

2019CI00227

CAUSE NO. _____

THE STATE OF TEXAS,
Plaintiff,

v.

FRANCISCO GUERRA, JR. d/b/a
AMERICAN CITIZENSHIP SERVICES,
Defendant.

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

224th
_____ JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION FOR CIVIL
PENALTIES AND INJUNCTIVE RELIEF**

NOW COMES Plaintiff, THE STATE OF TEXAS (State), acting by and through the Attorney General KEN PAXTON and on behalf of the public interest, complaining of Defendant, FRANCISCO GUERRA, JR. d/b/a AMERICAN CITIZENSHIP SERVICES (Guerra). In this action, the State alleges that Defendant engaged in false, misleading, and deceptive acts and practices in violation of § 17.46 of the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code (DTPA). In support hereof, the State will respectfully show the Court the following:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to Texas Rule of Civil Procedure 190.3(a).
2. This case is not subject to the restrictions of expedited discovery under Texas Rule of Civil Procedure 169 because the relief sought by the State includes a monetary amount of \$100,000 or less and non-monetary, injunctive relief.

JURISDICTION

3. This enforcement action is brought by the Attorney General of Texas, Ken Paxton, through his Consumer Protection Division, in the name of the State and in the public interest, pursuant to the authority granted to him by § 17.47 of the DTPA – Consumer Protection Act, Tex.

Bus. & Com. Code Ann. §§ 17.41 *et seq.*, upon the grounds that Defendant has engaged in false, deceptive, and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, § 17.46 of the DTPA.

4. In enforcement suits filed pursuant to § 17.47 of the DTPA, the Attorney General is authorized to seek civil penalties, redress for consumers, and injunctive relief.

DEFENDANT

5. Guerra is an individual who is doing business in Texas as alleged specifically below and may be served with process at his residence located at 12018 Elijah Stapp, San Antonio, Texas 78253, or wherever he may be found.

VENUE

6. Venue of this suit lies in BEXAR County, Texas, pursuant to § 17.47(b) of the DTPA because transactions made part of this suit occurred in Bexar County, Texas.

PUBLIC INTEREST

7. The State has reason to believe that Guerra is engaging in, has engaged in, or is about to engage in the unlawful acts or practices set forth below; that Guerra has, by means of these unlawful acts and practices, caused damage to and/or acquired money or property from persons; and that Guerra adversely affected the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this state. 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.

NOTICE BEFORE SUIT

8. The Consumer Protection Division informed Defendant in general of the alleged unlawful conduct described below at least seven (7) days before filing suit as may be required by

§ 17.47(a) of the DTPA.

TRADE AND COMMERCE

9. Guerra has, 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

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

SPECIFIC FACTUAL ALLEGATIONS

11. Guerra offered immigration services¹ to the general public even though he is not an accredited representative of an organization recognized as a provider of immigration services by the Board of Immigration Appeals (BIA) or licensed to practice law in Texas or any other jurisdiction of the United States.² See Exhibits A and B.

12. Guerra, a former employee of the United States Immigration and Naturalization Service (INS) in Dallas, retired in 1999 after 32 years of service. After retirement, Guerra

¹ For purposes of this petition, “immigration services” means providing in exchange for compensation, advice, information, counsel, or opinions regarding a person’s legal status in the United States or eligibility to obtain lawful permanent residence, asylum, or citizenship; providing legal representation of individuals in immigration matters before the federal government including, but not limited to, the U.S. Department of Homeland Security and its component agencies; selecting, preparing, or filing applications or forms impacting a person’s legal status in the United States or eligibility to obtain lawful permanent residence, asylum, citizenship, or to otherwise obtain a benefit pursuant to the immigration laws of the United States; or obtaining documents in support of any such applications.

² Title 8, Part 292, of the Code of Federal Regulations explains who may represent applicants before the Department of Homeland Security and its immigration officers. Section 1292 of Title 8 provides identical regulations for who may appear before the Executive Office of Immigration Review. The statute states, in relevant part, that only the following individuals may represent another in an immigration matter: (1) attorneys admitted to practice in a jurisdiction of the United States; (2) law students or law graduates not yet admitted to the bar who are under the direct supervision of a licensed attorney or accredited representative in a legal aid program or clinic; (3) reputable individuals of good moral character who are approved by a DHS official and who do not regularly engage in immigration and naturalization practice, or hold themselves out to the public as qualified to do so; and (4) accredited representatives of an organization approved by the BIA to provide immigration services.

relocated to San Antonio and decided to assist consumers “on a part time basis” with determining their eligibility for immigration benefits and relief. He “furnish[ed] everything for consumers: [t]he forms, the mailing materials, [and] the cover letter that goes on top.” *See* Exhibit C.

13. Guerra charged fees for the immigration services that he offered. For example, Guerra charged consumers \$500 for an “application for naturalization,” \$1,200 for a “petition for alien fiancé K-1 visa,” and \$4,800 for an “application for adjustment of status package.” *See* Exhibit A.

14. Guerra conducted business in a manner that caused Consumers to reasonably believe that he is authorized by law to provide immigration services when such is not the case. He represented himself as a “Citizenship Specialist” on business cards that he distributed to the general public and displays an “INS” flag and Immigration and Customs Enforcement and Border Patrol caps in his home office “so the applicant [with whom he meets] could feel that: Hey, this guy is aware.” *See* Exhibits D-E.

