

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**March 9, 2015**

**IN RE:**

**SHOW CAUSE PROCEEDING AGAINST  
NOACH PALATNIK DBA PURE AIR, INC.  
DBA AIR DUCT CLEANING FOR  
ALLEGED VIOLATIONS OF  
TENN. CODE ANN. § 65-4-401 *et seq.***

**DOCKET NO.  
14-00031**

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**ORDER APPROVING SETTLEMENT AGREEMENT**

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This matter came before Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director Robin Bennett of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on February 9, 2015, for consideration of the proposed *Settlement Agreement* filed by Noach Palatnik d/b/a Pure Air, Inc. d/b/a Air Duct Cleaning (“Air Duct Cleaning” or the “Respondent”) and the Staff of the Compliance Division of the TRA (“Compliance Division”) on January 13, 2015.

**BACKGROUND**

On March 24, 2014, the Compliance Division filed a request for consideration of the appointment of a Hearing Officer.<sup>1</sup> In the request, the Compliance Division states that the Investigative Staff of the Consumer Services Division (“CSD”) alleges that during the period of July 1, 2013 to July 17, 2013, Air Duct Cleaning made or caused to be made eight (8) telephone sales or marketing calls to Tennessee consumers on the Tennessee Do-Not-Call registry in

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<sup>1</sup> For additional information on the procedural background of this docket, see *Order Denying Settlement Agreement* (February 4, 2015).

violation of Tenn. Code Ann. § 65-4-401 *et seq.* (the “Do-Not-Call law”) and that Air Duct Cleaning is not registered as a telephone solicitor with the Authority.

At a regularly scheduled Authority Conference held on April 14, 2014, the Directors voted unanimously to appoint General Counsel or her designee to act as Hearing Officer (1) to determine whether a Show Cause Order should be issued against Air Duct Cleaning for alleged violations of Tenn. Code Ann. § 65-4-401, *et seq.*, and Authority rules; and (2) if a Show Cause Order was issued, to prepare this matter for hearing before the panel.

The Compliance Division submitted a *Petition* on July 31, 2014, setting forth the specific allegations against Air Duct Cleaning along with documents related to the investigation.<sup>2</sup>

On August 1, 2014, the Hearing Officer appointed in this matter issued an *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 (“Show Cause Order”)*. In the *Show Cause Order*, the Hearing Officer recites the following relevant facts:

1. Air Duct is not registered as a telephone solicitor with the Authority.
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. 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. As to each complaint, a Notice of Alleged Violations was issued by the CSD and sent by certified mail to Air Duct.

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<sup>2</sup> In support of the facts alleged in its *Petition*, the Compliance Division had previously filed a notice with the affidavit of Slayde Warren of the CSD. See *Tennessee Code Annotated Section 4-5-313 Notice, Affidavit of Slayde Warren in Support of Allegations of Violations of Tenn. Code Ann. § 65-4-401 et seq. Pursuant to a Proceeding Requiring Pure Air Inc. d/b/a Air Duct Cleaning to Show Cause Why a Cease and Desist Order and/or Fine Should Not Be Imposed* (April 28, 2014) (“*Affidavit of Slayde Warren*”).

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.<sup>3</sup>

In the *Show Cause Order*, the Hearing Officer states that upon this information, as demonstrated in the *Petition* and the supporting *Affidavit of Slayde Warren*, Air Duct Cleaning should be required to appear and show cause why it should not be found in violation of state law and TRA Rules.<sup>4</sup> Count 1 alleges Air Duct Cleaning violated Tenn. Code Ann. § 65-4-404 and TRA Rule 1220-04-11-.07(1) by making or causing 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 2 alleges Air Duct Cleaning violated Tenn. Code Ann. § 65-4-405(d)(1) and TRA Rule 1220-04-11-.04(1) and (4) by engaging in telephone solicitations to Tennessee residential subscribers without registering with the Authority as a telephone solicitor.<sup>5</sup> The Hearing Officer notes that upon finding a violation of the statutes and rules noted in Counts 1 and 2, the Authority is empowered to issue a cease and desist order, impose civil penalties up to \$2,000 for each violation, and to seek additional relief to the extent allowed under law.<sup>6</sup> In addition, on August 1, 2014, the Hearing Officer issued a *Notice to Appear for Hearing* directing Air Duct Cleaning to appear at 1:00 p.m. CDT on September 15, 2014 and show cause why the Authority should not find Air Duct Cleaning in violation of Tenn. Code Ann. §§ 65-4-401 *et seq.* and Tenn. Comp. R. & Regs. 1220-04-11.

On November 20, 2014, Air Duct Cleaning and the Compliance Division filed a proposed Settlement Agreement. Under the terms of that proposed Settlement Agreement, the Respondent acknowledged that “he or his agents did place calls to the eight (8) consumer phone numbers identified in the consumer complaints” and that he “failed to register as a solicitor pursuant to

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<sup>3</sup> *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*, p. 2 (August 1, 2014).

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 3-4.

<sup>6</sup> *Id.* at 4.

