

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, *ex rel.*
MIKE DEWINE, OHIO ATTORNEY
GENERAL,
Charitable Law Section
150 E. Gay St.
Columbus, Ohio 43215,

Plaintiff,

v.

COPS FOR KIDS, INC.
1726 West 47th St.
Ashtabula, Ohio 44004,

and

THOMAS DUFFY
1726 West 47th St.
Ashtabula, Ohio 44004,

and

CHARLES HITZEL
2018 Renko Road
Ashtabula, Ohio 44004,

and

TELCOM ENTERPRISES OF OHIO, INC.
c/o Corporate Creations Network, Inc.
119 E. Court Street
Cincinnati, Ohio 45202,

Defendants.

CASE NO.:

JUDGE

COMPLAINT OF OHIO ATTORNEY
GENERAL MIKE DEWINE

COMPLAINT

Plaintiff, State of Ohio, *ex rel.* Mike DeWine, Ohio Attorney General, hereby alleges:

1. Defendants are a sham charity, the individuals who run it, and their paid professional solicitor. They have engaged in fraud by using a charitable appeal to convince generous Ohio residents that their contributions will be used locally to support programming that benefits children in their community. Operating since 2004, Cops for Kids, Inc. collected donations of \$4,217,736 in charitable dollars from Ohio residents. This case is about this sham charity, the individuals and professional solicitor who personally benefitted from the charity, and the false and deceptive claims they made while hundreds of thousands of dollars a year from unsuspecting Ohioans.
2. In telemarketing calls, direct mail solicitations, websites, regulatory filings, and financial documents, Ohio Cops for Kids, Inc. has portrayed itself as a legitimate charity with programming that directly supports children in seventy-five of Ohio's counties. However, the overwhelming majority of the funds raised have gone to the professional fundraiser hired to solicit donations, to salaries of the individuals that oversee the "charity," and overhead expenses that also benefit these individuals directly. This diversion of charitable funds has deceived well-meaning donors and wasted charitable assets that should have been spent on their intended purpose.

PARTIES

3. Plaintiff State of Ohio, *ex rel.* Mike DeWine, Ohio Attorney General ("Attorney General"), brings this complaint in the public interest and under the authority vested in the Attorney General by O.R.C. § 109.23, *et seq.* ("Ohio Charitable Trust Act"), O.R.C. Chapter 1716 ("Ohio Organizations Act"), and the Attorney General's common law authority to enforce charitable trusts. The aforementioned authority permits the Attorney General to seek injunctive relief, rescission or reformation of trusts, restitution, and other equitable relief to prevent the waste, dissipation, and loss of charitable assets, and/or to stop ongoing donor deception caused by Defendants' violations of state law. These state laws and common law authority also authorize the Attorney General to obtain civil penalties, attorneys' fees, expenses, and costs.
4. Defendant Cops for Kids, Inc. ("Cops for Kids") is registered with the Ohio Secretary of State as a nonprofit corporation formed under O.R.C. Chapter 1702. Cops for Kids originally filed with the Ohio Secretary of State under the name "Ohio Cops for Kids, Inc." on July 26, 2004. On February 12, 2009, the organization amended its articles and changed its name to Cops for Kids, Inc. Although no d/b/a has been filed with the Ohio Secretary of State, Cops for Kids, Inc. appears to do business in Ohio as Ohio Cops for Kids.

5. Cops for Kids applied for and was granted exemption from federal income tax from the Internal Revenue Service (“IRS”) pursuant to Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).
6. Defendant Thomas (Thom) Duffy (“Duffy”) is identified as the co-founder of Cops for Kids and has at all times since its inception served as a board member and officer of the organization.
7. Defendant Chuck Hitzel (“Hitzel”) is identified as the co-founder of Cops for Kids and has at all times since its inception served as a board member and officer of the organization.
8. Defendant Telcom Enterprises of Ohio, Inc. (“Telcom”) is registered with the Ohio Secretary of State as an Ohio corporation formed under O.R.C. Chapter 1701.

JURISDICTION AND VENUE

9. In its most recent Statement of Continued Existence that was filed with the Ohio Secretary of State, Cops for Kids identified the location of its principal office as 1726 West 47th St., Ashtabula, Ohio 44004. On the organization’s current website, www.ohiocopsforkids.com, the organization’s address is identified as 4832 Cooper Rd., #300, Cincinnati, Ohio 45243 and requests for donations are directed to this address as well.
10. Cops for Kids has solicited donations from residents living in every county in Ohio during the time period covered by this complaint.
11. Duffy resides at 1726 West 47th St., Ashtabula, Ohio 44004. Individually and in concert with others, Duffy has formulated, directed, controlled, or participated in the acts and practices of Cops for Kids as set forth below. Among other things, Duffy has signed contracts, hired fundraisers, approved telemarketing scripts and other solicitation materials, recruited board members, and overseen the financial affairs of Cops for Kids. Duffy has personally profited from the deception alleged herein. He transacts or has transacted business in Franklin County, Ohio.
12. Hitzel resides at 2018 Renko Road, Ashtabula, Ohio 44004. Individually and in concert with others, Hitzel has formulated, directed, controlled, or participated in the acts and practices of Cops for Kids as set forth below. Among other things, Hitzel has signed contracts, hired fundraisers, approved telemarketing scripts and other solicitation materials, recruited board members, and overseen the financial affairs of Cops for Kids. Hitzel has personally profited from the deception alleged herein. He transacts or has transacted business in Franklin County, Ohio.

13. Telcom routinely conducts business in Ohio and is currently registered with the Charitable Law Section of the Ohio Attorney General's Office as a professional solicitor with active solicitation campaigns on file.
14. Defendants' actions, as described herein, occurred in the State of Ohio, involved residents of the State of Ohio, and constitute violations of the Ohio Charitable Trust Act, the Ohio Organizations Act, and Ohio common law. The amount in controversy in this action exceeds \$25,000.
15. Defendants conducted activity in Franklin County that gives rise to the claims for relief sought in this complaint.
16. Pursuant to O.R.C. § 109.16, venue in Franklin County is proper in that all Defendants routinely conduct business in Franklin County and the amount in controversy exceeds \$500.

ACTIVITIES GIVING RISE TO THIS COMPLAINT

17. Cops for Kids has been operating since it was first incorporated as an Ohio nonprofit in July of 2004.
18. Cops for Kids was granted tax-exempt status as a 501(c)3 by the IRS in 2009 with retroactive effect beginning on July 25, 2004.
19. As touted on their website and in solicitation materials, the identified mission of Cops for Kids is "to improve the quality of life for the youth of our communities, throughout the state of Ohio, through educational and recreational activities, working hand in hand with law enforcement throughout the state."
20. Cops for Kids claims to fulfill its mission by providing college scholarships and through programs that they have referred to by such names as "Buckeye Teddy Bear," "Bucks for Boots," and "Shop with a Cop."
21. The charitable programming that Cops for Kids purports to engage in primarily involves writing checks, providing donations of gift cards to governmental agencies, or delivering stuffed bears via the mail to governmental agencies.
22. Cops for Kids is a public benefit charity that solicits charitable donations and relies on those donations as its exclusive source of income.
23. Cops for Kids does not do charitable solicitation on its own behalf, but since 2004 has contracted with Telcom.

24. Telcom is an Ohio corporation registered with the Ohio Secretary of State and is a professional solicitor as that term is defined by O.R.C. § 1716.01(J).
25. Telcom is required to register with the Charitable Law Section of the Ohio Attorney General's Office and file notice of charitable campaigns and financial reports as required by O.R.C. Chapter 1716.
26. Telcom has prepared and utilized telemarketing scripts and solicitation materials that have misrepresented to Ohio residents the nature of the programming offered by Cops for Kids.
27. Residents of Ohio have reported receiving telephone solicitations from Telcom where Telcom has misrepresented their relationship to Cops for Kids, misrepresented their relationship to local law enforcement, or in some other manner provided false and misleading information regarding the charitable solicitation or intended use of the charitable donation.
28. Telcom solicited donations on behalf of Cops for Kids by telephone and through the mail in each of Ohio's 88 counties.
29. The scripts and other marketing materials utilized by Telcom and/or the actual solicitations made to Ohio donors misrepresented that such contributions were for charitable purposes and were false and deceptive.
30. Pursuant to the contracts entered into by Cops for Kids and Telcom, Telcom has been entitled to retain no less than 80% of the charitable donations that it collected for Cops for Kids as payment for its services.
31. Aside from an occasional donation made directly to the organization, Cops for Kids relies on the telemarketing and mail solicitation performed by Telcom as its exclusive source of income.
32. From 2005 through 2015, Cops for Kids received \$4,217,736 in charitable donations from Ohio residents according to the annual tax filings submitted to the IRS.
33. From 2005 through 2015, Cops for Kids paid \$3,342,372 to Telcom according to the annual tax filings submitted to the IRS. In other words, 79% of the charitable donations that were collected to benefit Cops for Kids' charitable mission actually went to the for profit professional solicitor that solicited for the donations.
34. After paying its professional solicitor from 2005 through 2015, Cops for Kids was left with \$875,364 to fulfill its mission.

