

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

State of Minnesota, by its Attorney General,
Lori Swanson,

Court File No. _____

Plaintiff,

vs.

Reaching Arms International Incorporated, a
Minnesota nonprofit corporation,

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR A COURT ORDER
REQUIRING A FINANCIAL AUDIT**

Defendant.

INTRODUCTION

Reaching Arms International Incorporated (“Reaching Arms”) is an adoption agency licensed by the Minnesota Department of Human Services (“DHS”). Minnesota law requires that Reaching Arms prepare a fee schedule for each client which sets forth each service to be performed by the agency, the fee to be charged for each service, and the timetable for each service. *See* Minn. Stat. § 259.37, subd. 1 (2006). The law also requires agencies such as Reaching Arms to collect the payment of fees, in stages, and as services are performed. *Id.*

Minnesota law allows the Attorney General to seek a court order requiring a financial audit of an adoption agency if there is good cause to believe the agency is violating the law relating to fee schedules and disclosure. The Attorney General makes such a motion here because Reaching Arms may be violating the law by: 1) charging significant fees early in the adoption process, before such fees are required in the schedule; 2) charging fees not disclosed on the fee schedule and then threatening to withhold adoptions if the clients do not pay these

additional fees; 3) increasing the fees that were specified in the fee schedule; and 4) failing to provide services as agreed to in its fee schedule.

STATEMENT OF FACTS

I. BACKGROUND OF REACHING ARMS

Reaching Arms was founded by Nila Hilton (f/k/a Nila Neumiller) in October of 1992. It was granted 501(c)(3) tax-exempt status by the IRS in 1995 as a licensed child-placing agency that placed orphaned children primarily from the Ukraine. It now claims to also place children from Russia, Guatemala, Poland, Armenia and the United States. See <http://reachingarms.org/index.cfm/pageid/87> (last visited January 25, 2007). Reaching Arms promises prospective parents on its website that it will provide a variety of services, such as organizing the entire adoption process here and abroad, being committed to doing everything possible to make the adoption process a positive, fruitful one, and having representatives abroad help cut through “red tape.” *Id.* And, while acknowledging that “[t]he time frame varies from nation to nation,” it claims “[i]nternationally, the range is typically six to twelve months from pre-application to placement.” *Id.*

In recent months, Reaching Arms has acknowledged that it is experiencing financial difficulties. In February of 2006, Nila Hilton sent a letter to families using its adoption services in which she sought donations because “Reaching Arms International is facing a financial crunch that has brought [it] to the brink of ruin.” (Affidavit of Randall K. Nelson, Ex. C.) Reaching Arms continued to advertise its adoption services and seek more clients despite these financial difficulties. As Reaching Arms has faced financial problems, so too have prospective parents faced financial problems with Reaching Arms. These include, but are not limited to, the following: changes in fees from the initial disclosure; the addition of counseling and other fees

when the prospective parents questioned Reaching Arms or its process; Reaching Arms' refusal to account for or provide receipts for fees (including cash) paid by the prospective parents in foreign countries; threats by Reaching Arms to stop the adoption process if the parents refused the additional counseling fees; refusing to refund money when prospective parents became concerned about the status of their adoption or had to use another agency to finish the process; and misrepresentations to prospective parents regarding the status of their adoptions. Some of their stories follow.

II. PARENTS' EXPERIENCES WITH REACHING ARMS

A. The Lairs

The following facts are set forth in the Affidavit of Angela Lair ("Lair Aff."), which is incorporated herein by reference.

In April of 2006, Angela and Joshua Lair of Glenville, Minnesota, selected Reaching Arms to help them adopt a baby and relied on its purported expertise and connections to Guatemala. (Lair Aff. ¶¶ 3, 5.) The Lairs signed an adoption agency fee schedule with Reaching Arms on about April 20, 2006. (*Id.* ¶ 6.) Just days later they were shown a photo of, and received a referral for, a baby on April 24, 2006. (*Id.* ¶ 7.) On April 27, 2006, they paid Reaching Arms \$15,750. (*Id.* ¶ 8.) In the summer of 2006, the Lairs noticed that "updated" photos of their baby were actually of different babies. (*Id.* ¶ 13.) Reaching Arms denied this, but a physician confirmed it. (*Id.*) Reaching Arms also refused to provide the Lairs with requested documentation, such as verification that their case was in the family court in Guatemala or a receipt for the \$15,750 that the Lairs paid. (*Id.* ¶¶ 10, 11.)

During the adoption process, the Lairs had concerns about Reaching Arms' finances. For instance, Reaching Arms claimed not to have received \$704.25 worth of checks that the Lairs'

relatives had donated after a fundraiser, even though copies of the cancelled checks showed that they had been cashed by Reaching Arms. (*Id.* ¶ 12.) Reaching Arms also had the Lairs' parents' credit card number and charged it without the Lairs' authorization. (*Id.* ¶ 18.) The Lairs ended up hiring an adoption agency in Guatemala to verify what was happening in their adoption process and discovered that the attorney on their power of attorney form at Reaching Arms did not know about their adoption. (*Id.* ¶ 14.) The second agency also learned that the "birth certificate" that Reaching Arms showed the Lairs for their baby was not a birth certificate but a birth report. (*Id.*)

Nila Hilton threatened to "black-mark" the Lairs' adoption, claiming that all they did was ask questions. (*Id.* ¶ 16.) In November 2006, the Lairs requested that Reaching Arms refund their money because of the false birth report, the photos of different children purporting to be the same child, and medical updates it provided which did not match the weight of the children in the pictures. (*Id.* ¶ 15.) While the Lairs are still interested in adoption, they do not want to do so through Reaching Arms. (*Id.* ¶ 17.) To date, they do not have a child and have not received a refund of their money. (*Id.*)

B. The Kantors

The following facts are set forth in the Affidavit of Beth Kantor ("Kantor Aff."), which is incorporated herein by reference.

In the summer of 2005, Beth and Brad Kantor of Plymouth, Minnesota, retained Reaching Arms to adopt a child from Guatemala. (Kantor Aff. ¶ 1.) The Kantors were referred a child during their first meeting with Reaching Arms, on July 29, 2005, at which they were also provided with Reaching Arms' adoption forms and fee schedule. (*Id.* ¶ 2.) A few days later, on August 3, 2005, they accepted the referral and paid a \$9,000 foreign fee, a \$6,000 agency fee and

a \$300 application processing fee. (*Id.* ¶ 3.) At that point, Reaching Arms had not conducted the home study or any other investigation to determine the suitability of the Kantors. (*Id.* ¶¶ 2, 3.) According to the Kantors' Client Fee Schedule and Disclosure, referral and acceptance of a child is step seven, which is supposed to occur after several steps had been completed, such as forms, the home study, adoptive parent training, and cultural training. (*Id.* ¶ 2, Ex. A.)

After paying the fees, the Kantors had a number of questions and called Cyndi Garner, its Guatemala director, to get more information about the process. (*Id.* ¶ 4.) After three weeks of unanswered telephone calls and emails, the Kantors were able to get through to Cyndi Garner. (*Id.*) When they inquired about the three week delay, Cyndi Garner became angry and threatened to pull the Kantors' adoption, telling them that if they wanted this child, then "stay in line." (*Id.*) The Kantors never received answers to their questions and were instead accused of having anger issues. (*Id.* ¶ 5.) When the Kantors attempted to address the communication problems with Reaching Arms, Tom Hilton, Nila's husband, claimed that the Kantors needed spiritual counseling because the "devil had a hold of them," which was the reason why they could not have children of their own. (*Id.* ¶ 6.) Unbeknownst to Tom Hilton, the Kantors already had biological children and were not adopting because they could not have biological children. (*Id.*) Tom Hilton attempted to force the Kantors to undergo spiritual counseling with him at an additional cost, which was not part of the original fee agreement, and told the Kantors that Reaching Arms had the power to put their adoption on hold indefinitely. (*Id.* ¶ 7.)

The Kantors were also subject to numerous misrepresentations made by Reaching Arms, including misrepresentations about when their case was in the PGN¹ in Guatemala, whether DNA testing had been completed, and whether social worker meetings with the birth mother were completed. (*Id.* ¶ 9.) Reaching Arms also withheld medical information about their child from the Kantors, which resulted in the PGN in Guatemala withdrawing the Kantors' case. (*Id.* ¶ 10.) Further, Reaching Arms gave the names of three different attorneys as the lawyer representing the Kantors, forged the Kantors' names on power of attorney documents and lied to the Kantors about the PGN withdrawal of its review. (*Id.* ¶¶ 10, 12.) When the Kantors informed Reaching Arms that they wished to file a grievance with Reaching Arms under its grievance policy, Nila Hilton threatened that if they filed a grievance, which would be reviewed by her, they would never see their little boy again. (*Id.* ¶ 13.) Nila Hilton also told the Kantors that if they complained to DHS or the U.S. Citizenship and Immigration Services, they would never get their child. (*Id.*) The Kantors ultimately retained an attorney and terminated their contract with Reaching Arms. (*Id.* ¶ 14.) Reaching Arms claimed that they were not allowed to terminate the contract and demanded that the Kantors submit to psychological testing, mandatory family counseling and anger management counseling with Reaching Arms. (*Id.*) Reaching Arms thereafter refused to give the Kantors any of their records and also pulled their home study, which forced the Kantors to pay for another one when they went forward with their adoption with another agency. (*Id.* ¶ 15.)

