

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

IN THE MATTER OF:)	
)	
)	
WAVELAND CITIZENS FUND)	Administrative Proceeding
)	Number C-10-0092
)	
)	
Respondent.)	

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

COME NOW Tanya G. Webber, Assistant Secretary of State 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 Revoke Registration and Impose Administrative Penalty (“SCDO”) against Respondent Waveland Citizens Fund (“Waveland”) for violating provisions of the Mississippi Charitable Solicitations Act (“Act”), Miss. Code Ann. Sections 79-11-501 *et. seq.* In support thereof the Division respectfully submits as follows:

I. JURISDICTION

The Act authorizes to the Secretary of State to regulate “charitable organizations” that are using a charitable appeal in soliciting contributions in or from the State of Mississippi.

Waveland’s stated purpose is “to continue giving disaster relief and assistance to our citizens and employees primarily in the form of physically rebuilding their homes.

We will consider each applicant's request, according to the standards set by the American Red Cross CAN program, and determine the assistance that can be provided." Waveland has not incorporated as a nonprofit organization with the Business Service Division of the Secretary of State's Office. Waveland is using a charitable appeal as the basis for soliciting. For this reason, the entity falls within the Act's definition of "charitable organization". Waveland is also registered with the Division as a charitable organization and, therefore, has voluntarily submitted to the jurisdiction and regulatory authority of the Secretary of State.

Waveland may be served with this SCDO by serving its Director, Jim Mitchel at 2272 Highway 53, Poplarville, Mississippi 39470.

II. FINDINGS OF FACT

A. 2007 Examination/Investigation of Waveland. On February 1, 2007, the Division performed a books and records examination of Waveland. The following violations of the Act and Rules were noted:

1. Waveland was not registered as a charitable organization with the Division. However, Waveland was soliciting funds from the public in violation of Miss. Code Ann. Section 79-11-503.

2. Waveland was not maintaining adequate books and records. It was not keeping documentation of its contributions. Nor was it maintaining any invoices or receipts of its expenses in violation of Miss. Code Ann. Section 79-11-518 and Mississippi Charities Act Rule 213. Further, Waveland was writing checks made payable to cash. These undocumented cash transactions hinder the Division's and the public's ability to determine how the charity is using its funds.

3. In addition, Waveland was operating with a small Board of Directors. The Division recommended that Waveland increase its Board of Directors to the number recommended by the Better Business Bureau.

4. At the conclusion of the exam, the Division notified Waveland in writing of the deficiencies noted during the exam. Waveland's response, dated April 5, 2007, was received by the Division. In Waveland's response it noted the following corrective measures taken by the charity:

a. Waveland would cease its solicitation activities until it completed a charity registration package. Waveland submitted a complete registration package with the Division and is now a registered charity;

b. Waveland notified the Division in writing that it had begun the process of documenting all contributions received by the organization and was now maintaining all invoices for expenditures.

c. Waveland notified the Division in writing that it was no longer writing checks out to cash. According to Waveland, all checks written would have documentation to support the expenditures. Receipts would also have to support petty cash checks.

d. Waveland further informed the Division that it had increased the size of its Board of Directors.

B. 2009 Examination/Investigation of Waveland. On August 24, 2009, the Division conducted a follow up examination of Waveland, and the following violations were noted:

1. Waveland pays all living expenses for one of its “volunteers”. Waveland is absorbing all of the costs for Kathleen Johnson’s (“Ms. Johnson”) living expenses. In addition to paying the maintenance costs on Ms. Johnson’s property, Waveland is also paying all of the utilities for the property. Waveland pays for Ms. Johnson food, fuel for personal vehicles, cell phone, and health/dental/vision premiums. Because the contributions used to pay for the above charges were not used in furtherance of Waveland’s charitable purpose, these expenditures were made in violation of Miss. Code Ann. Sections 79-11-509(1)(d) and 79-11-519(4)(a), and did not accomplish Waveland’s stated charitable purpose.

2. While Waveland’s stated charitable purpose is giving disaster relief and assistance, it appears that Waveland spent funds on other purposes also.

a. Waveland admitted to spending charitable contributions on repairs to a van given to Ms. Johnson by John Sabo. Waveland has confirmed that this van belongs to Ms. Johnson.

b. Waveland has spent charitable funds on a visa debit card given to Ms. Johnson designated as “personal use” giving Ms. Johnson approval to make personal transactions with this card.

c. Waveland provided reimbursements on purchases that were originally purchased with a debit card, effectively paying twice for these reimbursements.

d. Waveland allowed individuals to receive “cash back” on transactions made with debit cards.

e. Waveland spent charitable funds to pay for vehicles and other equipment personally owned by Ms. Johnson. All items were titled in Ms. Johnson's name, were in her possession, and were used at her discretion and not that of Waveland's. Waveland also used charitable funds to pay for the license plates of these items.

f. Waveland has a policy of using "petty cash" funds to pay for items. These funds are to be used for items that benefit the charitable purpose only. As a result, receipts of all items purchased should be submitted before the distribution of "petty cash". However, Waveland has disbursed charitable funds in the form of "petty cash" without receipts to document that the items purchased were used to further the charitable purpose of the organization.

