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IN THE COURT OF COMMON PLEAS
RICHLAND COUNTY, OHIO

STATE OF OHIO, *ex rel.*
MIKE DEWINE, OHIO ATTORNEY
GENERAL

Plaintiff,

vs.

MINISTRY IN MARKETING, INC.
1260 Lexington Avenue
Mansfield, Ohio 44907

GARY NICHOLAS BIAS
111 Oxford Road
Lexington, Ohio 44904

Defendants.

CASE NO.: 13 CV 52

JUDGE

HENSON

MOTION OF THE OHIO ATTORNEY
GENERAL FOR A TEMPORARY
RESTRAINING ORDER AND A
PRELIMINARY INJUNCTION

Plaintiff, State of Ohio *ex rel.* Mike DeWine, Ohio Attorney General, respectfully moves this Court, pursuant to Rule 65 of the Ohio Rules of Civil Procedure and Ohio Revised Code Section 1716.16(B), for the issuance of a Temporary Restraining Order and a Preliminary Injunction ordering and enjoining Defendants, as well as their agents, representatives, and assigns, from operating Defendant Ministry In Marketing, Inc., including, soliciting in the State of Ohio, from authorizing, allowing, or directly or indirectly withdrawing any and all funds from

Defendant Ministry In Marketing, Inc.'s accounts at any and all financial institutions, and ordering any and all financial institutions acting as a custodian of funds for Defendant Ministry In Marketing, Inc., as well as their agents, representatives, and assigns to prohibit the release of any and all funds. The reasons and authorities are more fully set forth in the attached Memorandum in Support, which is incorporated by reference herein.

Very respectfully submitted,

MIKE DEWINE
Attorney General of Ohio



Dionne DeNunzio (0082478)
Associate Assistant Attorney General
Ohio Attorney General's Office
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Ohio Revised Code Chapter 1716 enumerates certain registration and reporting requirements with which charitable organizations and professional solicitors must comply if they intend to solicit contributions in Ohio and prohibits certain acts and practices when soliciting for such contributions. Based upon the Ohio Attorney General's review and investigation,

Defendants have failed to properly register and report, have failed to properly deposit charitable contributions, have failed to maintain required records, have failed to make required disclosures, have committed deceptive acts while soliciting charitable contributions, have misled potential donors as to material facts concerning the solicitation of charitable contributions, have misled potential donors as to the existence of a charitable organization and a charitable purpose, have misrepresented the amount a charitable organization will receive from a solicitation campaign, have failed to provide complete and timely payments to charitable organizations, and have breached their fiduciary duties. As such, under R.C. § § 1716.07(A) and 1716.14(A)(12), Defendants are operating in violation of, and have failed to comply with, Ohio Revised Code Chapter 1716 and their actions constitute a nuisance pursuant to R.C. § 1716.14(B). Accordingly, an injunction should be issued to preserve the charitable trust assets retained by Defendants while operating in violation of this Chapter.

II. LAW AND ARGUMENT

The general rule for issuance of a preliminary injunction requires the plaintiff to establish that there will be irreparable injury if the Court does not enjoin the defendants' conduct. Ohio Civil Rule 65(A). Ohio Courts have considered four factors as shown by clear and convincing evidence to obtain a preliminary injunction, including (1) a substantial likelihood of success on the merits, (2) the existence of irreparable harm if an injunction is not issued, (3) that third-parties will not be unjustifiably harmed if an injunction is issued, and (4) that granting an injunction will serve the public interest. *Procter & Gamble Co. v. Stoneham* (2000), 140 Ohio App.3d 260, 267-68.

However, when a statute grants a specific injunctive remedy, the general rule does not apply. *Ackerman v. Tri-City Geriatric & Health Care, Inc.* (1978), 55 Ohio St.2d 51, 56. In *Ackerman*, the Ohio Supreme Court found that when a statute grants specific injunctive relief, the state need not show irreparable injury. *Id.* In the case of a statutory injunction, the moving party need only satisfy the statutory conditions. *Id.* at 57. Additionally, unlike equitable injunctions, statutory injunctions do not require clear and convincing evidence. *State v. R&J Partnership, Ltd.* (2nd Dist. Ct. App. 2007), 2007 Ohio 7165, 2007 Ohio App. LEXIS 6268 (specifically applying a preponderance of the evidence standard to preliminary injunctions under Ohio Revised Code Section 1716.16(B)); *see Stoneham*, 140 Ohio App.3d at 267-68.

Ohio Revised Code § 1716.16(B) authorizes the Attorney General to obtain injunctive relief for violations of Ohio's Charitable Organizations Act, Chapter 1716. Ohio Revised Code § 1716.16(B) states (in pertinent part): "In seeking injunctive relief, the attorney general shall not be required to establish irreparable harm but only shall establish a violation of a provision of this chapter or a rule adopted under this chapter or that the requested order promotes the public interest."

In *R&J Partnership*, the Second District Court of Appeals considered a preliminary injunction brought by the Attorney General pursuant to Ohio Revised Code § 1716.16(B) to enjoin charitable activities. The Second District found that Ohio Revised Code § 1716.16(B) only requires the Attorney General to establish a violation of Chapter 1716 by a preponderance of the evidence in order to obtain a preliminary injunction. *R&J Partnership* (2nd Dist. Ct. App. 2007), 2007 Ohio 7165. Therefore, in obtaining a temporary restraining order and preliminary injunction in this matter, the Attorney General need only establish a violation of

Chapter 1716 or show the requested order promotes the public interest by a preponderance of the evidence.

Defendants have violated numerous provisions of Chapter 1716. Each violation warrants enjoining further activities of Defendants.

1. Defendants violated numerous provisions of Chapter 1716

Defendants have violated numerous provisions of Chapter 1716. Ohio Revised Code § § 1716.02, 1716.04, and 1716.07 enumerates certain registration and reporting requirements with which charitable organizations and professional solicitors must comply if they intend to solicit contributions in Ohio. An Ohio Attorney General investigator testifies that Defendants have violated R.C. § § 1716.02, 1716.04, and 1716.07 by not complying with required registration and reporting requirements.

Ohio Revised Code § 1716.07(F) requires professional solicitors to deposit charitable contributions into an account in the name of the charitable organization. An Ohio Attorney General investigator testifies that Defendants have violated R.C. § 1716.07(F) by not depositing charitable contributions into accounts in the names of the charitable organizations for whom they were soliciting.

Ohio Revised Code § 1716.07(G) requires certain records to be maintained of charitable solicitations. An Ohio Attorney General investigator testifies that Defendants have violated R.C. § 1716.07(G) by not maintaining required records of charitable solicitations. An Ohio Attorney General investigator testifies that Defendants have violated R.C. § 1716.07(G) by not maintaining the name of each contributor and the date and amount of the contribution and by not maintaining a record of all expenses incurred by Defendants for the payment of which they are liable and for the payment of which the charitable organizations are liable.

Ohio Revised Code § § 1716.08 and 1716.10 require certain disclosures to be made during a charitable solicitation. An Ohio Attorney General investigator testifies that Defendants have violated R.C. § § 1716.08 and 1716.10 by not making the required disclosures during charitable solicitations. Defendants failed to disclose, prior to verbally requesting a contribution, the name of Ministry In Marketing, the city of its principal place of business, that the solicitation was being conducted by a professional solicitor, the name and address of each charitable organization on behalf of which the contribution collected will be used, and the particular charitable purpose to be advanced with the funds raised.

Ohio Revised Code § 1716.14 prohibits certain acts and practices while conducting a charitable solicitation. An Ohio Attorney General investigator testifies that Defendants have violated R.C. § 1716.14 by engaging in prohibited acts and practices while conducting charitable solicitations. Defendants deceived and/or misled potential donors while soliciting for a charitable organization and/or charitable purpose by representing to potential donors that Defendant Ministry In Marketing, Inc. was a 501(c)(3) tax-exempt organization and that all proceeds would be going to a charitable organization and/or a charitable purpose when Defendants used that money for their own personal and other unlawful purposes. In addition, Defendants misled potential donors to believe that the Stefanie Spielman Fund for Breast Cancer Research approved of Defendants' solicitations when, in fact, the Stefanie Spielman Fund for Breast Cancer Research retracted its consent in writing of Defendants' ability to conduct any charitable solicitations on its behalf or the use of its name for those purposes. Finally, Defendants filed false and misleading information with the Ohio Attorney General by representing that Ministry In Marketing was a 501(c)(3) tax-exempt organization when it was not.

In sum, the actions of Defendants' operations in violation of, and failure to comply with, Ohio Revised Code Chapter 1716, constitute violations of R.C. § § 1716.07(A) and 1716.14(A)(12), have resulted in breaches of their fiduciary duties in violation of R.C. § 1716.17, and constitute a nuisance pursuant to R.C. § 1716.14(B).

Thus, the Ohio Attorney General will establish by a preponderance of the evidence numerous violations of Chapter 1716 by Defendants and is therefore entitled to the necessary protection of injunctive relief under R.C. § 1716.16(B).

2. The requested relief promotes the public interest

In order to protect the public interest, the Ohio Attorney General was given the responsibility to regulate charitable solicitations in Ohio and to protect and preserve charitable trust assets resulting from those solicitations. The Ohio Attorney General believes that charitable assets in the possession, control, or custody Defendants may be at serious risk of diversion from the charitable purposes for which they were intended. An Ohio Attorney General investigator testifies that Defendant Gary Nicholas Bias personally benefitted at the expense of charitable beneficiaries by taking proceeds collected for charitable purposes and using that money for his personal and unlawful purposes.

The Ohio Attorney General cannot carry out his statutory responsibilities if injunctive relief is not granted. If injunctive relief is not granted, the Ohio Attorney General will not be able to exercise any oversight over the Defendants of their solicitations of Ohio citizens or the contributions made to Defendants by Ohio citizens. In sum, if injunctive relief is not granted the Ohio Attorney General will not be able protect Ohio citizens. Thus, the Ohio Attorney General has established by a preponderance of the evidence that the requested relief promotes the public

interest and thus is entitled to the necessary protection of injunctive relief under R.C. § 1716.16(B).

3. Ohio Civil Rule 65(A)

Although not required, the Ohio Attorney General can also show by clear and convincing evidence (1) a substantial likelihood of success on the merits, (2) the existence of irreparable harm if an injunction is not issued, (3) that third-parties will not be unjustifiably harmed if an injunction is issued, and (4) that granting an injunction will serve the public interest. *Procter & Gamble Co. v. Stoneham* (2000), 140 Ohio App.3d 260, 267-68. As shown above, there is a substantial likelihood that the Ohio Attorney General will prevail on the merits, the public interest will suffer irreparable harm if injunctive relief is not granted, as the Ohio Attorney General believes that charitable assets in the possession, control, or custody of Defendants may be at serious risk of diversion from the charitable purpose for which they were intended. No third parties would be unjustifiably harmed by the temporary cessation of solicitation and retention of assets retained by Defendants. Finally, Ohio Revised Code Chapter 1716 is meant to benefit the public, thus, an injunction is proper under Rule 65 of the Ohio Rules of Civil Procedure in order to protect the public interest.

III. CONCLUSION

For all the reasons stated above, the Ohio Attorney General respectfully requests this Court to issue a Temporary Restraining Order and a Preliminary Injunction pursuant to Rule 65 of the Ohio Rules of Civil Procedure and R.C. § 1716.16(B) in order to protect the public interest.

Very respectfully submitted,

MIKE DEWINE
Ohio Attorney General

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Attorney for Plaintiff Ohio Attorney General

CERTIFICATE OF SERVICE

A copy of the Motion was sent by regular U.S. mail this 14th day of January, 2013 to:

MINISTRY IN MARKETING, INC.
1260 Lexington Avenue
Mansfield, Ohio 44907

GARY NICHOLAS BIAS
111 Oxford Road
Lexington, Ohio 44904

BRIAN K. DUNCAN
DUNCAN SIMONETTE, INC.
155 East Broad Street, Suite 2200
Columbus, Ohio 43215
Attorney for Defendants

