

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

ILLINOIS REAL ESTATE LAWYERS
ASSOCIATION, an Illinois not-for-profit
corporation,

Plaintiff,

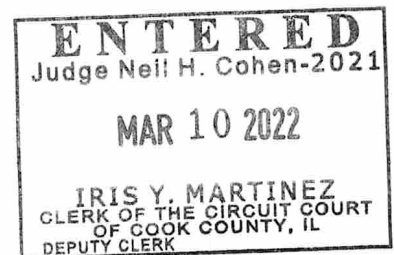
v.

ILLINOIS DEPARTMENT OF FINANCIAL
AND PROFESSIONAL REGULATION;
MARIO TRETO, JR., solely in his official
capacity as Secretary of the Illinois
Department of Financial and Professional
Regulation; and FRANCISCO MENCHACA,
solely in his official capacity as Director of
the Division of Financial Institutions,

Defendants.

Case No: 2022 CH 01658

Calendar 5



TEMPORARY RESTRAINING ORDER

This matter coming before the Court on Plaintiff's Motion for Temporary Restraining Order, the Court having heard from counsel of Plaintiff and Defendants, having read Plaintiff's Verified Complaint, Motion for Temporary Restraining Order and Memorandum in Support of Its Motion for Temporary Restraining Order, and Defendants' Opposition thereto, and having heard oral argument by the Plaintiff and Defendants, the Court finds as follows:

1. Defendants received proper and advanced notice of the hearing held on Thursday, March 3, 2022 at 10:30 a.m. A true and accurate copy of the hearing transcript is attached hereto as Exhibit A, and the Court's statements and findings therein on the record, as summarized below, are adopted and incorporated herein by reference.

2. A temporary restraining order is not a cause of action in itself but is an emergency remedy. Plaintiff's motion for a temporary restraining order is properly before this Court with respect to Count II of Plaintiff's Verified Complaint, which seeks Declaratory Judgment.
3. The primary purpose of a temporary restraining order is to preserve matters in *status quo* until the Court has an opportunity to consider the cause on its merits. *O'Brien v. Matual*, 14 Ill.App.2d 173, 186–87 (2nd Dist. 1957). *Status quo* is defined as the last actual, peaceful, and uncontested status preceding the controversy. *Nw. Steel & Wire Co. v. Indus. Comm'n*, 254 Ill. App. 3d 472, 476 (1st Dist. 1993).
4. In ruling on a temporary restraining order, this Court may not decide the merits of the case but instead must decide whether Plaintiff has established each of the elements required for the issuance of a temporary restraining order. In order for a temporary restraining order to issue, the Plaintiff must establish that: (a) Plaintiff has a protectable right; (b) Plaintiff has no adequate remedy at law; (c) Plaintiff will suffer irreparable harm in the absence of a temporary restraining order; and (d) Plaintiff has a likelihood of success on the merits. *Murges v. Bowman*, 254 Ill.App.3d 1071, 1081 (1st Dist. 1983).
5. The Court finds that the Plaintiff, through its members, has protectable rights and interests at stake as Plaintiff's members have the right to practice their professions free from unlawful regulation.
6. The Court finds that Plaintiff has no adequate remedy at law because the State is generally not amenable to suit for money damages, and to the extent the State is

amenable to suit for money damages, money damages cannot adequately remedy the harm Plaintiff and its members will suffer.

7. To demonstrate a likelihood of success on the merits, a plaintiff need only raise a fair question about the existence of a right. *In re Estate of Wilson*, 373 Ill.App.3d 1066, 1075 (1st Dist. 2007); *see also Tierney v. Vill. of Schaumburg*, 182 Ill.App.3d 1055, 1061 (1st Dist. 1989). The Court finds Plaintiff has raised fair questions as to the claims set forth in Plaintiff's Verified Complaint.
8. To demonstrate irreparable harm, a plaintiff need not show injury that is beyond repair or compensation in damages, but rather, need only show transgressions of a continuing nature. *Cont'l Cablevision of Cook County, Inc. v. Miller*, 238 Ill. App. 3d 774, 788 (1st Dist. 1992). The Court finds the harm Plaintiff will suffer would be of a continuing nature if the *status quo* prior to the implementation of the 2022 DS-1 Form is not preserved. Moreover, the Court finds that Plaintiff's members face an irreparable harm in that they may face professional sanctions, including the possibility of malpractice claims.
9. The Court finds that the version of the form in effect prior to the 2022 DS-1 Form ("1997 DS-1 Form") has been in use for 25 years. The 2022 DS-1 Form requires additional disclosures that the 1997 DS-1 Form did not require. There remain questions, including those raised by IDFPR officials in a February 16, 2022 webinar, as to the extent of the disclosures required by the 2022 DS-1 Form. Because the 1997 DS-1 Form has been used for 25 years, and because Plaintiff faces a "Hobson's choice" with respect to the 2022 DS1 Form, the Court finds that the balance of hardships as among the parties, as well as

the public interest, is in favor of preserving the *status quo*, i.e. the continued use of the 1997 DS-1 Form.

As a result of its findings above, the Court enters the following temporary restraining order:

1. The IDFPR and anyone acting in concert with the IDFPR are ordered to:
 - a. Refrain from invoking and/or enforcing the 2022 DS-1 Form in favor of or against any person or entity;
 - b. Refrain from requiring any person or entity to fill out or submit the 2022 DS-1 Form;
 - c. Use the 1997 DS-1 Form in every circumstance in which the 2022 DS-1 Form was to be used;
 - d. Post notice by 5:00 p.m. on March 3, 2022 on the IDFPR's website and by transmitting a memorandum to interested persons stating that the 2022 DS-1 Form shall not be used and that the 1997 DS-1 Form shall continue to be used in its stead.
2. By Agreement of the Parties, Defendants shall file an Answer or other responsive pleading to Plaintiffs' Verified Complaint for Injunctive Relief by April 4th, 2022.
3. The Parties shall convene on April 8th, 2022 at 10:30 a.m. for a status conference on the pleadings and for discussion on scheduling the preliminary injunction proceedings.
4. No bond is required.
5. This Order shall remain in effect until further notice.

SO ORDERED as of the 3rd day of March, 2022 at 11:33 a.m.

Neil H. Cohen, 2022

Neil H. Cohen, Associate Judge, Chancery
Division

3-3-22