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AT_____O'CLOCK _____M

FEB 22 2011
LAURA HINOJOSA, CLERK
District Courts, Hidalgo County
By_____(Deputy #48)

NO. _____

STATE OF TEXAS,	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	HIDALGO COUNTY, TEXAS
	§	
FONSECA SERVICES, INC., and	§	
JOSEFINA FONSECA, Individually,	§	
Defendants	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION

COMES NOW STATE OF TEXAS, hereinafter referred to as plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, complaining of FONSECA SERVICES, INC. and JOSEFINA FONSECA, Individually, hereinafter referred to as defendants, 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. 190.3.

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 Division against defendants for violations of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* (hereinafter "DTPA"), the Notary Public Act, TEX. GOV'T CODE ANN. § 406.001, *et seq.* (herein "NPA"), and the State Bar Act, TEX. GOV'T CODE ANN. § 81.001, *et seq.* (herein SBA"). 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.

DEFENDANTS

3. Defendant, FONSECA SERVICES, INC. (defendant FSI), is a Texas corporation whose registered office is at 302 E. Coma Ave., Hidalgo, Texas 78557. Defendant FSI is authorized to do business in Texas and may be served with process by serving its registered agent for service of process, Josefina Fonseca, at 302 E. Coma Ave., Hidalgo, Texas 78557.

4. Defendant JOSEFINA FONSECA (defendant Fonseca) regularly conducts business in Hidalgo County, Texas, and may be served with process by serving her at 302 E. Coma Ave., Hidalgo, Texas 78557 or at 413 E. Coma, Ste. E, Hidalgo, Texas 78577.

JURISDICTION

5. This Court has jurisdiction over this action pursuant to § 17.47(b) of the DTPA.

VENUE

6. Venue of this suit lies in Hidalgo County, Texas, for the following reasons:

a. Under TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(1), venue is proper because all or a substantial part of the events or omissions giving rise to the claim occurred in the county of suit; and

b. Under DTPA § 17.47(b), venue is proper because defendants have done business in the county of suit.

PUBLIC INTEREST

7. Plaintiff STATE OF TEXAS, has reason to believe that defendants are engaging in, have engaged in, or are about to engage in, the unlawful acts or practices set forth below, that defendants has, by means of these unlawful acts and practices, caused damage to and or acquired money or

property from persons, and that defendants adversely affected 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

8. 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

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

NOTICE BEFORE SUIT NOT GIVEN

10. There is good cause to believe that immediate and irreparable injury, loss, or damage would occur as a result of a delay in obtaining a temporary restraining order to enjoin defendants from continued violations of the DTPA. If defendants are not immediately restrained, defendants will continue to engage in the unauthorized practice of law and thereby cause immediate and irreparable injury, loss, or damage to persons who receive their services. Namely, the provision of legal services and/or advice by defendants, non-attorney, will have dire legal consequence and prejudice the legal rights of persons seeking benefits under U.S. immigration laws. Specifically, defendants will continue to solicit customers each day and will continue to give legal services and/or advice to their customers when defendant Fonseca is not licensed to practice law in the State of Texas or defendants

are not accredited by the Board of Immigration Appeals to represent individuals in immigration matters or in proceedings before the immigration courts. Defendants' customers will lose immigration benefits to which they are otherwise entitled and subject them to apprehension, detention or immediate deportation, or expose them to criminal liability as a result of defendant Fonseca's unqualified legal services and/or advice in immigration matters. As such, the Consumer Protection and Public Health Division filed this lawsuit without notice to defendants, as authorized by § 17.47(a) of the DTPA.

NATURE OF DEFENDANTS' OPERATIONS

11. Defendant Fonseca owns and operates Fonseca Services, Inc. a business that purports to provide immigration services to persons who purchase their services.

FACTUAL ALLEGATIONS

12. Defendants are engaging in and have engaged in the business of providing immigration services. Defendants solicit and charge those persons who seek and/or purchase their services (hereafter "customers"). Defendants hold themselves out to the public as an immigration service providers. Defendants have solicited customers by representing that defendant Fonseca has the skill or knowledge necessary to handle immigration cases and/or matters. On or about February 11, 1980, defendant Fonseca was commissioned as a Notary Public for the State of Texas by the Texas Secretary of State and is currently commissioned as a Notary Public.

