

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 4

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 2013-CX-17

PUBLISHERS MARKETING
SERVICE, INC.,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Pursuant to the motion of the Plaintiff, State of Wisconsin, by its attorneys, J.B. Van Hollen, Attorney General, and Lewis W. Beilin, Assistant Attorney General, and based on the record before the Court, the Court hereby makes the following findings of fact, conclusions of law, judgment of default, and order:

FINDINGS OF FACT

1. Plaintiff, State of Wisconsin, is a sovereign state of the United States, having its offices and principal place of business at the State Capitol, Madison, Dane County, Wisconsin.

2. Publishers Marketing Service, Inc. is a Florida corporation that is not registered to transact business in the State of Wisconsin, though it has done so. Its corporate address is 8800 49th Street North, Suite 419, Pinellas Park, FL 33782.

The Florida registered agent for Publishers Marketing Service, Inc. is Larry D. Goldstein, 7601 38th Avenue North, St. Petersburg, FL 33710.

3. This action was brought pursuant to Wis. Stat. §§ 100.52(9) and 100.20(6), to obtain forfeitures, costs, and injunctive relief from Defendant for violations of the consumer laws identified below.

4. Venue is proper in Dane County pursuant to Wis. Stat. § 801.50(d).

5. Defendant engages in the business of selling renewals of magazine subscriptions.

6. Defendant, through its employees or agents, makes telemarketing calls to Wisconsin consumers to promote the sale of renewals of magazine subscriptions.

7. Defendant has never registered as a telemarketer with the Wisconsin Department of Agriculture, Trade and Consumer Protection, as required by Wis. Admin. Code § ATCP 127.81(1).

8. Pursuant to Wis. Stat. § 100.52 and Wis. Admin. Code § ATCP 127.82, the State maintains a non-solicitation directory (also known as the “no call list”) containing the residential phone numbers of Wisconsin residents who inform the State that they do not want to receive telephone solicitations.

9. Wis. Stat. § 100.52(4)(a)2. and Wis. Admin. Code § ATCP 127.82(2) (the “No Call Law”), prohibits making telephone solicitations to residential numbers listed on the no call list, with limited exceptions.

10. Defendant has made numerous telemarketing calls to numbers on the no call list when none of the exceptions to the statutory ban on such calls applies.

11. Since 2008, consumers have filed complaints with DATCP involving Defendant's telemarketing practices, including violations of Wisconsin's No Call Law.

12. Despite being informed of the no call complaints against it, Defendant has failed to modify its practices to come into compliance with the No Call Law.

13. In August 2012, DATCP sent a civil investigative demand to Defendant requesting, among other things, the company's telephone records for calls made to Wisconsin residents during certain identified periods during 2010 and 2011. Defendant has never responded to DATCP's civil investigative demand.

14. On January 4, 2013, DATCP sent a civil investigative demand to BrightHouse Networks, LLC the Florida-based phone company servicing the telephone number used to call Wisconsin consumers who filed complaints with DATCP. Information provided by BrightHouse Networks in response to that civil investigative demand shows that during the period August 18, 2011 to December 15, 2012, defendant placed 136 calls to Wisconsin numbers, of which over 69 were listed on the Wisconsin no call list.

15. Telemarketing calls using telephone numbers that are not registered with DATCP are prohibited by Wis. Admin. Code § ATCP 127.81(1)(c), which provides that "[n]o individual may make a telephone solicitation to a covered telephone customer unless the telephone solicitation is covered by a registration under this section."

16. During solicitation calls to Wisconsin residents, Defendant told at least two consumers that their magazine subscription rates were about to rise, in order to induce them to act quickly to renew their subscriptions.

17. After renewing their subscriptions, however, these consumers learned, from the magazine publisher directly, that their subscription rates were not going up.

18. Defendant also continued to make solicitation calls to one Wisconsin resident after she specifically, and repeatedly, asked Defendant to cease making such calls to her.

19. In the case of another consumer, Defendant charged him for a renewal subscription and then failed to provide the renewal, then refused to refund the consumer despite 17 requests to do so, finally providing the refund 9 months after the charge was made – and 3 months after his subscription had expired.

CONCLUSIONS OF LAW

1. Pursuant to Wis. Stat. § 802.02(4), because the defendant has failed to serve an Answer or other responsive pleading to the Complaint within 20 days of service of the Summons and Complaint upon it, the averments in Plaintiff's Complaint are deemed admitted and Plaintiff is entitled to a default judgment.

