

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

September 20, 2012

IN RE:

**ALLEGED VIOLATIONS OF TENN. CODE ANN.
65-4-401, DO-NOT-CALL, AGAINST DAVID
GARTENBERG D/B/A SELLTEL, INC. D/B/A
NATIONAL PROTECTION SERVICE**

**DOCKET NO.
12-00101**

ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before Chairman Kenneth C. Hill, Director Herbert H. Hilliard and Director James M. Allison of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on September 10, 2012, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the "CSD") and David Gartenberg d/b/a Selltell, Inc. d/b/a National Protection Services ("National") related to alleged violations of the Tennessee Telephone Solicitation ("Do-Not-Call") Law, Tenn. Code Ann. § 65-4-401 *et seq.* and Tenn. Comp. R. & Regs. 1220-4-11-.01 *et seq.* The Settlement Agreement resolves four complaints received by the CSD alleging that National violated the Do-Not-Call Law by making or causing to be made telephone sales solicitation calls to the residential telephone numbers of four separate Tennessee consumers whose residential telephone numbers were listed on the Tennessee Do-Not-Call Register. At the time of the complaints, National was not registered with the TRA as a telephone solicitor. The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities 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

In negotiating the terms and conditions of this Settlement Agreement, the CSD took into consideration Tenn. Code Ann. § 65-4-116(b), which provides:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

The proposed Settlement Agreement was negotiated as the result of the CSD’s investigation into the complaints against National. The maximum penalty faced by National in this docket was ten thousand dollars (\$10,000) arising from the four complaints and the failure to register in the Do-Not-Call Program. In the proposed Settlement Agreement, National agreed to cease all telemarketing sales solicitation calls until National is registered as a solicitor with the Authority. In addition, National agreed to pay a civil penalty of \$2,500 to the Authority in settlement of these violations, to be remitted to the TRA within thirty (30) days after the Directors’ approval of the Settlement Agreement.

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

² Tenn. Code Ann. § 65-4-405(f).

A representative of National appeared telephonically at the Authority Conference on September 10, 2012. Following a review of the Settlement Agreement, the Directors voted unanimously to accept and approve the Settlement Agreement.

IT IS THEREFORE ORDERED THAT:

1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.
2. The amount of \$2,500 shall be paid by David Gartenberg d/b/a Selltell, Inc. d/b/a National Protection Services to the Tennessee Regulatory Authority as set out herein.
3. Upon payment of the amount of \$2,500 and compliance with the terms of the Settlement Agreement attached hereto, David Gartenberg d/b/a Selltell, Inc. d/b/a National Protection Services is excused from further proceedings in this matter, provided that, in the event of any failure on the part of David Gartenberg d/b/a Selltell, Inc. d/b/a National Protection Services to comply with the terms and conditions of the Settlement Agreement, the Authority reserves the right to re-open this investigation and David Gartenberg d/b/a Selltell, Inc. d/b/a National Protection Services shall pay any and all costs incurred by the TRA to enforce the Settlement Agreement.

Chairman Kenneth C. Hill, Director Herbert H. Hilliard and Director James M. Allison concur.

ATTEST:



Earl R. Taylor, Executive Director

THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

IN RE:)		
)		
ALLEGED VIOLATIONS OF Tenn. Code)		12-00441
Ann. § 65-4-401, <i>et seq.</i> , DO-NOT-CALL)	DO NOT CALL	12-00529
SALES SOLICITATION LAW, AND)	PROGRAM	12-00798
RULES OF TENNESSEE REGULATORY)	FILE NOS.	12-00945
AUTHORITY CHAPTER 1220-4-11, BY:)		
)		
DAVID GARTENBERG)		
SELLTEL, INC. D/B/A NATIONAL)		
PROTECTION SERVICE)		
393 MANTOLOKING RD.)		
BRICK, NJ 08723)		

SETTLEMENT AGREEMENT

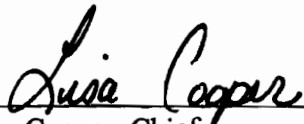
This settlement agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and David Gartenberg, Selltel, Inc. D/B/A National Protection Service ("Respondent"), and is subject to the approval of the directors of the TRA. The subject of this settlement agreement are four (4) separate complaints received by the CSD alleging that Respondent violated the Tennessee Do-No-Call Telephone Sales Solicitation law, T.C.A. § 65-4-401 *et seq.*, and TRA Rules and Regulations 1220-4-11-.07, by making or causing to be made telephone sales solicitation calls to the residential telephone numbers of four (4) separate Tennessee consumers whose residential telephone numbers were registered on the Tennessee Do-Not-Call Register.

Respondent acknowledged that it did place calls to the consumer phone numbers and has made good faith efforts to comply with Tennessee laws governing telephone solicitation calls, and stated failure to register with the TRA was completely inadvertent. T.C.A. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of civil penalties for knowing violations. The CSD considered several factors stated in T.C.A. § 65-4-116(b) during the negotiations that resulted in this Settlement Agreement, including the size of Respondent's business, good faith cooperation during the investigation, and the gravity of the violations by Respondent.

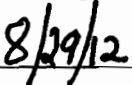
In an effort to resolve these four (4) complaints represented by the file numbers above, the CSD and Respondent agree to settle these complaints on the following terms subject to approval by the directors of the TRA.

1. Respondent admits that Selltel, Inc. D/B/A National Protection Service was not registered as a solicitor as required by the Rule 1220-4-11-.04 of the Telephone Solicitations Regulations, and further admits that the four (4) complaints against Selltel, Inc. D/B/A National Protection Service were true and valid complaints.
2. Respondent agrees to immediately register as a solicitor with the authority.
3. Respondent agrees to pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00) to the TRA within thirty (30) days of the ratification of this Settlement Agreement.
4. Respondent agrees to appear in person or telephonically at the TRA conference at which this Settlement Agreement will be considered for approval.
5. Respondent agrees to remain in compliance with all the statutory and regulatory requirements of the TRA.


6. In the event that Respondent fails to comply with the terms and conditions of this Settlement Agreement, the TRA reserves the right to re-open this investigation and Respondent shall pay any and all costs incurred by the TRA to enforce the Settlement Agreement.



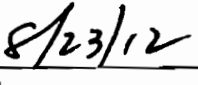
Lisa Cooper, Chief
Consumer Services Division
Tennessee Regulatory Authority



Date



David Gartenberg, President
National Protection Service



Date