

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

In the Matter of)
AZ Prime One Mortgage Corporation)
File No. EB- 07-TC-578
NAL/Acct. No. 200832170010
FRN: 0017433095

FORFEITURE ORDER

Adopted: June 15, 2009

Released: June 16, 2009

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of \$10,000 against AZ Prime One Mortgage Corporation ("AZ Prime One") for willful or repeated violations of section 64.1200(c)(2) of the Commission's rules, by making a telephone call for the purpose of delivering a telephone solicitation to a residential telephone consumer who had registered her telephone number on the National Do-Not-Call Registry.

II. BACKGROUND

2. The facts and circumstances surrounding this case are set forth in the Commission's Notice of Apparent Liability for Forfeiture and need not be reiterated at length.

3. Section 64.1200(c)(2) of the Commission's rules generally prohibits the delivery of telephone solicitations to residential telephone numbers that are contained in the National Do-Not-Call Registry, except in certain limited situations. Under the Communications Act of 1934, as amended ("Act"), and the Commission's rules, a "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." Not every promotional call, however, constitutes a prohibited telephone solicitation under this rule. Calls made by or on behalf of a tax-exempt nonprofit organization are not considered to be telephone solicitations. Similarly, calls that are made to a person

1 See 47 C.F.R. § 64.1200(c)(2).

2 AZ Prime One Mortgage Corporation, 23 FCC Rcd 1964 (Enf. Bur. 2008)

3 47 C.F.R. § 64.1200(c)(2).

4 47 U.S.C. §227(a)(3); 47 C.F.R. §64.1200(f)(12).

5 47 U.S.C § 227(a)(3); 47 C.F.R. § 64.1200(f)(12).

who either has provided prior express invitation or permission to call⁶ or has an established business relationship⁷ with the caller are not considered to be telephone solicitations. In addition to these statutory exemptions, section 64.1200(c)(2)(iii) also permits telephone solicitations to National Do-Not-Call registrants in the limited situation in which the caller has a personal relationship with the called party.⁸

3. Entities making telephone solicitations must honor do-not-call registrations no later than 31 days after a number is placed on the National Do-Not-Call Registry,⁹ and for a period of no less than five years. To accomplish this, section 64.1200(c)(2)(i)(D) requires entities making telephone solicitations to use a version of the National Do-Not-Call Registry obtained no more than 31 days before any telephone solicitation is made, and to document this process. An entity that does not claim one of the exemptions set forth above is not liable for calling a telephone number on the National Do-Not-Call Registry only if it is able to demonstrate both that it has fully complied with the Commission's standards governing use of the National Do-Not-Call Registry as set out in section 64.1200(c)(2)(i)(A)-(E) of the rules, *and* that the particular telephone solicitation call was the result of specific error.¹⁰

4. In order to comply with the Commission's standards, a person or entity initiating a telephone solicitation must first demonstrate that, as part of its routine business practice it has: (1) established and implemented written procedures to comply with the do-not-call rules; (2) trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to the do-not-call rules; (3) maintained and recorded a list of telephone numbers the seller may not contact; (4) used a process to prevent telemarketing to any telephone number on any list established pursuant to the do-not-call rules employing a version of the National Do-Not-Call Registry obtained from the administrator of the Registry within a designated time frame, and has maintained records documenting this process; and (5) used a process to ensure that it does not sell, rent, lease, purchase, or use the Registry for any purpose except national do-not-call compliance, and that it has purchased access to the Registry from the Registry administrator without participating in any cost sharing arrangement with any other entity. We reiterate,

⁶ Section 64.1200(c)(2)(ii) of our rules requires that prior express invitation or permission "must be evidenced by a signed, written agreement between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed." 47 C.F.R. § 64.1200(c)(2)(ii).

⁷ For do-not-call purposes, the term "established business relationship" means "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)(4). The established business relationship exception does not apply when a telephone subscriber has made a company-specific do-not-call request. A company-specific do-not-call request terminates an established business relationship for telemarketing purposes even if the requester continues to do business with the company. 47 C.F.R. § 64.1200(f)(4)(i); *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14070, para. 96 (2003); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752, 8766 n.47, 8770 n.63 (1992); *see also* H.R. Rep. 102-317, 1st Sess., 102nd Cong. at 15 (1991); *Charvat v. Dispatch Consumer Services, Inc.*, 95 Ohio St. 3d 505, 769 N.E.2d 829 (2002).

⁸ The term "personal relationship" means "any family member, friend, or acquaintance of the telemarketer making the call." 47 C.F.R. § 64.1200(f)(14).

⁹ The 31-day requirement applies to telephone solicitations made on or after January 1, 2005. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order, 19 FCC Rcd 19215 (2004). Previously, the Commission's rules provided that do-not-call registrations had to be honored within 3 months. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14040, para. 38 (2003). The 3-month provision applied to telephone solicitations made before January 1, 2005.

¹⁰ 47 C.F.R. §64.1200(c)(2)(1)(A)-(E).

however, that the “safe harbor” from liability only applies if such person or entity is able to show that the particular violative calls made in spite of adherence to the enumerated do-not-call procedures were the result of specific error.

