

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

July 3, 2013

IN RE:)
) Docket No. 12-00146
SHOW CAUSE PROCEEDING AGAINST DIRECT)
MARKETING TRAVEL SERVICES INC. FOR)
ALLEGED VIOLATIONS OF TENN. CODE ANN.)
§ 65-4-401 *et seq.*)

**ORDER REQUIRING DIRECT MARKETING TRAVEL SERVICES INC.
TO SHOW CAUSE WHY A CEASE AND DESIST ORDER AND/OR FINE SHOULD
NOT BE IMPOSED FOR VIOLATIONS OF TENN. CODE ANN. § 65-4-401 *et seq.***

This matter is before the Hearing Officer upon the order of the Tennessee Regulatory Authority (“TRA” or “Authority”) to determine whether a Show Cause Order should be issued and sanctions imposed against Direct Marketing Travel Services, Inc. (“Direct Marketing”), for violation of the Tennessee Do-Not-Call statute, Tenn. Code Ann. §§ 65-4-401, *et seq.* For this reason, the Authority’s Consumer Services Division (“CSD”) has presented its *Petition*, and the *Affidavit of Bertram H. Chalfant, Jr.*, attached in support thereof, setting forth the allegations made against Direct Marketing.¹ Based thereon, CSD requests the issuance of a show cause order requiring Direct Marketing to appear before the Authority and show cause why the TRA should not issue a cease and desist order and impose civil penalties and sanctions against it for making, or causing to be made, telephone solicitations for goods or services to Tennessee consumers in violation of Tenn. Code Ann. § 65-4-404 *et seq.*

¹ *Petition and Affidavit of Bertram H. Chalfant, Jr., in Support of Allegations of Violations of Tenn. Code Ann. § 65-4-401 et seq., Pursuant to a Proceeding Requiring Olen Miller d/b/a Direct Marketing Travel Services, Inc. to Show Cause Why a Cease and Desist Order and/or Fine Should Not be Imposed* (July 2, 2013).

JURISDICTION

The Authority is specifically authorized and charged, to ensure that the laws of this state as they relate to the Authority's jurisdiction "are enforced and obeyed, that violations thereof are promptly prosecuted, and all penalties due the state are collected."² The Authority is empowered to hear this matter and render an order pursuant to the powers delegated by the Tennessee General Assembly including those provided in Tenn. Code Ann. §§ 65-2-106, 65-3-105, 65-4-116, and 65-4-405(f).

RELEVANT FACTS

1. Direct Marketing is not registered as a solicitor with the TRA.³
2. Between the time period on or about April 30, 2012, and on or about November 11, 2012, Direct Marketing made not less than twenty (20) telephone calls to at least eighteen (18) Tennesseans soliciting them to purchase goods and/or services.⁴
3. Each of these Tennesseans was on the Do Not Call Registry.⁵
4. CSD's investigation determined that these Tennesseans had never given Direct Marketing permission to contact them for solicitation purposes.⁶

ALLEGED VIOLATIONS OF STATE LAW

The following actions, alleged in the *Petition* and the *Affidavit of Bertram H. Chalfant, Jr.*, to have been performed by Direct Marketing, constitute violations of state law:

- A. On not less than twenty (20) separate occasions Direct Marketing made, or caused to be made, unauthorized telephone solicitations for goods or services to at least

² Tenn. Code Ann. § 65-1-113.

³ *Affidavit of Bertram H. Chalfant, Jr.*, ¶ 33.

⁴ *Id.* at ¶ 5.

⁵ *Id.*

⁶ *Id.* at ¶ 32.

eighteen (18) Tennessee residential subscribers.

COUNT 1:

Each telephone solicitation made, or caused to be made, by Direct Marketing to a Tennessee residential subscriber listed on the Do Not Call Register constitutes a violation of Tenn. Code Ann. § 65-4-404, which states:

No person or entity shall knowingly make or cause to be made any telephone solicitation to any residential subscriber in this state who has given notice to the authority in accordance with regulations promulgated pursuant to this part, of such subscriber's objection to receiving telephone solicitations.⁷

B. Direct Marketing made telephone solicitations to Tennessee consumers and is not registered as a solicitor with the Authority.

COUNT 2:

Direct Marketing's failure to register as a solicitor with the Authority violates Tenn. Code Ann. § 65-4-405(d)(1) and (3), which state, in part, as follows:

(1) A person or entity desiring to make telephone solicitations to any residential subscriber shall pay to the authority by certified check or money order on or before March 15, 2000, an annual registration fee of five hundred dollars (\$500) to defray regulatory and enforcement expenses. Such annual registration fee shall allow access to the Do Not Call Register compiled from the database established under this part.⁸

* * *

(3) Fifteen (15) days after the registration deadline, the non-payment of any required fee is a violation of this part. The telephone solicitation of any residential subscriber listed in the Do Not Call Register compiled from the database established under this part, by any person or entity who is not duly registered and who is not otherwise exempted by law, is a violation of this part.⁹

⁷ Tenn. Code Ann. § 65-4-404 (2004).


⁸ Tenn. Code Ann. § 65-4-405(d)(1) (2011).

⁹ Tenn. Code Ann. § 65-4-405(d)(3) (2011).

BASED UPON THE FOREGOING INFORMATION, as presented by the CSD and filed in the docket file, the Hearing Officer, acting pursuant to and within the scope of the TRA's authority granted under Tenn. Code Ann. §§ 65-1-113, 65-2-106, 65-3-105, 65-4-116, and 65-4-405(f), hereby determines that Direct Marketing should be required to appear and show cause why it should not be found in violation of state law and the Authority should not immediately issue a cease and desist order and further impose civil penalties and sanctions to the maximum extent allowed by law.

BE IT THEREFORE ORDERED THAT:

Direct Marketing is hereby ordered and shall appear before the voting panel of Directors of the Tennessee Regulatory Authority during its regularly scheduled Authority Conference in the Hearing Room located at 460 James Robertson Parkway, Nashville, Tennessee, on **August 6, 2013, at 9:00 a.m. (CDT)** to show cause why the Tennessee Regulatory Authority should not proceed to take action against Direct Marketing for the unlawful actions and omissions alleged in the *Petition* and *Affidavit of Bertram H. Chalfant, Jr.*, and as further described in this Order. In accordance with Tenn. Code Ann. § 65-4-405(f), such actions by the Tennessee Regulatory Authority may include, but are not limited to, the issuance of a cease and desist order, imposition of a civil penalty up to two thousand dollars (\$2000) for each violation, and other relief as appropriate.


Kelly Cashman-Grams, Hearing Officer