

CAUSE NO. D16Y09000890

STATE OF TEXAS,
Plaintiff,

v.

COMMUNITY SUPPORT, INC.,
a Domestic Limited Liability
Corporation

Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

ATTORNEY GENERAL'S ORIGINAL PETITION AND
APPLICATION FOR INJUNCTIVE RELIEF

NOW COMES the State of Texas (hereinafter referred to as "State"), as Plaintiff, acting by and through Greg Abbott, Attorney General of the State of Texas, and complains of Community Support, Inc., (hereinafter referred to as "CSI"), Defendant, and for cause of action alleges the following:

I.

DISCOVERY

1.1 No discovery control plan is needed in this case because the allegations against Defendant CSI have been settled by Agreed Judgment contemporaneously with the filing of this lawsuit.

II.

NATURE OF THIS LAWSUIT

2.1 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 and in the public interest through his Consumer Protection and Public Health Division upon the grounds that Defendant has violated provisions of the Texas Deceptive Trade Practices — Consumer Protection Act, Tex. Bus. & Com. Code Ann. § 17.41 *et seq.* (hereafter “DTPA”), arising out of Defendant’s unfair or deceptive acts and practices in connection with its practice of professional fundraising through telephonic solicitation of Texas donors and collection practices involving donations from Texas donors. The Attorney General has authority to seek injunctive relief and civil penalties for violations of this statute’s provisions. Tex. Bus. & Com. Code Ann. § 17.47. The State further alleges that Defendant has failed to comply with the registration and disclosure requirements of the Chapter 1803 of the Occupations Code, Solicitation for Public Safety Organizations, Tex. Occ. Code Ann. §§ 1803 *et seq.* This suit, brought against the Defendant for injunctive relief, actual damages, restitution, civil fines and penalties, costs, and attorney’s fees, is the direct result of Defendant’s violations of the DTPA and Chapter 1803 of the Texas Occupations Code.

III.

JURISDICTION

3.1 This Court has jurisdiction over this action pursuant to Tex. Bus. & Com. Code § 17.47(b).

IV.

PUBLIC INTEREST

4.1 Defendant engages in the trade and practice of professional fundraising by telephonically soliciting Texas donors and collecting donations from Texas donors. Plaintiff joined in a multistate investigation of Defendant with over thirty (30) other states. Defendant has made both explicit and implicit false and misleading verbal and written statements, descriptions and representations to Texas donors that tended to and did deceive or mislead prospective donors in an attempt to solicit donations, the vast majority of which are paid to the professional fundraiser and the remainder of which is spent by the charity for administrative costs. On average, less than ten percent (10%) percent of donations collected in Texas and nationally are retained by the charity. Because Plaintiff has reason to believe that Defendant has engaged in, and will continue to engage in these unlawful practices as set forth in detail below, Plaintiff believes 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 businesses that lawfully conduct trade and commerce in this State. As such, the Consumer Protection and Public Health Division of the Office of the Attorney General of Texas is of the opinion that these proceedings are in the public interest.

V.

TRADE AND COMMERCE

5.1 Defendant has, at all times described below, engaged in conduct constituting trade and commerce, as those terms are defined in DTPA, §17.45(6), by engaging in the business of professional fundraising by telephonically soliciting Texas donors and collecting donations from Texas donors.

VI.

ACTS OF AGENTS

6.1 Whenever in this petition it is alleged that Defendant CSI did any act, it is meant that:

1. Defendant CSI performed or participated in the act, or
2. Defendant's affiliates, subsidiaries, directors, officers, agents, trustees or employees performed or participated in such act on behalf of and under the authority of the Defendant.

VII.

DEFENDANT

7.1 Defendant CSI is a Nevada corporation with its principal place of business at 312 E. Wisconsin Ave., Milwaukee, Wisconsin 53202, and is engaged in professional solicitations and collection of donations in Texas. Defendant may be served at its principal place of business at 312 E. Wisconsin Ave., Milwaukee, Wisconsin 53202. However, CSI has agreed to waive service of process and authorizes its attorneys to accept all process and other filings by certified mail.

VIII.

VENUE

8.1 Venue of this lawsuit lies in Travis County, Texas pursuant to Tex. Bus. & Com. Code § 17.47(b).

IX.

FACTUAL ALLEGATIONS

9.1 Defendant was and is registered as a public safety solicitor under Tex. Occ. Code Ann. Ch. 1803 et. seq in Texas during times relevant to this action.

9.2 Plaintiff joined the relevant regulatory authorities of at least 30 other states, which upon shared information and belief had reason to investigate Defendant for multiple violations of the charitable solicitations laws of the various states.

9.3 On March 5, 2009, Plaintiff served Defendant with a Civil Investigative Demand in accordance with authority vested by DTPA, § 17.61.

9.4 The Texas Civil Investigative Demand was filed as part of the multi-state investigation of Defendant. The states each issued an individual Civil Investigative Demand or a comparable request to Defendant on or about February 25, 2009.

9.5 In response, and as part of a coordinated effort, the multi-state group allowed Defendant to respond once to the group rather than to 31 separate demands.

9.6 Defendant provided approximately 30% of the information demanded.

9.7 Defendant CSI regularly conducts telephone solicitation campaigns by having its employees call Texans asking for contributions for the charities with which it contracts, including but not limited to: American Foundation for Disabled Children, Inc.; Association for Firefighters and Paramedics, Inc. ("AFP"); Cancer Center for Detection and Prevention, Inc.; Disabled Police Officers of America, Inc. ("DPOA"); Firefighters Support Foundation, Inc.; Kids Wish Network, Inc.; Children's Cancer and Leukemia Relief Fund (program of Medical Support Association, Inc. ("MSA"), hereinafter "the charities").

9.8 The charities contracted with Defendant for services as a professional fundraiser.

9.9 The contracts provide that the charities will receive between 8% and 15% of the total donations collected by Defendant. The remaining percentages, between 85% and 92% are paid to Defendant for fundraising services.

9.10 Defendant does not now nor has it ever had a physical presence in Texas.

9.11 The charities have not had and do not have a physical presence in Texas.

9.12 While making solicitations for contributions, Defendant's paid telemarketers and solicitors, both explicitly and implicitly, represented to Texan donors that the contributions would be used for local benefit.

9.13 While making solicitations for contributions, Defendant's paid telemarketers and solicitors, both explicitly and implicitly, represented to Texas donors that 100% of the donations would be used for charitable programs.

9.14 While making solicitations for contributions, Defendant's paid telemarketers and solicitors, both explicitly and implicitly, represented to Texas donors that the solicitors were themselves members or retired members of police or firefighter occupations.

9.15 While making solicitations for contributions, Defendant solicitors, both explicitly and implicitly, represented to Texas donors that the donor had previously contributed to the stated cause when this was not supported by fact.

9.16 While making solicitations for contributions, Defendant's paid telemarketers and solicitors, both explicitly and implicitly, represented to Texas donors that the calls were placed from within Texas, implying a local relationship which did not exist.

9.17 While making solicitations for contributions, Defendant's paid telemarketers and solicitors, both explicitly and implicitly, represented to Texas donors that a substantial portion of the donations would go to programs described by the solicitor which did not exist.

9.18 While making solicitations for contributions, Defendant's paid telemarketers and solicitors, both explicitly and implicitly, represented to Texas donors that it represented or was itself a local charity by using a pass-through Texas post office box or drop box to collect donations.

9.19 While making solicitations for contributions, Defendant's paid telemarketers and solicitors, both explicitly and implicitly, represented to Texas donors that they had pledged donations

by sending a confirmation 'receipt' and collection documents which intentionally closely resembled a bill for debt collection when no such pledges had been made.

9.20 While making solicitations for contributions Defendant's paid telemarketers and solicitors, both explicitly and implicitly, represented to Texas donors that the donors were required by law to remit pledged donations by sending a confirmation 'receipt' and collection documents which intentionally closely resemble a bill for debt collection when no such legal requirement exists.

9.21 While making solicitations for contributions, Defendant 's paid telemarketers and solicitors, both explicitly and implicitly, represented to Texas donors that their real or fabricated pledge was a collectible debt and made numerous and harassing collection calls to those donors.

9.22. The acts and omissions made by Defendant as described above constitute false and misleading verbal and written statements, descriptions and representations to Texas donors which tended to or did deceive or mislead prospective donors in an attempt to solicit donations and which are in violation of the DPTA and Chapter 1803 of the Texas Occupations Code.

9.23 Defendant has engaged in a pattern and practice of misleading and deceptive solicitation practices in violation of the Deceptive Trade Practices Act and Chapter 1803 of the Texas Occupations Code.

