

Jeannene Smith  
312 S. Lincoln Avenue  
Cherry Hill, NJ 08002  
(856) 321-0808

For Defendant, Jeannene Smith

MASHA ALLEN, by her Parent and  
Guardian, FAITH ALLEN

Plaintiff(s)

v.

FAMILIES THRU INTERNATIONAL  
ADOPTION, INC

And

CHILD PROMISE, INC. (formerly known as  
Reaching Out thru International Adoption,  
Inc.) and REACHING OUT THRU  
INTERNATIONAL ADOPTION, INC.

And

JEANNENE SMITH

Defendants

RECEIVED  
MILWAUKEE DISTRICT COURT  
2009 AUG 05 10 09 AM  
UNITED STATES  
DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil No. 08-4614 (JHR)  
Judge Donio

JEANNENE SMITH'S  
MOTION TO: DISMISS FOR  
LACK OF PERSONAL  
JURISDICTION

Comes Now, the Defendant, JEANNENE SMITH, *pro se*, in response to Plaintiff's Complaint and pleads that Fed. R. 12 (b)(2) requires dismissal of the Defendant (*personally*) from this matter and as reasons states:

1. Plaintiff states in paragraph No.13 of the Complaint that:

*At times material hereto, Jeannene Smith was the agent, servant and employee of FTIA and thereafter ROTIA and Child Promise, Inc. and acted in furtherance of the business of FTIA and ROTIA.*

2. Plaintiff states in paragraph No.29 of the Complaint that:

*Based upon information and belief, ROTIA may not have been a properly incorporated and/or a properly licensed business in the State of New Jersey for a period of time relevant to this matter. (emphasis supplied)*

3. Defendant herein affirmatively asserts that at all relevant times she acted as an employee of either FTIA or ROTIA, and that both corporations were properly incorporated at the time of her actions, as evidenced by Exhibits 1, 2, & 3, attached and incorporated herein as if fully set forth.

Allen vs. FTIA, et al  
Civil No. 08-4614 (JHR)  
Judge Donio

**Motion to Dismiss for Lack of Personal Jurisdiction**

4. Furthermore, the named Defendant Corporations have contractually agreed to hold harmless and indemnify Defendant for any and all actions as evidenced by the *previous Exhibits* and *Exhibit 4*, attached and incorporated herein.
5. Moreover, that if and/or when any of the named Defendant Corporations may or may not have been properly incorporated and/or licensed, it occurred without the knowledge, consent or corroboration of the named Defendant, as evidenced by *Exhibit 5*, attached and incorporated herein.
6. Defendant asserts that Federal Rules 12(b)(2) & Rule 12(h)(3) require dismissal, because vague, conclusory allegations do not make a valid pleading. Here Plaintiff makes the bald allegation: "ROTIA *may not* have been a properly incorporated/licensed business." The court need not accept as true, any allegations that are conclusory or mere legal conclusions, unwarranted deductions of fact or unreasonable inferences, or are internally inconsistent. *See Pesci v. Internal Revenue Service*, 1999 U.S. Dist. LEXIS 4007 (D. Nev. Mar. 16, 1999); *Hirsch v. Arthur Andersen & Co.*, 72 F.3d 1085, 1092 (2d Cir. 1995) (on a Motion to Dismiss, "general conclusory allegations need not be credited...when they are belied by more specific allegations of the complaint.").
7. Because the Complaint sounds in "negligence", the theory of *Respondeat – Superior* is appropriate to this case, if in fact, the Defendant Corporations actually *did* owe a duty to Plaintiff. ("Under this doctrine master is responsible for want of care on servant's part toward those to whom master owes duty to use care, provided failure of servant to use such care occurred in course of his employment", Black's Law Dictionary).
8. Additionally, your named Defendant further asserts that no duty of care was owed Plaintiff by ANY of the Defendants herein, because the actual adoption was overseen, supervised and performed by the government of the Russian Federation, as a Final Decree of Adoption, in Russia, according to Russian law, and consequently Russian Law applies hereto and the appropriate forum for the instant action is in Moscow, Russia, against the government of the Russian Federation, which has no personal jurisdiction over your named Defendant.

WHEREFORE, the named Defendant, Jeannene Smith, respectfully requests this Honorable Court to:


- A. DISMISS her as a named Defendant in the instant matter;
- B. Award costs and attorney's fees for having to prosecute a defense in the instant matter; and
- C. For such other and further relief as may seem just.

