

2013-17062

NO. _____

STATE OF TEXAS
Plaintiff,

v.

LBS TAX SERVICES a/k/a
LOANBUYSELL TAX SERVICES a/k/a
LOANBUYSELL, INC.
Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

FILED
Chris Daniel
District Clerk

MAR 22 2013

JUDICIAL DISTRICT

By _____
Harris County, Texas

**PLAINTIFF'S ORIGINAL VERIFIED PETITION AND APPLICATION FOR
EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND
PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the STATE OF TEXAS, Plaintiff, acting by and through Attorney General of Texas Greg Abbott (referred to herein as the "Attorney General"), on behalf of the State of Texas and on behalf of the interest of the general public of the State of Texas, and complains of Defendant LBS TAX SERVICES a/k/a LOANBUYSELL TAX SERVICES a/k/a LOANBUYSELL, INC. Plaintiff alleges that Defendant engaged in unlawful and deceptive acts and practices in violation of the Texas Deceptive Trade Practices Act, TEX. BUS. & COM. CODE §17.41 *et seq.* In support thereof, Plaintiff respectfully shows the following:

I. DISCOVERY

1.1. Discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.3.

1.2. This case is not subject to the restrictions of expedited discovery under TRCP 169 because:

- a. The relief sought by the State includes non-monetary injunctive relief; and
- b. The State's claims for monetary relief including penalties, consumer redress and attorneys' fees and costs are in excess of \$100,000 and could exceed \$ 1,000,000.00.

II. JURISDICTION

2.1. This action is brought pursuant to the statutory authority of §17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE §17.41 *et seq.* (“DTPA”), permitting the Consumer Protection Division of the Attorney General’s office to bring an action to restrain, by temporary restraining order, temporary injunction, or permanent injunction, false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§17.46(a) and (b) of the DTPA.

III. PARTIES

3.1. Plaintiff is the STATE OF TEXAS, acting by and through its Attorney General Greg Abbot and his Consumer Protection Division, in the public interest and under the authority granted to him by the Constitution, statutes, and laws of the State of Texas.

3.2. Defendant LBS TAX SERVICES a/k/a LOANBUYSELL TAX SERVICES a/k/a LOANBUYSELL, INC is a foreign corporation doing business in Texas as alleged specifically below, and this proceeding arises out of such business done in this state. Defendant maintains a regular place of business in this state at 14601 Bellaire Boulevard, Suite 35, Houston, Texas; 12738 Woodforest Boulevard, Houston, Texas; and 4010 Highway 6 South, Suite D, Houston, Texas, but has not designated or maintained a registered agent for service of process in Texas and therefore, may be served with process by serving the Secretary of State of the State of Texas, pursuant to Tex. Civ. Prac. & Rem. Code §17.044(b). The Secretary of State is hereby requested

to serve Defendant by certified or registered mail addressed to said defendant's home office at 4250 Alafaya Trail, Suite 212-348, Oviedo, Florida 32765-9412.

IV. VENUE

4.1. Venue for this suit is proper in Harris County pursuant to §-17.47 (b) of the Deceptive Trade Practices Act (DTPA) because Defendant has done business in and the transactions occurred in Harris County, Texas.

V. PUBLIC INTEREST

5.1. Because Plaintiff State of Texas has reason to believe that Defendant has engaged in, and will continue to engage in the unlawful practices set forth below, Plaintiff State of Texas has reason to believe Defendant has caused and will cause immediate, irreparable injury, loss and damage to the State of Texas, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Plaintiff also has reason to believe that imminent harm exists in that Defendant will continue to cause such adverse effects. Therefore, the Consumer Protection 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.

VI. TRADE AND COMMERCE

6.1. Defendant has, at all times described below, engaged in conduct constituting “trade” and “commerce,” as those terms are defined in §17.45(6) of the DTPA.

VII. ACTS OF AGENTS

7.1. Whenever in this petition it is alleged that a Defendant did any act, it is meant that:

- a. The Defendant performed or participated in the act, or

b. The Defendant's officers, agents, trustees or employees performed or participated in the act on behalf of and under the authority of the Defendant.

VIII. NOTICE BEFORE SUIT NOT GIVEN

8.1. Pursuant to §17.47(a) of the Deceptive Trade Practices Act, although contact has been made with the Defendant, Plaintiff has not given specific notice of the unlawful conduct alleged herein, because Plaintiff is of the opinion that there is good cause to believe that such an emergency exists that immediate and irreparable injury, loss or damage would occur as a result of such delay in obtaining a temporary restraining order, and that Defendant would evade service of process, destroy relevant records and secrete assets if prior notice of this suit were given.

