

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 1, 2014

IN RE:)	
)	DOCKET NO.
SHOW CAUSE PROCEEDING AGAINST NOACH)	14-00031
PALATNIK D/B/A PURE AIR, INC. D/B/A AIR DUCT)	
CLEANING FOR ALLEGED VIOLATIONS OF TENN.)	
CODE ANN. §§ 65-4-401, <i>et seq.</i> , AND TRA RULE 1220-04-11)	

**ORDER REQUIRING NOACH PALATNIK D/B/A PURE AIR, INC. D/B/A AIR DUCT
CLEANING TO APPEAR AND SHOW CAUSE WHY THE TRA SHOULD NOT
ISSUE A CEASE AND DESIST ORDER, IMPOSE CIVIL PENALTIES, AND
SEEK ADDITIONAL RELIEF FOR VIOLATIONS OF STATE LAW AND TRA RULES**

This matter is before the Hearing Officer upon the Order of the Tennessee Regulatory Authority (“TRA” or “Authority”) to determine whether an Order for Show Cause should be issued against Noach Palatnik d/b/a Pure Air, Inc. d/b/a Air Duct Cleaning (“Air Duct”), and if so, to prepare the matter for hearing before the panel. The TRA Compliance Division (“Compliance”) has presented a *Petition*, along with the supporting *Affidavit of Slayde Warren*, alleging that Air Duct has violated Tenn. Code Ann. §§ 65-4-401, *et. seq.*, also known as the Tennessee Do-Not-Call Law, and the TRA’s Telephone Solicitation Rules, Tenn. Comp. R. & Regs. 1220-04-11. Upon review and due consideration, the Hearing Officer makes the following findings:

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.”¹ 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, 65-4-401 *et. seq.*, and Tenn. Comp. R. & Regs. 1220-04-11.

RELEVANT FACTS

1. Air Duct is not registered as a telephone solicitor with the TRA.²
2. Between July 1, 2013 and July 17, 2013, Air Duct made or caused to be made at least eight (8) telephone calls to at least eight (8) Tennessee residential subscribers of telephone service soliciting the purchase of goods and/or services.³
3. Each complaining Tennessee residential subscriber objects to receiving telephone solicitations, is listed in the Tennessee Do-Not-Call Register, and did not give permission or consent for the solicitation.⁴
4. As to each complaint, a Notice of Alleged Violations was issued by the TRA Consumer Services Division and sent by certified mail to Air Duct.⁵
5. Returned certified mail receipts show that the Notices of Alleged Violations were acknowledged and received by someone authorized to do so at the addresses obtained for Air Duct.⁶

ALLEGED VIOLATIONS OF STATE LAW

The following actions, alleged to have been performed by Air Duct, constitute violations of state law and the TRA’s Rules:

¹ Tenn. Code Ann. § 65-1-113.

² *Petition*, pp. 1-2 and Exhibit A, *Affidavit of Slayde Warren*, ¶ 10.

³ *Id.* ¶ 7.

⁴ *Id.*

⁵ *Id.* ¶¶ 5-7; see also *Affidavit of Slayde Warren*, Exhibits 3 & 4.

⁶ *Id.* ¶¶ 8 and 9; see also *Affidavit of Slayde Warren*, Exhibits 5 & 6.

A. On at least eight (8) separate occasions, Air Duct made or caused to be made telephone solicitations for goods or services to at least eight (8) Tennessee residential subscribers listed in the Do-Not-Call Register.

COUNT 1:

Air Duct's telephone solicitations to Tennessee residential subscribers listed in the Do-Not-Call Register violate 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

Further, Air Duct's conduct violates the TRA's Telephone Solicitation Rules, as set forth in Tenn. Comp. R. & Regs. 1220-04-11-.07(1):

It is a violation of T.C.A. § 65-4-401 et seq. and this Chapter for a telephone solicitor to knowingly make or cause to be made any telephone solicitation to any telephone number that is listed in a Do Not Call Register that was in effect sixty (60) days prior to the time of the telephone solicitation.⁸

B. Air Duct engaged in telephone solicitations to Tennessee residential subscribers without registering with the Authority as a telephone solicitor.