Allen vs. FTIA, et al  
Civil No. 08-4614 (JHR)  
Judge Donio

**Motion to Dismiss for Lack of Personal Jurisdiction**

Respectfully submitted,

BY JEANNENE SMITH  
312 S. Lincoln Avenue  
Cherry Hill, NJ 08002  
(856) 321-0808

  
JEANNENE SMITH

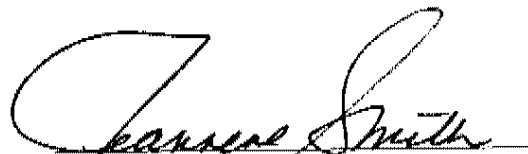
DATED: 8/5/09

Exhibits:

1. Affidavit of Jeannene Smith
2. Employment Contract  
(between FTIA & Jeannene Smith)
3. Acknowledgment & Agreement  
(by Matthew Mancuso to continue with FTIA)
4. Complaint Investigation Report
5. Separation Agreement & Release

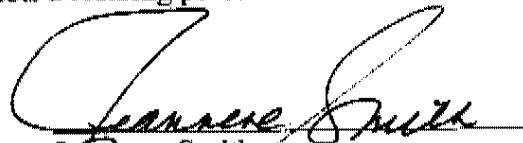
**POINTS & AUTHORITIES IN SUPPORT THEREOF**

1. Rule 12(b)(2), Federal Rules: lack of jurisdiction over a person;
2. Rule 12(b)(h)(1), Federal Rules:  
A defense of lack of jurisdiction over the person...is waived...(B) if it is neither made by motion under this rule nor included in a responsive pleading....;
3. As otherwise cited herein;
4. The record in this case.

  
Jeannene Smith

**REQUEST FOR HEARING ON MOTION**

Defendant, Jeannene Smith, *pro se*, hereby requests a Hearing pursuant to Federal Rule 56.

  
Jeannene Smith

Allen vs. FTIA, et al  
Civil No. 08-4614 (JHR)  
Judge Donio

**Motion to Dismiss for Lack of Personal Jurisdiction**

**CERTIFICATE OF SERVICE**

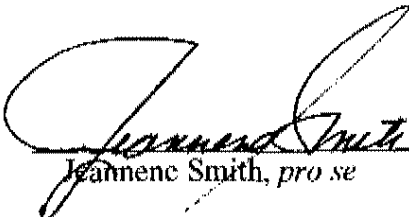
I HEREBY CERTIFY under Penalties of Perjury that on this 5<sup>th</sup> day of <sup>August</sup>~~February~~ 2009 a copy of the foregoing Defendant's *pro se Motion to Dismiss for Lack of Personal Jurisdiction* [with attached Exhibits, 1 thru 5] was mailed via US Postal Service, First-Class, Postage Pre-Paid to:

Robert N. Hunn, Esquire  
KOLSBY, GORDON, ROBIN, SHORE & BEAR  
2000 Market Street, 28th Floor  
Philadelphia, PA 19103

Donald C. Cofsky, Esquire  
DOFSKY & ZEIDMAN, L.L.C.  
209 Haddon Avenue  
Haddonfield, NJ 08033

CHILD PROMISE, INC.  
(formerly known as *Reaching Out Through International Adoption, Inc.*)  
and  
REACHING OUT THROUGH INTERNATIONAL ADOPTION, INC.  
c/o Joseph P. Hudrick, Registered Agent  
4 Ridge Road  
Southampton, NJ 08088

ADAGIO HEALTH, INC.  
(formerly known as *Family Health Council, Inc.*  
and trading as *Family Adoption Center*)  
960 Penn Avenue, Suite 600  
Pittsburgh, PA 15222

  
Jeannene Smith, pro se

RECEIVED  
WILLIAM T. WALSH, CLERK

2009 AUG -5 P 12:32

U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

FILED

**Jeannene Smith**  
312 S. Lincoln Avenue  
Cherry Hill, NJ 08002  
(856) 321-0808

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2009 FEB -2 P 1:48

For Defendant, Jeannene Smith

MASHA ALLEN, by her Parent and  
Guardian, FAITH ALLEN

Plaintiff(s)

v.

FAMILIES THRU INTERNATIONAL  
ADOPTION, INC

*And*

CHILD PROMISE, INC. (formerly known as  
Reaching Out thru International Adoption,  
Inc.) *and* REACHING OUT THRU  
INTERNATIONAL ADOPTION, INC.

*And*

JEANNENE SMITH

Defendants

UNITED STATES  
DISTRICT COURT  
  
DISTRICT OF NEW JERSEY  
Civil No. 08-4614 (JHR)  
*Judge Donio*  
  
JEANNENE SMITH'S  
AFFIDAVIT IN SUPPORT of  
HER MOTION to DISMISS  
FOR LACK OF PERSONAL  
JURISDICTION

AFFIDAVIT OF JEANNENE SMITH

1. My name is Jeannene Smith and I am a named Defendant in the instant matter.
2. I am over the age of 18 years, and of sound mind, being mentally competent to testify.
3. I have personal knowledge of the factual recitals, which I make herein.
4. During the time-period in which I worked with Keith Wallace – roughly 1996 to 1998 – I never held myself out to anyone as anything other than an “employee” of Families Thru International Adoption. (“FTIA”), or Children’s Hope International.
5. Because FTIA was an Indiana licensed, foreign accredited adoption agency, my job as the New Jersey representative of the organization was to coordinate, administratively, the United States’ aspects of international adoption paperwork: dossiers; police clearances; certification of marriage licenses, birth certificates and the like.
6. I do not have a Masters in Social Work; I am not licensed to perform social work duties; and I was not authorized by any licensed adoption agency to do that – neither Children’s Hope International,

Allen vs. FTIA, et al  
USDC-NJ 08-4614

Affidavit of Jeannene Smith

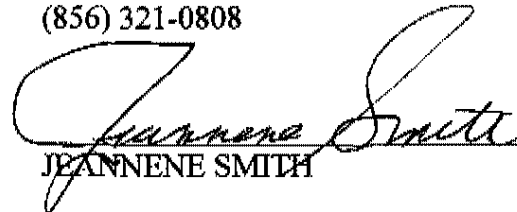
Families Through International Adoption, nor Reaching Out thru International Adoption (later renamed Child's Promise, Inc.) – it was not my position to make determinative judgment evaluations as to the suitability of persons to qualify as adoptive parents under the various State Licensing requirements.

7. At all times during the time-period in question, I was employed, using either a W-2 or 1099 (IRS) income reporting statement, by a properly incorporated and/or licensed adoption corporation. All correspondence, addresses, business cards, phone numbers, etc., reflected this fact; I worked within a discrete framework of tasks and assignments, directed by either statutory requirements or the internal policies and procedures of the employing corporation.
8. My duties were administrative in nature only; all my efforts and work was within the scope of my employment – whenever a question arose as to the efficacy of a policy, procedure or method, I brought it to the attention of either the Executive Director, who was licensed/authorized by the appropriate licensing authority, or to the Board of Trustees of the organization, for resolution.
9. Mr. Hunn is completely mistaken, and simply “guessing,” that I had any personal involvement in the decision-making process of placing of Masha, née Masha Yaskenkova, as an adoptive child from an orphanage in Russia to Matthew A. Mancuso.
10. Otherwise, Affiant saith not.

VERIFICATION OF AFFIANT

I solemnly affirm under penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true and correct.

Respectfully submitted,  
BY JEANNENE SMITH  
312 S. Lincoln Avenue  
Cherry Hill, NJ 08002  
(856) 321-0808

  
JEANNENE SMITH

DATED: 2/2/09

DECLASSIFIED





# CHILDREN OF CHINA

*a program of Families Thru International Adoption, Inc.*  
*(a state licensed not-for-profit child placement agency)*

October 3, 1996

Ms. Jeannene Smith  
312 So. Lincoln Avenue  
Cherry Hills, NJ 08002


Dear Jeannene:

Please find another "draft" Agreement. I cannot remember if this is the latest version with the addition of the financial management paragraph. As always, please feel free to make any suggested changes, fax it back to me or call me with your suggestions.

Very truly yours,

CHILDREN OF CHINA

By:

  
Keith M. Wallace  
Executive Director

Enclosure

KMW:rl c:\wp\adoption\smith1.ltr

AGREEMENT

This Agreement entered into this \_\_\_\_ day of October, 1996, by and between Families Thru International Adoption, Inc. (hereinafter "FTIA") and Jeannene and Donald Smith (hereinafter "Smith").

WITNESSETH:

WHEREAS, FTIA is a Indiana state licensed not-for-profit child placement agency which has developed a program entitled "Children of China" to assist U.S. citizens in adopting children from the People's Republic of China; and

WHEREAS, Smith is currently and has for more than a year, operated as a branch office of another child placement agency assisting U.S. citizens in adopting children from the People's Republic of China; and

WHEREAS, Smith now prefers to operate as a branch of FTIA; and

WHEREAS, FTIA and Smith have come to terms for Smith to operate as a branch of FTIA, the parties now reduce their Agreement to writing.

NOW THEREFORE, FOR AND CONSIDERATION of the mutual promises and covenants contained herein, the adequacy and sufficiency of which is acknowledged by the parties, the parties agree to the following:

1. That Smith will be allowed to facilitate families through FTIA out of the state of New Jersey according to the laws of New Jersey.
2. That FTIA will retain exclusive jurisdiction for the states of Indiana, Ohio, Kentucky and Illinois and if and when a prospective family calls Smith that resides in one of these states, that Smith will refer them to the home office in Evansville.
3. That Smith is allowed to serve families and accept applications from the remaining forty-six (46) states.
4. That FTIA will refer all inquiries East of Ohio to Smith.
5. That FTIA may accept applications from all fifty (50) states.