9.24 Defendant has collected donations as a result of telephone solicitations and written demands made to Texas donors.

X.

VIOLATIONS OF THE DTPA

Defendant by its actions, as described above in paragraphs 9.1 through 9.24, 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 DTPA sections 17.46(a) and 17.46(b), to wit:

- 10.1 Passing off goods or services as those of another, in violation of DTPA section 17.46(b)(1);
- 10.2 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);
- 10.3 Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of DTPA section §17.46(b)(3);
- 10.4 Using deceptive representations or designations of geographic origin in connection with goods or services, in violation of DTPA section 17.46(b)(4);
- 10.5 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 have, in violation of DTPA section 17.46(b)(5);
- 10.6 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 DTPA section 17.46(b)(7);
- 10.7 Advertising goods or services with intent not to sell them as advertised, in violation of DTPA section 17.46(b)(9);
- 10.8 Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, in violation of DTPA section 17.46(b)(12); or
- 10.9 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 which the consumer would not have entered had the information been disclosed, in violation of DTPA section 17.46(b)(24).

X.

VIOLATIONS OF CHAPTER 1803
OF THE TEXAS OCCUPATIONS CODE, SOLICITATION FOR PUBLIC
SAFETY ORGANIZATIONS

On information and belief, Defendant, as alleged above in paragraphs 9.1 through 9.24, has solicited, and will continue to solicit, funds in violation of chapter 1803 of the Texas Occupations Code, Solicitation for Public Safety Organizations. Specifically, Defendant has violated Chapter 1803 by engaging in the following conduct:

10.1 Failing to disclose to advertisers the name of any public safety solicitor employed, as required by Tex. Occ. Code Ann. §1803.101(c)(3);

10.2 Knowingly representing or implying that the solicitation proceeds are being used for a purpose other than the purpose for which the funds are actually used, in violation of section Tex. Occ. Code Ann. §1803.103(3);

10.3 Representing or implying that the solicitor is a peace officer or member of a public safety agency or public safety organization if the solicitor is not an officer or member, in violation of Tex. Occ. Code Ann. §1803.103(4); and/or

10.4 Committing other unfair or deceptive acts or practices, as enumerated above, in violation of Tex. Occ. Code Ann. § 1803.103(10).

XI.

INJUNCTION AND PENALTIES

11.1 The State may request, and this Court may grant, a temporary restraining order, temporary injunction, or permanent injunction without bond to restrain any act or practices declared to be unlawful by the Deceptive Trade Practices Act and Chapter 1803 of the Occupations Code, Solicitation for Public Safety Organizations. The Deceptive Trade Practices Act provides for civil penalties of not more than \$20,000.00 per violation and if the act deprived money or other property

from a consumer over the age of 65, an additional amount of up to \$250,000. Tex. Bus. & Com. Code Ann. §§ 17.47 (a) and (c). Chapter 1803 of the Occupations Code, Solicitation for Public Safety Organizations, provides for civil penalties of \$2,500 for a single violation; or \$10,000 for all the violations. Tex. Occ. Code Ann. § 1803.154.

XII.

ATTORNEY'S FEES AND COSTS

12.1 The State seeks to recover all costs incurred in this proceeding, including reasonable attorney's fees, investigative costs and court costs, pursuant to Tex. Gov't Code Ann § 402.006.

XII.

PRAYER

WHEREFORE PREMISES CONSIDERED, the State respectfully prays that this Court order relief against Community Support, Inc., as follows:

A. Render the Agreed Judgment and Permanent Injunction presented by the parties in favor of the State for injunctive relief and other relief authorized under the Texas Deceptive Trade Practices - Consumer Protection Act, Tex. Bus. & Com. Code Ann. § 17.47;

B. Issue a permanent injunction prohibiting Defendant, its agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in the unfair or deceptive conduct specifically alleged herein;

C. Order Defendant to pay the State attorneys' fees and costs pursuant to Tex. Gov't Code § 402.006;

D. Not require the State post a bond for all costs of these proceedings; and

E. Grant such other and further relief as the Court deems equitable and just.

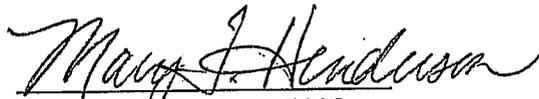
Respectfully submitted,

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