

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

April 9, 2013

**ALLEGED VIOLATIONS OF TENN.
CODE ANN. 65-4-401, DO-NOT-CALL,
AGAINST SAM COOPER, DBA
GLOBAL MEDIA MANAGEMENT, LLC**

**DOCKET NO.
12-00069**

ORDER

This matter came before Vice Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA") at a regularly scheduled Authority Conference held on December 17, 2012, for consideration of the *Request to Void Do-Not-Call Settlement Agreement* ("Request") filed by the Authority's Consumer Services Division ("CSD") on November 27, 2012 and the *Notice to Appear* issued by the Authority to Sam Cooper d/b/a Global Media Management, LLC ("Global Media") on November 29, 2012.

BACKGROUND

On August 20, 2012, at a regularly scheduled Authority Conference, the Authority considered and approved a Settlement Agreement between the CSD and Global Media related to alleged violations of the Tennessee Telephone Solicitation ("Do-Not-Call") Law, Tenn. Code Ann. § 65-4-401 *et seq.* and TRA Rules 1220-4-11-.01 *et seq.* The Settlement Agreement dealt with five complaints received by the CSD alleging that Global Media violated the Do-Not-Call Law by making or causing to be made telephone sales solicitation calls to the residential telephone numbers of five separate Tennessee consumers whose residential telephone numbers

were listed on the Tennessee Do-Not-Call Register. In addition, Global Media was not registered with the TRA as a telephone solicitor.

Under Tenn. Code Ann. § 65-4-404 and TRA Rule 1220-4-11-.07(1), persons and entities are prohibited from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires persons or entities desiring to make telephone solicitations to residential subscribers to register in the Do-Not-Call program. Tenn. Code Ann. § 65-4-405(f) authorizes the Authority to initiate proceedings relative to violations of the Do-Not-Call statutes and the TRA rules and regulations promulgated pursuant to the Do-Not-Call statutes.¹ “Such proceedings may include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction.”²

The maximum penalty faced by Global Media in this docket was \$12,000 arising from the five complaints and the failure to register in the Do-Not-Call Program. Under the terms of the Settlement Agreement, Global Media agreed to immediately stop all telemarketing sales solicitation calls until Global Media is registered as a solicitor with the Authority and to pay a civil penalty of \$3,000 to the Authority in settlement of all violations. Payment of the civil penalty was to be remitted to the TRA within thirty days after the Directors’ approval of the Settlement Agreement. The Settlement Agreement is attached hereto as Exhibit A.

¹ See Tenn. Comp. R. & Regs. 1220-4-11-.01 *et seq.*

² Tenn. Code Ann. § 65-4-405(f).

According to the CSD, Global Media failed to remit any payment thirty days after approval of the Settlement Agreement. As a result, the CSD requested that the Settlement Agreement be declared void.³

The Authority issued a *Notice to Appear* to Global Media on November 28, 2012, to appear at the Authority Conference scheduled for December 17, 2012 and show cause as to why the Authority should not convene a contested case and impose the maximum civil penalty.⁴

DECEMBER 17, 2012 AUTHORITY CONFERENCE

At the regularly scheduled Authority Conference held on December 17, 2012, the CSD presented its *Request* to the panel. No representative of Global Media was present in response to the *Notice to Appear*.⁵ The CSD described the efforts made to notify Global Media of the *Notice to Appear*.⁶ The CSD requested that the panel void the Settlement Agreement, find Global Media to be in default for failure to appear, and impose the full \$12,000 civil penalty for the five complaints and the failure to register in the Do-Not-Call Program.

TRA Rule 1220-1-2-.17 states:

- (1) Failure of a party to attend or participate in a pre-hearing conference, hearing or other stage of a contested case proceeding, after due notice thereof, shall be cause for finding such party in default, pursuant to T.C.A. § 4-5-309. Failure to comply with an order of the Authority or a Hearing Officer may be deemed a failure to participate in a contested case and, therefore, be cause for finding a party in default.
- (2)
 - (a) Upon entry into the record of the default of the petitioner at a contested case proceeding, the petition shall be dismissed.
 - (b) Upon entry into the record of the default of a respondent at a contested case proceeding, the matter shall be tried as unopposed relative to such respondent.

³ *Request to Void Do-Not-Call Settlement Agreement* (November 27, 2012).

⁴ *Notice to Appear* (November 29, 2012).

⁵ Transcript of Proceedings, pp. 20-21 (December 17, 2012).

⁶ *Id.* See also *Affidavit of Stacy Balthrop* (December 6, 2012) and *Affidavit of Lee Whitwell* (December 7, 2012), outlining efforts to contact and serve the *Notice to Appear* on Sam Cooper and Global Media.

- (3) Where the case is unopposed, the petitioner has the burden of making out a prima facie case, which may be done on the basis of written filings. In order to carry out statutory policies, however, the Authority or Hearing Officer may require further proof.

Based upon TRA Rule 1220-1-2-.17, the panel found that Global Media failed to participate in the proceeding and was in default. Further, based on the evidence presented and the record in this docket, the panel found that Global Media failed to pay the \$3,000 to the TRA in violation of the Settlement Agreement entered into with the CSD and approved by the TRA on August 20, 2012. The panel also found that, based on its admissions contained in the Settlement Agreement, Global Media was not a registered solicitor and made the five telephone solicitations to individuals on the Do-Not-Call list in violation of the Do-Not-Call statute and TRA Rules.

Therefore, pursuant to Tenn. Code Ann. § 65-4-405(f) and TRA Rule 1220-4-11-.07, the panel voted unanimously to void the Settlement Agreement and to require Global Media to pay the full amount of the penalty assessed for the violations in the amount of \$12,000.

IT IS THEREFORE ORDERED THAT:

1. The Settlement Agreement between the Consumer Services Division and Sam Cooper d/b/a Global Media Management, LLC is declared void; and
2. The amount of \$12,000 shall be paid by Sam Cooper d/b/a Global Media Management, LLC to the Tennessee Regulatory Authority.

Vice Chairman Herbert H. Hilliard and Director Kenneth C. Hill concur. Director Sara Kyle voted with the majority but resigned her position prior to the issuance of this order.

ATTEST:



Earl R. Taylor, Executive Director