IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

2009 FEB 29 PM 2:54

STATE OF TENNESSEE, *ex rel.* ROBERT E. COOPER, JR., ATTORNEY GENERAL and REPORTER,	)	
Plaintiff,	)	**No. _____**
v.	)	
ELMER VIRULA, individually and doing business as TPS TAX PROFESSIONAL SERVICES, INC. and OFFICE PROFESSIONAL SERVICES, INC.; TPS TAX PROFESSIONAL SERVICES, INC., a Tennessee corporation; and OFFICE PROFESSIONAL SERVICES, INC., a Tennessee corporation,	)	
Defendants.	)	

COMPLAINT 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") pursuant to Tenn. Code Ann. § 23-3-103 of the Unauthorized Practice and Improper Conduct statutes, Tenn. Code Ann. § 23-3-101 *et seq.* ("Unauthorized Practice of Law statutes" or "UPL statutes"), Tenn. Code Ann. § 47-18-108 of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.* ("TCPA"), the Notaries

Public statute, Tenn. Code Ann. § 8-16-401 *et seq.*, the Attorney General's general statutory authority at Tenn. Code Ann. § 8-6-109, and the Attorney General's common law authority.

2. Mary Clement, 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 the above-named Defendants for violations of the TCPA.

3. The Director and the Attorney General have reason to believe that the Defendants named herein have violated the UPL statutes, the TCPA and the Notaries Public statute. The Director and the Attorney General also have reason to believe that this action is in the public interest.

4. Pursuant to Tenn. Code Ann. § 47-18-108(a)(2), the Division is required to give ten (10) days notice of its intention to institute legal proceedings against the above-named Defendants unless the Division determines in writing that the purposes of the TCPA would be substantially impaired by further delay in instituting legal proceedings by attempts to serve the notice letter. The Division has made such a determination because the above-named Defendants have created and/or sold falsified government records to consumers. An affidavit of Director Mary Clement is attached as Exhibit A. The State needs to proceed as stated in Tenn. Code Ann. § 47-18-102(b) to "protect consumers and legitimate business enterprises from those who engage in unfair or deceptive acts or practices in part or wholly within the state."

I. JURISDICTION AND VENUE

5. The jurisdiction of this Court is invoked pursuant to the provisions of Tenn. Code Ann. §§ 23-3-103(c)(2) and 47-18-108.

6. Venue is proper in Davidson County pursuant to Tenn. Code Ann. § 23-3-103(c)(2), because it is the county where the alleged violations took place or are about to take place, and it is the county where the Defendants conduct, transact or have conducted business.

7. Venue is also proper in Davidson County pursuant to Tenn. Code Ann. § 47-18-108(a)(3), because it is the county where the alleged unfair or deceptive acts or practices took place, and the county in which the Defendants conduct, transact or have transacted business.

II. DEFENDANTS

The State of Tennessee alleges upon information and belief:

8. Defendant Elmer Virula ("Defendant Virula" or "Virula") is an individual and resident of Tennessee, residing at 4733 Billingsgate Road, Antioch, Tennessee.

9. Defendant TPS Tax Professional Services, Inc. ("Defendant TPS" or "TPS"), is a Tennessee corporation with its principal place of business at 86 Thompson Lane, Nashville, Tennessee. Its registered agent is TPS Tax Professional Services, Inc. located at 2825 Hartford Drive, Nashville, Tennessee.

10. Office Professional Services, Inc. ("Defendant OPS" or "OPS"), is a Tennessee corporation with its principal place of business at 2179 Nolensville Pike, Nashville, Tennessee. Its registered agent is Elmer Virula, located at 2179 Nolensville Pike, Nashville, Tennessee.

11. Defendant TPS and Defendant OPS shall be collectively referred to as "Corporate Defendants." Defendant Virula, Defendant OPS and Defendant TPS shall be collectively referred to as "Defendants."

12. Defendant Virula has been an owner, operator, officer, director, employee, agent and manager of Corporate Defendants, and has personally participated in their day-to-day activities and operations. Additionally, Defendant Virula 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.

III. GENERAL ALLEGATIONS

The State of Tennessee alleges upon information and belief:

13. Defendants have misrepresented to consumers that Defendant Virula is an attorney and certified public accountant in the State of Tennessee. Defendants have misled consumers regarding their ability to provide legal services such as immigration document preparation. Defendants have promised they can provide valid marriage licenses, but instead produced falsified government records to consumers. Defendants have advertised as a "notaria publica" without the required disclaimer.

IV. FACTUAL ALLEGATIONS

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

14. Defendants have engaged in trade or commerce in whole or in part in the State of Tennessee by offering goods or services to consumers.

15. Defendants have claimed to be notary publics or notarias publicas.

16. Defendants advertise, represent and promote to consumers that Defendant Virula is a "CPA" or Certified Public Accountant.

17. Defendants represent that Defendant Virula can provide immigration services and advice, marriages, divorces, tax services, translation services, and notary public services to consumers.

18. At a date uncertain, Defendants began distributing business cards to consumers which read:

ELMER VIRULA
ACCOUNTANT/CPA
INCOME TAX TODO EL ANO
LLENAMOS TODA CLASE DE
FORMAS/FOTOS/TRADUCCIONES
P.O. Box 17466
Nashville, TN 37217
OFFICE PROFESSIONAL SERVICES / OPS
2179 NOLENSVILLE PIKE NASHVILLE, TN 37211
TELS: (615) 401-7590 FAX: (615) 523-2504 / 401-7594
WWW.RADIOASIES.COM/RADIO
CRISTIANA/EMAIL:OFFPROSERV@YAHOO.COM

A true and exact copy of this business card is attached as Exhibit B.

19. Many certificates and other official-looking documents are hanging on the walls of Defendant Virula's office.

20. Defendant Virula is not a Certified Public Accountant in Tennessee.

21. Defendant Virula ran a business located at 4733 Billingsgate Road, Antioch, Tennessee.

22. Defendant OPS was previously located at 411 South Mountain Street, Smithville, Tennessee.

23. At the Smithville location, Defendant OPS advertised as having a "Notaria Publica" without any disclaimer.

24. Defendants have changed business locations numerous times, but the goods and/or services offered have remained the same.

25. Defendants held seminars about immigration law and its effect on the immigrant population of Tennessee at the OPS location on South Mountain Street in Smithville.

26. At a date uncertain, but at least by May 2006, Defendant Virula distributed flyers about the seminars. A true and exact copy of the flyer is attached as Exhibit C.

27. At least fifteen (15) Tennessee consumers attended one of the seminars held by Defendant Virula.

28. During these seminars, members of the Hispanic community would call Defendant Virula "licenciado."

29. Defendant Virula would respond in the affirmative when called "licenciado."

30. "Licenciado" is a generally understood to mean "lawyer" in Spanish.

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

32. During the seminars, Defendant Virula spoke about the new immigration reform. He said a new immigration law had been passed, but it was "frozen" for the time being.

33. Believing that Defendant Virula was an attorney, the consumers at the seminar would tell Defendant Virula about their immigration problems.

34. Defendant Virula would respond to their problems, often citing code from the law, and telling them not to worry because he could fix any problem.

35. Defendant Virula incorrectly told consumers that if they were not eligible for citizenship under any other law, they should bring in an American citizen. As part of these conversations, Defendant Virula stated he would marry them in order to "fix" their immigration status.

36. Defendant Virula told consumers that if they needed to "go to court," he would go with them.

37. When consumers would ask employees at the seminar if Defendant Virula was a good lawyer, they would answer in the affirmative, citing his many years of experience.

38. Defendants' employees would take consumers' fingerprints. These employees told consumers the fingerprints would be sent to the Federal Bureau of Investigation in order for Defendants to obtain the consumers' criminal records.

39. Defendant Virula stated he needed each consumer's criminal record so he could "fix" any legal problem before he sent in an application to the Department of Homeland Security United States Citizenship and Immigration Services ("USCIS") for the consumer.

40. Defendant Virula told the consumers they had to pay their taxes and learn English in order to obtain permits to stay in the United States.

41. At the end of the seminar, consumers would pay Defendant Virula five hundred dollars ($500.00) for representation and to "fix" their immigration problems.

42. When asked if he was an attorney, Defendant Virula falsely answered in the affirmative.

43. Defendant Virula falsely told consumers he was an immigration attorney in California and was waiting to take the exam in Tennessee to become an immigration attorney in Tennessee.

44. Defendant Virula told consumers he could represent them if their cases went to the "office of immigration" in Memphis.

45. Defendant Virula told consumers he could prepare their income tax returns.

46. Defendant Virula misled and deceived consumers with regards to tax laws and regulations.

47. Due to Defendant Virula's misrepresentations, at least one consumer owes seven thousand dollars ($7000.00) to the IRS.

48. Defendant Virula told consumers he could assist them with their applications for Temporary Protective Status with USCIS.

49. Defendant Virula told immigrants whether they were eligible for Temporary Protective Status under the law.

50. Defendant Virula represented that he had helped many immigrants obtain Temporary Protective Status.

51. For a fee, Defendant Virula filled out immigrants' Temporary Protective Status applications and sent them to USCIS.

52. Defendant Virula would give these immigrants advice about the appeals process of their Temporary Protective Status applications.

53. Some of the legal advice Defendant Virula gave immigrants regarding the Temporary Protective Status application process was incorrect and led to deportation or other negative consequences.

54. Temporary Protective Status is commonly referred to as "TPS."

55. Defendant Virula and Defendant Tax Professional Services, Inc. refer to the business as "TPS."

56. The business location at 86 Thompson Lane has a sign that says "TPS."

57. Defendants would prepare other immigration forms for consumers, such as I-485 applications for adjusted status.

58. Consumers were told that in order to speak with the "licenciado," Defendant Virula, they would need to make an appointment.

59. Consumers would come to one of the Corporate Defendants' offices and explain their immigration situation to a secretary or Defendant Virula.

60. The secretary or Defendant Virula would tell the consumer that they would take care of everything.

61. A secretary or Defendant Virula would select which immigration form would "fit" the situation, complete the form and send it to USCIS.

62. Consumers would give the Defendants monetary payment for the filing fee and a fee for the Defendants' services.

63. In one case, a consumer gave an employee of Defendant OPS a check made out to "USCIS" for one thousand five hundred and ninety dollars ($1,590.00).

64. In that case, Defendant OPS was hired by the consumer to file an application for adjusted status. When the check was returned to the consumer, it stated "Pay to the order of "USCIS/O.P.S." and was endorsed by "O.P.S."

65. Interestingly, the consumer received a notice from USCIS that her filing fee had never been paid. When the consumer asked an employee of Defendant OPS about this filing fee, the employee replied that USCIS is often mistaken about fees and forms it has received.

66. Defendant Virula told immigrants he could marry them under California law, "as if they were in California."

67. When consumers asked Defendant Virula if this practice was legal, he said, "Yes."

68. Consumers were charged from three hundred to one thousand dollars ($300.00-$1000.00) for Defendant Virula to marry them.

69. After he "married" these consumers, Defendant Virula would produce a California, County of Los Angeles License and Certificate of Confidential Marriage. True and exact copies of the purported marriage certificates given to Tennessee consumers by Defendant Virula are attached as Exhibit D and E.[1]

70. On the purported marriage certificate, Defendant Virula wrongfully certifies that the consumers were in Los Angeles County when they were married.

71. The California License and Certificate of Confidential Marriage states the marriage must take place in the county in which the license was issued.

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[1]To protect the consumers' privacy and due to the sensitive nature of this matter, the information on the alleged marriage certificates has been redacted on the court filed exhibits to protect the individual's identity. Unredacted copies will be provided upon request.

72. The consumers married by Defendant Virula were married in Tennessee, not Los Angeles County, California.

73. In some cases, the consumers were married at Defendants' offices.

74. Some of these consumers had never even traveled to California.

75. On the alleged marriage certificate, the issuing clerk certifies, by means of a notary, that the marrying parties have personally appeared before them or the person performing the marriage has provided a signed affidavit by the marrying parties.

76. The consumers married by Defendant Virula did not appear before the issuing clerk nor provide Defendant Virula with a signed affidavit of any kind.

77. In some cases, the purported marriage certificate would list an incorrect date as the date of the marriage.

78. Some of the alleged marriage certificates list the couple's residence incorrectly. For example, on the certificate attached as Exhibit D, the address listed as the "Residence of husband and wife" is the same address as the one listed for the person solemnizing the marriage, *i.e.* Defendant Virula. The couple never lived at the address listed.

79. On at least one occasion, the consumers did not sign the purported marriage certificate. The marriage license has "/S/" and the couple's name typed where the certificate calls for their signatures.

80. On at least one occasion, the purported marriage certificate did not have the signature of the County Clerk, Conny B. McCormack. On that license, Ms. McCormack's name has been typed in where the certificate calls for her signature.

81. After repeated requests, at least one consumer did not receive a copy of the alleged marriage certificate until years after the ceremony.

82. At least one consumer got a duplicate, rather than the original "license."

83. If the California License and Certificate of Confidential Marriage is properly filed with the Los Angeles County Clerk's Office, California law makes it difficult for anyone to obtain copies of the certificate.

84. Consumers who were married by Defendants may be facing legal consequences since their marriages may not be valid.

85. Defendants have failed to provide goods or services promised and/or promoted to consumers as represented and have failed to provide refunds to consumers.

86. Defendant Virula and Corporate Defendants have 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.

87. As a result of the Defendants' conduct described in this Complaint, the consumers described herein and possibly other consumers may have suffered ascertainable losses associated with the various unfair, deceptive or misleading acts or practices and the unauthorized practice of law violations alleged herein.

V. VIOLATIONS OF THE LAW

COUNT I: UNAUTHORIZED PRACTICE OF LAW

88. Plaintiff incorporates by reference and re-alleges each and every allegation contained in Paragraphs (13) - (87) of this Complaint.

89. Defendants have been and are engaging in "law business," engaging in the "practice of law," and performing legal services for persons within the State of Tennessee as defined in Tenn. Code Ann. § 23-3-101 *et seq*.

90. By the procuring of or assisting in the drawing of legal documents for a valuable consideration, Defendants have been and are engaging in "law business" pursuant to Tenn. Code Ann. § 23-3-101(1).

91. By advising or counseling consumers for a valuable consideration regarding secular laws, Defendants have been and are engaging in "law business" pursuant to Tenn. Code Ann. § 23-3-101(1).

92. By soliciting directly or indirectly to provide such services as the assisting in the drawing of legal documents and advising or counseling consumers for valuable consideration, Defendants have been and are engaging in "law business" pursuant to Tenn. Code Ann. § 23-3-101(1).

93. By soliciting directly or indirectly to provide legal services such as the drawing of immigration papers or documents in connection with proceedings prospective before any court, Defendants have been and are engaging in the "practice of law" pursuant to Tenn. Code Ann. § 23-3-101(3).

94. By engaging in the "law business"and "practice of law" without having been duly licensed, Defendant Virula has engaged in the unlawful practice of law, in violation of Tenn. Code Ann. § 23-3-103(a).

COUNT II: TENNESSEE CONSUMER PROTECTION ACT

95. The Plaintiff incorporates by reference and re-alleges each and every allegation contained in Paragraphs (13) - (87) of this Complaint.

96. Defendants' offering of legal services, accounting services and marriage certificates to consumers, as alleged herein, constitutes the offering of or providing of "goods" and/or "services" and constitutes "trade," "commerce" and/or a "consumer transaction" as defined in Tenn. Code Ann. § 47-18-103 (5), (10) and (11).

97. All of the acts and practices engaged in and employed by Defendants, 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).

98. Defendants have 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).

99. Defendants have 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).

100. Defendants have misrepresented that their services or goods have approval, characteristics, uses or benefits or qualities that Defendants' goods or services do not have, in violation of Tenn. Code Ann. § 47-18-104(b)(5).

101. Defendants have misrepresented that their services or goods are of a particular standard, quality, or grade when they are not, in violation of Tenn. Code Ann. § 47-18-104(b)(7).

102. Defendants have represented or implied that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve, in violation of Tenn. Code Ann. § 47-18-104(b)(12).

