

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

APR 20 AM 9:35
RICHARD R. ROOPER, CLERK
D.C.

STATE OF TENNESSEE, *ex rel.*)
Herbert H. Slatery III, Attorney)
General and Reporter,)
)
Petitioner,)
)
v.)
)
BENZ & CO. LLC, a Tennessee limited)
liability company,)
)
GARY BENZ, individually,)
)
and)
)
KRISTY COLLINS, individually,)
)
Respondents.)

Case No. 16 C 1661

ASSURANCE OF VOLUNTARY COMPLIANCE

1. This Assurance of Voluntary Compliance is given by Benz and Company LLC, a Tennessee limited liability company, Gary Benz, and Kristy Collins, both individually, to Herbert H. Slatery III, Attorney General and Reporter for the State of Tennessee, on behalf of Bill Giannini, Acting Director of the Division of Consumer Affairs of the Department of Commerce and Insurance.

WITNESSETH:

2. Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

- A. Benz & Co. LLC (“Benz”) is a Tennessee limited liability company operating in Williamson County, Tennessee.
- B. Benz primarily offers services relating to the recovery of unclaimed property held by the State of Tennessee, and advertises such services.
- C. Gary Benz is Benz’s President and Founder.
- D. Kristy Collins is Benz’s Vice President of Operations.
- E. On or about July 22, 2015, Kristy Collins, in her capacity as Vice President of Benz, drafted and prepared a petition to probate the estate of Dr. Michael A. Petrone, Sr., for submission to the Seventh Circuit Court of Davidson County, Tennessee.
- F. On or about July 22, 2015, Kristy Collins, in her capacity as Vice President of Benz, appeared in the courtroom of Judge Randy Kennedy, Seventh Circuit Court, Twentieth Judicial District, as a “designated representative” of Michael A. Petrone, Jr.
- G. In open court, Judge Kennedy admonished Kristy Collins, informing her that she was engaging in the practice of law without proper licensure in violation of Tenn. Code Ann. §§ 23–3–101 and 103.
- H. From at least July 21, 2014, to February 2, 2016, Benz operated as an investigations company without being duly licensed pursuant to Tenn. Code Ann. § 62–26–204(a), thus misleading Tennessee consumers that it was licensed to perform the services for which it advertised.

DEFINITIONS

3. As used in this Assurance and accompanying Agreed Order, the following words or terms shall have the following meanings:

- A. “**Agreed Order**” shall mean the Agreed Final Order entered in the above captioned matter.
- B. “**Assurance of Voluntary Compliance**” or “**Assurance**” shall mean this document, entitled Assurance of Voluntary Compliance in the matter of *State of Tennessee v. Benz & Co. LLC, et al.*
- C. “**Consumer**” shall mean any person, natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity, however organized.

- D. “**Consumer Act**” shall mean the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47–18–101 *et seq.*
- E. “**Division**” shall mean the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.
- F. “**Individual Respondents**” shall mean Gary Benz and Kristy Collins, individually, collectively, and any of their agents, representatives, employees, affiliates, successors, or assigns.
- G. “**Parties**” shall mean Respondents and the Attorney General.
- H. “**Respondents**” shall mean Benz & Co. LLC, a Tennessee limited liability company, Gary Benz, and Kristy Collins, individually, collectively, or in any combination, and any of their agents, officers, representatives, employees, affiliates, successors, or assigns.
- I. “**State of Tennessee**” or “**Attorney General**” shall mean the Tennessee Attorney General and Reporter.
- J. “**UPL Statute**” shall mean the Tennessee Unauthorized Practice and Improper Conduct Statute, Tenn. Code Ann. § 23–3–101 *et seq.*

Now, therefore, acting pursuant to Tenn. Code Ann. § 47–18–107, Respondents give, and the Attorney General accepts, the following assurances:

JURISDICTION

4. Jurisdiction over the subject matter herein and over the persons of the Respondents for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply for such further orders and directions as may be necessary or appropriate for the construction, modification, or execution of this Assurance and Agreed Order, including the enforcement of compliance therewith and assessment of penalties thereof. Respondents agree to pay all court costs and reasonable attorney’s fees associated with any successful petitions to enforce any provision of this Assurance and Agreed Order against any of the Respondents.

