

June 2011

Maryland Court Quashes Subpoena to TV Journalist for Testimony Concerning Broadcast on Locksmith's Business Practices

Shield Law Protects Journalist in Consumer Protection Probe

PUBLISHED IN: [MediaLawLetter May 2011](#)

TOPICS: [Reporters Privilege](#)

A Maryland trial court last month quashed a subpoena issued by the state Attorney General's Consumer Protection Division to a television journalist seeking testimony about his station's investigation of a locksmith's practices.

WMAR-TV, a Scripps Broadcasting station in Baltimore, has been following the state's consumer protection proceedings against Joseph M. Horton, who runs his business under the name "Around the Clock Locksmith." In August 2010, in a civil proceeding, the Attorney General's Office secured a preliminary injunction that required Horton to immediately cease and desist from:

- Engaging in any unfair or deceptive trade practices in violation of the Maryland Consumer Protection Act;
- Selling or offering to sell locksmith services unless he provided estimates quoting the total cost of their services before performing services, and to specify the particular services they will perform at that cost; and
- Selling or offering to sell locksmith services unless he completed the installation, repair, opening or modification of the lock or locks, any other services that he said they would perform, for the price that he quoted to the consumer.

WMAR-TV aired a story in November 2010 as part of its continuing coverage of Horton and the court proceedings.

As part of the story, Jeff Herman, a WMAR-TV producer, locked his keys in the trunk of his car. Herman then made a call on his cellphone. The station's reporter's voiceover reported that Herman was calling Horton's business. Herman's side of the conversation was broadcast in the story, including his repetition of the locksmith's telephone estimate of \$150 for the service. The story then showed Horton arriving at the parking lot where Herman's car was parked. Herman provided his credit card and identification to Horton, who remained in his van. WMAR-TV's reporter explained that Horton was attempting to charge Herman \$825 for the services. The reporter then emerged and questioned Horton about the charges. Horton denied providing a different price over the phone, and he drove off.

Following the broadcast, dozens of people contacted the Attorney General's Office to report allegedly similar encounters with Horton. On the basis of those complaints, the Attorney General's Office brought a motion seeking to hold Horton in contempt. The Attorney General's Office asked for full restitution to Horton's customers and to have him jailed.

In the contempt proceedings, the Attorney General's Office subpoenaed WMAR-TV's producer Herman, and in opposing the motion to quash, represented that the journalist would be asked: 1) what day he made the telephone call captured in the November 2010 video recording; 2) what telephone number he called; 3) whether the person who answered the telephone was a man or a woman and whether the person identified himself or herself; 4) what the other person on the telephone said; and 5) to authenticate the video recording.

In moving to quash the subpoena, WMAR-TV asserted its rights under Maryland's Shield Law (Md. Code, Courts and Judicial Proceedings, § 9-112), Article 40 of the Maryland Declaration of Rights, and the First Amendment to the U.S. Constitution. The hearing was held on April 26, 2011, after the court had heard the Attorney General's Office put on testimony against Horton from five witnesses who had called his business for service.

At the hearing on the Motion to Quash, counsel for WMAR-TV argued that the requested testimony would require Herman to reveal source information, in contravention of the Maryland Shield Law. WMAR-TV also argued that the Division could not demonstrate by clear and convincing evidence (1) a high degree of relevance, (2) the lack of any alternative means to obtain the information it sought from Herman, and (3) the compulsory disclosure will serve an overriding public interest.

Notably, WMAR-TV argued that any potential testimony from Herman was irrelevant, as the journalist was not a "consumer" within the meaning of the statutes at issue, and thus his experience with Horton and Around the Clock Locksmith could not be used as evidence at the contempt hearing. Indeed, the Attorney General's Office did not even mention Herman in its petition for contempt. WMAR-TV also pointed out the fact that the Petition stated that the Division has received at least 26 complaints about Horton's business practices from consumers, and that the court already had heard for itself the testimony of five of these consumers at the hearing before the Motion to Quash was argued.

Finally, WMAR-TV explained that the public interest favors protecting WMAR-TV and Herman from compelled testimony, as the reporting on Horton actually prompted additional consumers to come forward to the Attorney General's Office to report their experiences with him.

The Attorney General's Office argued that under Maryland case law, Herman was the source of the information and thus § 9-112(c)(1) did not apply. The state also argued that there was no alternative source for the conversation Herman allegedly had with someone at Around the Clock Locksmith, and that the testimony would support the petition for contempt and was therefore in the public interest. Finally, the Attorney General's Office also argued that by broadcasting the information about what Horton said on the phone, the journalist and the station waived its protection under the Maryland Shield Law.

In a ruling from the bench, Judge Alison L. Asti quashed the subpoena. She said that she has followed the legislative history of the Maryland Shield Law and understands the importance of protecting the news media privilege. Judge Asti concluded that the case law in Maryland must be read more narrowly than the Attorney General's Office suggested and made clear that this was not one of the limited instances in which a journalist could be compelled to testify. The court also remained un-convinced that such information could not be obtained by alternative means, especially in light of the testimony from consumers at the hearing.

Cheryl A. Feeley and Charles D. Tobin, of Holland & Knight LLP in Washington, D.C., represented WMAR-TV and its producer Jeff Herman in this matter. Lucy A. Cardwell and Philip D. Ziperman represented the Consumer Protection Division of the Office of the Attorney General of Maryland.

[PUBLICATIONS](#)

[COMMITTEES](#)

[EVENTS](#)

[ABOUT](#)

[JOIN](#)

[LOGIN](#)

[Privacy Policy](#). [Terms of Use](#).

© 2024 Media Law Resource Center. All Rights Reserved.