

AUG 14 2007

At 2:46 M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. GV403243

STATE OF TEXAS	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
CELEBRATE LIFE AT TRIPLE OAKS,	§	
AN UNLICENSED ASSISTED LIVING	§	
FACILITY, JEFFERY DUVALL,	§	98 TH JUDICIAL DISTRICT
Defendant	§	

PERMANENT INJUNCTION AND FINAL JUDGMENT

The State of Texas has brought this suit for injunctive relief and civil penalties under Texas Health and Safety Code §§ 247.044 and 247.045, respectively. On this day, the State of Texas appeared and announced ready. Defendant Jeffery Duvall, though duly provided notice of the trial, did not appear.

After hearing the evidence and the arguments of counsel, the Court finds that the requirements of Chapter 247 of the Texas Health and Safety Code have been met and renders this Permanent Injunction and Final Judgment.

DEFINITIONS

As used in this Permanent Injunction and Final Judgment, the following words or phrases mean:

- a. **“Assisted Living Facility”** means an establishment that furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment and that provides personal care services.
- b. **“Establishment”** means one or more facilities, which are considered to be part of the same establishment, subject to licensure as an assisted living facility based on their:
 - (i) common ownership;
 - (ii) physical proximity;

- (iii) hired services, personnel, or equipment in any part of the facilities' operations; and
 - (iv) any public appearance of joint operations or of a relationship between the facilities.
- c. **“Personal Care Services”** means:
- (i) assistance with meals, dressing, movement, bathing, or other personal needs or maintenance.
 - (ii) the administration of medication by a person licensed to administer medication or the assistance with or supervision of medication; or
 - (iii) general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person.
- d. **“The Duvall Facility”** means the facility located at 4900 Pack Saddle Pass, Austin, Texas, and **any other** unlicensed assisted living facilities owned or operated by Jeffery Duvall.
- e. **“DADS”** means the Texas Department of Aging and Disability Services.

FINDINGS

The Court **FINDS** that:

- 1) On June 12, 2007, the Court entered an order, granting the partial motion for summary judgment as to Defendant Jeffery Duvall's liability for violations of section 247.021 (a) of the Texas Health and Safety Code from August 16 through 23, 2004.
- 2) Defendant, at all times relevant to this suit, owned, operated and/or managed the facility located at 4900 Pack Saddle Pass, Austin, Texas, 78745, known as Celebratelife at Triple Oaks (hereafter known as “Celebratelife”).
- 3) On August 16-23, 2004, Celebratelife was **not** licensed as an assisted living facility.
- 4) From August 16-23, 2004, there were four or more residents at the facility, not related to any of the owners, managers or operators of Celebratelife.

5) Residents at the facility were receiving room, board and personal care services, as defined in Texas Health and Safety Code section 247.002 (5).

6) Thus, from August 16 through August 23, 2004, Defendant was operating Celebratelife as an assisted living facility without a license in violation of Texas Health and Safety Code section 247.021 (a).

ORDER

It is therefore, **ORDERED, ADJUDGED, AND DECREED**, that Defendant Jeffery Duvall, his agents, employees, attorneys, and all persons acting in concert with them, are hereby permanently **ENJOINED** from:

- a. Operating the DUVALL FACILITY as an assisted living facility without a license.
- b. Operating any other assisted living facility, as defined by 40 Texas Administrative Code § 92.2(b)(1)(A), in Texas without a license.
- c. Denying any agent of DADS or any other agent of the State access to any DUVALL FACILITY to monitor compliance with this order.
- d. Preventing or hindering DADS agents or any other agent of the State from effectuating an orderly transfer of the residents from any DUVALL FACILITY to licensed facilities or their families if relocation is required by this order.
- e. Failing to care for residents on a temporary and emergency basis and following any instruction given by DADS agents or any other agents of the State if relocation is required by this order.

In keeping with DADS' mandate to protect the residents of assisted living facilities pursuant to Tex. Health & Safety Code § 247.0011, it is further **ORDERED, ADJUDGED, AND DECREED** that DADS' agents, and any other agents of the State assisting DADS, are authorized, without further court order, to relocate one or more of the residents of any assisted

living facility owned or operated by Defendant, who are unrelated to Defendant, if any of the following occurs:

- a. DADS determines, during monitoring of Defendant's compliance with this order, that Defendant is operating an assisted living facility without a license;
- b. DADS determines, during its monitoring of Defendant's compliance with this order, that there is a threat to the health and safety of any resident in any assisted living facility owned or operated by Defendant; or
- c. DADS determines, during monitoring of Defendant's compliance with this order, that a resident is receiving Personal Care Service from the Defendant as defined in Tex. Health & Safety Code § 247.002 and Title 40 Tex. Admin. Code Chapter 92, and the resident is unable or unwilling to obtain the Personal Care Service from an outside provider.

This Order **BINDS** JEFFERY DUVALL, his agents, employees, attorneys, and persons acting in concert with them, who receive actual notice of this Order by service or otherwise.

IT IS FURTHER ORDERED that Defendant JEFFERY DUVALL pay the State of Texas the amount of SEVENTY-TWO THOUSAND AND 00/100 DOLLARS (\$72,000.00) in civil penalties pursuant to Texas Health and Safety Code § 247.045.

IT IS FURTHER ORDERED that Defendant JEFFERY DUVALL pay the State of Texas, Plaintiff, the amount of TWENTY-NINE THOUSAND, FOUR HUNDRED AND FORTY DOLLARS AND FIFTY CENTS (\$29,440.50.00) in reasonable and necessary attorney fees, pursuant to Texas Health and Safety Code § 247.045.

It is further ordered that Defendant pay all court costs in this matter. Post Judgment interest of 8.25 % shall apply to this judgment. The Clerk of this Court shall forthwith issue a writ of Permanent Injunction. This Order shall be effective immediately without the execution

and filing of a bond as the State is exempt from such bond under Texas Civil Practice and Remedies Code § 6.001. All other relief not expressly granted herein is denied.

Signed this 14 day of August, 2007.



JUDGE PRESIDING

ENTRY REQUESTED:

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