

FILED
DISTRICT CLERK
BEXAR CO. TEXAS

STATE OF TEXAS,
Plaintiff

v.

JAMES M. MCMAHON, JR., and
LINDA M. ZUFLACHT
Defendants

§ 12 JUL 25 PM 2:04 IN THE DISTRICT COURT
§ DEPUTY
§ _____ TH JUDICIAL DISTRICT
§
§
§
§
§ BEXAR COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR
TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, GREG ABBOTT, and complains of and files this Original Petition and Application for a Temporary and Permanent Injunction, complaining of and against JAMES M. MCMAHON, JR., and LINDA M. ZUFLACHT. In support thereof, Plaintiff respectfully shows unto the Court the following:

I. DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under a Level 2 discovery control plan, pursuant to Texas Rule of Civil Procedure 190.

II. AUTHORITY

2. This action is brought by the Attorney General of Texas, GREG ABBOTT, through the Consumer Protection Division, in the name of the STATE OF TEXAS and in the public interest, under the authority granted by Section 17.47 of the Texas Deceptive Trade Practices Act, TEX. BUS. & COMM. CODE §§ 17.41 *et seq.* (hereafter "DTPA"), upon the grounds that Defendants have engaged in false, deceptive, and misleading acts and practices in the course of trade and commerce as defined in and declared unlawful by, Sections 17.46(a) and 17.46(b) of the DTPA.

The DTPA permits the Texas Attorney General to bring an action to restrain by Temporary and Permanent Injunction, the use of any method, act, or practice declared to be unlawful by Section 17.46 of the DTPA, where such proceedings are in the public interest.

III. DEFENDANTS

3. Defendant JAMES M. MCMAHON, JR. is the co-owner, and principal, of ADOPTION SERVICES ASSOCIATES, INC. d/b/a TIMMENS ADOPTION SERVICES, a.k.a. ASA. Defendant does business in Texas as alleged herein, and may be served with process by serving him at **his place of residence and business: 5370 Prue Road, San Antonio, Texas 78240-1621.**

4. Defendant LINDA M. ZUFLACHT is the co-owner, principal, Director, and Licensed Child Care Administrator of ADOPTION SERVICES ASSOCIATES, INC., d/b/a TIMMENS ADOPTION SERVICES, a.k.a. ASA. Defendant does business in Texas as alleged herein, and may be served with process by serving her at **her place of residence and business: 5370 Prue Road, San Antonio, Texas 78240-1621.**

IV. VENUE

5. Venue of this action lies in Bexar County, Texas pursuant to Section 17.47(b) of the DTPA and Section 15.002 of the Texas Civil Practices and Remedy Code, as the transactions and events giving rise to this action occurred in Bexar County and/or because Defendants have done or are doing business in Bexar County, Texas.

V. PUBLIC INTEREST

6. Plaintiff, STATE OF TEXAS, has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth below, and Plaintiff has reason to

believe that Defendants have, by means of these unlawful acts and practices, caused damage to and acquired money from persons in and out of this State, and caused and will continue to cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Therefore, the Attorney General of Texas has reason to believe that these proceedings are in the public interest.

VI. ACTS OF AGENTS

7. When it is alleged that Defendants did any act, it is meant that Defendants performed or participated in the act, or that the Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

VII. TRADE AND COMMERCE

8. Defendants have, at all times described below, engaged in conduct which constitute trade and commerce, as those terms defined by Section 17.45(6) of the DTPA.

VIII. NOTICE BEFORE SUIT

9. The Consumer Protection Division of the Office of the Attorney General has informed the Defendant, at least seven (7) days prior to suit, in general of the alleged unlawful conduct, more particularly described below by: the issuance of a Civil Investigative Demand; and oral and written communications with the Defendants' attorney.

IX. NATURE OF DEFENDANTS' OPERATIONS

10. Defendants JAMES M. MCMAHON, JR. and LINDA M. ZUFLACHT, were the owners and employees of ASA which did business as a private adoption agency. In the course of their duties for and on behalf of ASA, they failed to disclose to their customers that they would be closing their business when they requested money from those customers for adoption services,

leading those consumers to believe that the Defendants would fulfill the contract between them and ASA to provide adoption related services.

