

AUTHORITY

3. This action is brought by Attorney General Greg Abbott, through his Consumer Protection Division, in the name of the STATE OF TEXAS and in the public interest pursuant to the authority granted by §17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §§17.41, *et seq.*, (West 2011) (“DTPA”) upon the ground that Defendant has engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§17.46(a) and (b) of the DTPA. In enforcement suits filed pursuant to Section 17.47 of the DTPA, the Attorney General is further authorized to seek civil penalties, redress for consumers and injunctive relief. This enforcement action is further brought by Attorney General Greg Abbott, through his Consumer Protection Division, in the name of the State and in the public interest, for violations involving the legal representation of others and the accreditation of representatives by the United States Board of Immigration Appeals (hereinafter, “BIA”). This enforcement action is further brought by Attorney General Greg Abbott, through his Consumer Protection Division, in the name of the State and in the public interest, pursuant to the State Bar Act, TEX. GOV’T CODE ANN. §§81.001, *et seq.* (West 2005) (hereinafter, “SBA”). This enforcement action is also brought for violations of the Notary Public Act, TEX. GOV’T CODE ANN. §§406.001, *et seq.*, (West 2005) (“NPA”), specifically sections 406.016 and 406.017, involving the unauthorized representation of others by a notary public.

PARTY DEFENDANT

4. Defendant JEFFREY L. SMITH is an individual residing in El Paso County, Texas, is the owner of JEFF SMITH AGENCY, a sole proprietorship, and may be served with process at 12301 Alameda Ave., Clint, Texas 79836, or wherever he may be found.

VENUE

5. Venue of this action lies in El Paso County on the basis of §17.47(b) of the DTPA because Defendant has his principal place of business and has done business in El Paso County.

PUBLIC INTEREST

6. Because Plaintiff STATE OF TEXAS has reason to believe that Defendant has engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe Defendant has caused and will cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State and further, will cause damage to the STATE OF TEXAS and to persons from whom monies or properties are unlawfully acquired by Defendant. Therefore, the Consumer Protection Division of the office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

7. Defendant has, at all times described below, engaged in conduct which constitutes "trade" and "commerce" as those terms are defined by § 17.45(6) of the DTPA.

ACTS OF AGENTS

8. Whenever in this Petition it is alleged that Defendant did any act, it is meant that:
- a. Defendant performed or participated in the act, or
 - b. Defendant's officers, agents, or employees performed or participated in the act on behalf of and under the authority of Defendant.

NOTICE BEFORE SUIT

9. Pursuant to § 17.47(a) of the DTPA, contact has been made with Defendant JEFFREY L. SMITH to inform Defendant in general of the unlawful conduct alleged herein.

NATURE OF DEFENDANT'S CONDUCT

10. Defendant operates a business in El Paso County, Texas that purports to provide legal services, and specifically immigration advice and services, to persons who purchase his services, when he is not authorized to provide such services.

SPECIFIC FACTUAL ALLEGATIONS

11. Defendant is engaging in and has engaged in the business of providing notary services and immigration services. Defendant solicits and charges those persons who seek and/or purchase his services (hereafter "customers"). Defendant has solicited customers by representing that he has the skill or knowledge necessary to handle immigration and other legal matters.

12. Defendant's customers are persons who sought to obtain legal benefits, including but not limited to, change in immigration status, deeds, and wills. The legal services rendered by Defendant include the following activities:

- a. interviewing and advising customers as to what immigration documents would need to be filed;
- b. selecting and preparing immigration forms or other legal documents on behalf of customers requiring a careful determination of legal consequences;
- c. gathering the supporting documentation for customer's application or other legal document;
- d. exercising discretion and/or analysis in selecting and preparing legal documents for immigration; and
- e. giving advice and rendering services requiring the use of legal skill or knowledge.

13. On or after the date when Defendant was commissioned as a Notary Public, Defendant solicited and agreed to perform the services described above in exchange for compensation from customers.

