

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
1 HOME LENDING CORPORATION
D.B.A. CAPITAL LINE FINANCIAL, LLC.
Apparent Liability for Forfeiture
File No. EB-03-TC-031
NAL/Acct. No. 200732170002
FRN: 0015635519

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 20, 2006

Released: October 20, 2006

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that 1 Home Lending Corporation d.b.a. Capital Line Financial, LLC ("Capital Line") apparently willfully or repeatedly violated section 227 of the Communications Act of 1934, as amended ("Act"), and the Commission's rules and orders by delivering at least four unsolicited, prerecorded advertising messages to three consumers. Based on the facts and circumstances surrounding these apparent violations, we find that Capital Line is apparently liable for a forfeiture in the amount of \$18,000.

1 47 U.S.C. § 503(b)(1). The Commission has the authority under this section of the Act to assess a forfeiture against any person who has "willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act"; see also 47 U.S.C. § 503(b)(5) (stating that the Commission has the authority under this section of the Act to assess a forfeiture penalty against any person who is not the holder of a Commission authorization so long as (A) such person is first issued a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission nearest to the person's place of resident; and (C) subsequently engages in conduct of the type described in the citation).

2 According to publicly available information, Capital Line Financial, LLC, also listed as 1 Home Lending Corporation, is headquartered at 23925 Park Sorrento, Suite 200, Calabasas, CA 91302-4010; a branch address is listed at 22801 Ventura Boulevard, #205, Woodland Hills, CA 91367. Therefore, all references to "Capital Line" in this NAL encompass 1 Home Lending Corporation as well as Capital Line Financial, LLC. Capital Line's agent for service of process is William J. Tessar. Daniel Shields is listed as president; Paul Joseph Karl is listed as designated officer; Glen Podell is listed as financial executive and owner. Accordingly, all references in this NAL to "Capital Line" also encompass William J. Tessar, Daniel Shields, Paul Joseph Karl, Glen Podell, and all other principals and officers of the entity, as well as the corporate entity itself.

3 See 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(2). Throughout this NAL, we will be citing the Commission's rules as they existed at the time of the violations; see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) (TCPA Report and Order).

II. BACKGROUND

2. On April 22, 2003, in response to consumer complaints alleging that Capital Line had delivered unsolicited, prerecorded advertising messages to several consumers, the Commission staff issued a citation to Capital Line pursuant to section 503(b)(5) of the Act.⁴ The staff cited Capital Line for delivering one or more prerecorded, unsolicited advertisements to a residential telephone line, in violation of section 227 of the Act and the Commission's rules and orders.⁵ According to the complainants, the unsolicited advertisements offered information concerning home loans.⁶ The citation, which the staff served by certified mail, return receipt requested, informed Capital Line that subsequent violations could result in the imposition of monetary forfeitures of up to \$11,000 per violation and included a copy of the consumer complaints that formed the basis of the citation. The citation informed Capital Line that within 30 days of the date of the citation, it could either request a personal interview at the nearest Commission field office, or could provide a written statement responding to the citation.

3. Capital Line filed a written response to the citation on May 21, 2003,⁷ arguing that it placed calls only to established customers of its title company subsidiary. Capital Line did not, however, provide any evidence of an established business relationship ("EBR") with any of the complainants whose complaints formed the basis of the citation.⁸ On May 13, 2005, Capital Line filed a supplemental response in which it requested that the Commission rescind the citation.⁹ To support its request, Capital Line attached a decision from the Superior Court of California, which had dismissed a claim, filed by one of the citation complainants, for private damages under the TCPA.¹⁰ Capital Line argued that the Commission should rescind the citation because the California court had found an EBR between the complainant and an affiliate of Capital Line.¹¹ We are not, however, bound by that court's decision

⁴ See Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, issued to Capital Line on April 22, 2003.

⁵ See 47 U.S.C. § 503(b)(5) (authorizing the Commission to issue citations to non-common carriers for violations of the Act or of the Commission's rules and orders).

⁶ See Complaints from Michele Robinson, Barbara Schneider, and Richard Stahl, requesting Commission action against Capital Line, which were attached to the citation.

⁷ See Letter from William Raney, Copilevitz & Canter, LLC (representing Capital Line), to Kurt Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, dated May 21, 2003.

⁸ See n.6, *supra*.

⁹ See Letter from William Raney, Copilevitz & Canter, LLC (representing Capital Line), to Kurt Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, dated May 10, 2005 ("*Supplemental Response*").

¹⁰ See 47 U.S.C. § 227(b)(3) (allowing a person or entity to bring, subject to the laws or rules of the State court, an action in State court for monetary damages resulting from violations of the Telephone Consumer Protection Act of 1991).

¹¹ See *Supplemental Response*, Attachment. The Court did not require Capital line to pay damages for sending the prerecorded message to Ms. Schneider because of an alleged established business relationship between her and an alleged affiliate of Capital Line, "Countrywide." In particular, the Court found that Countrywide had provided the first mortgage to Ms. Schneider's residential property. *Id.*

regarding that complainant's relationship with Capital Line.¹² Furthermore, Capital Line did not provide any independent evidence of an EBR with that complainant or with the other two complainants whose complaints formed part of the basis for the citation.¹³ Accordingly, the citation was not rescinded, nor is there any reason to rescind it now.

