

COPY
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CAUSE NO. D-1-GV-10-000486

THE STATE OF TEXAS,
Plaintiff,

v.

TAXMASTERS, INC., TMIRS
ENTERPRISES, LTD., TM GP
SERVICES, LLC, D/B/A
TAXMASTERS, and PATRICK R. COX,
individually,
Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200th JUDICIAL DISTRICT

CHARGE OF THE COURT

MEMBERS OF THE JURY:

1. This case is submitted to you by asking questions about the facts, which you must decide from the evidence admitted in this trial.
2. In arriving at your answers, consider only the evidence, including exhibits, admitted in this trial.
3. In considering this evidence, you are bound to follow the law set forth in this charge, as well as all instructions concerning jurors' conduct that you have been given.
4. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
5. Do not let bias, prejudice, or sympathy play any part in your deliberations.
6. Do not become a secret witness by telling other jurors about other incidents, experiences, or lawsuits. Do not tell other jurors about any special knowledge, information, or expertise that you may have. You must confine your deliberations to the evidence admitted in the trial.
7. Do not discuss or consider whether insurance protects any party.

8. This charge includes all legal instructions and definitions that are necessary to assist you in reaching your verdict, so do not seek out any information in law books or dictionaries.

9. All of the questions and answers are important. No one should say that any question or answer is not important.

10. Do not decide who you think should win and then try to answer the questions accordingly. Simply answer the questions, and do not concern yourselves with the effect of your answers.

11. Do not decide the questions by any method of chance.

12. Do not answer the questions by adding together each juror's figure and dividing by the number of jurors to get an average.

13. Do not do any trading on your answers. That is, one juror must not agree to answer one question a certain way if other jurors will agree to answer another question another way.

14. After you retire to the jury room, you will select a presiding juror. You will then deliberate upon your answers.

15. It is the duty of that presiding juror:

- a. to preside during the deliberations and to provide order and compliance with the charge;
- b. to write, sign, and deliver to the court clerk any communication to me;
- c. to conduct the vote and to participate in that vote; and,
- d. to write your answers in the spaces provided.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

16. The answers to the questions must be based on the decision of at least 10 of the 12 jurors. The same 10 jurors must agree on every part of an answer, including subparts, unless otherwise instructed. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

17. If the verdict is reached by unanimous agreement, the presiding juror will sign the verdict on the certificate page for the entire jury.

18. If 10 jurors agree on every answer, those 10 jurors sign the verdict. If 11 jurors agree on every answer, those 11 jurors sign the verdict. If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

19. During your service as jurors, if you observe a violation of my instructions outside the jury room, by either a juror or any other person, you must report that to me.

20. In your deliberations, any juror who observes a violation of my instructions shall point out the violation and caution the offending juror not to violate the instructions again.

21. You must not discuss the case with anyone, including other members of the jury, unless all of the jurors are present and assembled in the jury room. If anyone other than a juror tries to talk to you about the case before you reach a verdict, tell me immediately.

~~22. When all required questions have been answered, the presiding juror has written your answers on the charge, and the verdict has been signed, you will summon the court clerk and be returned to court with your verdict.~~

When words are used in this charge in a sense which varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence unless otherwise instructed. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No".

The term "**PREPONDERANCE OF THE EVIDENCE**" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in this case. A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not.

A fact may be established by "**DIRECT EVIDENCE**" or by "**CIRCUMSTANTIAL EVIDENCE**" or both. A fact is established by direct evidence when proved by documentary evidence or

by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

Evidence offered by a party for a limited purpose can be used only in connection with the evaluation of the purpose for which the evidence was admitted.

“TaxMasters” shall mean TaxMasters, Inc.,

“TMIRS” shall mean TMIRS Enterprises, Ltd. and TMGP Services, LLC, d/b/a TaxMasters.

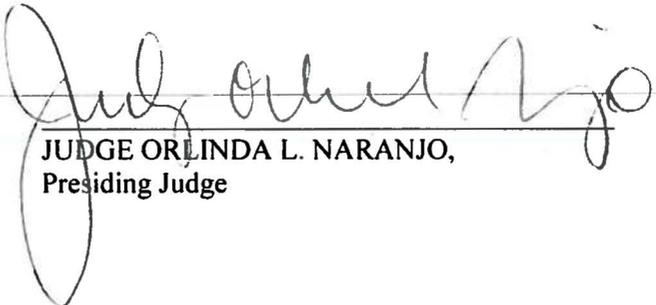
You are further instructed that:

The parties stipulate that the Defendants deleted audio recordings of 83,849 sales calls recorded between December 15, 2009, and April 27, 2010, and that had the recordings not been destroyed, each of these recordings would have been admissible as evidence against each of the Defendants.