- (A) On or about December 6, 2010, Leon Chakmakian was contacted by Linda Zuflacht of ASA who accepted them as adoptive parents in their program. Beginning in May 2011, Mr. and Mrs. Chakmakian paid ASA \$26,625.00 for their adoption services and birth mother expenses. That adoption failed, but two weeks before ASA notified them that the business was closed, the Chakmakians talked with an employee of ASA to arrange for a new birth mother, and the employee made no mention of the business closing. *See Exhibit A, attached.*
- (B) On or about February 14, 2011, Thierry Clavier was contacted by was contacted by Linda Zuflacht of ASA who accepted them as adoptive parents in their program. On March 22, 2011 Mr. & Mrs. Clavier paid ASA \$13,400.00 for the first installment of the nonrefundable Agency Fees. On November 7, 2011, the Claviers paid an additional \$20,000.00 for the Agency Fee and \$16,730.00 for an advance on the birth mother expenses. One week before ASA notified them that the business was closed; the Claviers talked with an employee of ASA and were told that arrangements were being made for the birth mother to meet them in San Antonio. From their initial involvement with ASA in November of 2011, until the notice of April 5, 2012, ASA gave them no indication that the business would be closing and that they would not be receiving a refund. *See Exhibit B, attached.*
- (C) On November 4, 2011, the Defendants were notified by the New York State Office of Children and Family Services that they were “no longer authorized to operate an adoption program in New York State” and to “notify all of its NYS

clients of the agency's current legal status in New York State". See Exhibit C attached.

X. FALSE, MISLEADING, AND DECEPTIVE ACTS AND PRACTICES

11. Defendants, as alleged above and detailed below, have in the course of trade and commerce engaged in false, misleading, and deceptive acts and practices declared unlawful in Sections 17.46(a) and 17.46(b) (5) & (24) of the DTPA. Such acts include:

- A) engaging in false, misleading, or deceptive acts or practices in the conduct of any trade or commerce, as alleged more specifically herein, in violation of Section 17.46(a) of the DTPA;
- B) 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 they do not have, as alleged more specifically herein, in violation of Section 17.46(b) (5) of the DTPA; and
- C) failing to disclose information concerning goods or services which was known at the time of the transaction, when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, as alleged more specifically herein, in violation of Section 17.46(b) (24) of the DTPA.

XI. INJURY TO CONSUMERS

12. Defendants have, by means of these unlawful acts and practices, obtained money from identifiable persons to whom such money or property should be restored or who, in the alternative, are entitled to an award for damages.

XII. DISGORGEMENT

13. All of the Defendants' assets are subject to the equitable remedy of disgorgement, the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains, benefits, profits, and real property that resulted from Defendants fraudulent actions and misrepresentation their services. Defendants should be ordered to disgorge all monies fraudulently taken from individuals, 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.

XIII. REPATRIATION OF ASSETS

14. After due notice and a hearing, the Court should order that all of Defendants' assets situated outside the jurisdiction of this Court be deposited or repatriated into an appropriate financial institution within the jurisdiction of this Court, or title to such assets be held in the registry of this court until such time as this court has made a determination as to the rightful owners of those assets.

XIV. TRIAL BY JURY

15. Plaintiff STATE OF TEXAS herein requests a jury trial and tenders the jury fee to the Bexar County District Clerk's office, pursuant to Texas Rule of Civil Procedure 216 and Section 51.604. of the Texas Government Code Annotated.

XV. APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIONS

16. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the laws of the State of Texas as alleged in this Petition. Unless enjoined by this Honorable Court, Defendants will continue to engage in business in violation of the DTPA, as alleged herein, and will cause immediate, irreparable injury

and harm to the State of Texas and to the general public. Therefore, Plaintiff requests that a Temporary Injunction and a Permanent Injunction be issued.

XVI. PRAYER

17. WHEREFORE, Plaintiff STATE OF TEXAS prays that Defendants be cited according to law to appear and answer herein; that after due notice to Defendants and a hearing, a TEMPORARY INJUNCTION be issued; and that on final trial of this cause, a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, Defendants' successors, assigns, officers, agents, servants, employees and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

- A) transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written or computer generated materials relating to the business of Defendants currently or hereafter in their possession, custody, or control except in response to further orders or subpoenas in this cause;
- B) transferring, spending, hypothecating, concealing, encumbering, or removing 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 possession of, or claimed by Defendants, insofar as such property relates to, arises out of, or was derived from the business operation of Defendants; including, but not limited to - real property at **5370 Prue Road, San Antonio, Texas** - real property at **9134 Newcombe Dr., Converse, Texas** – a **thirty six foot 1984 Cape Dory yacht, hull ID # CPDT0122M84G, vessel # 675640** – a **ten foot Avon**