13. Defendants' customers are persons who sought to obtain immigration visas, permanent residency, and/or citizenship to the United States (hereafter referred to collectively as "immigration benefits") for themselves or their relatives. The immigration service rendered by defendants for their

customers include the following activities:

a. interviewing customers to determine eligibility for immigration benefits under United States immigration laws;

b. advising customers as to whether or not to file a petition or application under United States immigration laws to secure an immigration benefit for the customer or a relative of the customer;

c. selecting and preparing a petition or application and other forms on behalf of customers, which were filed with the Bureau of Citizenship and Immigration Services in order to obtain an immigration benefit;

d. gathering the documentation supporting a customer's petition and or application for immigration benefits under United States immigration laws; and

e. conducting a preliminary inquiry into the facts and circumstances of their customer's case and advising customers as to the necessary steps required.

14. On or after defendant Fonseca was commissioned as a Notary Public, defendants solicited and agreed to perform the immigration service described above in exchange for compensation from their customers for the performance of the immigration services.

15. Defendant Fonseca is not presently or has ever been an attorney at law duly licensed by the State of Texas to engage in acts, practices and or conduct which constitute the practice of law. In addition, defendants are not presently nor have ever been a recognized organization or accredited representative by the Board of Immigration Appeals to represent individuals in immigration matters or in proceedings before the immigration courts.

16. Defendant Fonseca organized and operated defendant FSI as a mere tool or business conduit for herself. Defendant Fonseca is the sole incorporator, governing authority, and sole officer of defendant FSI, and controlled all aspects of business for defendant FSI. Defendant Fonseca knew or should have known that defendants' immigration practices, as alleged above, were false, misleading, or deceptive and failed to comply with the DTPA, NPA, and UPLA. Defendant Fonseca is responsible for the management of FSI's finances and operations; defendant Fonseca oversees, and is familiar with, every segment of FSI's business. In her capacity, defendant Fonseca has access to and control over FSI's assets, books, accounts, minutes, letters, memoranda, documents, and all other records of the company. Through her acts, defendant Fonseca personally and knowingly participated in FSI's unlawful conduct, as alleged in this petition.

NOTARY PUBLIC ACT VIOLATIONS

17. Defendant Fonseca, as alleged above, has in the course of trade and commerce violated the NPA as follows:

a. By providing a service that constitutes the unauthorized practice of law or accepting compensation for a service that constitutes the unauthorized practice of law, defendant Fonseca, a notary public, is in violation of § 406.016(d) of the NPA;

b. By engaging in the unauthorized practice of immigration law, defendant Fonseca, a notary public, is stating or implying that she is an attorney licensed to practice law in this state, is in violation of § 406.017(a)(1) of the NPA;

c. By soliciting or accepting compensation to prepare documents for another in an administrative proceeding relating to immigration to the United States, defendant Fonseca,

a notary public, is in violation of § 406.017(a)(2) of the NPA; and

d. By soliciting or accepting compensation to obtain relief on behalf of another from an officer, agency, or employee of the United States, defendant Fonseca, a notary public, is in violation of § 406.017(a)(3) of the NPA.

DTPA VIOLATIONS

18. Defendants, as alleged above, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§ 17.46(a) and (b) of the DTPA as follows:

a. By advertising, offering for sale, selling, or providing a service that constitutes the unauthorized practice of law, defendants are engaging in or have engaged in an act or practice that is false, misleading, or deceptive, in violation of §17.46(a) of the DTPA;

b. By agreeing to perform a service that constitutes the practice of law, defendants are representing, by implication, that defendant Fonseca has the status of a licensed attorney, which she does not, in violation of §17.46(b)(5) of the DTPA;

c. By agreeing to perform a service which constitutes the unauthorized practice of law, defendants are representing that their agreement with customers confers or involves an obligation which is prohibited by law, in violation of §17.46(b)(12) of the DTPA; and

d. By violating Section 406.017 of the NPA, defendant Fonseca is in violation of the DTPA. Section 406.017(f) of the NPA provides that failure to comply with Section 406.017 of the NPA is a deceptive trade practice and is actionable under the DTPA.

STATE BAR ACT VIOLATION

19. Defendants, as alleged above, were practicing law in the State of Texas while not being a member of the State Bar of Texas, in violation of § 81.102 of the SBA. See *Unauthorized Practice Committee v. Cortez*, 692 S.W.2d 47 (Tex. 1985).

INJURY TO CONSUMERS

20. Defendants have, by means of the unlawful act(s) or practice(s) alleged, caused actual damages to identifiable persons who should be compensated for such damages, or in the alternative, acquired money or property from persons to whom such money or property should be restored.

21. Because defendants have engaged in the unlawful acts and practices described above, defendants have violated the law as alleged in this petition. Unless restrained by this Honorable Court, defendants will continue to violate the laws of the State of Texas and cause injury to the general public.

APPLICATION FOR EX PARTE TRO

22. It is essential that the Court immediately and temporarily restrain defendants from continuing with the conduct described in this petition, namely the unauthorized practice of law. It is essential that the Court act immediately, prior to notice on defendants and a hearing on the matter, because defendants will continue to engage in the unauthorized practice of law and thereby cause immediate and irreparable injury, loss, or damage to persons who receive their services. Namely, the provision of legal services and/or advice by defendants, a non-attorney, will have dire legal consequences and prejudice the legal rights of persons seeking benefits under U.S. immigration laws. Specifically, defendants will continue to solicit customers each day and will continue to give legal services and/or

advice to their customers when they are not licensed to practice law in the State of Texas or accredited by the Board of Immigration Appeals to represent individuals in immigration matters or in proceedings before the immigration courts. Defendants' customers will lose immigration benefits to which they are otherwise entitled and subject them to apprehension, detention or immediate deportation, or expose them to criminal liability as a result of defendants' unqualified legal services and or advice in immigration matters.

PRAYER

23. WHEREFORE, plaintiff prays that defendants be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; 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 who receives actual notice of the injunction by personal service or otherwise from engaging, directly or indirectly, in the following acts or practices:

a. Operating a business or conducting business that provides immigration services or a legal document preparation service;

b. Advertising, offering for sale, selling, or providing an immigration service or a legal document preparation service;

c. Accepting money or valuable consideration for performing an immigration service or a legal document preparation service;

d. Accepting money or valuable consideration from any person seeking assistance to

obtain a benefit under United States immigration laws for himself/herself or any other person;

e. Advising or counseling any person whether or not to file a petition, application, or other form to obtain a benefit under United States immigration laws for himself/herself or any other person;

f. Selecting, preparing, or completing for any other person a pleading, document, or other form incident to legal actions or United States immigration proceedings;

g. Holding out, by any means, to the public as an "immigration specialist," "immigration counselor," or "immigration service provider" and by any title or designation incorporating the word "immigration" or an abbreviation thereof;

h. Stating or implying to be an attorney licensed to practice law in this state unless they are a member of the State Bar of Texas;

i. Representing, directly or by implication, that defendant Fonseca has the skill, expertise, or competence to handle immigration or legal matters;

j. Representing, directly or by implication, that defendant Fonseca can get legal status, a work permit, or other benefit under United States immigration laws for a person who purchases her services;

k. Practicing law in the State of Texas while not being a member of the State Bar of Texas;

l. Advising or counseling any person as to matters of law or legal rights under state or federal laws, rules, and/or regulations, including but not limited to, matters relating to legal

actions or United States immigration proceedings;

m. Accepting or soliciting money or valuable consideration for advising or counseling any person as to matters of law or legal rights under state or federal laws, rules, and or regulations, including but not limited to, matters relating to legal actions or United States immigration proceedings;

n. Advertising, offering for sale, selling, or performing a notarial service;

o. Accepting money or valuable consideration for performing a notarial service;

p. Concealing, withholding, destroying, mutilating, altering, falsifying, or removing from the jurisdiction of this Court any books, records, documents, invoices, receipts, or other written materials relating to the business of defendant currently or hereafter in defendants' possession, custody or control except in response to further orders or subpoenas in this cause; and

q. Representing, directly or by implication, that this Court, the Bureau of Citizenship & Immigration Services (also known as the Immigration and Naturalization Service), or the Office of the Attorney General has approved any good or service sold or offered for sale by defendants, or approved of any of defendants' business practices.