2. Defendant is a "telephone solicitor" within the meaning of Wis. Stat. § 100.52(1)(j).

3. Defendant is also a mail-order seller within the meaning of Wis. Stat. § 100.174(2).

4. Defendant violated Wis. Stat. § 100.52(4)(a)2. on 69 occasions by making telephone solicitations to residential customers whose telephone numbers were on the state's no-solicitation directory. Each such call is a separate violation carrying a forfeiture of \$100.00 pursuant to Wis. Stat. § 100.52(10), for a total forfeiture of \$6,900.

5. Defendant violated Wis. Stat. § 100.52(3) and Wis. Admin. Code § ATCP 127.82(2) on 136 occasions by making telephone solicitations to residential customers in Wisconsin without having registered as a telephone solicitor with the State of Wisconsin, as required by statute. Each call made without proper registration is a violation, subject to a \$100 forfeiture pursuant to Wis. Stat. § 100.52(10), for a total forfeiture of \$13,600.00.

6. Defendant violated Wis. Admin. Code § ATCP 127.81 on 136 occasions by making 136 telephone solicitation calls to Wisconsin residents using a telephone line that Defendant had not registered with DATCP, as required by Wis. Admin. Code § ATCP 127.81(1)(c). Each such call is a separate violation, subject to a forfeiture of between \$100 and \$10,000 pursuant to Wis. Stat. § 100.26(6). The Court concludes that \$100 is the appropriate penalty, for a total forfeiture of \$13,600.00.

7. Defendant has made misrepresentations in its telephone solicitations to two Wisconsin residents by telling them that their magazine subscription price was about to rise, when in fact it was not. Each such misrepresentation is a

violation of Wis. Admin. Code § ATCP 127.14(15) and carries a forfeiture of not less than \$100 nor more than \$10,000 for each violation, pursuant to Wis. Stat. § 100.26(6). The Court concludes that the appropriate penalty is \$100.00 per violation, for a total forfeiture of \$200.00.

8. Defendant has violated Wis. Admin. Code § ATCP 127.16(4) on one occasion by initiating a telephone solicitation to a consumer who had previously stated that he or she did not wish to receive solicitations from the seller. This violation is subject to a forfeiture of between \$100 and \$10,000 pursuant to Wis. Stat. § 100.26(6). The Court concludes that the appropriate penalty is \$100.00.

9. Defendant has violated Wis. Stat. § 100.174(2) by failing to deliver a magazine subscription within the delivery period or refund the amount paid for it. This violation carries a forfeiture of between \$100 and \$1,000 pursuant to Wis. Stat. § 100.174(5)(b). The Court concludes that \$100 is the appropriate penalty.

JUDGMENT

Based on the foregoing findings of fact and conclusions of law, and pursuant to Wis. Stat. § 806.02, which permits the court to render a judgment of default where no issue has been joined and the time for joining issue has expired, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. Judgment is entered against Defendant and in favor of the State of Wisconsin in the amount of **\$52,567.50** for civil forfeitures and surcharges comprised of the following:

a. Civil forfeitures of \$34,500.

b. A penalty surcharge of \$8,970, pursuant to Wis. Stat. § 757.05 (26 percent of forfeiture);

c. A consumer protection surcharge of \$8,625 pursuant to Wis. Stat. sec. 100.261 (25 percent of forfeiture);

d. A jail surcharge of \$345, pursuant to Wis. Stat. § 302.46 (1 percent of forfeiture);

e. A crime laboratories and drug enforcement surcharge of \$13.00, pursuant to Wis. Stat. § 165.755;

f. A court fee of \$25.00, pursuant to Wis. Stat. § 814.63;

g. A court support services surcharge of \$68.00, pursuant to Wis. Stat. § 814.85;

h. A justice information system surcharge of \$21.50, pursuant to Wis. Stat. § 814.86.

2. The defendant is also permanently ENJOINED from further violations of Wis. Stat. §§ 100.52, 100.174, and Wis. Admin. Code §§ ATCP 127.14, 127.16, 127.81, and 127.82. In particular, before the defendant makes any further telemarketing calls to Wisconsin residents, defendant shall register with DATCP as a telephone solicitor, and shall register the phone lines and numbers that it shall use to make such telemarketing calls.

3. Upon proper notice, any party may apply to the court, which shall retain jurisdiction, for such further orders as may be necessary or appropriate for the revision, modification, or enforcement of the judgment.

IT IS SO ORDERED.

Dated this 18th day of September, 2013.

BY THE COURT:



AMY R. SMITH
Circuit Court Judge