

STATE OF NEW YORK
DEPARTMENT OF STATE

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

- by-

CONSENT ORDER
15-DNC-0238

MPOWER ENERGY LIMITED LLC
LAVIE POPACK

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. Respondent MPower Energy Limited LLC (“MPower”) is a domestic limited liability company with an address of 24 Hillel Place, Brooklyn, NY 11210. As used herein, MPower shall include its affiliates, successors and assigns, and all their employees, agents, attorneys, officers, directors, shareholders, subsidiaries, members, and parents.
3. The Department of State’s Division of Consumer Protection received numerous complaints stating that MPower violated the Do Not Call law.
4. The Department’s staff conducted an investigation, which investigation resulted in commencement of the above-captioned administrative proceeding.
5. MPower has been advised of its right to be represented by an attorney and is represented by David M. Berger, Esq., Tenenbaum Berger & Shivers LLP, 26 Court Street, Penthouse, Brooklyn, New York 11242.
6. By executing this Consent Order, MPower affirmatively waives the right to a hearing in the manner provided by law, consents to the issuance and entry of this Consent Order and agrees to be bound by the terms, provisions and conditions contained herein.
7. MPower enters into this agreement solely to resolve this administrative disputed matter. MPower affirms that all violations alleged in the Department’s Notice of Apparent Liability, regarding a pattern of business practices by MPower 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 MPower made no less thirty-five (35) unsolicited telemarketing sales calls to sixteen (16) 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, MPower agrees to a settlement for a total payment due of **\$17,500.00**.

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

1. That MPower shall execute and forward the within Consent Order to the **NYS Department of State, Division of Consumer Protection, Attn: Aiesha L. Battle, Esq., One Commerce Plaza, 99 Washington Avenue, Suite 640, Albany, NY 12231**, so that the original of same is received on or before **October 14, 2016**;
2. That MPower shall be ordered to pay a fine in the amount of seventeen thousand, five hundred dollars (\$17,500.00) in five (5) equal monthly installment payments with the first installment in the amount of **\$3,500** due on or before **October 14, 2016**; the second installment in the amount of **\$3,500** being due on or before **November 15, 2016**; the third installment in the amount of **\$3,500** being due on or before **December 15, 2016**; the fourth installment in the amount of **\$3,500** being due on or before **January 16, 2017**; and the fifth installment in the amount of **\$3,500** being due on or before **February 15, 2017**.

All installment payments shall be made payable to: **"NYS Department of State"** by certified check, postal money order, or by check drawn on its attorney's trust account by the due date.

3. That upon execution of this Consent Order by the Secretary of State or her designee, the Complaint in this matter shall be terminated, withdrawn and discontinued with prejudice with respect to MPower in accordance with the terms hereof;
4. Lavie Popack is released as a Respondent with no findings made against him in this action.
5. That execution of this Consent Order resolves any and all claims and causes of action that the Department has, has had or may have against Respondents for alleged violations of the Do-Not-Call Law up to and including the date of entry of this Order;
6. That the Consent Order herein expressly depends upon representations made by MPower, 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 MPower;

7. The effective date of this Consent Order shall be the date on which the Secretary of State or her designee signs the same and shall expire when MPower has fully complied with the requirements of this Consent Order. The Department will provide MPower or MPower's counsel with a fully executed copy of this Consent Order as soon as practicable after the Secretary of State or her designee signs the same;
8. The failure of MPower to comply fully and in 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 the MPower's default and failure to perform an obligation under this Consent Order;
9. This Consent 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 her designee indicating an intent to modify this Consent Order;
10. Nothing contained in this Consent 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 MPower; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Consent 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 MPower.

Dated:

10/19/2014
Albany, New York

NEW YORK STATE
DEPARTMENT OF STATE

By: 

Aiesha L. Battle, Esq.

Director, Division of Consumer Protection

