

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	
	§	
ANDREW S. HUIZAR and	§	
EDWARD S. HUIZAR	§	BEXAR COUNTY, TEXAS
f/d/b/a A&E Investments	§	
f/d/b/w Harper Enterprises	§	
f/d/b/w Dilley Mobile Homes	§	
	§	
and	§	
	§	
DAVID BARROSO	§	
d/b/a SWEET HOMES	§	
Defendants	§	<u>407TH</u> JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, the State of Texas, acting by and through Attorney General of Texas Greg Abbott, complains of ANDREW S. HUIZAR and EDWARD S. HUIZAR f/d/b/a A&E INVESTMENTS, f/d/b/w Harper Enterprises, and f/d/b/w Dilley Mobile Homes; and DAVID BARROSO d/b/a SWEET HOMES, Defendants, and for cause of action would respectfully show as follows:

AUTHORITY

1.1. This action is governed under Discovery Control Plan level II pursuant to TRCP Rule 190.3 and is brought by Attorney General Greg Abbott, through his Consumer Protection Division, in the name of the State of Texas and in the public interest under the authority granted him by §17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. &

COM. CODE ANN. §17.41 *et seq.* (hereafter the "DTPA") upon the ground that Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§17.46(a) and (b) of the DTPA.

DEFENDANTS

2.1. Defendant ANDREW S. HUIZAR is an individual doing business in Texas as alleged specifically below and may be served with process at his home at 21914 Legend Point, San Antonio, Texas, 78258.

2.2. Defendant EDWARD S. HUIZAR is an individual doing business in Texas as alleged specifically below and may be served with process at his home at 7518 Tantara Court, San Antonio, Texas, 78249.

2.3. Defendant DAVID BARROSO is an individual doing business in Texas as alleged specifically below and may be served with process at his home at 9311 Pioneer Forrest, Austin, Texas 78744.

2.4. Defendants Andrew S. Huizar and Edward S. Huizar previously did business under the assumed name of A&E Investments and also worked for or under the names of Sweet Homes, Dilley Homes and Harper Enterprises; Defendant David Barroso does business under the assumed name of Sweet Homes.

VENUE

3. Venue of this suit lies in Bexar County, Texas for the following reasons:

A) Under TEX. CIV. PRAC. & REM. CODE §15.001, venue is proper because all or part of the causes of action alleged herein accrued in Bexar County, Texas.

B) Under TEX. CIV. PRAC. & REM. CODE §15.036, venue is proper because the principal place of business of Defendants was in Bexar County, Texas.

C) Under the DTPA §17.47(b), venue is proper because Defendants have done business in Bexar County, Texas as follows: Defendants sold manufactured homes in Bexar County.

PUBLIC INTEREST

4. Because Plaintiff STATE OF TEXAS has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe Defendants have caused and will cause loss and damage to the State of Texas, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Therefore, the Consumer Protection Division of the office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

5. Defendants have, at all times described below, engaged in conduct which constitutes "trade" and "commerce" as those terms are defined by §17.45(6) of the DTPA.

ACTS OF AGENTS

6. Whenever in this Petition it is alleged that Defendants did any act, it is meant that:

A) Defendants performed or participated in the act, or

B) Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

NOTICE BEFORE SUIT

7. The Consumer Protection Division informed Defendants in general of the alleged unlawful conduct described below, at least seven days before filing suit, as may be required by §17.47(a) of the DTPA.

FACTS

8.1. The Consumer Protection and Public Health Division of the Office of the Attorney General (hereafter "the OAG") is authorized to investigate and bring actions for the State of Texas for possible violations of the Deceptive Trade Practices - Consumer Protection Act ("DTPA"), TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* and the Texas Manufactured Housing Standards Act, ("TMHSA") TEX. OCC. CODE §1201.001, *et seq.* (2005)¹ The Texas Department of Housing and Community Affairs, Manufactured Housing Division (hereafter "MHD") is the agency authorized to enforce the TMHSA and regulate the manufactured home industry through the Manufactured Housing Rules, 10 TAC §80.10 *et seq.* (2004) (hereafter "Rules").

8.2. David Barroso was licensed by MHD as a retailer under the TMHSA and authorized to sell manufactured homes as "Sweet Homes" from a lot at 10346 Hwy 90 West, San Antonio, Texas through September 16, 2003. In February 2003 David Barroso entered into a verbal

¹The Texas Manufactured Housing Standards Act was amended by HB 2438, effective September 1, 2005, amending various sections of Chapter 1201. Violations of the TMHSA are cited to the section number then in effect at the time of the violation.

agreement with Andy Huizar and Eddy Huizar in which Andy Huizar, as General Manager of Sweet Homes, was given authority to engage in a number of duties, including, but not limited to: purchasing inventory, negotiating sales, signing purchase memoranda, executing sales contracts, coordinating delivery and set up of homes, collecting down payments, depositing funds, disbursing funds, paying contractors and vendors, verifying that sales were conducted at the bonded and licensed location of Sweet Homes, and verifying that all sales were performed in accordance with the TMHSA and the regulations promulgated by MHD. Neither Edward nor Andrew Huizar possessed a license from MHD to sell manufactured homes as required by law.

