

COPY

Cause No. D-16V-08-001207

IN THE MATTER OF:
STATE OF TEXAS

AND

RAINIER MANAGEMENT, LTD.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

419 JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

BP JUN 10 2008
At Amalia Rodriguez-Mendoza, Clerk

ASSURANCE OF VOLUNTARY COMPLIANCE

TO THE HONORABLE JUDGE OF SAID COURT:

Come Now, the State of Texas (hereinafter "State") acting by and through Attorney General Greg Abbott, and RAINIER MANAGEMENT, LTD. (hereinafter "RAINIER" or "RESPONDENT"), and respectfully submit the following Assurance of Voluntary Compliance (hereinafter "AVC") for the Court's approval and filing in accordance with the Deceptive Trade Practices-Consumer Protection Act ("DTPA"), TEX. BUS. & COM. CODE ANN. § 17.58 (Vernon 2002).

**I.
FACTUAL BACKGROUND**

RAINIER is a Texas limited partnership that does business in Texas. The general partner of Rainier, Ltd. is Rainier, L.L.C., a Texas limited liability company. Rainier manages seventeen residential rental properties in Travis County, as well as some commercial properties. Rainier paid the gas and trash at some of the residential properties. Free cable was offered to residents at some Rainier properties. At some point in 2007, Rainier made the decision to have all residents at all Rainier properties pay for gas and trash. Rainier also decided to discontinue the free cable at all Rainier properties. In December of 2007, all Rainier residents who had previously had gas and/or trash paid by Rainier, and/or received free cable, received a notice from Rainier that was taped to

the resident's front door (hereinafter the "December 2007 notice"). That notice advised the resident that "effective January 1st, 2008, Rainier Management will no longer be paying any utilities at their properties. Natural gas and trash bills will now be billed back to the residents and cable will no longer be offered." The notice further stated: "Attached to this letter is the 'Lease Addendum for Allocating Natural Gas Costs.' Please read this over, sign, and return it with your rent and water payment. January rental payments will not be accepted unless this addendum is signed and returned." The lease addendum included with the notice did not have a box checked indicating how Rainier had elected to allocate the costs for natural gas.

II. NATURE OF ALLEGED VIOLATIONS

Some residents at Rainier properties who received the notice contacted local media, the Austin Tenants' Council, and filed complaints with the State. These residents alleged that Rainier was attempting to change certain provisions of their lease in the middle of the lease term. Some residents alleged that their lease had a box checked indicating that Rainier would be responsible for paying gas, trash and/or cable; others indicated that although the box was not checked on their lease, representatives of Rainier verbally indicated that Rainier would pay for gas, trash, and/or cable, and in support of that allegation, pointed to the fact that Rainier had in fact paid for those items until January of 2008. As late as February 26, 2008, Rainier's own website indicated that gas, trash, and cable were paid by Rainier Management at some of its residential properties.

Residents who were now being billed for gas and trash formerly paid by Rainier, and who no longer had cable access, were not offered compensation for these added expenses or for the loss of the value of free cable.

As a result of the activity described above, RAINIER may have violated §§ 17.46(a); (b)(5); (b)(9); (b)(11); (b)(12); and (b)(24) of the DTPA. These sections read as follows:

1. [17.46(a)] False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to action by the consumer protection division;
2. [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;
3. [17.46(b)(9)] Advertising goods or services with intent not sell them as advertised;
4. [17.46(b)(11)] Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;
5. [17.46(b)(12)] Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; and
6. [17.46(b)(24)] Failing 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.

III.

TERMS OF COMPLIANCE

In response to the allegations stated above, but without admitting the truth or falsity of the allegations, Rainier, its officers, agents, servants, employees, and all other persons in active concert

or participation with Respondent who receive actual notice of this AVC, agree and voluntarily assure the State that from the date of the signing of this AVC, Rainier shall not:

1. Require residents at any of the seventeen residential rental properties it manages in the Austin area to sign any addenda to the residents' current leases.
2. Fail to destroy any addenda that were signed and returned by Rainier residents in response to the December 2007 notice.
3. For any resident, past or current, who received the December 2007 notice, and was in the middle of a lease term with Rainier at the time of the notice, fail to return any monies paid by Rainier residents for:
 - a. Natural Gas;
 - b. Trash; and/or
 - c. Any other expense formerly paid by Rainier.

Nothing in this provision shall require Rainier to return monies paid by Rainier residents for any utilities if the following two conditions are met:

- a. Rainier had not assumed responsibility for payment of the utility, either by act (e.g. paying the bill), or by verbal representation to the resident; and
 - b. The current lease signed by the resident indicates that the resident is responsible for all utilities.
4. Fail to make compensation to any Rainier resident, past or current, who received free cable prior to the December 2007 notice.
 - a. For purposes of compliance with this provision, Rainier shall:
 - I. Determine the value of cable access for each resident, and multiple

that figure by the months remaining in each resident's lease at the time the free cable was discontinued. The resulting figure is the amount due each resident in compensation.

IV.

REPORTING REQUIREMENT

No later than six months from the date this AVC is filed, Respondent shall deliver an accounting of all compensation made to consumers who are entitled to compensation under the Terms of Compliance, Paragraph III, above. Such accounting shall include the name of the consumer, contact information for the consumer, including address and telephone number, and the amount and method of the compensation rendered.

V.

ATTORNEY'S FEES AND COURT COSTS

The Respondent further agrees that it will pay attorney's fees to the State of Texas in the amount of five thousand dollars (\$5,000.00). This amount of \$5,000.00 shall be due at the time this AVC is entered by the court. The payment shall be tendered by the Respondent in the form of a cashiers check. The check should be made payable to the Office of the Attorney General of Texas. The check shall bear the Attorney General No. 082506205 on it, and shall be delivered if mailed to: The Office of the Attorney General, Consumer Protection Division, 9th Floor, P.O. Box 12548, Austin, Texas 78711 (Attn: Nanette DiNunzio), and if hand-delivered, to: The Office of the Attorney General, Consumer Protection Division, 9th Floor, 300 West 15th Street, Austin, TX 78701 (Attn: Nanette DiNunzio).

V.

GENERAL PROVISIONS

1. Nothing in this AVC shall be construed as a waiver of any private rights, causes of action, or remedies of any person against the Respondent with respect to its practices described herein;
2. The parties to this AVC expressly understand and agree that this AVC shall not be construed in any way as an admission on the part of the Respondent of any violation of the DTPA or of any other conduct or of any liability whatsoever to any party, all of which is expressly and vigorously denied;
3. This AVC shall be governed by § 17.58 of the DTPA, and shall remain in effect until rescinded by agreement of the parties or voided by a court of competent jurisdiction for good cause;
4. It is also understood by the Respondent that the subsequent failure to comply with the terms of the AVC is *prima facie* evidence of a violation of the Deceptive Trade Practices-Consumer Protection Act; and
5. This AVC states the entire agreement between the parties respecting the subject matter stated herein.

AGREED this 10th day of June, 2008.

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General of Texas

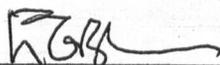
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Deputy First Assistant Attorney General

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ATTORNEY FOR RESPONDENT

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