

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Gary Braver
File No.: EB-TCD-15-00020134
NAL/Acct. No.: 201632170007
FRN: 0025786179

ORDER

Adopted: August 4, 2017

Released: August 4, 2017

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. The Enforcement Bureau (Bureau) issued a Notice of Apparent Liability for Forfeiture (NAL) and proposed a penalty of \$25,000 against Mr. Gary Braver for apparently causing the display of misleading or inaccurate caller ID information with the intent to cause harm.

II. BACKGROUND

2. On August 2, 2016, the Bureau issued an NAL proposing, in part, a \$25,000 forfeiture against Mr. Braver for his apparent violation of the Truth in Caller ID Act of 2009, as codified in Section 227(e) of the Communications Act of 1934, as amended, and Section 64.1604 of the Commission's rules.

3. Mr. Braver filed a response to the NAL (NAL Response) on September 26, 2016, in which he denied both knowledge of, and participation in, the apparently unlawful calls.

1 Steven Blumenstock and Gary Braver, Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 8648 (2016) (NAL).

2 Id. at 8653-8654, 8655, paras. 17, 22.

3 Id. at 8652-8653, para. 14.

4 Id. at 8652-8653, paras. 13, 16.

5 Although Mr. Braver's response was initially due September 1, 2016, we exercise our discretion to consider his response as filed and address the merits of his response herein.

6 On September 26, 2016, the Bureau received a sworn, notarized deposition statement under penalty of perjury, dated September 22, 2016, styled as a "Reply to Plaintiffs' Notice of Apparent Liability for Forfeiture" for the

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Blumenstock, in his separate response to the *NAL*, admitted that he participated in the violations described in the *NAL*.⁷ On January 13, 2017, the Bureau issued a Forfeiture Order imposing a penalty of \$25,000 against Mr. Blumenstock.⁸

III. DISCUSSION

4. In his *NAL* Response, Mr. Braver denies any knowledge of, or participation in, the making of the apparently unlawful spoofed telephone calls identified in the *NAL*.⁹ In addition, Mr. Braver provides a sworn affidavit from Mr. Blumenstock stating that Mr. Braver had no part in making the telephones calls at issue and Mr. Braver did not have knowledge of the telephone calls being made.¹⁰ With respect to calls that Mr. Braver made to the landline telephone number of Mr. Blumenstock, Mr. Braver explained that those calls were not calls to Mr. Blumenstock, but rather were calls to Mr. Blumenstock's ex-wife, Lynn Gottlieb Blumenstock, with whom Mr. Braver has a personal relationship.¹¹ Mr. Braver alleges in the *NAL* Response that the landline phone number that he dialed was originally registered in Mr. Blumenstock's name, but that Mr. and Ms. Blumenstock separated in 2010 and Ms. Blumenstock retained exclusive use of the landline phone after the separation.¹² The additional facts provided by Mr. Braver in his *NAL* Response, coupled with the sworn statements and admissions of Mr. Blumenstock,¹³ indicate that Mr. Braver did not participate in the campaign of harassing phone calls to Ms. Braver. Thus, Mr. Braver cannot be held liable for the violations alleged in the *NAL*.

IV. CONCLUSION

5. Based on the record before us, we conclude that the evidence is insufficient to find that Mr. Braver violated the Truth in Caller ID Act of 2009, as codified in Section 227(e) of the Communications Act of 1934, as amended, and relevant Commission rules. We hereby rescind the *NAL* as it relates to Mr. Braver and cancel the forfeiture imposed upon Mr. Braver.

V. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to 47 U.S.C. § 504(b) and 47 CFR § 1.80(f)(4), the Notice of Apparent Liability for Forfeiture issued to Mr. Braver is hereby **RESCINDED** as it relates to Mr. Braver, and the proposed \$25,000 forfeiture imposed upon Mr. Braver is **CANCELLED**.

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Supreme Court of the State of New York, County of Suffolk and a sworn, notarized deposition document, dated August 16, 2016, signed by Mr. Steven Blumenstock. The Bureau treats these documents as Mr. Braver's Response to the *NAL* in EB-TCD-15-00020134.

⁷ Affidavit of Steven Blumenstock, Aug. 16, 2016 (on file in File No. EB-TCD-15-00020134) (Blumenstock Affidavit).

⁸ *Steven Blumenstock*, Forfeiture Order, DA 17-57 (EB Jan. 13, 2017).

⁹ *Gary Braver*, Reply to Plaintiffs' Notice of Apparent Liability for Forfeiture (Sept. 26, 2016) (on file in File No. EB-TCD-15-00020134).

¹⁰ *Id.* at 6.

¹¹ *Id.* at 3-4 (explaining that Mr. Braver and Lynn Gottlieb Blumenstock, Steven Blumenstock's ex-wife, are involved in a personal relationship and his calls to that telephone number were associated with that relationship).

¹² *Id.* at 4.

¹³ *See* Blumenstock Affidavit.

7. It is further ordered that copies of this *Order* shall be sent by first class and certified mail, return receipt requested, to Mr. Braver at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau