Australian Government Solicitor the leading lawyers to government

AGS

Express law
fast track information for clients

4 October 2012

Federal Court decision on unwanted door knocking

In the first case to test the Australian Consumer Law (ACL) provisions around door-to-door sales practices, the Federal Court has ordered by consent that the respondents in *ACCC v Neighbourhood Energy* (27 September 2012) pay total penalties of $1 million.

The orders also clarify that salespeople can contravene the ACL and be liable for penalty by disturbing consumers who have in place a visible 'Do not knock' sign on their premises.

Background

Division 2 of the ACL, being Sch 2 of the *Competition and Consumer Act 2010*, governs unsolicited sales practices. It places express obligations on suppliers who conduct business by making unsolicited consumer agreements through telemarketing, door-to-door sales and other direct selling outside a retail context. The purpose of the provisions is to protect consumers from improper sales practices. In the door-to-door sales context, this includes an obligation on sales representatives to disclose their identity and the purpose of their call, and to leave immediately upon the consumer's request.

The ACCC, represented by the Australian Government Solicitor, commenced proceedings against Neighbourhood Energy Pty Ltd, an energy retailer, and Australian Green Credits Pty Ltd (AGC), a marketing company engaged by Neighbourhood Energy to sell its products through door-to-door marketing.

Over several months in 2011, contractors of AGC visited residential homes to sell retail electricity products offered by Neighbourhood Energy. In breach of s 74(b) of the ACL, some contractors did not always clearly advise consumers that they were obliged to leave the premises immediately upon request. In three instances the contractors also did not clearly advise consumers that the purpose of their visit was to negotiate an agreement (in breach of s 74(a)) and in two of those instances consumers were told that the contractor was not there to sell anything, or was not there to try to change the consumer's electricity company, when this was not the case (in breach of s 18).

In addition, the contractors did not clearly disclose all the identification details required by s 74(c). Although they carried identification badges with Neighbourhood Energy's name and the contractor's photograph and name on the front, the badges only referred to AGC and provided the address of both companies on the back.

In two instances, the contractors also failed to leave the premises upon the consumer's request, both where the consumer made a verbal request and where the consumer displayed a 'Do not knock' sign. This comprised breaches of s 75.

In breach of s 18 of the ACL, contractors in two instances acted in a way which was misleading or deceptive, or likely to mislead or deceive, by representing to consumers that they were not asking them to change suppliers, that the consumer was being overcharged by their current supplier or that the consumer had been zoned incorrectly, when this was not the case.

Orders

Justice Marshall ordered a pecuniary penalty of $850,000 against Neighbourhood Energy and $150,000 against AGC.

Justice Marshall also made declarations of contravention, publication orders against both parties, required them to establish or maintain a trade practices compliance program, and granted an injunction against the parties engaging in specified conduct in relation to unsolicited consumer agreements in breach of the ACL.

Reasons for judgment are yet to be handed down; however, the orders confirm that the display of a 'Do not knock' sign constitutes a consumer's request that a door-to-door salesperson leave the premises. The significant pecuniary penalties ordered should serve as a warning to those conducting business door-to-door that they need to be stringent in ensuring compliance with ACL requirements.

For further information, please contact:

David Ablett
Senior Executive Lawyer
T 03 9242 1247 **F** 03 9242 1215
david.ablett@ags.gov.au

Kate Scarlett
Lawyer
T 03 9242 1426 **F** 03 9242 1215
kate.scarlett@ags.gov.au