8.3. David Barroso was motivated to turn over the management of his lot to Andy Huizar because Andy Huizar had succeeded in convincing a local businessman to finance the purchase of repossessed manufactured homes to be sold from this Sweet Homes location, leaving David Barroso free to move to Austin for family and personal reasons. The original agreement was intended to allow David Barroso to collect money from the sale of repossessed manufactured homes from his licensed, rented lot while Andy Huizar, assisted by his brother, Eddy Huizar, and another principal in A&E's operations, Juan Montalbo, also profited.

8.4. David Barroso alleges that on, about, or before the period of May and June 2003 the Huizars began selling homes from Sweet Homes's licensed lot under the name of A&E Investments and retaining many of the sales proceeds without paying him the verbally agreed share of the net profits. He alleges that even though his license was displayed on the wall of the sales office, many sales were conducted without his prior knowledge or any subsequent accounting or reporting.

8.5. The Huizar brothers allege that they sold all homes under contract as sales by Sweet Homes. They allege that David Barroso had broken his verbal agreement and was demanding more money than had been agreed. They indicate that even though these were sales by Sweet Homes, they paid many taxes and fixed many homes from their own funds, absorbing many losses which they believe should have been absorbed by Sweet Homes.

8.6. The original agreement and plan of operation, if any, quickly deteriorated. The resulting business practices by A&E and SH and the staff of people they retained left some consumers without title to their homes and with defective or missing appliances or repairs which they thought they were buying. Some consumers lost money from paying down payments or purchase money on uncompleted deals and undelivered homes.

8.7. Although originally, SH, A&E, and A&E's financier were to split the proceeds from the sale of manufactured homes equally with SH, A&E, and the financier each receiving 33 1/3 % of the net profits, this plan soon fell apart. With a new verbal agreement for the months of May and June 2003 the Huizars agreed to pay David Barroso \$8,000 a month for permitting the use of his license allowing them to continue selling homes and receiving the profits. For the month of July 2003 the Huizars and David Barroso agreed to lower that payment to \$7000 per month. By August 2003 David Barroso agreed to accept \$500 for the sale of every single-wide manufactured home and \$1,000 for every double-wide manufactured home.

8.8. As arguments escalated over the amounts of money owed by A&E to SH and as consumers began filing complaints with MHD, the business relationship deteriorated to the point where David Barroso requested that his license be pulled down from the wall in the main office on September 16, 2003. A&E continued doing business at that location under the new name of

American Eagle; eventually, the whole business closed down in November or early December 2003.

8.9. In effectuating approximately 71 sales of repossessed homes, A&E through its own name and the SH name, sold many of these homes: (a) without good and marketable title and without all taxes paid and free of all liens and encumbrances, (b) without a written 60 day warranty of habitability, (c) without a notice regarding absence of formaldehyde, (d) without a notice of a right of rescission in the event the various requirements for the sale were not met, and (e) without having sold a home from the bonded and licensed retail lot location, instead selling some of the homes from the previous locations at which they were foreclosed upon. As set out below, all of these sales were made in violation of the TMHSA.

8.10. In addition, OAG and MHD allege that in the sale of these repossessed homes, A&E and SH personnel routinely used what is referred to in this industry as “open” or “blank” applications for Statements of Ownership and Location (hereafter referred to as “the SOL”) in which the blank for the name of the purchaser is left blank or open. The SOL is the document which serves as the official record of ownership of a manufactured home. Until application is made for a new SOL, the existing SOL remains in effect. The use of properly filled in SOLs allows MHD to regulate this industry and collect transfer fees on property which, by its very nature, is movable. By using “open” applications for SOLs, A&E was able to hide the existence of the previous lender and dealer as being within the chain of title to the home, thereby deceiving purchasers and MHD; *i.e.* by using “open” applications for SOLs, A&E either provided the previous invalid SOL to the new consumer or inserted only the name of the eventual consumer as the purchaser on the SOL making the chain of title appear as if the home was being sold by

the original defaulting owner to the new consumer. This eliminated the payment of titling and inspection fees due the state upon the transfer of title from the defaulting home owner to the lender and again upon the transfer of title from the lender to A&E/SH, in effect, eliminating two sets of fees and depriving the state of revenue.

8.11. Most of the consumers who purchased homes from A&E/SH did not receive good and marketable title as required by the TMHSA.

8.12. It is undeniable that David Barroso's MHD license was used to effectuate these sales. It is also undeniable that the Huizar brothers represented this business as their own business under the A&E name through the distribution of their business cards. A&E clearly wanted the profitability and opportunity afforded by the license which they were paying to use, but now deny liability because it was in David Barroso's name. David Barroso clearly wanted the profitability of all of these sales but now denies liability indicating that the Huizar brothers were acting outside the scope of their agreement. Of approximately \$1 million in sales in 2003, it has been stated that approximately \$530,000 was spent for inventory and expenses; A&E and its principals received approximately \$334,000 in net profit; David Barroso received approximately \$136,000 in net profit.

8.13. The State of Texas alleges that David Barroso, Andy Huizar, and Eddy Huizar were "inextricably intertwined Defendants" regarding all the A&E transactions under the common law doctrine of inextricability recognized by the Texas Supreme Court.

8.14. The State of Texas alleges that A&E and SH should be held jointly and severally liable to all consumers who were damaged as a result of the business practices of A&E which developed as a result of their business agreements and actions: David Barroso because, in effect,

he unlawfully “rented” or “loaned” his license to the Huizars which they used as the ostensible legal authority with which to do business and because he did receive money for individual sales as well as what amounts to rental payments for his license; and Andy and Eddy Huizar because in effectuating these sales, they operated this business acting as if, or believing, it was their own business, knowingly failing to return funds, failing to pay taxes, and making deceptive promises to induce sales, in violation of the DTPA as well as the TMHSA. Additionally, once these Defendants terminated their joint business operations, they continued operating in the manufactured home industry. Andrew and Edward Huizar set up other business by “renting” or “borrowing” another license and operating under the name of Harper Enterprises and Dilley Mobile Homes. David Barroso continued using his Sweet Homes name and has harmed an additional number of consumers as described below. These three Defendants have continued harming unsuspecting consumers with their deceptive and fraudulent conduct and misrepresentations.

SPECIFIC FACTUAL ALLEGATIONS

Complaints Jointly Against Defendants Andy Huizar, Eddy Huizar and David Barroso

9.1. The consumer in OAGs189115, MHD2005001116-L² filed complaints with both OAG and MHD and stated that on or about April 23, 2003, in Bexar County, she bought a home, HUD label RAD1277989/90,³ from Defendants who failed to disclose that \$7,902.37 in back taxes

² Complaints filed with OAG are denominated OAGnnnnnnn; complaints filed with MHD are denominated MHDnnnnnnnnn. If a complaint was filed with both offices, both complaint numbers are provided.

³Manufactured homes are identified by their Housing and Urban Development (HUD) label numbers and are denominated with three capital letters followed by numbers. These label numbers are listed in MHD’s computers along with serial numbers and other information. If a

were due to Bandera County. She was notified of these taxes almost two years after she bought the manufactured home from Defendants. Defendants failed to give good and marketable title as required by TMHSA §1201.451. These taxes, together with penalties and interest, remain owing and unpaid, and Bandera County has threatened to foreclose on the home.

9.2. The consumer in OAGs189530, MHD200500190-L stated that he bought a home, HUD Label NTA0981697/8, from Defendants on or about August 22, 2003. Defendants failed to disclose \$2,808.20 in back taxes of which he was notified after he bought the manufactured home from Defendants and just prior to filing his complaint. The home was sold from a location that was not a licensed, bonded location, in violation of TMHSA §1201.107(b) and Rules, §80.123(b). Tax liens against the home for unpaid taxes in years 2001 and 2002 were, at the time of sale, outstanding in Bexar County. The consumer paid the \$2808.20 in back taxes on August 19, 2004 and is owed this amount by Defendants. Defendants failed to give good and marketable title as required by TMHSA §1201.451. The sale contract provided purports to be “as is/where is” and without warranty, in violation of TMHSA §1201.455.

9.3. The consumer in OAG183288, MHD2005000868-L stated on or about March 3, 2005 that she paid \$13,820 to Defendants on or about February 28, 2003 for the purchase of a manufactured home which she never received. Following unsuccessful attempts to reach Defendant Andy Huizar, the consumer found out the home she purchased had already been sold to someone else. She wants a refund of her money plus interest from the date of payment to Andrew Huizar.

slash appears in the last two digits, this designates two halves of one home, each having the same initial digits; e.g. RAD1277989/90 means one half is numbered RAD1277989, the other half is numbered RAD1277990 If two slashes appear, this designates a home with three parts.

9.4. The consumer in OAG157292 stated that she purchased a home, RAD0996381/82 from Defendants on or about August 19, 2003 but has not received title to her mobile home from A&E Investments. The consumer called A&E to request the title everyday until they changed their telephone number. She did not discover she would not receive title to the home until just prior to filing her complaint on February 3, 2004. The consumer wishes to receive a clear title to the manufactured home plus a working air conditioning unit which was promised and worth approximately \$500.00.

9.5. The consumer in OAGs189532, MHD2005001166-L stated that she purchased a home, HUD Label PFS0582024, from Defendants on August 1, 2003 and later found out on or about June 24, 2005 that back taxes in the amount of \$3261.40 plus interest were owed on the home. She filed her complaint with OAG on July 20, 2005.

9.6. The consumer in OAGs174001, MHD20041012-T stated that she has still not received title to a mobile home, HUD Label RAD1232615/16, she purchased from Defendants for \$35,700 on September 17, 2003. She did not discover she would not receive title until on or about April 27, 2004.

9.7. The consumer in OAGs179929, MHD2005000395-L stated that after he purchased a manufactured home, HUD Label PFS0448056/7 from Defendants on May 30, 2003 he discovered sometime in January, 2005 that taxes in the amount of \$13,312.77 plus interest were owing on the home. He seeks reimbursement for having to pay these taxes and has filed his own private lawsuit in *Jon Sanders vs. Sweet Mobile Homes, Inc.*, No. 2005CI08064 (166th Dist. Ct. Bexar County).

9.8. The consumer in MHD2004000577-T stated that she has never received clear title for a home, HUD Label TEX469195/6, she purchased from Defendants. She made out a purchase money check for \$14,400 to Edward Huizar for the purchase from Defendants on February 18, 2003. She gave up trying to obtain title after she discovered she would not obtain title just prior to filing her complaint on January 9, 2004.

9.9. The consumer in OAG155011 filed a complaint detailing her business dealings with A&E Investments. In September of 2003, the consumer agreed to buy a mobile home for \$9,000 if she purchased it within a week and put up a \$2,000 deposit. She complied, but never received the home. She inquired further regarding the home, but found out A&E sold the home for \$22,000. Following a meeting with A&E representatives, including Andrew Huizar, the consumer agreed to purchase four mobile homes for \$21,000. This sale was predicated on representations that the four mobile homes were guaranteed to be in stock by October 15, 2003 and she would be able to inspect and accept or reject the homes at that time. She rejected the homes because in her opinion, they were nothing but junk. She called her bank to cancel the \$21,000 check, but it had already been cashed. Even though the A&E Defendants partially reimbursed this complainant in the amount of \$10,000, she discovered in August, 2004 that the remaining \$11,000 due her would not be reimbursed and Defendants now refuse to pay this complainant the rest of her refund.

9.10. The consumer in OAG145939, MHD2003001878-T stated that A&E Investments sold him an uninhabitable home, HUD Label PFS0684215/6, on or about July 10, 2003 with defective appliances and without a promised five ton air conditioner. Even though the A&E Defendants made offers to fix or supply all the appliances and air conditioner, the consumer fixed the home

but this consumer has still not been able to receive what he paid for and was promised. His damages total approximately \$2,000.00 or more but he did not discover that he would not be paid until on or about December 29, 2004.

Complaints Solely Against Defendants Andy Huizar and Eddy Huizar

9.11. The consumer in OAGs 195094 stated that he paid \$9,000 to Defendant Eddie Huizar when he was working for or under the name of Dilly Homes on or about August 30, 2005 for a Palm Harbor manufactured home, HUD Label unknown, which he never received and for which he did not receive a refund of his money.

9.12. The consumer in OAGs186781stated that he bought a home, HUD Label PFS0401972, on November 30, 2004 from Andy Huizar when he was working for or under the name of Harper Enterprises but did not receive title from the Defendant Andy Huizar nor did he receive the promised repairs and appliances totaling approximately \$500.00

Complaints Solely Against Defendant David Barroso

9.13. The consumer in OAGs 187714 indicated she purchased a mobile home HUD Label PFS0598799 from an intermediary on or about March 2, 2003 who purchased the home from Sweet Homes without paying taxes to Bandera County and leaving this consumer named as a Defendant in a tax collection lawsuit by the county. She paid taxes in the amount of \$2,116.20 which is owed to this consumer by Defendant David Barroso because he sold the home to the intermediary Paul Guilbeau of Bandera County without disclosing the taxes which were owed. She did not discover that taxes were due until she was notified of the pending delinquent tax lawsuit in March, 2005.

9.14. The consumer in MHD2006000243-LRV purchased a used manufactured home, HUD Label PFS0553871, on or about March 5, 2005, from Defendant Barroso who failed to disclose to her at the time of sale that there were unpaid taxes in Eagle Pass, Texas. The installation price was included in the price of this contract and was not reported to the Department, in violation of Rules, §80.119(f).

9.15. The consumer in MHD2006000400-LRV purchased a home, HUD Label PFS0569654, from Defendant Barroso on or about October 18, 2004. This consumer did not discover he would not receive title until on or about December 21, 2005 and as of January 2, 2006, he had still not received one. Defendant Barroso failed to give good and marketable title as required by TMHSA §1201.451 and failed to properly complete and timely file the required notice of installation with respect to this home, in violation of Rules, §80.119(f)(1).

9.16. The consumers in MHD2006000044-LRV purchased a used manufactured home, HUD Label NTA0981358/9, from Defendant Barroso on or about October 25, 2004. Even though these consumers provided the necessary paperwork to Defendant Barroso to obtain their SOL, as of January 3, 2006, they still had not received one.

9.17. The consumer in MHD2006000242-LRV purchased a used manufactured home, HUD Label RAD1208558, from Defendant Barroso on or about October 19, 2004. At the time of sale there were unpaid taxes in Nueces County which he did not disclose to the consumer. Defendant failed to give good and marketable title as required by TMHSA §1201.451. The installation price was included in the price of this contract and was not reported to the Department, in violation of Rules, §80.119(f).

9.18. The consumers in MHD20050001260-LRV purchased a used manufactured home, HUD Label PFS0702935/6, from Defendant Barroso on or about May 8, 2003. At the time of sale there were unpaid taxes for tax years 2002 and 2003 in Bexar County which were not disclosed to these consumers. Defendant Barroso failed to give good and marketable title as required by TMHSA §1201.451. Defendant Barroso did not provide the warranty of habitability, in violation of TMHSA §1201.455.

