

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 15, 2009

IN RE:

**RULEMAKING TO AMEND CHAPTER 1220-4-11
TO FURTHER CLARIFY THE DEFINITION OF
“TELEPHONE SOLICITATION”**

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**DOCKET NO.
04-00258**

ORDER CLOSING DOCKET

This docket came before Chairman Eddie Roberson, Director Sara Kyle and Director Mary W. Freeman of the Tennessee Regulatory Authority (the “Authority” or “TRA”), under section one business, at a regularly scheduled Authority Conference held on May 18, 2009 to consider closing the docket.

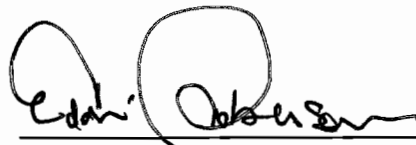
On August 31, 2004, the Authority filed a Notice of Rulemaking Hearing with the Secretary of State, and a rulemaking hearing was held on November 9, 2004 to consider the proposed rule amendments to the above mentioned chapter, the Do Not Call rules. Such amendments included modifying the definition of “telephone solicitation” to exclude from the Do Not Call prohibitions real estate brokers offering their services to persons who are selling their houses without a real estate agent or who have allowed their real estate contract to expire. After the hearing, additional comments were received up to November 19, 2004. The rule amendments were approved by the Directors in a 3 to 1 vote during the December 13, 2004 Authority Conference. On March 7, 2005, the rules as approved were submitted to the Attorney General for review. On June 14, 2006, the TRA received a letter from the Attorney General rejecting the rules as submitted stating the rules “conflict with the statutes that govern telephone

solicitations” and “impermissibly narrow the statutory definition of ‘telephone solicitation’ set out at Tenn. Code Ann. § 65-4-401(6)(A)(i).” A copy of the Attorney General’s letter is attached as Exhibit A.

Since that time, the Authority has worked on modifying the proposed rules to address the concerns articulated by the Attorney General’s Office. After completing these changes, new language was submitted to the Attorney General for consideration prior to submitting a new draft of the proposed rules to the Directors for consideration. Nevertheless, after a lengthy review process, the Attorney General’s Office informed the Authority that the new language would not cure the infirmities originally noted by the Attorney General. For these reasons, the Authority is of the opinion that the rule amendments cannot be modified sufficiently to meet the approval of the Attorney General.

During the May 18, 2009 Authority Conference, the panel voted unanimously to terminate this rulemaking and close the docket.

IT IS SO ORDERED.


Eddie Roberson, Chairman
Sara Kyle, Director
Mary W. Freeman, Director

STATE OF TENNESSEE

Office of the Attorney General



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June 14, 2006

The Honorable Ron Jones, Chairman
The Honorable Sara Kyle, Director
The Honorable Pat Miller, Director
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Received
RON JONES
JUN 14 2006

Re: Proposed Telephone Solicitation Regulations
— Do Not Call Register,
Chapter 1220-4-11

Dear Chairman Jones and Directors Kyle and Miller:

Pursuant to your submission, I have reviewed in accordance with Tenn. Code Ann. § 4-5-211 the proposed rules addressing telephone solicitations. I have determined that I cannot approve these proposed rules because they conflict with the statutes that govern telephone solicitations and authorize the do-not-call register, Tenn. Code Ann. §§ 65-4-401 *et seq.*

In particular, the provisions of proposed rule 1220-4-11-.01(19)(a) would exclude from the definition of "telephone solicitation" any voice communications made by real estate brokers to residential subscribers who have offered to sell their real property without using the services of a real estate broker, or who have allowed their contract with a real estate broker to expire. This would impermissibly narrow the statutory definition of "telephone solicitation" set out at Tenn. Code Ann. § 65-4-401(6)(A)(i), which defines that term to include a telephone communication that

Exhibit A

Chairman Jones and Directors Kyle and Miller
T.R.A. Proposed Telephone Solicitation Regulations
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“[p]romotes or encourages, directly or indirectly, the purchase of . . . property, goods, or services.” The “services” to which this statute refers necessarily include those of real estate brokers. I do not believe that a person who has offered to sell real property directly can be construed to have given “prior express permission” for a solicitation so as to come within the exception set out at Tenn. Code Ann. § 65-4-401(6)(B)(i).

While the remaining provisions of the proposed rules do not appear to present any issues as to form or legality, I regret that I cannot approve the rules in the form in which they were submitted to this Office for the reasons stated above. I am therefore returning the unsigned rules to you with this letter.

Please contact me if you have any additional questions or would like to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul G. Summers", with a large, stylized initial "P" and a long horizontal flourish extending to the right.

PAUL G. SUMMERS
Attorney General

PGS/CLL:dh

Enclosures

cc: Richard Collier, Esq.
T.R.A. General Counsel