VENUE

5. Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the Parties relating hereto or arising out of this Assurance is solely in the Circuit Court of Davidson County, Tennessee.

PERMANENT INJUNCTION

6. Accordingly, it is hereby agreed that upon approval of this Assurance by the Court, Respondents and anyone in concert with Respondents shall be permanently and forever enjoined, restrained, and bound from directly or indirectly engaging in the acts or practices set forth herein, and further, permanently required to directly or indirectly satisfy the affirmative requirements set forth herein:

Compliance with UPL Statute

- A. Individual Respondents shall be prohibited from appearing as an advocate in a representative capacity or drawing papers, pleadings, or documents in connection with any pending or prospective legal action, unless Individual Respondents possess a license to practice law from the Tennessee Supreme Court, and maintain such license in good standing when Individual Respondents are engaged in such action.
- B. Individual Respondents shall be prohibited from giving any legal advice or drawing any legal documents for valuable consideration, unless Individual Respondents possess a license to practice law from the Tennessee Supreme Court, and maintain such license in good standing when Individual Respondents are engaged in such action.
- C. Individual Respondents shall be prohibited from obtaining or attempting to secure for any person any property or property rights whatsoever, if such action requires the professional judgment of a lawyer, unless Individual Respondents possess a license to practice law from the Tennessee Supreme Court, and maintain such license in good standing when Individual Respondents are engaged in such action.
- D. Benz & Co. LLC shall be prohibited from engaging in the acts and practices described in sections A-C, the appropriate Tennessee licensure of their principals, officers, directors, agents, and employees notwithstanding.

- E. Individual Respondents, unless proceeding pro se on their own behalf, shall be prohibited from engaging in any act or practice that holds themselves out as an attorney, lawyer, or law firm, either explicitly or implicitly.
- F. Benz & Co. LLC shall be prohibited from engaging in any act or practice that advertises or holds itself out as an attorney or law firm, the appropriate Tennessee licensure of its principals, officers, directors, representatives, agents, and employees notwithstanding.
- G. Individual Respondents shall be prohibited from preparing legal documents including, but not limited to, probate documents until such time as Respondents obtain a valid license to practice law in the State of Tennessee and such license is in good standing.

Compliance with the Consumer Act

- H. Individual Respondents shall be prohibited from using terms or phrases such as “legal,” “law,” “legal services,” “law firm,” “lawyer,” “counselor at law,” or similar terms or phrases in such a way that would indicate to Tennessee consumers that Individual Respondents provide legal services in the State of Tennessee, unless Individual Respondents possess a license to practice law from the Tennessee Supreme Court, and it is in good standing at the time of using such terms or phrases.
- I. Benz & Co. LLC shall be prohibited from using terms or phrases such as “legal,” “law,” “legal services,” “law firm,” “lawyer,” “counselor at law,” or similar terms or phrases in such a way that would indicate to Tennessee consumers that Benz & Co. LLC provides legal services in the State of Tennessee, the appropriate Tennessee licensure of its principals, officers, directors, representatives, agents, and employees notwithstanding.
- J. Respondents shall not directly or indirectly represent, state, promote, advertise, claim, or imply that Respondents are duly licensed to operate as an investigations company, unless at the time of making such claim, Respondents are duly licensed pursuant to Tenn. Code Ann. § 62–26–204(a), and such license is in good standing.
- K. Individual Respondents shall not directly or indirectly represent that their services provide any assistance or representation in any proceedings before any Tennessee tribunal unless at the time of the representation Individual Respondents possess a license to practice law from the Tennessee Supreme Court, and it is in good standing.
- L. Benz & Co. LLC shall not directly or indirectly represent that its services provide any assistance or representation in any proceedings before any Tennessee tribunal, the appropriate Tennessee licensure of its principals, officers, directors, and employees notwithstanding.

- M. Respondents shall not directly or indirectly represent that they are able to secure unclaimed property for any consumer when they are not licensed to do so or when such property is subject to any legal proceedings in Tennessee.
- N. Respondents shall not directly or indirectly represent they can provide goods or services in the State of Tennessee which are unlawful to provide.

