

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT
	§	
Plaintiff	§	
	§	
vs.	§	
	§	MIDLAND COUNTY, TEXAS
HILDA M. ARMENDARIZ and	§	
MARCELINO ARMENDARIZ d/b/a	§	
APLICACION DE ORO E	§	
INFORMACION,	§	
	§	
Defendants.	§	238 th JUDICIAL DISTRICT

**PLAINTIFF’S AMENDED ORIGINAL PETITION AND APPLICATION
FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW THE STATE OF TEXAS, hereinafter referred to as Plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, complaining of HILDA M.

ARMENDARIZ and MARCELINO ARMENDARIZ doing business as APLICACION DE ORO E INFORMACION, hereinafter referred to as Defendants, and for cause of action would respectfully show:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to Tex. R. Civ. P. 190.2(b)(3).

NATURE OF THIS SUIT

2. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection Division against Defendants for violations of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM CODE ANN. § 17.41, et seq. (Vernon 1987 and Supp. 2004) (hereinafter “DTPA”). The DTPA grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions. TEX. BUS. & COM. CODE ANN. § 17.47.

DEFENDANTS

3. Defendant HILDA M. ARMENDARIZ is an individual doing business as APLICACION DE ORO E INFORMACION, regularly conducts business in Midland County, Texas, and may be served with process by serving her at her place of business at 120 N. Main Street, Midland, Texas 79701. Midland County, Texas.

4. Defendant MARCELJNO ARMENDARIZ, is an individual doing business as APLICACION DE ORO, E INFORMACION, regularly conducts business in Midland County, Texas, and may be served with process by serving him at his place of business at 120 N. Main Street, Midland, Texas 79701, Midland County, Texas.

JURISDICTION

5. This Court has jurisdiction over this action pursuant to § 17.47(b) of the DTPA.

VENUE

6. Venue of this suit lies in Midland County, Texas, for the following reasons:

a. Under TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(1) (Vernon Supp. 2004), venue is proper because all or a substantial part of the events or omissions giving rise to the claim occurred in the county of suit; and

b. Under DTPA § 17.47(b), venue is proper because Defendants have done business in the county of suit.

PUBLIC INTEREST

7. Plaintiff, STATE OF TEXAS, has reason to believe that Defendants are engaging in, have engaged in, or are about to engage in, the unlawful acts or practices set forth below, that Defendants have, by means of these unlawful acts and practices, caused damage to and acquired money or property from persons, and that Defendants adversely affect the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. 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

8. Defendants have, 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

9. Whenever in this Petition it is alleged that Defendants did any act, it is meant that Defendants

performed or participated in the act, or that the officers, agents or employees of Defendants performed or participated in the act on behalf of and under the authority of Defendants.

NATURE OF DEFENDANTS' OPERATIONS

10. Defendants HILDA M. ARMENDARIZ and MARCELINO ARMENDARIZ own and operate a business that purports to provide immigration services to persons who purchase their services.

FACTUAL ALLEGATIONS

11. In approximately 1996, Defendants began the business of providing immigration services to those persons who purchase their services (hereafter "customers"). Defendants hold themselves out to the public as "Immigration and Naturalization Consultants" and have solicited customers by representing that they have the skill or knowledge necessary to handle immigration cases and/or problems. Defendants conduct business in Midland County, Texas, and use the business name of "Aplicacion De Oro E Informacion (Immigration)" (The translation of their business name is "Golden Application & Information"). Defendants advertise their immigration services by a sign front of their place of business and on stationery that reads, in pertinent part, as follows:

APLICACION DE ORG (IMMIGRATION) & BAIL BONDING

and on business cards which state:

Aplicacion de Oro 120 N. Main St. Midland, Texas 79701 (432) 683-0064	<ul style="list-style-type: none">• Inmigracion• Fobs• Contractos• Curso De Maejar Defensivo• Y Otro Tipo De Aplicaciones
Hilda M. Armendariz Interprete/Notaria Publica	

