

CAUSE No. 2004-65357

STATE OF TEXAS,
Plaintiff,

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IN THE DISTRICT COURT

v.

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HARRIS COUNTY, TEXAS

NORVERGENCE, INC.
Defendant.

270th JUDICIAL DISTRICT

DEFAULT JUDGMENT AGAINST DEFENDANT NORVERGENCE, INC.

On this day came on to be heard the above-entitled and numbered cause wherein THE STATE OF TEXAS is Plaintiff and NORVERGENCE, INC. is the Defendant. The Plaintiff appeared in person by its attorney of record and announced ready for trial. The Defendant, although having been duly and legally cited to appear and answer, failed to appear and answer, and wholly made default.

Citation was served according to law and return of service was made to the clerk where it remained on file for the time required by law. The Court has read the pleadings and the papers on file, has heard and considered the testimony and evidence presented by Plaintiff, and is of the opinion that the allegations of Plaintiff's Petition have been sufficiently proven.

FINDINGS

This court, based upon the testimony and evidence presented, makes the following findings:

1. Plaintiff filed a petition in this cause pursuant to the provisions of the Texas Deceptive Trade Practices Act ("DTPA"), the allegations of which the court takes notice.
2. The Texas Attorney General is charged with, among other things, the responsibility

of enforcing the DTPA on behalf of the public interest.

3. NORVERGENCE is a corporation organized under New Jersey law with its principal place of business located at 550 Broad Street, Newark, New Jersey.
4. At all times relevant to this matter, NORVERGENCE did business from its principal place of business located at 550 Broad Street, Newark, New Jersey and from various offices in the State of Texas.
5. On or about June 30, 2004, creditors of NORVERGENCE filed an involuntary bankruptcy petition in U.S. Bankruptcy Court for the District of New Jersey.
6. NORVERGENCE currently is in Chapter 7 bankruptcy in the U.S. Bankruptcy Court for the District of New Jersey (Docket 04-32079-RG).
7. A trustee, Charles Forman, has been appointed to act in the stead of NORVERGENCE. The plaintiff does not allege that the trustee is involved in any of the wrongdoing alleged to have been committed by NORVERGENCE.
8. NORVERGENCE, at all times relevant hereto, engaged in trade and commerce within the meaning of the DTPA in the State of Texas, to wit: advertising, offering for sale, selling, and providing telecommunications service and related telecommunications equipment, and charging Texas consumers for, or causing them to be charged for, the same.
9. NORVERGENCE has engaged in unfair and deceptive acts or practices in the conduct of trade and commerce, in violation of the DTPA because it materially misrepresented the nature of its telecommunications services to all Texas consumers who contracted for same.
10. The NORVERGENCE rental agreements for Matrix and Matrix Soho routers and firewalls

and related equipment were part of a unified agreement under which NORVERGENCE promised to provide telecommunications services in exchange for consumers' payments. These services have not been provided at least since a time early in the NORVERGENCE bankruptcy case and in some cases have never been provided.

11. All Equipment Rental Agreements or other contracts procured between NORVERGENCE and Texas consumers or between finance companies and Texas consumers as a result of a NORVERGENCE solicitation directed to any Texas consumer are the result of deceptive and unfair practices and fraud on the part of NORVERGENCE and, therefore, are declared void *ab initio* and are unenforceable.
12. All of the unfair and deceptive acts or practices alleged in Plaintiff's petition constitute the basis for the execution and filing of this Default Judgment.
13. Any references to the acts and practices of NORVERGENCE shall mean that such acts and practices are by and through the acts of said corporation's officers, agents, servants, employees, attorneys, and representatives; all other persons or entities directly or indirectly under their control, wholly or partially; and all other persons or entities in active concert or participation with them who receive actual notice of this Default Judgment by personal service or otherwise.
14. This Court has jurisdiction over the subject matter of the complaint having been filed herein and over the parties to this Default Judgment.
15. The court finds that 1,020 Texas small businesses and consumers were victims of NorVergence's fraud and deceptive acts and practices and that a civil fine and penalty should be awarded to the State of Texas for each such victim.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant, its

officers, agents, servants, employees, and attorneys, and any other person in active concert or participation with Defendant shall be permanently enjoined from engaging in the following acts or practices:

1. Engaging in any commerce in the State of Texas, including, but not limited to, the business of advertising, offering for sale, selling, and providing telecommunications service and related telecommunications equipment, and charging Texas consumers for, or causing them to be charged for, the same.
2. Assigning any NorVergence equipment rental agreement (or any part thereof) where a Texas business, consumer, person, or entity is a party thereto, to any other person, entity or finance company.
3. Enforcing, attempting to enforce, collecting or attempting to collect any monies purportedly owed under any NorVergence equipment rental agreement from any Texas consumer, business or entity.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all contracts or agreements between NorVergence and Texas consumers, businesses or persons are hereby declared void *ab initio* and unenforceable.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any consumer financing agreements owned or held in whole or part by NorVergence shall be deemed void and uncollectible by any person or entity.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any NorVergence consumer financing agreements transferred or assigned to any third party after those contracts were rejected in the Bankruptcy Case pursuant to 11 U.S.C. § 365 shall be deemed void and uncollectible by any person or entity.

IT IS ALSO ORDERED that to the extent that NorVergence has a residual, contingent, or similar right to any consumer financing agreement not currently owned or held by NorVergence, those agreements shall be deemed void and uncollectible as of the time that NorVergence's residual, contingent, or similar right matures.

IT IS ALSO ORDERED that NorVergence shall notify each consumer affected by this section that their consumer financing agreement has been deemed uncollectible and void, either immediately or in the future, as applicable.

IT IS FURTHER ORDERED that Plaintiff, State of Texas, have Judgment and recover from Defendant NorVergence, the sum of \$_____ for reimbursement of attorney fees and investigative costs which were incurred on behalf of the Plaintiff and which do not constitute an antecedent debt with respect to this litigation.

IT IS FURTHER ORDERED that Plaintiff, State of Texas, have Judgment and recover from Defendant NorVergence, the sum of \$_____ for civil fines and penalties and which do not constitute an antecedent debt with respect to this litigation.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, to the extent not prohibited by bankruptcy law :

1. Defendant shall make payment of all amounts due herein to the Plaintiff by delivery of a cashier's check or money order to the Office of the Attorney General, Consumer Protection Division, 300 West 15th Street, 9th Floor, William Clements Building, Austin, Texas 78701. Such check or money order shall be made payable to the Office of the Attorney General.
2. All costs of court incurred in this case are taxed against Defendant.
3. Defendant shall pay pre-judgment and post-judgment interest on all monetary awards set forth in this judgment as provided by law.

4. The State of Texas have all writs and processes as may be necessary in the enforcement and collection of this judgment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all relief not expressly granted herein is denied.

SIGNED this _____ day of _____ 2005.

JUDGE PRESIDING