MONETARY PAYMENT TO THE STATE

7. Upon execution of this Assurance, Respondents shall be jointly and severally responsible to pay the sum of Three Thousand and 00/100 Dollars (\$3,000.00) by electronic funds transfer or certified check to the Tennessee Attorney General as directed by counsel for the Attorney General. Said funds include, but are not limited to, legal fees and costs of investigation and prosecution of this matter. Said funds will be distributed at the sole discretion of the Attorney General.

8. Payment shall be made to the Consumer Protection and Advocate Division, Office of the Attorney General as follows: \$1,500 on or before the third business day after the entrance of the Agreed Order in this matter, and \$1,500 on or before the date thirty days after the date of the first payment.

FORBEARANCE ON EXECUTION AND DEFAULT

9. No execution or garnishment on the monetary portion of this Assurance shall issue so long as Respondents make timely payments in accordance with paragraph 8 herein. In the event Respondents fail to make any such payment within twenty days of its due date, the entire balance of this Assurance may be collected by execution, garnishment, or other legal process, together with interest from the date of entry of this Assurance pursuant to Tenn. Code Ann. § 47-14-121. Respondents agree to pay any attorney's fees and costs associated with such collection efforts.

10. Respondents are required to retain proof of all payments to the State in the form of canceled checks for each payment for 24 months following the final payment to the State.

Respondents shall provide proof of all payments to the State within ten days of a request for such information.

COMPLIANCE

11. Upon request, Respondents agree to provide books, records, and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to compliance with this Assurance. Respondents shall make any requested information available within one week of the request at the Office of the Attorney General in Nashville, Tennessee, or at any other location within the State of Tennessee that is mutually agreeable in writing to the Respondents and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

12. Respondents have represented and warranted to the State that any unlawful operations have ceased. However, if at any time Respondents decide to begin offering goods or services similar in any way to those giving rise to this Assurance, Respondents shall notify the Attorney General in writing at least thirty days prior to the initial offering of such goods or services to Tennessee consumers. The notice to the Attorney General shall include, at a minimum, a complete copy of all advertisements of any type that might be distributed or seen by a Tennessee consumer, a copy of any contracts or agreements that Tennesseans will be required to execute, copies of any required licenses to provide said goods or services, and all form copies of any documents that will be used to produce goods or services for Tennessee consumers. Respondents understand that the State and this Honorable Court expressly rely upon Respondents' commitment to so notify the State, and if Respondents market goods or services to Tennesseans and fail to timely and fully notify the State as required, the State has the right to vacate (in whole or in part)

or set aside this Assurance, request that the Respondents be held in contempt, or take any other action available at law.

PRIVATE RIGHT OF ACTION AND ACTIONS RESERVED BY THE STATE

13. Nothing in this Assurance shall be construed to affect any private right of action that any consumer or person may hold against the Respondents.

14. This Assurance is only between the Attorney General and Respondents. This Assurance does not include any other affiliates, successors, assigns, parents, officers, directors, agents, representatives, employees, individuals, or other persons who may have provided goods or services, or agreed to provide goods or services to Tennessee consumers. The State expressly reserves the right to take action against any other individuals or businesses. There are no third party beneficiaries to this Assurance.

PENALTIES FOR FAILURE TO COMPLY

15. Pursuant to Tenn. Code Ann. § 47-18-107(c), Respondents understand that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Consumer Act.

16. Pursuant to Tenn. Code Ann. § 47-18-107(f), Respondents understand that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand and 00/100 Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions including, but not limited to, contempt sanctions, the imposition of attorney's fees, and civil penalties. Respondents agree to pay all court costs and reasonable attorney's fees associated with any successful petitions to enforce this Assurance and Agreed Order against Respondents.

17. Pursuant to Tenn. Code Ann. § 23-3-103(c)(4), any knowing violation of the terms of this Assurance shall be punishable by a civil penalty of not more than Twenty Thousand and 00/100 Dollars (\$20,000.00) per violation, in addition to any other appropriate relief, including but not limited to, contempt sanctions, the imposition of attorney's fees, and civil penalties.

REPRESENTATIONS AND WARRANTIES

18. Respondents represent and warrant that the execution and delivery of this Assurance is their free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondents agree that the Assurance and terms hereof are fair and reasonable. The Parties warrant that they will implement the terms of this Assurance in good faith. Further, Respondents represent and warrant that no offers, agreements, or inducements of any nature whatsoever have been made to Respondents by the State of Tennessee, its attorneys, or any employee of the Attorney General or the Division, to procure this Assurance.