Because the above items were purchased with charitable contributions and were not used to accomplish the charitable purpose of the organization, these purchases were made in violation of Miss. Code Ann. Section 79-11-509(1)(d) and 79-11-519(4)(a).

3. During the 2007 examination, Waveland was verbally notified that it could not have a convicted felon as an employee, officer, or director. Because of this law, Waveland did not appoint Ms. Johnson as one of its board members. While Waveland did not officially appoint Ms. Johnson as one of its board members or hire her as an employee, Waveland determined that it could still treat Ms. Johnson as an employee without officially designating her as such. This would, therefore, give Ms. Johnson the benefits of an employee and allow Waveland to appear to be in compliance with the law. It is evident that Ms. Johnson was acting and was treated as an employee. Just like other employees, Waveland paid the premiums for Ms. Johnson's health, dental, and vision

insurance. Just like other employees, Waveland paid the bills for Ms. Johnson's cell phone. Just like other employees, Waveland paid for Ms. Johnson to attend a nonprofit training seminar. When referring to its employees, Waveland would include Ms. Johnson. Waveland uses statements like "by staff other than Ms. Johnson" or "Ms. Johnson and other staff". Waveland gave Ms. Johnson petty cash privileges. Waveland also gave Ms. Johnson authority to sign for purchases made on Waveland's behalf. Waveland allowed Ms. Johnson to serve as contact person for the organization. She was allowed to operate and manage the organization in all aspects, including personnel decisions and financial decisions. In addition, Ms. Johnson has contacted the Division on several occasions on behalf of the charity. Ms. Johnson's title on her email lists her as "Field Operations Manager Waveland Citizens Fund". In addition, support letters written on behalf of Waveland uses these terms to identify Ms. Johnson: "Director" and "Kathleen and her staff". Articles on the internet further refer to Ms. Johnson in these capacities. Therefore, Ms. Johnson is an employee with management duties and control of Waveland and this employment is in violation of Miss. Code Ann. Section 79-11-509(1)(f).

4. Despite being cited for the problem in 2007, Waveland continued to fail to maintain documentation of its expenditures. During the examination, the examiner couldn't reconcile the books and records. There were so many missing receipts and records that the examiner provided a spreadsheet to the organization to complete regarding its financial transactions. There were missing memos on checks to document the purposes of the transactions. The ledgers also failed to list the purposes of the transactions. After receiving additional documents after the examination, it was

determined that checks were still being written out to cash despite Waveland's written notification in April 2007 that it was no longer writing checks out to cash.

Waveland states it is operating according to its policy and procedures. However, Waveland has failed to submit written copies of these policies and procedures that have been approved by the board.

a. Waveland states that it has an agreement with Mr. Mailhes to pay the utilities bills and maintenance on a property that Mr. Mailhes allowed Ms. Johnson to use. However, no agreement has been submitted to support this arrangement.

b. Waveland states that its policy is that long term volunteers will not pay housing and food costs. However, no written agreement was submitted to the Division to support this policy.

c. Neither has a written agreement been submitted to confirm the policy that Waveland pays for volunteers cell phones.

d. Waveland states that a restricted donation was received to pay the health, dental, and vision premiums for Ms. Johnson. However, no documentation was submitted to the Division confirming this donation or restriction on it.

e. Waveland states that it made an arrangement in which Ms. Johnson would get "petty cash" in the amount of Four Hundred Dollars (\$400.00). However, no written agreement was submitted to the Division confirming this policy.

f. Waveland states that it made repairs on a vehicle owned by Ms.

Johnson because this vehicle was used exclusively for hauling, attending meetings, and for work associated with the organization. Nevertheless, no written agreement has been submitted between Waveland and Ms. Johnson documenting this arrangement.

The 2009 examination confirmed that Waveland is still not maintaining its books and records as required by Miss. Code Ann. Section 79-11-518 and Mississippi Charity Act Rule 213.

III. APPLICABLE LAW

A. Mississippi Regulation of Charitable Solicitations Act.

1. Miss. Code Ann. Section 79-11-501(a)(i)(B) defines a charitable organization as 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.

Based on the definitions above, Waveland is a charitable organization subject to registration and regulation by the Division.

