

NO. D-1-GV-06-000369

IN RE	§	IN THE DISTRICT COURT OF
	§	
	§	TRAVIS COUNTY, TEXAS
	§	
GREEN TREE SERVICING LLC	§	<u>53rd</u> JUDICIAL DISTRICT

ASSURANCE OF VOLUNTARY COMPLIANCE

COMES NOW, THE STATE OF TEXAS, acting by and through Attorney General Greg Abbott, and the Texas Department of Housing and Community Affairs, Manufactured Housing Division, an agency of the State of Texas, and GREEN TREE SERVICING LLC (hereafter “Green Tree”) and respectfully submit and present the following Assurance of Voluntary Compliance (hereafter “AVC”) for the Court’s approval and filing in accordance with the Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COMM. CODE ANN. §17.58.

I. Facts

1.1. The Consumer Protection and Public Health Division of the Office of the Attorney General (hereafter “the OAG”) is authorized to investigate and bring actions for the State of Texas for possible violations of the Deceptive Trade Practices - Consumer Protection Act (“DTPA”), TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* and the Texas Manufactured Housing Standards Act, (“TMHSA”) TEX. OCC. CODE §1201.001, *et seq.*

1.2. The Texas Department of Housing and Community Affairs, Manufactured Housing Division (hereafter “the TDHCA-MHD”) is the agency authorized to enforce and administer the TMHSA and to regulate the manufactured home industry. Pursuant to TEX. OCC. CODE §1201.003(6) a “consumer” is “a person, other than a person licensed under this chapter, who seeks to acquire or acquires by purchase, exchange, or lease-purchase a manufactured home.” The primary purposes of this AVC are to protect consumers, require compliance with the TMHSA, and provide stability to the manufactured housing industry.

1.3. Green Tree engages in the business of servicing loans secured by manufactured homes in Travis County and in most, if not all, counties in Texas. Green Tree sells repossessed or foreclosed manufactured homes that it has acquired in the operation of its business. Green Tree, in conducting these activities is subject to Texas law, including, but not limited to, the DTPA and the TMHSA.

1.4. During the course of Green Tree’s loan servicing business, many home owners, whose accounts are serviced by Green Tree, default on their loan payments to Green Tree. As an example of the volume involved, during a four month period between June 23, 2003, and October 31, 2003, Green Tree sold approximately 2,929 repossessed homes. During that four month period, approximately 1279 homes, or roughly 43.5%, were sold to persons or entities who were acting as manufactured home retailers without possessing the required license.

1.5. In effectuating these sales of manufactured homes to purchasers, including purchasers who were “consumers” within the definition of the TMHSA, Green Tree provided a sales agreement which indicated that the sale was made on an “As is -Where is” basis and typically indicated that the purchaser would be responsible for the payment of any unpaid lot rent or back taxes. It was disclosed to the purchaser in such purchase agreements that after purchase of the manufactured home from Green Tree at the agreed price, that the purchaser, who may also have been a consumer under the TMHSA, would still have to pay any unpaid lot rent and taxes. In many instances the warranties and disclosures required to be given to consumers pursuant to the TMHSA were not provided.

1.6. Green Tree alleges that it sold manufactured homes primarily to licensed retailers prior to October 31, 2003, and that thereafter, except for sales to consumers conducted from licensed bonded locations in compliance with the TMHSA, it has sold manufactured homes only to licensed retailers whose licenses have been confirmed by Green Tree, thereby exempting Green Tree from the TMHSA requirements as provided in TEX. OCC. CODE §1201.460(a).

1.7. Although Green Tree holds seven Texas retail licenses and bonds for its offices in Texas and bordering states, the OAG and the TDHCA-MHD allege that Green Tree sold many manufactured homes from unlicensed, unbonded locations, in violation of the TMHSA as then in effect, to consumers who were not licensed retailers. OAG and the TDHCA-MHD allege that all of the requirements of the TMHSA were applicable to those transactions. The sale of these manufactured homes to these consumers by Green Tree has occurred for various reasons, including but not limited to the fact that:

(a) Green Tree did not actually verify that the purchaser possessed a valid retailer’s license at the time of the sale,

(b) Green Tree’s sales agents sold homes regardless of the possession of a license by the purchaser,

(c) persons seeking to buy manufactured homes from Green Tree masqueraded as licensed retailers, and

(d) some fact situations involved combinations of any of the preceding.