6. That Smith will submit a copy of any written materials that are sent to prospective clients regarding Chinese adoptions to FTIA.
7. That the total agency fee charged to each couple/single by Smith for an adoption from China through FTIA shall be the same as the fee FTIA charges to prospective families.
8. For each family referred to FTIA by Smith, Smith will receive a total of Two Thousand Dollars (\$2,000.00) payable as follows: Four Hundred Dollars (\$400.00) upon receipt of the application by FTIA and the couple's/single's Four Hundred Dollar (\$400.00) application fee; and One Thousand Six Hundred Dollars (\$1,600.00) upon receipt of a completed original dossier with three (3) copies, the One Thousand Eight Hundred Dollar (\$1,800.00) dossier fee and Three Hundred Fifty Dollar (\$350.00) Ministry of Civil Affairs fee. All remaining fees are retained by FTIA.
9. If a family withdraws from the adoption process or if China closes for adoptions after the family has submitted their Four Hundred Dollar (\$400.00) application fee, the application fee is non-refundable. If a family withdraws from the adoption process or if China closes its adoption program process after the families submit their dossier fee, it will be FTIA's policy to attempt to refund Fifty Percent (50%) of the dossier fee. If a family withdraws from the adoption process or if China closes its adoption program after the family submits their referral fee, it will be FTIA's policy to attempt to refund Fifty Percent (50%) of the referral fee. To accomplish this goal, Smith agrees to create a separate trust account where Smith will deposit at least Fifty Percent (50%) of all fees received from FTIA with the exception of the Four Hundred Dollar (\$400.00) application fee, until the adopting couple/single has returned from China after having completed their adoption. Smith is to provide monthly written evidence of their compliance with this policy.
10. Smith is required to maintain her own general liability insurance policy in the amount of One Million Dollars (\$1,000,000.00) and name FTIA as an additional insured.

- 11. Smith is required to provide the attached application which states the refund policy to all families.
- 12. This Agreement may be terminated in writing by either party submitting such a letter of termination to the other.

FAMILIES THRU INTERNATIONAL ADOPTION, INC.

By:

\_\_\_\_\_  
Keith M. Wallace, Executive Director

JEANNENE SMITH

\_\_\_\_\_  
DONALD SMITH

K:\W\rf c\wp\adoption\smith.agr

DECLASSIFIED



*Reaching Out thru International Adoption, Inc.*

*file sent  
to Indiana  
4/1/98*

**Acknowledgement and Agreement**

I/We have been informed of the formal separation between the Families thru International Adoption - New Jersey office and the FTIA Home Office in Indiana. I/We understand the New Jersey office has become an independent child placement agency now known as Reaching Out thru International Adoption, Inc. I/We have been presented with options of continuing my/our adoption and have indicated my/our preferences below.

\_\_\_\_\_ I am aware that my adoption application and file are presently retained in the former NJ office of FTIA which is now an independent child placement agency known as **Reaching Out thru International Adoption, Inc.** It is my preference to continue working with the New Jersey office and I hereby grant permission for all documentation to be transferred to Reaching Out.

~~\_\_\_\_\_~~ I am aware that my adoption application and file are presently retained in the former NJ office of FTIA which is now an independent child placement agency known as **Reaching Out thru International Adoption, Inc.** It is my preference not to transfer my application and documentation to Reaching Out and to instead, have all documentation forwarded to the Families thru International Adoption, Inc. located at 971 A. S. Kenmore Avenue, Evansville, IN 47715. I understand that a representative from FTIA- Indiana will handle all future contact.

\_\_\_\_\_ I/We wish to withdraw our application at this time.

\_\_\_\_\_  
Signature - Adoptive Applicant

\_\_\_\_\_  
Signature - Adoptive Applicant

Name: MATTHEW A. MANCUSO

Address: 152 SHERZER ROAD NEW LEN PA 17069

Program ( China, Russia, Guatemala) RUSSIA

EXHIBIT



State of New Jersey  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF YOUTH AND FAMILY SERVICES

Bureau of Licensing  
PO Box 717  
Trenton, New Jersey 08625-0717

CHRISTINE TODD WHITMAN  
Governor

MICHELE K. GU  
Commissioner  
CHARLES VEN  
Acting Director

December 2, 1998

Mr. Keith M. Wallace, Director  
Families Thru International Adoptions  
971 A South Kenmore Drive  
Evansville, Indiana 47714

Dear Mr. Wallace:

Under the New Jersey State Adoption Law (N.J.S.A. 9:3-37 et seq.) and the Manual of Requirements for Adoption Agencies (N.J.A.C. 10:121A), the official State regulations, the New Jersey Division of Youth and Family Services' Bureau of Licensing is responsible for certifying all public and private adoption agencies, both within and outside the State that provide adoption services in New Jersey. In keeping with the Division's responsibility under the State Adoption Law, the Bureau of Licensing is responsible for investigating complaints involving all public and private adoption agencies subject to our authority.

While Families Thru International Adoption is not licensed by the New Jersey Division of Youth and Family Services' Bureau of Licensing, your agency maintained an office in Cherry Hill, New Jersey. As such, a representative from the Bureau of Licensing conducted a complaint investigation at your adoption agency's Cherry Hill site on March 3, 1998 in response to allegations that (if your agency were licensed in New Jersey) would result in violations of certain requirements of the Manual of Requirements for Adoption Agencies. I have attached for your information the Complaint Investigation Summary/Report which identifies the findings of the investigation.



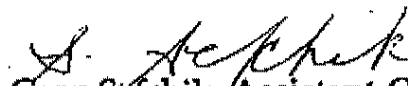
-2-

As a result of the complaint investigation, the Bureau determined that your agency was providing adoption services in New Jersey since October 1996 without securing a license/certificate as required under the New Jersey State Adoption Law (N.J.S.A. 9:3-37 et seq.) and the Manual of Requirements for Adoption Agencies (N.J.A.C 10:121A).

As you may be aware, Ms. Jeannene Smith who operated your agency's New Jersey office has since applied and was granted a Certificate of Approval for an adoption agency called Reaching Out Thru International Adoption. Hannah Druger serves as the director of the agency.

If you have any questions, please contact me or Anna Montes, Adoption Agency Coordinator, either in writing or by telephoning at (609) 292-8255.

Sincerely,

  
Gary Sefchik, Assistant Chief  
Residential and Agency Programs  
Bureau of Licensing

c: Richard Crane, Chief  
Bureau of Licensing  
Anna Montes  
Patricia Vesper, Welfare Consultant  
State of Indiana - Department of Public Welfare  
Hannah Druger ✓  
Jeannene Smith

**COMPLAINT INVESTIGATION SUMMARY/REPORT**

COMPLAINT NUMBER 0298

NAME OF ADOPTION AGENCY Families Thru International Adoptions		
STREET 971 A South Kenmore Drive		
CITY Evansville	STATE Indiana	ZIP CODE 47714
DIRECTOR Keith M. Wallace		
TELEPHONE (812) 479-9900		

NAME OF BOARD PRESIDENT NA		
STREET		
CITY	STATE	ZIP CODE
APPROVAL REGULAR		TEMPORARY
DATE COMP RECEIVED 1/23/98	DATE INVESTIGATED 3/3/98	

ALLEGATION	FINDINGS	RESULTS	
		COMPLAINT SUBSTANTIATED	COMPLAINT UNSUBSTANTIATED
<p>1) Families Thru International Adoptions, an adoption agency located in Indiana, but is not licensed by the New Jersey Division of Youth and Family Services Bureau of Licensing was operating an office located in Cherry Hill, New Jersey and providing adoption-related services.</p>	<p>1) The Adoption Agency Coordinator from the Bureau of Licensing interviewed the Director of Families Thru International Adoptions (Indiana) by telephone on several occasions. Mr. Wallace indicated that his agency had an office in Cherry Hill, New Jersey for the purpose of processing paper work. At this time, Mr. Wallace requested and was sent an application package for licensure in New Jersey and indicated that he wanted to comply with New Jersey regulations.</p> <p>However, on 1/20/98, Mr. Wallace informed the Bureau that he had decided not to apply for a license in New Jersey. On 2/23/98, the Bureau received a letter from Mr. Wallace stating that he had terminated his relationship with Ms. Jeannene Smith who was operating the Cherry Hill office on behalf of Families Thru International Adoptions.</p> <p>On 3/3/98, the Adoption Agency Coordinator conducted an on-site inspection at the Cherry Hill office (the home of Ms. Smith) and interviewed Ms Smith and Hannah Druger (the current Director of Reaching Out Thru International Adoption, the agency formed by Ms. Smith after learning that Families Thru International Adoptions was not licensed in New Jersey).</p>	<p>X</p>	

As a result of this visit    violation(s) applicable to the allegations were cited,    additional violation(s) were cited and    recommendation(s) were made.

Anna Montes, Adoption Agency Coordinator  
Inspector(s) Name(s) and Title(s)

Case 1:08-cv-04614-JHR-AMD Document 57 Filed 08/05/2009 Page 18 of 25

COMPLAINT INVESTIGATION SUMMARY/REPORT

COMPLAINT NUMBER 02/98

Families Thru International Adoptions  
NAME OF AGENCY

ALLEGATION	FINDINGS	RESULTS	
		COMPLAINT SUBSTANTIATED	COMPLAINT UNSUBSTANTIATED
	<p>1) (Continued) During the on-site inspection, a number of case files were reviewed. The inspection revealed an office located in Ms. Smith's home that contained a conference room, a large office equipped with three desks, computers, file cabinets and telephones. The agency offers international adoption programs in China, Guatemala and Russia. Ms. Smith travels to these countries and provides supervision of the agency's overseas consultants. Ms. Smith visits orphanages and makes video tapes of children who are available for adoption. These video tapes are then shown to prospective adoptive applicants. Ms. Smith stated that an adoptive applicant completes the agency's adoption application and returns the application to the New Jersey office. Once the New Jersey office has reviewed the application, Ms. Smith then forwards the application to the Indiana office for processing.</p> <p>The Indiana office (Mr. Wallace) provides payments for the services provided to applicants by Ms. Smith. The Indiana adoption agency (Families Thru International Adoptions) lists Ms. Smith as the Director of their New Jersey office.</p> <p>Ms. Smith indicated that it was her understanding that Mr. Wallace had applied or was in the process of applying to be licensed in New Jersey and was not aware that the Cherry Hill office was operating without a license.</p> <p>This allegation is substantiated. Families Thru International Adoptions through their office in New Jersey was providing adoption services in New Jersey since October 1996 without securing a license/certificate as required under the New Jersey State Adoption Law (N.J.S.A. 9:3-37 et seq.) and the Manual of Requirements for Adoption Agencies (N.J.A.C. 10:121A).</p>	X	

As a result of this visit \_\_\_ violation(s) applicable to the allegations were cited, \_\_\_ additional violation(s) were cited and \_\_\_ recommendations were made.

Anna Montes, Adoption Agency Coordinator  
Inspector(s) Name(s) and Title(s)

Case 1:08-cv-04614-JHR-AMD Document 57 Filed 08/05/2009 Page 19 of 25

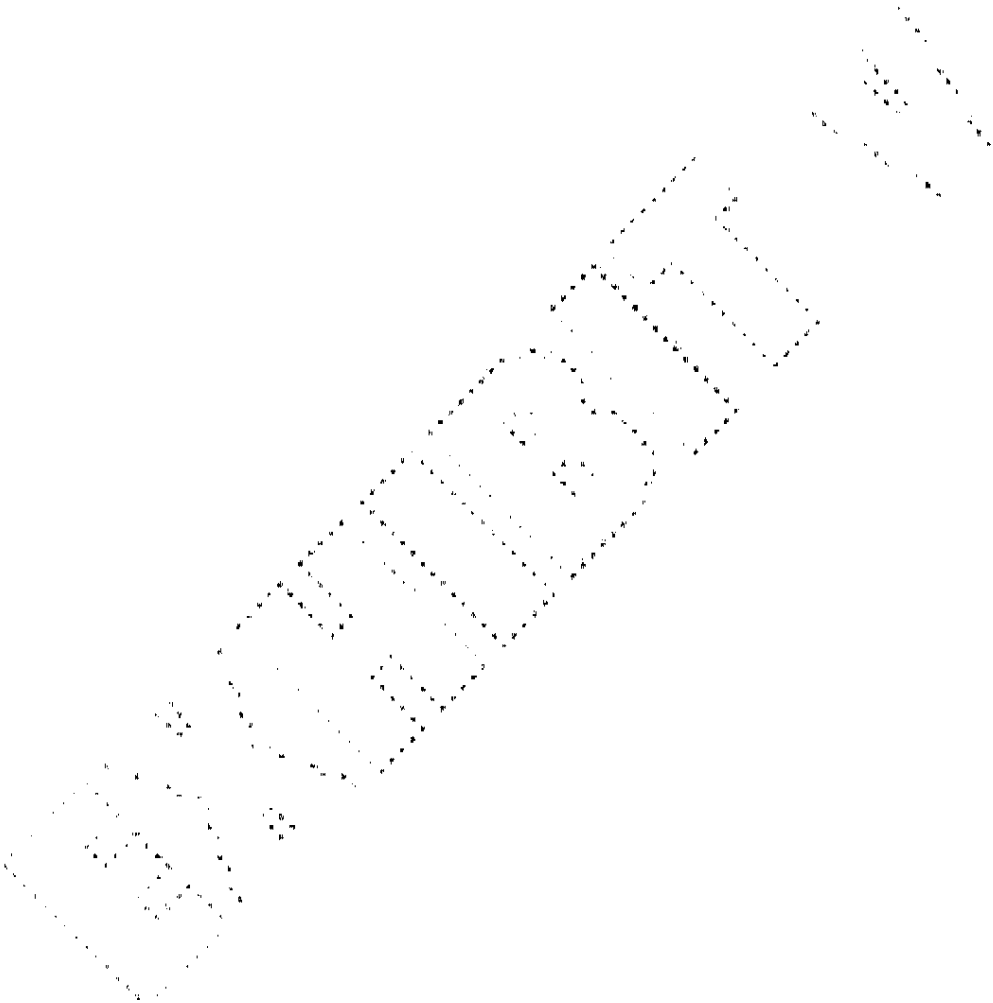
## COMPLAINT INVESTIGATION SUMMARY/REPORT