2. Miss. Code Ann. Section 79-11-509(1) requires the Secretary of State to “deny, suspend or revoke” Waveland’s charitable registration for the following reasons:

- (c) A document filed with the Secretary of State contains one or more false or misleading statements or omits material facts;
- (d) The charitable contributions have not been or are not being applied for the purpose or purposes stated in the documents filed with the Secretary of State;
- (e) The applicant or registrant has violated or failed to comply with any provisions of this chapter or any rule or other thereunder;
- (f) Any applicant, registrant, officer, director, or partner of the applicant or registrant, or any agent or employee thereof who has been convicted of a felony or misdemeanor involving misrepresentation, misapplication or misuse of the money or property of another maintains a position where he or she has access to or control over the funds of the charitable organization.;

* * *

3. Miss. Code Ann. Section 79-11-509 (4) states that 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 any provision of this chapter or any rule or order thereunder, he may, in his discretion, seek one or more of the following remedies in addition to other remedies authorized by law:

- (a) Issue a cease and desist order, with or without a prior hearing against the person or persons engaged in the prohibited activities, directing them to cease and desist from further illegal activity; or
- (b) Administratively dissolve the charitable organization;
- (c) Issue an order imposing an administrative penalty up to a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each offense, each violation to be considered as a separate offense in a single proceeding or a series of related proceedings;

(d) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under subparagraph (b) of this section, the Secretary of State shall consider, among other factors, the frequency, persistence and willfulness of the conduct constituting a violation of this chapter or a rule promulgated thereunder or an order of the Secretary of State, the number of persons adversely affected by the conduct, and the resources of the person committing the violation.

4. Miss Code Ann. Section 79-11-518 states that every charitable organization, professional fund-raiser, professional solicitor, or fund-raising counsel, whether or not required to register pursuant to Section 79-11-501 through 79-11-529, Mississippi Code of 1972, shall keep true and correct books and records of solicitation activities that are covered by Section 79-11-501 through 79-11-529, Mississippi Code of 1972, or any rule or order adopted under Section 79-11-501 through 79-11-529, Mississippi Code of 1972. All books and records shall be opened to inspection at all reasonable times by the Secretary of State or Attorney General, or their duly authorized representatives. The records shall be maintained for a period of at least three (3) years.

5. Miss. Code Ann. Section 79-11-519(4) states as follows:

(4) It shall be a violation of Sections 79-11-501 through 79-11-529 for any charitable organization:

(a) To engage in any financial transaction which is not related to the accomplishment of its charitable purpose, or which jeopardizes or interferes with the ability of the charitable organization to accomplish its charitable purpose;

* * *

B. Mississippi Charities Act Rules.

The Division has the right to inspect the books and records of charitable organizations at all reasonable times pursuant to Miss. Code Ann. Section 79-11-518. A charitable organization registered with the Secretary of State's Office is required to maintain certain books and records pursuant to Section 79-11-518. Mississippi Charities Act Rule 213 also requires Waveland to maintain accurate books and records, by providing as follows:

Charitable organizations either registered with the Secretary of State or exempt from registration shall maintain accurate books and records of the solicitation activities of the organization for a period of at least three (3) years. Solicitation activities shall include all financial activities of the organization. The records shall be maintained at the offices of the charitable organization and shall be kept in an auditable format. By way of example such records shall include, but not be limited to, the following:

(A) All check books, bank statements, cancelled checks and cash reconciliations of the organization;

(B) All bills, statements and receipts (or copies thereof), paid or unpaid, relating to the business and operation of the organization;

(C) Statements and records of all accounts in which the organization is vested;

(D) All written agreements (or copies thereof) entered into by the organization with any entity, person or otherwise relating to the business of the organization as such;

(E) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts;

(F) Current minutes of the meetings of the organization's board of directors; and,

(G) Copies of all solicitation materials.

IV. CONCLUSIONS OF LAW

The previous paragraphs are incorporated herein by reference.

A. Waveland, a registered charity, is violating the Act in the following ways:

1. **False or misleading statements on documents filed with the Secretary of State.** Waveland has continued to represent on all documents filed with the Secretary of State's office that Ms. Johnson is a "volunteer"; however, it is evident based on Ms. Johnson's actions that she operates in an employee's capacity. Ms. Johnson serves as the contact person for the charity. She gives directions to employees regarding operating, employee, and financial policies and procedures. *See* Miss. Code Ann. Section 79-11-509(1)(c).

