

IN THE CHANCERY COURT FOR SHELBY COUNTY, TENNESSEE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

STATE OF TENNESSEE, *ex rel.* ROBERT)
E. COOPER, JR.,)

Plaintiff,)

v.)

No. C4-09-0921-1

CONNOR DIAZ, individually and doing)
business as DIAZ SERVICIO DE TAXES,)

Defendants.)

AGREED FINAL JUDGMENT

Plaintiff, the State of Tennessee, by and through Robert E. Cooper, Jr., the Attorney General and Reporter, at the request of Mary Clement, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance, and Defendants, Connor Diaz, individually and doing business as Diaz Servicio de Taxes (hereinafter collectively "Defendants"), as evidenced by their signatures, do consent to the entry of this Judgment and its provisions. Defendants enter into this Judgment to avoid the time and expense associated with litigation. This is an Agreed Final Judgment ("Order" or "Judgment") for which execution may issue.

This Agreed Final Judgment is entered into by Defendants as their own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed upon them by this Agreed Final Judgment, and they consent to its

entry without further notice, and aver that no offer, agreements or inducements of any nature whatsoever have been made to them by the Plaintiff or their attorneys or any employee of the Attorney General's Office to procure this Agreed Final Judgment.

In the event the Court shall not approve this Agreed Final Judgment, this Judgment shall be of no force and effect against the State of Tennessee.

This Agreed Final Judgment shall bind Defendants and shall be binding on any and all future purchasers, merged parties, inheritors, or other successors in interest to Defendants.

Defendants have, by signature of Conny Diaz, waived any right to appeal, petition for certiorari, move to reargue or rehear or be heard in connection with any judicial proceedings upon this Judgment.

This Order only resolves the specific matter set forth in the State's Complaint arising under Tenn. Code Ann. § 8-16-401 relating to business cards distributed between March 2008 and October 5, 2008 and the specific advertisement published in *La Prensa Latina* between February 25, 2008 and October 5, 2008, both of which violated the Notaries Public statute by advertising as a notario public without the required disclaimer. The State does not allege and does not waive any other causes of action including but not limited to the use of the term notario publico at any other time or any other representations or warranties regarding the providing of legal services. Under Tenn. Code Ann. § 8-16-401, a notary public who is not licensed to practice law in Tennessee and advertises their services as a notary public must include in all advertisements the following disclaimer:

“I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF TENNESSEE, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”

This disclaimer must appear in English and the language of the advertisement.

Defendants published a weekly advertisement in *La Prensa Latina* between February 25, 2008 and October 5, 2008 which stated the Defendants were a “Notario Publico.” The advertisement did not contain the disclaimer required by Tenn. Code Ann. § 8-16-401. The State gave Defendants notice of its intent to sue as provided for in Tenn. Code Ann. § 47-18-108(a)(2). Defendants subsequently disclosed that the business cards used between March 2008 and October 5, 2008 also state “Notaría” without the required disclaimer. Due to the Defendants’ actions in violation of Tenn. Code Ann. § 8-16-401, the State filed a complaint in the Chancery Court for Shelby County, Tennessee. The State and Defendants have reached an agreement annunciated in this Judgment.

1. JURISDICTION

1.1 Jurisdiction of this Court over the subject matter and over the Defendants for the purpose of entering into and enforcing this Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply to this Court for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Order, including the enforcement of compliance therewith and penalties for violation thereof. Defendants agree to pay all court costs and attorneys’ fees associated with any successful petitions to enforce any provision of this Order against Defendants.

2. VENUE

2.1 Pursuant to Tenn. Code Ann. § 47-18-108(a)(3), venue as to all matters between the parties relating hereto or arising out of this Order is solely in Shelby County, Tennessee.

3. PARTIES

3.1 Defendants warrant and represent that they are the proper parties to this Order. Their principal place of business is 1071 Goodman Road West in Horn Lake, MS 38637. Defendants further acknowledge that they understand that the State expressly relies upon this representation and warranty, and that if it is false, unfair, deceptive, misleading or inaccurate, the State has the right to move to vacate or set aside in whole or in part this Order, or request that Defendants be held in contempt, if the State so elects.

3.2 Defendants Conny Diaz, individually and doing business as Diaz Servicio de Taxes, represent that these are the true legal names of the entities entering into this Order. Further, Defendants represent and warrant that Diaz Servicio de Taxes is not incorporated or otherwise authorized to do business in the State of Tennessee but is merely the business name of Conny Diaz. The Defendants understand that the State expressly relies upon this representation and if said representation is false, inaccurate, deceptive, unfair or misleading, the State has the right to move to vacate or set aside in whole or in part this Order or request that the Defendants be held in contempt, if the State so elects.

4. DEFINITIONS

As used in this Agreed Final Judgment, the following words or terms shall have the following meanings:

- 4.1 “Agreed Final Judgment”, “Judgment” or “Order” shall refer to this document entitled Agreed Final Judgment in the matter of *State of Tennessee v. CONNY DIAZ, individually and doing business as DIAZ SERVICIO DE TAXES*.
- 4.2 “Attorney General” means Office of the Tennessee Attorney General.
- 4.3 “Consumer” means any person, a natural person, individual, governmental agency or other entities, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.
- 4.4 “Clear and Conspicuous” or “Clearly and Conspicuously”: A statement is “Clear and Conspicuous” or “Clearly and Conspicuously” disclosed if, by whatever medium, it is readily understandable and presented in such size, color, contrast, location, and audibility, compared to other information with which it is presented, that is readily apparent to the person to whom it is disclosed. If such statement is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner which is readily noticeable and understandable. Further, a disclosure of information is not clear and conspicuous if, among other things, it is obscured by the background against which it appears or there are other distracting elements. Warnings, safety disclosures or statements of limitation must be set out in close conjunction with the benefits described, or with appropriate captions, of such prominence that warnings, safety disclosures or statements of limitation are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the statement so as to be confusing or misleading. The statement shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the statement shall be used in any communication.
- 4.5 “Defendant,” “Defendants,” “Conny Diaz” or “Diaz Servicio de Taxes” shall refer to Conny Diaz individually and doing business as Diaz Servicio de Taxes and/or any and all and/or any all officers, directors, owners, employees, managers, partners, parents, subsidiaries, successors, assigns, agents and representatives acting on behalf of Conny Diaz individually and doing business as Diaz Servicio de Taxes.
- 4.6 “Division” or “Division of Consumer Affairs” shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.
- 4.7 “Tennessee Consumer Protection Act” or “Consumer Act” shall refer to the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. § 47-18-101 *et seq.*

4.8 “Notaries Public statute” shall refer to the Consumer Protection part of the Notaries Public statute and related statutes found at Tenn. Code Ann. § 8-16-401 *et seq.*

5. APPLICATION OF ORDER TO DEFENDANT AND ITS SUCCESSORS

5.1 Defendants agree that the duties, responsibilities, burdens and obligations undertaken in connection with this Order shall apply to the Defendants, to each of its officers, owners, directors, partners, subsidiaries, affiliates, managers, parents, related entities, agents, assigns, representatives, employees, successors, sales staff and any and all other persons or entities acting directly or indirectly on its behalf.

6. PERMANENT INJUNCTION AND REHABILITATION

Accordingly, it is hereby agreed by the Defendants that immediately upon the entry of this Order, pursuant to Tenn. Code Ann. § 47-18-108(a)(4), Defendants and anyone in concert with them, shall be permanently and forever enjoined, restrained and bound from directly or indirectly engaging in the practices set forth herein and further, permanently required to directly or indirectly satisfy the affirmative requirements set forth herein:

6.1 Defendants shall not advertise as a notario publico or term of similar import without the disclaimer required by the Notaries Public statute, Tenn. Code Ann. § 8-16-401 *et seq.*

6.2 Defendants shall be prohibited from stating, implying or causing to be stated or implied that any employee is an attorney unless such employee has a license to practice law in the state of Tennessee.

6.3 Defendants shall be prohibited from stating, implying or causing to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Defendants.

6.4 Defendants shall be prohibited from representing or implying that any procedures or other acts or practices hereafter used or engaged in by Defendants have been approved, in whole or in part, by the State.

7. ATTORNEYS' FEES AND COSTS TO THE STATE

7.1 Pursuant to Tenn. Code Ann. §§ 47-18-108(b)(3) and 47-18-108(a)(5), Defendants shall pay the sum of Five Hundred Dollars (\$500.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes or other lawful purpose at the sole discretion of the Attorney General. Said payment shall be made by providing a certified or cashier's check made payable to the "Treasurer, State of Tennessee - Attorney General" and shall be delivered to the Attorney General on the day of execution of this Order.

8. CIVIL PENALTIES

8.1 Pursuant to Tenn. Code Ann. § 47-18-108(b)(3), Defendants shall pay the sum of Five Hundred Dollars (\$500.00) to the State of Tennessee as a civil penalty for the Defendants' acts and/or practices described. Said payment shall be made immediately upon execution of this Order by providing the Attorney General with a certified check made payable to the "Treasurer, State of Tennessee - Civil Penalties."

9. GENERAL PROVISIONS

9.1 This Order may only be enforced by the parties hereto and this Honorable Court.

9.2 The titles and headers to each section of this Order are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Order.

9.3 As used herein, the plural shall refer to the singular and the singular shall refer to the plural and the masculine and the feminine and the neuter shall refer to the other, as the context requires.

9.4 Nothing in this Order shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Order shall not bar the State, or any other governmental entity from enforcing laws, regulations or rules against the Defendants.

9.5 Nothing in this Order constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

9.6 Defendants waive and will not assert any defenses Defendants may have to any criminal prosecution or administrative action relating to the conduct described in the State's Complaint, which defenses may be based, in whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in *Hudson v. United States*, 118 S. Ct. 488 (1997), and *Austin v. United States*, 509 U.S. 602 (1993), and agrees that the amount that Defendants have agreed to pay under the terms of this Order is not punitive in effect or nature for purposes of such criminal prosecution or administrative action.

9.7 Defendants hereby expressly waive and relinquish any and all rights, remedies, appeals or other interests that he/she/it may possess to a jury trial or any derivative rights that flow from a trial by jury under the Tennessee Constitution or United States Constitution or any other law, regulation or rule.

9.8 No waiver, modification, or amendment of the terms of this Order shall be valid or binding unless approved by this Honorable Court and then only to the extent set forth in such written waiver, modification or amendment.

9.9 Any failure by any party to this Order to insist upon the strict performance by any other party of any of the provisions of this Order shall not be deemed a waiver of any of the provisions of this Order, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Order and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of attorneys' fees to the State.

9.10 If any clause, provision or section of this Order shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Order and this Order shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

9.11 Defendants waive any and all challenges in law or equity to the entry of the Order by the courts. Further, Defendants have waived any right to appeal, petition for *certiorari*, move to reargue or rehear or to otherwise be heard in connection with any judicial proceedings under this Order.

9.12 Time shall be of the essence with respect to each provision of this Order that requires action to be taken by the Defendants within a stated time period or upon a specified date.

9.13 This Order sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Order which are not fully expressed herein or attached hereto.

9.14 Nothing in this Order shall be construed to waive any claims of Sovereign Immunity the State may have in any action or proceeding.

9.15 This Order constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Complaint. This Order is limited to resolving only matters set forth in the State's Complaint.

9.16 If the Defendants decline to obtain the assistance of legal counsel, Defendants have expressly waived their right to counsel by executing this Order.

