

NO.

IN THE MATTER OF:
STATE OF TEXAS

AND

BARRY HICKS d/b/a A TO Z MOVERS
Respondent

§
§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

JUDICIAL DISTRICT

ASSURANCE OF VOLUNTARY COMPLIANCE

COME NOW, THE STATE OF TEXAS, acting by and through Attorney General GREG ABBOTT, and Respondent BARRY HICKS d/b/a A TO Z MOVERS, and respectfully submit for the Court's approval and filing in accordance with, TEX. BUS. & COM. CODE ANN. § 17.58 (Vernon Supp. 2004) and TEX. BUS. & COM. CODE ANN. § 44.102(c) (Vernon Supp. 2004), this Assurance of Voluntary Compliance for purposes of settlement of the cause of action.

STIPULATIONS

The parties, as acknowledged by their signature below, make the following stipulations:

1. Texas has investigated certain claims and causes of action under the Texas Telemarketing Disclosure and Privacy Act, TEX. BUS. & COM. CODE ANN. §§ 44.001 et seq. (Vernon Supp. 2004) (“TTDPA”) and the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §§ 17.41 *et seq.* (Vernon 1987 and Supp. 2004) (“DTPA”).
2. Respondent denies the allegations set forth in paragraph 1 above, and the parties agree and stipulate that (a) this Assurance is being entered into for the sole purpose of compromising disputed claims without the necessity for protracted and expensive litigation and (b) neither this Assurance nor the payment of money pursuant to this Assurance by Respondent constitutes an admission by Respondent of a violation of the TTDPA, DTPA, or otherwise;

3. The Office of the Attorney General and Respondent agree to and do not contest the entry of the Assurance by this Court;

4. The Office of the Attorney General has jurisdiction in this matter under section 17.47 of the DTPA and section 44.102(c) of the TTDPA.

5. The venue of this cause is proper in Travis County;

6. This Assurance in no way affects any individual's right of action under the DTPA or the TTDPA; and

7. For the purposes of this Assurance, the following definitions apply:

- A. "Consumer good or service" means property of any kind that is normally used for personal, family, or household purposes. The term does not include a security, as defined by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes).
- B. "Effective date" means the date on which this Assurance of Voluntary Compliance is approved by the Court.
- C. "Express invitation or permission" means consent which is affirmatively stated in direct terms, definitely and explicitly, and not left to inference or implication.
- D. "Telemarketing call" means an unsolicited telephone call made to (i) solicit a sale of a consumer good or service; (2) solicit an extension of credit for a consumer good or service; or (3) obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for the sale. The term "telemarketing call" includes an unsolicited telephone call made to encourage

or induce the recipient to attend a face-to-face meeting or otherwise receive a future solicitation for the sale of a consumer good or service or an extension of credit for a consumer good or service.

- E. "Texas no-call list" means the database of telephone numbers of consumers in the State of Texas who object to receiving unsolicited telemarketing calls which is maintained by the Public Utility Commission of Texas (or its agent) pursuant to section 44.101 of the TTDPA.
- F. "Unsolicited telephone call" means a telephone call that is transmitted to any person without that person's prior express invitation or permission.
- G. "Established Business Relationship" means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within three (3) months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

RELIEF

8. For purposes of settlement, Respondent agrees and voluntarily assures the Office of Attorney General that effective immediately upon the Court's approval of this Assurance, Respondent shall not:

- A. Make or cause to be made any telemarketing call to a telephone number in the State of Texas until after such time that Respondent has purchased and downloaded the current Texas no-call list;
- B. Make or cause to be made a telemarketing call to any telephone number that has been published on the then-current Texas no-call list more than sixty (60) days unless such call would be exempted from the application of the TTDDPA pursuant to section 44.003(b);
- C. Make or cause to be made a telemarketing call to a person in the State of Texas that has expressed his or her desire, either directly to Respondent or through the inclusion of such person's telephone number on a legally binding no call list (including any list maintained by a federal governmental agency), not to receive such telemarketing calls;
- D. Initiate any telemarketing call to a residential telephone line using an artificial or prerecorded voice to deliver a message unless the call is made to a person with whom Respondent has an established business relationship at the time the call is made; and
- E. Fail to provide Respondent's true name, address, and telephone number to any consumer, consumer protection agency or organization, or law enforcement agency that asks for such information, including but not limited to the Texas Attorney General's Office and the Public Utility Commission.

9. Respondent further agrees and voluntarily assures the Office of Attorney General that before Respondent makes or causes to be made any telemarketing call to a telephone number in

the State of Texas, Respondent shall:

- A. Adopt and implement written procedures that are reasonably calculated to insure compliance with all legally binding no call laws, including but not limited to the TTDDPA and effectively prevent telemarketing calls that are in violation of such laws, including taking corrective action when appropriate (hereinafter “Written Procedures”);
- B. Provide a copy Respondent’s Written Procedures to any third party telemarketing agency with whom Respondent does business and require such third party telemarketing agency to comply with the no call laws and such Written Procedures;
- C. Provide a copy of Respondent’s Written Procedures to the Texas Attorney General’s Office by mailing same to the undersigned attorney;
- D. Provide a copy of Respondent’s Written Procedures to all current and future employees of Respondent who conduct telemarketing calls in Texas or who have any supervisory capacity over any employee who conducts telemarketing calls in Texas; and
- E. Institute a training program for all employees who conduct telemarketing calls in Texas in which employees will receive instruction in customer relations, etiquette, and compliance with all legally binding no call laws, including but not limited to the TTDDPA, and Respondent’s Written Procedures.

10. Further, Respondent shall not represent, directly or by implication, that the Attorney General has approved any of Respondent’s business practices.

11. This Assurance shall be governed by § 17.58 of the DTPA and shall remain in effect until rescinded by agreement of the parties or voided by a Court of competent jurisdiction.

12. This Assurance shall be binding upon Respondent and its successors and assigns. If Respondent merges with any other business entity or if Respondent sells, assigns, or otherwise transfers substantially all of its assets to any other business entity, Respondent shall provide reasonable prior notice of this Assurance to the surviving corporation or the purchaser, assignee, or transferee and its binding effect upon the surviving corporation, purchaser, assignee, or transferee.

13. It is further understood that, pursuant to § 17.58 of the DTPA, unless this Assurance is rescinded by agreement of the parties or voided by a Court for good cause, subsequent failure to comply with the terms of this Assurance is *prima facie* evidence of a violation of the DTPA.

14. This Assurance shall be deemed in effect from the day it is approved by the District Court of competent jurisdiction to which it is submitted. To the extent that the provisions of this Assurance conflict with any Texas, local or federal law which now exists, or is later enacted or amended, such law and not this Assurance shall apply where such conflict exists. For the purposes of this Assurance, a conflict exists if conduct prohibited by this Assurance is required by such Texas, local, or federal law or a person or agency acting under color of Texas, local or federal law, or if conduct required by this Assurance is prohibited by such Texas, local, federal law or a person or agency acting under color of Texas, local or federal law.

15. The Parties further agree that Respondent shall pay a civil penalty to the State of Texas in the sum of Five Thousand and No/100 Dollars (\$5,000.00) which shall be due and payable to the State a date one year from the Effective Date of this Assurance; Provided,

however, that if Respondent has achieved and maintained substantial compliance with all requirements set forth in this Assurance for one year following the Effective Date of this Assurance, including making all other payments required under this Assurance, the State shall forgive the payment of civil penalties in the amount of Five Thousand and No/100 Dollars (\$5,000). For purposes of this paragraph, Respondent shall specifically not be considered to be in substantial compliance with this Judgment if the Texas Attorney General's Office and the Texas Public Utility Commission combined receive more than two verifiable complaints against Respondent in any thirty day period or more than ten total complaints against Respondent within one year of the Effective Date of this Assurance.

16. The Parties further agree that Respondent shall reimburse investigative costs and attorneys' fees to the State of Texas pursuant to the TEX. GOV'T CODE ANN. § 402.006(c), in the sum of Two Thousand and No/100 Dollars (\$2,000.00), which sum shall be paid in five monthly installments as follows:

September 15, 2004	\$666.66
October 15, 2004	\$333.33
November 15, 2004	\$333.33
December 15, 2004	\$333.33
January 15, 2005	\$333.35

17. All relief not provided herein is hereby expressly excluded.

AGREED this _____ day of _____, 2004.

GREG ABBOTT

Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

PAUL D. CARMONA
Chief, Consumer Protection Division

C. Brad Schuelke
Assistant Attorney General
CONSUMER PROTECTION AND PUBLIC HEALTH DIVISION
State Bar No. 24008000
P. O. Box 12548
Austin, Texas 78711
(512) 463-1269
FAX (512) 473-8301
Attorneys for the STATE OF TEXAS

BARRY HICKS d/b/a A TO Z MOVERS

DAVID I. GOODHART
State Bar No. 00798216
331 Melrose Dr., Ste 102
Richardson, Texas 75080
(972) 644-2581
(972) 907-2266 (Fax)
ATTORNEY FOR BARRY HICKS d/b/a A TO Z MOVERS