

establishing that Dynasty only began regularly accessing the National Do-Not-Call Registry within the required time interval after the Dynasty NAL. Such a record cannot support a finding that Dynasty properly implemented its written compliance plan during the forfeiture period.

3. Training of Personnel - Section 64.1200(c)(2)(i)(B)
35. Section 64.1200(c)(2)(i)(B) of the safe harbor defense requires a seller to demonstrate that as part of its routine business practice, "it has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules." In the Dynasty NAL, we found that Dynasty's LOI response did not reasonably demonstrate the existence of an adequate training program to meet this safe harbor requirement. By contrast, the materials provided by Dynasty in its NAL Response detail a rigorous telemarketing training program that includes, as a primary component, Dynasty's obligations with respect to both national and company-specific do-not-call requirements. We have no information, however, to verify that such training was conducted during the time frame in question or in the manner described in Dynasty's most recent pleading. Further, claims made by Dynasty telemarketers to consumers who questioned or challenged Dynasty's calls raise questions as to whether Dynasty accurately and effectively educated its personnel. Nonetheless, because we have determined above that Dynasty has not met other safe harbor criteria, we need not rule here on the adequacy of its training program during the forfeiture period.
4. Purchasing the Registry - Section 64.1200(c)(2)(i)(E)
36. The safe harbor requires a telephone solicitor to demonstrate that it "uses a process to ensure that it does not sell, rent, lease, purchase, or use the national do-not-call database, or any part thereof, for any purpose except compliance with [the do-not-call rules] and any such state or federal law to prevent telephone solicitations to telephone number registered on the national database." It must demonstrate that it "purchases access to the relevant do-not-call data from the administrator of the national database and does not participate in any arrangement to share the cost of accessing the national database, including any arrangement with telemarketers who may not divide the cost to access the national database among various client sellers." Dynasty's LOI response failed to provide any information or statement regarding this aspect of the safe harbor, and the NAL so noted this deficiency. In its April 122 NAL Response, however, Dynasty states that it (1) purchases the National Do-Not-Call Registry from the administrator; (2) uses the National Do-Not-Call Registry solely for compliance with do-not-call requirements; and (3) does not participate in any arrangement to share costs of accessing the National Do-Not-Call Registry. We have no reason to question Dynasty's assertions in this regard. Compliance with a single safe harbor requirement, however, does not remove liability for unlawful calls.
5. Error - Section 64.1200(c)(2)(i)
37. The error aspect of the safe harbor defense exempts from liability telephone solicitations that are the result of specific identifiable errors that occurred during telemarketing conducted in compliance with each do-not-call safe harbor provision contained in section 64.1200(c)(2)(i). Accordingly, failure to meet a single safe harbor standard renders error irrelevant. Moreover, as emphasized in the Dynasty NAL, the error defense does not apply simply because an entity meets all other safe harbor criteria. Instead, once an entity has demonstrated compliance with each safe harbor standard, it may then invoke an error claim by showing that unlawful telephone solicitation occurred as a result of a specific error. As explained above, we conclude that Dynasty has failed to demonstrate compliance with at least two safe harbor standards for the time frame at issue, and thus cannot claim the safe harbor defense even if it were able to demonstrate that particular calls are attributable to identifiable errors.
38. Dynasty's NAL Response claims stringent procedures to ensure compliance with National Do-Not-Call rules and appears to suggest that any unlawful calls should be found to have been made in error. In this regard, Dynasty compares the total number of telemarketing calls that it has made during various periods between February 2004 and March 2005 against the number of national do-not-complaints lodged against it during those time frames, yielding claimed complaint rates between .00014 and .00129 percent. According to Dynasty, these miniscule complaint levels attest to the efficacy of its do-not-call practices and demonstrate that any unlawful calls are the result of error.
39. Further, although Dynasty does not indicate that it has discovered specific events or oversights that may have caused such alleged errors, it outlines possible breakdowns that could lead to unlawful calls being made outside its normal do-not-call procedures.
40. Dynasty's arguments about complaint levels and possible glitches in national do-not-call compliance might be credible if it had fully implemented its compliance plan and accessed the National Do-Not-Call Registry as required, but it did not. In addition, some of the possible breakdowns to national do-not-call compliance that Dynasty posits are more indicative of an inherently flawed compliance program than error.
41. Finally, Dynasty appears to misunderstand the interplay between error and intent. While intent is relevant in assessing whether an unlawful