Tenn. Code Ann. § 65-4-405(d).”<sup>7</sup> Further, the Respondent agreed to pay a civil penalty in the amount of \$18,000 to the TRA; however, the civil penalty would be stayed for a period of ten (10) years, at which time the penalties would be dismissed. If Air Duct Cleaning committed any future violation of Tennessee’s Do-Not-Call or Do-Not-Fax laws within ten (10) years, the Respondent agreed to pay the entire \$18,000 civil penalty in full.<sup>8</sup> At the regularly scheduled Authority Conference held on December 1, 2014, the panel considered the proposed Settlement Agreement. Upon taking into account the guidance provided in Tenn. Code Ann. § 65-4-116(b) to determine the amount of a civil penalty, the panel found that the gravity of the violation, including the number of admitted violations of the Do-Not-Call law and the admitted failure of the Respondent to register as a telephone solicitor, along with the failure of Air Duct Cleaning to show good faith after receiving notices of violation from the CSD, weighed against the proposed suspension of all monetary penalties. As a result the panel voted unanimously to reject the proposed Settlement Agreement. The panel noted, however, that rejection of the proposed Settlement Agreement did not preclude consideration of any future settlement entered into by the parties that takes into account the factors provided by Tenn. Code Ann. § 65-4-116(b).<sup>9</sup>

#### **THE PROPOSED SETTLEMENT AGREEMENT**

On January 13, 2015, the Compliance Division filed another proposed *Settlement Agreement* with Air Duct Cleaning. In this proposed *Settlement Agreement*, the Respondent acknowledges that he or his agents placed calls to the eight (8) complainants identified in the consumer complaints. The Respondent also failed to register as a solicitor pursuant to Tenn. Code Ann. § 65-4-405(d). The proposed *Settlement Agreement* indicates that the Respondent does not have previous Do-Not-Call violations with the TRA, and that the Respondent agrees to no longer telemarket to Tennessee residents. The Respondent does not own or operate any

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<sup>7</sup> *Settlement Agreement*, p. 1 (November 20, 2014).

<sup>8</sup> *Id.* at 2-3. Tennessee’s “Do-Not-Fax” law is codified at Tenn. Code Ann. § 65-4-501, *et seq.*

<sup>9</sup> *Order Denying Settlement Agreement*, p. 6 (February 4, 2015).

business that engages in telemarketing. The proposed *Settlement Agreement* also states that the Respondent has serious financial difficulties and is in a financially compromised situation. The Compliance Division states that it considered the factors stated in Tenn. Code Ann. § 65-4-116(b) during the negotiations that resulted in the proposed *Settlement Agreement*, including the size of the Respondent's business and the gravity of the violations by the Respondent.<sup>10</sup>

Under the terms of the proposed *Settlement Agreement*, if approved by the Authority, the Respondent agrees to pay \$1,800 within 15 days of ratification of the proposed *Settlement Agreement*. The remaining \$16,200 of the civil penalty will be stayed for a period of 10 years, at which time the remaining penalties will be dismissed. If the Respondent commits any future violation of either the Do-Not-Call or Do-Not-Fax statutes within 10 years, the Respondent agrees to pay the remaining \$16,200 in full. In addition, if the Respondent fails to comply with the Settlement Agreement, the Respondent must pay any costs to enforce the Settlement Agreement. In addition, the Respondent agrees that neither he nor any of his employees, agents, or affiliates over whom he exerts control shall telemarket or cause another to telemarket to Tennessee residents, and to remain in compliance with all the statutory and regulatory requirements of the TRA. In the event of non-compliance, the TRA can re-open the investigation and the Respondent will pay all costs incurred by the Authority to enforce the *Settlement Agreement*.<sup>11</sup>

#### **FINDINGS AND CONCLUSIONS**

At the regularly scheduled Authority Conference held on February 9, 2015, the panel conducted a Hearing in this matter.<sup>12</sup> Mr. Palatnik participated telephonically and was subject to questions from the panel.<sup>13</sup> No person sought recognition to comment at the Hearing.

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<sup>10</sup> *Settlement Agreement*, p. 1-2 (January 13, 2015).

<sup>11</sup> *Id.* at 2-3.

<sup>12</sup> The Hearing Officer issued a *Re-Notice to Appear for Hearing* on January 30, 2015.

<sup>13</sup> Mr. Bryan Kaemmerer, Esq., attorney for Mr. Palatnik, also appeared telephonically.

During his testimony at the Hearing, Mr. Palatnik confirmed that he was familiar with the terms of the proposed *Settlement Agreement* and that his signature appears on both the proposed *Settlement Agreement* filed on January 13, 2015, and the original signature page filed on January 21, 2015.<sup>14</sup>

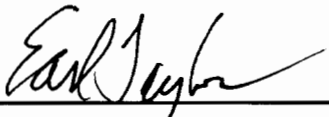
Thereafter, upon applying the guidance provided by Tenn. Code Ann. § 65-4-116(b) in the imposition of penalties, the panel found that the terms of the proposed *Settlement Agreement* are reasonable. Therefore, the panel voted unanimously to approve the proposed *Settlement Agreement*.

**IT IS THEREFORE ORDERED THAT:**

The proposed *Settlement Agreement* filed by Noach Palatnik d/b/a Pure Air, Inc. d/b/a Air Duct Cleaning and the Staff of the Compliance Division on January 13, 2015, is approved.

**Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director Robin Bennett concur.**

**ATTEST:**

  
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**Earl R. Taylor, Executive Director**

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<sup>14</sup> Transcript of Authority Conference, pp. 13-14 (February 9, 2015).