19. Respondents represent that signatories to this Assurance have authority to act for and bind Respondents.

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

21. Neither Respondents nor anyone acting on Respondents' behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division, 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 Respondents.

22. Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondents' business practices.

23. Respondents represent and warrant that they are the proper parties to this Assurance and Agreed Order. Respondents further acknowledge that the State expressly relies upon this representation and warranty, and that if it is false, misleading, deceptive, unfair, or inaccurate, the State has the right to move to vacate or set aside this Assurance (in whole or in part) and Agreed Order, and request that Respondents be held in contempt, if the State so elects.

24. This Assurance and Agreed Order may only be enforced by the Parties hereto and the Court.

25. Nothing in this Assurance 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 Assurance shall not bar the State or other governmental entity from enforcing laws, regulations, or rules against Respondents.

26. Nothing in this Assurance 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.

27. Nothing in this Assurance shall alter any rights conferred by Tenn. Code Ann. § 47-18-109(d).

COMPLIANCE WITH ALL LAWS, REGULATIONS, AND RULES

28. Nothing in this Assurance and Agreed Order shall be construed as relieving Respondents of the obligation to comply with all state or federal laws, regulations, or rules.

FILING OF ASSURANCE

29. Upon the execution of this Assurance, the Attorney General shall prepare and file in the Circuit Court of Davidson County a Petition, Agreed Order, and this Assurance for the Court's approval. Respondents hereby waive all rights which they may have to be heard in connection with judicial proceedings upon the Petition. Respondents agree to pay all costs of filing such Petition, Assurance, and Agreed Order. Simultaneously with the execution of this Assurance, Respondents shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. Respondents consent to the entry of this Assurance and Agreed Order without further notice.

NOTIFICATION TO STATE

30. Any notices required by this Assurance shall be sent Certified Mail – Return Receipt Requested by United States Mail, or by any other nationally recognized courier service that provides tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State: Deputy Attorney General Consumer Protection & Advocate Division Office of the Attorney General P.O. Box 20207 Nashville, Tennessee 37202 (615) 741-1671	For the Respondents: Gary Temple 4211 Gallatin Road Nashville, Tennessee 37216 (615) 226-2263
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Respondents are required to provide the State with any changes of address at least ten days prior to any such change becoming effective.

31. For five years following the execution of this Assurance, Respondents shall notify the Attorney General in writing at least thirty days prior to the effective date of any proposed changes in their business structure, such as dissolution, assignment, or sale resulting in the

emergence of a successor corporation or firm, the creation or dissolution of subsidiaries, or any other changes in Respondents' status that may affect compliance with obligations arising out of this Assurance.

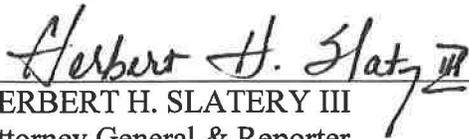
COURT COSTS

32. All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondents. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

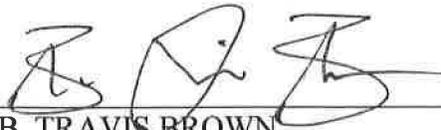
COMPLETE AGREEMENT

33. This Assurance and Agreed Order constitute the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition prior to entry of the Agreed Order.

FOR THE STATE OF TENNESSEE:



HERBERT H. SLATTERY III
Attorney General & Reporter
B.P.R. No. 9077



B. TRAVIS BROWN
Assistant Attorney General
B.P.R. No. 34164
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(615) 741-3533
travis.brown@ag.tn.gov
Counsel for the State of Tennessee

I hereby certify that this is a true copy
of original instrument filed in my office
this 20 day of June 16

RICHARD R. ROOKER Clerk

By


Deputy Clerk

Attorney General Signature Page in the Matter of
State of Tennessee v. Benz & Co. LLC, et al.
Assurance of Voluntary Compliance

FOR THE RESPONDENTS:

A handwritten signature in black ink, appearing to read "Gary Temple", written over a horizontal line.

GARY TEMPLE

B.P.R. No. 14503

4211 Gallatin Road

Nashville, Tennessee 37216

(615) 226-2263

gwt@bellsouth.net

*Counsel for Benz & Co. LLC, Gary Benz, and
Kristy Collins*