

No. _____

STATE OF TEXAS
Plaintiff

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

v.

TRAVIS COUNTY, TEXAS

STEVE HENRY MCINTOSH, ALSO
KNOWN AS STEVE HENRY BRUCE,
DOING BUSINESS AS AUSTIN CREDIT
DOCTOR,

Defendant

_____ JUDICIAL DISTRICT

**PLAINTIFF, STATE OF TEXAS' FIRST ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW THE STATE OF TEXAS, Plaintiff in the above-entitled and numbered cause, acting by and through the Attorney General of Texas, GREG ABBOTT, and files this first original petition, complaining of STEVE HENRY MCINTOSH, also known as STEVE HENRY BRUCE, doing business as AUSTIN CREDIT DOCTOR, hereinafter referred to as Defendant, and for cause of action would respectfully show:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.2(b)(3) and 190.3.

NATURE OF THIS SUIT

2. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection and Public Health Division against Defendant for violations of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM.

CODE ANN. § 17.41, *et seq.* (Vernon 2002 and Supp. 2005) (hereinafter “DTPA”) and Texas Finance Chapter 393, entitled “Credit Services Organization.” (Vernon 2002). The DTPA grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions. TEX. BUS. & COM CODE ANN. § 17.47. The Texas Finance Code grants authority to the Attorney General to seek injunctive relief for any violations of Chapter 393 and provides that any violation of that chapter is also a deceptive trade practice actionable under the DTPA. See Tex. Finance Code §§ 393.502 and 393.504, respectively.

DEFENDANT

3. Defendant Steve Henry McIntosh, also known as Steve Henry Bruce, is an individual doing business in Travis County, Texas under the assumed name of Austin Credit Doctor. Defendant may be served with process at his home address at 8437 Jamestown Drive, Austin, Texas, 78758.

AUTHORITY

4. This court has jurisdiction over this matter pursuant to § 17.47 (b) of the DTPA and §393.502 of the Texas Finance Code.

VENUE

5. The venue of this suit lies in Travis County, Texas, because (a) under DTPA § 17.47(b), Defendant has done business in the county of suit and (b) it is the county where the principal place of business is located.

PUBLIC INTEREST

6. Plaintiff has reason to believe that Defendant is engaging in, has engaged in, or is about to engage in, the unlawful acts or practices set forth below, that Defendant adversely affects the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State.

Therefore, the Consumer Protection and Public Health 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

7. Defendant has, 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

8. Whenever in this petition it is alleged that Defendant did any act, it is meant that Defendant performed or participated in the act, or that the officers, agents or employees of Defendant performed or participated in the act on behalf of and under the authority of Defendant.

NOTICE BEFORE SUIT

9. The Consumer Protection and Public Health Division properly contacted Defendant at least seven days before suit was filed to inform him in general of his unlawful actions.

NATURE OF DEFENDANT’S OPERATIONS

10. Austin Credit Doctor is a sole proprietorship owned by Steve McIntosh. Austin Credit Doctor is also advertised as “America’s Credit Doctor.” Defendant maintains a website at americascreditdoctor.com, or alternatively, austincreditdoctor.com. Defendant advertises that he can repair or help repair a consumer’s credit for a fee.

APPLICABLE LAW

11. The following law is applicable to this matter.

A. Texas Finance Code section 393.001 (3) , which defines a credit service organization as: a person who provides or represents that the person can or will provide, in return for the payment of valuable consideration, any of the following services with respect to the extension of consumer credit

by others:

- (1) improving a consumer's credit history or rating;
- (2) obtaining an extension of consumer credit for a consumer; or
- (3) providing advice or assistance to a consumer with regard to Paragraph (1) or (2)

B. Texas Finance Code section 393.306, which requires that a credit service organization register with the Texas Secretary of State's Office before **advertising** credit repair services.

C. Texas Finance Code section 393.101, which requires that a credit service organization register with the Texas Secretary of State's Office before **providing** services.

D. Texas Finance Code section 393.302, which requires that a credit service organization have a surety bond or set up a surety account if it collects any payment for services before completion of the services.

E. Texas Finance Code section 393.201 (b) (2), which requires that a credit service organization provide the consumer an estimated period for complete provision of services, which should be no more than 180 days.

