

STATE OF NEW YORK  
DEPARTMENT OF STATE  
In the Matter of a Proceeding Pursuant to Articles 26  
of the General Business Law and  
Regulations promulgated thereunder,

**CONSENT ORDER**

- by-

File #13 - 0017  
#13 - 1316

Premier Yankee of Upstate NY, LLC

Respondent.

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1. The New York State Department of State ("Department") is an executive agency of the State of New York charged with the regulation of the "Do Not Call" law and the enforcement of Article 26 of the General Business Law.
2. An enforcement action and proceeding against Premier Yankee of Upstate NY, LLC (Premier) 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 alleges that Premier has apparently violated New York General Business Law § 399-z and 21 NYCRR Parts 4602 and 4603 by making no less than thirty five (35) unsolicited telemarketing sales calls to twenty one (21) consumers whose telephone numbers were validly registered on the Do Not Call Registry.
4. The Department's staff conducted an investigation, which investigation resulted in commencement of the above-captioned administrative proceeding.
5. Premier has been advised of their right to be represented by an attorney and they are represented by Craig D. Chartier, Attorney at Law, of Dibble & Miller, P.C. with an office address located at 55 Canterbury Road, Rochester, New York 14607-3436.
6. By executing this Consent Order, Premier affirmatively waives its 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.
7. Premier enters into this agreement in order to resolve a disputed matter. Premier 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 Premier made no less than thirty five (35) unsolicited telemarketing sales calls to twenty one (21) consumers whose telephone numbers were validly registered on the National Do Not Call Registry, in violation of New York General Business Law Section 399-z and 21 NYCRR Parts 4602 and 4603, Premier agrees to a settlement payment in the amount of \$500.00 per alleged call, for a total payment due of **\$10,500.00**.

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

1. That Premier shall return the fully executed and notarized Consent Order such that same is received by the Department on or before September 1, 2014. The mailing address to send the Consent Order is: NYS Department of State, Division of Licensing Services, Attn: John E. Kenny, Senior Attorney, One Commerce Plaza, 99 Washington Avenue, 5<sup>th</sup> Floor, Albany, NY 12231.
2. That Premier shall pay a fine in the amount of **\$10,500.00 (Ten Thousand Five Hundred Dollars)**, in twelve equal monthly installment payments, with the first installment in the amount of \$875.00 being due on or before September 1, 2014; the second installment in the amount of \$875.00 being due on or before October 1, 2014; the third installment in the amount of \$875.00 being due on or before November 1, 2014; the fourth installment in the amount of \$875.00 being due on or before December 1, 2014; the fifth installment in the amount of \$875.00 being due on or before January 1, 2015; the sixth installment in the amount of \$875.00 being due on or before February 1, 2015; the seventh installment in the amount of \$875.00 being due on or before March 1, 2015; the eighth installment in the amount of \$875.00 being due on or before April 1, 2015; the ninth installment in the amount of \$875.00 being due on or before May 1, 2015; the tenth installment in the amount of \$875.00 being due on or before June 1, 2015; the eleventh installment in the amount of \$875.00 being due on or before July 1, 2015 and the twelfth installment in the amount of \$875.00 being due on or before August 1, 2015. All installment payments shall be in the form of a cashier's check or money order, payable to the **New York State Department of State**.
3. That upon execution of this Order by the Secretary of State or his designee, the Complaint in this matter shall be terminated, withdrawn and discontinued with prejudice with respect to Respondent in accordance with the terms hereof.
4. That the Consent Order herein expressly depends upon representations made by Respondent 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 Respondent.
5. The effective date of this Order shall be the date on which the Secretary of State or his designee signs the same. The Department will provide Respondent or its counsel with a

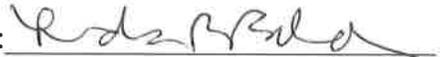
forth in a writing executed by the Secretary of State or his designee indicating an intent to modify this Order.

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 Respondent, its parents, subsidiaries or affiliates (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 applicable laws, the implementing regulations or conditions contained in orders if any, issued by the Department to Respondent.

Dated:

August 27, 2014  
Albany, New York

NEW YORK STATE  
DEPARTMENT OF STATE

By: 

~~William Sharp~~ Linda Baldwin  
Deputy Counsel  
GENERAL

**CONSENT OF HUGH P. FOY**

Hugh P. Foy, Chief Executive Officer, on behalf of Premier Yankee of Upstate NY, LLC hereby consents to the issuing and entering of this Order, waives his right to a hearing and agrees to be bound by the terms and conditions herein.

  
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Hugh P. Foy  
Chief Executive Officer

STATE OF NEW YORK    )  
                                  )  
                                  )    ss.:  
COUNTY OF            )

On this 11 day of August in the year 2014 before me, the undersigned, personally appeared Hugh P. Foy, 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.

  
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Notary Public

DAVID J. DREVERMAN  
Notary Public, State of New York  
WAYNE COUNTY  
Lic # 01DR6203113  
Comm. Exp. March 30, 2017