15. Guerra is not now and, at all times relevant, has not been an attorney at law duly licensed by the State of Texas or another jurisdiction in the United States to engage in acts, practices and/or conduct which constitute the practice of law. In addition, Guerra is not now and, at all relevant times, has not been an accredited representative of an organization recognized by the BIA, as able to represent individuals in immigration matters or in proceedings before the immigration courts.

VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

16. Guerra has in the course of trade and commerce as alleged above and detailed below, engaged in false, misleading, and deceptive acts and practices declared unlawful in § 17.46 of the DTPA. Such acts include:

- a. Causing confusion or misunderstanding that Guerra has approval or certification to offer and provide immigration services when such is not the case in violation of § 17.46(b)(2);
- b. Representing that immigration services offered have approval and benefits that they do not have and that he has a status that he does not possess in violation of § 17.46(b)(5); and
- c. Failing to disclose information regarding the immigration services he offers, when such failure to disclose was intended to induce consumers into entering into an agreement that consumers would not have entered into if the information had been disclosed in violation of § 17.46(b)(24).

PRAYER

17. The State prays that Guerra be cited according to law to appear and answer herein; that pursuant to § 17.47 of the DTPA, upon final hearing a PERMANENT INJUNCTION be issued, enjoining Guerra and his officers, agents, servants, employees, and any other person in active concert or participation with Guerra, from engaging in the following acts or practices:

- a. Advertising Immigration Services via print, billboard, Internet, social media, or through any other means unless Defendant is a duly licensed attorney;
- b. Offering for sale, selling, or providing Immigration Services unless Defendant is a duly licensed attorney or properly accredited by the BIA;
- c. Failing to honor any requests by consumers of Immigration Services to rescind any agreements or contracts with Defendant without further obligation and failing to cease any and all collection efforts;

- d. Accepting money or valuable consideration in exchange for providing Immigration Services unless Defendant is a duly licensed attorney or properly accredited by the BIA;³
- e. Holding himself out to the public as an attorney or “citizenship specialist,” unless Defendant is a duly licensed attorney or properly accredited by the BIA;
- f. Representing, directly or by implication, that Defendant has the skill, expertise, or competence to handle Immigration Services matters unless Defendant is a duly licensed attorney or properly accredited by the BIA;
- g. Representing, directly or by implication, that this Court or the Office of the Attorney General have approved any good or service sold or offered for sale by Defendant, or approved of any of Defendant’s business practices;
- h. Representing, directly or by implication, that Immigration Services will be provided under the direct supervision of an attorney when such is not the case;
- i. Aiding another person in the unauthorized practice of law; and
- j. Sharing fees with duly licensed attorneys for Immigration Services.

18. The State prays that Guerra be ordered to immediately send written notification to all consumers, if any, whose cases are pending that they have the option of either agreeing to the transfer of their cases to an attorney authorized to practice federal or state law within the State of Texas or to the return of their files at no additional charge.

19. The State prays that Guerra be ordered to post notice at any place where he currently conducts business involving immigration services, which notice shall be on the front side of the

³ Defendant may accept money or valuable consideration if she is an employee of a law firm owned and operated by an attorney authorized to practice federal or state law within the State of Texas and Defendant accepts it on behalf of said firm and under the direction of an attorney.

front door, in red bold-faced type of a minimum size of 40-points, in both English and Spanish, and shall state that by order of the court, he is prohibited from preparing any type of legal document, filling out immigration documents, or conducting business as an immigration service provider.

20. The State prays that this Court will order Guerra to:

- a. Pay civil penalties not to exceed \$20,000.00 per violation to the State of Texas for each violation of the DTPA;
- b. Pay pre-judgment and post-judgment interest on all awards of civil penalties, as provided by law; and
- c. Pay all costs of court and reasonable attorney's fees pursuant to Tex. Gov't Code § 402.006(c).

21. The State further respectfully prays for all other relief to which the State may be justly entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General of Texas

BRANTLEY STARR
Deputy First Assistant Attorney General

DARREN MCCARTY
Deputy Attorney General for Civil Litigation

PAUL SINGER
Chief, Consumer Protection Division

/s/ Valeria Sartorio

VALERIA SARTORIO

SBN 24073758

valeria.sartorio@oag.texas.gov

STEVEN ROBINSON

steven.robinson.oag.texas.gov

SBN 24046738

Assistant Attorneys General

Office of the Texas Attorney General

Consumer Protection Division

112 E. Pecan, Suite 735

San Antonio, Texas 78205

Telephone (210) 225-4191

Fax (210) 225-1075

ATTORNEYS FOR PLAINTIFF

EXHIBIT LIST

- Exhibit A: American Citizenship Services 2018 Fee Schedule
- Exhibit B: Declaration of Steven Lang, Executive Office of Immigration Review
- Exhibit C: Excerpts from Transcript of Examination Under Oath of Francisco Guerra, Jr.
- Exhibit D: Francisco Guerra Jr.'s Business Card
- Exhibit E: Photograph of Francisco Guerra Jr.'s Home Office