4. Despite the citation's warning that subsequent violations could result in the imposition of monetary forfeitures, the Commission has received subsequent consumer complaints indicating that Capital Line apparently continued to send illegal prerecorded, unsolicited advertisements after receiving the citation.¹⁴ As discussed below, we base our action here on this information from consumers alleging that Capital Line sent unsolicited prerecorded advertising messages after the date of the citation, and that the messages did not qualify for any exemption from the prohibition imposed by our rules. In sum, despite prior warning, Capital Line has continued to engage in the same unlawful conduct since the April 2003 citation.

III. DISCUSSION

A. Violations of the Commission's Rules Restricting Prerecorded Messages

5. Section 227(b)(1)(B) of the Act prohibits any person from initiating "any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order of the Commission."¹⁵ Section 64.1200(a)(2) of the Commission's rules provides exemptions for calls: 1) made for emergency purposes; 2) made for non-commercial purposes; 3) made for commercial purposes that do "not include or introduce an unsolicited advertisement"¹⁶ or constitute a telephone solicitation¹⁷; 4) to persons "with whom the caller has an established business

¹² See *Citibank, N. A., v. Graphic Scanning Corp. and Graphnet Systems, Inc.*, 618 F.2d 222, 225 (2nd Cir. 1980) (state court determination that a contract was not void for illegality was not binding on the FCC, nor did the court's determination preclude a claim before the FCC that the contract was illegal due to a violation of the Communications Act).

¹³ See n.6, *supra*.

¹⁴ See the following consumer complaints requesting Commission action: 1) Complaint of Richard Horn, filed October 25, 2005, and December 14, 2005 (received prerecorded messages on October 25, 2005, and December 14, 2005); 2) complaint of Mark Klein, filed January 24, 2006 (received prerecorded message on January 4, 2006); 3) complaint of Kirby Beall, filed February 16, 2006 (received prerecorded message on February 16, 2006). Each of the complainants signed declarations stating that the messages they received advertised Capital Line's home loans, and that they did not have established business relationships with Capital Line.

¹⁵ 47 U.S.C. § 227(b)(1)(B).

¹⁶ "Unsolicited advertisement" means "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission." 47 C.F.R. § 64.1200(f)(10).

¹⁷ "Telephone solicitation" means "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person," but "does not include a call or message: (i) to any person with that person's prior express invitation or permission; (ii) to any person

relationship¹⁸ at the time the call is made”; and 5) “made by or on behalf of a tax-exempt nonprofit organization.”¹⁹

6. As explained above, Capital Line initiated prerecorded messages that invited consumers to consider taking out a Capital Line home mortgage loan. For example, one of the messages first informed the consumer that Capital Line “just obtained the lowest start rate in the mortgage loan industry in over 40 years of 1.5%.”²⁰ The message then went on to invite the consumer to “[g]ive us a call . . . [w]e’re open 7 days a week . . . our loans have no up front fees, no out of pocket costs and you can actually skip the first month of your mortgage payments.”²¹ Based on the record before us, we find that the prerecorded messages at issue here were not made for any emergency or non-commercial purposes, and were not on behalf of a tax-exempt, nonprofit organization, but were commercial in nature and included or introduced “unsolicited advertisements” or constituted “telephone solicitations.”²²

7. The record also indicates that Capital Line did not have the prior express consent of the recipients of these prerecorded messages to deliver the unsolicited advertising messages or telephone solicitations. Further, Capital Line has provided neither argument nor evidence in response to our citation to prove tax-exempt nonprofit status. Therefore, based on the evidence in the record, including the complainants’ affidavits, we find that the prerecorded messages were unsolicited advertisements or telephone solicitations that were prohibited by section 227(b)(1)(B) of the Act²³ and Section 64.1200(a)(2)²⁴ of the Commission’s rules.

B. Proposed Forfeiture

8. We conclude that Capital Line apparently willfully or repeatedly violated the Act and the Commission's rules and orders by delivering unsolicited, prerecorded advertising messages. Capital Line apparently did not cease its unlawful conduct even after the Commission staff issued a citation warning that it was engaging in unlawful conduct and could be subject to monetary forfeitures. Accordingly, a

with whom the caller has an established business relationship; or (iii) by or on behalf of a tax-exempt nonprofit organization.” 47 C.F.R. § 64.1200(f)(9).

¹⁸ An “established business relationship” is defined as “a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber’s purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber’s inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.” 47 C.F.R. § 64.1200(f)(3).

¹⁹ 47 C.F.R. § 64.1200(a)(2).

²⁰ See complaint of Mark Klein, filed January 24, 2006.

²¹ *Id.*

²² *TCPA Report and Order*, 18 FCC Rcd at 14097-98, para. 140.

²³ 47 U.S.C. § 227(b)(1)(B).

²⁴ 47 C.F.R. § 64.1200(a)(2).

proposed forfeiture is warranted against Capital Line for its apparent willful or repeated violations of section 227 of the Act and of the Commission's rules and orders regarding restrictions on telephone solicitations.