Marine power boat, hull ID # AVB16522L798, registration # 6425JF, without further order of this Court;

- C) **falsely advertising and representing to consumers inside and outside the State of Texas, expressly or by implication, that Defendants can perform any type of adoption services;**
- D) **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 of, or claimed by said Defendants without notice to Plaintiff and the approval of this Court; and;**
- E) **destroying, altering, mutilating, concealing, transferring, or otherwise disposing of or changing any records related to any Defendant or entity in which any Defendant has an ownership interest.**

18. **In addition, Plaintiff, STATE OF TEXAS, respectfully prays that this Court will:**

- A) **adjudge against Defendants civil penalties in favor of Plaintiff in an amount of not more than \$20,000.00 per violation of the DTPA;**
- B) **order Defendants to restore all money or 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;**
- C) **order Defendants to pay Plaintiff's, attorney fees and costs of court, pursuant to Section 402.006(c) of the Texas Government Code;**

- D) order Defendants to pay pre-judgment interest on all awards of restitution, damages, civil penalties and attorney fees as provided by law; and
- E) grant all other relief to which Plaintiff may show it is entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JOHN SCOTT
Deputy Attorney General for
Civil Litigation

TOMMY PRUD'HOMME
Assistant Attorney General
Chief, Consumer Protection Division



JAMES E. CUSTER

SBN 24004605

KARYN MEINKE

SBN 24032859

Assistant Attorneys General
Office of the Attorney General of Texas
Consumer Protection Division
115 E. Travis, Suite 925
San Antonio, Texas 78205-1615
Telephone: 210-225-4191, ext. 1110
Facsimile: 210-225-1075

ATTORNEYS FOR PLAINTIFF

STATE OF VIRGINIA

§

COUNTY OF FAIRFAX

§

§

AFFIDAVIT OF LEON CHAKMAKIAN

Before me, the undersigned authority, personally appeared **LEON CHAKMAKIAN**, who by me having been duly sworn and identified by his Virginia Driver's License, did upon his oath state as follows:

“My name is **LEON CHAKMAKIAN**. I am over 18 years of age, of sound mind, and capable of making this affidavit. I am personally acquainted with the facts stated herein, and verify that they are true and correct.

My wife and I are residents of the State of Virginia. After deciding to pursue adoption, we contacted ASA and formally applied to adopt through their agency and were accepted through an initial letter of acceptance dated December 6, 2010 signed by Linda M. Zuflacht.

We paid a total of \$26,625.00 paid throughout various stages of the adoption process beginning on May 11, 2011. In January 2012, we had an adoption that failed due to the birth mother changing her mind at the last minute.

Since the failure of the aforementioned adoption, I had several conversations with ASA staff member, Ms. Nikki Lopez. Two weeks prior of receiving the April 5th 2012 notice, I spoke with Ms. Lopez again in which I consented in searching for a new birth mother in which she agreed to find a new birth mother.

On April 5, 2012, I received an email from Jim McMahon for Linda Zuflacht stating the following: ‘That economic conditions have made it impossible for Adoption Services Associates to continue operations and with deep sadness and regret, we are forced to cease operations immediately..’.

We were not placed with a birth mother and did not receive a refund for the aforementioned amount paid.”

“Affiant further saith not.”



LEON CHAKMAKIAN



SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority on
this the 14 day of July 2012.



Notary Public-State of Virginia



STATE OF NEW JERSEY §
 §
COUNTY OF BERGEN §

AFFIDAVIT OF THIERRY CLAVIER

Before me, the undersigned authority, personally appeared **THIERRY CLAVIER**, who by me having been duly sworn and identified by his New Jersey Driver's License, did upon his oath state as follows:

My name is **THIERRY CLAVIER**. I am over 18 years of age, of sound mind, and capable of making this affidavit. I am personally acquainted with the facts stated herein, and verify that they are true and correct.

My wife and I are residents of the State of New Jersey. After deciding to pursue adoption, we contacted ASA and formally applied to adopt through their agency and were accepted into their "Parents in Partnership" program through an initial letter of acceptance dated February 14, 2011 signed by Linda M. Zuflacht.