103. Defendants have 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).

104. By accepting payment for legal services, or other goods or services, and failing to deliver those goods and/or services, Defendants have engaged in conduct in violation of Tenn. Code Ann. § 47-18-104(a) and (b)(27).

105. By failing to clearly and conspicuously disclose to consumers that Defendant Virula has not met the State's requirements to practice law and cannot legally offer legal services in the State of Tennessee, including the preparation of legal documents without a valid law license or the assistance and supervision of an attorney, Defendants have violated Tenn. Code Ann. § 47-18-104(a) and (b)(27).

106. Defendants have advertised as a notaria publica without a clear and conspicuous disclaimer disclosing the individuals are not licensed to practice law in Tennessee in violation of Tenn. Code Ann. § 47-18-104.

107. By advising or assisting in the selection and completion of immigration forms without a license to practice law in Tennessee, Defendants are in violation of Tenn. Code Ann. § 47-18-104.

108. By representing that Defendant Virula is a notary public or notaria publica able to offer services as an immigration consultant, immigration paralegal or expert on immigration matters without the required accredited representative, Defendants have engaged in an unfair or deceptive act under Tenn. Code Ann.§ 47-18-104.

109. All of the acts and practices engaged in and employed by Defendants 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 Unauthorized Practice of Law statutes and 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:

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 Defendants requiring the Defendants to appear and answer this Complaint.

3. That this Court adjudge and decree that Defendants have engaged in the aforementioned acts or practices which violate the Tennessee Unauthorized Practice and Improper Conduct statutes.

4. That this Court adjudge and decree that Defendants have engaged in the aforementioned acts or practices which violate the Tennessee Consumer Protection Act of 1977.

5. That pursuant to Tenn. Code Ann. §§ 23-3-103(c)(1), (c)(3) and 47-18-108(a)(1), (a)(4), and (a)(5), this Court temporarily and permanently enjoin and restrain Defendants from engaging in the aforementioned acts or practices which violate the Tennessee Unauthorized Practice and Improper Conduct statutes, the Tennessee Consumer Protection Act of 1977, and other laws and regulations.

6. That this Court enter judgment against Defendants and in favor of the State for the reasonable costs and expenses of the investigation and prosecution of the Defendants' actions, including attorneys' fees and costs, expert and other witness fees, as provided by Tenn. Code Ann. §§ 23-3-103(c)(1) and 47-18-108(a)(5), (b)(4), and other state law.

7. That pursuant to Tenn. Code Ann. § 23-3-103(c)(1), this Court make such orders or render such judgments as may be necessary to obtain restitution for any person who suffered an ascertainable loss from Defendants' violations of the Tennessee Unauthorized Practice and Improper Conduct statutes.

8. 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 person who has suffered any ascertainable loss as defined in Tenn. Code Ann. § 47-18-2102(1), including statutory interest, and requiring that Defendants pay all costs of distributing and administering the same.

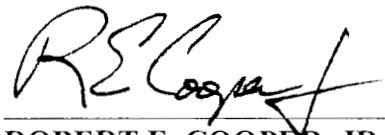
9. That this Court adjudge and decree that Defendants pay civil penalties of not more than ten thousand dollars ($10,000.00) per violation of the Unauthorized Practice and Improper Conduct statutes to the State of Tennessee as provided by Tenn. Code Ann. § 23-3-103(c)(1).

10. That this Court adjudge and decree that Defendants pay civil penalties of not more than one thousand dollars ($1,000.00) per violation of the Tennessee Consumer Protection Act of 1977 to the State of Tennessee as provided by Tenn. Code Ann. § 47-18-108(b)(3).

11. That all costs in this case be taxed against Defendants.

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

Respectfully submitted,



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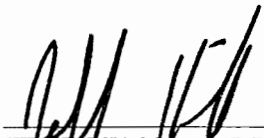
Attorney General and Reporter
B.P.R. No. 10934



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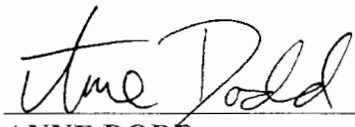

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