

2005-07308

NO. _____

DEPUTY CLERK OF COURT
HARRIS COUNTY, TEXAS
16:08 PM 2-07-05
SWYER, JAMES
2005 FEB 07 16:08

STATE OF TEXAS,
Plaintiff

v.

ELVIA DIAZ, a/k/a ELVIA MARTINEZ¹
d/b/a DIAZ INCOME TAX and CENTRO
DOCUMENTAL,
Defendant

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

113 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL VERIFIED PETITION AND APPLICATION FOR
EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND
PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the STATE OF TEXAS, Plaintiff, acting by and through Attorney General of Texas GREG ABBOTT (referred to herein as the "Attorney General"), on behalf of the State of Texas and on behalf of the interest of the general public of the State of Texas, and complains of ELVIA DIAZ, a/k/a ELVIA MARTINEZ, doing business as DIAZ INCOME TAX and CENTRO DOCUMENTAL, and would respectfully show the court the following:

DISCOVERY

1. Discovery shall be conducted under LEVEL 2 of Rule 190.3 of the Texas Rules of Civil Procedure.

JURISDICTION

2. This action is brought by Attorney General Greg Abbott through his Consumer Protection and Public Health Division in the name of the State of Texas under the authority granted to him

¹ Defendant has also been known as Elvia Ibarra

pursuant to §17.47 of the Texas Deceptive Trade Practices Act, TEX. BUS. & COM. CODE ANN. §17.41 et seq., ("DTPA"), upon the grounds that Defendant has engaged in false, misleading and deceptive acts and practices in the conduct of trade or commerce as defined and declared unlawful by §17.46 (a) and (b) of the DTPA. This suit is also brought upon the grounds that Defendant has violated §406.017 TEX. GOVT. CODE ANN.(Notary Statute) which regulates a notary public. Violations of TEX. GOVT. CODE §406.017 also constitute deceptive acts under the DTPA.

DEFENDANT

3. Elvia Diaz, a/k/a Elvia Martinez, d/b/a DIAZ INCOME TAX and CENTRO DOCUMENTAL, operated her principal place of business at 401 Edgebrook, Houston, Texas 77034, Harris County, Texas.

4. Elvia Diaz, a/k/a Elvia Martinez, is an individual residing in Houston, Texas who may be served with process at 9850 Sagebark, Houston, Texas 77089, or wherever she may be found.

VENUE

5. Venue of this suit lies in Harris County, Texas, for the following reasons:

A. Under TEX. CIV. PRAC. & REM. CODE ANN. §15.002(a)(1), venue is proper because all or part of the causes of action alleged herein occurred in Harris County, Texas:

B. Venue is also proper in Harris County, Texas, under TEX. CIV. PRAC. & REM. CODE ANN. §15.002(a)(2) because the Defendant was a resident of Harris County, Texas at the time the causes of action accrued:

C. Venue is also proper in Harris County, Texas under TEX. CIV. PRAC. & REM. CODE ANN. §15.002(a)(3) because Defendants' principal office was located in Harris County, Texas; and

D. Venue is also proper under DTPA §17.56 because the Defendant did business in Harris County, Texas, and the transactions that form the basis of this cause of action occurred in Harris County, Texas.

PUBLIC INTEREST

6. Because Plaintiff State of Texas has reason to believe that the 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 immediate, irreparable injury, loss and damage to the State of Texas, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Therefore, the Consumer Protection and Public Health 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 constituting "trade" and "commerce," as those terms are defined in §17.45(6) of the DTPA.

ACTS OF AGENTS

8. Whenever in this petition it is alleged that the Defendant did any act, it is meant that:

A. The Defendant performed or participated in the act, or

B. The Defendant's officers, agents, trustees or employees performed or participated in the act on behalf of and under the authority of the Defendant.

NOTICE BEFORE SUIT NOT GIVEN

9. Pursuant to §17.47(a) of the Deceptive Trade Practices Act, contact has not been made with the Defendant herein to inform her of the unlawful conduct alleged herein, for the reason that the

Plaintiff is of the opinion that there is good cause to believe that such an emergency exists that immediate and irreparable injury, loss or damage would occur as a result of such delay in obtaining a temporary restraining order, and that Defendant would evade service of process and flee the jurisdiction, destroy relevant records and secrete assets if prior notice of this suit were given.

