

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT
CIVIL ACTION NO. 10 1922 E

In the Matter of)
MENACOLA MARKETING, INC.)

ASSURANCE OF
DISCONTINUANCE

10 MAY -3 AM 11:27

ATTORNEY GENERAL'S OFFICE
DIVISION OF SOLICITATION

Pursuant to G.L. c. 68, § 18 et seq. and c. 93 A, the Attorney General of the Commonwealth of Massachusetts caused an investigation to be made into certain methods, acts, and practices used in the solicitation of charitable funds in Massachusetts by Menacola Marketing, Inc. ("Menacola").

Menacola's principal office is located at 6914 New Utrecht Ave., Brooklyn, NY 11228. Menacola had been registered with the Division of Public Charities ("Division") as a professional solicitor, as required by M.G.L. c. 68 § 24, until the Division received notice on July 8, 2008 from Menacola's surety that its bond was cancelled effective July 1, 2008. The Division sent Menacola a notification on July 9, 2008 that it was no longer legally permitted to engage in charitable solicitations in Massachusetts and that it must cease and desist all solicitation activity in Massachusetts. Menacola, however, continued to engage in solicitations in Massachusetts, and the Division received information of multiple instances of Menacola's continuing to solicit in Massachusetts after the date of the cease and desist letter and while it was not bonded.

In addition to the fact that Menacola was conducting solicitations illegally, many other aspects of the solicitations constituted statutory violations as well:

The Division received evidence from a Massachusetts resident of a solicitation by Menacola on July 25, 2008 on behalf of Association for Police

Officers, 17 Geneva Drive, Caramel, New York 10512. The Division had no record of Menacola's having submitted the fundraising contract with Association for Police Officers, as required by M.G.L. c. 68 § 22.

In another solicitation call to a Massachusetts resident by Menacola on behalf of Association for Police Officers on or about August 5, 2008, the Menacola solicitor told the potential donor that the organization was raising funds for Medford Police and for Massachusetts State Police, blatantly false representations and an unauthorized use of the names of these law enforcement agencies. The caller failed to disclose the location of Association for Police Officers, thereby furthering a deceptive scheme to lead a potential donor to believe that this was local fundraising for a local benefit. This call involved violations of M.G.L. c. 68 §§ 23(a)(1), 28, and 32(e) and c. 93A § 2.

Another Massachusetts resident contacted the Division on March 3, 2009 about Menacola's continuing to solicit him many times on behalf of Association for Police Officers. He had asked Menacola solicitors on several prior occasions to remove his number from the call lists, but Menacola continued to call him, with the last call taking place on March 3, 2009. Menacola's refusal to honor an individual's request not to be contacted is a violation of the Telemarketing Sales Rule, 16 CFR Part 310, §310.4(b)(1)(iii)(A), which is enforceable by States' attorneys general.

The Division received evidence of a false pledge sent by Menacola to a Massachusetts resident on behalf Disabled Firefighters Fund, 2521 North Grand Avenue, Suite D, Santa Ana, CA 92705. Materials sent to a Massachusetts

resident referenced a pledge made during a call on a date after the individual had been placed in a nursing home and was not even home to receive a call. Such a deceptive scheme violates M.G.L. c. 68 § 32(e) and c. 93A § 2:

Based upon these investigations, the Attorney General has determined that there is reason to believe that Menacola committed acts or practices in the course of the telemarketing and follow-up mailings that violated G.L. c. 68, §§ 22, 23(a)(1), 28, and 32(e), c. 93A § 2, and Telemarketing Sales Rule, 16 CFR Part 310, §310.4(b)(1)(iii)(A).

WHEREFORE, acknowledging the Attorney General's authority under c. 68, § 32 (e) and without admitting any violation of law, Menacola agrees to entry of this

Assurance of Discontinuance and hereby assures the Attorney General as set forth below:

1. Menacola, its agents, servants, employees, subcontractors, successors and assigns, and all other persons in active concert or participation with it, whether acting individually or through any corporation, trust, or other device or entity, shall refrain from:

- a. using any deceptions or misrepresentations in any solicitation, including, but not limited to, falsely stating, representing, or implying that
 - (i) an individual has agreed to a donation, when that is not the case;
 - (ii) an individual has engaged in a phone conversation regarding a charitable donation, when no phone conversation actually took place;
 - (iii) a request for information by an individual is tantamount to a pledge for a charitable donation;

- b. mailing to any individual any pledge card or pledge reminders when that individual has not expressly agreed to a donation to the charitable organization;
- c. failing to disclose subcontractors that it retains to conduct charitable solicitations on Forms 10, 10A, and 11;
- d. using the name of any other charitable organization, unless that organization has given written authorization of two officers for the use of its name.

2. Menacola, its respective agents, servants, employees, subcontractors, successors and assigns, and all other persons in active concert or participation with it, whether acting individually or through any corporation, trust, or other device or entity, hereby represent that, in conducting charitable solicitations in

Massachusetts, they shall

- a. disclose that the solicitation is being conducted by a paid fundraiser;
- b. disclose the location of the charitable organization on whose behalf the solicitation is being conducted;
- c. not conduct charitable solicitations unless they are registered and bonded as required by c. 68, § 24;
- d. file a Form 10A and the fundraising contract prior to the commencement of any solicitation campaign, as required by c. 68, § 22;
- e. file the written authorization of two officers for any organization whose name shall be used during the course of solicitations;
- f. not conduct charitable solicitations unless the charitable organization is in possession of a valid certificate of solicitation as required by c. 68, § 19;
- g. file a Form 11A that reports financial information on the fundraising campaign of the prior calendar year by February 28.

3. Menacola agrees to the assessment of a \$20,000 civil penalty, with \$10,000 payable within sixty (60) days of the execution of this Assurance and the remaining \$10,000 suspended for a period of two (2) years during which time Menacola will maintain full compliance with Massachusetts law. If during that two (2) year period, the Commonwealth has evidence of any statutory violations by Menacola, the full remaining \$10,000 would become immediately payable upon presentation by the Commonwealth to Menacola's counsel of such statutory violations.

4. Based upon this agreement in principle, the Division has registered Menacola as a professional solicitor permitted to engage in charitable solicitations in Massachusetts.

5. Pursuant to G.L. c. 93A, § 5, this matter may be reopened in the future by the Attorney General for further proceedings in the public interest. This Assurance of Discontinuance may be modified (a) by the parties or (b) by the Superior Court at the request of Menacola in the case of (i) change of underlying law, (ii) disagreement between the parties as to interpretation of said Assurance, or (iii) as equity may otherwise require.

6. This Assurance of Discontinuance shall be filed in the Superior Court of Suffolk County, pursuant to c. 93A, § 5, and shall be a matter of public record.

MENACOLA MARKETING, INC.

By: Katherine DeGaris By: _____

Title: President Title: _____

Date: 4/24/10

MARTHA COAKLEY
ATTORNEY GENERAL

By: *Sandra L Cardone* *Sandra L Cardone*

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HEREBY ATTEST AND CERTIFY ON
May 12, 2010 THAT THE
FORGOING DOCUMENT IS A FULL,
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE,
AND IN MY LEGAL CUSTODY.

MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE
SUFFOLK SUPERIOR CIVIL COURT
DEPARTMENT OF THE TRIAL COURT

BY: *Clara A Walsh*
Asst. Clerk