12. Defendants' customers are persons 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 or their relatives. The immigration service rendered by Defendants for their customers include the following activities:

a. Interviewing customers to determine eligibility for immigration benefits under U.S. immigration laws;

b. advising customers as to whether or not to file a petition or application under U.S. immigration laws to secure an immigration benefit for the customer or a relative of the customer;

c. selecting and preparing a petition or application and other forms on behalf customers, including, but not limited to, form 1-90 (Application To Replace Permanent Resident), form I-129F (Petition for alien Finance), form 1-130 (Petition for Alien Relative), form N-400 (Application for Naturalization), form 1-485 (Application to Register Permanent Residence or Adjust Status), form 1-538 (Application to Extend/Change Non Immigrant status), form N-600 (Application for Certification of Citizenship), form 1-601 (Application for Waiver for Grounds Excludability), form 1-751 (Petition to Remove the conditions on Residence), form 1-765 (Application for Employment Authorization), which were filed with the Immigration and Naturalization Service in order to obtain an immigration benefit; and

d. gathering and storing the documentation supporting a customer's.

13. Defendants agreed to perform the immigration service described above in exchange for compensation ranging from between \$50.00 to \$10,000, and did in fact accept compensation from their customers for the performance of the immigration service described above.

14. In addition, Defendants prepared legal documents, i.e., Deed of Trust for the transference of property.

15. Neither Defendants, are now or have ever 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. In addition, neither Defendant is now nor has ever been a recognized organization or accredited representative by the Board of Immigration Appeals as able to represent individuals in immigration matters or in proceedings before the immigration courts.

16. The activities of Defendants, as alleged in paragraphs 13, 14 and 15 above, constitute the unauthorized practice of law. See *Unauthorized Practice Committee v. Cortez*, 692 S.W.2d 47 (Tex. 1985).

**NOTARY PUBLIC LAW AND
TEXAS DECEPTIVE TRADE PRACTICES ACT VIOLATIONS**

17. Defendants Hilda M. Armendariz and/or MARCELINO Armendariz, as alleged above, have in the course of trade and commerce violated Chapter 406 of the Texas Government Code, TEX.GOV'T CODE ANN. §406.00 1, et seq. (herein referred to as "Notary Public Law") as follows:

1. By stating or implying that they are an attorney licensed to practice law in this state in violation of TEX. GOV'T CODE ANN. §406.0 17(a)(1) ; and
- b. By soliciting or accepting compensation to prepare documents for another in an administrative proceeding relating to immigration to the United States, Defendants, notary public, in violation of TEX. GOV'T CODE ANN.§406.0 17(a)(2); and
- c. By soliciting or accepting compensation to obtain relief on behalf of another from an officer, agency, or employee of the United States, Defendants, a notary public, in violation of TEX. GOV'T CODE ANN. § 406.017(a)(3); and

- d. By using the phrase “notario” or “notario publico” to advertise the services of a notary public in violation of TEX. GOV’T CODE ANN. § 406.017(a)(4); and;
- e. By advertising the services of a notary public in a language other than English and failing to post or otherwise include with the advertisement a notice that complies with TEX. GOV’T CODE ANN. § 406.017(b), in violation of TEX. GOV’T CODE ANN. § 406.017(a)(5); and
- f. By failing to state that the notary public is not an attorney, which must be in English and in the language of the advertisement, in letters of conspicuous size, posting the fees that a notary public may charge and 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”

This is in violation of TEX. GOV’T CODE ANN. § 406.017(b).

18. Defendants, as alleged above, have 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 as follows:

- a. By advertising, offering for sale, selling, or providing a service that constitutes the unauthorized practice of law, Defendants are engaging in or have engaged in an act or practice that is false, misleading, or deceptive, in violation of §17.46(a) of the DTPA;
- b. By representing that they have the skill or knowledge necessary to handle immigration cases and/or problems, Defendants are representing, by implication, that they have the status of a licensed attorney, which they do not, in violation of

§17.46(b)(5) of the DTPA;

- c. By agreeing to perform a service which constitutes the unauthorized practice of law, Defendants are representing that their agreement with customers confers or involves or an obligation which is prohibited by law, in violation of §17.46(b)(12) of the DTPA; and
- d. By stating or implying that they are an attorney licensed to practice law in this state, Defendants are failing to disclose information concerning goods or services which was known at the time of the transaction and 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 DTPA §17.46(b)(24), and
- e. By failing to post or otherwise include in their advertisement a notice that they are not an attorney licensed to practice law in Texas and may not give legal advice or accept legal fees and failure to post the fees that a notary my charge, Defendants are failing to disclose information concerning goods or services which was known at the time of the transaction and 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 DTPA §17.46(b)(24), and
- f. By violating Section 406.017 of TEX. GOV'T CODE ANN., Defendants are in violation of the DTPA. Section 406.017(f) of the Notary Public Law provides that failure to comply with Section 406.017 of the Act is a deceptive trade practice

and is actionable under the DTPA.

EQUITABLE RESCISSION

19. All agreements between Defendants and their customers should be subject to the equitable remedy of rescission.

DISGORGEMENT

20. All of Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains, benefits or profits. Defendants should be ordered to disgorge all monies secured by deception, 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.

CONSTRUCTIVE TRUST

21. A constructive trust should be placed upon all of Defendants' assets in favor of all consumers victimized by Defendants and in favor of the State of Texas until this Court determines the appropriate amount of restitution and disgorgement.

INJURY TO CONSUMERS

22. Defendants have, by means of these unlawful acts and practices, obtained money or other property from identifiable persons to whom such money or property should be restored or who, in the alternative, are entitled to an award of damages.

23. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated the law as alleged in this petition. Unless restrained by this Honorable Court, Defendants will continue to violate the laws of the State of Texas and cause damage to the general public.

**APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER
AND ASSET FREEZE**

24. It is essential that the Court immediately and temporarily restrain Defendants from continuing with the conduct described in this Petition, namely the unauthorized practice of law. It is essential that the Court act immediately, prior to notice on Defendants and a hearing on the matter, because Defendants will continue to engage in the unauthorized practice of law and thereby cause immediate and irreparable injury, loss, or damage to persons who receive their services. Namely, the provision of legal services and/or advice by Defendants, non-attorneys, will have dire legal consequences and prejudice the legal rights of persons seeking benefits under U.S. immigration laws. Specifically, Defendants will continue to solicit customers each day and will continue to give legal services and/or advice to their customers when they are not licensed to practice law in the State of Texas. Defendants' customers will lose immigration benefits to which they are otherwise entitled and subject them to apprehension, detention or immediate deportation, or expose them to criminal liability as a result of their unqualified legal services and/or advice in immigration matters.

25. Plaintiff, STATE OF TEXAS, also asks that the assets of Defendants be frozen during the pendency of these legal proceedings to preserve monies for consumer restitution upon final judgment. Defendants received large sums of money from their victims based on their unauthorized practice of law. Unless an asset freeze is granted, Defendants' assets may be dissipated, lost, altered, removed or materially injured. The interests of the State of Texas and the public require an Ex Parte Asset Freeze to preserve monies for consumer restitution.

PRAYER

26. WHEREFORE, Plaintiff prays that Defendants 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 Defendants, their officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants from engaging, directly or indirectly, in the following acts or practices:

- a. Operating an immigration services business or conducting business at 120 N. Main Street, Midland, Texas 79701, Midland County, Texas;
- b. Advertising, offering for sale, selling, or providing an immigration service;
- c. Accepting money or valuable consideration for performing an immigration service;
- d. 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;
- e. 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;
- f. 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;
- g. Holding themselves out, by any means, to the public as an “Notaria Publica,” “Immigration Specialist,” “Immigration Counselor,” “Immigration Consultant,” “Attorney,” “Representative” and by any title or designation incorporating the word “Immigration” or an abbreviation thereof;
- h. Representing, directly or by implication, that either Defendant has the skill, expertise, or competence to handle immigration matters;
- i. Representing, directly or by implication, that Defendants can get legal status, a

work permit, or other benefit under U.S. immigration laws for a person who purchases their services;