IX. NATURE OF DEFENDANT'S OPERATIONS

9.1. Defendant uses aggressive advertising techniques including delivering flyers around the city and soliciting customers at Wal-Mart. (Exhibit 1 Orr Aff. ¶ 3; Exhibit 2 Moses Aff. ¶ 3). Their advertisements guarantee the "maximum tax refund allowed" for a fee of only \$75. (Exhibit 1 Orr Aff. ¶ 3). However, during preparation of consumers' returns, Defendant asks the consumers to sign acknowledgments stating that the fee increases based on the number of forms needed. (Exhibit 1 Orr Aff. ¶ 5; Exhibit 2 Moses Aff. ¶ 5). Consumers are understandably surprised to later learn, after receiving their refund from the IRS, that Defendant has withheld hundreds of dollars more from consumers' tax refunds than the amount originally quoted and Defendant refuses to detail the charges or refund the difference. (Exhibit 1 Orr Aff. ¶ 9; Exhibit 2 Moses Aff. ¶ 7).

9.2. Defendant has used this scheme to fraudulently obtain thousands of dollars from consumers all over Harris County.

X. SPECIFIC FACTUAL ALLEGATIONS

10.1. Defendant, operating in Harris County, is engaged in widespread income tax preparation fraud throughout Harris County, Texas and the surrounding area.

10.2. Defendant uses a number of different, aggressive advertising techniques, including soliciting customers at Wal-Mart (Exhibit 1 Orr Aff. ¶ 3) and passing out flyers at the Martin Luther King Jr. parade in downtown Houston (Exhibit 2 Moses Aff. ¶ 3).

10.3. Defendant and its agents state in advertisements and in response to interested consumers that the company specializes in tax refunds and guarantees “maximum tax refund credit.” (Exhibit 1 Orr Aff. ¶ 3).

10.4. Defendant also advertises and directly tells consumers that its fee for tax return preparation services is \$75 which it will deduct from the refund. (Exhibit 1 Orr Aff. ¶ 4; Exhibit 2 Moses Aff. ¶ 5). On occasion, Defendant states that additional fees may be charged for additional forms, but Defendant never states exactly how much those fees will be. (Exhibit 1 Orr Aff. ¶ 5).

10.5. Instead, Defendant quotes an optimistic value as the amount the consumer absolutely will receive as a refund as an enticement to get the consumer to agree to use Defendant’s services. (Exhibit 1 Orr Aff. ¶ 5; Exhibit 2 Moses Aff. ¶ 5). Defendant never details the charges on the forms it requires consumers to sign, in fact often leaving the fee entry blank. (Exhibit 1 Orr Aff. ¶ 5; Exhibit 2 Moses Aff. ¶ 5-6).

10.6. Defendant fraudulently completes their consumer agreement forms outside of the presence of consumers and without their consent. One consumer discovered that Defendant had filled in the amount for the fees after he had left their office. (Exhibit 1 Orr Aff. ¶ 9). Another

was given a form that she never signed; she believes her signature was copied and pasted onto that document from another form. (Exhibit 2 Moses Aff. ¶ 10, Ex. D).

10.7. Defendant gives consumers significantly less from their Internal Revenue Service (IRS) refund than Defendant had previously disclosed. (Exhibit 1 Orr Aff. ¶ 8; Exhibit 2 Moses Aff. ¶ 7). Defendant gave one consumer more than \$2000 less than Defendant had promised. (Exhibit 1 Orr Aff. ¶ 8). Another was surprised to learn that, rather than the \$75 Defendant quoted, Defendant had kept \$896 from her return. (Exhibit 2 Moses Aff. ¶ 7).

10.8. Once the transaction has occurred, Defendant often refuses to provide any supporting documentation of the services provided, including the actual return, or the cost associated with the services. One consumer was told that the printer was out of ink and that the requested documents would be emailed to him the next day, but he never received anything from Defendant “despite repeated attempts over the phone and via email during the next three days.” (Exhibit 1 Orr Aff. ¶ 6).

10.9. It does not appear that Defendant’s agents actually have any specialized training in tax preparation and, in fact, Defendant has made numerous serious errors on returns either through incompetence or intentional fraud to increase the value of a refund. Defendant told one consumer that there was an IRS error code associated with his return but could not explain the error code or how to resolve it. (Exhibit 1 Orr Aff. ¶ 7). Errors contained on returns prepared by LBS Tax Service include: (1) mischaracterizing the race of a dependent as American Indian; (2) mischaracterizing a three year dependent as being permanently and totally disabled due to mental illness; (3) incorrectly stating that a minor dependent receives social security insurance or disability payments; (4) incorrectly stating that a minor dependent’s parents are deceased despite

the tax payer being the parent of the dependent; and (5) reporting an incorrect amount of Earned Income. (Exhibit 1 Orr Aff. ¶ 11). Moreover, some consumers have received notice since Defendant's filing on their behalf that the consumers owe the IRS money. (Exhibit 1 Orr Aff. ¶ 12, Ex. B).

10.10. News outlets in Defendant's home state of Florida, as well as two in Houston, have published reports detailing the fraudulent practices Defendant uses. (*See* Exhibit 3-5).

10.11. Defendant has used even more unscrupulous practices to avoid investigation and prosecution during the busy tax preparation season. Defendant offered one consumer \$1200, almost 50% more than it had fraudulently taken from her refund, if she would not talk to Emily Akin, an investigative reporter for Fox 26 News. (Exhibit 2 Moses Aff. ¶ 13). Defendant's agents refuse to provide their last name to consumers (Exhibit 1 Orr Aff. ¶ 9; Exhibit 2 Moses Aff. ¶ 13) and will attempt to settle in order to keep consumers quiet (Exhibit 2 Moses Aff. ¶ 9-14).

XI. VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

11.1. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

11.2. Defendant, as alleged and detailed above, has in the conduct of trade and commerce engaged in false, misleading, or deceptive acts or practices declared unlawful in §§ 17.46(a) and (b) of the DTPA. Such acts include:

a. 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 have, in violation

of DTPA, §17.46(b)(5);

b. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, in violation of DTPA, §17.46(b)(7);

c. Advertising goods or services with intent not to sell them as advertised, in violation of DTPA, §17.46(b)(9);

d. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve or which are prohibited by law, in violation of DTPA, § 17.46(b)(12);

e. 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 which the consumer would not have entered had the information been disclosed, in violation of DTPA, §17.46(b)(24);

XII. INJURY TO CONSUMERS

12.1. Defendant has, by means of the unlawful acts and practices described in this petition, obtained money or other property from identifiable persons to whom such money or property should be restored or who, in the alternative, are entitled to an award of damages.

XIII. NECESSITY OF IMMEDIATE RELIEF

13.1. Pursuant to TEX. BUS. & COM. CODE §521.151(e) and TEX. BUS. & COM. CODE §17.47(d), Plaintiff requests immediate relief by way of a Temporary Restraining Order and Temporary Injunction, as set forth in the Prayer. Despite direct media attention and inquiries and investigations into the Defendant's business practices by law enforcement agencies, including

the Harris County Sherriff's Department (Exhibit 1 Orr Aff. ¶ 10), Defendant continues to engage in the deceptive and fraudulent business practices described herein. Immediate injunctive relief by way of Temporary Restraining Order and Temporary Injunction is therefore necessary to prevent continuing harm prior to final trial.

13.2. In addition to restraining Defendant's conduct to prevent future illegal acts and continuing harm to consumers, Plaintiff requests immediate relief to preserve and protect the fraudulently obtained monies that have been paid to Defendant. In light of the seriousness of the illegal conduct described herein, Defendant is likely to waste or secrete the funds prior to final trial to avoid repaying the funds to the State and consumers.

13.3. For these reasons, the assets of Defendant are subject to dissipation and secretion and therefore should be frozen pending final trial so restitution can be made and full and final relief can be awarded at final trial. Plaintiff requests that the Court exercise its authority and grant the injunctive relief necessary to prevent additional harm to the Defendant's victims as well as further violation of the DTPA. TEX. BUS. & COM. CODE §17.47(c).

13.4. Pursuant to TEX. BUS. & COM. CODE §17.47(b), Plaintiff requests that a Temporary Restraining Order be issued without prior notice to Defendant to prevent wasting or secretion of the funds fraudulently obtained by Defendant.

XIV. REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

14.1. Plaintiff requests leave of this Court to conduct telephonic, oral, written and other depositions of witnesses and parties prior to any scheduled Temporary Injunction Hearing and prior to Defendant's answer date. There are a number of victims and other witnesses who may need to be deposed prior to any scheduled injunction hearing. Any depositions, telephonic or

otherwise, would be conducted with reasonable, shortened notice to Defendant and their attorneys, if known.

XV. DISGORGEMENT

15.1. Defendant's assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendant to retain, including all ill-gotten gains and benefits or profits that result from Defendant putting fraudulently converted property to a profitable or personal use. Defendant should be ordered to disgorge all monies fraudulently taken from individuals and businesses together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

XVI. TRIAL BY JURY

16.1. Plaintiff herein requests a jury trial and tenders the jury fee to the Harris County District Clerk's office pursuant to TEX. R. CIV. P. 216 and TEX. GOVT. CODE §51.604.

XVII. CONDITIONS PRECEDENT

17.1. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

XVIII. PRAYER

18.1. Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated and will continue to violate the law as alleged in this Petition. Unless immediately restrained by this Honorable Court, Defendant will continue to violate the laws of the State of Texas and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public.

18.2. Therefore, Plaintiff requests a Temporary Restraining Order, Temporary Injunction and Permanent Injunction as indicated below. TEX. BUS. & COM. CODE §17.47(d); TEX. BUS. & COM. CODE §521.151(e). The Court shall issue such injunctive relief without requiring a bond. TEX. BUS. & COM. CODE §17.47(b); TEX. BUS. & COM. CODE §521.151(d). Pursuant to TEX. BUS. & COM. CODE §17.47(b), Plaintiff requests that a Temporary Restraining Order be issued without prior notice to Defendant as allowed by statute to prevent irreplaceable loss of funds fraudulently obtained by Defendant.

18.3. Plaintiff prays that Defendant 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 Defendant (including any business entities established by Defendant), their officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendant, from engaging in the following acts or practices:

a. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, or other written or computer generated materials relating to the business of Defendant currently or hereafter in Defendant's possession, custody or control except in response to further orders or subpoenas in this cause;

b. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing or allowing the transfer, removal, or withdrawal from any financial institution or from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property,

real, personal or mixed, wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by Defendant without further order of this Court;

c. Soliciting or obtaining any Personal Identifying Information or Sensitive Personal Information (as defined in Chapter 521 of the Texas Business and Commerce Code) from consumers or third party individuals, or compensating any person to solicit or obtain such information, including but not limited to Social Security numbers, driver's license numbers, date of birth, and bank account information;

d. Transferring, using, or otherwise communicating any Personal Identifying Information or Sensitive Personal Information (as defined in Chapter 521 of the Texas Business and Commerce Code) obtained from any consumers or third party individuals, including but not limited to Social Security numbers, driver's license numbers, date of birth, and bank account information, except by order of this Court;

e. Engaging in any type of tax return preparation services without further order of this Court;

f. Advertising, offering, or promoting tax return preparation services to third party individuals, except by order of this Court.

18.4. Plaintiff further prays that Defendant be ordered to produce (i) the contact information for all consumers and third party individuals from whom Defendant obtained Personal Identifying Information or Sensitive Personal Information; (ii) all records under their custody or control that contain Personal Identifying Information or Sensitive Personal Information of consumers (as defined in Chapter 521 of the Texas Business and Commerce Code) to Plaintiff to be stored or disposed of by shredding, erasing, or by other means, to make

them unreadable or undecipherable; and (iii) a completed financial statement, verified under oath, specifying the name and address of each financial institution and brokerage firm, including foreign institutions or firms, at which the Defendant has accounts or safe deposit boxes.

18.5. In addition, Plaintiff respectfully prays that this Court will:

a. Order Defendant to pay civil penalties not to exceed \$20,000.00 per violation to the State of Texas for each violation of the DTPA;

b. Order Defendant to pay civil penalties in an amount up to \$250,000.00 as allowed by law under the DTPA, for acts or practices that were calculated to acquire or deprive money or other property from consumers who were 65 years of age or older when the act or practice occurred;

c. Order the disgorgement of Defendant's assets, as provided by law;

d. 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;

e. Order Defendant to pay pre-judgment and post-judgment interest on all awards of restitution, damages or civil penalties, as provided by law; and

f. Order Defendant to pay all costs of Court, costs of investigation, and reasonable attorney's fees pursuant to TEX. GOVT. CODE § 402.006(c) and TEX. BUS. & COM. CODE §521.151(f).

18.6 Plaintiff further prays for such other relief to which Plaintiff STATE OF TEXAS may be justly entitled.

Respectfully submitted,

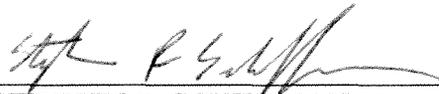
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ATTORNEYS FOR PLAINTIFF

VERIFICATION

In support of the foregoing Original Verified Petition and Application for *Ex Parte* Temporary Restraining Order, Temporary Injunction and Permanent Injunction, attached are the following affidavits and exhibits, which are hereby incorporated by reference:

Exhibit

1. Affidavit of William Orr (Ex. A-B)
2. Affidavit of Loretta Young Moses (Ex. A-E)
3. News Article: abclocal.go.com/ktrk, "Woman: Tax prep service charged me hundreds." (dated March 1, 2013)
4. News Article: fox4now.com, "Customers accuse LBS Tax Service of grossly overcharging." (dated February 21, 2013)
5. News Article: abcactionnews.com, "Tampa man in trouble with IRS after using tax preparer." (dated April 6, 2012)
6. Electronic Articles of Incorporation for Defendant filed with the Florida Secretary of State on October 12, 2006