

# TENNESSEE REGULATORY AUTHORITY RECEIVED

Deborah Taylor Tate, Chairman  
Pat Miller, Director  
Sara Kyle, Director  
Ron Jones, Director



2004 MAR 29 AM 8:45

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460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

## MEMORANDUM

TO: Chairman Deborah Taylor Tate  
Director Pat Miller  
Director Ron Jones

FROM: Eddie Roberson, Chief, Consumer Services and External Affairs Division  
Edwin Mimms, Manager, Do Not Fax Program  
Kim Beals, Counsel

DATE: March 25, 2004

SUBJECT: Settlement with Professional School of Real Estate, Inc.  
(Docket No. 04-00066)

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Attached is a Settlement Agreement between the Consumer Services and External Affairs Division ("Staff") and Professional School of Real Estate, Inc. ("the School") for violations of the Tennessee Do-Not-Fax Program, Tenn. Code Ann. § 65-4-501 *et seq.*

Two (2) complaints, each alleging a violation of Tenn. Code Ann. § 65-4-501 *et seq.*, were registered with the Authority against the School, one on August 27, 2003 and the other on February 3, 2004. The Staff notified the School in writing of each complaint. This Settlement requires the School to make a payment of \$2,000 to the Authority no later than thirty (30) days following ratification of the Settlement by the Directors and to provide assurance that it will fully comply with applicable state law in the future. A representative of the School will be available telephonically at the Authority Conference to answer any questions.

Considering all relevant facts, the Staff believes the terms of this Settlement are fair and reasonable and should have the result of eliminating any additional unsolicited facsimile advertising complaints against the School. Staff submits the attached Settlement Agreement for deliberation at the April 12, 2004 Authority Conference.

cc: Mr. Timothy W. Jones, Counsel for the Professional School of Real Estate

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**IN RE:**

**ALLEGED VIOLATIONS OF TENN. CODE ANN.  
§ 65-4-501 *et seq.***

**PROFESSIONAL SCHOOL OF REAL ESTATE, INC.**

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**DOCKET NO.  
04-00066**

**Consumer Services Division  
File No. F03-0066  
F04-0035**

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**SETTLEMENT AGREEMENT**

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This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and the Professional School of Real Estate, Inc. ("the Company"). This Settlement Agreement pertains to two complaints received by the CSD alleging violations of Tenn. Code Ann. § 65-4-501 *et seq.* ("Do-Not-Fax Law"). This Settlement Agreement is subject to the approval of the Directors of the TRA.

On August 27, 2003, the CSD received a complaint alleging the receipt of an unsolicited facsimile advertisement from the Company on August 22, 2003, following notification by the complainant on two separate occasions to cease transmitting unsolicited facsimile advertisements. Immediately thereafter, the CSD began an investigation of the Company and provided the Company a notice of this complaint on August 28, 2003. The CSD received a second complaint from the same complainant on February 3, 2004 alleging receipt of another

unsolicited facsimile advertisement from the Company on January 26, 2004. The CSD provided the Company with notice of this second complaint on February 3, 2004.

Tenn. Code Ann. § 65-4-502(c) prohibits persons from knowingly transmitting or causing another person to transmit an unsolicited facsimile advertisement after receiving notification of the recipient's request not to receive any further unsolicited facsimile advertisements. Tenn. Code Ann. § 65-4-504(a) authorizes the TRA to assess penalties for violations of Tennessee's Do-Not-Fax Law, including the issuance of a cease and desist order and/or the imposition of a civil penalty of up to a maximum of \$2,000 for each violation. Accordingly, the Company faces a maximum penalty in this proceeding of \$4,000, stemming from these two complaints.

In negotiating this Settlement Agreement, CSD relied upon the factors stated in Tenn. Code Ann. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violation. The Company is located in Knoxville, Tennessee and employs two individuals. After receiving notice of the two complaints referenced above, the Company contacted the CSD and expressed an interest in resolving these alleged violations, as well as any additional complaints, whether known or unknown by the CSD prior to the execution of this Settlement Agreement. To this end, the CSD and the Company have agreed to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

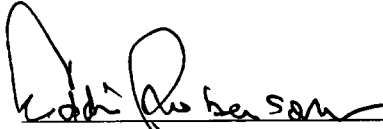
1. The Company neither admits nor denies that the two complaints against it are true and valid complaints.
2. After receiving notice of the complaints, the Company contacted the CSD and expressed an interest in resolving this matter.

3. The Company agrees to pay \$2,000 in settlement of these complaints, to be remitted to the Office of the Chairman of the TRA no later than thirty days following approval of the Settlement Agreement by the TRA Directors.<sup>1</sup>
4. Upon completion of the terms and conditions of this Settlement Agreement, the Company is excused from further proceedings in this matter.
5. The Company agrees to comply with all provisions of Tennessee's Do-Not-Fax Law, Tenn. Code Ann. § 65-4-501 *et seq.*
6. A representative of the Company will participate either in person or telephonically in the Authority Conference during which the Directors will consider this Settlement Agreement.
7. In the event that the Company fails to comply with the terms and conditions of this Settlement Agreement, the TRA reserves the right to re-open this docket. The Company shall pay any and all costs incurred in enforcing the Settlement Agreement.
8. Any violation by the Company of Tennessee's Do-Not-Fax Law not accounted for in this Settlement Agreement will be treated separately and will not be cause to re-open this Docket.
9. If any clause, provision or section of this Settlement Agreement is held to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Settlement Agreement, and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

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<sup>1</sup> The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, referencing TRA Docket No 04-00066

10. This Settlement Agreement represents the entire agreement between the Parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the Parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.

  
Eddie Roberson  
Chief, Consumer Services Division  
Tennessee Regulatory Authority

3-22-04  
Date

  
Signature

Brian Sullivan  
Print Name

General Manager  
Print Title

Professional School of Real Estate, Inc.

3-17-04  
Date