

THE STATE OF TEXAS

Plaintiff

v.

RENEWAL SERVICES, INC., d/b/a
CORPORATE COMPLIANCE CENTER and
THOMAS H. LITCHFIELD,

Defendants

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CAUSE NO. 2005 - _____

**PLAINTIFFS’ 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 RENEWAL SERVICES, INC., d/b/a TEXAS CORPORATE COMPLIANCE, and THOMAS H. LITCHFIELD, Defendants, for violating the Texas Deceptive Trade Practices – Consumer Protection Act, TEX. BUS. & COMM. CODE § 17.41 *et seq.* (hereafter DTPA).

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 TEX. R. CIV. P. 190.3.

**II.
JURISDICTION AND AUTHORITY**

2.1. This action is brought by Attorney General Greg Abbott, through his Consumer Protection Division, in the name of the STATE OF TEXAS and pursuant to the authority granted

him by the TEXAS DECEPTIVE TRADE PRACTICES--CONSUMER PROTECTION ACT, TEX. BUS. & COM. CODE § 17.41 *et seq.* (“DTPA”) upon the ground that Defendants have 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 Defendants from engaging in the acts and practices described below and which are declared to be unlawful by the DTPA.

2.3 Additionally, this suit seeks civil penalties from Defendants 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 Defendants’ 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. 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 Defendants have 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 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 RENEWAL SERVICES, INC., d/b/a TEXAS CORPORATE COMPLIANCE, is a corporation duly formed and existing under the laws of the State of Texas, and transacts or has transacted business in El Paso County, Texas. It may be served with citation by serving its registered agent, Business Filings Incorporated, at 701 Brazos St., Austin, Texas 79701.

4.3 Defendant THOMAS H. LITCHFIELD is a resident of the State of California. At all times material to this action, he directly participated in the conduct alleged herein; or directed or controlled the practices and policies of RENEWAL SERVICES, INC. complained of herein and had authority to control them; and had actual or constructive knowledge of the acts and practices complained of herein; or exercised a reckless indifference to the truth or falsity of such acts or practices set forth in this Petition. Defendant does not maintain a place of regular business in Texas and has no registered agent in Texas on whom service of citation may be made. The cause of action asserted against him arose from purposeful acts committed by the Defendant in Texas. Accordingly, Defendant may be cited by serving the Secretary of State of Texas, pursuant to TEX. CIV. PRAC. & REM. CODE § 17.044(b), provided that the citation and petition are forwarded to his home office at 28881 Sunset Road, Valley Center, CA 92082, pursuant to TEX. CIV. PRAC. & REM. CODE § 17.045.

V. EXHIBITS

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 and in an affidavit by Chris A. Paul. The affidavits are attached as Exhibits A and B.

**VI.
PUBLIC INTEREST**

6.1 The Attorney General has reason to believe that Defendants have engaged in the unlawful practices described below. The Attorney General also has reason to believe that Defendants have 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 Defendants have, at all time 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 Defendants did any act, it is meant either that the Defendants performed or participated in the act, or that the Defendants’ officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

**IX.
NOTICE**

9.1 The Consumer Protection Division did not inform Defendants 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 Defendants mail an “Annual Minutes Disclosure Statement” (“Statement”) to

businesses in Texas. A true and correct copy of their August 4, 2005 Statement addressed to a Texas business is attached as Exhibit A. The solicitation, requesting payment of a \$125.00 fee, looks similar to forms used by official agencies of the State of Texas, including the Secretary of State's *Application for Reservation of Entity Name* and *Certificate of Limited Partnership*, and the Comptroller of Public Account's *Texas Franchise Tax Public Information Report. (PIR form)* The PIR form must be filed annually for a corporation to maintain its business status. The Defendants' solicitation forms carry an official looking time deadline for filing and include a seal which resembles the seal of the State of Texas and the Texas Secretary of State's charter number for the corporation being solicited.

10.2 Defendants' Statement has the appearance of an official document and conveys the overall false impression that businesses must pay Defendants \$125 to create minutes of corporate meetings in order to avoid violation of Texas law.

10.3 The document's overall appearance leads a reader to believe that a corporation's minutes must be filed by a date certain with the Secretary of State, and that this is the task that Defendants will perform. However, the Secretary of State does not need or want corporate minutes, nor is there any requirement that they be filed.

10.4 The official looking nature of the document, coupled with citations of statutory authority regarding legal liability, all combine to deceive Texas businesses into purchasing the worthless services of Defendants.

10.5 In order to appear as an official document, the Statement contains the recipient business's charter number; a "certification" blank at the bottom; an official looking form number, together with a "revision" date; and a Defendant file number.

10.6 The Statement refers to annual minutes requirements in the following manner:

TEXAS BUSINESS CORPORATION ACT ARTICLE 2.44 IS STATUTORY. IN ORDER TO REMAIN IN GOOD STANDING WITH APPLICABLE LAWS AND REGULATIONS, YOUR CORPORATION IS REQUIRED TO HAVE ITS MINUTES OF ANNUAL MEETINGS DOCUMENTED FOR COMPLIANCE PURPOSES.

10.7 This statement is incorrect as a matter of law. Minutes do **not** have to have to be kept in written form. The referenced statute, TEX. BUS. CORP. ACT Art. 2.44 provides:

“Any books, records, minutes, and share transfer records may be in written form **or** in any other form capable of being converted into written paper form within a reasonable time.”

[emphasis added]

10.8 The Statement further outlines the consequences of a failure to have these minutes:

“Courts are becoming increasingly unforgiving on officers and directors who do not follow corporate procedure. Failure to comply with certain provisions could cause your corporation to lose its limited liability status or pierce its ‘Veil of Protection’. Personal liability and exposure to tax agencies and other government office could possibly be placed upon officers, directors, and shareholders for failing to document corporate minutes.”

10.9 This statement is also incorrect as a matter of law. Article 2.44 does **not** provide that the failure to keep minutes will result in personal liability. There is no reference to personal liability in the referenced statute. Under law, personal liability can be established only upon a piercing of the corporate veil, something entirely unrelated to the mere preparation of a corporation’s annual minutes.

10.10 The Statement implies that Defendants will provide businesses with corporate minutes:

“To avoid non-compliance with corporate law, complete the statement form below by

providing the following candidate names for the positions listed and submit with the ANNUAL FEE OF \$125 WITHIN 10 BUSINESS DAYS to ensure sufficient time for processing, fulfillment, and mailing of the annual minutes for your corporation.”

10.11 Implicit in that statement is that Defendants will appropriately prepare the corporate minutes. However, it is manifestly impossible for Defendants to perform this job based on the information they have. Defendants do not know, nor do they request, information concerning the date, time, and place of the annual meeting. They do not know which officers, directors and shareholders attended the meeting. Defendants do not know nor request information concerning any motion, any vote, or any action taken at the meeting. Therefore, Defendants cannot provide accurate “MINUTES FOR YOUR CORPORATION.”

10.12 Continuing on with the deception of appearing as an official document, the Statement is identified as TX 2004 Form 4780C (REV 08/2005). At the top of the page, it states:

“REPLY NO LATER THAN AUGUST 18, 2005.

In the middle of the page, it states:

“TO ENSURE PROMPT PROCESSING AND COMPLIANCE, PLEASE RETURN THIS FORM WITH YOUR PAYMENT TO TEXAS CORPORATE COMPLIANCE, BUSINESS DIVISION 815 BRAZOS ST #100 AUSTIN, TX 78701-9996.

10.13 There are two disclaimers in the Statement. Near the bottom, the Statement states, “THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY ANY GOVERNMENT AGENCY [*sic*] AND THIS OFFER IS NOT BEING MADE BY ANY AGENCY OF THE GOVERNMENT. [*sic*] REQUIREMENT 39 U.S.C. §3001(d) THIS IS A SOLICITATION FOR THE ORDER OF SERVICES, AND NOT A BILL, INVOICE, OR STATEMENT OF ACCOUNT DUE. YOU ARE UNDER NO OBLIGATION TO MAKE

ANY PAYMENTS ON ACCOUNT OF THIS OFFER UNLESS YOU ACCEPT THIS OFFER.”

The outside of the mailing envelope states, “THIS IS NOT A GOVERNMENT DOCUMENT.” These disclaimers do not overcome the false impression that is created by the Statement that a business needs to spend \$125 and file its annual minutes. Under law, these disclaimers must be clear and conspicuous. Under law, they cannot be used to contradict the overall impression created by the whole of the document.

10.14 Although TEXAS CORPORATE COMPLIANCE is not located in, nor does it have a physical presence in Texas, it uses an Austin mailing address to further deceive businesses into believing that it is somehow associated with the government. Its address provided on the Statement is 815A Brazos, St. #100, Austin, Texas 78701-9996. In fact, it has no suite in Austin, Texas and simply has a mailbox which is used to forward its mail to its California address.

XI. DECEPTIVE TRADE PRACTICES

11.1 The Attorney General adopts, incorporates and realleges articles II through X and all exhibits attached, as if fully set forth below and further alleges:

11.2 The State has reason to believe, and therefore alleges, that Defendants have directly or indirectly engaged in and will continue to engage in misleading, or deceptive acts and practices. Unless this court restrains Defendants from engaging in the acts described in Paragraphs 10.01 through 10.14, Defendants will continue violating §17.46(a) and (b) as outlined below.

11.3 By engaging in the conduct set forth in Paragraphs 10.1 through 10.14, Defendants engaged in representations, acts, practices or omissions which are material and likely to mislead, and in fact did mislead consumers. Thus Defendants violated DTPA §17.46(a), “false, misleading or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

11.4 By utilizing a form of solicitation that appears to be from an official agency of the State of Texas, Defendants violated DTPA §17.46(b)(2), “causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

11.5 Defendants’ Statement gives the impression that a business must file its annual minutes, and that Defendants will provide this service for a fee. In truth and in fact, the Secretary of State’s office does not require annual minutes. Defendants are providing a service not required by law, and of no value, for \$125, by deceiving people into believing it is a legal requirement, thereby violating §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.”

11.6 By representing that the services of Defendants are necessary in order to maintain corporate existence, and inducing businesses to purchase those services, Defendants violated DTPA §17.46(b)(12), “representing that an agreement confers or involves rights or remedies, or obligations which it does not have or involve.”

11.7 Defendants’ failure to disclose that their services are not required in order to comply with Texas law is in violation of §17.46(b)(24), “failure 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.”

XII. INJURY TO CONSUMERS

12.1 By means of the foregoing unlawful acts and practices, Defendants have 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.

**XIII.
EQUITABLE RELIEF**

13.1 The State of Texas asks that the Court temporarily restrain and permanently enjoin Defendants from sending any more ANNUAL MINUTES DISCLOSURE STATEMENTS, or any similar solicitation, to businesses in Texas.

13.2 The State of Texas further asks that the Court temporarily restrain and permanently enjoin Defendants from advertising or offering services that have no value to Texas businesses.

13.3 The State of Texas asks further that the Court temporarily restrain and permanently enjoin Defendants from representing that failure to prepare written minutes of shareholder and directors minutes will necessarily expose those shareholders and directors to personal liability.

13.4 The State of Texas asks further that the Court temporarily restrain and permanently enjoin Defendants from using any form of solicitation which has the appearance of being from an official agency of the State of Texas.

13.5 The State of Texas further asks that the Court, under its equity powers, order Defendants to make restitution and disgorge the sum of all money, or the equivalent of money, paid by consumers to Defendants as a fee for rendition of their “services.”

**XIV.
NECESSITY OF IMMEDIATE RELIEF
TO PRESERVE DEFENDANTS’ ASSETS**

14.1 Plaintiff the State of Texas requests immediate relief by way of an Ex Parte Temporary Restraining Order freezing Defendants’ assets to preserve and protect such assets from dissipation so the victims of Defendants’ actions can receive the restitution to which they are entitled. Defendants’ assets are subject to dissipation for the reason that Defendants are not present in the State of Texas and they have no assets in the state which can be seized to satisfy a judgment

herein, and they have previously been sued by the State of Florida and investigated by the State of Arizona for exactly the type of actions as alleged herein.

**XV.
OTHER RELIEF**

15.1 The State of Texas asks the Court to order Defendants to restore any money or property which may have been acquired from businesses in Texas by means of any unlawful act or practice.

15.2 The State of Texas asks the Court to order each Defendants 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.

15.3 The State of Texas asks the Court to order Defendants to pay reasonable attorney fees, pursuant to TEX. GOVT. CODE § 402.006.

PRAYER

WHEREFORE, Plaintiff The State of Texas prays that an Ex Parte Temporary Restraining Order be granted and Defendants 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 Defendants, their successors, assigns, officers, agents, servants, employees, attorneys and any other person in active concert or participation with Defendants, 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 Defendants' business which are in Defendants' possession, custody, or control except in response to further orders or subpoenas in this cause;

b. Transferring, spending, hypothecating, concealing, encumbering, depleting,

modifying, dissipating, distributing, or removing from the jurisdiction of this Court any money, stocks, bonds, assets, 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 possession of, or claimed by Defendants, insofar as such property relates to, arises out of or is derived from the unlawful business operation of Defendants within the State of Texas;

c. sending any more ANNUAL MINUTES DISCLOSURE STATEMENTS, or any similar solicitation, to businesses in Texas;

d. advertising or offering services that have no value to Texas businesses;

e. representing that failure to prepare written minutes of shareholder and directors minutes will necessarily expose those shareholders and directors to personal liability;

f. using any form of solicitation which has the appearance of being from an official agency of the State of Texas.

g. causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in that Defendants are not connected with any official agency of the State of Texas;

h. 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 Defendants are deceiving people into believing that filing written minutes is a legal requirement

i. representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, by representing that the services of Defendants are necessary in order to maintain corporate existence, and inducing businesses to purchase those services

j. 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, by failing to disclose, by failing to disclose that their services are not required in order to comply with Texas law

k. representing, directly or by implication, that this court or the Attorney General has approved any good or service sold or offered for sale by Defendants, or has approved any of Defendants' business practices.

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

a. Order Defendants to make restitution and disgorge the sum of all money, or the

equivalent of money, paid by Texas businesses to Defendants

b. Adjudge against Defendants, jointly and severally, civil penalties in favor of Plaintiff State of Texas in the amount of \$20,000.00 per violation of the DTPA;

c. Order Defendants to pay Plaintiff State of Texas attorney's fees and costs of court pursuant to TEX. GOVT. CODE §402.006(c);

DATED this _____ day of August, 2005.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

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