- j. Showing, directly or by implication, any affiliation, connection, or association of an address or telephone number in the United States with an immigration service in Mexico;
- k. Concealing, withholding, destroying, mutilating, altering, falsifying, or removing from the jurisdiction of this Court any books, records, documents, invoices, receipts, or other written materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause; and
- 1. Representing, directly or by implication, that this Court, the Bureau of Citizenship & Immigration Services (also known as the Immigration and Naturalization Service and/or Department of Homeland Security), or the Office of the Attorney General has approved any goods or services sold or offered for sale by Defendants, or approved of any of Defendants' business practices.

27. WHEREFORE, Plaintiff further prays that Defendants 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 Defendants, their officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants from engaging, directly or indirectly, in the following acts or practices:

- a. Operating an immigration services business or conducting business at 120 N. Main Street, Midland, Texas 79701, Midland County, Texas;
- b. Advertising, offering for sale, selling, or providing an immigration service;
- c. Accepting money or valuable consideration for performing an immigration service;
- d. 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;
- e. 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;
- f. 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;
- g. Holding themselves out, by any means, to the public as an “Notaria Publica,” “Immigration Specialist,” “Immigration Counselor,” “Immigration Consultant,” “Attorney,” “Representative” and by any title or designation incorporating the word “Immigration” or an abbreviation thereof;
- h. Representing, directly or by implication, that either Defendant has the skill, expertise, or competence to handle immigration matters;
- i. Representing, directly or by implication, that Defendants can get legal status, a work permit, or other benefit under U.S. immigration laws for a person who purchases their services;
- j. Showing, directly or by implication, any affiliation, connection, or association of an address or telephone number in the United States with an immigration service

in Mexico;

- k. Concealing, withholding, destroying, mutilating, altering, falsifying, or removing from the jurisdiction of this Court any books, records, documents, invoices, receipts, or other written materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause; and
1. Representing, directly or by implication, that this Court, the Bureau of Citizenship & Immigration Services (also known as the Immigration and Naturalization Service and/or Department of Homeland Security), or the Office of the Attorney General has approved any goods or services sold or offered for sale by Defendants, or approved of any of Defendants' business practices.

28. Plaintiff, STATE OF TEXAS, further prays that this Court grant leave to conduct telephone, oral, written, and other depositions of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date, with reasonable shortened notice to Defendants and their attorney, if known.

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

- a. Adjudge against Defendants civil penalties in favor of Plaintiff, STATE OF TEXAS, in the amount of \$20,000 per violation of the DTPA;
- b. Order Defendants 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 to compensate for such losses;
- c. Adjudge against Defendants reasonable attorney's fees and court costs pursuant to

TEX. GOV'T CODE ANN. § 402.006 (Vernon 1998);

- d. Adjudge against Defendants prejudgment and postjudgment interest at the highest lawful rate;
- e. Order disgorgement of all monies taken by Defendants as a result of their unauthorized practice of law;
- f. Place an equitable lien on all of Defendants' assets and rescind all fee agreements entered into by and between Defendants and their customers; and
- g. 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. §523(a)(7).

FURTHER, Plaintiff, STATE OF TEXAS, respectfully prays for all other relief to which Plaintiff STATE OF TEXAS, may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY McBEE
First Assistant Attorney General

EDWARD D. BURBACH
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VERIFICATION

STATE OF TEXAS §

COUNTY OF LUBBOCK §

BEFORE ME, the undersigned authority, on this day personally appeared affiant Barbara T. Dykes, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that she executed the same, and after she was duly sworn, upon her oath, she deposed and said that the affiant is an investigator for the Office of Attorney General, and is authorized to make this affidavit, that the affiant has carefully read the factual allegations in the foregoing PLAINTIFF’S AMENDED ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION, and has reason to believe that each and all said factual allegations are true and correct; and affiant signs this Verification, pursuant to Rule 682 of the TEXAS RULES OF CIVIL PROCEDURE.

BARBARA T. DYKES
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on the ____ day of _____, 2004.

NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS