

FILED

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE 2010 FEB 25 AM 11:24

RICHARD W. ROCKER, CLERK

STATE OF TENNESSEE, *ex rel.*)
ROBERT E. COOPER, JR., ATTORNEY)
GENERAL AND REPORTER,)
)
Plaintiff,)
)
v.)
)
MIRELLA GARCIA, individually and doing)
business as CENTRO DE APOYO AL)
INMIGRANTE, a sole proprietorship owned)
and operated by MIRELLA GARCIA)
)
Defendant.)

CHK D.C.

No. 100704

**COMPLAINT OF THE STATE OF TENNESSEE FOR
PERMANENT INJUNCTION AND OTHER RELIEF**

1. This civil law enforcement action is brought in the name of the State of Tennessee, in its sovereign capacity, by and through Robert E. Cooper, Jr., Attorney General and Reporter ("Attorney General", "the State," or "Plaintiff"), pursuant to the Notaries Public Statute, Tenn. Code Ann. § 8-16-401 *et seq.* the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.* ("Consumer Act") and the Attorney General's general statutory authority set forth at Tenn. Code Ann. § 8-6-109, and the Attorney General's authority at common law.

2. Mary Clement, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance, has requested that the State of Tennessee, by the Attorney General, commence civil law enforcement proceedings against Defendant for violations of the Consumer Act.

3. The Director and the Attorney General have reason to believe that the Defendant named herein has violated the Consumer Act.

4. The Director and Attorney General also have reason to believe that this action is in the public interest.

5. Defendant has been provided with ten (10) days notice of contemplated legal action as set forth in Tenn. Code Ann. § 47-18-108(a)(2).

I. GENERAL OVERVIEW

6. The Attorney General brings this civil law enforcement proceedings against Mirella Garcia, individually and doing business as Centro de Apoyo al Inmigrante, a sole proprietorship owned and operated by Mirella Garcia because she has engaged in unfair and deceptive acts and practices against consumers by advertising as a “notario publico” without the required disclaimer and advertising and/or selling “International Driver’s Licenses.”

II. JURISDICTION AND VENUE

7. The jurisdiction of this Court is invoked pursuant to the provisions of Tenn. Code Ann. § 47-18-108 since Defendant was a Tennessee business located in Tennessee during the relevant period.

8. Venue is proper in Davidson County pursuant to Tenn. Code Ann. §§ 47-18-108(a)(3), because it is one of the counties in Tennessee where the alleged unfair and deceptive acts and practices alleged in this Complaint have taken place, took place or are about to take place.

III. PARTIES

The State of Tennessee alleges upon information and belief:

9. Plaintiff, State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General & Reporter, is charged with enforcing the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101 *et seq.*, (hereinafter “the TCPA”), which prohibits unfair or deceptive acts or practices affecting the conduct of any trade or commerce. Under Tenn. Code Ann. § 47-18-108 (a) (1), the Attorney General may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the TCPA and to secure such equitable and other relief as may be appropriate in each case. The Attorney General is authorized to seek a judgment which enjoins fraudulent or illegal business acts or practices, including but not limited to, any misrepresentation, concealment or suppression of a material fact, and which awards damages, restitution and any other appropriate relief for such acts. *Id.*; Tenn. Code Ann. §§ 47-18-108 (b) (1-4) and (c).

10. Defendant Mirella Garcia (“Defendant Garcia”), during the relevant time period was a resident of Tennessee. Defendant Garcia personally participated in and controlled and directed the business practices of her sole proprietorship, Centro de Apoyo al Inmigrante.

11. Defendant Garcia owns and/or owned and operates and/or operated a sole proprietorship called Centro de Apoyo al Inmigrante. Defendant Garcia d/b/a Centro de Apoyo al Inmigrante is and/or was located at 2517 Nolensville Pike, Nashville, TN 37211.

12. As used in this Complaint, Defendant Garcia, individually and dba Centro de Apoyo al Inmigrante and its agents are collectively referred to as “Defendant.”

IV. GENERAL ALLEGATIONS

The State of Tennessee alleges upon information and belief:

13. Defendant has advertised as a “notario publico” without the required disclaimer.
14. Defendant has engaged in unfair and deceptive trade practices by advertising and selling “International Driver’s Licenses.”

V. FACTUAL ALLEGATIONS

Upon information and belief, the State of Tennessee alleges as follows:

15. Defendant has advertised, promoted and offered goods and services to the general public.
16. Defendant has engaged in trade or commerce as defined by Tenn. Code Ann. § 47-18-103(11).
17. Defendant has advertised and/or claimed to be notary publics or notarios publicos.
18. Defendant Garcia ran a business located at 2517 Nolensville Pike, Nashville, TN 37211.
19. Defendant Garcia d/b/a Centro de Apoyo al Inmigrante advertised as having a “Notario Publico” in *La Prensa Latina* throughout 2007. A copy of the advertisements are attached as Collective Exhibit A to this Complaint.
20. Defendant Garcia d/b/a Centro de Apoyo al Inmigrante advertised as having a “Somos notario Publico” in the December 1-14, 2007 publication of *El Suceso*. A copy of the advertisement is attached as Exhibit B to this Complaint.
21. The Spanish translation of “notary public” is “notario publico.”

22. In many Spanish speaking countries, a “notario publico” is a civil-law notary, or an attorney who has been specially appointed to grant public faith to certain common, everyday transactions.

23. As a result, Spanish-speaking consumers often believe individuals that advertise as a “notario publico” are licensed attorneys.

24. In Tennessee, a disclaimer is required in any advertisement which uses the phrase “notario publico.”

25. Defendant Garcia d/b/a Centro de Apoyo al Inmigrante did not include the required disclaimer in any of her advertisements despite using the terms “Notario Publico” and “Somos notario Publico.”

26. Defendant Garcia is not an attorney and not licensed to practice law in the State of Tennessee.

27. Defendant Garcia d/b/a Centro de Apoyo al Inmigrante does not employ an attorney who is licensed to practice law in the State of Tennessee.

28. Defendant Garcia d/b/a Centro de Apoyo al Inmigrante also advertised the sale of “international driver’s licenses” in *La Prensa Latina* throughout 2007.

29. International driver’s licenses are not a valid form of identification and serve no legal purpose.

30. Consumers often confuse these documents with International Driver’s Permits (“IDPs”), which are used to translate valid United States driver’s licenses into different languages for foreign travel.

31. Defendant is not authorized to issue IDPs.

32. The U.S. Department of State has authorized only two (2) companies to issue valid IDPs: the American Automobile Association (“AAA”) and the American Automobile Touring Alliance (“AATA”).

33. Defendant has directly engaged in the alleged conduct and unfair or deceptive acts or practices described herein, had knowledge or should have had knowledge of the practices, and had the authority to control and stop the violations of the law.

34. As a result of the Defendant’s conduct described in this Complaint, consumers may have suffered ascertainable losses associated with the various unfair, deceptive or misleading acts or practices alleged herein.

VI. VIOLATIONS OF THE LAW

COUNT I: TENNESSEE CONSUMER PROTECTION ACT

35. The Plaintiff incorporates by reference and re-alleges each and every allegation contained in Paragraphs (13) - (34) of this Complaint.

36. At all times relevant to this Complaint, the Defendant’s conduct of offering “notario publico” services and “International Driver’s Licenses” as alleged in this Complaint occurred in the conduct of “trade”, “commerce” and/or a “consumer transaction” and constitutes the offering of, or providing of, “goods” and/or “services” as defined in Tenn. Code Ann. §§ 47-18-103(5), (10) and (11).

37. All of the acts and practices engaged in and employed by the Defendant as alleged herein are “unfair or deceptive acts or practices affecting the conduct of any trade or commerce” in Tennessee, which are declared unlawful by Tenn. Code Ann. § 47-18-104(a).

38. Each and every unfair or deceptive act or practice engaged in by Defendant as recited above constitutes a separate violation of the Tennessee Consumer Protection Act as provided by Tenn. Code Ann. § 47-18-104(b).

39. Defendant has caused likelihood of confusion or of misunderstanding as to the source and approval of their goods or services, in violation of Tenn. Code Ann. § 47-18-104(b)(2).

40. Defendant has caused likelihood of confusion or of misunderstanding as to the affiliation, connection or association with, or certification by, another, in violation of Tenn. Code Ann. § 47-18-104(b)(3).

41. Defendant has misrepresented the use and benefit of the licenses in violation of Tenn. Code Ann § 47-18-104(b)(5).

42. Defendant has advertised goods with the intent not to sell them as advertised in violation of Tenn. Code Ann. § 47-18-104(b)(9).

43. Defendant has used statements in advertisements which create a false impression of the quality, value, usability or origin of the goods or services offered, in violation of Tenn. Code Ann. § 47-18-104(b)(21).

44. Defendant has advertised as a notario publico without a clear and conspicuous disclaimer disclosing the individuals are not licensed to practice law in Tennessee as required by Tenn. Code Ann. § 8-16-401(a) in violation of Tenn. Code Ann. § 47-18-104.

45. All of the acts and practices engaged in and employed by Defendant described in this Complaint are deceptive to the consumer or other person in violation of Tenn. Code Ann. § 47-18-104(b)(27).

DEMAND FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff, State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, pursuant to the Tennessee Consumer Protection Act of 1977, the Attorney General's general statutory authority, the Attorney General's common law authority, and this Court's equitable powers, prays that an order and judgment be entered and that such orders and injunctions be issued without bond pursuant to Tenn. Code Ann. § 47-18-108 (4):

1. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101 and 47-18-116.

2. That process issue and be served upon Defendant requiring the Defendant to appear and answer this Complaint.

3. That this Court adjudge and decree that Defendant has engaged in the aforementioned acts or practices which violate the Tennessee Consumer Protection Act of 1977.

4. That pursuant to Tenn. Code Ann. § 47-18-108(a)(1), (a)(4), and (a)(5), this Court grant permanent prohibitory and mandatory injunctive relief against Defendant to enjoin and

ameliorate the foregoing acts or practices, which are in violation of the Tennessee Consumer Protection Act of 1977 and other laws and regulations and such order be issued without cost bond as set forth in Tenn. Code Ann. § 47-18-108(a)(4).

5. That this Court enter judgment against Defendant and in favor of the State for the reasonable costs and expenses of the investigation and prosecution of the Defendant's actions, including attorneys' fees and costs, expert and other witness fees, as provided by Tenn. Code Ann. §§ 47-18-108(a)(5), (b)(4), and other state law.

6. That pursuant to Tenn. Code Ann. § 47-18-108(b)(1), this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses as defined by Tenn. Code Ann. § 47-18-2101(a), including statutory interest, and requiring Defendant to be liable for such repayment of ascertainable losses and statutory interest to such consumers and other persons and to pay all costs of a court selected third party administrator to distribute the ascertainable losses as restitution and administer the same.

7. That this Court adjudge and decree that Defendant pay civil penalties for each violation of Tenn. Code Ann. § 47-18-104(b)(2),(3),(5),(9),(21), and (27), of not more than one thousand dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b)(3);

8. That this Court revoke any business licenses or other license or certificates authorizing Defendant to engage in notary public services and the sale of "International Driver's Licenses" in this State because of its persistent and knowing violations of the Tennessee Consumer Protection Act as set forth in Tenn. Code Ann. § 47-18-108(b)(2).

9. That this Court make such orders and render such judgments as may be necessary to disgorge the profits and ill-gotten gains Defendant realized by reason of the alleged violations of the Tennessee Consumer Protection Act of 1977.

10. That no costs be taxed to the State as set forth in Tenn. Code Ann. § 47-18-116.

11. That all costs in this case be taxed against the Defendant.

12. That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,



ROBERT E. COOVER, JR.
Attorney General and Reporter
B.P.R. No. 10934

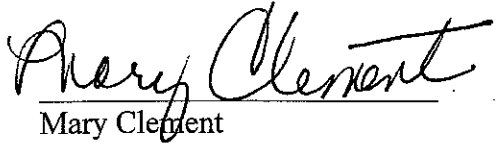


ANNE D. SIMMONS
Assistant Attorney General
B.P.R. No. 26272

JEFFREY L. HILL
Senior Counsel
B.P.R. No. 16731


Office of the Tennessee Attorney General
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, TN 37202-0207
Phone: (615) 532-2590
Facsimile: (615) 532-2910

Approved by:



Mary Clement

Director of Division of Consumer Affairs

I hereby certify that this is a true copy
of original instrument filed in my office
this 25 day of Feb 2010
By RICHARD B. BOOKER Clerk

Deputy Clerk