SPECIFIC FACTUAL ALLEGATIONS

10. Defendant filed an application to become a Notary Public on March 7, 2000 and was granted her commission for a four year period beginning April 20, 2000 and ending April 20, 2004. (Exhibits "1 [p. 2, para. 4] & 2 [pp.1-2]"). Defendant listed her address on her Notary Public Commission Certificate as 9953 Bessemer St., Houston, Texas 77034 and operated a business called *Diaz Income Tax* out of that location. (Exhibits "1 [p. 2, para. 4], 2 [p. 2] & 3").

11. Although Defendant never filed an Assumed Name Certificate to do business as *Diaz Income Tax*, she printed business cards and flyers with her business name and the Bessemer Street address. (Exhibits "1 [pp. 2-3, para. 5], 4 & 5"). Defendant's flyers indicate she had forms for immigration and listed (713) 378-9830 as her phone number. (Exhibits "1 [pp. 2-3, para. 5] & 5"). This phone number was also used for a business called Martinez Retail Shop at the same Bessemer Street location with Defendant listed as the business contact. (Exhibits "1 [p. 3, para. 6], 4, 5 & 6").

12. Defendant conducted her income tax business from the Bessemer Street location until approximately July, 2001 when she leased a location at 401 Edgebrook, Houston, Texas 77034. (Exhibits "1 [p. 3, para. 7], 7 [pp. 1-10], 8 & 9").² While most consumers learned of Defendant's services by word of mouth, Defendant also advertised her services in church bulletins and with

² Although the lease agreement indicates the lessors are Eusebio Martinez and Elvia Diaz, d/b/a *E & D Carpet*, Defendant also conducted her immigration business and her income tax business out of this location. (Exhibits "7 [pp. 1 & 7], 8, 9, 10 [p. 3], 11 & 12").

business cards. (Exhibits "1 [p. 2-3, para. 5], 10 [pp. 1-3] & 11").

13. Along with her income tax service, Defendant also advertised that she had forms for immigration and that she was a Notario Publico. (Exhibits "1 [p. 3, para. 5], 5, 12 & 13 [p. 2, para. 10]").³

14. The consumers who used Defendant's services were people who sought to obtain immigration visas, permanent residency and/or authorization to work in the United States (hereafter referred to collectively as "immigration benefits") for themselves and/or their relatives. (Exhibits "1 [p. 1, para. 3], 13 [p. 1, para. 3-6], 14 [p. 1, para. 3-4] & 15 [p. 1, para. 3-5]").

15. Consumers heard about Defendant, and the services she was providing, through relatives, friends, and neighbors. (Exhibits "13 [p. 1, para. 3], 14 [p. 1, para. 3] & 15 [p. 1, para. 3]"). After arriving at the Edgebrook location, consumers would meet with Defendant about their immigration needs. (Exhibits "13 [p. 1, para. 3-5], 14 [p. 1, para. 3-4] & 15 [p. 1, para. 3-5]"). Whether consumers were trying to obtain residency, a work permit or citizenship status, Defendant would tell them that they qualified and that she could get results for them in as little as three months or within one year. (Exhibits "13 [p. 1, para. 5] & 15 [p. 1, para. 5]").

16. Consumers were told to bring their birth certificates, marriage licenses or other appropriate documents to Defendant so that she could fill out all the necessary paperwork. Consumers were also told to bring money orders made out to the *Immigration and Naturalization Service*, now known as the *Bureau of Citizenship and Immigration Service* (BCIS) in a specific dollar amount to be sent with their paperwork. (Exhibits "13 [p. 1, para. 6], 15 [p. 1, para. 5-6], 15D [pp. 1-5] & 16 [pp. 1-3]").

³ Defendant exhibits a literal translation of the term "Notary" into Spanish, with the knowledge that the literal translation of it is misleading, in that a "Notario" in Mexico has some of the attributes of an attorney at law.