F. Texas Finance Code section 393.105, which requires that a credit service organization make certain disclosures, including the following:

1. Name and address of surety company or name and address of bank in which the surety account is maintained.
2. The fact that a consumer may proceed against the surety bond or account.
3. The availability of nonprofit counseling services.

G. Texas Finance Code section 393.504, which provides that a violation of Chapter 393 of the Texas Finance Code is a deceptive trade practice actionable under the Texas Deceptive Trade

Practices Act.

H. Texas Finance Code section 393.502, which authorizes the Attorney General to file suit to enjoin violations of Chapter 393 of the Texas Finance Code.

I. Texas Business and Commerce Code section 17.46 (b)(24), which defines a deceptive trade practice as, inter alia, the failure to disclose a material fact when such failure was intended to induce the consumer to enter into a transaction which the consumer would not have entered into if the disclosure had been made.

J. Texas Business and Commerce Code section 17.47, which authorizes the Attorney General to seek civil penalties of up to \$20,000.00 per violation of the DTPA.

EXHIBITS

12. In support of this petition, the State relies upon and adopts by reference for all purposes the attached exhibits as follows:

A. Exhibit A, which is the Affidavit of Investigator Rosalinda Fierro.

B. Attachment 1 to Exhibit A, which is a true and correct copy of the website as printed out by Investigator Fierro.

C. Exhibit B, which is a copy of the contract and disclosures provided by Defendant to consumers.

D. Exhibit C, which is comprised of pertinent excerpts from Defendant's sworn statement.

SPECIFIC FACTUAL ALLEGATIONS

13. Defendant Steve Henry McIntosh advertises credit repair services through his website at austincreditdoctor.com, or alternatively, americascreditdoctor.com. Locally, he directs people to his website by posting signs with his web address and business telephone number on utility poles throughout Austin. True and correct printouts of his website pages were downloaded by the Office of the Attorney General Investigator Fierro; a copy of the printout is attached as attachment 1 to her affidavit.

14. The website inquires “Credit issues? We have restored thousands of Americans’ credit reports. Discover how America’s Credit Doctor can improve yours.” The website assures consumers that “America’s Credit Doctor is a legitimate credit report repair company, operating in accordance with all federal and state legislation.” In fact, however, Defendant is not operating in accordance with state law. Based upon the services advertised on the website, Austin Credit Doctor is a credit services organization as defined in the Texas Finance Code. As a credit service organization in Texas, Defendant must register with the Texas Secretary of State’s Office before advertising and providing credit repair services unless exempt from the requirements of the code. Based upon information and belief, Defendant is not exempt. The Texas Secretary of State’s office has certified that it does not have any documents on file pursuant to the Credit Services Organization Act, Tex. Finance Code §§ 393.001 et seq., pertaining to Austin Credit Doctor, America’s Credit Doctor or Steve McIntosh. Nonetheless, Defendant admits that he has been providing service without registration since at least 2004. Further, he has placed numerous signs in Austin advertising these services. See Fierro Affidavit. In one area of town he has sixteen signs up. *Id.* Defendant has and is continuing to advertise his business even though he is not registered with the Secretary of State’s Office.

Defendant's website is operational and active, and on information and belief, he continues to provide credit repair services.

15. Defendant also advertises "Guaranteed Mortgage Approval!" However, the guarantee is conditional, and while some conditions are disclosed, a number of others are not. For example, the website does not disclose the amount of interest that could be charged on such a mortgage.

16. Finally, the website promises "[w]e can legally and efficiently remove **negative** items from your credit reports...." See attachment 1 (emphasis added). However, a consumer is only entitled to have items that are **inaccurate or obsolete** removed from the credit reports.

17. Defendant typically charges from \$250 to \$ 950 to a single person and up to \$1,250.00 a couple for his credit repair services. He requires individuals to enter into a contract, an example of which is attached as Exhibit B. He does not provide a date certain by which services will be completed and he fails to provide all disclosures required by the Texas Finance Code.

18. Finally, Defendant admits that he has neither a surety bond nor a surety trust account. Nonetheless, Defendant demands and receives payment (full or partial) for his credit repair services before he completely performs all of the credit repair services.

