



Telecom Decision CRTC 2012-195

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Ottawa, 30 March 2012

Mr. Lev Olevson, carrying on business as Capital Windows and Doors – Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-1147

In this decision, the Commission imposes an administrative monetary penalty of \$2,000 on Mr. Lev Olevson, carrying on business as Capital Windows and Doors, for initiating, on its own behalf, two telemarketing telecommunications without being registered with, and having provided information to, the National Do Not Call List (DNCL) operator, and without being a registered subscriber of the National DNCL and having paid all applicable fees to the National DNCL operator, in violation of the Unsolicited Telecommunications Rules.

1. Between 10 March 2010 and 6 February 2012, the Commission received numerous complaints in relation to telemarketing telecommunications made by Mr. Lev Olevson, carrying on business as Capital Windows and Doors (Capital Windows).¹
2. On 15 February 2012, a Notice of Violation was issued to Capital Windows pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Capital Windows that it had initiated, on its own behalf,
 - two telemarketing telecommunications to consumers without being a registered subscriber to the National Do Not Call List (DNCL) and having paid all applicable fees to the National DNCL operator, in violation of Part II, section 6² of the Commission's Unsolicited Telecommunications Rules (the Rules); and
 - two telemarketing telecommunications without being registered with, and having provided information to, the National DNCL operator, in violation of Part III, section 2³ of the Rules.
3. The Notice of Violation set out an administrative monetary penalty (AMP) for four violations at \$500 per violation, for a total amount of \$2,000.

¹ Mr. Lev Olevson, carrying on business as Capital Windows and Doors, Ottawa, Ontario, Tel.: 613-680-0492. Industry – Sale and installation of windows and doors.

² Part II, section 6 of the Unsolicited Telecommunications Rules states that a telemarketer shall not initiate a telemarketing telecommunication on its own behalf unless it is a registered subscriber of the National DNCL and has paid all applicable fees to the National DNCL operator.

³ Part III, section 2 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication on its own behalf unless it has registered with, and provided information to, the National DNCL operator.

4. Capital Windows was given until 15 March 2012 to pay the AMP set out in the Notice of Violation or to make representations to the Commission regarding the violations.
5. The Commission received representations from Capital Windows dated 14 March 2012.
6. Based on the information contained in the representations, the Commission has identified the following issues to be addressed in its determinations:

- I. Did Capital Windows commit the violations?

- II. Is the amount of the AMP reasonable?

I. Did Capital Windows commit the violations?

7. Capital Windows stated that
 - It will register with the National DNCL operator and subscribe to the National DNCL shortly. It has not done so because the business was not aware of these obligations before receiving the Request for Information (RFI) letter dated 2 November 2011, and it does not have any support staff during winter months as the weather does not permit operation of the business; and
 - The additional complaints, which Commission staff claimed to have received after the RFI letter was sent, must relate to calls made prior to the issuance of the RFI letter to Capital Windows.
8. The Commission notes that, in its response, Capital Windows acknowledged having made telemarketing calls. It also admitted to not being registered with the National DNCL operator and not having a subscription to the National DNCL.
9. The Commission also notes that Capital Windows did not dispute the veracity of the claims made in the Notice of Violation regarding the violations.
10. The Commission notes that the absence of knowledge of the Rules is not a defence or exemption set out in the Act or the Rules.
11. The Commission further notes that complaints were received relating to unsolicited telemarketing calls allegedly made by Capital Windows after the RFI letter was sent out in November 2011, continuing into January and February 2012.
12. In light of the above, the Commission considers that, on a balance of probabilities, Capital Windows made the telemarketing calls cited in the notice of violation without being registered with the National DNCL operator, without being a subscriber of the National DNCL, and without having paid all the applicable fees to the National DNCL operator.
13. The Commission concludes that Capital Windows has committed the two violations to Part II, section 6 of the Rules and the two violations of Part III, section 2 of the Rules cited in the Notice of Violation.

II. Is the amount of the AMP reasonable?

14. Capital Windows claimed that a total AMP of \$2,000 is excessive since:
 - It is unjust to issue both a warning and a Notice of Violation with an AMP for the same type of violations;
 - The purpose of the AMP is not to punish but to encourage compliance:
 - Capital Windows is in the process of complying with the Rules and the required corrective measures will be taken as soon as possible;
 - As per its financial statements sent on 16 November 2011, the business is in a dire financial situation;
 - The business does not have the funds to pay the AMP; and
 - The payment of the AMP is harmful for the potential continuance of the business and may lead to the dismissal of employees.
15. The Commission notes that Capital Windows did not receive a warning letter for the violations mentioned in the Notice of Violation, but rather an RFI letter.
16. The Commission notes that Capital Windows has not registered with the National DNCL operator and/or subscribed to the National DNCL and therefore has avoided paying the required subscription fee since at least 10 March 2010.
17. The Commission also notes that complaints were received relating to unsolicited telemarketing calls allegedly made by Capital Windows after the RFI letter was sent out in November 2011, continuing into January and February 2012.
18. The Commission considers that, according to the information provided by the business in its answer to the RFI letter and obtained by the Commission from the Ministry of Government Services of Ontario, Capital Windows is a sole proprietorship.
19. In light of the above, and given the size of the business and that it is the first Notice of Violation issued to the business, the Commission considers that a penalty of \$500 per violation for the four violations cited in the Notice of Violation is appropriate.

Conclusion

20. In the circumstances of this case, the Commission considers that a penalty of \$500 for each of the violations of Part II, section 6 and Part III, section 2 of the Rules is appropriate. The Commission therefore imposes a total AMP of \$2,000 on Capital Windows.
21. The Commission hereby notifies Capital Windows of its right to apply to the Commission to review and rescind or vary this decision under section 62 of the Act and to appeal this decision to the Federal Court of Appeal under section 64 of the Act.

Any review and vary application under section 62 of the Act must be made within 90 days of the date of this decision, and the Commission will place all related documentation on its website. An appeal from this decision may be brought in the Federal Court of Appeal with the leave of that Court. Leave to appeal must be applied for within 30 days of the date of this decision or within such further time as a judge of the Court grants in exceptional circumstances.

22. The Commission reminds Capital Windows that, should it continue to initiate telemarketing telecommunications on its own behalf or engage telemarketers for the purpose of solicitation of its products and/or services, it is required to comply with the Rules. Examples of measures that Capital Windows should adopt to ensure compliance with the Rules include, but are not limited to, the following:
 - registering with the National DNCL operator;
 - subscribing to the National DNCL;
 - downloading the National DNCL at least once every 31 days prior to the date of the telemarketing telecommunication; and
 - establishing and implementing adequate written policies and procedures to comply with the Rules, which include documenting a process to (a) prevent the initiation of telemarketing telecommunications to any telecommunications number that has been registered for more than 31 days on the National DNCL, and (b) honour consumers' requests that they not be contacted by way of telemarketing telecommunications.
23. The Commission advises Capital Windows that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
24. The amount of \$2,000 is due by 30 April 2012 and is to be paid in accordance with the instructions contained in the Notice of Violation. For any amount owing that is not paid by 30 April 2012, interest calculated and compounded monthly at the average bank rate plus three percent will be payable on that amount and will accrue during the period beginning on the due date and ending on the day before the date on which payment is received.
25. If payment has not been received within 30 days of the date of this decision, the Commission intends to take measures to collect the amount owing, which may include certifying the unpaid amount and registering the certificate with the Federal Court.

Secretary General