

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

THE STATE OF OHIO, <i>ex rel</i> , MIKE	:	Civil Action No.
DEWINE, OHIO ATTORNEY GENERAL,	:	
	:	
Plaintiff,	:	Judge
	:	
v.	:	
	:	
INTEGRAL RESOURCES, INC., 1972	:	
Massachusetts Avenue, Cambridge,	:	
Massachusetts, 02140,	:	
	:	
Defendant.	:	

**MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION AND MEMORANDUM IN SUPPORT**

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 Defendant Integral Resources, Inc., as well as its owners, officers, managers, directors, agents, representatives and assigns, from soliciting for any charitable organization or charitable purpose in the State of Ohio and from acting as a professional solicitor under Ohio Revised Code Chapter 1716, the Ohio Charitable Organizations

Act. The reasons and authorities are more fully set forth in the attached Memorandum in Support, which is incorporated by reference herein.

Respectfully submitted,

MIKE DEWINE
Attorney General of Ohio

/s/ Diane K. Oates

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Ohio Revised Code Chapter 1716 enumerates registration, reporting, and disclosure requirements with which professional solicitors must comply if they intend to solicit charitable contributions in Ohio and prohibits certain acts and practices when soliciting for such contributions. Based upon the Ohio Attorney General's investigation, Defendant Integral Resources, Inc. ("Integral") failed to make required disclosures when soliciting charitable contributions, misled potential Ohio donors as to material facts when soliciting charitable contributions, misrepresented the amount a charitable organization will receive from solicitation campaign revenue, failed to provide complete and timely payments of campaign revenue to a

charitable organization, failed to properly register with the Ohio Attorney General before soliciting, failed to timely file financial reports with the Ohio Attorney General, and breached its fiduciary duties. Defendant Integral is operating in violation of, and has failed to comply with, R.C. §§ 1716.07, 1716.08, and 1716.14, and its actions constitute a nuisance pursuant to R.C. § 1716.14(B). Accordingly, an injunction should be issued to protect Ohio residents from the misleading and illegal acts of Defendant Integral.

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 defendant's 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*, 140 Ohio App.3d 260, 267-68 (2000).

However, when a statute grants a specific injunctive remedy, the general rule does not apply. *Ackerman v. Tri-City Geriatric & Health Care, Inc.*, 55 Ohio St.2d 51, 56 (1978). 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. No. 22162, 2007 Ohio App. LEXIS 6268, *P22 (Dec. 28, 2007)

(specifically applying a preponderance of the evidence standard to preliminary injunctions under Ohio Revised Code § 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 Revised Code 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 motion for a preliminary injunction brought by the Attorney General pursuant to R.C. § 1716.16(B) to enjoin charitable activities. The Second District found that R.C. § 1716.16(B) only requires the Attorney General to establish a violation of Revised Code Chapter 1716 by a preponderance of the evidence in order to obtain a preliminary injunction. *R&J Partnership* at *P25. Therefore, in obtaining a temporary restraining order and preliminary injunction in this matter, the Attorney General need only establish a violation of Revised Code Chapter 1716 or show the requested order promotes the public interest by a preponderance of the evidence.

Defendant Integral violated numerous provisions of Chapter 1716. Each violation warrants enjoining further activities of the Defendant.

1. Defendant Integral violated numerous provisions of Chapter 1716.

Defendant Integral violated R.C. §§ 1716.07, 1716.08, and 1716.14 in the course of acting as a professional solicitor.¹ Ohio Revised Code § 1716.07 enumerates certain registration and reporting requirements with which professional solicitors must comply if they intend to

¹ Facts are supported by Affidavit of Major Case Investigator John Amburgey (Attached as Exhibit 1).

solicit contributions in Ohio. Defendant Integral violated R.C. § 1716.07 by failing to file timely annual registration forms in 2011 and 2013, and failing to file timely solicitation campaign financial reports in 2010, 2011, 2012, and 2013.

Ohio Revised Code § 1716.08 requires certain disclosures to be made during a charitable solicitation. Based on audio recordings provided by Defendant Integral to the Attorney General, Defendant Integral violated R.C. § 1716.08 by failing to make required disclosures during charitable phone solicitations. Prior to verbally requesting a contribution, Defendant Integral failed to disclose (1) the name of Integral Resources, Inc., (2) a statement that the solicitation was conducted by a professional solicitor, (3) the address of the charitable organization it was soliciting on behalf of, and (4) if requested, the percentage of gross revenue the charitable organization would receive from a solicitation campaign. The audio recordings of solicitation calls provided by Defendant Integral were made to Ohio residents over a three-day period. The recordings contained a total of one-hundred and eighty-four (184) disclosure violations.

Ohio Revised Code § 1716.14 prohibits certain acts and practices while conducting a charitable solicitation. Defendant Integral violated R.C. § 1716.14(A)(2) by misleading Ohio residents as to material facts during the solicitation of contributions for a charitable organization. Defendant Integral misled potential Ohio donors when an Integral caller stated that she worked for a charitable organization, not a professional solicitor; and when Defendant Integral failed to make all required disclosures during solicitations under R.C. § 1716.08.

Additionally, Defendant Integral violated R.C. § 1716.14(A)(8) when an Integral caller stated that a charitable organization would receive a greater percentage of gross revenue from a solicitation campaign than the percentage listed in the contract between Defendant Integral and the charitable organization. During a phone solicitation, an Integral employee represented that

100% of all donations would go to the charitable organization and 78% of the donations would be used by the charitable organization for non-administrative purposes. However, the Integral contract stated that the charitable organization would receive an estimated 1% of the gross revenue from the solicitation campaign.

Defendant Integral violated R.C. § 1716.14(A)(11) by failing to provide complete and timely payment to a charitable organization of the proceeds from a solicitation campaign. Defendant Integral promised a charitable organization 1% of the gross revenue from the solicitation campaign, or \$301.85. These charitable funds were not paid to the charitable organization.

The actions of Defendant Integral constitute violations of R.C. §§ 1716.07, 1716.08, and 1716.14, which results in breaches of fiduciary duties in violation of R.C. § 1716.17, and constitutes a nuisance pursuant to R.C. § 1716.14(B). The Ohio Attorney General will establish by a preponderance of the evidence numerous violations of Chapter 1716 by Defendant Integral 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, protect and preserve charitable trust assets resulting from those solicitations, and protect the public from misleading solicitations. If Defendant Integral is allowed to continue soliciting, it will maintain its practice of misleading Ohio residents as to the identity of the person conducting the solicitation and the amount of the donation retained by the charitable organization. Because Defendant Integral is not identifying itself by name or its status as a professional solicitor, many Ohio residents believe that the charitable organization is contacting them directly and that 100% of their donation will go to the

charity. These misleading statements heavily influence an Ohioan's decision to donate. Ohio residents are deprived of the chance of making a fully informed decision as to how to spend their money because they are unaware that they are not speaking to a charity volunteer and unaware that only 1% of their donation will go to the charitable organization.

If injunctive relief is not granted, the Ohio Attorney General cannot carry out his statutory responsibilities of protecting Ohioans. 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*, 140 Ohio App.3d 260, 267-68 (2000). 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 Defendant Integral will continue to mislead Ohio residents when soliciting for charitable donations. No third parties would be unjustifiably harmed by the temporary cessation of solicitation. Finally, an injunction will serve the public interest by preventing Ohio residents from being misled when making the decision to donate to a charitable organization. Thus, an injunction is proper and necessary under Rule 65 of the Ohio Rules of Civil Procedure in order to protect the public interest.

III. CONCLUSION

For 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.

Respectfully submitted,

MIKE DEWINE
Attorney General of Ohio

/s/ Diane K. Oates

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion was served by regular U.S. Mail, postage prepaid, this 18th day of June, 2013, to the following:

INTEGRAL RESOURCES, INC.
1972 Massachusetts Avenue
Cambridge, Massachusetts, 02140

/s/ Diane K. Oates

Diane K. Oates (0079221)
Associate Assistant Attorney General

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Massachusetts, 02140,	:	
	:	
Defendant.	:	

The Court finds that Plaintiff Ohio Attorney General has provided sufficient information and justification in support of a temporary restraining order, establishing that Defendant Integral Resources, Inc. violated Ohio Revised Code §§ 1716.07, 1716.08, and 1716.14, which resulted in breaches of fiduciary duties in violation of R.C. § 1716.17, and that Defendant Integral Resources, Inc.'s actions constitute a nuisance subject to abatement pursuant to R.C. § 1716.14(B). The injury caused is irreparable because Defendant Integral misled numerous Ohio donors while soliciting on behalf of charitable organizations leading donors to give money under a false belief. This Order was granted without notice since Defendant Integral, Inc. consistently misleads potential donors and breaches its fiduciary duties. Additionally, immediate relief is necessary to protect Ohio citizens from further abuse until the Court has an opportunity to conduct a preliminary injunction hearing.

Pending hearing on the Motion for Preliminary Injunction,

IT IS HEREBY ORDERED THAT Defendant Integral Resources, Inc. and its owners, officers, managers, directors, agents, representatives and assigns:

1. Immediately cease all acts of "solicitation" as defined in Revised Code § 1716.01(K) in the State of Ohio for any "charitable organization" or "charitable purpose" as defined in R.C. §§ 1716.01(A) and 1716.01(B), respectively; and
2. Immediately cease acting as a "professional solicitor" as defined in R.C. § 1716.01(J) in the State of Ohio for any "charitable organization" as defined in R.C. §§ 1716.01(A).

No bond is required from the State in this Matter.

This temporary restraining order is scheduled to expire on July 2, 2013.

The hearing on the Motion for Preliminary Injunction is scheduled for July 1, 2013 at 9 am.

IT IS SO ORDERED.

W. H. L.
Judge