IN THE DISTRICT COURT OF EL PASO COUNTY TEXAS
327th JUDICIAL DISTRICT

FILED
GILBERT SANCHEZ
DISTRICT CLERK
2006 JUL 11 PM 1 40
EL PASO COUNTY, TEXAS
BY _____
DEPUTY

THE STATE OF TEXAS	§	
	§	
Plaintiff,	§	
	§	
v.	§	CAUSE NO. 2006 - 3546
	§	
MANUEL ESCALANTE III, d/b/a ME ACCOUNTING & CONSULTING,	§	
	§	
	§	
Defendant.	§	

PLAINTIFF'S ORIGINAL PETITION FOR RESTITUTION AND PENALTIES, AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

COMES NOW THE STATE OF TEXAS, Plaintiff, complaining of MANUEL ESCALANTE III, d/b/a ME ACCOUNTING & CONSULTING, Defendant, for violating the Texas Deceptive Trade Practices – Consumer Protection Act, TEX. BUS. & COM. CODE §§ 17.41 *et seq.* ("DTPA") and TEX. GOV'T CODE § 406.017 (the "Notary Statute") .

The State of Texas, represented by Attorney General Greg Abbott, appears through the Consumer Protection and Public Health Division of the Office of the Attorney General.

I.
DISCOVERY CONTROL PLAN

1.1. The discovery in this case is intended to be conducted under Level 2 pursuant to Rule 190.3, TEX. R. CIV. P.

II.
JURISDICTION AND AUTHORITY

2.1. 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 and pursuant to the

authority granted him by the Notary Statute and the DTPA upon the ground 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 the Notary Statute and the DTPA.

2.2 This action seeks to permanently enjoin Defendant from engaging in the acts and practices described below and which are declared to be unlawful by the Notary Statute and the DTPA.

2.3 Additionally, this suit seeks civil penalties from Defendant as a result of the conduct herein alleged, pursuant to § 17.47(c) of the DTPA. This suit also seeks restitution on behalf of identifiable persons who suffered damages as a result of Defendant's unlawful acts and practices, as provided by § 17.47(d) of the DTPA.

2.4 Further, Attorney General Greg Abbott seeks attorney's fees and investigative fees reasonable in relation to the efforts expended by his office in prosecuting this action and court costs as authorized by TEX. GOV'T CODE § 402.006(c).

III.
VENUE

3.1 Venue of this suit lies in El Paso County, Texas for the following reasons:

a. Under the DTPA § 17.47(b), venue is proper because Defendant has done business in El Paso County, Texas; and

b. Under TEX. CIV. PRAC. & REM. CODE §15.002(a)(1) venue is proper in El Paso County, Texas because all or a substantial part of the events or omissions giving rise to the claims occurred in El Paso County, Texas.

IV.
PARTIES

4.1 The Attorney General is authorized by the Texas Constitution, Art. 4, § 22, to enforce the laws of Texas. Section 17.47 of the DTPA authorizes the Attorney General to bring enforcement actions under the DTPA.

4.2 Defendant MANUEL ESCALANTE III does business in El Paso County, Texas, and may be served with process at his residence address, 10571 Lakewood Ave., El Paso, Texas 79925, which is also his business address for ME ACCOUNTING & CONSULTING, or wherever he may be found.

V.
EXHIBIT

5.1 The factual allegations in this pleading relating to deceptive trade practices are supported and sworn to in an affidavit by Patricia M. Acosta, Investigator with the Office of the Attorney General of Texas, attached as Exhibit A.

VI.
PUBLIC INTEREST

6.1 The Attorney General has reason to believe that Defendant has engaged in the unlawful practices described below. The Attorney General also has reason to believe that Defendant has caused and will continue to cause injury, loss and damage not only to Texas consumers, but also to legitimate businesses which lawfully conduct trade and commerce in Texas. The Consumer Protection and Public Health Division of the Office of the Attorney General believes that this action is in the public interest.

VII.
TRADE AND COMMERCE

7.1 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.

VIII.
ACTS OF AGENTS

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

IX.
NOTICE

9.1 The Consumer Protection and Public Health Division of the Office of the Attorney General of Texas did not inform Defendant of the alleged unlawful conduct prior to filing suit because immediate and irreparable injury, loss or damage will occur as a result of such delay in obtaining a Temporary Restraining Order.

X.
SUMMARY OF THE CASE

10.1 Defendant operates a business in El Paso, El Paso County, Texas, ostensibly as a Notary Public, but at which, among other things, he provides counseling for a fee regarding U.S. immigration laws and procedures. The target population is comprised of citizens of foreign countries, primarily the Republic of Mexico, attempting to immigrate to the United States.

10.2 Defendant operates a business in which he represents to consumers that he is qualified to prepare all pertinent documentation as prescribed by the immigration laws of this country, but he fails to inform the consumers that he is not authorized or qualified to do so under these immigration laws.

10.3 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(3) 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 person entitled to the representation, and he failed to obtain permission from the immigration officials to act as the representative of said consumer.

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

10.5 Defendant is not, and has not been at all relevant times, licensed by the State Bar of Texas to practice as an attorney in the State of Texas, and has not, at all relevant times, worked under the direct daily supervision of a licensed attorney.

10.6 Defendant is a Notary Public, licensed as such by the State of Texas. However, in addition to performing functions which Notaries are legally authorized to do, Defendant also provides counseling for a fee regarding U.S. immigration laws and procedures, and represents to consumers that he is qualified to prepare all pertinent documentation as prescribed by the immigration laws of this country.

10.7 Defendant's failure to disclose his lack of authority is intended to induce consumers into transactions into which they would not have entered if the information had been disclosed to them.

XI.
NOTARY STATUTE

11.1 Under Texas Government Code § 406.017 (the "Notary Statute"), a person who is a notary public violates the law if he or she:

a. states or implies that the person is an attorney licensed to practice law in Texas;

b. solicits or accepts compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or related matters;

c. solicits or accepts compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of Texas or the United States;

d. uses the phrase "notario" or "notario publico" to advertise the services of a notary public by any means; or

e. advertises the services of a notary public in a language other than English, if the person does not post or otherwise include with the advertisement a notice that complies with the following:

> The notice must state that the notary public is not an attorney and must be in English and in the language of the advertisement and in letters of a conspicuous size. ... The notice must include 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."

A violation of any of the foregoing provisions is also a violation of the DTPA.

11.2 The State has reason to believe, and therefore alleges, that Defendant has directly or indirectly engaged in and will continue to engage in conduct which violates the Notary Statute, as follows:

a. Defendant solicits or accepts compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or related matters;

b. Defendant solicits or accepts compensation to obtain relief on behalf of another from an officer, agency, or employee of Texas or the United States;

XII.
DECEPTIVE TRADE PRACTICES

12.1 The conduct described above violates §17.46(a) and (b) of the DTPA which declares that misleading, or deceptive acts or practices in the conduct of trade or commerce are unlawful.

12.2 The State has reason to believe, and therefore alleges, that Defendant has directly or indirectly engaged in and will continue to engage in misleading, or deceptive acts and practices. Unless this court restrains Defendant from engaging in the acts described in Paragraphs 10.01 through 10.8, Defendant will continue violating §17.46(a) and (b) as outlined below.

a. Defendant does not possess the certification or qualifications necessary to counsel persons regarding their rights under U.S. immigration laws or other legal matters. Defendant's provision of these services to consumers given his failure to possess the certification or qualifications necessary to perform such services violates the DTPA as follows:

> §17.46(b)(2)--Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
>
> §17.46(b)(3)--Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;
>
> §17.46(b)(5)--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.
>
> §17.46(b)(12)--Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.

b. Defendant failed to disclose to consumers that he is not qualified to counsel them regarding their rights under U.S. immigration laws or with respect to other legal matters, because he is not certified or licensed to provide such counseling. Defendant's failure to disclose such information concerning his services is intended to induce consumers into transactions into which

they would not have entered had this information been disclosed. Such failure violates the DTPA as follows:

> §17.46(b)(24)--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.

XIII.
INJURY TO CONSUMERS

13.1 By means of the foregoing unlawful acts and practices, Defendant has acquired 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.

XIV.
EQUITABLE RELIEF

14.1 The State of Texas asks that the Court temporarily enjoin and permanently enjoin Defendant from providing advice on immigration matters, thereby representing that the services provided have approval or characteristics which they do not have.

14.2 The State of Texas further asks that the Court temporarily enjoin and permanently enjoin Defendant from offering to give advice on how to adjust the immigration status of consumers, thereby representing that his services are of a particular standard, quality, or grade when they are of another.

14.3 The State of Texas further asks that the Court temporarily enjoin and permanently enjoin Defendant from failing to disclose that he is not authorized to practice law or to be a "representative" to assist undocumented immigrants in their cases in the State of Texas.

14.4 The State of Texas further asks that the Court temporarily enjoin and permanently enjoin Defendant from failing to disclose that he is not authorized to receive money as a fee because of or in consequence of acting as an immigration counselor.

14.5 The State of Texas further asks that the Court, under its equity powers, order Defendant to make restitution and disgorge the sum of all money, or the equivalent of money, paid by consumers to Defendant as a fee because of or in consequence of Defendant acting as an immigration counselor.

XV.
NECESSITY OF IMMEDIATE RELIEF TO PRESERVE DEFENDANT'S ASSETS

15.1 Plaintiff the State of Texas requests immediate relief by way of an Ex Parte Temporary Restraining Order freezing Defendant's assets to preserve and protect such assets from dissipation so the victims of Defendant's actions can receive the restitution to which they are entitled. Defendant's assets are subject to dissipation for the reason that Defendant misrepresents his authority under both Texas and United States law, he operates a business out of his home with no apparent advertising that there is a business at that location, and he takes payment in cash from consumers, thereby indicating an intent to secrete the funds.