17. Defendant would then select the application to be filled out and prepare the petition and other forms on behalf of consumers, including, but not limited to the form I-130 (Petition for Alien Relative), form I-485 (Application to Register Permanent Residence or Adjust Status) and form I-765 (Application for Employment Authorization Document). (Exhibits "13 [p. 1, para. 6], 13C [pp. 1-15], 14 [p. 1, para. 4], 14C [pp. 1-7], 15 [p. 1, para. 5-6] & 15C [pp. 1-16]").

18. Consumers were either told where to mail the applications or the Defendant would address the packages herself; however, the packages were returned numerous times to the consumers due to incorrect addresses or incorrect fee amounts. (Exhibits "13 [pp.1-2, para. 7-8], 13E [pp. 1-8], 14 [p.1, para. 5], 14D [pp. 1-6], 15 [pp. 1-2, para. 6-7] & 15E [pp. 1-6]"). In some situations, consumers lost all the fees sent to the BCIS and only the paperwork was returned.

19. Many consumers received denial letters and/or a Notice to Appear for a Deportation Hearing after sending the packages to BCIS, pursuant to Defendant's instructions. (Exhibits "13 [p. 2, para. 8, 10], 14 [p. 1, para. 6], 14G, 15 [p. 2, para. 8] & 15F [pp. 1-3]"). Those consumers who were able to contact Defendant were told not to worry; others did not get their phone calls returned, and still others went to her office to find the doors locked and the business closed. (Exhibits "1 [p. 2, para. 3], 13 [p. 2, para. 10] & 14 [p. 2, para. 7]").

20. Consumers were required to pay Defendant a fee in cash or money order for her services, which ranged from \$400 to as much as \$1,500, depending on the immigration paperwork she completed for them. (Exhibits "1 [p. 1, para. 3], 13 [p.1, para. 6], 13B, 14 [p.1, para. 4], 14B, 15 [p. 1, para. 5-6] & 15B").

NOTARY PUBLIC LAW VIOLATIONS

21. Defendant Diaz, as alleged above, has in the course of trade and commerce violated Chapter

406 of the Texas Government Code. TEX. GOV'T CODE ANN. §406.001, *et seq.* (herein referred to as "Notary Public Law") as follows:

- A. By soliciting or accepting compensation to prepare documents for another in an administrative proceeding relating to immigration to the United States, in violation of TEX. GOV'T CODE ANN. §406.017(a)(2);
- B. By soliciting or accepting compensation to obtain relief on behalf of another from an officer, agency, or employee of the United States, in violation of TEX. GOV'T CODE ANN. §406.017(a)(3);
- C. Using the phrase "notario" or "notario publico" to advertise the services of a notary public, whether by signs, pamphlets, stationery, or other written communication or by radio or television, in violation of TEX. GOV'T CODE ANN. §406.017(a)(4);
- D. Advertising the services of a notary public in a language other than English, whether by signs, pamphlets, stationery, or other written communication or by radio or television, if the person does not post or otherwise include with the advertisement a notice that complies with TEX. GOV'T CODE ANN. §406.017(b);
- E. Advertising the services of a notary public in a language other than English and:
 - (1) failing to state in English and in letters of a conspicuous size, that the notary public is not an attorney;
 - (2) failing to state in the language of the advertisement and in letters of a conspicuous size that the notary public is not an attorney;
 - (3) failing to include the fees that a notary public may charge; and
 - (4) failing to include the following statement: "I AM NOT AN ATTORNEY"

LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE", in violation of TEX. GOV'T CODE ANN. §406.017(b).

- F. By failing to comply with §406.017 of the TEX. GOV'T CODE, Defendant has committed deceptive trade practices that are actionable under the Texas Deceptive Trade Practices Act.

DECEPTIVE TRADE PRACTICES ACT VIOLATIONS

22. Defendant in the course and conduct of trade and commerce, has directly and indirectly engaged in false, misleading and deceptive acts and practices declared to be unlawful by the DTPA §§17.46(a) and (b), by engaging in the following conduct:

- A. Causing confusion or misunderstanding as to the source, sponsor, or certification of goods or services, in violation of §17.46(b)(2) of the DTPA;
- B. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have, in violation of §17.46(b)(5) of the DTPA;
- C. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, in violation of §17.46(b)(7) of the DTPA;
- D. Advertising goods or services with intent not to sell them as advertised, in violation of §17.46(b)(9) of the DTPA;
- E. Representing that an agreement confers or involves rights, remedies, or obligations

which it does not have or involve, or which are prohibited by law in violation of §17.46(b)(12) of the DTPA; and

- F. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of §17.46(b)(24) of the DTPA.