2. **Using charitable funds for a non-charitable purpose.** Waveland failed to use charitable contributions for the purposes stated in the documents Waveland filed with the Secretary of State. Waveland spent a large and primarily undocumented and unsupported amount of its charitable contributions on Ms. Johnson, clearly outside of its charitable purpose. Waveland paid for vehicles and equipment owned by Ms. Johnson. Waveland paid for repairs and license plates for a vehicle owned by Ms. Johnson. Waveland used charitable funds to put money on a debit card and then gave the debit card to Ms. Johnson for her personal use. Waveland paid the premiums for Ms. Johnson health, dental, and vision insurance. By paying for Ms. Johnson living expenses, including her food, cell phone, and fuel usage, it's clear that Waveland is failing to serve its charitable purpose in these transactions. *See* Miss. Code Ann. Sections 79-11-509(1)(d) and 79-11-519(4)(a).

3. **Allowing an officer, director, or any agent or employee who has been convicted of a felony to have access and control over the funds of the organization.**

Ms. Johnson, a convicted felon, is serving in a management position of Waveland. In this position, she has access to and control over the organization's funds. Ms. Johnson serves as the contact person for the charity. Ms. Johnson identifies herself as manager of the charity. Ms. Johnson receives "petty cash" from Waveland. Waveland allows Ms. Johnson to receive charitable contributions from volunteers. Waveland allows Ms. Johnson to use charitable funds to make purchases for the organization. Waveland allows Ms. Johnson to pay personnel for their services with charitable funds, all in violation of the Act. *See* Miss. Code Ann. Section 79-11-509(1)(f).

4. **Failure to maintain proper books and records.** Waveland has failed to maintain receipts or documentation of income and expenses. Waveland has not been able to supply the Division with copies of all receipts to verify that purchases were made in furtherance of the charitable purpose. On several "petty cash" checks, the receipts submitted did not total the amount of the check. The check was written for more than the total amount of the receipts. Checks were written that failed to document the reason the check was written in the memo section of the check.

Waveland states that it had an agreement with Mr. Mailhes regarding property Mr. Mailhes allowed Ms. Johnson to use. However, no agreement was submitted to the Division.

Waveland stated that it has adopted a policy for long term volunteers. However, no agreement was submitted to the Division to confirm this policy.

Waveland states that a restricted donation was given to it to purchase health, dental, and vision premiums for Ms. Johnson. However, no written documentation was submitted to confirm this donation.

Waveland was not able to provide any agreements where it agreed to purchase vehicles and equipment, but list the titles in individual names.

Waveland failed to supply documentation showing the list of volunteers that come, assist, and donate to the organization.

Waveland has failed to document numerous financial transactions. *See* Miss. Code Ann. Section 79-11-518; Mississippi Charities Act Rule 213.

V. NOTICE OF INTENDED ACTION

The previous paragraphs are incorporated herein by reference. As provided in Miss. Code ann. Section 79-11-509(4) (2002), the Secretary of State intends to take the following action:

- A. Order Waveland Citizens Fund to Cease and Desist from further illegal activity in the State of Mississippi.
- B. Revoke the registration of Waveland Citizens Fund.
- C. Impose an administrative penalty of up to Twenty-Five Thousand Dollars (\$25,000.00) for each offense against Respondent—with each violation to be considered a separate offense in a single proceeding—taken in violation of Miss. Code Ann. Sections 79-11-501 *et. seq.*

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

VI. 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.*

VII. AMENDMENTS

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

VIII. RIGHT TO AN ADMINISTRATIVE HEARING

An administrative hearing may be requested in this matter. NOTICE is hereby given that Respondent have thirty (30) days from the date of receipt of this Summary Cease and Desist Order and Notice of Intent to Revoke Registration and Impose Administrative Penalty to provide written notice of their request for an administrative hearing to Tanya G. Webber, Assistant Secretary of State, 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. Respondents may appear at the hearing with or without the assistance of counsel. Respondents 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 Respondents' 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 REVOKING

REGISTRATION AND IMPOSING ADMINISTRATIVE PENALTY may be entered in this proceeding without further notice.

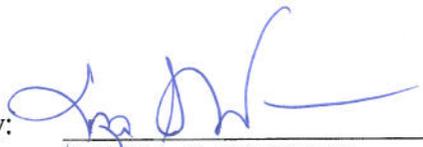
IX. ORDER

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.

ISSUED, this, the 15th day of July, 2010.

C. DELBERT HOSEMANN, Jr.
Secretary of State

By:



TANYA G. WEBBER
Assistant Secretary of State
Securities and Charities Division

CERTIFICATE OF SERVICE

I, Tanya G. Webber, 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:

Waveland Citizens Fund
c/o Jim Mitchell
2272 Highway 53
Poplarville, MS 39470

This, the 15th day of July, 2010.



TANYA G. WEBBER
Assistant Secretary of State
Securities and Charities Division