14. Defendant is not presently, nor ever has been, an attorney at law duly licensed by the State of Texas to engage in acts, practices and/or conduct which constitute the practice of law.

15. In certain circumstances, the U.S. immigration laws permit a “representative” to assist undocumented immigrants in their cases. However, Defendant is not qualified by the Bureau of Citizenship & Immigration Services under 8 C.F.R. §292.1 to represent consumers because he is not an attorney, law student or accredited person, he is receiving remuneration, he has no pre-existing relationship or connection with the persons entitled to the representation, and he failed to obtain permission from the immigration officials to act as the representative of said consumers.

16. Defendant does not possess, and has not at all relevant times possessed, the certification, license, or other qualifications necessary to perform such services.

NOTARY PUBLIC ACT VIOLATIONS

17. Defendant, as alleged above, has in the course of trade and commerce violated the NPA as follows:

a. by providing a service that constitutes the unauthorized practice of law or accepting compensation for a service that constitutes the unauthorized practice of law, Defendant, a notary public, is in violation of §406.016(d) of the NPA;

b. by engaging in acts and practices that constitute the unauthorized practice of law, Defendant, a notary public, is stating or implying that he is an attorney licensed to practice law in this state, in violation of §406.017(a)(1) of the NPA; and

c. by soliciting or accepting compensation to prepare documents for another in a judicial or an administrative proceeding, Defendant, a notary public, is in violation of §406.017(a)(2) of the NPA.

VIOLATION OF TITLE 8 CFR PART 292

18. Federal law provides that undocumented immigrants may be represented by either a licensed attorney, an appropriately supervised law student or a person accredited by the Board of Immigration Appeals (BIA), who may charge or accept a fee for representing them in immigration proceedings. §292.3, Title 8, Part 292, Code of Federal Regulations (hereinafter, “CFR”)¹. Engaging in such business without a license as an attorney or accreditation by the BIA is a violation of the DTPA.

¹ Accredited Representatives. An accredited representative is a person who is approved by the Board of Immigration Appeals to represent aliens before the Board, the Immigration Courts, and the Department of Homeland Security. He or she must be a person of good moral character who works for a specific nonprofit religious, charitable, social service, or similar organization which has been recognized by the Board to represent aliens. Accreditation is valid for a period of up to three years and can be renewed. *See* 8 C.F.R. §§ 1292.1(a)(4), 1292.2(d) Accredited representatives must file a Notice of Entry of Appearance as Attorney or Representative before the Immigration Court (Form EOIR-28) in order to represent an individual before the Immigration Court. *See* Chapter 2 3(c) (Appearances). Accredited representatives should be careful to use the most current version of the Form EOIR-28, which is available on the Executive Office for Immigration Review website at www.usdoj.gov/eoir. (a) *Qualifying Organizations*, - The Board of Immigration Appeals officially recognizes certain nonprofit religious, charitable, social service and or similar organization as legal service providers. *See* 8 C.F.R. §1292.2(a), Chapter 2 2(b) (Legal Service Providers) To be recognized by the Board, an organization must affirmatively apply for that recognition. Such an organization must establish to the satisfaction of the Board that its fees are only nominal, that it does not assess excessive membership dues for persons given assistance, and that it has at its disposal adequate knowledge, information and experience in Immigration law and procedure. The qualifications and procedures for organizations seeking Board recognition are set forth in the regulations at 8 C.F.R. §1292.2(a) and (b). Questions regarding recognition may be directed to the Executive Office for Immigration Review, Office of the General Counsel. *See* Appendix B (EOIR Directory) (b) *Qualifying representatives*. The Board of Immigration Appeals accredits persons of good moral character as representatives of qualifying organizations. *See* 8 C.F.R. § 1292.2(d) Representatives of the recognized organizations are not automatically accredited by the Board. Rather, the recognized organization must affirmatively apply for accreditation on each representative's behalf. *See* 8 C.F.R. §1292.2(d). No individual may apply on his or her own behalf. Accreditation is not transferrable from one representative to another, and no individual retains accreditation upon his or her separation from the recognized organization. Section 2.4 Accredited Representatives, *Immigration Court Practice Manual*. www.usdoj.gov/eoir.

19. Defendant, as alleged and detailed above, has violated and will continue to violate 8 C.F.R. §292.1 by falsely claiming that he has the authority to represent others before the DHS and its immigration officers.²

20. Defendant, as alleged and detailed above, is not and at all relevant time has not been, affiliated with any organization recognized by the BIA as providers of legal services. Thus, Defendant is in violation of Section 292.2(d) of Title 8, Part 292, of the CFR because he is not accredited by the BIA as a representative of any such organizations.

21. Defendant, as alleged and detailed above, has violated and will continue to violate section 292.4 of Title 8, Part 292, of the CFR by falsely claiming that he is authorized to appear as a representative of others.

STATE BAR ACT VIOLATION

22. The State Bar of Texas Act ("SBA") provides that a person may not engage in the practice of law in the State of Texas unless that person is a member of the State Bar of Texas as a licensed attorney. TEX. GOV'T CODE ANN. § 81.102 (West 2005). *See Unauthorized Practice Committee v. Cortez*, 692 S. W.2d 47 (Tex. 1985). Failure to comply with this requirement is a violation of the DTPA.

23. The "practice of law" means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge or judicial officer in a court or administrative tribunal as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal

² Section 292 of Title 8 provides identical regulations for who may appear before the Executive Office of Immigration Appeals.

effect of which under the facts and conclusions involved must be carefully determined. *See* TEX. GOV'T CODE ANN. § 81.101(a) (West 2005).

24. Defendant, as alleged above, was practicing law in the State of Texas while not being a member of the State Bar of Texas, in violation of §81.102 of the SBA.

VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

25. Defendant, as alleged above and detailed below, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§17.46(a) and (b) of the DTPA. Such acts include:

A. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services by stating or implying falsely that Defendant is:

1. an attorney licensed to practice law in this State or that Defendant has an attorney on staff to assist him with immigration related matters in violation of DTPA § 7.46(b)(2); and
2. able to otherwise comply with the requisites of 8 C.F.R. § 292 by functioning as a properly supervised law student, or by accreditation by the U.S. Board of Immigration Appeals in violation of DTPA §17.46(b)(2);Com:§ 81.101(a).

B. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, by Defendant:

1. advertising, offering for sale, selling, or providing an immigration service in violation of DTPA §17.46(b)(3);
2. accepting money or valuable consideration for performing an immigration service in violation of DTPA § 17.46(b)(3);

3. accepting money or valuable consideration from any person seeking assistance to obtain a benefit under U.S. immigration laws for himself or any other person in violation of DTPA §17.46(b)(3);
4. advising any person whether or not to file a petition, application, or other form to obtain a benefit under U.S. immigration laws for himself or any other person in violation of DTPA § 17.46(b)(3); and
5. preparing for any person a petition, application or other form to obtain a benefit under U.S. immigration laws for himself or any other person in violation of DTPA § 17.46(b)(3).

C. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have by:

1. representing, directly or by implication, that Defendant can obtain legal status, a work permit, or other benefit under U.S. immigration laws for a person who purchases his services in violation of DTPA § 17.46(b)(5); and
2. representing to any person, expressly or by implication, that Defendant can or will represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, U.S. citizenship, or any other Immigration related matter (including alien temporary or permanent employment or travel) in violation of DTPA §17.46(b)(5).

D. Representing that goods or services are of a particular standard, quality or grade, if they are of another, by Defendant:

1. holding himself out, by advertising or by any means, to the public as an "immigration specialist," "immigration counselor," "immigration services

provider" or "immigration consultant" or by any title or designation incorporating the word "immigration" or an abbreviation thereof in violation of DTPA § 17.46(b)(7); and

2. representing, directly or by implication, that Defendant has the skill, expertise, or competence to handle immigration matters in violation of DTPA § 17.46(b)(7).