24. Plaintiff, STATE OF TEXAS, further prays that this Court order defendants to post notice at 302 E. Coma Ave., Hidalgo, Texas 78557, and at any other place where defendants may conduct business, which notice shall be on the front-side of the front door, in bold-faced type of a minimum size of 16 points, in both English and Spanish, and shall state:

NOTICE

JOSEFINA FONSECA AND FONSECA SERVICES, INC. HAVE BEEN SUED BY THE OFFICE OF THE TEXAS ATTORNEY GENERAL FOR ENGAGING IN THE UNAUTHORIZED PRACTICE OF LAW.

THE DISTRICT COURT HAS ORDERED JOSEFINA FONSECA AND FONSECA SERVICES, INC. TO STOP CONDUCTING BUSINESS AS AN IMMIGRATION SERVICE PROVIDER.

IF YOU HAVE ANY QUESTIONS, OR IF YOU BELIEVE YOU WERE A VICTIM, PLEASE CALL 956-682-4547.

AVISO

JOSEFINA FONSECA Y FONSECA SERVICES, INC. HAN SIDO DEMANDADA POR LA OFICINA DEL PROCURADOR GENERAL DE TEXAS POR INVOLUCRARSE EN LA PRACTICA DE LEYES SIN AUTORIZACION.

LA CORTE DEL DISTRICTO HA ORDENADO A JOSEFINA FONSECA Y FONSECA SERVICES, INC. PARAR SU NEGOCIO DE SERVICIOS DE INMIGRACION.

SI USTED TIENE ALGUNA PREGUNTA O PIENSA QUE FUE UNA VICTIMA, POR FAVOR LLAME AL 956-682-4547.

25. Plaintiff STATE OF TEXAS, further prays that this Court grant leave to conduct telephone, oral, written, and other depositions of witnesses prior to any scheduled temporary injunction hearing and prior to defendants' answer date, with reasonable shortened notice to defendants and their attorney, if known.

26. In addition, plaintiff STATE OF TEXAS, respectfully prays that this Court will:

a. Adjudge against defendants civil penalties in favor of plaintiff STATE OF TEXAS, in the amount not to exceed more than $20,000.00 per violation;

b. Adjudge against defendants civil penalties in favor of plaintiff STATE OF TEXAS,

in the amount of not more than $250,000.00 for violations of the DTPA if the consumer was 65 years of age or older;

c. Order defendants to restore all money or other property acquired by means of unlawful acts or practices, or in the alternative, to compensate identifiable persons for actual damages;

d. Adjudge against defendants reasonable attorney's fees and court costs pursuant to TEX. GOV'T. CODE ANN. § 402.006;

e. Adjudge against defendants pre-judgment and post-judgment interest at the highest lawful rate;

f. Rescind all agreements entered into by and between defendants and consumers;

g. Appoint a receiver or sequester defendants' assets if defendants have been ordered by this Court to make restitution and defendants have failed to do so within three months after the order to make restitution has become final and nonappealable; and

h. 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).

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

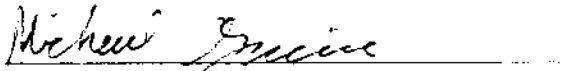
Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

BILL COBB
Deputy Attorney General for Civil Litigation

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



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Attorney for Plaintiff

VERIFICATION

STATE OF TEXAS §

COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority, on this day personally appeared affiant Rozanne N. Lopez, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that she executed the same, and after she was duly sworn, upon her oath, she deposed and said that the affiant is an investigator for the Office of Attorney General, and is authorized to make this affidavit, that the affiant has carefully read the factual allegations in the foregoing PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION, and has reason to believe that each and all said factual allegations are true and correct; and affiant signs this Verification, pursuant to Rule 682 of the TEXAS RULES OF CIVIL PROCEDURE.

ROZANNE N. LOPEZ
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on the 18th day of February, 2011.

VANESSA A. CUELLAR
Notary Public
STATE OF TEXAS
Commission Exp. 03-02-2013
Notary Without Bond

NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS