



BROWN, McHAM & ASSOCIATES
 FAMILY LAW • BANKRUPTCY • PERSONAL INJURY • CRIMINAL DEFENSE



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_____, 2010

_____, Inc.

 _____, Florida _____

CERTIFIED MAIL NO.

Re: *Mr. and Mrs. Smith*

To Whom It May Concern:

This firm has been retained by Mr. and Mrs. Smith to prosecute legal action against you for damages.

On or October 14, 2009 the Smiths contacted you to rent a house, known as Coastal Classic for July 18, 2010. A deposit was paid at that time of \$1,060.00. An additional deposit of \$530.00 was paid on November 23, 2009.

In December of 2009 the Smiths 13 year old son was diagnosed with jaw cancer. The Smiths contacted you and were told that they could purchase travel insurance for \$384.12. They were told that if they were unable to travel the insurance would cover the loss for the trip. This was later confirmed by email from your employee Debra Premo a copy of which is attached to this letter.

On June 26, 2010 Mrs. Smith contacted you to tell you about her son's ongoing treatment. At that time she placed a deposit of \$500.00 for the elevator so that her son would be able to stay at the property. During that conversation Mrs. Smith confirmed with your employee that if her son's physician refused to allow him to travel that the insurance that she purchased through your representative would protect her. She was assured that it would.

Unfortunately the Smiths son was not able to travel. His physician felt that his treatments need to be delayed and then on July 12, 2010 the doctor announced that they needed to move forward quickly and he would not be able to travel. The Smiths contacted your office to inform you that they would not be able to travel and would not be using the rental property. They also asked how to proceed with filing a claim for the travel insurance. After that call you charged the remaining balance owed for the rental, \$4,143.62 to the Smiths credit card despite knowing that they would not be able to use the property and that the property was easily rented to someone else. This wrongful charge was disputed with the credit card company and is currently on hold.

The Smiths contacted the travel insurance company only to be told that the insurance would not be covering the claim. The travel insurance company informed the Smiths that you should not have sold the policy for a variety of reasons. Specifically the policy does not cover cancer victims. Additionally, the policy was not purchased in a timely fashion. It must be purchased when the reservation is made or within 30 days. At no time did your representative inform the Smiths of these restrictions and in fact based on the emails attached you clearly represented to the Smiths that the insurance would specifically cover their situation.

As a consequence of your wrongful acts and omissions in misrepresenting the travel insurance policy, my client has incurred substantial damages.

In their dealings with you, Mr. and Mrs. Smith contracted with you for goods and services. Accordingly, in this transaction Mr. and Mrs. Smith were clearly “consumers” as such term is defined in Section 17.45, TEXAS BUSINESS & COMMERCE CODE.

Mr. and Mrs. Smith assert that you committed a number of false, misleading or deceptive acts and practices prohibited by Section 17.46 of the TEXAS BUSINESS & COMMERCE CODE (the Texas Consumer Protection – Deceptive Trade Practices Act) including, but not limited to, the following:

1. Representing that goods or services have characteristics, uses, or benefits which they do not have, in violation of TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(5);
2. Representing that goods or services are of a particular standard, quality, or grade, if they are of another, in violation of TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(7);
3. Advertising goods or services with intent not to sell them as advertised, in violation of TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(9);
4. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(12);
5. Failing to disclose information concerning goods or services which was known at the time of the transaction thereby intending to induce Mr. and Mrs. Smith into entering into the referenced agreement, knowing that they would not have entered into such agreement had such information been disclosed, in violation of TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(24).

The foregoing violations were committed knowingly and intentionally, and Mr. McKenzie relied on your representations, acts, and omissions to his damage and detriment.

Further, the representations, acts, and omissions made by you in your dealings with Mr. and Mrs. Smith constituted an “unconscionable action or course of action” as such term is defined in Section 17.45(5), TEXAS BUSINESS & COMMERCE CODE.

In addition to constituting numerous violations of the Texas Consumer Protection – Deceptive Trade Practices Act, the above-described acts and omissions made by you constituted, among other things: misrepresentation; negligence; negligent misrepresentation; constructive fraud; breach of contract; breach of express warranty; breach of implied warranty; fraud; and breach of duty of good faith and fair dealing.

As a direct result of your wrongful acts and omissions, Mr. and Mrs. Smith have been compelled to retain the services of this firm to seek redress for the damages they have suffered. As

of the date of this writing, the fee for the legal services and related costs incurred in this matter is \$2,000.00.

Therefore, the total damages thus far suffered by Mr. and Mrs. Smith as a direct consequence of your deception regarding the travel insurance is \$6,624.12, itemized as follows:

1. Deposits paid by the Smiths - \$4,240.00
2. Cost of Travel Insurance - \$384.12
3. Attorney fees incurred to date in the amount of \$2,000.00 in connection with investigating and pursuing this claim.

Demand is hereby made upon you to immediately pay the total amount of damages sustained, \$6,624.12, to Mr. and Mrs. Smith through this office immediately.

Additionally, the following actions must be taken by you immediately:

4. Cancellation of any and all amounts purportedly owed by Mr. and Mrs. Smith on the credit card in their name, last four digits 9966

This letter constitutes notice that unless we receive a certified check, cashier's check, or money order for such full amount, \$6,624.12, and written confirmation of regarding the required actions on Account # 9966 on or before October 15, 2010, this firm has been instructed to take whatever steps are necessary to protect our client's interests.

In such event, the Smiths have authorized and instructed us to file and prosecute a lawsuit against you to collect all damages caused by the above-described wrongful representations, acts, and omissions.

In connection with such litigation, we have been directed to pursue all proper legal remedies and to seek all available relief including, but not limited to, direct and consequential damages, penalties as provided by the Texas Consumer Protection – Deceptive Trade Practices Act, attorney fees, interest, court costs, and such additional punitive damages as may be legally appropriate.

Pursuant to Section 17.505, TEXAS BUSINESS & COMMERCE CODE, please be advised that if this claim has not been resolved within sixty (60) days from the date you receive this notice, the petition in the above-referenced lawsuit against you will be amended to request additional relief under the provisions of Section 17.50, TEXAS BUSINESS & COMMERCE CODE, including treble damages as authorized therein.

Please pay this claim now to avoid litigation and further expense. Your immediate response to this serious matter will be appreciated.

Sincerely,

Chris McHam

Attorney for Mr. and Mrs. Smith
Texas State Bar Number