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telephone solicitation made by an otherwise compliant telemarketer constitutes error, a call is not made in error simply because a telemarketer did not intend to violate national do-not-call requirements or did not intend to call numbers on the National Do-Not-Call Registry. Whatever a seller's specific intent in making a particular telemarketing call, calling a number on the National Registry cannot be deemed unintentional when a seller has failed to implement basic threshold procedures to guard against making such calls. Further, it does not matter whether or not a seller's failure to implement is intentional when such failure is substantial, pervasive, and recurring. The safe harbor in our rules thus recognizes that a telemarketer's intent to avoid unlawful calls is best evidenced by detailed compliance procedures and adherence to basic requirements such as timely access to the Registry. In short, the error defense only applies to unlawful actions that occur despite comprehensive policies and procedures to prevent them. Dynasty clearly did not adhere to such procedures during the forfeiture period.

- A. Dynasty Has Failed to Show that the Proposed Forfeiture for 68 Calls Should Be Reduced or Canceled
42. Section 503(b) of the Act authorizes the Commission to assess a forfeiture of up to \$11,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act, by a non-common carrier or other entity not specifically designated in section 503 of the Act. In exercising such authority, we are to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."
43. The Dynasty NAL proposes the maximum forfeiture of \$11,000 for each alleged violation of section 64.1200(c)(2) of the Commission's rules. Although the Dynasty NAL is the Commission's first proposed forfeiture for violations of the national do-not-call rules, we determined that a national do-not-call violation implicates the same concern as a violation of the company-specific do-not-call rules and, accordingly, applied the \$10,000 base amount that the Commission had previously proposed for company-specific do-not-call violations. In Dynasty's case, we adjusted the base amount upward to the \$11,000 maximum to reflect that (1) Dynasty's practices were "wholly inadequate" to promote compliance with national do-not-call rules; (2) Dynasty's violations continued despite being informed by the Commission's staff that it was relying upon a non-existent exemption to justify its calls; and (3) Dynasty continued to misinform consumers that it is exempt from national do-not-call rules even after admitting, in correspondence to the Commission, that it is subject to these rules.
44. In the NAL Response, Dynasty seeks cancellation of the forfeiture claiming that it has implemented a rigorous and costly national do-not-call plan on short notice and that it did not willfully make telephone solicitations to consumers on the National Do-Not-Call Registry. Finally, Dynasty contends that imposition of any forfeiture threatens its financial solvency. For the reasons set forth below, we find that Dynasty has failed to present evidence justifying reduction or cancellation of the proposed forfeiture with respect to the 68 calls at issue here.
1. Dynasty's Conduct
1. Dynasty failed to meet critical elements of its obligations under the Commission's national do-not-call rules, most notably the threshold duties to timely access the National Do-Not-Call Registry and scrub its telemarketing lists to ensure that calls are not made to registered numbers. Dynasty's record thus belies its claim to have implemented an effective national do-not-call compliance plan during the forfeiture period. Dynasty chose to engage in telemarketing without ensuring compliance with the most basic do-not-call requirements mandated by section 64.1200(c)(2), resulting in multiple calls to consumers registered on the National Do-Not-Call Registry. Regardless of Dynasty's intentions, its violations are, therefore, both willful and repeated.
46. Dynasty's NAL Response provides detailed information about the steps it has taken to comply with national do-not-call rules. Whatever Dynasty's current procedures may be, however, we must consider here the state of Dynasty's compliance at the time it made the calls currently at issue. Even if Dynasty ultimately brought its telemarketing activities into full and consistent compliance with national do-not-call rules, that fact alone would not militate against forfeiture. Consumers should be able to expect that sellers who choose to use telemarketing to advertise their property, goods, or services will comply with do-not-call requirements without the necessity of costly and time-consuming enforcement actions.
47. As emphasized in the NAL, our initial goal in this case was to seek Dynasty's compliance with the law; not to seek a forfeiture. First, as required by the Act, we issued a citation to Dynasty, warning it specifically about its non-compliance and requesting that it take corrective action immediately. Next, after the citation was issued, we took into consideration its assertion regarding the basis for its initial noncompliance and its claim of immediate remedial actions, and we then monitored complaints filed against Dynasty rather than beginning a forfeiture action immediately. We commenced our forfeiture action only after complaint levels indicated that Dynasty was still making unlawful telephone solicitations and Dynasty's response to our LOI revealed the insufficiency of Dynasty's national do-not-call

compliance program. Nonetheless, we did not impose a forfeiture for any calls made by Dynasty before its February 20, 2004 letter to the Division, which formally acknowledged its do-not-call obligations and pledged effective enforcement. Dynasty has not met even minimal compliance standards. Its conduct, therefore, does not merit reduction or cancellation of the proposed forfeiture for the 68 unlawful calls.

2. Financial Hardship

48. Dynasty details its financial challenges and submits numerous financial documents to support its claim that any forfeiture would threaten its financial solvency, jeopardizing the continued operation of both the Arizona and California entities. As explained in the Dynasty NAL, the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Despite these clear requirements, Dynasty does not include a succinct statement of its financial status beyond a summary assertion regarding its liabilities. More critically, Dynasty fails to provide the documentation necessary to justify reducing or canceling the forfeiture based on financial hardship. Dynasty has not provided any federal tax returns to support its hardship claim. Further, although Dynasty has submitted over 30 pages of financial records pertaining to its Arizona and California companies, crucial information is missing. Dynasty provides various bank account records, profit and loss statements, and balance sheets along with copies of sworn statements from its president and chief operating officer attesting to the accuracy of unidentified financial records. We cannot be certain, however, as to which records the sworn statements pertain because these statements actually predate some of Dynasty's financial documentation. In addition, the documentation does not include 2004 financial data for Dynasty's California operations despite indication to the contrary in the NAL Response. This omission prevents our consideration of a key factor necessary to assess Dynasty's financial status and hardship claim: its total gross revenues. Commission staff urged Dynasty to provide a more complete and clear financial showing, including copies of its federal tax returns, yet Dynasty has not to date responded. Dynasty's incomplete showing fails to reliably and objectively document the company's financial status and, thus, does not justify reducing or canceling the forfeiture.

IV. Conclusion and Ordering Clauses

49. After reviewing the information and documentation filed by Dynasty in its NAL Response, we find that Dynasty has failed to identify facts or circumstances to persuade us that there is a reasonable basis for modifying the forfeiture proposed in the Dynasty NAL with respect to the 68 telephone solicitations listed in Appendix A. As discussed above, Dynasty has failed to show any mitigating circumstances or demonstrate financial hardship sufficient to warrant a reduction of the forfeiture penalty. We are, however, canceling the proposed forfeiture with respect to two calls that were made one day before effectuation of the call recipient's national do-not-call registration.
50. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 (f)(4) of the Commission's rules, 47 C.F.R. § 1.80(f)(4), that Dynasty Mortgage, L.L.C. SHALL FORFEIT to the United States Government the sum of \$748,000 for willfully and repeatedly violating of section 64.1200(c)(2) of the Commission's rules, as described in the paragraphs above and detailed in Appendix A. We find that Dynasty's Arizona and California companies are jointly and severally liable for this forfeiture because of their common ownership and operations, and the fact that they have acted in concert to deliver telephone solicitations.
51. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C., 20554.
52. IT IS FURTHER ORDERED that a copy of this Order shall be sent by first class mail and certified mail return receipt to Dynasty Mortgage, L.L.C. at: (1) 2633 E. Indian School Rd., Suite 370, Phoenix, Arizona 85016; (2) 5701 W. Talavi Blvd., Suite 110, Glendale, Arizona 85306; and (3) 4660 E. LaJolla Village Dr., Suite 400, San Diego, California 92122.

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Marlene H. Dortch

Secretary

Appendix A

DYNASTY MORTGAGE, L.L.C.

