

Cause No. 09-14826

**STATE OF TEXAS,
Plaintiff,**

v.

**TYRONE BAILEY, Individually,
a/k/a T.D. BAILEY a/k/a J.D. BAILEY
d/b/a BEHIND ON MORTGAGE, and
MARK BAILEY, Individually a/k/a
MARKUS BAILEY, d/b/a
BEHIND ON MORTGAGES, USA
Defendant.**

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

134th JUDICIAL DISTRICT

AGREED TEMPORARY INJUNCTION

CAME ON TO BE CONSIDERED this day, the Original Petition of Plaintiff, the State of Texas in this cause seeking a Temporary and Permanent Injunction against Defendants, TYRONE BAILEY, Individually, a/k/a T. D. Bailey a/k/a J. D. Bailey d/b/a Behind On Mortgage, and MARK BAILEY a/k/a MARKUS BAILEY, d/b/a Behind On Mortgages, USA, (“Defendants”), and Plaintiff’s request therein for Temporary Injunction. Defendants were duly served with process and notice of the Temporary Restraining Order and Notice of this Hearing by personal service. The State of Texas appeared by and through its Attorney General GREG ABBOTT and his assistant. Defendants appeared by and through their counsel of record Christopher Parvin, and enter their appearance herein for all purpose. The parties further announce that they have consented to the entry of this Agreed Temporary Injunction (Order), waiving the making of a further record other than this Order, and prior to the taking of any testimony in this cause, jointly move that the Court approve and enter this Order.

THE COURT FINDS, having reviewed the pleadings and stipulations of the parties and it appearing to the Court that Plaintiff, the STATE OF TEXAS, and Defendants, TYRONE BAILEY, Individually, a/k/a T. D. Bailey a/k/a J. D. Bailey d/b/a Behind On Mortgage, and MARK BAILEY a/k/a MARKUS BAILEY, d/b/a Behind On Mortgages, USA, agree to and have approved the entry of this Temporary Injunction, that said agreement should be approved, and accordingly this Order should be entered by the Court.

THE COURT FINDS that it has jurisdiction under the provisions of the Texas Mortgage Broker License Act, TEX. FINANCE CODE § 156.001 *et seq.*, the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et. seq.* (DTPA) and the Texas Home Solicitation Cancellation Act, TEX. BUS. COM. CODE ANN. §39.001 *et seq.*, over the subject matter and over all parties to this action.

THE COURT FINDS that Plaintiff's Original Petition for Civil Penalties and for Injunctive Relief alleges violations of the Texas Mortgage Broker License Act, TEX. FINANCE CODE § 156.001 *et seq.*, §§17.46(a) and (b) of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et. seq.* (DTPA) and § 39.004 of the Texas Home Solicitation Cancellation Act, TEX. BUS. COM. CODE ANN. §39.001 *et seq.* and states a claim upon which temporary injunctive relief can be granted against Defendants, and that Plaintiff has authority to seek the relief it has requested.

THE COURT FINDS that venue of this matter is proper in Dallas County because Defendants conducted business in Dallas County and a substantial part of the events or omissions giving rise to this law suit occurred in Dallas County, Texas.

THE COURT FINDS that by agreeing to the terms and issuance of Temporary Injunction, the Defendants TYRONE BAILEY, Individually, a/k/a T. D. Bailey a/k/a J. D. Bailey d/b/a Behind On Mortgage, and MARK BAILEY a/k/a MARKUS BAILEY, d/b/a Behind On Mortgages, USA, are not admitting or conceding any liability and is made without admitting to any violations of law or wrong doing of any kind.

THE COURT FINDS, that Defendants may have and may be violating §156.402 of the Texas Mortgage Broker License Act, TEX. FINANCE CODE § 156.001 *et seq.*, §§17.46(a) and (b) of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* (DTPA) and § 39.004 of the Texas Home Solicitation Cancellation Act, TEX. BUS. COM. CODE ANN. §39.001 *et seq.* It further appears that, unless Defendants are immediately restrained from the acts prohibited below, Defendants may or will continue to commit such unlawful acts as alleged and continue to use deception in their marketing, soliciting, advertising, contracting, offering and performance and delivery of mortgage assistance services. Furthermore, Defendants may continue to use deceptive tactics and misrepresentations and may well dissipate and secrete their business records and assets before a final judgment for restitution can be rendered..