9.17 Defendants will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Order or for any other purpose which would otherwise circumvent any part of this Order or the spirit or purposes of this order.

9.18 The Defendants have provided the State with certain documents, advertisements, and contracts. The Defendants acknowledge and agree that providing these documents to the State in no way constitutes the State's pre-approval, review for compliance with state or federal law, or with this Order, or a release of any issues relating to such documents.

10. REPRESENTATIONS AND WARRANTIES

10.1 Defendants represent and warrant that the execution and delivery of this Order is their free and voluntary act, that this Order is the result of good faith negotiations.

10.2 Defendants represent and warrant that signatories to this Order have authority to act for and bind the Defendants.

10.3 Defendants represent and warrant that the only way the term “notario publico” was used was in advertisements published in *La Prensa Latina* between February 25, 2008 and October 5, 2008 and the only way “Notaría” was used was on business cards distributed between March 2008 and October 5, 2008.

10.4 Defendants represent and warrant that their sales to Tennessee consumers amounted to less than Seven Thousand Five Hundred Dollars (\$7,500.00).

10.5 Defendants represent and warrant that the financial information provided to the State of Tennessee is true, accurate, non-deceptive, and non-misleading.

10.6 The Defendants understand that the State expressly relies upon these representations and warranties and if said representations or warranties are false, inaccurate, deceptive, unfair, incomplete or misleading in any way, the State has the right to move to vacate or set aside in whole or in part this Order or request that the Defendants be held in contempt or otherwise seek statutory sanctions and remedies, if the State so elects.

11. COMPLIANCE WITH ALL LAWS

11.1 Nothing in this Order shall be construed as relieving the Defendants of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this

Order be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

12. PENALTY FOR FAILURE TO COMPLY

12.1 Defendants understand that upon execution and filing of this Order, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

12.2 Defendants understand and acknowledge that pursuant to the provisions of the Notaries Public Statute, Tenn. Code Ann. §§ 8-16-401(a) and 8-16-403, any knowing violation of the terms of this Order shall be *prima facie* evidence of a violation of the Tennessee Consumer Protection Act and punishable by civil penalties of not more than Two Thousand Dollars (\$2,000.00) for each violation, in addition to any other appropriate sanctions including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties.

13. MONITORING FOR COMPLIANCE

13.1 Upon request, Defendants shall provide books, records or documents to the State at any time, and further, to informally, or formally under oath, provide testimony or other information to the State relating to compliance with this Order. Defendants shall make any requested information available within one (1) week of the request, at the Office of the Attorney General or at such other location within the State of Tennessee as is mutually agreeable in writing to the Defendants and the Attorney General. This shall in no way limit the State's right to obtain documents, records, testimony or other information pursuant to any law, regulation, or rule.

13.2 Within thirty (30) days of the entry of this Order, the Defendants shall submit a copy of this Order to each of its officers, directors, employees and any third parties who act directly or indirectly on behalf of the Defendants as an agent, independent contractor or who are involved in conducting business in the State of Tennessee. Within forty-five (45) days of entry of this Order, the Defendants shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Order.

13.3 The State of Tennessee has the right to test shop Defendants for the purpose of confirming compliance with this Order and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with the Defendants. Further, the State of Tennessee may record (audio and/or video) any or all aspects of its solicitations or visit(s) with the Defendants in audio or video form without notice to the Defendants. The Defendants agree to void any sale that is commenced by a test shopper at the conclusion of the sale upon notification that it was test shopping conducted by the State.

14. PRIVATE RIGHT OF ACTION

14.1 Nothing in this Order shall be construed to affect any private right of action that a consumer may hold against Defendants.

15. NOTIFICATION TO STATE

15.1 For five (5) years following execution of this Order, Defendants shall notify the Attorney General, c/o Consumer Advocate & Protection Division, Post Office Box 20207, Nashville, Tennessee 37202-0207, in writing at least thirty (30) days prior to the effective date of any proposed changes in its business structure, such as dissolution, assignment, or sale resulting in the emergence of a successor business, corporation or firm, the creation or dissolution or

subsidiaries, or any other changes in Defendants' status that may affect compliance with obligations arising out of this Judgment.

15.2 Any notices required to be sent to the State or the Defendants by this Order shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the Tennessee Attorney General:

Deputy Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, Tennessee 37202
Telephone: (615) 741-1671

For the Defendants:

Conny Diaz
1071 Goodman Road West
Horn Lake, MS 38637
Telephone: (901) 359-2978

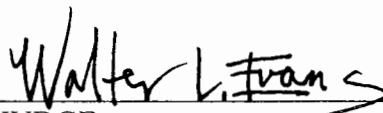
16. PAYMENT OF COURT COSTS

16.1 All court costs associated with this action and any other incidental costs or expenses incurred thereby shall be borne by Defendants. No costs shall be taxed to the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

17. WAIVER OF SERVICE AND SUBMISSION TO COURTS JURISDICTION

17.1 Defendants, by signing this Agreed Final Judgment, waive service of process and voluntarily submit to the jurisdiction of this Court.

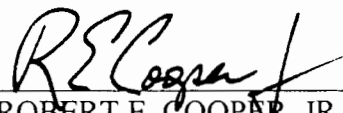
IT IS SO ORDERED, ADJUDGED AND DECREED.

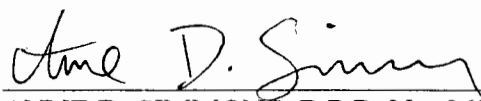

JUDGE

04/29/09

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:

FOR THE STATE OF TENNESSEE:


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


ANNE D. SIMMONS B.P.R. No. 26272
Assistant Attorney General
JFFREY L. HILL B.P.R. No. 16731
Senior Counsel
State of Tennessee
Office of the Attorney General
Consumer Advocate & Protection Division
Post Office Box 20207
Nashville, TN 37202-0207

Telephone: (615) 532-2590
Facsimile: (615) 532-2910

APPROVED BY:

A handwritten signature in cursive script that reads "Mary Clement". The signature is written in black ink and is positioned above a horizontal line.


MARY CLEMENT, DIRECTOR
Division of Consumer Affairs

FOR THE DEFENDANTS:



CONNY DIAZ

Owner

Social Security #: 

Diaz Servicio de Taxes

1071 Goodman Road West

Horn Lake, MS 38637

Phone: (901) 359-2978

Facsimile: (662) 349-0940

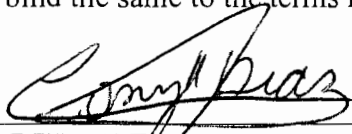
Email: taxesdiaz@hotmail.com

DEFENDANTS, CONNY DIAZ, INDIVIDUALLY AND DOING BUSINESS AS DIAZ
SERVICIO DE TAXES

SIGNATURE AND ACKNOWLEDGMENT

Defendants, Conny Diaz, individually and doing business as Diaz Servicio de Taxes have read and understand this Agreed Final Judgment and each of its terms. Defendants, Conny Diaz, individually and doing business as Diaz Servicio de Taxes admit to the jurisdiction of the Court in this matter and consents to the entry of this Judgment. Defendants, Conny Diaz, individually and doing business as Diaz Servicio de Taxes agree to each and every term contained herein.

I, Conny Diaz, being first duly sworn on oath, depose and say that I am the owner and operator of Diaz Servicio de Taxes sued by the State of Tennessee and am fully authorized and empowered to sign this Agreed Final Judgment on behalf of myself and Diaz Servicio de Taxes, and bind the same to the terms hereof.



CONNY DIAZ

SUBSCRIBED AND SWORN to before
me this 23rd day of March, 2009.

Notary Public

My Commission Expires: November 13, 2012