COMPLAINT NUMBER 0290Families Thru International Adoptions  
NAME OF AGENCY

ALLEGATION	FINDINGS	RESULTS	
		COMPLAINT SUBSTANTIATED	COMPLAINT UNSUBSTANTIATED
2) The Director of the New Jersey/Cherry Hill office of Families Thru International Adoptions indicated to an applicant that there were more than 20 children available for adoption from Guatemala, however, a few weeks later the applicant was told that there were no children available for adoption from Guatemala.	2) The Director of the Cherry Hill office indicated that she provided information and showed a video to the applicant of children from Guatemala who were available for adoption. The Director indicated that the specific child the applicant was interested in adopting had already been assigned to another applicant. The Director also stated that the applicant only wanted to adopt a female child, but there were only male children available at that time the applicant received approval from Immigration and Nationalization Service (INS) in 12/97. The Director denied saying that there were no children available, instead she indicated to the applicant that there were no female children coming through for adoption from Guatemala.  The agency failed to document the above-noted information in case notes and as such, this allegation cannot be verified or denied.	NA	NA

As a result of this visit \_\_\_ violation(s) applicable to the allegations were cited, \_\_\_ additional violation(s) were cited and \_\_\_ recommendations were made.

Anna Montes, Adoption Agency Coordinator  
Inspector(s) Name(s) and Title(s)



## SEPARATION AGREEMENT AND RELEASE

This Separation Agreement and Release (collectively "Agreement") is made on this        day of       , 2007, by and among REACHING OUT THRU INTERNATIONAL ADOPTION, INC. ("Reaching Out") a New Jersey Non-Profit Corporation, JEANNENE SMITH ("J. Smith") and DONALD SMITH ("D. Smith").

WHEREAS, it has been determined by the parties hereto, that effective       , 2007, J. Smith shall resign as President of the Corporation and will no longer be employed by Reaching Out and D. Smith shall resign as Vice President of the Corporation; and,

WHEREAS, the parties have determined that it would be in their best interest to memorialize the terms and conditions under which J. Smith shall leave her employment with Reaching Out, and D. Smith shall resign as Vice President of the Corporation.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

### SECTION 1: Severance Terms

(A) In anticipation and reliance upon J. Smith and D. Smith fulfilling all of the obligations set forth in this agreement, Reaching Out agrees to the following:

- (i) Make a payment to J. Smith in the sum of eight thousand three hundred three dollars and forty-six cents (\$8,300.46) upon receipt of a fully executed copy of this Agreement;
- (ii) Pay J. Smith two thousand seventy-five dollars and eighty-six cents (\$2,075.86) in twelve monthly installments commencing on October 1, 2007 and concluding on September 1, 2008 for a total payment over that term of twenty four thousand nine hundred ten dollars and thirty-eight cents (\$24,910.38);
- (iii) Pay seven thousand three hundred eight dollars (\$7,308.00) to D. Smith as past due rent which payment shall bring Reaching Out current through August 31, 2007;
- (iv) Pay health insurance for J. Smith's family (J. Smith, D. Smith, her husband, and their children) including dental of same or better value as currently paid for by the company for a period of one year subsequent to the separation without contribution by J. Smith or her family;
- (v) Repay the currently outstanding demand note for the loan provided to Reaching Out by D. Smith. The total amount due and owing on the loan is thirty-five thousand five hundred fifty-one dollars (\$35,551.00). Upon payment of said sum, the loan will be considered satisfied in full. D. Smith will execute any and all necessary documents to reflect satisfaction of the loan;

(vi) Reaching Out will pay eight thousand dollars (\$8,000.00) towards attorney's fees incurred by J. Smith. Said payment to be made directly to the attorney and upon receipt of an invoice; and

(vii) Reaching Out shall permit J. Smith to remove her desk from the facility and keep it as her own.

(viii) So long as Reaching Out remains in business it will maintain a Business and Management Indemnity Policy equal to its present policy, which is identified as Westchester Fire Insurance Company, Policy No. BM120036792, effective date of December 12, 2003 (a copy of the policy declaration pages are attached hereto) and a Professional Liability policy equal to its present policy, which is identified as United National Insurance Company, Policy No. NGA0000371, effective date of November 10, 2006 (copy of the policy declaration page is attached hereto.) The parties acknowledge that at this time, based on their present knowledge, they are unable to conclusively establish wrong doing by any party.

(B) J. Smith and D. Smith in consideration for the promises and covenants made in this agreement, agree to the following provisions:

(i) J. Smith shall immediately resign as President of Reaching Out;

(ii) J. Smith agrees to vacate the premises;

(iii) J. Smith agrees not to solicit, directly or indirectly, any of the current clients of Reaching Out;

(iv) J. Smith agrees to return all corporate property including but not limited to the original corporate minute binder, keys to the files, computer access codes, unlock all passwords to access protected documents, credit cards, cellular phones, Hague materials, documentation for counsel on accreditation documentation in both printed and CD fashion as well as all original program applications (CDs) and other RO files;

(v) J. Smith agrees that she will not seek future employment with Reaching Out or any related or affiliated company;

(vi) D. Smith agrees to immediately resign as Vice President of the Corporation. D. Smith shall be permitted to remain as a caseworker but obligated to handle additional responsibilities in light of his significant compensation.

## **SECTION 2: Mutual Release.**

The parties to this Agreement, intending to be legally bound, as an acknowledgment of the mutual consideration exchanged herein, release and forever discharge each other from any and all claims and/or causes of action, whether past, present or future, presently known or unknown, arising out of the employment relationship and/or business relationship between J. Smith and D. Smith and Reaching Out, as an entity, the Board members as individuals or in their capacity as a Board member, both past, current, and future Board members, the Executive Director, as an individual or in the

capacity of Executive Director, except with respect to the construction or enforcement of this Agreement, as provided in Section 12, *infra*.

**SECTION 3: Representation of Comprehension of Documents.**

The parties have relied upon the advice of their attorneys in entering into this Release and Settlement Agreement and further acknowledge that they have been afforded a full and complete opportunity to review and evaluate the terms and conditions of the Agreement and further acknowledge that the terms of this Agreement and Release are fully understood and voluntarily accepted.

**SECTION 4: Governing Law.**

This Agreement shall be governed by, and construed in accordance with the laws of the State of New Jersey.

**SECTION 5: Agreement Binding Upon Successors.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns and legal representatives. This Agreement shall not be assigned, however, except as part of an estate transfer.

**SECTION: 6 Non-Disparagement**

The parties further agree that neither of them shall make any comments or statements, either publicly or privately, that would tend to disparage, defame or otherwise create a negative impression concerning the business or personal reputation, character or practices of the other party or parties. Reaching Out further agrees that they will only respond to inquiries from future employers or others seeking information about J. Smith's employment history by stating the dates of her employment, her position with the employer and that she left of her own volition.

**SECTION 7: Confidentiality.**

The parties shall keep the terms of this Separation Agreement and Release absolutely confidential. The parties shall not engage in discussions concerning the employment and/or business relationship between J. Smith, D. Smith and Reaching Out with anyone else, and if someone else inquires, shall state only that the parties separated in an amicable fashion. Without limitation, J. Smith and D. Smith shall not disclose any terms of the severance agreement, shall not give even a ballpark figure as to the monies they received, or hint in any way the amount of the payments made, shall not express any satisfaction or dissatisfaction with the severance, and shall not discuss or describe what precipitated the severance other than if required to do so by any Federal or State judiciary or regulatory authority to the extent such disclosure may be required.

**SECTION 8: Additional Documents.**

The parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions, including the filing of any documents necessary to conclude their relationship.



**SECTION 9: Severability.**

In the event that any one or more of the provisions contained herein shall, for any reason, be held invalid or unenforceable, then such invalidity or unenforceability shall not affect any other provisions of the Agreement.

**SECTION 10: Execution in Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument.

**SECTION 11: Entire Agreement.**

This Agreement constitutes the entire Agreement of the parties with respect to the subject matter hereof, and modified and/or replaces the terms of all previous agreement with respect to the subject matter hereof. In the event of any conflict between this Agreement and any other Agreement between the parties with regard to the subject matter hereof, the provisions of this Agreement shall control.

**SECTION 12: Arbitration.**

Any controversy or claim arising out of or in connection with this Agreement (other than an action for injunctive relief) shall be resolved by arbitration in accordance with the rules of the American Arbitration Association then in effect in the State of New Jersey and judgment upon any such award by the arbitrators shall be final and binding upon the parties and may be entered and enforced in any court having jurisdiction thereof. The arbitration shall be held in the State of New Jersey and the arbitration award shall include attorney's fees and costs to the prevailing party.

IN WITNESS WHEREOF, the parties hereto have executed this Separation Agreement and Release as of the day and year first above written.

By: \_\_\_\_\_  
IAN GRODMAN, for the Board of  
Directors of Reaching Out Thru  
International Adoption, Inc.

Date: \_\_\_\_\_

\_\_\_\_\_  
JEANNENE SMITH

Date: \_\_\_\_\_

\_\_\_\_\_  
DONALD SMITH

Date: \_\_\_\_\_