

STATE OF NEW YORK
DEPARTMENT OF STATE

In the Matter of the Alleged Violations of the
Do Not Call Registry

CONSENT ORDER

- by-

File No. 2013 -0452

CITY POWER & GAS, LLC

1. The New York State Department of State, Division of Licensing Services (the "Department") is a department of the State of New York charged with administration and enforcement of General Business Law § 399-z and 21 New York Codes, Rules and Regulations (NYCRR) Parts 4602 and 4603.
2. An enforcement action and proceeding against CITY POWER & GAS, LLC ("Company") was initiated based upon complaints received by the Department alleging violations of the Do Not Call Registry, in violation of General Business Law § 399-z and 21 New York Codes, Rules and Regulations (NYCRR) Parts 4602 and 4603.
3. The Department's investigation confirms that Company has apparently violated New York General Business Law (GBL) Section 399-z and 21 NYCRR Parts 4602 and 4603 by making no less than twenty-nine (29) unsolicited telemarketing sales calls to twenty-eight (28) consumers whose telephone numbers were validly registered on the National Do Not Call Registry.
4. Company has been advised of their right to be represented by counsel, and is represented in these proceedings by Usher Fogel, Esq., 557 Central Avenue, Suite 4A, Cedarhurst, NY 11516.
5. By executing this Consent Order, Company affirmatively waives the right to a hearing in the manner provided by law, consents to the issuance and entry of this Order and agrees to be bound by the terms, provisions and conditions contained herein.
6. Company enters into this agreement in order to resolve a disputed matter. Company affirms that all violations alleged in the Department's Notice of Apparent Liability, regarding a pattern of business practices which allegedly violated the relevant sections of the General Business Law have been, or will be rectified, in accordance with the terms set forth herein:

To resolve the Department's allegations that the Company made no less than twenty-nine (29) unsolicited telemarketing sales calls to fourteen (14) consumers whose telephone numbers were validly registered on the National Do Not Call Registry, in violation of New York General Business Law (GBL) Section 399-z and 21 NYCRR Parts 4602 and 4603 the Company agrees to a settlement payment in the amount of \$500 per alleged call, for a total payment due of **\$14,500**.

NOW, in consideration of the above premises, it is **ORDERED**:

1. That Company shall execute and forward the within Consent Order to the NYS Department of State, Office of General Counsel, Attn: Linda D. Cleary, Esq., One Commerce Plaza, 99 Washington Avenue, 5th Fl., Albany, NY 12231, so that the original of same is received on or before July 21, 2014, or this agreement shall be considered void and of no effect.
2. That Company shall pay a fine in the amount of \$14,500, being due on or before July 21, 2014, with payment to be in the form of attorney's check, cashier's/certified check or money order, made payable to the New York State Department of State. Failure to submit an attorney's check, certified/cashier's check or money order in the stated first payment amount, together with an original fully executed copy of this Consent Order will render the offer set forth herein null and void.

ALL PAYMENTS MUST BE IN THE FORM OF ATTORNEY'S CHECK, CASHIER'S/CERTIFIED CHECK OR MONEY ORDER. PERSONAL OR BUSINESS CHECKS ARE NOT ACCEPTABLE. The mailing address for all payments is: NYS Department of State, Office of General Counsel, Attn: Linda D. Cleary, Esq., One Commerce Plaza, 99 Washington Avenue, 5th Fl., Albany, NY 12231.

3. That upon execution of this Order by the Secretary of State or his designee, the disciplinary file involving the referenced telemarketing calls, being pursued by virtue of issuance of a Notice of Apparent Liability in this matter, shall be terminated, withdrawn and discontinued with prejudice with respect to Company in accordance with the terms hereof.
4. That the Consent Order herein expressly depends upon representations made by the Company, both oral or written, formal or informal which relate to the subject matter of the Consent Order and that such representations have fully, accurately and truthfully disclosed all relevant facts to the Department of State. If any such representation is determined to be limited, inaccurate or untruthful, the Department of State shall not be bound by the terms herein and shall initiate any action it deems appropriate in the administrative, civil or criminal prosecution of the Company.
5. The effective date of this Order shall be the date on which the Secretary of State or his designee signs the same and shall expire when Company has fully complied with the requirements of this Order. The Department will provide Company or Company's counsel with a fully executed copy of this Order as soon as practicable after the Secretary of State signs the same.
6. The failure of Company to comply fully and in a timely fashion with any provision of this Consent Order shall constitute a default and a failure to perform an obligation under this Consent Order. Such default shall result in an administrative hearing for the purpose of determining whether additional penalties should be imposed due to Company's Default and failure to perform an obligation under this Order.
7. This Order constitutes the entire agreement of the parties and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Secretary of State or his designee indicating intent to modify this Order.

8. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demand whatsoever that the Department may have against anyone other than Company; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial for any other violations of the General Business Law or conditions contained in orders if any, issued by the Department to Company.

Dated: 8/13/14
Albany, New York

NEW YORK STATE
DEPARTMENT OF STATE

By: W. H. S.

CONSENT OF CITY POWER & GAS, LLC, by and through Dean T. Jardin, President

Respondent **CITY POWER & GAS, LLC, by and through Dean T. Jardin, President**, hereby consents to the issuing and entering of this Order, waives the right to a hearing and agrees to be bound by the terms and conditions herein.

CITY POWER & GAS, LLC

By: _____

Dean T. Jardin, President

STATE OF ^{Florida} ~~NEW YORK~~)
) ss:
COUNTY OF ~~Putnam~~ ^{Putnam})

On this 29 day of July in the year 2014 before me, the undersigned, personally appeared Dean T. Jardin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Terena Goodside Terena Goodside
Notary Public