We paid \$13,400.00 for the first part of the agency fees on March 22, 2011, and waited to be matched to a birth mother for adoption. We were matched to a birth mother by the agency and paid the remainder of the fees on November 7, 2011 in the amount of \$23,330.00. The breakdown of the fees is supposed to be as follows: \$20,00.00 for agency fees and \$16,730.00 for advanced and birth expenses.

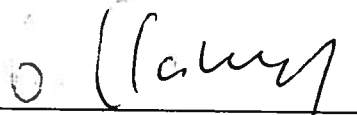
One week before getting the April 5th, 2012 notice, I had a telephone conversation with an ASA staff member, Ms. Nikki Lopez who explained to me at that time, arrangements were being made for the birth mother to travel to Texas and meet with Adoption Services Associates and the possibility of me traveling to ASA as well.

From November 2011 through up until the time I received an email on April 5, 2012, we were in constant communication with Adoption Services Agency with no indication whatsoever, that the agency was having financial difficulties and the news that we were about to receive that they were closing their business.

On April 5, 2012, we received an email from the agency stating that they were closing their business due to apparent financial difficulties with no other details for information. That means no contacts, no news, nothing, except a couple of emails during the following days explaining the situation. At this time, all the fees have been paid, and nothing has been reimbursed. Now, we have to try to carry on our own adoption process with another agency and again paying fees and expenses. The emotional, stressful, and financial impact is devastating for our family."




"Affiant further saith not."



THIERRY CLAVIER

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority on
this the 14 day of July 2012.





Notary Public-State of New Jersey



New York State
Office of
Children &
Family
Services

www.ocfs.state.ny.us

Andrew M. Cuomo
Governor

Gladys Carrión, Esq.
Commissioner

Capital View Office Park
52 Washington Street
Rensselaer, NY
12144-2834

April 13, 2012

Linda Zuflacht
James McMahon
Adoption Services Associates
5370 Prue Road
San Antonio, Texas 78240

Dear Ms. Zuflacht and Mr. McMahon,

Recent information received by the Office of Children and Family Services (OCFS) indicates that Adoption Services Associates (ASA) has closed its office in Texas and plans to surrender or has surrendered its license to operate an adoption program to the Residential Child Care Licensing (RCCL) Division of the Texas Department of Family and Protective Services.

As you are aware, OCFS informed ASA by letter dated November 4, 2011 that ASA was no longer authorized to operate an adoption program in New York State (NYS) for the reasons noted in that letter. You were directed to cease accepting additional New York State clients. However, OCFS also informed ASA that OCFS was willing to work with ASA to conclude adoptive placements involving NYS clients awaiting finalization. ASA was also provided a new application to apply for approval of its adoption program in New York State. By letter dated December 6, 2011, OCFS repeated its offer to work with ASA to conclude adoptions involving New York State clients with whom matches had been made. In addition, OCFS directed ASA to notify all of its NYS clients of the agency's current legal status in New York State and to provide such clients with a contact person at ASA to address client questions and concerns.

With the action ASA has taken in the State of Texas, OCFS is deeming ASA's application in New York for approval to operate an adoption program in New York as withdrawn.

As an adoption agency previously approved by OCFS, the following information must be provided to this office:

- 1) a list of New York State clients who have not yet finalized the adoption process with information on the current status of their adoption plan
- 2) the agency plan for honoring contracts and other agreements with New York clients



An Equal Opportunity Employer



- 3) the agency plan to transfer New York client case records to another NYS approved adoption agency
- 4) a copy of the agreement with a NYS approved adoption agency to handle post adoption requirements
- 5) a copy of the agreement with a NYS approved adoption agency to store, maintain and retrieve New York client records

At the request of ASA and by letter dated January 26, 2012 OCFS agreed that Stephen Moisoff could maintain agency files for New York State clients during the application process of ASA. As ASA will no longer proceed with that process in NYS, ASA must identify a New York State authorized agency that will maintain those records.

All of the information required above must be provided in writing within 30 days of receipt of this letter.

Sincerely,



Carol McCarthy

cc: Brenda Rivera
Leora Neal
John Stupp
Craig Sunkes
Steve Moisoff
Greg Abbott, Texas Attorney General
Willy Salas, Texas DFPS