Dionne DeNunzio
Dionne DeNunzio (0082478)
Associate Assistant Attorney General

Affidavit of Major Case Investigator J. Brian Fisher

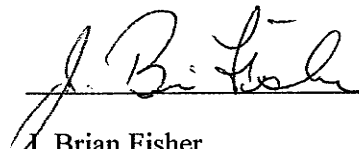
State of Ohio)
) SS
County of Franklin)

NOW COMES J. Brian Fisher, being first duly sworn, deposes and states as follows:

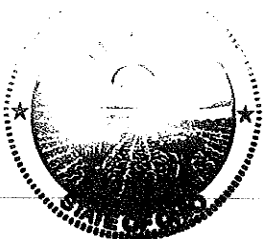
1. I am of lawful age and suffer no disability at law.
2. I make this Affidavit upon personal information, knowledge, and belief.
3. I am employed by the Office of the Attorney General of the State of Ohio, Charitable Law Section, as a Major Case Investigator, and have held this position since January of 2012. As a Major Case Investigator, I investigate issues concerning charitable trusts.
4. As an employee of the Ohio Attorney General's Office, Charitable Law Section, I consulted the records of this Office and confirmed that Ministry In Marketing was not registered under the Charitable Organizations Act with the Ohio Attorney General's Office prior to September 24, 2012.
5. As an employee of the Ohio Attorney General's Office, Charitable Law Section, I consulted the records of this Office and confirmed that Ministry In Marketing was not registered as a professional solicitor under the Charitable Organizations Act with the Ohio Attorney General's Office prior to October 16, 2012.
6. As an employee of the Ohio Attorney General's Office, Charitable Law Section, I consulted the records of this Office and confirmed that Ministry In Marketing was not registered under the Charitable Trust Act at any time prior to the making of this affidavit.
7. As an employee of the Ohio Attorney General's Office, Charitable Law Section, I consulted the records of this Office and confirmed that Ministry In Marketing represented in filings to this Office that Ministry In Marketing was a 501(c)(3) tax-exempt organization when it is not.
8. As part of an ongoing investigation by this Office of Ministry In Marketing and Gary Nicholas Bias and their conduct of charitable solicitations in Ohio, I investigated and determined that neither Ministry In Marketing nor Gary Nicholas Bias deposit charitable contributions into accounts in the names of the charitable organizations for whom they solicit.

9. I determined that Ministry In Marketing and Gary Nicholas Bias did not maintain a record of the name of each contributor and the date and amount of the contribution and a record of all expenses incurred by them for the payment of which they are liable and for the payment of which the charitable organizations are liable.
10. I determined that Ministry In Marketing and Gary Nicholas Bias did not disclose, prior to verbally requesting a contribution, the name of Ministry In Marketing, the city of its principal place of business, that the solicitation was being conducted by a professional solicitor, the name and address of each charitable organization on behalf of which the contribution collected will be used, and the particular charitable purpose to be advanced with the funds raised.
11. I determined that Ministry In Marketing and Gary Nicholas Bias represented to potential donors that Ministry In Marketing, Inc. was a 501(c)(3) tax-exempt organization and that all proceeds would be going to a charitable organization and/or a charitable purpose.
12. I determined that Ministry In Marketing and Gary Nicholas Bias told potential donors that the Stefanie Spielman Fund for Breast Cancer Research approved of their solicitations when, in fact, the Stefanie Spielman Fund for Breast Cancer Research retracted its consent in writing of their ability to conduct any charitable solicitations on its behalf or the use of its name for those purposes.
13. I determined that Gary Nicholas Bias used Ministry In Marketing's monies for personal use, including, but not limited to, payment of school loans, shopping sprees, golfing, and casino trips.

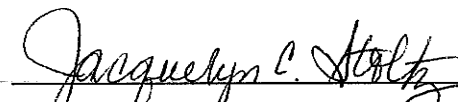
FURTHER AFFIANT SAITH NAUGHT.


J. Brian Fisher

SWORN TO AND SUBSCRIBED in my presence, this 10th day of January, 2013.



JACQUELYN C STOLTZ
Notary Public
In and for the State of Ohio
My Commission Expires
November 19, 2017


Notary Public