NATIONAL DO-NOT-CALL VIOLATIONS SUBJECT TO FORFEITURE

		Call Recipient's	Dynasty's Telephone Solicitation							
Telephone Recipient	Call Area Code	D-N-C-Registration					Caller ID			
			Registration Date	Effectuation Date	Date of Call	Date of Dynasty's Access to		Timely Access to D-N-C Registry	Expired Access to D-N-C Registry	No Access to D-N-C Registry
D-N-C Registry										
1 Adams, Robert	858 (CA)		8/13/03	10/1/03	8/3/04	3/8/04		X		
2 Atkinson, Nigel	619 (CA)		6/28/03	10/1/03	8/31/04	3/13/04		X		
3 Berens, Barbara	602 (AZ)		8/18/04	11/18/04	12/27/04	3/15/04		X		602-218-9221
4 Bonomo, Robert	858 (CA)		7/23/03	10/1/03	8/3/04	3/8/04		X		
5 Carlson, Jay E.	623 (AZ)		6/28/03	10/1/03	3/9/04	3/15/04			X	602-445-9276
6 Chute, William P.	619 (CA)		6/28/03	10/1/03	8/14/04	3/13/04		X		Dynasty Mortgage 602-218-9221
7 Demchak, Barry	858 (CA)		7/26/03	10/1/03	3/26/04	3/8/04	X			858/362-8695
8 Denisac, Frank	858 (CA)		6/28/03	10/1/03	3/2/04	3/8/04			X	858-362-8695
9					7/13/04			X		602-218-9221
10 Epps, John	858 (CA)		6/28/03	10/1/03	8/2/04	3/8/04		X		602-218-9221
11					8/11/04			X		602-218-9221
12 Ferguson, Bruce	760 (CA)		6/27/03	10/1/03	8/14/04	3/13/04		X		602-218-9221
13 Fernando, E. Joe A. IV	619 (CA)		7/26/03	10/1/03	4/13/04	3/13/04	X			
14 Finnegan, Philip (Jay)	619 (CA)		7/26/03	10/1/03	4/12/04	3/13/04	X			
Call Recipient's Dynasty's Telephone Solicitation										
Solicitation Recipient	Recipient's Area Code	D-N-C-Registration								Displayed
			Registration Date	Effectuation Date	Date of Call	Date of Dynasty's Access to				Timely
D-N-C Registry										
15 Frank, Kevin	619 (CA)				1/22/04	4/22/04	11/30/04	3/13/04		
16 Gittus, Michael	623 (AZ)				7/6/03	10/1/03	6/7/04	3/15/04	X	
17 Grimes, Larry A.	619 (CA)				6/28/03	10/1/03	5/10/04	3/13/04	X	
18							5/11/04		X	
19 Hansen, Patricia	619 (CA)				6/29/03	10/1/03	8/7/04	3/13/04		
20 Holland, Christopher J.	858 (CA)				8/6/03	10/1/03	3/5/04	3/8/04		
21 Holmes, Mark	858 (CA)				9/22/03	12/22/03	11/22/04	3/8/04		
22 Jaycox, Antoinette	480 (AZ)				10/13/03	1/13/04	8/2/04	3/15/04		
23 Johnson, Todd	602 (AZ)				4/14/04	7/14/04	10/26/04	3/15/04		
24 Kertesz, Joe	480 (AZ)				4/25/04	7/25/04	8/16/04	3/15/04		
25							1/6/05		X	
26 Koepke, Kevin	480 (AZ)				8/2/04	11/2/04	1/19/05	1/06/05	X	

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27				1/20/05	X
28	Langevin, Edwin	858 (CA)	7/26/03	10/1/03	9/27/04 3/8/04
29	Lauterbach, Lynette	480 (AZ)	8/16/04	11/16/04	12/13/04 3/15/04
30					12/13/04
31	Lewis, Jeffrey	619 (CA)	6/30/03	10/1/03	7/10/04 3/13/04
32					11/30/04
33	Logan, Michelle	623 (AZ)	5/15/04	8/15/04	12/1/04 3/15/04
34					12/6/04
35					12/18/04