COUNT 2:

Air Duct's failure to register with the Tennessee Regulatory Authority as a telephone solicitor and pay the required registration fee violates Tenn. Code Ann. § 65-4-405(d)(1), which provides in relevant part:

A person or entity desiring to make telephone solicitations to any residential subscriber shall pay to the authority by certified check or

⁷ Tenn. Code Ann. § 65-4-404.

⁸ Tenn. Comp. R. & Regs. 1220-04-11-.07(1).

money order . . . an annual registration fee of five hundred dollars (\$500) to defray regulatory and enforcement expenses. . .⁹

In addition, Air Duct's failure to register violates Tenn. Comp. R. & Regs. 1220-04-11-.04(1) and (4), which state:

It is the duty of any telephone solicitor engaging in the solicitation of Tennessee residential telephone subscribers to register with the Authority. Telephone solicitors shall submit an application in writing to the Authority. The application must contain, but shall not be limited to, the telephone solicitor's name, including aliases, trade names, and assumed names, address, telephone number and name of the agent for service of process along with a notarized statement from an officer of the company affirming the company will comply with the provisions of this Chapter.¹⁰

Telephone solicitors doing business in the state and subject to the control and jurisdiction of this Chapter shall pay to the Authority, on or before May 1st of each year, an annual registration fee, which allows for unlimited electronic access to the Do Not Call Register. Such registration fee shall cover the time period from the following July 1st through June 30th of the following year or any part thereof.¹¹

Under Tenn. Code Ann. § 65-4-405(f), Tenn. Comp. R. & Regs. 1220-04-11-.02(6) and (7), and 1220-04-11-.07, after notice and a hearing, upon finding a violation of the statutes and rules noted above in Counts 1 and 2, the Authority is empowered to issue a cease and desist order, impose civil penalties and sanctions up to a maximum of two thousand dollars (\$2,000) for each violation, and to seek additional relief to the extent allowed under law.

UPON THE FOREGOING INFORMATION, as demonstrated in the *Petition* and the supporting *Affidavit of Slayde Warren* presented by the TRA Compliance Division, the Hearing Officer hereby determines that Air Duct should be required to appear before the Authority and show cause why it should not be found in violation of state law and TRA Rules for making or causing to be made telephone solicitations for goods or services to Tennessee residential

⁹ Tenn. Code Ann. § 65-4-405(d)(1).

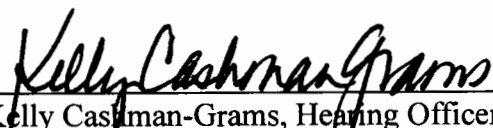
¹⁰ Tenn. Comp. R. & Regs. 1220-04-11-.04(1).

¹¹ Tenn. Comp. R. & Regs. 1220-04-11-.04(4).

subscribers and, upon a finding such violation, why the TRA should not immediately issue a cease and desist order, impose civil penalties and sanctions, and seek appropriate additional relief to the extent allowed by law.

IT IS THEREFORE ORDERED THAT:

Noach Palatnik d/b/a Pure Air, Inc. d/b/a Air Duct Cleaning shall appear before the Tennessee Regulatory Authority during the regularly scheduled Authority Conference at **1:00 p.m. (CDT) on September 15, 2014**, in Hearing Room G.201 located on the ground floor of the Andrew Jackson State Office Building, 500 Deaderick Street, Nashville, Tennessee 37243, and show cause why the Authority should not find him in violation of Tenn. Code Ann. §§ 65-5-401 *et seq.* and/or Tenn. Comp. R. & Regs. 1220-04-11 and, upon such finding, take action against Noach Palatnik d/b/a Pure Air, Inc. d/b/a Air Duct Cleaning for the unlawful acts and omissions alleged in this Order, which may include the issuance of an Order that requires Noach Palatnik d/b/a Pure Air, Inc. d/b/a Air Duct Cleaning immediately cease and desist, imposes civil penalties of up to two thousand dollars (\$2000) for *each* violation, and directs action for additional relief to the maximum extent allowed under law.


Kelly Cashman-Grams, Hearing Officer