VIOLATIONS

19. Defendant, as alleged above, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in Chapter 393 of the Texas Finance Code and §§ 17.46(a) and (b) of the DTPA as follows:

A. Defendant has not registered as a credit service organization with the Secretary of State's office in violation of § 393.101 of the Texas Finance Code.

B. Defendant has advertised his credit repair services before registering with the Secretary

of State's office in violation of § 393.306 of the Texas Finance Code.

C. Defendant has failed to obtain a surety bond or account in violation of § 393.302 of the Texas Finance Code.

D. Defendant has failed to provide disclosures to consumers that they have a right to proceed against the surety bond or account and has failed to provide the name of the surety company in violation of § 393.105 (2) and (3) of the Texas Finance Code.

E. Defendant has failed to provide disclosures to consumers as to the availability of nonprofit credit counseling services in violation of § 393.105 (9) of the Texas Finance Code.

F. Defendant has failed to provide the estimated period for performing the service not to exceed 180 days in his contracts in violation of § 393.201 (b)(2) of the Texas Finance Code.

G. Defendant has received valuable consideration before completely performing all services he has agreed to perform and without obtaining a surety bond or establishing and maintaining a surety account in violation of § 393.302 of the Texas Finance Code.

H. Defendant has failed to disclose the numerous factors that affect mortgage approval and condition the "guarantee" of mortgage approval when such failure to disclose was intended to induce the consumers into entering into the contract for credit repair services, a transaction into which the consumers would not have entered had the information been disclosed, in violation of §17.46(b)(24) of the DTPA.

I. Defendant has failed to disclose the lack of surety bond, lack of surety account and lack of registration when such failure to disclose was intended to induce the consumers into entering into the contract for credit repair services, a transaction into which the consumers would not have entered had the information been disclosed, in violation of §17.46(b)(24) of the DTPA.

J. Defendant represents that the services he provides have benefits which they do not have by representing that he can remove “negative” items from a credit report when the law provides that only items which are wrong or obsolete may be removed, in violation of §17.46(b)(5) of the DTPA.

INJURY TO CONSUMERS

20. Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated the law as alleged in this petition. Unless restrained by this Honorable Court, Defendant will continue to violate the laws of the STATE OF TEXAS and cause damage to the general public.

PRAYER

WHEREFORE, Plaintiff prays that Defendant 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 Defendant, its officers, agents, servants, employees and attorneys and any other person in active concert or participation with this Defendant as follows:

A. From advertising or providing credit repair services without first registering with the Texas Secretary of State’s Office.

B. From receiving payment, partial or otherwise, for credit repair services before completing all services if Defendant has not first obtained a surety bond or established and maintained a surety account.

C. From entering into a contract for credit repair services without disclosing:

1. that a consumer may proceed against the surety bond or surety account;

2. the name of the surety company;
3. the availability of nonprofit credit counseling services; and
4. the estimated time of completion of services which should not exceed 180 days.

D. From advertising that he can remove negative items from a credit report without also disclosing that the negative items must be wrong or obsolete to be removed.

E. From advertising “Guaranteed mortgage approval” if it is not guaranteed, and without disclosing all conditions which apply.

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

A. Adjudge against Defendant civil penalties in favor of Plaintiff, STATE OF TEXAS, in the amount of not more than \$20,000.00 per violation of the DTPA.

B. Order Defendant 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 Defendant to pay reasonable and necessary attorney’s fees.

D. Adjudge against Defendant prejudgment and postjudgment interest at the highest lawful rate; and

E. Adjudge that all fines, penalties or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. §523(a)(7).

Further, Plaintiff, STATE OF TEXAS, respectfully prays for all other relief to which Plaintiff, STATE OF TEXAS, may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

PAUL D. CARMONA
Chief, Consumer Protection and Public Health
Division

JOHN OWENS
Deputy Chief, Consumer Protection and Public
Health Division

GLORIA SALINAS
Assistant Attorney General
State Bar No. 17534300
Office of the Attorney General
Consumer Protection and Public Health Division
P.O. Box 12548
Austin, TX 78711-2548
(512) 463-0286
Fax (512) 473-8301

ATTORNEYS FOR PLAINTIFF