DISGORGEMENT

23. All of Defendant's assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendant to retain, including all ill-gotten gains and benefits or profits that result from Defendant putting fraudulently converted property to a profitable use. Defendant should be ordered to disgorge all monies fraudulently taken from individuals and businesses together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

REPATRIATION OF ASSETS

24. After due notice and a hearing, the court should order that all of Defendant's assets situated outside the jurisdiction of this Court be deposited or repatriated into an appropriate financial institution within the jurisdiction of this Court.

REQUEST FOR FINDINGS OF ACTUAL FRAUD AND FALSE REPRESENTATION

25. The Court and/or Jury should make findings at the conclusion of this case that the Defendant engaged in actual fraud and false representation in that Defendant made repeated and materially false

representations to the public concerning the ability to provide immigration services, which were known to be false when made. Such false representations were made with the intention that they be acted upon by the parties to whom the misrepresentations were made. Reliance upon these false representations has resulted in injury to hundreds of consumers in the State of Texas.

**NECESSITY OF IMMEDIATE RELIEF TO PRESERVE
DEFENDANT'S ASSETS**

26. Plaintiff requests immediate relief by way of a Temporary Restraining Order and Temporary Injunction to preserve and protect Defendant's assets from dissipation so that the many victims of Defendant's actions can receive the restitution to which they are entitled. Defendant received sums of money through her illegal immigration services and used fraudulently solicited funds for personal gain. Defendant's assets are subject to dissipation for the following reasons:

- A. Defendant engages in the unauthorized practice of law by providing Immigration related services without being a licensed attorney, thus all the monies taken in by her for Immigration related services is contraband;
- B. Defendant is not an accredited individual or organization entitled to represent individuals before the Immigration and Naturalization Service, thus all the monies taken in by her for Immigration related services is contraband;
- C. Defendant is known for changing her phone number numerous times during the course of her business thereby avoiding consumers who she claims to help;
- D. Defendant often disappears for months at a time without returning phone calls or answering her phone, leaving consumers without assistance after taking their money;
- E. Defendant required cash or money orders from her consumer-victims and is not

known to place these funds in banks, using the funds instead to purchase real and personal property for her own use;

F. Once Defendant took consumers' money, she refused to issue refunds to persons who complained to her and instead would tell them to keep sending their paperwork to immigration;

G. Defendant has a history of not paying her bills regardless if it was for expenses related to her business or for personal use, instead choosing to dissipate funds taken from consumers.

For these reasons, the assets of Defendant are subject to dissipation and secretion and therefore should be frozen pending final trial so restitution can be made and full relief can be awarded at final trial.

REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

27. Plaintiff requests leave of this Court to conduct telephonic, oral, written and other depositions of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendant's answer date. There are a number of victims and other witnesses who may need to be deposed prior to any scheduled injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendant and her attorneys, if known.

TRIAL BY JURY

28. Plaintiff herein requests a jury trial and tenders the jury fee to the Harris County District Clerk's office pursuant to TEX. R. CIV. P. 216 and TEX. GOVT. CODE ANN. §51.604.

**APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

29. Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated and will continue to violate the law as alleged in this Petition. Unless immediately restrained by this Honorable court, Defendant will continue to violate the laws of the STATE OF TEXAS and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public. Therefore, Plaintiff requests an Ex Parte Temporary Restraining Order, Temporary Injunction and Permanent Injunction as indicated below.