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants TYRONE BAILEY, Individually, a/k/a T. D. Bailey a/k/a J. D. Bailey d/b/a Behind On Mortgage, and MARK BAILEY a/k/a MARKUS BAILEY, d/b/a Behind On Mortgages, USA, their officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them, who receive 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 temporarily enjoined

from engaging in the following acts or practices:

- A. Transferring, concealing, destroying, or removing from the jurisdiction of this court any written or computer generated materials relating to the mortgage broker or mortgage assistance services business of Defendants currently or hereafter in Defendants' possession, custody, or control, during the pendency of this suit, except in response to further orders or subpoenas in this court;
- B. Engaging in the business of a mortgage broker or providing mortgage assistance services without first becoming licensed as a mortgage broker by the State of Texas;
- C. Selling, soliciting, offering for sale, contracting, or receiving payment for any goods or services at any consumers home or at place other than at the Defendants place of business without providing consumers with a complete copy of the contract pertaining to the consumer transaction including a "NOTICE OF CANCELLATION" statement in bold-faced type of a 10 point minimum size, as required by law;
- D. Failing to refund to consumers or to hold in trust, fees or compensation for services which are not actually performed or where fees received bear no reasonable relationship to the value of services actually performed; ~~Retaining fees or compensation for services which are not actually performed or where fees received bear no reasonable relationship to the value of services actually performed;~~
- E. Recommending or encouraging default or delinquency or continuation of an existing default or delinquency on any exiting indebtedness;
- F. Attempting to induce a party to breach a contract so that the person may make a

mortgage;

- G. Advertising, representing, offering or engaging in purported mortgage assistance services to consumers to obtain loans, renewals, extensions, modifications and/or rearrangements of existing mortgage loans, without an active mortgage brokers license as is required by law;
- H. Entering into agreements to represent consumers in the State of Texas without providing a detailed written list to each consumer of the specific methods and actions Defendants will actually use to assist consumers in preventing foreclosure of their home prior to receiving any money or compensation from consumers;
- I. Representing to a consumer, expressly or by implication, that foreclosure on their home is or is not imminent without providing written proof from the entity which threatened or initiated foreclosure which substantiates such representation;
- J. Failing to provide and timely deliver to current consumers, who have active and open files with Defendants, within seven days, a written statement which sets forth the prohibition of the Defendants to continue to provide any services pursuant to this Court order; ~~Failing to provide and timely deliver to consumers a weekly written statement or similar document which details each and every contact that the Defendants have had with the homeowner's mortgage company [or mortgage company's designated agent] together with the date and time of the contact, the person and phone number contacted, the identity of the person making the contact for Defendants, and the precise request and specific result of the request relating to~~

- ~~preventing the consumer's home or property from being foreclosed upon;~~
- K. Representing, expressly or by implication, that Defendants can assist consumers in preventing foreclosure of their property or that Defendants can assist consumers with paying any arrearage on any mortgage or obtain new financing for them so as to prevent foreclosure unless Defendants actually undertake and document specific and continuous actions to so assist consumers commencing within one business day of receipt of funds from any consumer paying for such services;
- L. ~~Failing to provide and remit full and complete refunds to consumers within 48 hours of receiving information from any mortgage company or other source which indicates to a reasonable person that Defendants will not be successful in assisting the consumer from saving his or her home or other property from foreclosure;~~
- M. ~~Failing to notify consumers orally and in writing within 48 hours of receiving information from any mortgage company which indicates to a reasonable person that Defendants will not be successful in assisting the consumer from saving his or her home or other property from foreclosure;~~
- N. Making any telephone solicitation to or from a person for the purpose of inducing the person to purchase, rent, claim, or receive an item or service, unless Defendants have first registered and posted a bond with the Texas Secretary of State pursuant to Chapters 37 & 38 of the Texas Business and Commerce Code.
- O. Taking any fee or any type of consideration from consumers for the purpose of assisting them in any fashion relating to any threatened or pending foreclosure

proceeding without providing the specific type and amount of assistance represented orally and/or in writing to said consumers

- P. Passing off goods and services as those of another by functioning as and/or falsely purporting to be fully authorized and/or licensed to conduct the business of a mortgage broker in Texas;
- Q. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, by functioning as and/or falsely purporting to be fully authorized and/or licensed to conduct the business of a mortgage broker in Texas;
- R. Causing confusion or misunderstanding as to affiliation, connection, association with, or certification by, by functioning as and/or falsely purporting to be fully authorized and/or licensed to conduct the business of a mortgage broker in Texas;
- S. Representing, expressly or by implication, that goods or services have sponsorship, approval, characteristics, 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, by functioning as and/or falsely purporting to be fully authorized and/or licensed to conduct the business of a mortgage broker in Texas, or by falsely representing, expressly or by implication, that Defendants could, would and will make connections with consumers mortgage holders and provide mortgage assistance services to modify, rearrange, extend or renew the consumers mortgage loans;
- T. Advertising or representing, expressly or by implication, goods or services with the

intent not to provide them as advertised, by functioning as and/or falsely purporting to be fully authorized and/or licensed to conduct the business of a mortgage broker in Texas, or by falsely representing, expressly or by implication, that Defendants could and would make connections and negotiate with the consumers mortgage holders and provide mortgage assistance services to modify, rearrange, extend or renew the consumers mortgage loans;