XVI.
OTHER RELIEF

16.1 The State of Texas asks the Court to order Defendant to restore any money or property which may have been acquired from his "clients" by means of any unlawful act or practice.

16.2 The State of Texas asks the Court to order Defendant to pay a civil penalty, to and for the benefit of the State of Texas, in the amount of $20,000.00 per violation of the DTPA.

16.3 The State of Texas asks the Court to order Defendant to pay reasonable attorney fees, pursuant to TEX. GOV'T CODE § 402.006.

PRAYER

WHEREFORE, Plaintiff The State of Texas prays that the Court issue a Temporary Restraining Order restraining Defendant as set forth herein, and that Defendant be cited according to law to appear and answer herein; that after reasonable notice and hearing a Temporary Injunction be issued; and upon final hearing a Permanent Injunction be issued, restraining and enjoining Defendant, his successors, assigns, officers, agents, servants, employees, attorneys and any other person in active concert or participation with Defendant, or acting under any assumed name or legal entity, from engaging in the following acts or practices:

a. Transferring, concealing, destroying or removing from the jurisdiction of this Court any books, records, documents, invoices, or other written materials relating to Defendant's business which are in Defendant's possession, custody, or control except in response to further orders or subpoenas in this cause;

b. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing or allowing the transfer, removal, or withdrawal from any bank, savings association, credit union or other financial institution or from the jurisdiction of this Court any money, stocks, bonds, assets, sports memorabilia, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by such Defendant without further order of this court;

c. Maintaining an office in Texas for the purpose of giving advice and counsel regarding U.S. immigration rights and privileges or any other sort of legal matter, until such time as Defendant obtains the certification, license, or other qualifications required for such activity or unless such acts are performed under the direct daily supervision of an attorney licensed to practice law in the State of Texas;

d. Representing or advertising that Defendant has an office available for giving advice and counsel regarding U.S. immigration laws or any other sort of legal matter, until such time as Defendant obtains the certification, license, or other qualifications required for such activity or unless such acts are performed under the direct daily supervision of an attorney licensed to practice law in the State of Texas;

e. Selecting or preparing immigration forms or legal documents of any type on behalf of persons seeking to legalize their status or to obtains lawful employment in the United States, until such time as Defendant obtains the certification, license, or other qualifications required for such activity, unless such acts are performed under the direct daily supervision of an attorney licensed to practice law in the State of Texas;

f. Giving persons advice and counsel regarding their rights under the immigration laws of the United States or any other sort of legal matter, until such time as Defendant obtains the certification, license, or other qualifications required for such activity, unless such acts are performed under the direct daily supervision of an attorney licensed to practice law in the State of Texas;

g. Collecting or accepting fees for providing immigration or other legal services to consumers, until such time as Defendant obtains the certification, license, or other qualifications required for such activity, unless such acts are performed under the direct daily supervision of an attorney licensed to practice law in the State of Texas;

h. Holding himself out to the public by any title or designation incorporating the word "immigration," "inmigracion," or an abbreviation thereof, unless Defendant is recognized and accredited by the Bureau of Citizenship & Immigration Services to provide immigration services;

i. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in that Defendant does not possess the certification or qualifications necessary to counsel persons regarding their rights under U.S. immigration laws or other legal matters;

j. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in that Defendant does not possess the certification or qualifications necessary to counsel persons regarding their rights under U.S. immigration laws or other legal matters;

k. 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, in that Defendant does not possess the certification or qualifications necessary to counsel persons regarding their rights under U.S. immigration laws or other legal matters;

l. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; specifically, and without limitation, counseling persons regarding their rights under U.S. immigration laws or other legal matters.

m. Failing to disclose information concerning any good or service sold or offered for sale with knowledge at the time of the transaction when such failure to disclose is intended to induce consumers to enter into transactions consumers would not enter into if such information were disclosed; specifically, and without limitation, failing to disclose to consumers that he is not qualified to counsel them regarding their rights under U.S. immigration laws or with respect to other legal matters, because he is not certified or licensed to provide such counseling.

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

In addition, Plaintiff State of Texas respectfully prays that this Court will:

a. Order Defendant to make restitution and disgorge the sum of all money, or the equivalent of money, paid by consumers to Defendant as a fee because of or in consequence of Defendant acting as an immigration counselor, or, in the alternative, award actual damages and restore any money or property which may have been acquired by means of any unlawful act or practice;

b. Adjudge against Defendant civil penalties in favor of Plaintiff State of Texas in the amount of $20,000.00 per violation of the DTPA;

c. Order Defendant to pay Plaintiff State of Texas attorney's fees and costs of court pursuant to TEX. GOV'T CODE §402.006(c);

DATED this 11th day of July, 2006.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

PAUL D. CARMONA
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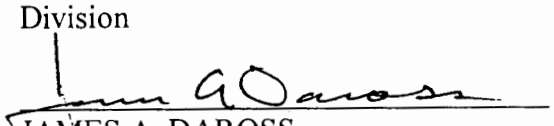

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