

CAUSE NO. _____

**THE STATE OF TEXAS, individually
and on behalf of the TEXAS REAL
ESTATE COMMISSION,
Plaintiff,**

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IN THE DISTRICT COURT OF

v.

TRAVIS COUNTY

**NATIONAL HOME PROTECTION, INC.,
Defendant.**

___ JUDICIAL DISTRICT

**VERIFIED ORIGINAL PETITION AND
APPLICATION FOR INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF THIS COURT:

The State of Texas, individually and on behalf of the Texas Real Estate Commission, by and through the Attorney General of Texas, files this Verified Original Petition and Application for Injunctive Relief against Defendant, National Home Protection, Inc.

In support, Plaintiff would respectfully show the Court as follows:

**I.
DISCOVERY CONTROL PLAN**

1.1 Plaintiff intends to conduct discovery under Level 2 of Rule 190.3 of the Texas Rules of Civil Procedure.

**II.
PARTIES**

2.1 The Texas Real Estate Commission ("Commission") is the state agency that regulates residential service companies and the sale of residential service contracts, pursuant to the Texas Residential Service Company Act (the "Act"). Tex. Occ. Code §§ 1303.001-.407 (Vernon 2004 & Supp. 2008).

2.2 Plaintiff brings this suit to enjoin violations of, and to compel compliance with, the Act.

2.3 Defendant is a New York domestic business corporation which is not licensed to do business in Texas. Defendant may therefore be **served by the Travis County Constable** with process as follows:

**National Home Protection, Inc.
c/o Office of the Secretary of State
Statutory Documents Section–Citations Unit
PO Box 12079
Austin, Texas 78711-2079**

2.4 The last-known address of Defendant’s principal place of business and the last-known names of the principals of Defendant, for the purpose of **service by the Texas Secretary of State**, are as follows:

**National Home Protection, Inc.
Attention: Leo Serrur or David Seruya
42 W 38th Street, Suite 800
New York, NY 10018**

**III.
JURISDICTION**

3.1 This action is brought by Attorney General Greg Abbott in the name of the State of Texas on behalf of the Texas Real Estate Commission. This Court has jurisdiction under the Act, which provides that Plaintiff may bring an action in the name of the State of Texas in a District Court of Travis County for a restraining order, injunction, or other relief, for violations thereof. Tex. Occ. Code § 1303.403(a).

3.2 This action is also brought by Attorney General Greg Abbott in the name of the State of Texas and in the public interest under the authority granted him by section 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41-17.63 (Vernon 2002 & Supp. 2008)(hereafter the “DTPA”), upon the ground that Defendant has engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, DTPA sections 17.46(a) and (b).

3.3 Defendant transacts business in the State of Texas through its sale of residential service contracts to Texas consumers. Further, upon information and belief, Defendant conducts most if not all of its business through the internet, and Defendant’s internet service provider is located in the State of Texas. As such, this Court has personal jurisdiction over Defendant.

IV. VENUE

4.1 Venue is proper in Travis County pursuant to Texas Occupations Code section 1303.403(a).

4.2 Under DTPA section 17.47(b), venue of this suit also lies in Travis County, Texas because Defendant and its agents have done business and undertaken transactions in Travis County, Texas.

V.
PUBLIC INTEREST AND NOTICE

5.1 Because Plaintiff State of Texas has reason to believe that Defendant has engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff has reason to believe that Defendant has caused adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State.

5.2 Pursuant to DTPA section 17.47(a), contact has not been made with the Defendant to inform it of the unlawful conduct alleged herein, for the reason that the Consumer Protection Division has been unable to locate Defendant, its owner or registered agent, as Defendant has not filed any information with the Texas Secretary of State, as required to conduct business in this State.

VI.
TRADE AND COMMERCE

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

VII.
STATEMENT OF FACTS

7.1 Defendant is a “person” and a “residential service company” as defined in the Act. Tex. Occ. Code § 1303.002(3), (4).

7.2 Residential service companies doing business in the State of Texas, including Defendant, are required by the Act to do the following, among other obligations:

- A. obtain a license (Tex. Occ. Code § 1303.101(a));

- B. maintain a funded reserve against their liability to provide repair and replacement services under their outstanding residential service contracts written in the State of Texas (Tex. Occ. Code § 1303.151);
- C. maintain a bond or other security with Plaintiff as a guarantee that they will meet their obligations to their contract holders (Tex. Occ. Code § 1303.153(a));
- D. file an annual report with Plaintiff not later than April 1st of each year on a form prescribed by Plaintiff, which is to include a financial statement and other data (Tex. Occ. Code § 1303.202);
- E. file with, and obtain approval from, Plaintiff of any evidence of coverage before such coverage is issued or evidence of coverage is delivered to the consumer (Tex. Occ. Code § 1303.251(b)); and
- F. file with, and obtain approval from, Plaintiff of any schedule of charges for services under a residential service contract before such schedule is used (Tex. Occ. Code § 1303.253(a)).

7.3 Defendant has sold, and continues to sell, “residential service contracts” to consumers in the State of Texas, as that term is defined in the Act. Tex. Occ. Code § 1303.002(5). Defendant has engaged, and continues to engage, in such activity without a license and without complying with the other obligations under the Act.

7.4 Plaintiff has advised Defendant of the licensure requirements under the Act, and has

warned Defendant of its continuing violations of the Act and the consequences thereof. Further, Plaintiff has issued a cease and desist letter to Defendant, a true and correct copy of which is attached hereto and made fully a part hereof as Exhibit A. Defendant has ignored these warnings and notices, and continues to engage in the unlicensed sale of residential service contracts to consumers in the State of Texas.

VIII. **VIOLATIONS**

8.1 Defendant has violated and continues to violate section 1303.101(a) of the Occupations Code, which provides that “[a] person may not issue a residential service contract or perform or arrange to perform services under a residential service contract unless the person is licensed as a residential service company under this chapter.”

8.2 Defendant has violated and continues to violate section 1303.151 of the Occupations Code, which provides that “[a] residential service company shall maintain a funded reserve against its liability to provide repair and replacement services under its outstanding residential service contracts written in this state.”

8.3 Defendant has violated and continues to violate section 1303.153(a) of the Occupations Code, which provides that “[a]s a guarantee that a residential service company will meet its obligations to its contract holders, the company shall maintain with the commission a bond or other security accepted by the commission.”

8.4 Defendant has violated and continues to violate section 1303.202(a) of the Occupations Code, which provides that “[n]ot later than April 1 of each year, each residential

service company shall file with the commission a report covering the preceding calendar year.”

8.5 Defendant has violated and continues to violate section 1303.251(b) of the Occupations Code, which provides that “[a] residential service company may not issue or deliver evidence of coverage under a residential service contract, or an amendment to that evidence, to a person in this state until a copy of the evidence or amendment is filed with and approved by the commission.”

8.6 Defendant has violated and continues to violate section 1303.253(a) of the Occupations Code, which provides that “[a] residential service company may not use in conjunction with a residential service contract a schedule of charges for services covered under the contract or an amendment to that schedule until a copy of the schedule or amendment is filed with and approved by the commission.”

8.7 By failing to obtain a Texas license as a residential service company, Defendant has engaged in false, misleading and deceptive acts and practices declared unlawful in DTPA section 17.46(a) and (b). Such acts include:

- A. causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA section 17.46(b)(2);
- B. causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of DTPA section 17.46(b)(3);

- C. 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 DTPA section 17.46(b)(5); and
- D. 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 DTPA section 17.46(b)(24).

IX.
CLAIM FOR INJUNCTIVE RELIEF

9.1 Defendant's sale of residential service contracts to consumers in the State of Texas without a license violates the public interest of Texas consumers, and also directly violates the Occupations Code. The public interest of Texas consumers will be at risk unless Defendant is permanently restrained from the unlicensed sale, or offer for sale, of residential service contracts to consumers in this state.

9.2 Because Defendant's continuing unlicensed sale of residential service contracts threatens the public interest of Texas consumers, Plaintiff has and will continue to suffer probable injury. For the same reasons, Plaintiff, on behalf of Texas consumers, is subject to imminent harm and irreparable injury.

9.3 Having satisfied the prerequisites for injunctive relief, Plaintiff is entitled to an order

enjoining and restraining Defendant from selling, or offering for sale, residential service contracts to consumers in Texas without a license. Tex. Occ. Code § 1303.403(a). Plaintiff is entitled to such injunctive relief without a bond. Tex. Occ. Code § 1303.403(c).

9.4 Plaintiff would further show that the Defendant, by its acts, is violating the laws of the State of Texas and will continue to violate such laws unless restrained by a court order enforceable by contempt. Unless the Defendant is enjoined by a temporary injunction and, upon final hearing, a permanent injunction to cease the unlicensed sale of residential service contract, Defendant will continue to operate in violation of state law.

X.
CLAIM FOR CIVIL PENALTIES

10.1 Plaintiff requests that this Court assess civil penalties against Defendant within the statutory range for each act that violates the Occupations Code. Tex. Occ. Code §§ 1303.404, 1303.407.

10.2 Plaintiff further requests that this Court assess civil penalties against Defendant in an amount up to \$20,000 per violation of the DTPA. Tex. Bus. & Com. Code § 17.47(c)(1).

XI.
INJURY TO CONSUMERS

11.1 Defendant has 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.

XII.
EQUITABLE RESCISSION

12.1 All agreements between consumers and Defendant for the purchase of residential

service contracts should be subject to the equitable remedy of rescission.

XIII.
DISGORGEMENT

13.1 All of Defendant's assets gained from the sale of its residential service contracts are subject to the equitable remedy of disgorgement, including all ill-gotten gains and benefits or profits that resulted from the sale of its residential service contracts in the State of Texas. Defendant should be ordered to disgorge all monies taken from consumers 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.

XIV.
CONDITIONS PRECEDENT

14.1 All conditions precedent to Plaintiff's right to recover and Defendant's liability have occurred or have been waived.

PRAYER

WHEREFORE, Plaintiff prays for the following relief:

- A. That Defendant be cited to appear and answer herein;
- B. That, upon notice and a hearing, the Court enter a temporary injunction, enjoining the Defendant, its agents, assigns, or any one acting in concert with them, from:
 - 1. issuing, selling or offering to sell, residential service contracts to consumers in the State of Texas unless and until Defendant is properly licensed and fully complies with all other requirements in the Act;

2. accepting any money as compensation for selling residential service contracts to consumers in the State of Texas unless and until Defendant is properly licensed and fully complies with all other requirements in the Act; and

3. advertising the sale of residential service contracts to consumers in the State of Texas unless and until Defendant is properly licensed and fully complies with all other requirements in the Act.

C. That upon notice and hearing, the Court grant a permanent injunction against Defendant for the above requested relief;

D. That upon final trial or hearing in this case, the Court 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 to compensate for such losses;

E. That upon the final trial or hearing in this case, the Court award civil penalties against Defendant;

F. That upon final trial or hearing in this case, the Court order Defendant to pay Plaintiff's attorney fees and costs of court. Tex. Gov't Code § 402.006(c); and

G. That Plaintiff be awarded all such other and further relief, at law and in equity, to which it may show itself justly entitled.

Dated: January 8, 2009.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

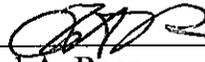
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Deputy First Assistant Attorney General

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Deputy Attorney General for Civil Litigation

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Chief, Environmental Protection and Administrative Law
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**ATTORNEYS FOR THE STATE OF TEXAS,
INDIVIDUALLY AND ON BEHALF OF THE
TEXAS REAL ESTATE COMMISSION**

VERIFICATION

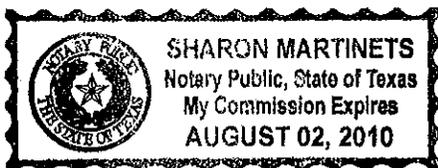
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

The undersigned has read the factual allegations in Section VII of the foregoing "Verified Original Petition and Application for Injunctive Relief and Civil Penalties," and hereby verifies that she has personal knowledge thereof and that they are true and correct to the best of her knowledge and belief.

Beverly S. Rabenberg

Beverly S. Rabenberg
Assistant Director of Enforcement
Texas Real Estate Commission

Subscribed and sworn to me this 6th day of January, 2009.



Notary without Bond

Sharon Martinets

Notary Public in and for the State of Texas

My Commission Expires: 8-2-10



Texas Real Estate Commission

Post Office Box 12188 Austin, Texas 78711-2188
1101 Camino La Costa Austin, Texas

January 24, 2007

Victor Hakim
National Home Protection, Inc.
42 West 38th Street
New York, New York 10018

RE: File No. 071308
Previous File No. 065022

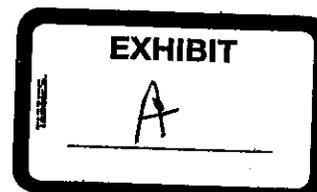
Dear Mr. Hakim:

The Commission has received a complaint that National Home Protection, Inc. is offering a product in Texas which appears to meet the definition of a residential service contract as defined in The Residential Service Company Act, Chapter 1303, Texas Occupations Code. Failure to obtain a license from this agency prior to offering residential service contracts in Texas is a Class B misdemeanor and a deceptive trade practice. National Home Protection, Inc. may wish to consult with its attorney regarding the consequences of violating the Texas Deceptive Trade Practices Act, Chapter 17, Texas Business and Commerce Code.

National Home Protection, Inc. must immediately cease any efforts to issue or arrange to issue residential service contracts until such time as it has a license to do so. Since the company cannot lawfully service any contracts it may have written, its position so far as compliance with the law will deteriorate if it does not immediately return any monies received from Texas consumers and immediately stop any contracts "in progress."

If it should come to our attention that Nation Home Protection, Inc. has not complied with this demand, we will not hesitate to enforce the Residential Service Company Act by all available means.

Should the company wish to pursue compliance by obtaining the required license, please contact Beverly Rabenberg, Residential Service Company Program Manager, at the above address or by telephone to (512) 465-3917. You may also obtain information and licensure forms on our web site at www.trec.state.tx.us/licenses/RSC_info.asp.



Mr. Victor Hakim
January 24, 2007
Page Two

Prompt compliance with this demand will materially affect consideration of any application for licensure.

Sincerely,


Della M. Lindquist
Director of Enforcement

DML:ng

Enclosure

CM:RRR NO. 7005 3110 0000 2471 3437

cc: Victor Hakim
National Home Protection, Inc.
42 West 38th Street
New York, New York 10018

7005 3110 0000 2471 3437

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VICTOR HAKIM
NATIONAL HOME PROTECTION INC
42 W 38TH ST
NEW YORK NY 10018

PS Form 3800, June 2002 See Reverse for Instructions