Call Recipient's

Dynasty's Telephone Solicitation

D-N-C- Registration

Solicitation Recipient	Recipient's Area Code	Registration Date	Effectuation Date
35 Logan, Michelle (cont.)	623 (AZ)	5/15/04	8/15/04
37			
38 Madden, William	619 (CA)	7/26/03	10/1/03
39			
40			
41 Marler, James	619 (CA)	6/29/03	10/1/03
42 McKenzie, James	858 (CA)	7/1/03	10/1/03
43 McKenzie, Thomas	619 (CA)	7/1/03	10/1/03
44 Mitchell, Kelly	619 (CA)	7/18/03	10/1/03
45 Neuberg, Karen	480 (AZ)	7/10/04	10/10/04
46 Novitz, Stuart	858 (CA)	6/27/03	10/1/03
47 Oleska, Myron	619 (CA)	7/13/03	10/1/03
48 Pickwell, Sheila	858 (CA)	6/30/03	10/1/03
49 Ramsey, Marian	480 (AZ)	7/1/03	10/1/03
50 Recker, Irene	858 (CA)	6/29/03	10/1/03
51 Rice, Marilyn	858 (CA)	6/29/03	10/1/03
52			

Sof

Call Recipient's

D-N-C- Registration

Telephone Solicitation Recipient	Call Recipient's Area Code
53 Rippetoe, Patrick	858 (CA)
54 Rumsey, Eric	619 (CA)
55	
56 Scotti, Diane	623 (AZ)

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57

58

59 Stewart, Hal 480 (AZ)

60 Taub, Charles 858 (CA)

61 Torkington, 619 (CA)
Adrian

62 Van Hoven, 480 (AZ)
Lynn

63

64 Vizcarra, 760 (CA)
Victor

65 Walker, Claire 619 (CA)

66 Wassel, 858 (CA)
Theodore A.

67 Worthington, 858 (CA)
Mary

68 Zanelli, 858 (CA)
Elizabeth

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According to Dynasty, "Dynasty Mortgage" refers to two separate companies owned by Curtis L. White who serves both as President and Chief Executive Officer. See Dynasty Response to Apparent Liability for Forfeiture, dated April 12, 2005. The entities, both named Dynasty Mortgage L.L.C., were organized separately in Arizona and California in 2000 and 2002, respectively, although Dynasty's own website and internal documents have represented the companies as a single entity. Because of their common ownership and operations, and the fact that the Arizona and California companies have acted in concert to deliver telephone solicitations, we find both Dynasty entities jointly and severally liable for the forfeiture imposed herein. We have obtained information indicating that Dynasty may have ceased operations. See Better Business Bureau of Central and Northern Arizona, Reliability Report, Jan. 16, 2007 ("According to information in the Bureau files, it appears that the company is no longer in business. The numbers the Bureau had for this company are disconnected, and directory assistance does not have a listing for this company. The Bureau's mail to this company has been returned as undeliverable."). In addition, Dynasty's California telephone number is not in service, and the website that served both Dynasty's Arizona and California businesses is no longer operating. Further, the Arizona Department of Financial Institutions reports that on April 27, 2006, Dynasty's license as a mortgage broker was revoked. See Arizona Department of Financial Institutions, Summary of Actions Report at 42 (April 2006), http://azdfi.gov/Forms/SAR_2006_04.pdf. Records of the Arizona Corporation Commission show that in April 2006, an individual named Curtis White accepted appointment as the statutory agent for Preferred Mortgage Services, Inc., a company incorporated in the state of California in 1991 and seeking to do business in Arizona. See Preferred Financial Group, Inc. d/b/a Preferred Mortgage Services, Inc., Application for Authority to Transact Business in Arizona (Apr. 19, 2006). At the time of the telemarketing violations addressed herein, Dynasty operated out of two offices in Arizona and one in California: (1) 2633 E. Indian School Rd., Suite 370, Phoenix, Arizona 85016; (2) 5701 W. Talavi Blvd., Suite 110, Glendale, Arizona 85306; and (3) 4660 E. LaJolla Village Dr., Suite 400, San Diego, California 92122.