PRAYER

30. WHEREFORE, Plaintiff prays that Defendant be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant, Defendant's successors, assigns, officers, agents, servants, employees, attorneys, and any other person in active concert or participation with Defendant, from engaging in the following acts or practices:

- A. Soliciting or accepting compensation to prepare documents for another person in any proceeding (administrative or otherwise) relating to immigration to the United States;
- B. Soliciting or accepting compensation to prepare documents for another person in any type of proceeding relating to work visas or permits, residency status, or U.S. Citizenship in any court, tribunal, or agency of the United States;
- C. Advising any person as to any issue relating to immigration, residency status, work visas/permits or U.S. Citizenship;

- D. Soliciting or accepting any type of fee for purporting to advise or assist someone fill out paperwork for any issue relating to immigration, residency status, work visas/permits or U.S. Citizenship;
- E. Advertising in any type of medium that Defendant is able to assist or advise someone in any capacity relating to immigration, work visas or permits, residency status, or U.S. Citizenship;
- F. From acting in the capacity of a notary public;
- G. Telling consumers that Defendant can obtain work permits or residency status for them if they pay Defendant a fee;
- H. Telling consumers that they can obtain residency status through relatives;
- I. Telling consumers that they are eligible for residency permits or can obtain citizenship status;
- J. Soliciting or accepting compensation to obtain relief on behalf of another from an officer, agency, or employee of the United States;
- K. Using the phrase "notario" or "notario publico" to advertise the services of a notary public, whether by signs, pamphlets, stationery, or other written communication or by radio or television;
- L. Advertising the services of a notary public in a language other than English, whether by signs, pamphlets, stationery, or other written communication or by radio or television, if the person does not post or otherwise include with the advertisement a notice that complies with TEX. GOV'T CODE ANN. §406.017(b); and
- M. Advertising the services of a notary public in a language other than English and:

- (1) failing to state in English and in letters of a conspicuous size, that the notary public is not an attorney;
- (2) failing to state in the language of the advertisement and in letters of a conspicuous size that the notary public is not an attorney;
- (3) failing to include the fees that a notary public may charge; and
- (4) failing to include the following statement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

3). In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court will:

A. Adjudge against Defendant civil penalties in favor of Plaintiff STATE OF TEXAS in an amount not to exceed \$250,000.00 allowed by law under the DTPA, specifically, §17.47(c)(2) of the Texas Business and Commerce Code, due to Defendant committing acts and practices which were calculated to acquire or deprive money or other property from consumers who were 65 years of age or older when the act or practice occurred;

B. Adjudge against Defendant civil penalties in favor of Plaintiff, STATE OF TEXAS, not to exceed more than \$20,000 per violation as allowed by law for each such violation, pursuant to TEX. BUS. & COM. CODE §17.47(c)(1):

C. Order Defendant to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or, in the alternative, award judgment for damages in an amount within the jurisdictional limits of this court to compensate for such losses;

D. Order Defendants to pay Plaintiff STATE OF TEXAS attorney fees and costs of court pursuant to TEX. GOVT. CODE §402.006(c):

- E. Order the disgorgement of all sums taken from consumers by means of Deceptive Trade Practices, together with all proceeds, interest, income, profits and accessions thereto;
- F. Grant leave to the Plaintiff to conduct telephonic, oral and other depositions prior to the Defendants' answer date and any Temporary Injunction hearing; and
- G. Grant all other relief to which the Plaintiff State of Texas may show itself entitled.

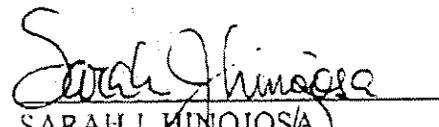
Respectfully submitted,

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Attorney General of Texas

BARRY R. McBEE
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VERIFICATION

STATE OF TEXAS

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COUNTY OF HARRIS

Before me, the undersigned Notary Public, on this day personally appeared Cathryn Haynes, who, after being duly sworn, stated under oath that she is the lead investigator for Plaintiff in this action, that she has read the above petition, and that every statement contained in the petition is true and correct and within the personal knowledge of all of the affiants as indicated in the affidavits attached to Plaintiff's Original Petition.

Cathryn Haynes
CATHRYN HAYNES

SUBSCRIBED AND SWORN TO BEFORE ME, on the 2nd day of February, 2005, to certify which witness my hand and official seal.

Janetta Ross
NOTARY PUBLIC
State of Texas

