



## Compliance and Enforcement Decision CRTC 2015-475

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### **Ziad Rawdah, carrying on business as Kareem Duct Cleaning – Violations of the Unsolicited Telecommunications Rules**

*The Commission imposes total administrative monetary penalties of \$15,000 on Ziad Rawdah for the initiation of telemarketing telecommunications on his behalf while he was not a registered subscriber of the National Do Not Call List (DNCL) and had not paid the applicable fees to the National DNCL operator, and while he was not registered with, and had not provided information to, the National DNCL operator.*

#### **Introduction**

1. Between 1 July 2013 and 23 July 2014, telemarketing telecommunications were made on behalf of Mr. Ziad Rawdah, carrying on business as Kareem Duct Cleaning.
2. On 17 March 2015, a notice of violation was issued to Mr. Rawdah pursuant to subsection 72.07(1) of the *Telecommunications Act* (the Act).<sup>1</sup> The notice informed Mr. Rawdah that he was vicariously liable for the conduct of the telemarketer, which had initiated the following:
  - 10 telemarketing telecommunications on behalf of a client that was not a registered subscriber of the National Do Not Call List (DNCL) and had not paid the applicable fees to the National DNCL operator, in violation of Part II, section 7<sup>2</sup> of the Commission's Unsolicited Telecommunications Rules (the Rules); and
  - 10 telemarketing telecommunications on behalf of a client that was not registered with, and had not provided information to, the National DNCL operator, in violation of Part III, section 3<sup>3</sup> of the Rules.

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<sup>1</sup> Subsection 72.07(1) of the Act states that a person authorized to issue notices of violation who believes on reasonable grounds that a person has committed a violation may issue, and shall cause to be served on that person, a notice of violation.

<sup>2</sup> Part II, section 7 of the Unsolicited Telecommunications Rules (the Rules) states that a telemarketer shall not initiate a telemarketing telecommunication on behalf of a client unless that client is a registered subscriber of the National DNCL and the applicable fees to the National DNCL operator associated with that client's subscription have been paid.

<sup>3</sup> Part III, section 3 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication on behalf of a client unless that client has registered with, and provided information to, the National DNCL operator, and all applicable fees charged by the Complaints Investigator delegate associated with that client have been paid.

3. The notice of violation set out administrative monetary penalties (AMPs) for 20 violations at \$750 per violation, for a total amount of \$15,000.
4. Mr. Rawdah was given until 17 April 2015 to pay the AMPs set out in the notice of violation or to make representations to the Commission regarding the violations.
5. The Commission received representations from Mr. Rawdah.
6. Based on the record of this proceeding, the Commission has identified the following issues to be addressed in this decision:
  - Did Mr. Rawdah commit the violations?
  - Is the amount of the AMPs reasonable?

### **Did Mr. Rawdah commit the violations?**

7. Part II, section 7 and Part III, section 3 of the Rules prohibit a telemarketer from initiating telemarketing telecommunications on behalf of a client unless that client is registered with the National DNCL operator and subscribed to the National DNCL, and has provided information and paid the applicable fees to the National DNCL operator.
8. As per section 72.16 of the Act,<sup>4</sup> a person is liable for a violation that is committed by an employee of the person acting in the course of the employee's employment, or by an agent or mandatary of the person acting within the scope of the agent's or mandatary's authority, whether or not the employee or agent or mandatary who actually committed the violation is identified or proceeded against.
9. During the period under investigation, Mr. Rawdah was not a registered subscriber of the National DNCL and had not paid the applicable fees to the National DNCL operator. Mr. Rawdah stated to investigators and confirmed in his representations that he had hired a telemarketer to initiate telemarketing calls on his behalf while he was carrying on business as Kareem Duct Cleaning. As a result of this arrangement, Mr. Rawdah received a list of duct-cleaning appointments that were booked by the telemarketer, and paid the telemarketer per appointment booked. Given this arrangement, Mr. Rawdah is vicariously liable for the violations committed by the telemarketer in the course of initiating telemarketing calls on Mr. Rawdah's behalf.
10. Accordingly, on a balance of probabilities, Mr. Rawdah is found to have committed the violations outlined in the notice of violation dated 17 March 2015.

