining VVLF's purpose and requesting financial support from the resident. This was a solicitation as defined in Miss. Code Ann. Section 79-11-501(j).
7. The March, 2006, letter further claimed that VVLF was a registered charity in the state of Mississippi. The letter stated, "The official registration and financial information of VVLF may be obtained from the Mississippi Secretary of State's office by calling 1-800-236-6167. Registration by the Secretary of State does not

imply endorsement by the Secretary of State.” Because VVLF was not registered in the state of Mississippi, this statement constitutes a false representation under Miss. Code Ann. Section 79-11-529.

III. Applicable Statutory Provisions

8. The previous paragraphs are incorporated herein by reference.
9. Miss. Code Ann. Section 79-11-503(1) provides in pertinent part:

. . .prior to any solicitation of contributions, every charitable organization as defined in Section 79-11-501 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.
10. Miss. Code Ann. Section 79-11-501 defines a charitable organization as follows:
 - (a)(i) “Charitable organization” means either of the following:
 - (A) Any person determined by the Internal Revenue Service to be a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code; or
 - (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.
12. Miss Code Ann. 79-11-501(j) defines solicitations as requests made directly or indirectly for “money, credit, property, financial assistance, or any other thing of

value . . .” Further, in (j)(i), solicitations made through any “written request” are specifically included.

13. Miss. Code Ann. Section 79-11-525 states as follows:

Every person who solicits, collects or expends contributions on behalf of a charitable organization or for a charitable purpose, or who conducts a charitable sales promotion, and every officer, director, trustee or employee of that person who is concerned with the solicitation, collection or expenditure of those contributions shall be considered a fiduciary and as acting in a fiduciary capacity. This section does not supersede or otherwise alter the standard of care or the limitations on the liability of volunteers.

14. Miss. Code Ann. Section 79-11-529, in relevant part, reads:

. . . . In connection with any solicitation, any person employing a device, scheme or artifice to defraud; or engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, or obtaining money or property by means of any false pretense, representation or promise shall be guilty of a felony and, upon conviction, shall be punished by a fine not exceeding Twenty-five Thousand Dollars (\$25,000.00) or imprisoned not more than five (5) years, or both.

IV. Conclusions of Law

15. The previous paragraphs are incorporated herein by reference.
16. Pursuant to Miss. Code Ann. Section 79-11-501(j)(i), VVLF’s written appeal for funds through its letter sent to a Mississippi resident was a solicitation as defined by Mississippi law. In violation of Miss. Code Ann. Section 79-11-503(1), Respondent VVLF did not register with, and pay a filing fee to the Division prior to these solicitations.

17. VVLF represented in its solicitation that the charity was registered with the state of Mississippi when, in fact, VVLF was not registered with the state; this is in violation of Miss. Code Ann. Section 71-11-529.
18. Respondent SHERWOOD is an agent and fiduciary of VVLF as defined in Miss. Code Ann. Section 79-11-525. As agent and fiduciary, he is responsible for compliance with the Act.

V. Amendments

The Division reserves the right to amend this SUMMARY CEASE AND DESIST ORDER AND NOTICE OF INTENT TO IMPOSE ADMINISTRATIVE PENALTY to allege additional violations.

VI. Public Interest

This SUMMARY CEASE AND DESIST ORDER AND NOTICE OF INTENT TO IMPOSE ADMINISTRATIVE PENALTY is issued in the public interest and for the protection of contributors consistent with the purpose of the Act.

VII. Notice of Intended Action

Please note that the Secretary of State intends to take the following additional action: Impose an administrative penalty of up to \$25,000 for each violation of the act on VVLF and SHERWOOD.

VIII. Right to an Administrative Hearing

An administrative hearing may be requested in this matter. Any such request shall be made in writing within thirty (30) days from the date of receipt of this Order. The request must be addressed to James O. Nelson, II, Assistant Secretary of State, Post Office Box 136, 700 North Street, Jackson, Mississippi 39205-0136.

If an administrative hearing is requested, written notice of the date, time, and place will be given to all parties by certified mail, return receipt requested. Said notice will also designate a Hearing Officer.

In the event such a hearing is requested, the Respondent may appear, with or without the assistance of an attorney, at the date, time and place specified and cross-examine witnesses, 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 the Respondent's behalf at the hearing relating to the matters contained herein. In the event such written notice is not received within said thirty (30) day period of time, a **FINAL CEASE AND DESIST ORDER AND ORDER IMPOSING ADMINISTRATIVE PENALTY** may be entered in this proceeding with no further notice.

IX. Order

The Secretary of State, pursuant to Miss. Code Ann. Section 79-11-509(4), hereby ORDERS VIETNAM VETERANS LEGACY FOUNDATION TO SUMMARILY CEASE AND DESIST soliciting contributions in and from the State of Mississippi. This ORDER shall remain in effect until further order of the Secretary of State.

The Secretary of State, pursuant to Miss. Code Ann. Section 79-11-509(4), hereby ORDERS ALEXANDER SHERWOOD TO SUMMARILY CEASE AND DESIST soliciting contributions in and from the State of Mississippi. This ORDER shall remain in effect until further order of the Secretary of State.

BE ADVISED THAT, pursuant to Section 79-11-529 of the Act, a willful violation of this Summary Cease and Desist Order may be punishable upon conviction by a fine not

exceeding Twenty Five Thousand Dollars (\$25,000) or by imprisonment in the county jail of not more than five (5) year or both, in addition to civil and administrative remedies available to the Division.

ISSUED, this, the 4th day of JUNE, 2006.

ERIC CLARK
Secretary of State

BY:



JAMES O. NELSON, II
Assistant Secretary of State
Business Regulation and Enforcement

Benjamin Akins
Mississippi Secretary of State's Office
Post Office Box 136
Jackson, Mississippi 39205-0136
(601) 359-6364
bakins@sos.state.ms.us

CERTIFICATE OF SERVICE

I, Benjamin Akins, do here by certify that I have this day mailed via Certified Mail, postage pre-paid, a true and correct copy of the SUMMARY CEASE AND DESIST ORDER AND NOTICE OF INTENT TO IMPOSE ADMINISTRATIVE PENALTY to the following:

VIETNAM VETERANS LEGACY
FOUNDATION
Post Office Box 95000-1655
Philadelphia, PA 19195-1655

CARLTON SHERWOOD
Post Office Box 95000-1655
Philadelphia, PA 19195-1655

This, the 14th day of JUNE, 2006.


BENJAMIN AKINS
Legal Division

Benjamin Akins
Mississippi Secretary of State's Office
Post Office Box 136
Jackson, Mississippi 39205-0136
(601) 359-6364
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