35. Duffy and Hitzel are the co-founders of Cops for Kids. Likewise, from 2004 through 2012, Duffy and Hitzel were the only two individuals identified as directors or trustees of Cops for Kids in the tax returns filed by the organization.
36. Duffy and Hitzel are not only co-founders of Cops for Kids; they are officers, directors, and the organization's only employees.
37. From 2010 through 2015, Duffy reported to the IRS that he worked an average of 40 hours each week as the Director of Cops for Kids.
38. From 2010 through 2015, Hitzel reported to the IRS that he worked an average of 30 hours each week as the "Marketing Manager" for Cops for Kids.
39. From 2005 through 2015, Cops for Kids has paid a total of \$614,540 for the salaries of Hitzel and Duffy and related employment taxes.
40. Once the salaries and payroll taxes associated with Duffy and Hitzel are subtracted from the remaining revenue of Cops for Kids from the donations collected from 2005 through 2015, Cops for Kids is left with \$260,824 to fulfill its charitable mission. This represents just six percent of the charitable donations received by Cops for Kids.
41. Of this remaining money, the tax filings submitted by Cops for Kids from 2005 through 2015 indicate that \$188,122 was spent by the organization on "professional fees," "occupancy," and other overhead expenses.
42. The "occupancy" expenses paid by Cops for Kids were largely rent payments paid to Duffy, as the principal place of business for the organization during this time period was in Duffy's private residence.
43. According to Cops for Kids tax returns from 2005 through 2015, they spent only \$73,840 on scholarships, donations, or direct programming expenses. This represents only 1.75% of the charitable donations received by Cops for Kids.
44. In solicitations sent directly to Ohio donors, Cops for Kids together with their professional solicitor Telcom routinely promoted their "programs" and emphasized their state-wide focus.
45. Cops for Kids together with their professional solicitor Telcom represented that Cops for Kids "sponsored" 75 of Ohio's 88 counties and led Ohio residents to believe that Cops for Kids contributed in some significant way to each of the counties listed on their solicitation materials and website.
46. Cops for Kids together with their professional solicitor Telcom sent solicitation materials to Ohio donors that misled Ohio donors to believe that their donations would be used to

impact their “local” market and/or that the solicitation was actually being conducted by a local law enforcement agency.

47. Cops for Kids together with their professional solicitor Telcom misled Ohio donors to believe that the Buckeye Teddy Bear program was a wide-reaching program and that Cops for Kids was directly involved in assuring that stuffed animals distributed by Cops for Kids were provided to Ohio children by local law enforcement or other agencies.
48. Cops for Kids together with their professional solicitor Telcom misled Ohio donors to believe that Cops for Kids was directly involved in providing cold-weather appropriate clothing to needy children throughout Ohio.
49. Cops for Kids together with their professional solicitor Telcom and its subcontractors misled Ohio donors to believe that Cops for Kids was providing underprivileged Ohio children with the opportunity “to go on a shopping spree with a local police officer.”
50. Through information provided on its written solicitations, Ohio Cops for Kids together with its professional solicitor Telcom have misled and deceived Ohio donors.
51. Through information provided on its website, Ohio Cops for Kids has misled and deceived Ohio donors.
52. Cops for Kids and Telcom have attempted to deceive Ohio donors by soliciting pledges through the mail that represented that the donor had already made an oral promise to donate during a telephone call.
53. The allegations contained in this complaint regarding the charitable assets of Cops for Kids and the solicitation of those assets relate to information obtained by the Ohio Attorney General from 2012 to 2014. Upon information and belief, the Ohio Attorney General anticipates uncovering evidence that will demonstrate a similar pattern of activity in continuing into the present.

VIOLATIONS OF OHIO LAW

COUNT 1

Misrepresentations that Contributions were for a Charitable Purpose

54. Plaintiff incorporates by reference all the foregoing paragraphs.
55. In numerous instances, in connection with soliciting charitable contributions from donors, Defendants, directly or indirectly, expressly or by implication, have represented that donors’ contributions would go to a legitimate charitable organization and be used

primarily for charitable programs benefitting Ohio children through “educational and recreational activities.

56. In truth and in fact, donors’ contributions have not gone to a legitimate charitable organization and were not used primarily for charitable purposes benefitting Ohio children through “educational and recreational activities.”
57. . Instead, the contributions primarily benefited Telcom, Duffy, and Hitzel.
58. The charitable solicitations made by Cops for Kids on its own behalf and through solicitations made by Telcom were false and/or misleading and constituted deceptive practices in violation of O.R.C. § 1716.14(A)(5).
59. Plaintiff is entitled to injunctive relief, restitution, attorney’s fees and costs of investigation and litigation, and civil penalties of up to \$10,000 for each violation of O.R.C. § 1716.14(A)(5) against all Defendants jointly and severally.