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<sup>4</sup> Formerly section 72.02 of the Act

## **Is the amount of the AMPs reasonable?**

11. In Telecom Decision 2007-48, the Commission stated that the appropriate factors to be considered in determining the amount of an AMP include the nature of the violations, the number and frequency of complaints and violations, the relative disincentive of the measure, and the potential for future violations.<sup>5</sup>
12. The making of unsolicited telemarketing telecommunications on behalf of clients that are not registered with the National DNCL operator and not subscribed to the National DNCL is a serious violation that causes significant inconvenience and nuisance to consumers who have registered their numbers on the National DNCL. Failure to subscribe to the National DNCL as required increases the likelihood that telemarketing telecommunications will be made to consumers whose numbers are registered on the National DNCL. Such telecommunications, by their nature, violate the expectation of consumers not to receive them. In this case, Mr. Rawdah was neither registered with the National DNCL operator nor subscribed to the National DNCL during the period under investigation.
13. Regarding the number and frequency of complaints and violations, Mr. Rawdah hired a telemarketer to conduct telemarketing telecommunications on his behalf for the period of 1 July 2013 to 23 July 2014. Mr. Rawdah confirmed to investigators that three to four appointments per week were scheduled as a direct result of the telemarketing calls initiated on his behalf to telephone numbers in the Greater Toronto Area. At no point during the period under investigation was Mr. Rawdah registered with the National DNCL operator or subscribed to the National DNCL.
14. Regarding the relative disincentive of the measure, the Commission must ensure that the AMPs it imposes serve as an incentive to comply with the Rules. Among other things, compliance includes both registering with the National DNCL operator and purchasing subscriptions to the area codes that will be contacted. AMPs must not be set so low as to be financially advantageous for a telemarketer or a client of a telemarketer to consider the amount as a cost of doing business.
15. An individual who commits a violation under section 41 of the Act is liable to an AMP of up to \$1,500 per violation. In this case, total AMPs of \$15,000 (20 violations at \$750 per violation) are reasonable and necessary to promote compliance with the Rules by Mr. Rawdah.

## **Conclusions**

16. The Commission has found that Mr. Ziad Rawdah, doing business as Kareem Duct Cleaning, committed 10 violations of Part II, section 7 of the Rules, and 10 violations of Part III, section 3 of the Rules. The Commission therefore imposes total AMPs of \$15,000 on Mr. Rawdah.

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<sup>5</sup> In addition, the Commission stated in Compliance and Enforcement Regulatory Policy 2015-109 that the ability to pay is a factor to be considered when determining the amount of an AMP.

17. The Commission hereby notifies Mr. Rawdah of his right to apply to the Commission to review and rescind or vary this decision under section 62 of the Act, and to seek leave of the Federal Court of Appeal to appeal this decision before that court 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.<sup>6</sup> In accordance with section 64 of the Act, an application for leave to appeal must be made to the Federal Court of Appeal within 30 days of the date of this decision or within such further time as a judge of the Court grants in exceptional circumstances.
18. The Commission reminds Mr. Rawdah that, should he initiate telemarketing telecommunications or cause such telecommunications to be initiated in the future, he is required to comply with the Rules. Examples of measures that Mr. Rawdah should adopt to ensure compliance with the Rules include 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 a 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.
19. The Commission advises Mr. Rawdah that to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
20. The amount of \$15,000 is due by **23 November 2015** 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 **23 November 2015**, 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.
21. 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

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<sup>6</sup> In Telecom Information Bulletin 2011-214, the Commission issued, pursuant to the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, revised guidelines for review and vary applications to reflect the modified time limit in which such applications must be made.

## Related documents

- *Administrative monetary penalties under the Voter Contact Registry*, Compliance and Enforcement Regulatory Policy CRTC 2015-109, 27 March 2015
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2007, as amended by Telecom Decision CRTC 2007-48-1, 19 July 2007