9. Section 503(b) of the Act authorizes the Commission to assess a forfeiture of up to \$11,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act by a non-common carrier or other entity not specifically designated in section 503 of the Act.²⁵ In exercising such authority, we are to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."²⁶

10. Although the Commission's Forfeiture Policy Statement does not establish a base forfeiture amount for violating the prohibition on delivering unsolicited, prerecorded advertising messages to a residential telephone line, we have found these violations to be similar in nature to violating the prohibition on delivering unsolicited advertisements to telephone facsimile machines. In *Warrior Custom Golf*,²⁷ we considered \$4,500 per prerecorded advertising message to be an appropriate base amount,²⁸ and we apply that amount to each of the four apparent unsolicited, prerecorded advertising violations evidenced by the complaints.²⁹ This results in a proposed total forfeiture of \$18,000. Capital Line shall have the opportunity to submit evidence and arguments in response to this Notice of Apparent Liability for Forfeiture to show that no forfeiture should be imposed or that some lesser amount should be assessed.³⁰

²⁵ Section 503(b)(2)(C) provides for forfeitures up to \$10,000 for each violation in cases not covered by subparagraph (A) or (B), which address forfeitures for violations by licensees and common carriers, among others. See 47 U.S.C. § 503(b). In accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. 104-134, Sec. 31001, 110 Stat. 1321, the Commission implemented an increase of the maximum statutory forfeiture under section 503(b)(2)(C) to \$11,000. See 47 C.F.R. § 1.80(b)(3); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000); see also *Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (this recent amendment of section 1.80(b) to reflect inflation left the forfeiture maximum for this type of violator at \$11,000).

²⁶ 47 U.S.C. § 503(b)(2)(D); *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17100-01, para. 27 (1997), recon. denied, 15 FCC Rcd 303 (1999).

²⁷ *Warrior Custom Golf, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 23648 (Enf. Bur. 2004) ("*Warrior Custom Golf*") (first NAL to address prerecorded advertising messages).

²⁸ See *Warrior Custom Golf*, 19 FCC Rcd at 23652, para. 10 (citing *Get-Aways, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 4843 (2000); *Tri-Star Marketing, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 11295 (2000); *Tri-Star Marketing, Inc.*, Forfeiture Order, 15 FCC Rcd 23198 (2000); *Carolina Liquidators, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 16837 (2000); *Carolina Liquidators, Inc.*, Forfeiture Order, 15 FCC Rcd 21775 (2000); *21st Century Fax Ltd.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 24406 (2000); *21st Century Fax Ltd.*, Forfeiture Order, 17 FCC Rcd 1384 (2002)); see also *Septic Safety, Inc.*, Forfeiture Order, 21 FCC Rcd 6868, 6872, paras. 10-11 (Enf. Bur. 2006).

²⁹ See n.14, *supra*.

³⁰ See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

IV. CONCLUSION AND ORDERING CLAUSES

11. We have determined that 1 Home Lending Corporation d.b.a. Capital Line Financial, LLC apparently violated section 227 of the Act and the Commission's related rules and orders by delivering the unsolicited, prerecorded advertising messages identified above. We have further determined that 1 Home Lending Corporation d.b.a. Capital Line Financial, LLC is apparently liable for a forfeiture in the amount of \$18,000.

12. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, and under the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that 1 Home Lending Corporation d.b.a. Capital Line Financial, LLC is hereby NOTIFIED of an APPARENT LIABILITY FOR FORFEITURE in the amount of \$18,000 for willful or repeated violations of section 227(b)(1)(B) of the Act, 47 U.S.C. § 227(b)(1)(B), section 64.1200(a)(2) of the Commission's rules, 47 C.F.R. § 64.1200(a)(2), and the related orders described in the paragraphs above.

13. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules,³¹ within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, 1 Home Lending Corporation d.b.a. Capital Line Financial, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment by check or money order, payable to the order of the "Federal Communications Commission," may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, Pennsylvania 15251. Payment by overnight mail may be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, Pennsylvania 15262-0001, Attn: FCC Module Supervisor. Payment by wire transfer may be made to: ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. The payment should note NAL/Acct. No. 200732170002.

15. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division, and must include the NAL/Acct. No. referenced in the caption.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

³¹ 47 C.F.R. § 1.80.

17. Requests for payment of the full amount of this *Notice of Apparent Liability for Forfeiture* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.³²

18. IT IS FURTHER ORDERED that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to 1 Home Lending Corporation d.b.a. Capital Line Financial, LLC in care of Mr. William E. Raney, Esq., Copilevitz & Canter, LLC, 423 W. Eighth Street, Suite 400, Kansas City, Missouri 64105; to 1 Home Lending Corporation d.b.a. Capital Line Financial, LLC, Attention: William J. Tessar, 23925 Park Sorrento, Suite 200, Calabasas, CA 91302-4010; and to 1 Home Lending Corporation d.b.a. Capital Line Financial, LLC, Attention: William J. Tessar, 22801 Ventura Boulevard, #205, Woodland Hills, CA 91367.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Enforcement Bureau

³² 47 C.F.R. § 1.1914.