

Department of Workforce Development
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State of Wisconsin
Department of Workforce Development
Scott Walker, Governor
Reginald J. Newson, Secretary

April 11, 2013

Kevin Potter, Administrator
Division of Legal Services
Wisconsin Department of Justice
17 W Main St
Madison WI 53703

Re: Action for violations of Wis. Stat. § 103.34 and Wis. Admin. Code Ch. DWD 273

Dear Mr. Potter:

We request that you commence action against **Satton Marketing** for violations of Wisconsin Statutes Section 103.34, the Traveling Sales Crew law. This action should include the assertion of statutory forfeitures as provided in Wis. Stat. § 103.34(12)(a).

In June 2012, an employee of Satton Marketing contacted our department about alleged violations of the Traveling Sales Crew law. The agency investigated and found violations as detailed on the Final Determination. We found 55 violations between April 20, 2012 and August 26, 2012.

I have enclosed the DWD file in this matter, and I request that the Department of Justice take all appropriate steps to enforce and collect the payments required by the DWD orders in the file. We are requesting the maximum forfeiture of \$1,000 for the following 55 verified instances of unauthorized traveling sales crew activity in Wisconsin.

A complete certified copy of the case file is included with this letter. Please take every reasonable action to pursue the forfeitures owed in this matter. If you have any questions, please contact me at (608) 266-9427 or e-mail me at howard.bernstein@dwd.wisconsin.gov

Sincerely,

Howard Bernstein
Legal Counsel

Enclosure – Final Determination

cc: Complainant
Employer
File
Count File

**STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
EQUAL RIGHTS DIVISION**

In the matter of

ERD Case # LS 201201419

The Department of Workforce Development's (DWD's) investigation of Satton Marketing, LLC ("Satton"), to determine if Satton violated Wis. Stat. § 103.34, Wisconsin's Traveling Sales Crew regulations, when it directed workers to work on its behalf in the State of Wisconsin.

FINAL DETERMINATION

On June 26, 2012, the Department initiated an investigation of Satton based upon complaints made by Sean Bailey and Jordan Candee, Satton crew members.

On March 21, 2013, the Department issued an initial determination concerning this case concluding that Satton was an employer engaged in traveling sales crew activities in Wisconsin without obtaining a certificate of registration or proper permits for traveling sales crew workers. Therefore, Satton violated the statute on thirteen documented occasions.

Satton, by its counsel, Sonny J. Olsen and Axiom Legal, filed a timely appeal of the Conclusions of the initial determination. Satton continues to argue that it did not violate the law because the workers in question were independent contractors and not employees.

After reviewing the case record, including the materials submitted with the appeal request, the Department now makes the following:

FINDINGS OF FACT

1. Satton is a corporation headquartered in Orem, Utah, at 730 South Sleepy Ridge Drive. It is in the business of selling DirecTV and Dish Network upgrades and services to consumers from house to house. It sent salespersons to Wisconsin during the summer of 2012.
2. The Traveling Sales Crew law provides:

Registration required. No person may **employ, offer to employ, or otherwise recruit** an individual to work as a traveling sales crew worker without first obtaining a certificate of registration from the Department.

Wis. Stat. § 103.34(2) (Emphasis added).

3. Satton never applied for a certificate of registration from the Department, and thus never obtained such a certificate.
4. Sean Bailey and Jordan Candee reported that they were part of a twelve-member crew hired by Satton as salespersons. In early May 2012, they traveled together in a group and were absent overnight from their permanent places of residence for the purpose of

selling consumer goods or services to consumers, namely satellite television upgrades or services, from house to house in Wisconsin. Satton does not dispute this assertion, except to allege that the workers were not employees, but instead they were independent contractors.

5. Bailey and Candee reported that all crew members were permanent residents of other states. Bailey is a permanent resident of Tennessee, for example. The workers stayed in apartments rented for them in the Traceway Apartment complex in Fitchburg, Wisconsin, and traveled on a daily basis to do sales work in various communities. The crew members were:

Sean Bailey
Eric Blews (off-site manager)
Jordan Candee
Sean Ecklund
Nick Pearce (off-site manager)
Dino Tome
Aaron (last name unknown; no longer there as of 6/25/12)
Bruno (last name unknown)
Danny (last name unknown)
Doug (last name unknown)
Isaac (last name unknown)
Jennifer (last name unknown; no longer there as of 6/25/12)

6. Workers engaged in selling from house to house in Wisconsin, Mondays through Fridays from noon until 9 PM, and on Saturdays from 9 AM until about 3:30 or 4:30 PM. Each day, the crew would be driven back to their Fitchburg apartment after the day of selling, sometimes returning as late as midnight or 2:00 AM. Bailey and Candee reported working in Waunakee, Madison, Sauk City, Beloit, and the Town of Dunn.
7. On June 5, 2012, Nicholas Sergey Pearce was cited for operating a motor vehicle without proof of insurance. Pearce gave a Texas address as his home address. He was driving a vehicle with Texas plates.
8. The Department received information about a Better Business Bureau of Utah complaint regarding a Madison, Wisconsin consumer who complained that he ordered services from Candee through Satton Marketing on June 18, 2012. See Attachment A, Copy of Better Business Bureau Complaint Report.
9. On July 1, 2012, Sean Ecklund was cited in Lancaster, Wisconsin, selling within the city limits without a permit.
10. On July 6, 2012, Officer in Charge Daniel Swinehart of the Highland Police Department, Highland, Wisconsin, reported to the DWD that he had a run-in with Satton workers. A week later, he provided the details, stating that he observed Sean Roger Ecklund selling from house to house in Highland driving a car with Texas license plates. See Attachment B, Wisconsin Courts information about City of Lancaster citation.
11. On July 12, 2012, Dino Tome knocked on the door of several houses in Poynette, Wisconsin, according to a consumer in that community. He reported to the consumer that he was from Texas and that Satton would be in the area until late August 2012.

Tome reported that his fellow crew members were also selling in Blanchardville, Darlington, and Arlington, Wisconsin.

12. After speaking with the Department, Bailey and Candee informed Satton they would no longer engage in traveling sales crew activities without proper registration. They told Satton they would not continue to violate the law. Satton terminated them after they reported these concerns.
13. In a letter dated July 13, 2012, Investigator Maria Selsor contacted Phillip Stockton, CEO of Satton, Timothy Stockton, President, and Grant Miser, Senior Vice President of Sales, informing them that the department had reason to believe that Satton was violating Wis. Stat. §103.34 and asking for a written response. The letter also directed Satton to immediately cease all traveling sales activities in Wisconsin.
14. On July 30, 2012, CEO Stockton provided a written response alleging that the crew members were independent contractors, and thus, the statute did not apply. Investigator Maria Selsor contacted Stockton and informed him that the statute specifically prohibits employers engaged in traveling sales crew activities from classifying workers as independent contractors.¹
15. Satton did not dispute any of the Findings of Fact from the initial determination, other than to say that the findings were made on “sparse evidence.”
16. Satton argues that “Federal Law trumps Wisconsin’s statute here and therefore, Satton is properly characterizing its workers as employees contractually and as a matter of federal law.” By this, we assume Satton means that it can, contrary to Wisconsin law, characterize these workers as independent contractors.
17. On Satton’s website, it holds itself out as the employer. “We believe working for us is an easy decision...”, “We provide a very stable, economy-proof job...” It explains that “Satton gives the best and most experienced sales training to each sales representative.” It provides a manual, sales materials, clothes, and “supportive management.” See Attachment C, “Why Satton.”

CONCLUSIONS

- A. Satton is a business that was engaged in traveling sales crew activities in Wisconsin within the meaning of Wis. Stat. § 103.34.
- B. Satton never obtained the certificate of registration required by Wis. Stat. § 103.34(2).

¹ See Wis. Stat. § 103.34(9)(c):

(9) **Prohibited practices.** No employer of a traveling sales crew worker and no employee, agent, or representative of that employer who supervises or transports traveling sales crew workers may do any of the following:

...

(c) Consider a traveling sales crew worker to be an independent contractor rather than an employee.

- C. Satton engaged in unlawful traveling sales crew activities in Wisconsin during the summer of 2012. Based upon the un rebutted Findings of Fact made in the initial determination, and found to be supported by substantial information from consumers, law enforcement, and employee witnesses, the Department concludes that Satton engaged in traveling sales crew activities in violation of Wis. Stat. § 103.34 on at least 55 days. The Department believes that the maximum forfeitures of \$55,000 should be pursued for these violations. See Attachment D, Satton Marketing Traveling Sales Crew Violations.
- D. Satton relies on Utah District Court case from 1994 to support its argument that salespeople are properly classified as independent contractors. See *Covey & Co. v. United States*, 1994 U.S.D.C., Lexis 4122 (U.S. D.Ct. Utah). This case was a tax dispute under the Internal Revenue Code, and found that Covey & Company's salespeople were independent contractors between January 1, 1986, and December 31, 1998. Clearly, this has no bearing on this case. The analysis of independent contractor status under the IRS code is similar, but not the same as analysis under Wisconsin's wage and hour laws. Additionally, even under the IRS code, analysis of independent contractor status is done on a case by case basis. Therefore, a finding that a company's salespeople were independent contractors in the late 1980s does not mean that ALL salespeople are independent contractors. Nor does it mean that Covey & Company's salespeople were independent contractors either before or since the decision. Moreover, a Utah federal district court case could in no way preempt the State of Wisconsin from enacting legislation as it has done here. For purposes of this statute, traveling sales crew members cannot be considered independent contractors.
- E. Satton states that this statute "attempts to limit Satton's and the worker's [sic] contractual rights and tax classification." It has no bearing on such issues. That being said, however, even under traditional IRS standards, these workers were employees. The company paid rent for them at the apartment complex in which they lived, told them how to do the job, gave them specific instructions and required that they perform their work in specified ways. They held themselves out as Satton Marketing workers and not as persons operating their own independent businesses. These workers were definitely not free from Satton's direction and control. Nonetheless, federal tax law has no bearing on this matter.

SUMMARY

The Department now refers this matter to the Department of Justice requesting that it commence an action to collect the maximum amount of forfeitures available based upon the information available to the Department of Workforce Development, or \$55,000.

Dated at Madison, Wisconsin, this 10th of April, 2013



Jim Chiolino
Director, Labor Standards Bureau

Enclosures: Attachments A - D

COMPLAINT ACTIVITY REPORT Case # 22131965 Better Business Bureau of Utah

Consumer Info:

Hahn, Charles
[REDACTED]

Business Info: Satton Marketing LLC

768 N 1200 W
Orem, UT 84057
801 607-5807

Location Involved: (Same as above)

Consumer's Original Complaint :

When signing up for service I specified no auto withdrawals from bank. Their auto withdraw caused an overdraft. And service has not begun yet.

On 6/18/2012 I ordered Dish Network from sales rep Jordan Candee. Reference ticket number 20122603516. At that time I stated no auto withdrawals from my bank. I was not informed of an advance payment for services. I was told no install fee, \$25 for a pole mount, and \$33 a month for service. The time for the install was not what I had agreed to so I had to reschedule the install. When that day came I was informed I needed to call diggers hotline and had to reschedule install again. In the mean time, on 6/21/2012, an amount of \$43.19 was withdrawn from my bank without my knowledge. The amount was more than I had in my account because I hadnt deposited my check. So the bank also assessed a \$33 overdraft fee. When I called Satton Marketing to have the money refunded to my bank because I didnt authorize it, I was informed they always take the first month from the bank on record. They also, I spoke with Melissa, told me they would not pay the overdraft fee, and if I wanted the \$43.19 back I would have to cancel. None of this was told to me when I signed up. This is for Dish Network through Satton Marketing. I dont want to cancel. I still want service installed on July 5, 2012. But I want. To pay after getting a bill like I agreed to when I signed up. They have caused me to pay extra bank fees because of there deception. Had I known, I would have had,d funds available.

Consumer's Desired Resolution:

I would like them to refund to my bank what they withdrew, \$43.19 plus the overdraft fee of \$33. And I would like them to send me a bill for the first month, or give me a day of withdrawal so I can have funds available.

06/29/2012	web	BBB	Complaint Received by BBB
07/02/2012	LW	BBB	Complaint Reviewed by BBB Operator
07/02/2012	Otto	EMAIL	Send acknowledgement to Consumer
07/02/2012	Otto	MAIL	Inform Business of the Complaint
07/16/2012	WEB	BBB	RECEIVE BUSINESS RESPONSE : Contact Name and Title: Andrew Peterson - Director of Administration

Contact Phone: 801-877-0480

Contact Email: drew@sattonsales.com

Satton Marketing is a sales company for both Dish Network and DirecTV. DirecTV does not charge the first months upfront bill. Dish Network charges the first months bill upfront. Satton has no control over that situation. The customer signed up for Dish Network and the \$43.19 was his first months bill. Also the customer will receive a \$10 discount on their service for doing credit card auto pay. That discount works months 2-13.

07/16/2012	LW	EMAIL	Forward Business response to Consumer
08/01/2012	Otto	BBB	No response received from Consumer
08/01/2012	Otto	MAIL	Inform Business - Case Closed ASSUMED SATISFIED
08/01/2012	Otto	BBB	Case closed - Assumed Satisfied

A

search calendar pay fees online reports help view cart (0 items)

Lancaster, City of vs. Sean R Ecklund

[Printable Version \(PDF\)](#)

Grant County Case Number 2012FO001003

What is RSS? 

Filing Date 07-10-2012	Case Type Non-Traffic Ordinance Violation	Case Status Closed - Commitment issued 01-04-2013 for Ecklund, Sean R
Defendant Date of Birth [REDACTED]	Address [REDACTED]	
Branch Id 1	DA Case Number [REDACTED]	

Court Record Events

- ⬇ Ascending Date Order
- ⬆ Descending Date Order

Charge(s)

Count No.	Statute	Description	Severity	Disposition
1	12.05	Sell in City Limits w/o Permit	Forf. U	Guilty Due to No Contest Plea

[View history and details of Charge\(s\)/Sentence\(s\)](#)

Defendant Owes the Court: \$ 200.50

Responsible Official VanDeHey, Robert P.	Prosecuting Agency Lancaster City Atty	Prosecuting Attorney	Defense Attorney
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Defendant

Defendant Name Ecklund, Sean R	Date of Birth [REDACTED]	Sex Male	Race¹ Caucasian
Address [REDACTED]			Address Updated On 06-28-2012
JUSTIS ID	Finger Print ID		

Citations

Citation 3200122

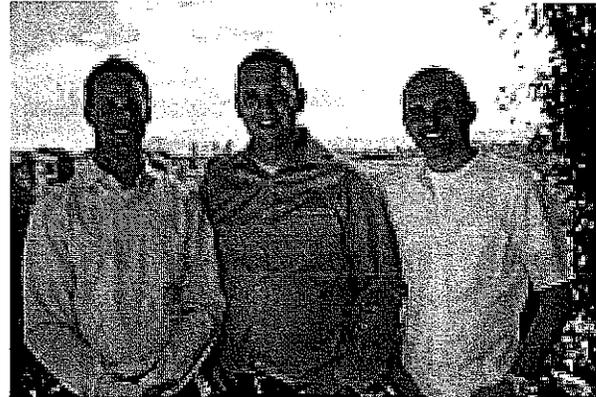
Bond Amount \$ 200.50	Deposit Type None	Appearance Date and Time 07-16-2012 at 01:00 pm	Mandatory No
Name Ecklund, Sean R		Date of Birth [REDACTED]	Sex Male
Address [REDACTED]			Address Updated On 06-28-2012
Plate Number	State WI	Expiration	VIN
Issuing Agency Lancaster Police Dept	Officer Name Reukauf, Debra A.	Violation Date 06-28-2012	MPH Over
Plaintiff Agency Lancaster, City of	Ordinance or Statute Ordinance	Statute 12.05	Charge Description Sell in City Limits w/o Permit
Severity Forf. U			





We believe working for us is an easy decision, but if you are asking yourself, why satton, here are the reasons:

THE JOB - We provide a very stable, economy-proof job where you can take control of your income. It is a year-round opportunity that provides many of our hard working employees with a six-figure income. You can sell television, internet, and phone service anywhere in the country, so our market is anywhere you want to go. We will be in 10 out of state locations this year and have selected the best areas possible. Our only competition is ourselves, so if you are ambitious and want to get ahead for yourself, this might be the right job for you.



During the preseason we have sales trips every weekend to increase sales and sales training. We have incentives, competitions, activities and trips to build great relationships and make the job fun.

COMPENSATION - Everyone needs money and some people are willing to go to great lengths to get some. If money motivates you and you like getting paid for what you accomplish when you work and not the time you log in at an hourly job, then Satton is a good fit.

We know that our compensation per sale is higher than any other similar company. The harder you work, and the more driven you are to succeed, the more dollar bills you will have to buy cool things.

You can be successful selling with Satton! You can make more money with Satton over any other company. We're growing more than 300% per year and are attracting the best sales people in the business because of the amazing growth potential. The longer you work with Satton the more you will earn for your efforts.

TRAINING - Satton gives the best and most experienced sales training to each sales representative. Available to you are: a professional training manual, sales materials, apparel, supportive management, and active employees dedicated to your success. Before summer arrives you will know what to do and will have confidence in your ability to sell our services. We give you 12 months to hit the highest pay levels compared to a short 4 month season like pest control and security companies, making it another great reason to sell for Satton!

NETWORKING vs. COLD RECRUITING - Selling for Satton is fun so it should be easy to invite your friends to join us. Satton has focused on the value of network recruiting (as opposed to cold recruiting) and has been very successful at it. When you join Satton, you join a family of good friends. We recognize that by taking care of the people who take care of us, our employees will be loyally working to bring others to Satton. If you know someone who is considering a sales position, you can easily set up a meeting with one of our sales executives and also take advantage of a free lunch.

ORGANIZATION - The first year in business Satton invested everything into organizing a business that could grow successfully, then reinvested everything the next year. As the owner of Satton, I am committed to continuing to reinvest our profits into providing the best opportunity for you. Fancy cars and expensive tastes are nice, but not if it means less money in your pockets. Growth and expansion are what we invest our money in. Because of this we have accomplished in our second year what some of our direct competitors accomplished in their fifth and sixth years, placing Satton at the top of the industry this year.

Although we have grown immensely and sold thousands of accounts over the past few years, we are still in our growing stages as a company. We realize that quality leaders and managers are the best asset we can have as a company, so we are always looking for new leaders, and will provide opportunities this summer to train and build up

C

Satton Marketing
Traveling Sales Crew ViolationsPrepared April 10, 2013
ERD Case No. LS201201419

Week Ending Date	Number of Days Crews Worked
05/19/12	5
05/26/12	5
06/02/12	5
06/09/12	5
06/16/12	5
06/23/12	5
06/30/12	5
07/07/12	5
07/14/12	5
07/21/12	5
07/28/12	5
Total	<u><u>55</u></u>

For purposes of this decision, we estimate crew operation based upon information supplied by crews members.

Candee and Bailey confirm that they operated 6 days per week from early May. We have no information about operation after July. Assuming some days off for inclement weather, we estimate 5 days per week worked in violation of the law.