1.8. OAG and TDHCA-MHD allege that in the sale of repossessed manufactured homes, Green Tree personnel sometimes used the practice of employing what is referred to in this industry as “open” or “blank” applications for Statements of Location or TDHCA-MHD “Form A” (hereafter referred to as “SOL applications”; a Statement of Ownership and Location being referred to as an “SOL”) in which the blank for the name of the purchaser is left blank or open. The “SOL” is the document which serves as the official record of ownership of a manufactured home and reflects other matters such as the location of the manufactured home and certain liens. Until application is made for a new “SOL” the existing “SOL” remains in effect. The use of properly completed “SOL” applications allows TDHCA-MHD to regulate this industry, maintain complete and current records on manufactured homes in Texas, and collect transfer fees on property which, by its very nature, is mobile. By using “open” “SOL” applications, the name of the purchaser is not disclosed as being within the chain of title to the home, *i.e.* by using “open” “SOL” applications, purchasing dealers can insert only the name of the eventual consumer as the purchaser on the “SOL” making the chain of title appear, inaccurately, as if the manufactured home is being sold by the lender directly to the new consumer. This skipped assignment negates the payment of transfer fees due the state upon the transfer of title from the lender to the purchasing dealer, in effect eliminating statutory transfer fees, depriving the state of revenue,

and creating a gap in official state records. Furthermore, because title does not pass until an application for an SOL is filed, the supposed owners at the time of sale, the retailers, do not, in fact, possess good title, which they are required to warrant when they sell a manufactured home.

1.9. In addition, OAG and TDHCA-MHD allege that Green Tree's practice of sometimes abandoning its secured manufactured housing collateral contributes to an expanding black market of manufactured homes. Green Tree's practices for liquidating repossessed or foreclosed manufactured homes or other homes that, although not repossessed or foreclosed, secure nonperforming loans, result in an abandonment of these homes by their owners. Coupled with the resulting abandonment of these homes, these practices create inventory for this black market. Unscrupulous retailers and brokers, including unlicensed retailers and brokers, pick up these homes and flagrantly sell them on this black market to unwary consumers.

1.10. These manufactured homes are abandoned by their owners after: (a) notice of default by Green Tree and prior to repossession by Green Tree, (b) notice of repossession by Green Tree, and (c) notice of a forcible entry and detainer action by an owner of real estate upon which the home is located. Green Tree, either prior to or after filing a lawsuit (wherein Green Tree has obtained a judgment granting Green Tree possession rights to the manufactured home), discovers that the costs likely to be incurred in taking possession, such as the cost of unpaid lot rent, unpaid taxes, necessary repair, and movement of the home, will likely be greater than the resale value of the manufactured home. Rather than accept liability and take further losses on the home, Green Tree simply leaves its collateral on the site without exercising its repossession rights or taking any further legal action. Where Green Tree has not taken a judgment, it has no ownership or possession rights and at times simply chooses not to enforce its lien or not to file a release of lien. Owners abandon homes after receiving a default or repossession notice from Green Tree, or after a mobile home park or other landlord has notified the owner of a forcible entry and detainer action or after the owner is evicted for failure to pay back rent. The result of the legal proceedings coupled with the abandonment of the homes by the owners sometimes results in the home being picked up or marketed by unscrupulous and often unlicensed retailers and brokers or movers who often strip the home of any valuable appliances and then sell the home without applying for the SOL, without providing the statutory disclosures and warranties, and without making required repairs necessary to render the home habitable.

1.11. OAG and TDHCA-MHD allege that the practices of selling repossessed manufactured homes to unlicensed individuals acting as retailers, providing "open" "SOL" applications to both consumers and retailers, foregoing repossession of secured collateral, and electing not to release liens on homes it has not repossessed and upon which it has elected to take no further action, have contributed to a marketplace where the requirements of the law are not being met. This has materially contributed to a significant and expanding black market where unwary consumers are victimized. The end result is that innocent consumers are left with, or at risk of purchasing, a manufactured home:

- (a) without the ability to obtain an "SOL,"
- (b) with a defective title which prevents them from enjoying all of the benefits of home ownership including the right to resell the manufactured home and the right to apply for a homestead exemption,
- (c) that is defective or uninhabitable,
- (d) that will never be delivered or conveyed, often involving unrefunded partial or full payment, and/or

(e) without the protection afforded by the Manufactured Home Owner's Recovery Trust Fund and the licensed retailer's bond.

1.12. Green Tree has cooperated with OAG's investigation and has met with OAG attorneys and TDHCA-MHD staff. Green Tree has denied and continues to deny these allegations, but in the interest of avoiding the time, expense, and uncertainty of litigation, the State of Texas, the TDHCA-MHD, and Green Tree desire to settle and compromise their mutual disputes and differences regarding OAG's and TDHCA-MHD's allegations.

II. Acts of Agents

2.1. Whenever in this AVC it is alleged that Defendant did any act or thing, it is meant that Green Tree performed or was responsible for such act or thing or that such act was performed by the officers, agents, or employees of Green Tree and in each instance the officers, agents, or employees of Green Tree were then authorized to and did in fact act on behalf of Green Tree.

III. Violations of the Texas Manufactured Housing Standards Act

3.1. The Attorney General of the State of Texas and the TDHCA-MHD allege that Green Tree engaged in certain practices within trade or commerce in the State of Texas, either directly or indirectly, in violation of the Texas Manufactured Housing Standards Act, TEX. OCC. CODE §1201.001 *et seq.*, as follows:

(A) Selling manufactured homes to consumers without providing the consumer with good and marketable title, in violation of TEX. OCC. CODE §1201.451;

(B) Selling manufactured homes to consumers without providing the consumer with a written sixty day warranty of habitability, in violation of TEX. OCC. CODE §1201.455;

(C) Selling manufactured homes to consumers without providing the consumer with a notice regarding formaldehyde, in violation of TEX. OCC. CODE §1201.153;

(D) Selling manufactured homes to consumers without providing the consumer with the disclosures required, including a notice of a right of rescission in violation of TEX. OCC. CODE §1201.162 and 1201.1521, 1201.163; and

(E) Selling manufactured homes to consumers from unbonded and unlicensed locations, in violation of TEX. OCC. CODE §1201.107.

IV. Violation of the Texas Deceptive Trade Practices Act

4.1. The acts and practices engaged in by Green Tree referred to in Paragraphs I-III of this AVC are alleged by the Attorney General of Texas to be in violation of TEX. BUS. & COMM. CODE ANN. §17.46(a) and to be deceptive trade practices in the conduct of trade or commerce pursuant to TEX. OCC. CODE §1201.603.

V. Assurance

5.1 Green Tree hereby agrees and voluntarily assures the Attorney General of Texas and the TDHCA-MHD that as of the effective date of this AVC, Green Tree, its officers, directors,

agents, employees and representatives will comply fully with the TMHSA and will not violate the DTPA and to that end will discontinue and stop altogether the following acts and practices:

(A) Selling any manufactured home to any consumer without providing the consumer with good and marketable title;

(B) Selling any manufactured home to any consumer if the manufactured home has pending or outstanding unpaid back taxes or unpaid lot rent or any other lien, charge, or encumbrance that would result in the consumer not receiving good and marketable title;

(C) Selling any manufactured home to any consumer without first making the home habitable and providing the consumer with a written sixty day warranty of habitability;

(D) Selling any manufactured home to any consumer without providing the consumer with a notice regarding formaldehyde;

(E) Selling any manufactured home to any consumer without providing the consumer a notice of a right of rescission and all the disclosures required by TEX. OCC. CODE §1201.162, and §1201.163;

(F) Selling any manufactured home to any consumer from an unbonded or unlicensed location except as authorized by Tex. Occ. Code § 1201.107(d);

(G) Creating or providing to anyone “open” or “blank” applications for Statements of Ownership and Location, or which do not properly and accurately contain the name(s) of the person(s) or properly licensed retailer, who is purchasing the manufactured home from Green Tree,

(H) Sending or using “open” or “blank” applications for Statement of Location;

(I) Selling any manufactured home to any person who is purchasing the home for the commercial purpose of reselling the home and who is not licensed at the time of purchase as a retailer of manufactured homes;

(J) Failing to check the Active License Holders database on the TDHCA Internet website in order to confirm that a person who is not a consumer who is purchasing a manufactured home possesses a duly issued and unexpired retailer’s license before selling a manufactured home to such person;

(K) Moving or causing to be moved, any manufactured home without first obtaining any required permit issued by TXDOT for the movement of the home.