- U. Misrepresenting, the authority, expressly or by implication, of a salesman, representative or agent to negotiate the final terms of a consumer transaction, by functioning as and/or falsely purporting to be fully authorized and/or licensed to conduct the business of a mortgage broker in Texas, or by falsely representing, expressly or by implication, that Defendants could, would and will negotiate with consumers mortgage holders providing mortgage assistance services to modify, rearrange, extend or renew the consumers mortgage loans; and
- V. Failing to disclose information concerning goods or services which is known at the time of the transaction when such failure to disclose such information is intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, by functioning as and/or falsely purporting to be fully authorized and/or licensed to conduct the business of a mortgage broker in Texas, and by falsely representing, expressly or by implication, that Defendants could, would and did make connections and negotiate with the consumers mortgage holders providing mortgage assistance services to modify,

rearrange, extend or renew the consumers mortgage loans.

- W. Representing falsely that Defendants have or are negotiating with any consumers mortgage holders providing mortgage assistance services to modify, rearrange, extend or renew the consumers mortgage loans.
- X. Failing to fully adhere to and comply with the Texas Mortgage Brokers License Act and any and all administrative rules adopted by the Texas Department of Savings and Mortgage Lending in the function or operation of a business of a Mortgage Broker in the State of Texas.

IT IS FURTHER 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(s)" means TYRONE BAILEY, Individually, a/k/a T. D. Bailey a/k/a J. D. Bailey d/b/a Behind On Mortgage, and MARK BAILEY a/k/a MARKUS BAILEY, d/b/a Behind On Mortgages, USA, their successors, assigns, officers, agents, subcontractors, servants, employees, corporations and any other persons in active concert or participation with them;
- C. "Person" means an individual, sole proprietorship, firm, partnership, corporation, association, joint venture or other group, or business entity, however organized;
- D. "Representing", "selling", "marketing", "promoting", "distributing", soliciting or

“advertising” means any type of contact with a person or entity for the purpose of requesting, persuading, or seeking any type of payment, contribution, sponsorship, compensation, or anything of value from said person or entity for any reason whatsoever, including use of the Internet or telephone.

- E. “Telephone solicitation” means a telephone call initiated by a seller or salesperson to or from a person for the purpose of inducing the person to purchase, rent, claim, or receive a good or service. The term “telephone solicitation” includes a call made by a purchaser in response to a solicitation sent by mail or made by any other means, and also includes the use of automatic dialing machines or recorded message devices.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants shall respond to the Request for Production of Documents and Subpoena issued by Plaintiff, the State of Texas, on or before 4:30 p.m., December 8, 2009 and shall appear for deposition as Noticed and Subpoenaed by Plaintiff, the State of Texas, at Plaintiffs office at 1412 Main Street, Suite 810, Dallas, Texas 75202 at 9:00 a.m., December 15, 2009, as stipulated and agreed by and between the parties.

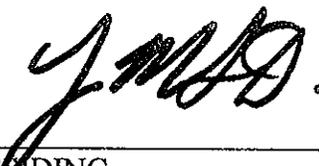
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants in this cause be and hereby are commanded forthwith to comply with this Order from the date of entry until during the pendency of this cause until further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of this Court shall, upon request pf Plaintiff, forthwith issue any necessary and appropriate Writ of Injunction in conformity with the law and the terms of this Order.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that Defendants' attorneys shall deliver a copy of this Temporary Injunction to each Defendant restrained herein, or alternatively provide actual notice to said Defendants of the specific terms of this Temporary Injunction and that Plaintiff shall reasonably attempt to serve a copy of this Temporary Injunction upon each Defendant who is not represented by counsel in this cause. Defendants' attorneys shall notify Plaintiff, State of Texas, in writing within 10 days after this order is signed, that either a true and correct copy of this order was delivered by them to their client Defendants or that they provided actual notice to said Defendant clients of the specific terms of this Temporary Injunction.

IT IS FURTHER ORDERED ADJUDGED AND DECREED this Order shall be effective without the execution and filing of a bond as Plaintiff, the STATE OF TEXAS is exempt from a bond under TEX. CIV. PRAC. & REM. CODE § 6.001 and TEX. BUS. & COM. CODE § 17.47(b) in connection with this Temporary Injunction.

SIGNED this 9th day of November 2009 at 8:30 o'clock p m.



JUDGE PRESIDING

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BEHIND ON MORTGAGE

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BEHIND ON MORTGAGE

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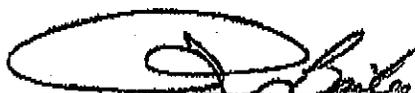
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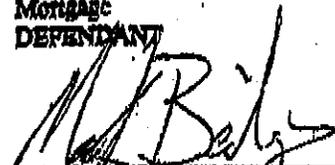
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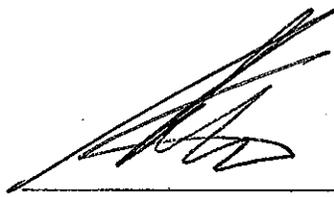

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