9.19. The consumers in OAGs141307, MHD2005000142-L indicated they purchased a mobile home, HUD Label PFS0430617, from Defendant Barroso on or about March 23, 2003. Defendant Barroso had paid off some undisclosed taxes for the 2003 tax year in December 2004 after they were brought to his attention by OAG and this complaint was then considered closed. However, the consumers did not discover until approximately February 2005 that \$2173.61 in taxes for tax years 2001 and 2002 had still not been paid by Defendant Barroso, despite Barroso's claims through his attorney that all taxes had been paid off. Defendant Barroso failed to give good and marketable title as required by TMHSA §1201.451.

9.20. The consumers in MHD2005001257-II indicate that in November 2003, Defendant Barroso installed a used manufactured home, HUD Label PFS0381011/12, for them. This installation was not reported to the Department, in violation of Rules, §80.119(f). The Department performed an inspection of the home on August 23, 2005, and installation deviations were cited. On September 1, 2005, the Department issued Defendant Barroso a notice of these deviations along with an order to perform required warranty work requiring corrective action within 40 days, all as provided for in TMHSA §1201.356. Defendant has not complied with the notice and warranty order and is in violation of TMHSA §§ 1201.354 and 1201.356(e).

9.21. The consumer in MHD2005000445-W filed a complaint indicating that he purchased a manufactured home, HUD Label PFS0633571, from Defendant Barroso on or about September 29, 2004. Defendant Barroso sold this home from a location that was not bonded or licensed and failed to provide the Site Preparation Notice in violation of TMHSA §1201.107(b) and Rules, §§ 80.123(b) and 80.54(b). Defendant also failed to provide the formaldehyde notice, in violation of TMHSA §1201.153(b) and Rules, §80.123(b)(7). The home was not habitable, as defined in TMHSA §1201.453 and was therefore sold in violation of TMHSA §1201.455. The contract for the sale of the home provided for installation which was not performed in accordance with the specified method, in violation of TMHSA §1201.361. The report of MHD's inspection of the home on January 18, 2005 was issued on or about February 14, 2005, and Defendant was ordered to correct the matters set out in the report within 40 days and to provide the Department with proof of compliance within an additional ten days. Defendant Barroso has not complied with the Department's order and this consumer incurred actual damages in the amount of \$415.78 by correcting, at his own cost, matters that the Defendant Barroso was required but failed to address.

9.22. The consumer in OAGs 199862, MHD2006000244-LRV filed a complaint against Defendant David Barroso stating that on or about August 18, 2005, David Barroso accepted a wire transfer of \$49,500 from this consumer's account to David Barroso's account for purchase of a home, HUD Label NTA0356124/25, which was never delivered. Defendant Barroso had failed to pay the floor planner who had a secured interest in the home. As a result, the floor planner picked it up from the location where David Barroso's installation crew had delivered and installed the manufactured home on the consumer's property. This consumer is now obligated to

repay his bank the loan amount of \$49,500 in monthly installments for a home which has been picked up by David Barroso's floor planner, Shipley Brothers, who through trickery and deception, took it off the lot. Defendant Barroso failed to give good and marketable title as required by TMHSA §1201.451. This installation was included in the price of this contract and was not reported to the Department, in violation of Rules, §80.119(f). Defendant failed to submit to the manufacturer the manufactured home information card as required by TMHSA §80.121(a)(2).

9.23. The consumer in MHD2005001301-L filed a complaint on or about July 30, 2005, against David Barroso regarding a home he sold them. The home was inspected by the Department and installation deviations were cited. Defendant Barroso has not provided the Department with evidence that it has performed the required corrective work and this consumer should be reimbursed by Defendant Barroso for the additional installation costs.

9.24. The consumer in MHD2005001297-L filed a complaint on or about July 20, 2005, indicating that on or about February 2, 2003, Defendant Barroso sold him a used manufactured home, HUD Label PFS0691210/11. At the time of sale there were tax liens for unpaid taxes in years 2002 and 2003, and 2004 outstanding in Medina County which were not discovered by the consumer until prior to filing the complaint, therefore Defendant Barroso failed to give good and marketable title as required by TMHSA §1201.451. The consumer incurred damages in the amount of \$3,723.52 by paying these taxes but the Defendant has not reimbursed this consumer.

9.25. The consumer in MHD2006000207-L indicated that on or about September 20, 2004, Defendant Barroso installed a manufactured home, HUD Label PFS0623891. This installation was not reported until on or about February 2, 2005, in violation of Rules, §80.119(f). The

report, when filed, did not identify the location of the installed home in a manner that would enable the Department to inspect the installation of the home, in violation of Rules, §80.204(a)(6).

9.26. The consumer in MHD2006000163-IV had a home, HUD Label RAD0986827, installed for him by Defendant David Barroso on or about June 25, 2003. The home was inspected by the Department on or about June 9, 2005, and installation deviations were cited. On June 20, 2005, the Department issued Defendant Barroso a notice of these deviations, along with an order to perform required warranty work and requiring corrective action within 40 days, all as provided for in TMHSA §1201.356. Defendant has not complied with the notice and warranty order and is in violation of TMHSA, §§1201.354 and 1201.356(e).

9.27. The consumers in MHD2005001324-LRV indicate that on or about April 14, 2005, Defendant Barroso sold them a used manufactured home, HUD Label NTA0625497/8. At the time of sale there were tax liens outstanding in Guadalupe County and therefore Defendant has failed to give good and marketable title as required by TMHSA §1201.451. David Barroso is liable for actual damages resulting from the violations of the TMHSA. Defendant Barroso failed to give good and marketable title as required by TMHSA §1201.451 and failed to properly complete and timely file the required notice of installation with respect to this home, in violation of Rules, §80.119(f)(1). Defendant Barroso sold the home from an unbonded unlicensed location in violation of TMHSA §1201.107(b) and Rules, §80.123(b) and did not provide the necessary paperwork to obtain their SOL, in violation of TMHSA §1201.206. The home was inspected by MHD on September 13, 2005, and found not to be habitable, in violation of

TMHSA §1201.455. Installation violations were cited and were not timely corrected, in violation of TMHSA §1201.357.

9.28. The consumer in MHD2006000339-LRV, MHD2006000333-WU indicates that Defendant David Barroso sold him a used manufactured home HUD Label PFS0728762/63 on or about October 11, 2005 but Defendant Barroso has failed to give him good and marketable title as required by TMHSA §1201.451 and has failed to properly complete and timely file the required notice of installation, in violation of Rules, §80.119(f)(1). The sale was made from a location that was separate from Defendant's licensed location, but the sale was not made in compliance with the requirements of TMHSA §1201.107(d).

9.29. The consumers in MHD2005001296-LRV indicate that on or about August 4, 2004, Defendant Barroso sold them a used manufactured home HUD Label PFS0560128/9. The home was not sold from a licensed and bonded location in violation of TMHSA §1201.107(b) and Rules, §80.123(b). At the time of sale there were unpaid taxes for tax year 2004 in Comal County which the consumers have since paid. Therefore, Defendant Barroso has failed to give good and marketable title as required by TMHSA §1201.451. Defendant has failed to properly complete and timely file the required notice of installation, in violation of Rules, §80.119(f)(1). Defendant Barroso is liable for actual damages resulting from his violations.

9.30. The consumer in MHD2005001299-L indicates that Defendant Barroso sold him a used manufactured home, HUD Label NTA1087613/4, on or about August 1, 2004. At the time of sale there were tax liens for unpaid taxes in years 2002, 2003, and 2004 outstanding in Bexar County. Therefore, Defendant Barroso failed to give good and marketable title as required by

TMHSA §1201.451. This consumer has incurred actual damages in the amount of \$3,464.55 by paying these taxes, and Defendant Barroso has not reimbursed him.

9.31. The consumer in OAGa194914, MHD2006000324-LRV stated that on or about July 18, 2005, he paid Defendant David Barroso \$5,000 for a manufactured home in a sale which was cancelled. David Barroso sent this consumer a refund check which was returned for insufficient funds and this consumer has never received a refund. Defendant Barroso has refused to return calls to this consumer and has eluded him to avoid payment of the refund. Knowingly issuing a check appearing on its face to be a bona fide payment but known not to represent good funds is a violation of Rules, §80.121(k)(4). Defendant Barroso has not refunded Mr. Ortiz's deposit in violation of TMHSA §1201.151.

9.32. The consumer in MHD2006000206-L indicates that on or about July 9, 2004, Defendant Barroso installed for her a manufactured home, HUD Label HWC0269591. This installation was not reported until on or about March 7, 2005, in violation of Rules, §80.119(f). The report did not contain the required map, in violation of Rules, §80.204(a)(1)(f).

9.33. The consumer in MHD2005000794-LRV indicates that on or about May 17, 2004, Defendant Barroso sold him a used manufactured home, HUD Label PFS0437329. At the time of sale there were tax liens for unpaid taxes in years 1998 and 1999 outstanding in Travis County. Therefore, Defendant Barroso failed to give good and marketable title as required by TMHSA §1201.451. Defendant Barroso has not paid these taxes, which continue to accrue penalties and interest. The consumer has since paid off the back taxes and this payment constitutes his actual damages resulting from the violations of the TMHSA by Defendant Barroso.

9.34. In MHD2005000023-WU the Department indicates that on or about October 13, 2005, a consumer complaint inspection was performed on this consumer's home. Warranty items were assigned to the Defendant Barroso. An inspector for the Department hand delivered the report of inspection and order to take corrective action to Defendant Barroso on November 17, 2005, and as of the date hereof, Defendant Barroso has not provided the Department with evidence that he has performed the required corrective work. This consumer has suffered actual damages to be determined.

9.35. In MHD06000165-IV Defendant Barroso installed a manufactured home HUD Label RAD923388/89/90 for a consumer. The home was inspected by the Department on or about June 3, 2005, and installation deviations were cited. On June 20, 2005, the Department issued Defendant Barroso a notice of these deviations, along with an order to perform required warranty work and requiring corrective action within 40 days. Defendant Barroso has not complied with the notice and warranty order and is, therefore, in violation of TMHSA §§ 1201.354 and TMHSA §1201.356(e).

9.36. In MHD2006000158-IV Defendant Barroso installed a used manufactured home HUD Label PFS0666420/1 for a consumer. An inspection of the home was performed by the Department on June 28, 2005, and installation deviations were cited. On July 20, 2005, the Department issued Defendant Barroso a notice of these deviations along with an order to perform required warranty work and corrective action within 40 days. Defendant Barroso has not complied with the notice and warranty order and is, therefore, in violation of TMHSA §§ 1201.354 and 1201.356(e).

9.37. The consumer in MHD2006000245-LRV purchased a used manufactured home, HUD Label PFS0595526/27, from Defendant Barroso on or about October 7, 2005. At the time of sale there were unpaid taxes in Hays County. Therefore, Defendant Barroso failed to give good and marketable title as required by TMHSA §1201.451. Additionally, Defendant Barroso failed to deliver and install the manufactured home after this consumer paid Defendant Barroso \$21,980.00, including installation as part of the contract, in violation of Rules, §80.119(c). On or about December 9, 2005, this consumer paid another company an additional \$1900.00 to transport and install the manufactured home. This consumer now possesses the home but has been damaged \$1900 for the installation fee which he paid twice. The unpaid taxes are still owed on the home.

9.38. The consumer in MHD2005001367-LRV purchased a used manufactured home, HUD Label PFS0504545/6, from Defendant Barroso on or about July 2, 2005. At the time of sale there were unpaid taxes in Hays County. Therefore, Defendant Barroso failed to give good and marketable title as required by TMHSA §1201.451. The salesperson employed by Defendant Barroso to handle this sale was Kent Lovato, and at that time he was not licensed to act as a salesperson, in violation of TMHSA §1201.101(f). The sale was made from a location that was separate from Defendant Barroso's licensed location and the sale was not made in compliance with the requirements of TMHSA §1201.107(d).

9.39. In MHD2005001366-W Defendant Barroso sold a used manufactured home, HUD Label PFS0584977, to this consumer on or about December 31, 2002. At the time of the sale there were unpaid taxes owing for tax years 2000, 2001, and 2002, in Atascosa County which were not discovered by the Department until prior to August, 2005. Defendant Barroso failed to

give good and marketable title as required by TMHSA §1201.451. Defendant Barroso also failed to provide the required warranty of habitability, in violation of TMHSA §1201.455 and this consumer should be compensated for her damages.

9.40. Although these Defendants have partially cooperated in fixing title to approximately 63 of the homes originally referred to OAG by MHD which had title, tax, or appliance problems, the sales described in paragraphs 9.1 through 9.10 are homes for which consumers are owed money or titles and for which neither set of Defendants acknowledges liability or is willing or able to reimburse the victims. Additionally, after having terminated their business relationship regarding A&E Investments, all Defendants stayed in the manufactured home industry separately but continued engaging in practices which have defrauded or otherwise harmed consumers as can be seen in paragraphs 9.11 through 9.12 by the Huizars and 9.13 through 9.39 by David Barroso. This lawsuit was filed to address the problems with consumers which these Defendants have harmed jointly or separately and to prevent future illegal conduct on the part of these Defendants. Prior to this lawsuit, copies of all the complaints had been provided to the respective Defendants pursuant to their respective involvements.

FALSE, MISLEADING OR DECEPTIVE ACTS

10. The Attorney General of the State of Texas alleges that Defendants engaged in certain practices within trade or commerce in the State of Texas, either directly or indirectly, in violation of the Texas Manufactured Housing Standards Act, TEX. OCC. CODE §1201.001 *et seq.*, and the Texas Deceptive Trade Practice Act, TEX. BUS. COME CODE §17.46(a) as follows:

(A) Selling manufactured homes to consumers without providing the consumer with good and marketable title with all back rent and taxes paid and free of all liens and encumbrances, in violation of TEX. OCC. CODE §§1201.451, 1201.603, in addition to the allegations regarding the consumers in paragraphs 9.1 through 9.40;

(B) Selling manufactured homes to consumers without providing the consumer with a written 60 day warranty of habitability, in violation of TEX. OCC. CODE §§1201.455, 1201.603, in addition to the allegations regarding the consumers in paragraphs 9.1 through 9.40;

(C) Selling manufactured homes to consumers without providing the consumer with a notice regarding formaldehyde, in violation of TEX. OCC. CODE §§1201.153, 1201.603, in addition to the allegations regarding the consumers in paragraphs 9.1 through 9.40;

(D) Selling manufactured homes to consumers without providing the consumer with the disclosures required, including a notice of a right of rescission in violation of TEX. OCC. CODE §§1201.162, 1201.1521, 1201.603, in addition to the allegations regarding the consumers in paragraphs 9.1 through 9.40;

(E) Selling manufactured homes to consumers from unbonded and unlicensed locations, in violation of TEX. OCC. CODE §§1201.107,⁴ 1201.603, in addition to the allegations regarding the consumers in paragraphs 9.1 through 9.40;

(F) Deceptively selling manufactured homes to consumers without a license duly issued by MHD, in violation of TEX. OCC. CODE §§1201.101(b)(c)(f)(g), 1201.603, in addition to the allegations regarding the consumers in paragraphs 9.1 through 9.40;

⁴Prior to September 1, 2005 this statute prohibited all sales from unbonded, unlicensed locations; pursuant to the amendment, a sales contract must identify the license and bond as applying to a specific sale from a specific location if it is not from a bonded location.

(G) Deceptively selling manufactured homes to consumers by promising appliances would be provided with the home and then failing to provide a habitable home with the appliances promised, in violation of TEX. OCC. CODE §§1201.453, 1201.603 TEX. BUS. COM. CODE §17.46(b)(5), in addition to the allegations regarding the consumers in paragraphs 9.1 through 9.40; and

(H) Accepting purchase money for a manufactured home, failing to deliver the manufacture to the purchaser, and failing to return the purchase money or deposit, in violation of TEX. OCC. CODE §§1201.151, 1201.603 in addition to the allegations regarding the consumers in paragraphs 9.1 through 9.40.

INJURY TO CONSUMERS

11. Defendants have, by means of these unlawful acts and practices, obtained 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. All of the damaged consumers in the complaints listed above are consumers as defined in TMHSA §1201.003(6). The Department believes that damages should be awarded against the Defendants and that it is proper to reimburse all of the damaged consumers from the Texas Manufactured Homeowners' Recovery Trust Fund set out in TMHSA §1201.401 *et seq.* (2005)

PRAYER

12. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this Petition.

Unless enjoined by this Honorable Court, Defendants will continue to violate the laws of the State of Texas and cause loss and damage to the State of Texas and to the general public.

13. WHEREFORE, Plaintiff requests that Defendants be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, their officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

A) Selling manufactured homes to consumers without providing the consumer with good and marketable title with all back rent and taxes paid and free of all liens and encumbrances, in violation of TEX. OCC. CODE §1201.451;

B) Selling manufactured homes to consumers without providing the consumer with a written 60 day warranty of habitability, in violation of TEX. OCC. CODE §1201.455;

C) Selling manufactured homes to consumers without providing the consumer with a notice regarding formaldehyde, in violation of TEX. OCC. CODE §1201.153;

D) Selling manufactured homes to consumers without providing the consumer with the required disclosures, including a notice of a right of rescission, in violation of TEX. OCC. CODE §1201.162 and 1201.1521;

(E) Selling manufactured homes to consumers without contractually providing that a bond identified to a license and on file with the MHD applies to a sale being made to a consumer, in violation of TEX. OCC. CODE §§1201.107, 1201.603;

F) Using, allowing, or causing salespersons or employees who do not possess a license duly issued by MHD, to sell or install manufactured homes;

G) Selling manufactured homes to anyone without a license duly issued by MHD;

H) Accepting deposits or purchase money for the purchase of a home, then failing to provide the home or refund the deposit or purchase money as required by statute or within 14 days of the sale;

I) Promising appliances, benefits, or attachments to induce the sale of a home, then failing to provide the appliances, benefits, or attachments upon tender or delivery of the purchased home; or

J) Lending, renting, leasing, or allowing another person to use for any reason or for any consideration, a license issued by MHD which is not in the name of the person to whom the license was issued.

14. In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court will:

A) Adjudge against each Defendant civil penalties in favor of Plaintiff STATE OF TEXAS in the amount of \$20,000 per violation of the DTPA and an additional amount up to \$250,000 for calculating to acquire or deprive money or other property from a consumer who was 65 years of age or older, pursuant to TEX. BUS. COMM. CODE §17.47(c);

B) Order Defendants, jointly and severally, to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative award judgment for damages to compensate for such losses.

C) Order Defendants, jointly and severally, to pay Plaintiff STATE OF TEXAS attorney fees and costs of court pursuant to the TEX. GOVT. CODE, §402.006(c).

D) Order Defendants, jointly and severally, to pay pre-judgment interest on all awards of restitution, damages or civil penalties, as provided by law.

E) Grant all other relief to which Plaintiff STATE OF TEXAS may show itself entitled.

Respectfully submitted,

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Attorney General of Texas

BARRY R. MCBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

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State Bar No. 15078400

STATE OF TEXAS

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COUNTY OF BEXAR

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BEFORE ME, the undersigned authority on this day personally appeared JERRY JENSEN, who I have identified through his driver's license, and who after being by me duly sworn, upon his oath deposed and said that the affiant is an investigator for the Texas Department of Housing and Community Affairs, Manufactured Home Division and as such is authorized to make this affidavit, that the affiant carefully read the allegations in the foregoing pleading, and that as required by §17.47(a) of the Consumer Protection Act, the affiant has reason to believe that each and all of said allegations are true and correct.

____/S/_____
JERRY JENSEN

SUBSCRIBED AND SWORN TO before me
on the _9TH_ day of _March_, 2006.

____/S/ Diane L. Robinson_____
Notary Public in and for the
State of Texas

[SEAL]