5. On February 28, 2007, in response to a consumer complaint alleging that AZ Prime One had made a telephone call for the purpose of delivering telephone solicitations to a residential telephone consumer who had registered a telephone number on the National Do-Not-Call Registry, the Bureau issued a citation¹¹ to AZ Prime One, pursuant to section 503(b)(5) of the Act.¹² The Bureau cited AZ Prime One for delivering one or more telephone solicitations to residential telephone consumers who had registered their telephone numbers on the National Do-Not-Call Registry, in violation of section 64.1200(c)(2) of the Commission’s rules. The citation warned AZ Prime One 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 complaint that formed the basis of the citation.¹³ The citation informed AZ Prime One that within 30 days of the date of the citation, it could either request an interview with Commission staff, or could provide a written statement responding to the citation. AZ Prime One did not request an interview or otherwise respond to the citation.

6. Following the issuance of the citation, the Commission received at least one complaint from a consumer alleging that AZ Prime One had delivered telephone solicitations to a residential telephone consumer who had registered a telephone number on the National Do-Not-Call Registry. The solicitations were for mortgage loans and refinancing. This violation, which occurred after the Bureau’s citation, resulted in the issuance of a Notice of Apparent Liability for Forfeiture against AZ Prime One on February 15, 2008 in the amount of \$10,000.¹⁴ The *NAL* ordered AZ Prime One to either pay the proposed forfeiture amount within thirty (30) days or submit evidence or arguments in response to the *NAL* to show that no forfeiture should be imposed or that some lesser amount should be assessed. AZ Prime One did not respond to the *NAL* or pay the proposed forfeiture amount.

III. DISCUSSION

7. Section 503(b) of the Act authorizes the Commission to assess a forfeiture 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. The maximum penalty for such a violation is \$11,000 for a violation occurring before September 2, 2008, and \$16,000 for a violation occurring on or after September 2, 2008.¹⁵ In exercising such authority, we are to take into

¹¹ Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-07-TC-578, issued to AZ Prime One Mortgage Company on February 28, 2007.

¹² See 47 U.S.C. § 503(b)(5) (authorizing the Commission to issue citations to persons who do not hold a license, permit, certificate or other authorization issued by the Commission or an applicant for any of those listed instrumentalities for violations of the Act or of the Commission’s rules and orders).

¹³ Commission staff mailed the citation to AZ Prime One Mortgage Company, Attn: Brian Ramsey, President, 7145 East 1st Street, Scottsdale, Arizona 85251-5307.

¹⁴ See n.2 *supra*; see also 47 U.S.C. § 503(b)(1).

¹⁵ Section 503(b)(2)(C) provides for forfeitures of 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) first to \$11,000 and more recently to \$16,000. 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)(forfeiture maximum for this type of violator set at \$11,000); *Amendment of Section 1.80(b) of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*,

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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.”¹⁶

8. Although the *Commission’s Forfeiture Policy Statement* does not establish a base forfeiture amount for violating the prohibition on making telephone solicitations to customers who have registered on the National Do-Not-Call Registry,¹⁷ the Commission has found that a national do-not-call violation implicates the same concern as a violation of the company specific do-not-call rules and, accordingly, justifies the application of the \$10,000 base amount that the Commission previously proposed for company specific do-not call violations.¹⁸ We apply that base amount to the apparent violation.

9. AZ Prime One did not respond to the NAL or pay the proposed forfeiture amount. AZ Prime One has failed to identify facts or circumstances to persuade us that there is a basis for modifying the proposed forfeiture, and we are not aware of any further mitigating circumstances sufficient to warrant a reduction of the forfeiture penalty. For these reasons, and based on the information before us, we hereby impose a total forfeiture of \$10,000 for AZ Prime One willful or repeated violation of section 227 of the Act and the Commission’s related rules and orders, as set forth in the *NAL*.

IV. ORDERING CLAUSES

10. 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(f)(4) of the Commission’s rules, 47 C.F.R. § 1.80(f)(4), and under authority delegated by sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, that AZ Prime One Mortgage Corporation IS LIABLE FOR A MONETARY FORFEITURE to the United States Government the sum of \$10,000 for willfully and repeatedly violating section 227(b)(1)(c) of the Communications Act, 47 U.S.C. § 227(b)(1)(c), section 64.1200(a)(3) of the Commission’s rules, 47 C.F.R. § 64.1200(a)(3), and the related orders as described in the paragraphs above.

11. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission’s rules within thirty (30) days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.¹⁹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be

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19 FCC Rcd 10945 (2004) (amendment of section 1.80(b) to reflect inflation left the forfeiture maximum for this type of violator at \$11,000); *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008) (amendment of section 1.80(b) to reflect inflation increased the forfeiture maximum for this type of violator to \$16,000).

¹⁶ See 47 U.S.C. § 503(b)(2)(D); see also *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) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999).

¹⁷ *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 (1997), recon. denied, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹⁸ *Dynasty Mortgage, LLC*, Order of Forfeiture, 22 FCC Rcd 9453, 9469, para. 43 (2007).

¹⁹ 47 U.S.C. § 504(a).

mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). AZ Prime One will also send electronic notification on the date said payment is made to Johnny.drake@fcc.gov. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

12. IT IS FURTHER ORDERED that a copy of the Forfeiture Order shall be sent by First Class mail and certified mail return receipt requested to AZ Prime One Mortgage Corporation, aka HomePlaceLoans.com, Attention: Kimberly Callan, President; Brian Ramsey, Secretary; and Donald W. Hudspeth, Registered Agent, 7145 E. 1st St., Scottsdale, AZ 85251-5307 and 20601 N. 19th Ave. #100, Phoenix, AZ 85027-3587.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau