

NO. 2005-07308

STATE OF TEXAS,
Plaintiff

v.

ELVIA DIAZ, a/k/a ELVIA
MARTINEZ¹ d/b/a DIAZ INCOME
TAX and CENTRO DOCUMENTAL,
Defendant

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

113th JUDICIAL DISTRICT

DEFAULT JUDGMENT

On this day came on to be heard the above-entitled and numbered cause wherein THE STATE OF TEXAS is Plaintiff and ELVIA DIAZ is the Defendant. The Plaintiff appeared in person and by its attorney of record and announced ready for trial. The Defendant, although having been duly and legally cited to appear and answer, failed to answer, and made default despite entering an appearance in the cause. Because Defendant ELVIA DIAZ entered an appearance, she and her bankruptcy attorney were notified of Plaintiff's Motion for Default and Notice of Hearing on this date. Despite being notified of this default hearing on this date, Defendant ELVIA DIAZ failed to appear for this hearing and further wholly failed to answer this lawsuit.

Citation was served according to law and return of service was made to the clerk where it remained on file for the time required by law. The Court has read the pleadings and the papers on file, has heard and considered the testimony and evidence presented by Plaintiff, and is of the opinion that the allegations of Plaintiff's Petition have been sufficiently proven and that a default judgment should be entered in this case against ELVIA DIAZ.

¹ Defendant has also been known as Elvia Ibarra.

FINDINGS

This court, based upon the testimony and evidence presented, makes the following findings:

1. Plaintiff filed a petition in this cause pursuant to the provisions of the Texas Deceptive Trade Practices Act (“DTPA”) and the Texas Government Code, the allegations of which the court takes notice. Defendant was properly served with citation which has been on file for the appropriate time and that Defendant received notice of Plaintiff’s Default Motion and notice of this hearing and wholly failed to answer this suit.
2. The Texas Attorney General is charged with, among other things, the responsibility of enforcing the DTPA on behalf of the public interest.
3. Elvia Diaz, Defendant, has violated the Texas Government Code and the Texas Deceptive Trade Practices Act (“DTPA”) as set forth in Plaintiff’s First Amended Verified Petition by engaging in the unauthorized practice of law in violation of DTPA §§ 17.46(a), 17.46(b)(24) and TEX. GOVT. CODE 406.016(d)(Vernon 2005) by giving legal advice and accepting fees for providing legal advice.
4. Elvia Diaz, Defendant, has also violated the Texas Government Code and the Texas Deceptive Trade Practices Act (“DTPA”) as set forth in Plaintiff’s First Amended Verified Petition by soliciting or accepting compensation to prepare documents for another in an administrative proceeding relating to immigration to the United States, in violation of TEX. GOV’T CODE ANN. §406.017(a)(2); by soliciting or accepting compensation to obtain relief on behalf of another from an officer, agency, or employee of the United States, in violation of TEX. GOV’T CODE ANN. §406.017(a)(3); by using the phrase “notario” or “notario publico” to advertise the services of a notary public, whether by signs, pamphlets, stationery, or other written communication or by radio or television, in violation of TEX. GOV’T CODE ANN. §406.017(a)(4); by advertising the services of

a notary public in a language other than English, by signs, pamphlets, stationery, or other written communication and by not posting or otherwise including with the advertisement a notice that complies with TEX. GOV'T CODE ANN. §406.017(b); and by advertising the services of a notary public in a language other than English and: 1) failing to state in English and in letters of a conspicuous size, that the notary public is not an attorney; 2) failing to state in the language of the advertisement and in letters of a conspicuous size that the notary public is not an attorney; 3) failing to include the fees that a notary public may charge; and 4) failing to include the following statement: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE", in violation of TEX. GOV'T CODE ANN. §406.017(b);

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant ELVIA DIAZ, her officers, agents, servants, employees, and attorneys, and any other person in active concert or participation with her who receives actual notice of this order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other devise, shall be permanently enjoined 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 the business of Defendant currently or hereafter in Defendant's possession, custody or control except in response to further orders or subpoenas in this cause;

B. Soliciting or accepting compensation to prepare documents for another person in any proceeding (administrative or otherwise) relating to immigration to the United States;

C. Soliciting or accepting compensation to prepare documents for another person in any

type of proceeding relating to work visas or permits, residency status, Immigration or U.S. Citizenship in any court, tribunal, or agency of the United States;

D. Advising any person as to any issue relating to immigration, residency status, work visas/permits or U.S. Citizenship;

E. Soliciting or accepting any type of fee for purporting to advise or assist someone in filling out paperwork for any issue relating to immigration, residency status, work visas/permits or U.S. Citizenship;

F. Advertising in any type of medium that Defendant is able to assist or advise someone in any capacity relating to immigration, work visas or permits, residency status, or U.S. Citizenship;

G. Acting in the capacity of a notary public;

H. Advertising Defendant's services as a notary public, notario publico, or notaria publica;

I. Telling consumers that Defendant can assist them in any way for Immigration related services or needs if they pay Defendant a fee;

J. Telling consumers that they can obtain residency status through relatives;

K. Telling consumers that they are eligible for residency permits or can obtain citizenship status;

L. Soliciting or accepting compensation to obtain relief on behalf of another from an officer, agency, or employee of the United States;

M. Using the phrase "notario" or "notario publico" to advertise the services of a notary public, whether by signs, pamphlets, stationery, or other written communication or by radio or television.

N. By giving legal advice and accepting fees for such advice without being licensed to practice law in the State of Texas;

O. Giving, providing, or offering advice or counsel to any person, homeowner, or consumer regarding real estate matters, laws, procedures, rights, privileges, or documents;

P. Representing to any person, expressly or by implication, that Defendant can or will represent the interest of another with a mortgage company, financial institution or lender, including any proceeding relating to a mortgage foreclosure or real property sale;

Q. Selecting, drafting, completing, or preparing real estate related forms, contracts, deeds, or real estate or legal documents of any type to be used or filed on behalf of persons seeking to sell or purchase real estate or obtain relief from any foreclosure process related to any real property;

R. Advising persons, expressly or by implication, of the type of form, application or document needed in any type of proceeding relating to mortgage foreclosures or the transfer of real estate;

S. Giving persons advice or counsel of any kind regarding their rights under the real estate laws of the United States or Texas;

T. Soliciting, collecting, or accepting fees or compensation of any type, for providing any type of mortgage foreclosure or real estate related services to consumers, investors or others;

U. Representing, expressly or by implication, that Defendant is able to provide or obtain relief on behalf of another facing mortgage foreclosure proceedings;

V. Advertising real-estate related services of any kind via the Internet, telephone radio, TV, electronic broadcast, print (i.e. newspapers, magazines, business cards, etc.), or in person;

W. Assisting or working with others to purchase, assign, transfer, or sell any real property or any interest in same; and

X. Soliciting persons listed on the foreclosure rolls of Houston or any other city or county; and

Y. Buying or selling any real property, or assisting others in buying or selling any real property without approval of this court in advance.

IT IS ALSO ORDERED, ADJUDGED AND DECREED that, as used in this Temporary Injunction, the following terms are defined as follows:

A. “Consumer” means an individual, partnership, corporation, or entity of any kind, including this state, or a subdivision or agency of this state who seeks or acquires, by purchase or lease, any goods or services;

B. “Defendant” means Elvia Diaz, a/k/a Elvia Martinez, d/b/a Diaz Income Tax and Centro Documental, her successors, assigns, officers, agents, subcontractors, servants, present and former employees, corporations and any other persons in active concert or participation with her;

C. “Services” means work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods;

D. “Person” means an individual, partnership, corporation, association, or other group, however organized.

E. “Sell”, “market” or “solicit” means any type of contact with a person or entity for the purpose of requesting, persuading, or seeking any type of contribution, sponsorship, compensation, or anything of value from said person or entity for any reason whatsoever.

IT IS FURTHER ORDERED that Plaintiff, State of Texas, have Judgment and recover

from Defendant Elvia Diaz, the sum of \$224,228.05 for reimbursement of attorney fees, court and investigative costs which were incurred on behalf of the Plaintiff and which do not constitute an antecedent debt with respect to this litigation.

IT IS FURTHER ORDERED that Plaintiff, State of Texas, have Judgment and recover from Defendant Elvia Diaz, the sum of \$683,000 for civil fines and penalties and which do not constitute an antecedent debt with respect to this litigation.

IT IS FURTHER ORDERED that Plaintiff, State of Texas, have Judgment and recover from Defendant Elvia Diaz, the sum of \$683,000 for restoration of money or other property (“restitution”) illegally taken from at least 683 known identifiable persons who were victimized by Elvia Diaz. Plaintiff is ordered to remit such monies to consumer victims as restitution in the event all or part of this portion of the judgment is paid.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, to the extent not prohibited by bankruptcy law :

1. Defendant shall make payment of all amounts due herein to the Plaintiff by delivery of a cashier’s check or money order to the Office of the Attorney General, Consumer Protection Division, 300 West 15th Street, 9th Floor, William Clements Building, Austin, Texas 78701. Such check or money order shall be made payable to the Office of the Attorney General.
2. All costs of court incurred in this case are taxed against Defendant.
3. Defendant shall pay pre-judgment and post-judgment interest on all monetary awards set forth in this judgment as provided by law.
4. The State of Texas have all writs and processes as may be necessary in the enforcement and collection of this judgment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all relief not expressly granted herein is denied.

SIGNED this _____ day of _____ 2005.

JUDGE PRESIDING