COUNT 2
Committing any Deceptive Act or Practice

60. Plaintiff incorporates by reference all the foregoing paragraphs.
61. In numerous instances, in connection with soliciting charitable contributions from donors, Defendants, directly or indirectly, expressly or by implication, have represented that donors’ contributions would go to a legitimate charitable organization and be used primarily for charitable programs benefitting Ohio children through “educational and recreational activities.”
62. In truth and in fact, donors’ contributions have not gone to a legitimate charitable organization and were not used primarily for charitable purposes benefitting Ohio children through “educational and recreational activities.”
63. Instead, the contributions primarily benefited Telcom and Defendants Duffy and Hitzel.
64. The charitable solicitations made by Cops for Kids on its own behalf and through solicitations made by Telcom were false and/or misleading and constituted deceptive practices in violation of O.R.C. § 1716.14(A)(1)-(2).
65. In numerous instances, in connection with soliciting charitable contributions from donors, Telcom mailed solicitation materials to donors and represented in those materials that the donors had already made a promise to contribute during a telephone solicitation, when in fact, the donors had made no such commitment.

66. In these instances, the charitable solicitations were intentionally deceptive and are a violation of O.R.C. § 1716.14(A)(1)-(2).
67. Through its solicitation materials, Cops for Kids and Telcom have misled or intentionally deceived donors into believing that they were soliciting directly for local law enforcement agencies or in a manner that would benefit the donor's local community.
68. In these instances, the charitable solicitations made by Cops for Kids and Telcom were intentionally deceptive and are a violation of O.R.C. § 1716.14(A)(4).
69. Plaintiff is entitled to injunctive relief, restitution, attorney's fees and costs of investigation and litigation, and civil penalties of up to \$10,000 for each violation of O.R.C. § 1716.14(A)(1)-(2).

COUNT 3
Means and Instrumentalities of Deception

70. Plaintiff incorporates by reference all the foregoing paragraphs.
71. In numerous instances, in connection with soliciting charitable contributions from donors, Defendants provided Telcom and its subcontractors with the means and instrumentalities to deceive donors. The means and instrumentalities that Defendants provided include, but are not limited to, affiliation with a purported charitable organization in whose name solicitations can be made and telemarketing scripts and other solicitation materials, such as brochures, and thank you letters that make misrepresentations about the purported programs of Cops for Kids.
72. By providing the means and instrumentalities to others for the commission of deceptive acts and practices Defendants have violated O.R.C. § 1716.14(A).

COUNT 4
Fraud

73. Plaintiff incorporates by reference all the foregoing paragraphs.
74. Defendants, individually and in concert with one another, made false or misleading statements and representations to, or had reason to know of false and misleading statements and representations made, to donors, the Ohio Attorney General, the State of Ohio, and the Internal Revenue Service.
75. The false and misleading statements made by Defendants were purposeful, willful, wanton, and/or reckless and intended to mislead donors, the Ohio Attorney General, the

State of Ohio, and the Internal Revenue Service regarding Cops for Kids, its programs, and the use of donations.

76. Donors, the Ohio Attorney General, the State of Ohio, the Internal Revenue Service, and others relied on the false and misleading statements and representations regarding Cops for Kids and have suffered damages as a result.

COUNT 5
Breach of Fiduciary Duties

77. Plaintiff incorporates by reference all the foregoing paragraphs.
78. As a charitable nonprofit, the assets and income of Cops for Kids are held in trust to be used to fulfill the charitable mission of Cops for Kids.
79. As officers, directors, and employees of Cops for Kids, Duffy and Hitzel had fiduciary duties to Cops for Kids, the assets and income held in trust, and the intended beneficiaries of the organization.
80. The fiduciary duties owed by Duffy and Hitzel arise out of obligations codified in O.R.C. Chapter 1702, O.R.C. § 109.23, *et seq.*, and O.R.C. § 1716.17.
81. As a professional solicitor as that term is defined at O.R.C. § 1716.01, Telcom had fiduciary duties to Cops for Kids, the assets and income held in trust, and the intended beneficiaries of the organization.
82. The fiduciary duties owed by Telcom arise out of obligations codified in O.R.C. § 1716.17.
83. The fiduciary duties referenced in the paragraphs above were breached by Defendants when Defendants failed to protect the charitable assets of the organization and failed to use those assets to carry out the organization's charitable mission.
84. The fiduciary duties referenced in the paragraphs above were breached by Defendants when Defendants failed to comply with Ohio law when seeking charitable donations from Ohio donors.
85. As a result of Defendants' breaches of fiduciary duties, Plaintiff is entitled to injunctive relief, restitution, civil penalties of up to \$10,000 for each violation, costs, and attorney's fees as permitted by common law and O.R.C. § 1716.16(B).

COUNT 6
VIOLATION OF 1994 ASSURANCE OF DISCONTINUANCE

86. In 1994, Telcom entered into an Assurance of Discontinuance (“AOD”) that was filed with this court (Case No. 94MS 02-54). That AOD was entered into upon the Ohio Attorney General finding that Telcom had fraudulently solicited donors in Ohio on behalf of the Ohio Police Athletic League.
87. As part of the 1994 AOD, Telcom agreed “that it intends to conduct and will conduct all charitable solicitations within the State of Ohio in accordance with the laws of this state.”
88. Further, Telcom agreed that any evidence of a violation of the AOD is prima facie evidence of a violation of O.R.C. Chapter 1716.
89. As alleged herein, Telcom’s conduct has breached the 1994 AOD and is therefore a prima facie violation of O.R.C. Chapter 1716.

COUNT 7
VIOLATION OF 1999 ASSURANCE OF DISCONTINUANCE

90. In 1999, Telcom entered into an AOD that was filed with this court (Case No. 99CVH03-2240). That AOD was entered into upon the Ohio Attorney General finding that Telcom had entered into contracts with unregistered professional solicitors to conduct campaigns on their behalf and then failed to provide necessary registration information, failed to make necessary disclosures at the time of solicitation, and failed to disclose the fixed percentage of gross revenue when asked by donors.
91. As part of the 1999 AOD, Telcom agreed that in all future solicitations that it would clearly and conspicuously disclose at the point of solicitation its name and that the solicitation was being conducted by a professional solicitor and the name and address of the nonprofit for which it was soliciting.
92. Further, Telcom agreed that any evidence of a violation of the AOD is prima facie evidence of a violation of O.R.C. Chapter 1716.
93. As alleged herein, Telcom’s conduct has breached the 1994 AOD and is therefore a prima facie violation of O.R.C. Chapter 1716.

INJURY

94. Donors and the intended beneficiaries of these charitable donations have suffered and will continue to suffer substantial injury as a result of Defendants' violations of Ohio law. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure donors, reap unjust enrichment, and harm the public interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ohio Attorney General respectfully requests that the Court:

- A. Enter a permanent injunction to prevent Defendants from future violations of Ohio law, including a permanent injunction prohibiting Defendants from soliciting in the state of Ohio for charitable purposes;
- B. Grant a permanent injunction that perpetually enjoins Defendants Duffy and Hitzel from incorporating or holding any position as an officer, trustee, or employee of any nonprofit corporation or association in the State of Ohio;
- C. Impose a constructive trust over all charitable assets held by Defendants and order Defendants to disgorge all assets held under that constructive trust to the Ohio Attorney General for distribution to other charitable organizations;
- D. Order the Ohio Secretary of State to dissolve Ohio Cops for Kids;
- E. Order Telcom to withdraw from all solicitation activities in Ohio and file final reports for all active campaigns within 90 days of the Court's Order;
- F. Order Defendants to pay restitution and compensatory damages, including interest for all amounts unjustly or illegally retained by them, to the Ohio Attorney General for distribution to other charitable organizations;
- G. Award civil penalties of \$10,000 for each violation of Ohio Revised Code Chapter 1716;
- H. Declare the terms of the charitable trust, and enter an order enforcing those terms in a manner consistent with this Complaint including distributing all assets and proceeds to other charitable organizations;
- I. Reform the charitable trust in accordance with the doctrine of *cy pres* or deviation;
- J. Award such relief as the Court finds necessary to redress injury to donors resulting from Defendants' violations of Ohio Revised Code Chapter 1716 and common law;

K. Award Plaintiff the costs of bringing this action, attorneys' fees, and such other and additional relief as the Court may determine to be just and proper.

Very respectfully submitted,

MIKE DEWINE
Ohio Attorney General



Kristine Hayes (0069778)
Senior Assistant Attorney General
Thaddius A. Townsend (0089197)
Assistant Attorney General
Ohio Attorney General's Office
Charitable Law Section
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130
Voice: (614) 466-3181
Fax: (614) 466-7988
Kristine.Hayes@OhioAttorneyGeneral.gov
Attorney for Plaintiff Ohio Attorney General