(L) Failing to comply with TXDOT rules for the movement of a home which is ordered or contracted by Green Tree for movement;

(M) Moving or causing to be moved any manufactured home to an unbonded, unlicensed storage facility which is not the site designated by the consumer where the home will be installed, when the sale of the home is to a consumer;

(N) Causing or contracting for the installation of a manufactured home for a consumer by anyone who is not licensed by TDHCA-MHD to install manufactured homes;

(O) Failing to comply with the TMHSA, the DTPA and such other laws and regulations of the state of Texas that are applicable to the sale of repossessed manufactured homes in the state of Texas;

(P) Accepting funds from the sale of any manufactured home to any consumer without taking reasonable steps to confirm that the consumer is using his/her own funds for payment;

(Q) Releasing a lien on any manufactured home without filing a release of lien with TDHCA-MHD and providing the location of the home and all identifying information for the home pursuant to paragraph 5.2(F) of this AVC;

(R) Engaging in any assumption of debt or transfer of equity transaction, unless a consumer who is an obligor on a loan serviced by Green Tree identifies a purchaser who desires to purchase the home and assume the selling consumer's loan. In this instance, Green Tree may underwrite credit, give its consent and provide documentation needed to effectuate the sale and assumption; otherwise, if Green Tree's role in any such transaction goes beyond underwriting credit, giving its consent and providing the documentation needed to effectuate such sale and assumption, the sale will be handled by Green Tree or another licensed retailer in accordance with and subject to the TMHSA;

(S) Doing any of the foregoing acts by using or contracting with any third party who is known to engage in, or is suspected of engaging in, any of the foregoing acts. Nothing in this AVC is intended to prohibit Green Tree from selling any manufactured home to any consumer through licensed retailers or otherwise selling any manufactured home in accordance with the requirements of the TMHSA and other applicable laws. Any such retailer is responsible for complying with the TMHSA.

5.2 Green Tree hereby agrees and voluntarily assures the Attorney General of Texas and the TDHCA-MHD that as of the effective date of this AVC, Green Tree, its officers, directors, agents, employees and representatives will adopt and follow appropriate policies and procedures to insure that:

(A) any offering or sale of any manufactured home to a consumer is conducted in strict accordance with all requirements of the TMHSA and other applicable laws;

(B) any offering or sale of any manufactured home to someone who is not a consumer is made only to a licensee who possesses an unexpired retailer's license under the TMHSA at the time of sale;

(C) any consumer to whom Green Tree is offering or selling a manufactured home is acting on his or her own behalf or, if made to someone on behalf of a consumer, that this person is a licensed retailer or broker under the TMHSA and that the representation of the consumer has been disclosed to and acknowledged by the consumer in writing;

(D) Green Tree conducts a reasonable inquiry to confirm that a consumer is paying for the purchase with the consumer's own funds;

(E) Green Tree files a release of lien with TDHCA-MHD and provides TDHCA-MHD the location of a home and all identifying information for any home for which it is releasing a lien;

(F) when engaging in any assumption of debt or transfer of equity transaction, where Green Tree's role in any such transaction goes beyond credit underwriting, giving its consent and providing the documentation needed to effectuate such sale and assumption, the sale will be handled by Green Tree or another licensed retailer in accordance with and subject to the TMHSA;

(G) no transaction shall be denominated, named, or referred to as a "Transfer of Equity" sale unless the appraised market value of the manufactured home being sold is greater than the amount of the unamortized balance on the note, plus all back taxes and back lot rent owing on the home; and

(H) Green Tree substantially complies with all state and federal consumer protection laws and rules applicable to its business and operations.

VI. Relief for Consumers.

6.1. In addition to the assurances provided in paragraph V, Green Tree also voluntarily agrees to:

(A) send the questionnaire shown as Attachment A to the persons listed in Attachment B within ten days from the effective date of this AVC and to any person who requests the questionnaire after the effective date of this AVC, and to accept a questionnaire response for one hundred twenty days after the effective date of this AVC;

(B) post on its website the notice shown as Attachment C, contemporaneous with the sending of the questionnaire;