The parties further stipulate that the content of the deleted recordings was consistent with the content of calls recorded before December 15, 2009 and after April 27, 2010.

Thus, if you determine that the calls made before and after this time period contain violations of law you may determine those 83,849 sales calls made between December 15, 2009, through April 27, 2010, contain violations of the law to the same extent you determine calls made before and after this period contain violations of law.

March 28, 2012
DATE


JUDGE ORLINDA L. NARANJO,
Presiding Judge

Question No. 1

Did the Defendants engage in any of the following practices in the conduct of trade or commerce?

“Trade or commerce” means the advertising, offering for sale, sale, lease or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of the State of Texas.

1. Accept payments from consumers without disclosing that said payments were non-refundable even if the consumer decided not to sign the written engagement agreement;
or
2. Accept payments from consumers without disclosing that the payments were non-refundable even if the Defendant did not provide the consumer with any services; or
3. Accept payments from consumers without disclosing that there would be an administrative fee charged if the consumer cancelled his agreement?

Please answer “Yes” or “No” for each:

TaxMasters: Yes

TMIRS: Yes

Patrick R. Cox: Yes

If you have answered "Yes" to a Defendant in Question No. 1, then answer Question No. 2 as to that Defendant. If you have not answered "Yes" to any Defendant in Question No. 1, then do not answer Question No. 2.

Question No. 2

Were any of the practices found in Question No. 1, false, misleading, or deceptive?

"False, misleading, or deceptive act or practice" means any act or series of acts that have the tendency to deceive an average ordinary person, even though that person may have been ignorant, unthinking, or credulous.

You are instructed that the State is not required to show actual deception. A practice is false, misleading, or deceptive if it has a capacity to deceive or is likely to deceive.

Please answer "Yes" or "No" for each of the following:

TaxMasters: Yes

TMIRS Yes

Patrick R. Cox: Yes

Question No. 3

Did the Defendants engage in any false, misleading, or deceptive act or practice in the conduct of trade or commerce?

“Trade or commerce” means the advertising, offering for sale, sale, lease or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of the State of Texas.

“Intent” as used in subparts (e) and (f) below means actual awareness of the falsity, deception, or unfairness of the act or practice, or the condition, defect, coupled with the specific intent that consumers act in detrimental reliance on the falsity or deception or in detrimental ignorance of the unfairness.

Intent may be inferred from objective manifestations that indicate that the person acted intentionally or from facts showing that a defendant acted with flagrant disregard or prudent and fair business practices to the extent that the defendant should be treated as having acted intentionally. Intent can be proven by circumstantial evidence.

Representations are not unlawful unless they concern a material fact and are specific enough for you to measure their accuracy. Non-factual statements, such as expressions of opinion and “mere puffing” cannot be a basis for a false, misleading, or deceptive act.

Do not consider acts or practices you found, if any, in Question No. 1 or Question No. 2.

Please answer “Yes” or “No” for each Defendant

“False, misleading, or deceptive act or practice” means any of the following:

- a. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

TaxMasters Yes

TMIRS Yes

Patrick R. Cox Yes

- b. Causing confusion or misunderstanding regarding the affiliation, connection, or association with, or certification by, another.

TaxMasters Yes

TMIRS Yes

Patrick R. Cox Yes

- c. Representing that goods or services have sponsorship, approval, characteristics, uses, benefits, or qualities which they do not have or that a person has a sponsorship, approval, status, affiliation or connection which he or it does not.

TaxMasters Yes

TMIRS Yes

Patrick R. Cox Yes

- d. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.

TaxMasters Yes

TMIRS Yes

Patrick R. Cox Yes

- e. Advertising goods or services with the intent not to sell them as advertised.

TaxMasters Yes

TMIRS Yes

Patrick R. Cox Yes

- f. 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.

TaxMasters Yes

TMIRS Yes

Patrick R. Cox No

If you have answered "Yes" to a Defendant in Question No. 2 or Question No. 3, then answer Question No. 4 as to that Defendant. If you have not answered "Yes" to any Defendant in Question No. 2 or Question No. 3, then do not answer Question No. 4.

In answering questions about money, answer each question separately in accordance with the evidence. Do not increase or reduce the amount in one answer because of your answer to any other question about money. Do not speculate about what the ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

Question No. 4

What is the total sum of money, if any, that is necessary to restore money taken from consumers by each Defendant by means of any unlawful acts or practices committed by such Defendant(s)?

Do not include any amount of money in your award, if any, that has previously been refunded to a consumer.

Please answer in dollars and cents, but do not add any amount for interest.

Answer as to TaxMasters	\$ <u>73,737,412.00</u>
Answer as to TMIRS	\$ <u>24,740,306.00</u>
Answer as to Patrick R. Cox	\$ <u>14,622,102.00</u>

If you have answered "Yes" to a Defendant in Question No. 2 or Question No. 3, then answer Question No. 5 as to that Defendant. If you have not answered "Yes" to any Defendant in Question No. 2 or Question No. 3, then do not answer Question No. 5.

Question No. 5.

On how many occasion(s), if any, do you find that the Defendant(s) engaged in the acts or practices upon which you based your "Yes" answer(s) to Question No. 2 and Question No. 3?

You are instructed to first determine the number of occasions of each act or practice, based upon your "Yes" answers to Question No. 2 and Question No. 3 and its subparts.

The total amount of this calculation is to be entered below and will be the total number of violations committed for each act or practice by each Defendant listed below.

Answer as to Taxmasters

94,114

Answer as to TMIRS

644

Answer as to Patrick R. Cox

15,625

If you have answered "Yes" to a Defendant in Question No. 2 or Question No. 3, and answered Question No. 5, then answer Question No. 6 as to that Defendant. If you have not answered "Yes" to any Defendant in Question No. 2 or Question No. 3, then do not answer Question No. 6.

Question No. 6

What sum of money, if any, should be assessed against each Defendant as civil penalties for the acts or practices committed by that Defendant that you based your answer to Question No. 2 and Question No. 3 on?

You are hereby instructed that civil penalties may be assessed against each Defendant for every occasion in which an act or practice you found was committed by that Defendant in Question No. 2 and Question No. 3, if any.

A "civil penalty" means an amount not more than \$20,000.00 per violation that you may in your discretion award as punishment of the wrongdoer and as a warning and example to the wrongdoer and others to deter the same or similar conduct in the future.

A civil penalty is a sum of money payable to and for the benefit of a governmental unit, of which the law exacts payment by way of punishment for doing some act that is prohibited, or omitting to do some act that is required to be done.

A civil penalty is not compensation for actual pecuniary loss.

In determining the amount of a penalty, if any, you shall consider the following factors:

1. The seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act or practice;
2. The history of previous violations;
3. The amount necessary to deter future violations;
4. The economic effect on the person against whom the penalty is to be assessed;
5. Knowledge of the illegality of the act or practice; and
6. Any other matter that justice may require

You cannot consider evidence of one of the defendant's acts or conduct in determining the penalty to assess against another defendant.

Please answer in dollars and cents the total amount of civil penalties to be imposed (in other words, for the number of occasions determined in Question 5 multiplied by the per occasion civil penalty):

Answer as to TaxMasters	\$ <u>47,057,000.00</u>
Answer as to TMIRS	\$ <u>2,898,000.00</u>
Answer as to Patrick R. Cox	\$ <u>31,250,000.00</u>

If you have assessed civil penalties against any Defendant in Question No. 6, then answer Question No. 7 as to that Defendant, otherwise do not answer Question No. 7.

Question No. 7

What is a reasonable fee for the necessary services of the Office of the Attorney General of the State of Texas in this case?

“Reasonable and necessary attorney’s fees” mean the sum of the money that would fairly and reasonably compensate the State of Texas for its attorneys’ fees.

Factors that should be considered when determining the reasonableness of a fee include:

- The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;
- The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- The fee customarily charged in the locality for similar legal services;
- The amount involved and the results obtained;
- The time limitations imposed by the client or by the circumstances;
- The nature and length of the professional relationship with the client
- The experience, reputation, and ability of the lawyer or lawyers performing the services; and
- Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Please answer separately in the blank following each stage of work in dollars and cents, if any for each of the following:

For preparation and trial

TaxMasters \$ 348,666.00

TMIRS \$ 348,666.00

Patrick R. Cox \$ 348,666.00