E. Failing to disclose information concerning goods or services which was known at the time of the transaction, to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, by Defendant:

1. providing or giving persons advice and counsel regarding their rights under the immigration laws of the United States or any other sort of legal matter while falsely purporting to be qualified to do so in violation of DTPA § 17.46(b)(24);
2. soliciting, collecting, or accepting fees or compensation of any type, for providing any type of immigration or legal services to consumers while falsely purporting to be qualified to do so in violation of DTPA § 17.46(b)(24); and
3. representing, expressly or by implication, that Defendant is able to provide or obtain undetectable counterfeit documents for persons wishing to immigrate to the U.S. which will aid such person to gain employment, residency, citizenship, or other benefit in violation of DTPA § 17.46(b)(24).

26. Based on the conduct alleged above, Defendant has additionally directly engaged in false, misleading, and deceptive acts and practices declared unlawful by DTPA § 17.46(a), by engaging in the practice of law in the State of Texas while not a member of the State Bar of Texas as a licensed attorney in violation of TEX. GOV'T CODE ANN. § 81.102 (West 2005).

27. By violating Section 406.017 of the NPA, Defendant is in violation of the DTPA. Section 406.017(f) of the NPA provides that failure to comply with Section 406.017 of the NPA is a deceptive trade practice and is actionable under the DTPA.

ENFORCEMENT OF CIVIL INVESTIGATIVE DEMAND

28. The State also seeks to enforce the Demand for Report and Civil Investigative Demand (“CID”) served on Defendant by the Consumer Protection Division of the Texas Attorney General’s Office by certified mail, return receipt requested on October 25, 2013, which were received by Defendant on October 29, 2013. Defendant has failed to fully respond to the Demand for Report and Civil Investigative Demand.

29. In compliance with DTPA §§ 17.60 and 17.61(b), the CID issued by the State to Defendant: (1) stated the statute and section under which the alleged violation is being investigated, and the general subject matter of the investigation; (2) described with reasonable specificity the report to be made and documents or material to be produced; (3) prescribed a return date; and (4) identified an agent for the Consumer Protection Division to whom the requested material is to be produced.

30. While Defendant has produced a few documents in response to the CID, Defendant has failed to produce the majority of the documents requested. Defendant has not claimed that any privilege is applicable to the documents in question.

31. DTPA §17.62(a) provides that a person who withholds requested documentary materials with intent to avoid, evade or prevent compliance with DTPA §§ 17.60 or 17.61 is guilty of a misdemeanor and on conviction may be punished by a fine of up to \$5000 and confinement in jail for up to one year. At this time the State is not seeking criminal sanctions against Defendant.

32. DTPA § 17.62(b) provides that upon failure to provide the report and documentary materials requested under DTPA §§ 17.60 and 17.61, the State may file a petition seeking an order of enforcement. DTPA § 17.62(c) provides that a Court may enter any order required to carry into effect the provisions of DTPA §§ 17.60 and 17.61, and that a failure to comply with such an enforcement order is punishable by contempt, which punishment may include a fine and incarceration.

CONDITIONS PRECEDENT

33. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

REQUEST FOR DISCLOSURE

34. Pursuant to Rule 194, TEX. R. CIV. P., Defendant is requested to disclose the information or material described in Rule 194.2. Defendant's written responses to the requests for disclosure, along with all copies of documents and other tangible items responsive to these requests, shall be produced at the Office of the Attorney General, Consumer Protection Division, 401 E. Franklin, Suite 530, El Paso, Texas 79901, except as provided by Rule 194.3, within 50 days of service of Plaintiffs' Original Petition.

INJUNCTIVE RELIEF NECESSARY

35. The State's petition for an injunction is authorized by Section 17.47(c) of the DTPA. TEX. BUS. & COM. CODE ANN. § 17.62(b) (West 2011).

36. Pursuant to said statutory authority, the State requests that the Court grant a temporary injunction and permanent injunction, enjoining Defendant, his successors, assigns, officers, agents, servants, employees, and representatives from violating Texas law as well as specifically compelling Defendant to respond to the terms of the CID duly issued by the State.

ATTORNEY FEES AND COSTS OF COURT

37. This action is brought pursuant to the Deceptive Trade Practices – Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §§ 17.41, *et seq.* (West 2011), under which injunctive relief, penalties, attorney fees and costs of court are recoverable by the Attorney General. Defendant should pay the State attorneys’ fees and costs of Court for the prosecution of this injunctive enforcement action, as provided by TEX. GOV’T CODE ANN. § 402.006(c) (West 2005).

PRAYER

38. **WHEREFORE**, Plaintiff prays that Defendant be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant, his officers, agents, servants, employees and attorneys, and any other person in active concert or participation with Defendant who receives actual notice of the injunction by personal service or otherwise from engaging, directly or indirectly, in the following acts or practices:

- a. Operating a business or conducting business that provides immigration and/or legal document preparation service, including but not limited to immigration, deeds and wills;
- b. Advertising, offering for sale, selling, or providing legal service(s), immigration service(s) or other immigration matters;
- c. Accepting money or valuable consideration for preparing immigration forms or other immigration matters or any other legal documents;
- d. Accepting money or valuable consideration from any person seeking assistance to obtain a benefit under laws of the United States, State of Texas, or any jurisdiction for himself/herself or any other person;

e. Advising or counseling any person whether or not to file a petition, pleading, application, or other form to obtain a benefit under laws of the United States, State of Texas, or any jurisdiction for himself/herself or any other person;

f. Selecting, preparing, or completing for any other person a pleading, document, or other form incident to legal actions or proceedings;

g. Representing, directly or by implication, that Defendant has the skill, expertise, or competence to handle legal matters, including but not limited to immigration matters;

h. Representing, directly or by implication, that Defendant can obtain legal status, under the laws of the United States, State of Texas, or any jurisdiction for a person who purchases his services;

i. Practicing law in the State of Texas while not being a member of the State Bar of Texas;

j. Advising or counseling any person as to matters of law or legal rights under the laws of the United States, State of Texas, or any jurisdiction, rules, and/or regulations including but not limited to matters relating to legal actions or immigration proceedings;

k. Accepting or soliciting money or valuable consideration for advising or counseling any person as to matters of law, immigration proceedings or legal rights under the laws of the United States, State of Texas, or any jurisdiction;

l. Advertising, offering for sale, selling, or performing a notarial service; and

m. Representing, directly or by implication, that this Court, or the Office of the Attorney General has approved any good or service sold or offered for sale by Defendant, or approved of any of Defendant's business practices.

39. The STATE OF TEXAS further prays that Defendant fully respond to the State's Demand for Report and Civil Investigative Demand, more particularly producing the report and documents requested in the CID as follows:

- A. Produce copies of all documents that demonstrate the types of services and pricing of said services provided by Jeff L. Smith.
- B. Produce copies of all documents that demonstrate what authority entitles you to provide immigration related services (i.e., consulting, completing forms, notary services, including, but not limited to, licensing, recognition and accreditation).
- C. Produce copies of all documents indicating the name, address and telephone number of all people who have received immigration consulting services or assistance completing forms from Jeff L. Smith.
- D. Produce copies of all documents that reflect the total amount billed, total amount paid and any final balances due for each person named under C, including, but not limited to, computer payment records, receipt books, payment logs, etc.
- E. Produce copies of all immigration documents prepared for each person named under C.
- F. Produce documents that indicate the names, addresses and telephone numbers of all agencies to whom Jeff L. Smith has forwarded immigration documents.
- G. Produce all documents describing in detail each and every product and or service advertised by Jeff L. Smith, on the radio or any other advertising medium, including, but not limited to immigration assistance/consulting.
- H. Produce copies of the tax returns for Jeff L. Smith for the years 2008 to present.

- I. Produce documents which evidence the bank account statements and copies of all checks, deposits or debits for any operating account for the years 2008 to date. The documentation should include the bank name, location and account number.
- J. Produce documents evidencing all complaints, and or refund/credit requests which have been filed by any consumers against Jeff L. Smith regarding allegations of failure to perform as advertised, from any individual, governmental agency, Better Business Bureau or any other entity.
- K. Produce documents evidencing all lawsuits which have been filed against Jeff L. Smith. Regarding each lawsuit, your response should include, but not be limited to:
 - 1. the names of all parties;
 - 2. the court and cause number;
 - 3. the general nature of the claims; and
 - 4. the current status or final disposition of the lawsuit.
- L. Copy of all notary licenses and applications.
- M. Copy of any licenses to practice law.
- N. Copy of any Bureau of Immigration of Appeals.
- O. Copies of all W-2's.
- P. Copy of all checks to employees or independent contractors.
- Q. Copies of all W-9's.
- R. State the names, social security numbers and addresses of all employees and independent contractors that received payment from you.

S. If you claim that you are supervised by an attorney, please state names and addresses of attorneys and Texas State Bar license numbers. Please state the period of the time you claim they have supervised you.

40. Plaintiff, STATE OF TEXAS, further prays that this Court order Defendant to post notice at any other place where Defendant may conduct business, which notice shall be on the front-side of the front door, in red bold-faced type of a minimum size of 40 points, in both English and Spanish, and shall state:

NOTICE

BY ORDER OF THE _____ JUDICIAL DISTRICT COURT OF EL PASO COUNTY, TEXAS, JEFF SMITH IS PROHIBITED FROM PREPARING ANY LEGAL DOCUMENT, FILLING OUT IMMIGRATION DOCUMENTS, OR CONDUCTING BUSINESS AS AN IMMIGRATION OR LEGAL DOCUMENT SERVICE PROVIDER.

IF YOU HAVE ANY QUESTIONS, OR FEEL YOU WERE A VICTIM, PLEASE CALL (915) 834-5800.

THIS NOTICE IS PLACED HERE BY ORDER OF THE COURT.

AVISO

LA CORTE DEL _____ DISTRITO DEL CONDADO DE EL PASO, ESTADO DE TEXAS, PROHIBE A JEFF SMITH PREPARAR DOCUMENTOS LEGALES, LLENAR FORMULARIOS JURÍDICOS DE INMIGRACIÓN, O PROVEER SERVICIOS DE INMIGRACIÓN.

SI USTED TIENE UNA PREGUNTA O PIENSA QUE FUE VICTIMA, FAVOR DE MARCAR AL (915) 834-5800.

SE HA PUBLICADO ESTE AVISO POR ORDEN DE LA CORTE.

41. Plaintiff further prays that this court award judgment in favor of the Plaintiff and against the Defendant as follows:

a. Order Defendant to pay civil penalties to the STATE OF TEXAS in the amount of not less than \$2,000 per violation and not more than \$20,000 per each violation of the DTPA;

b. Order Defendant to pay civil penalties to the STATE OF TEXAS in the amount of not more than \$250,000 for violations of the DTPA if the consumer was 65 years of age or older;

c. Order Defendant to pay the STATE of TEXAS its attorneys' fees and costs of court pursuant to TEX. GOV'T. CODE ANN. §402.006(c);

d. Order Defendant to restore all money or other property acquired by means of unlawful acts or practices, or in the alternative, to compensate identifiable persons for actual damage; and

e. Order Defendant to pay pre-judgment and post judgment interest on all damages or civil penalties, at the highest allowable rate, as provided by law.

42. In addition, Plaintiff State, respectfully prays that this Court:

a. Appoint a receiver or sequester Defendant's assets if Defendant has been ordered by this Court to make restitution and Defendant has failed to do so within three (3) months after the order to make restitution has become final and non-appealable; and

b. Adjudge that all fines, penalties or forfeitures payable to and for the benefit of the State, are not dischargeable under bankruptcy pursuant to 11 U.S.C. section 523(a)(7).

43. The State further prays that this court grant all other relief to which the Plaintiff, STATE OF TEXAS, may show itself entitled.

Respectfully submitted,

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