

NO. 2009-33833

STATE OF TEXAS
Plaintiff

v.

PATRICK O'CONNOR &
ASSOCIATES, L.P. D/B/A
O'CONNOR & ASSOCIATES
Defendants

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

129th JUDICIAL DISTRICT

P-7
ASRFX

**ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION TO APPROVE PLAN
TO DISBURSE RESTITUTION FUNDS**

On this day the Court considered the State's unopposed Motion to Approve Plan to Disburse Restitution Funds ("Motion") pursuant to Tex. Bus. & Com. Code §17.47(d). Having considered the Motion and finding that it is unopposed, the Court finds that:

1. The State of Texas, by and through the Consumer Protection Division of the Office of Attorney General, filed this lawsuit against Defendant under the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code §17.41 *et seq.* It is stipulated that the parties have compromised and settled all claims stated by Plaintiff and the parties have entered into an Agreed Final Judgment and Permanent Injunction ("Final Judgment"), which has been entered by the Court.

2. It is further stipulated that under the terms of the Final Judgment, Defendant is obligated to pay the State Three Hundred Thousand Dollars and No/100 (\$300,000.00) ("Restitution Funds") to be distributed as restitution for Texas consumers. To date, Defendant has made a partial payment of Two Hundred Thousand Dollars and No/100 (\$200,000.00) of the Restitution Funds, which is currently deposited in the State treasury awaiting disbursement to Texas consumers who qualify for restitution. The balance of One Hundred Thousand Dollars and

No/100 (\$100,000.00) is to be paid by Defendant on August 15, 2011, also to be distributed as restitution for Texas consumers.

3. It is further stipulated that the Final Judgment provides that a portion of the Restitution Funds may be used by the State to engage third parties to assist the State in disbursing the Restitution Funds.

4. The State has proposed it will mail claims forms to the following categories of Texas consumers who authorized Defendants to provide property tax protest services for their homestead properties for any of the tax years 2007, 2008, 2009 or 2010 (pending verification):

a) Texas resident consumers who were granted an over-65 property tax exemption on their homestead for a tax year and paid Defendant more than 25% of their tax savings in the same tax year. For the purposes of this provision, tax savings is defined as the difference between the initial assessed value and the final assessed value after the protest hearing for that year multiplied by the previous year's total tax rate;

b) Texas resident consumers who authorized Defendant's agents to appear on their behalf to protest the appraisal district's appraisal of their homestead, but Defendant's agents failed to appear at an informal hearing at the appraisal district and failed to appear at a formal hearing before the appraisal review board, with the result that the total appraised value was not lowered for that tax year and the total appraised value was lowered by the appraisal district for the following tax year (not as a result of any efforts on the part of Defendant).

The State proposes to mail claims forms to identified Texas consumers in the foregoing categories. The State proposes to pay PrintMailPro.com up to \$15,000.00 from the Restitution

Funds for printing and mailing the claims forms and for postage. In the event the State determines that it can print and mail claim forms efficiently and at less expense using the State's resources, the State is authorized to do so.

5. The State further proposes that the claims forms will request the consumer's verification of their identity, their contact information, and supporting documentation for claims. The State will allow a 30 day period for return of the claims forms ("Claims Period") plus a 5-day grace period ("grace period"). Claims forms not delivered to the Office of Attorney General on or before the date ending the grace period, or post-marked on or before the date ending the grace period, will not qualify for payment of Restitution Funds. The State will review the qualified claims forms, verify the accuracy of the information, determine as reasonably practicable if the claim qualifies for restitution, and calculate the total dollar amount of qualified claims received. Based on the total dollar amount of qualified claims received, the State will calculate the pro rata percentage of the Restitution Funds (after distribution expenses) to be disbursed to each consumer who qualifies ("Qualified Consumers") (up to 100% of the claim amount). Restitution shall not be paid, insofar as the State is reasonably able to determine, to consumers whose claims do not qualify because they are untimely or unverified or due to fraud on the part of the consumer.

6. Due to the volume of potential qualified claimants, the Court finds that issuance of the checks to Qualified Consumers would cause a significant negative impact on the resources of the State, and a disbursing agent should be appointed by the Court to distribute the Restitution Funds in accordance with the State's proposed plan. The Court finds that such an arrangement would be more efficient and expedite payment of claims. The Court finds that the proposed fee for the disbursing agent of \$5.00 per check plus postage, with a minimum of \$5,000.00 total, is

reasonable and necessary and may be paid from the Restitution Funds. Additionally, the Court finds the proposed premium of up to \$600.00 for a one-year security bond payable to the State to secure the Restitution Funds is reasonable and necessary and may be paid from the Restitution Funds.

IT IS ORDERED THAT:

1. The State's Unopposed Motion to Approve Plan to Disburse Restitution Funds is GRANTED. The State is authorized to mail claims forms to identified Texas consumers in the categories specified herein. The State is authorized to pay PrintMailPro.com up to \$15,000.00 from the Restitution Funds for printing and mailing the claims forms and for postage. The State is authorized to pay a pro rata percentage of the Restitution Funds (up to 100% of the claim amount) to the following categories of Texas consumers who authorized Defendant to provide property tax protest services for their homestead properties for the tax years 2007, 2008, 2009 and 2010 and who qualify for restitution, as the State is reasonably able to determine:

- a) Texas resident consumers who were granted an over-65 property tax exemption on their homestead for a tax year and paid Defendants more than 25% of their tax savings in the same tax year, where tax savings is defined as the difference between the initial assessed value and the final assessed value after the protest hearing for that year multiplied by the previous year's total tax rate;
- b) Texas resident consumers who authorized Defendant's agents to appear on their behalf to protest the appraisal district's appraisal of their homestead, but Defendant's agents failed to appear at an informal hearing at the appraisal district and failed to appear at a formal hearing before the appraisal review board, with the result that the total appraised value was not lowered for that tax year and the

total appraised value was reduced by the appraisal district for the following tax year.

2. Randolph N. Osherow is hereby appointed as the Disbursing Agent in this case.

3. The State is hereby ORDERED to disburse the Restitution Funds (less Court-approved expenses) to Qualified Consumers as verified by the State by and through the Disbursing Agent and to take such additional steps as are reasonably necessary to assist the Disbursing Agent in distributing the Restitution Funds to Qualified Consumers.

4. The Disbursing Agent shall receive the Restitution Funds held by the State and hold the Restitution Funds in a Trust account at a federally insured bank for disbursement to Qualified Consumers as verified by the State. Based upon the information provided by the State, the Disbursing Agent shall prepare the checks and mail them to Qualified Consumers with a letter explaining the calculation of the distribution. The Disbursing Agent shall prepare and maintain a cash receipt and disbursements record, which shall reflect the initial balance of the Trust account; all deposits of Restitution Funds; all disbursements made by Disbursing Agent to Qualified Consumers, with the date of the transaction, the check number, the name and address of the consumer, the amount of the disbursement; and the ongoing balance of the account. The Disbursing Agent shall provide the State or the Defendant with a copy of the disbursement record upon the State's or the Defendant's request.

5. The Disbursing Agent shall be paid for his services from the Restitution Funds. The proposed fee of up to \$5.00 per check, with a \$5,000.00 minimum, for the Disbursing Agent's services plus postage is approved as reasonable and necessary. The Disbursing Agent shall submit invoices to the State from time to time, and the State shall remit payment from the Restitution Funds to the Disbursing Agent only for Court-approved fees and expenses. Should

any unanticipated expenses arise, the Disbursing Agent shall request Court approval before requesting payment for those costs from the Restitution Funds. If the State determines that issuance of checks to consumers may be done efficiently and with less expense utilizing State resources, the State is authorized to do so in the alternative.

6. The Disbursing Agent shall obtain a security bond in the amount of \$300,000.00 to be payable to the State of Texas for any failure to perform the duties of Disbursing Agent as set forth in this Order. The cost of the bond shall be paid out of the Restitution Funds. The proposed fee of up to \$600.00 for the premium for the security bond is hereby approved by the Court and may be paid by the State from the Restitution Funds.

7. The Disbursing Agent shall retain all returned mail and coordinate with the State to attempt to locate a deliverable address for any intended recipient. If a deliverable address cannot be obtained, the Disbursing Agent is directed to forward the undelivered funds to the State. Any checks mailed to Qualified Consumers not negotiated within 180 days of issuance by the Disbursing Agent shall be voided and returned to the State. The Disbursing Agent shall return any funds remaining in the Trust account to the State for handling pursuant to Tex. Gov't Code §402.007.

8. The Disbursing Agent shall submit a final report and accounting to the State and the Defendant upon completion of all of the steps of the process outlined in the immediately preceding paragraph. The parties may request a hearing regarding the final report, or the Court may order a hearing sua sponte. If no hearing is held, the Disbursing Agent will be ORDERED discharged from his duties after 60 days after filing his final report with the Court.

9. This Order is not intended to grant or limit any legal rights or remedies of any nature to any third party. This Order may not be relied upon by a third party to assert or defend any rights or remedies it might have or pursue.

Signed this 7 day of July, 2011.

A handwritten signature in black ink, consisting of a stylized, cursive letter 'R' followed by a horizontal line.

PRESIDING JUDGE



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this July 26, 2011

Certified Document Number: 49292330 Total Pages: 7

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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