

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

September 23, 2013

IN RE:)	
)	
SHOW CAUSE PROCEEDING AGAINST)	DOCKET NO.
DIRECT MARKETING TRAVEL SERVICES,)	12-00146
INC. FOR ALLEGED VIOLATIONS OF TENN.)	
CODE ANN. § 65-4-401, <i>et seq.</i>)	

ORDER

This matter came before Chairman James M. Allison, Vice Chairman Herbert H. Hilliard and Director David F. Jones of the Tennessee Regulatory Authority (the “Authority” or “TRA”) at a regularly scheduled Authority Conference held on September 9, 2013, to consider evidence that Olen Miller d/b/a Direct Marketing Travel Services, Inc. (“Direct Marketing Travel Services”) violated Tenn. Code Ann. § 65-4-401 *et seq.*, known as the Tennessee Do-Not-Call law, and to determine what, if any, penalty to impose.

BACKGROUND

On February 7, 2013, TRA Consumer Services Division (“CSD”) investigative staff filed a memorandum requesting that the Directors appoint a hearing officer to determine whether a show cause proceeding against Direct Marketing Travel Services for violations of Tenn. Code Ann. § 65-4-401 *et seq.* should be initiated. The Directors appointed a hearing officer in this matter on February 13, 2013.¹

¹ See *Order Appointing Hearing Officer* (February 19, 2013).

CSD filed a *Petition* on July 2, 2013, setting forth its allegations against Direct Marketing Travel Services.² In the *Petition*, CSD asserts that the TRA received twenty (20) complaints from at least eighteen (18) Tennessee consumers during the period of May 4, 2012 through November 11, 2012 alleging that Direct Marketing Travel Services solicited them to purchase goods and/or services. Each of the Tennessee consumers was registered on the Do-Not-Call Register and had not given Direct Marketing Travel Services permission to contact them for solicitation purposes.³ In addition, CSD alleges that Direct Marketing Travel Services is not registered as a telephone solicitor with the TRA.⁴ According to CSD, Direct Marketing Travel Services responded to sixteen (16) of the notices of violation that were sent to them. CSD investigated the responses, but found none of the information provided in the responses was verifiable.⁵

On July 3, 2013, the Hearing Officer issued an *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.* (“*Show Cause Order*”). The *Show Cause Order* required Direct Marketing Travel Services to appear at the August 6, 2013 Authority Conference 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 and services to Tennessee consumers in violation of the Tennessee Do-Not-Call law. Count 1 of the *Show Cause Order* sets forth the violations for each telephone solicitation made, or caused to be made, by Direct Marketing Travel Services to a Tennessee residential subscriber

² In support of its *Petition*, CSD submitted the affidavit of Bertram H. Chalfant, Jr. See *Tennessee Code Annotated Section 4-5-313 Notice, 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 Market Travel Services, Inc. to Show Cause Why a Cease and Desist Order and/or Fine Should Not Be Imposed* (July 2, 2013) (“*Chalfant Affidavit*”).

³ *Chalfant Affidavit*, ¶ 5 (July 2, 2013).

⁴ *Id.* at ¶ 33.

⁵ *Id.* at ¶ 32.

listed on the Tennessee Do-Not-Call Register, as prohibited by Tenn. Code Ann. § 65-4-404. Count 2 of the *Show Cause Order* sets forth the violation for Direct Marketing Travel Services for making, or causing to be made, telephone solicitations while not registered as a telephone solicitor with the TRA, as required by Tenn. Code Ann. § 65-4-405(d).

On July 30, 2013, the Hearing Officer issued a *Re-Notice to Appear*, ordering Direct Marketing Travel Services to appear at the September 9, 2013 Authority Conference.

Tenn. Code Ann. § 65-4-404 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 [A]uthority, in accordance with regulations promulgated pursuant to this part, of such subscriber’s objection to receiving telephone solicitations.”⁶ Tenn. Code Ann. § 65-4-405(d)(1) states that a “person or entity desiring to make telephone solicitations to any residential subscriber shall pay to the [A]uthority... an annual registration fee of five hundred dollars (\$500)...”⁷ Pursuant to Tenn. Code Ann. § 65-5-405(d)(3), “telephone solicitation of any residential subscriber listed in the Do-Not-Call Register ... by any person or entity who is not duly registered and who is not otherwise exempted by law, is a violation.”⁸ The TRA is authorized to issue a cease and desist order and impose a civil penalty up to the maximum of two thousand dollars (\$2,000) per knowing violation of Tenn. Code Ann. § 65-4-401 *et seq.*⁹

SEPTEMBER 9, 2013 AUTHORITY CONFERENCE

At the regularly scheduled Authority Conference on September 9, 2013, CSD presented evidence to the panel that Direct Marketing Travel Services had violated Tenn. Code Ann. § 65-4-401 *et seq.* No representative of Direct Marketing Travel Services was present in response to

⁶ Tenn. Code Ann. § 65-4-404 (2004).

⁷ Tenn. Code Ann. § 65-4-405(d)(1) (Supp. 2012).

⁸ Tenn. Code Ann. § 65-4-405(d)(3) (Supp. 2012).

⁹ Tenn. Code Ann. § 65-4-405(f) (Supp. 2012).

the *Show Cause Order* or *Re-Notice to Appear*.¹⁰ CSD described the efforts made to notify Direct Marketing Travel Services of the *Show Cause Order* and *Re-Notice to Appear*.¹¹ CSD requested that the panel impose the maximum civil penalty of forty-two thousand dollars (\$42,000), based on twenty (20) knowing violations of Tenn. Code Ann. § 65-4-404 and one (1) knowing violation of Tenn. Code Ann. § 65-4-405(d), and order that Direct Marketing Travel Services cease and desist making, or causing to be made, telephone solicitations to Tennessee subscribers listed on the Do-Not-Call Register.

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) 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 Direct Marketing Travel Services, after being given due notice, failed to participate in the proceeding and was in default. Further, based on the evidence presented in this docket, the panel found that Direct Marketing Travel Services had violated Tenn. Code Ann. § 65-4-404 on twenty (20) occasions by making, or causing to be made, telephone solicitations to Tennessee subscribers listed on the Do-Not-Call

¹⁰ Transcript of Authority Conference, p. 10 (September 9, 2013).

¹¹ *Id.* at 11.

Register and had violated Tenn. Code Ann. § 65-4-405(d) by making telephone solicitations of residential subscribers listed on the Do-Not-Call Register while not duly registered as a telephone solicitor.

Therefore, pursuant to Tenn. Code Ann. § 65-4-405(f), the panel voted unanimously to require Olen Miller d/b/a/ Direct Marketing Travel Services, Inc. to pay forty-two thousand dollars (\$42,000) immediately and to cease and desist making, or causing to be made, telephone solicitations to Tennessee subscribers listed on the Do-Not-Call Register.

IT IS THEREFORE ORDERED THAT:

1. Olen Miller d/b/a Direct Marketing Travel Services, Inc. shall immediately cease and desist making, or causing to be made, telephone solicitations to Tennessee subscribers listed on the Do-Not-Call Register; and

2. Olen Miller d/b/a Direct Marketing Travel Services, Inc. shall immediately pay a fine of forty-two thousand dollars (\$42,000), representing a two thousand dollar (\$2,000) fine per violation of Tenn. Code Ann. §§ 65-4-404 and 65-4-405(d).

Chairman James M. Allison, Vice Chairman Herbert H. Hilliard and Director David F. Jones concur.

ATTEST:



Earl R. Taylor, Executive Director