

Downstream Telemarketing Vendors Beware: You May Be on the Hook for Your Partner's TCPA Troubles

Article By:

Connor Treanor

Hello all. I hope you all had a happy holiday season and enjoyed the time off with your families. I have an interesting case to share with you all for my first post of 2024, involving the well-known serial plaintiff, Mark Dobronski. *EGV COMPANIES, INC. v. BTB MARKETING, LLC*, No. 4:23-CV-00939-NCC, 2024 WL 111698 (E.D. Mo. Jan. 10, 2024).

First, a bit of background.

Mark Dobronski sued several entities for violating telemarketing laws. One of those entities was EGV Companies, Inc. Rather than duking it out in court, EGV decided to settle the case and agreed to pay Dobronski \$118,999.50.

EGV then turned around and sued another company, BTB Marketing, LLC, claiming that BTB had breached its contract. In short, EGV stated that BTB would “repay the balance” of losses due to the poor lead that resulted in Dobronski lawsuit.

Prior to EGV suing BTB, BTB contributed \$55,000 out of the \$118,999.50 settlement. However, EGV sued for what it considered the remaining balance of \$68,399, including attorney's fees. More recently, EGV filed a motion to remand the case back to state court.

Let's take a look.

BTB timely removed the original Complaint based on diversity jurisdiction—arguing that the amount in controversy *exceeded* the state court's jurisdiction limit of \$75,000.

Shortly after, EGV filed a motion to remand the case back to state court arguing that they were “damaged in the amount of \$68,399.50 as a direct and proximate result of Defendant BTB's breach of its contract to repay this balance.”, and that the amount requested is in the state court's jurisdictional threshold.

BTB countered by stating that the amount in question did in fact exceed the \$75,000 limit, yet provided absolutely no evidence to prove it. The Court was not persuaded by BTB's meritless argument. Ultimately, the Court remanded the case back to state court because it found that EGV's

original Complaint “unambiguously state[d] the alleged damages, \$68,399.50”, which fell short of the threshold for federal court (\$75,000).

So what can we learn from this recent decision? Downstream vendors must be cautious and ensure they are vetting leads as best as possible. You should always anticipate that if your partner loses a lawsuit or pays a settlement, you may owe some portion of indemnity.

BTB learned these lessons the hard way. EGV’s settlement with Dobronski immediately brought BTB into the fold and spawned another lawsuit, despite BTB not being the company that directly called Dobronski in the first place.

So, if your company is a lead provider, make sure you always tread carefully. Don’t assume you’re off the hook if your lead buyer has legal troubles. Understand your contracts and remain diligent on being compliant, or you may end up losing more in the long run. Thank you for reading, and talk soon.

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