(C) individually and personally contact each consumer who responds to the questionnaire, within thirty days from the post marked date of the response to the questionnaire, to ascertain what disclosures, corrective action, repairs, and/or financial compensation may be necessary or required to provide that consumer with everything that they would have been entitled to have received under the TMHSA. Within thirty days of the first post-response contact with each person who responds to the questionnaire, Green Tree will determine the requisite compensation, disclosures, or rescission rights as may be required for any given response and within that same period, notify the TDHCA-MHD for approval of Green Tree's determination. Upon receipt of such approval from TDHCA-MHD, Green Tree will immediately provide the requisite compensation, disclosures, or rescission rights. Green Tree will, on a current basis, send copies of the questionnaire responses to TDHCA-MHD and keep the TDHCA-MHD fully apprised of all corrective action taken for each questionnaire response; and

(D) provide a copy of this AVC, within ten days from its effective date, to each of its regional managers and each of its sales agents in Texas involved in the procurement or sale of manufactured homes and each such person will sign an acknowledgment of receipt of a copy of this AVC. Each such acknowledgment is to be kept in the personnel folder of these employees.

VII. Tolling Agreement

7.1. Subject to the provisions of this agreement, the running of any time or limitations shall be deemed to have ceased to run as of December 19, 2003 on the bringing of any legal or administrative action by the TDHCA-MHD or the OAG under the DTPA, the MHSA, the Rules or any other legal requirement with respect to any matter made the subject of this AVC. With respect to any claim or cause of action arising under, out of, or in connection with this AVC, the statute of limitations in DTPA §17.47(d) is hereby tolled until the effective date of this AVC.

7.2. If at anytime the TDHCA-MHD determines that a matter that was to have been remedied or performed pursuant to this AVC has not been remedied or performed and despite notice and a reasonable opportunity to cure, which shall be no less than thirty days after such notice, the TDHCA-MHD believes that Green Tree has either: (a) failed to provide a consumer with an effective remedy or cure, providing all rights and benefits provided for in retail sales to consumers under the DTPA, the MHSA, the Rules, and this AVC, or (b) engaged in the sale of

manufactured homes in a manner that the TDHCA-MHD believes to be in violation of the DTPA, the MHSA, the Rules, and/or this AVC, the TDHCA-MHD and/or OAG may initiate such legal and/or administrative proceedings against Green Tree under the DTPA, the MHSA, the Rules, and/or this AVC as they deem appropriate, and Green Tree will not assert any defense or claim of limitations, laches, estoppel, or the like, such defenses being waived and renounced during the pendency of this tolling agreement.

VIII. Prima Facie Evidence

8.1. In order to comply with TEX. BUS. & COMM. CODE, §17.58(c) this AVC shall not be considered an admission of prior violation of the Consumer Protection Act or the TMHSA. However, unless this AVC has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of this AVC is *prima facie* evidence of a violation of the Consumer Protection Act and the TMHSA. It is also agreed and understood that this AVC in no way affects individual rights or action under the Consumer Protection Act, the TMHSA, or any other appropriate theory of law or equity.

8.2. Notwithstanding the provisions of paragraph 8.1, this AVC shall not be disclosed by testimony, exhibit, argument, or otherwise, and shall not be introduced into evidence during the administrative proceeding, or any appeal thereof, in the matter of TDHCA-MHD vs. Green Tree Servicing, LLC, pending as SOAH Docket No. 332-05-4501.

IX. Attorneys' Fees and Court Costs

9.1. The acceptance of this AVC is conditioned upon the stipulation that Green Tree will pay to the Office of Attorney General the sum of Fifty Thousand Dollars (\$50,000.00) as attorneys fees and costs of investigation, within ten days from the effective date of this AVC .

9.2. Any and all taxable costs of court are taxed against Green Tree.

X. Court Approval

10.1. The parties agree that they will submit this AVC to a court of competent jurisdiction in Travis County and request that the court approve and enter this AVC pursuant to the terms set forth in this AVC .

10.2. This AVC shall be governed by TEX. BUS. & COM. CODE, § 17.58.

10.3. It is further agreed and understood that while the parties to this AVC presently intend to cooperate in securing and obtaining compliance with the terms of this agreement, the matters settled by the filing of this AVC may be reopened at any time by the Texas Attorney General's Office, acting on its own or on behalf of the TDHCA-MHD, for further proceedings in the public interest and that when signed this AVC will be filed and placed in the public record.

10.4. The "effective date" of this AVC is the date the court signs the Order Approving Assurance of Voluntary Compliance.

Respectfully submitted,

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**ITS DULY AUTHORIZED OFFICER OR
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