¹ PGN stands for the "Procuraduria General de la Nacion," which is roughly the equivalent of the Attorney General's Office and provides the government approval for the adoption after the Guatemalan family court approves/recommends the adoption.

C. Rick Spaulding and Christina Moulder

The following facts are set forth in the Affidavit of Rick Spaulding (“Spaulding Aff.”), which is incorporated here by reference.

Rick Spaulding and Christina “Tinia” Moulder (“the Spauldings”) of Minneapolis, Minnesota, decided to adopt a child from Guatemala in November of 2005. (Spaulding Aff. ¶ 3.) They chose Reaching Arms because it was smaller than other agencies, and could provide them with the individual attention they were looking for. (*Id.* ¶ 4.) As early as November 29, 2005, Reaching Arms referred a Guatemalan child to the Spauldings for adoption. (*Id.* ¶ 6.) The Spauldings were uncomfortable with this referral because it was right after they signed up with Reaching Arms and so the agency did not know anything about them. (*Id.*) They decided to turn down the referral, concerned that something might come up that would jeopardize the process. (*Id.*)

In January 2006, the Spauldings received a second referral to adopt a child in Guatemala. (*Id.* ¶ 7.) They were surprised since it again occurred before the home study was completed. (*Id.*) Since the home study was underway, however, they decided to accept the referral. (*Id.*) Rick Spaulding would later come to believe that the quick referral was made so that Reaching Arms could collect the \$15,250 fee required upon referral as soon as possible, and so that they would be committed to Reaching Arms. (*Id.*)

On September 22, 2006, several days prior to their planned second trip to visit their daughter in Guatemala, Rick Spaulding called Nila Hilton to make arrangements for meeting their daughter in Guatemala. (*Id.* ¶ 9.) When Rick Spaulding asked if she had arranged for an interpreter and contact person, as Reaching Arms had with their first visit with their daughter, Nila Hilton did not appear to know if one would be provided. (*Id.* ¶¶ 10, 11.) After Rick

Spaulding expressed concerns about Nila Hilton's understanding of the Guatemala process, she hung up on him. (*Id.* ¶ 11.) Throughout that evening, the Spauldings had several conversations with Nila Hilton and her husband, Tom Hilton. During those conversations, they were told that Rick had "anger issues" and that Reaching Arms could "hold up" their home study and call the INS to halt the adoption. (*Id.* ¶¶ 12-15.) Further, they were told that, as a licensed adoption agency, Reaching Arms could do whatever it wanted to interrupt the adoption process if Nila Hilton thought it necessary. (*Id.* ¶ 12.) In this conversation, Tom Hilton told the Spauldings that they should cancel the Guatemala trip because the "foreign representative" of Reaching Arms canceled their trip to Guatemala. (*Id.* ¶ 15.)

Since the Spauldings were so far in the adoption process and had already met their daughter, they wanted to make the adoption work. (*Id.* ¶ 16.) To save the adoption, the Spauldings asked Tom Hilton what they had to do to continue the process. (*Id.*) Tom Hilton told them that in order for the adoption to proceed, Rick Spaulding needed to apologize to Nila Hilton and meet with Tom Hilton for a series of counseling sessions at a cost of \$40 per session. (*Id.*) This "counseling" fee was never disclosed to the Spauldings prior to their conversation with Tom Hilton, and they were not aware that this may be required of them. (*Id.* ¶ 17.) Once Rick Spaulding agreed to the counseling, Tom Hilton told him that their "trip was back on." (*Id.*) Later, when Rick Spaulding informed Tom Hilton that he would only seek counseling from someone on Reaching Arms' counseling referral list--which Tom Hilton was not--Reaching Arms decided that Rick Spaulding was no longer required to meet with a counselor.² (*Id.* ¶ 18.)

² The Spauldings now only communicate with Reaching Arms in writing because they are afraid that anything they say verbally could be used against them as "anger management issues" and threaten the adoption process. (*Id.* ¶ 20.)

It has been 14 months since the adoption process began and the Spauldings are still waiting for their daughter. (*Id.* ¶ 21.) To date, they have paid Reaching Arms over \$15,000. (*Id.*)

D. The Goras

The following facts are set forth in the Affidavit of Kathleen Gora (“Gora Aff.”), which is incorporated herein by reference.

In the fall of 2005, Kathleen and David Gora of Cottage Grove, Minnesota, met with Reaching Arms to facilitate an adoption for them from Guatemala. (Gora Aff. ¶ 1.) They were surprised to receive a referral for a child from Reaching Arms at their first meeting--before they entered into an agreement or provided any information to Reaching Arms on their eligibility to adopt. (*Id.* ¶ 2.) At the time the Goras decided to retain Reaching Arms, they had no idea that it was experiencing financial problems which, when they heard of the potential problems, greatly added to the stress of the adoption process. (*Id.* ¶ 3.) The Goras received a letter from Reaching Arms in February 2006, stating that it was on the “brink” of financial disaster. (*Id.*) The Goras also received an email from Reaching Arms later that month, which acknowledged that its financial condition was serious. (*Id.*) In August of 2006, the Goras learned that Reaching Arms was downsizing, relocating the Guatemala program director, and putting its building up for sale. When asked why they were not informed about such matters that could adversely affect their adoption process, Nila Hilton told the Goras that Reaching Arms did not have a duty to disclose this information to them. (*Id.* ¶¶ 4-6.)

The Goras experienced additional problems with Reaching Arms. Although the Goras had been provided a fee schedule, the Guatemala program fee later increased \$1,000. (*Id.* ¶ 7.) Furthermore, the Goras were told to pay an additional \$200 for translation costs, \$100 in medical

costs and \$250 to their Guatemala attorney, none of which were on the fee schedule. (*Id.* ¶ 10.) Reaching Arms refused to provide the Goras with receipts for their payment of these costs or the balance paid on their foreign fee.³ (*Id.*) Although the Goras were able to go to Guatemala and get their daughter, to date Reaching Arms has not provided the Goras with their daughter's amended birth certificate, which the Goras need for her social security number and to apply for citizenship. (*Id.* ¶ 12.)

E. The Andersons

The following facts are set forth in the Affidavit of Brenda Anderson ("Anderson Aff."), which is incorporated herein by reference.

Brenda and Glenn Anderson of Redwood Falls, Minnesota, are in their late 40s and wanted to adopt a child. (Anderson Aff. ¶¶ 1-3.) After they were unsuccessful in adopting domestically, they decided to retain Reaching Arms because they were interested in adopting a child from Russia. (*Id.* ¶ 5.) After the Andersons signed up with Reaching Arms, they were matched with a nine-year-old child named Yulia (they called her Julia) and were required to pay \$7,000 in order to "secure" her. (*Id.* ¶ 6.) The Andersons were told that, without paying the fee and signing an adoption agreement, Julia could possibly be adopted by someone else.⁴ (*Id.*)

³ The Goras also had many other problems with Reaching Arms, including the following conduct by Reaching Arms: 1) giving the Goras two different birth dates for their daughter; 2) failing to disclose when the birth mother's home study was completed or when Reaching Arms completed the family court process; 3) providing conflicting information about when the Gora's case was in the PGN in Guatemala; and 4) refusing to provide documentation about the PGN process. (Gora Aff. ¶¶ 8-10.)

⁴ The Andersons had expressed concerns about fetal alcohol syndrome and attachment issues and were told about the Bridge of Love program, whereby the child could come to live with them for several weeks before finalizing the adoption. (*Id.* ¶ 5.) After they paid the \$7,000 fee, however, they were told it was no longer available. (*Id.* ¶ 7.) Nonetheless, they decided to go forward with adopting Julia. (*Id.*)

In September 2006, the Andersons received news that “it would be mere weeks” before they could make the first of two required trips to Russia to meet Julia. (*Id.* ¶ 9.) Nonetheless, when Brenda spoke with the Russian adoption coordinator, Galina, she informed Brenda that Julia was no longer available for adoption and had been adopted by another couple who had priority over them, despite the payment to “secure” her. (*Id.* ¶ 11.) Further, prior to the planned trip, they were required to pay an additional \$300 for “document update fees,” which was in addition to the fees listed on the fee schedule. (*Id.* ¶ 9.) Still sincerely wanting to adopt a child, the Andersons asked for another referral since they were told that the \$7,000 fee they paid was for a *successful* referral, which they did not receive. (*Id.* ¶ 12.)

In October of 2006, the Andersons were sent pictures of several children and expressed interest in a nine-year-old girl named Katya. (*Id.* ¶ 13.) Although they requested more information on her, they were only given a picture and information on her height and weight. (*Id.*) They consulted with a doctor who specializes in adopted children who opined that, based on the limited information Reaching Arms had provided, Katya was at a high risk of having fetal alcohol syndrome. (*Id.* ¶ 14.) A few days later, when Galina called the Andersons to inquire about whether they made a decision about Katya, Brenda Anderson informed Galina of the doctor’s opinion. (*Id.* ¶ 15.) Galina disputed the doctor’s opinion and stated that she would provide the Andersons with additional medical information on Katya. (*Id.*) The Andersons never heard from Reaching Arms or Galina again.⁵ (*Id.*) They would still like to adopt a child, but do not know whether they can proceed. (*Id.* ¶ 17.) It has been over a year, and they have spent over \$8,000, and they have no prospects of being matched with a child. (*Id.*)

⁵ The Andersons sent Reaching Arms a grievance letter on December 30, 2006, as allowed under Reaching Arms’ grievance policy. (*Id.* ¶ 16.) Despite the policy’s 10-day deadline to respond, Reaching Arms has not responded. (*Id.*)

F. The Struemkes

The following facts are set forth in the Affidavit of Brad Struemke (“Struemke Aff.”), which is incorporated herein by reference.

In late 2003 or early 2004, Brad and April Struemke of Osceola, Wisconsin, contacted Reaching Arms to participate in a host-to-adopt program that was to take place in the summer of 2004. (Struemke Aff. ¶ 3.) The Struemkes informed Reaching Arms that they wished to adopt a five to eight-year-old girl. (*Id.*) They were shown pictures of a girl named Oksana and were told that she was available for adoption. (*Id.*) The Struemkes began corresponding with Oksana, sending her gifts and pictures of themselves and their family. (*Id.*) At that time, Reaching Arms told the Struemkes that the adoption would be completed two or three months after they completed the host program. (*Id.* ¶ 4.)

In June of 2004, one week before Oksana was to come to the United States for her visit, Reaching Arms informed the Struemkes that there would be a delay in Oksana’s adoption because Oksana’s biological father had not relinquished his parental rights. (*Id.* ¶ 5.) The Struemkes later learned that Reaching Arms had this information in March of 2004, when they signed their contract, but did not disclose it. (*Id.* ¶ 6.) Upon learning this, the Struemkes expressed their dismay to Nila Hilton. (*Id.* ¶ 7.) She refused to discuss the issue and threatened the Struemkes that Reaching Arms had the authority to drop the adoption without the risk of any liability to the agency if they were going to “continually express [their] anger.” (*Id.*) They viewed Nila Hilton’s comments as a threat as this telephone conversation was the first time they expressed concerns about the process. (*Id.*)

The Struemkes also had problems with Reaching Arms not being forthright with the fees that had to be paid. First, a fee for adoption finalization was originally listed as \$6,000, but when

it came time to pay the fee, Reaching Arms requested \$8,000. (*Id.* ¶ 8.) Second, the Struemkes were required to pay approximately \$8,000 in cash to Reaching Arms' liaison in Russia, Inna Kezikova, but were not informed about the specific costs for the "overseas expenses" until they asked her.⁶ (*Id.* ¶¶ 9-10.) Neither Inna Kezikova nor Reaching Arms would provide the Struemkes with a receipt for these funds. (*Id.* ¶ 11.) Unlike some other prospective parents, the Struemkes were successful in their adoption. Oksana's adoption was finalized in April of 2006. (Struemke Aff. ¶ 13.)

G. The Nelsons

The following facts are set forth in the Affidavit of Randall K. Nelson ("Nelson Aff."), which is incorporated herein by reference.

Randall and Laura Nelson of Big Lake, Minnesota, became very interested in adopting a child in late 2004. (Nelson Aff. ¶ 3.) In January 2005, they contacted Reaching Arms and selected two boys from Russia whom they wished to adopt. (*Id.*) The Nelsons entered into a contract with Reaching Arms on April 22, 2005, and were given fee schedules and a timeline indicating when each fee was to be paid. (*Id.* ¶ 4.) In August 2005, however, Reaching Arms required the Nelsons to sign a new contract with a new fee schedule. (*Id.* ¶ 5.) The new contract contained higher fees than those listed in the original contract. (*Id.*) For example, the home study fee increased from \$2,400 to \$2,800 and the post-adoption fee increased from \$650 to \$750.⁷ (*Id.*) During the summer of 2005, the Nelsons hosted the two boys they wished to adopt

⁶ For example, Reaching Arms did not disclose that part of the overseas expense money went to the Frank Foundation office in Russia, when they were also paying a \$1,000 fee to the Frank Foundation office in the United States. (Struemke Aff. ¶ 10.)

⁷ The Nelsons refused to pay the increased fees. (Nelson Aff. ¶ 5.)

at their home for one month as part of the Bridge of Love (host-to-adopt) program and bonded with them.⁸ (*Id.* ¶ 6.)

The Nelsons felt that Reaching Arms was not forthright with the fees that had to be paid for the adoptions. First, Reaching Arms instructed the Nelsons to bring \$9,500 in cash with them when they made their trip to Russia to cover the “overseas expenses” listed in a fee schedule. (*Id.* ¶ 8.) The fee schedule provided a list of the services that were included in the overseas expenses, but it did not indicate a specific cost for each item. (*Id.*) Items included in the overseas expenses were medical expenses, interpreter fees, transportation, and passports for the children. (*Id.*) The Nelsons nonetheless ended up paying additional money for medical expenses, interpreter fees, and transportation while in Russia. (*Id.*) Second, only later did the Nelsons learn that part of the \$9,500 was for bribing Russian officials and some of it went to the Frank Foundation’s employees in Russia. (*Id.* ¶ 9.) Reaching Arms had disclosed on the fee schedule that a \$1,000 fee per child would be paid to the Frank Foundation office in the United States, but it did not disclose on the fee schedule that part of the overseas expense money went to the Frank Foundation office in Russia. (*Id.*) Finally, neither the Russian facilitator, Inna Kezikova, nor Reaching Arms would give the Nelsons a receipt for the \$9,500 cash payment they made in Russia for “overseas expenses.” (*Id.* ¶ 10.)

As with other parents, Reaching Arms threatened the Nelsons’ adoption process if they complained or questioned Reaching Arms. When the Nelsons expressed their concerns about Reaching Arms with other prospective parents in emails, one of the parents showed the Nelsons’

⁸ Reaching Arms initially told the Nelsons that hosting the boys counted as fulfillment of one of the two required trips that prospective adoptive parents must make to Russia. Later, the adoption process was delayed because, contrary to what Reaching Arms told the Nelsons, hosting the boys did *not* count towards fulfillment of the two trip requirement. (Nelson Aff. ¶ 6.)

comments to Nila Hilton of Reaching Arms. (*Id.* ¶ 7.) Thereafter, Nila Hilton sent the Nelsons an email stating she was concerned about any negative reaction by any family to these issues. (*Id.*) Nila Hilton warned that if anger surfaced during the home study process, it could jeopardize the adoption. (*Id.*) Further, after the Nelsons sent the Frank Foundation an email asking for verification that Reaching Arms was working with it in Russia, the Nelsons subsequently received an email from Craig Cook of Reaching Arms stating that if the Nelsons upset the Frank Foundation, the Frank Foundation could decide to charge the Nelsons a full fee of \$30,000, rather than the \$2,000 it was charging. (*Id.* ¶ 11.) Ultimately, the Nelsons did adopt the two children on June 24, 2006. (*Id.* ¶ 4.)

H. The Spurbecks

The following facts are set forth in the Affidavit of Ann Spurbeck (“Spurbeck Aff.”), which is incorporated herein by reference.

In February of 2005, Ann and Andrew Spurbeck of Waconia, Minnesota, became interested in adopting a baby from eastern Europe and retained Reaching Arms. (Spurbeck Aff. ¶ 3.) On November 21, 2006, the Spurbecks wrote a check to Reaching Arms for \$4,100. (*Id.* ¶ 9.) They were told this was an “in country” fee, with \$3,310 for their facilitator in the Ukraine, \$650 for post-adoption reporting, \$100 for consulate registration and the rest as a wire transfer fee. (*Id.*) Nila Hilton told them she was wiring the money to their facilitator immediately. (*Id.*) The Spurbecks were found to be eligible to adopt two children and traveled to the Ukraine in December 2006. (*Id.* ¶¶ 7,10.) Reaching Arms assured the Spurbecks that they would have as much as time as they needed to review photos and meet the children and that they should only choose a child with whom they felt bonded. (*Id.* ¶ 11.) Once in the Ukraine, however, the Spurbecks were limited to one hour to review photos and were only permitted to

meet one child. (*Id.* ¶ 12.) In addition, they were told they had to choose a child in that hour. (*Id.*) They were not able to identify a child to adopt on that trip. (*Id.*) The Spurbecks learned on the trip that their Russian facilitator had not received his fee; nor had Reaching Arms performed the other services covered by the \$4,100. (*Id.* ¶¶ 13, 14.) Although Nila Hilton later told the Spurbecks that Reaching Arms would refund the extra \$4,100 in country fee, Reaching Arms has not done so. (*Id.* ¶¶ 14, 16.) To date, an adoption has not been processed and the Spurbecks still have not received a child. (*Id.* ¶ 17.)

ARGUMENT

I. UNDER MINN. STAT. § 259.45, SUBD. 1 (2006), THE COURT MAY ORDER REACHING ARMS TO UNDERGO A FINANCIAL AUDIT BY AN AUDITOR CHOSEN BY THE ATTORNEY GENERAL.

Reaching Arms is a child-placing agency and is licensed as such by DHS. *See* Minn. Stat. § 259.21, subd. 6 (2006) (an “agency” is “any ... organization, association or society licensed or certified by the commissioner of human services to place children for adoption”).

Under Minnesota law:

If the commissioner [of DHS] or attorney general has good cause to believe that a child-placing agency has violated section 259.37, subdivision 1, 259.55, 317A.907 or any other applicable law dealing with fees, payments, accounts or financial disclosure by a child-placing agency, the commissioner or the attorney general may seek a court order requiring a financial audit of the agency, at the agency’s expense, by an auditor chosen by the commissioner or attorney general.

Minn. Stat. § 259.45, subd. 1 (2006).

In this case, the State has good cause to believe that Reaching Arms has, at a minimum, violated Minn. Stat. § 259.37, subd. 1, which provides:

An agency may only require payment of fees in stages as services are performed. An agency engaged in placement activities must provide a prospective adoptive parent with a schedule of fees and a timeline indicating when each fee or portion of the total fees for the agency services must be paid. The agency must also provide a fee schedule for prefinalization postplacement services.

Therefore, this Court may order a financial audit of Reaching Arms, at its expense, by an auditor chosen by the Attorney General.

II. THE STATE HAS GOOD CAUSE TO BELIEVE REACHING ARMS HAS VIOLATED MINN. STAT. § 259.37, SUBD. 1 (2006).

As the record in this matter demonstrates, the State has ample evidence to believe that Reaching Arms has violated Minn. Stat. § 259.37, subd. 1. Reaching Arms has required payment of fees before services are performed, largely by referring children for adoption early in the process, before such a referral is provided for on the fee schedule. As a result of these early referrals, Reaching Arms has received substantial fees even before a home study or other procedures have been completed to determine the suitability of the adoption. Reaching Arms has also required parents to pay fees not disclosed on the fee schedule. Moreover, Reaching Arms has increased the fees for services during the adoption process. In addition to these violations, which are discussed more fully below, the financial audit is warranted because Reaching Arms refuses and fails to provide receipts for payments by prospective parents, which is particularly troubling given the large amounts of cash parents are required to pay in foreign countries.⁹ Based upon all of this evidence, this Court should order a financial audit of Reaching Arms.

⁹ For example, the Nelsons were required to bring \$9,500 in cash to Russia. (Nelson Aff. ¶ 8.) Reaching Arms refused to provide a receipt for this payment. (*Id.* ¶ 10.) Similarly, the Struemkes paid \$8,000 in cash to Reaching Arms Russian liaison. (Struemke Aff. ¶ 9.) Reaching Arms also refused to provide them with a receipt for this money. (*Id.* ¶ 11.)

A. Reaching Arms Has Violated Minn. Stat. § 259.37, Subd. 1 By Requiring Payments Of Fees Before Services Are Performed.

The statute requires the adoption agency to charge fees in *stages* as services are performed. *See* Minn. Stat. § 259.37, subd. 1 (2006). As explained below, Reaching Arms repeatedly violated the statute by requiring at least 50 percent of the total adoption fee to be paid shortly after the prospective parents enter into an agreement with it and begin the adoption process. Reaching Arms frequently obtains significant funds early on--before the prospective parents' eligibility for adopting has been determined--by referring a child. This is clearly contrary to the fee schedule and timeline.

For instance, the Kantors' Client Fee Schedule and Disclosure clearly indicates that referral and acceptance of a child is step *seven*, which is supposed to occur after several other steps have been completed, such as filling out forms, the home study, adoptive parent training, and cultural training. (Kantor Aff. ¶ 2, Ex. A.) Nonetheless, a child was referred to the Kantors during their first meeting with Reaching Arms, on July 29, 2005, at which they were also provided with Reaching Arms' adoption forms and fee schedule. (*Id.* ¶ 2.) A few days later, on August 3, 2005, they accepted the referral and paid the \$9,000 foreign fee, \$6,000 agency fee and a \$300 application processing fee. (*Id.* ¶ 3.) At that point, Reaching Arms had not conducted the home study or any other investigation to determine the suitability of the Kantors.¹⁰ (*Id.* ¶¶ 2,3.)

Likewise, Reaching Arms also ignored the statute when retained by the Spauldings. In late November 2005, Reaching Arms referred a child to the Spauldings, which they did not

¹⁰ The Goras were also given a referral prior to the completion of their home study. (Gora Aff. ¶ 2.) They rejected it so that the child did not have to wait for a home which they completed the paperwork. (*Id.*)

accept because they had just signed up and were uncomfortable that something might come up to jeopardize the process; they wanted to wait until Reaching Arms had a chance to complete some of the necessary forms and paperwork. (Spaulding Aff. ¶ 4.) Shortly thereafter, in January of 2006 while the home study was still underway, the Spauldings received a second referral, which they accepted and for which they paid \$15,250, even though the money was to pay for services that could not be performed for months. (*Id.* ¶ 7.)

Reaching Arms also made no pretense of a staged fee structure for the Lairs. The Lairs signed an adoption fee schedule with Reaching Arms on about April 20, 2006, were shown a photograph of their baby on April 24, 2006, and paid Reaching Arms \$15,750 a mere three days later.¹¹ (Lair Aff. ¶¶ 6-8.) Subsequently, they began having problems receiving information and updates from Reaching Arms, and asked for a receipt for the \$15,750; Reaching Arms provided excuses, but no receipt. (*Id.* ¶ 11.) By November 7, 2006, the Lairs sent a letter requesting a refund because of the misrepresentations of Reaching Arms. (*Id.* ¶ 15.) As a result, Nila Hilton threatened to “black-mark” their adoption. (*Id.* ¶ 16.) Reaching Arms has neither completed an adoption for the Lairs nor refunded their money. (*Id.* ¶ 17.) The Lairs also state that Reaching Arms had credit card information from the Lairs’ parents due to their initial payments. (*Id.* ¶ 18.) Reaching Arms subsequently charged the Lairs’ parents’ credit card without authorization. (*Id.*) No services had been performed for the unauthorized payment.

¹¹ The Lairs were also told at that time, that the adoption of their Guatemalan baby would be completed in three and one-half to six and one-half months. (*Id.* ¶ 8.) That has not proven to be the case.

Reaching Arms also charged fees to other prospective parents without compliance with the “staged” fee schedule requirement.¹² The Andersons paid \$7,000 to secure a nine-year-old Russian girl named, Julia, in April of 2006. (Anderson Aff. ¶ 6.) Reaching Arms told the Andersons that it was necessary to pay the fee in order to “secure” Julia so that she was not adopted by someone else. (*Id.*) In September, they were told “it would be mere weeks” before they could make their first trip to Russia to meet Julia.¹³ (*Id.* ¶ 9.) Subsequently, however, Reaching Arms’ Russian adoption facilitator, Galina, told the Andersons that Julia had been adopted by another family with priority over them, despite the \$7,000 to “secure” her. (*Id.* ¶ 11.)

The use of large retainer fees which do not coincide with a published timeline of adoption services is a violation of Minn. Stat. § 259.37, subd. 1 and warrants an auditor to be appointed by the Court.¹⁴

¹² For example, the Spurbecks paid \$4,100 to Reaching Arms for an in-country fee for a trip in which they were not successful in adopting a child. (Spurbeck Aff. ¶¶ 9, 12.) Part of that fee, \$3,310, was supposed to be paid to the foreign facilitator in the Ukraine. (*Id.* ¶ 9.) Despite Nila Hilton’s assertion that she was going to wire transfer the money immediately when she received it, she did not. (*Id.* ¶¶ 9, 13.) The facilitator was never paid. (*Id.* ¶ 13.) In addition, the other services covered by the \$4,100--the post-adoption reporting, consulate registration and the wire transfer fee--were never performed, let alone performed prior to payment as required by statute. (*Id.* ¶ 14.)

¹³ In the meantime, the Andersons had been showing Julia’s pictures to family and friends so they could “meet” their daughter. (*Id.* ¶ 8.)

¹⁴ The adoption agency must also set forth on the fee schedule a timeline as to when the payments for each service are required and the timeline of each service. Minn. Stat. § 259.37, subd. 1 (2006). The affidavits accompanying this memorandum are replete with examples of delays and missed deadlines. For example, Reaching Arms represented to the Spauldings that tasks were completed sooner than they were. The Spauldings found that paperwork that should have been filed weeks before a visit to Guatemala was filed just days before, and their DNA approval, which should have been accepted in March 2006, was not accepted until September 2006. (Spaulding Aff. ¶ 8.) The early payments without services, coupled with the organization’s statements about financial difficulties and refusal to give receipts, caused great concern for the prospective parents about where their money is going.

B. Reaching Arms Has Violated Minn. Stat. § 259.37, Subd. 1, By Adding Fees Not On the Schedule Once the Parents Have Started the Adoption Process.

The law prohibits agencies such as Reaching Arms from requiring that parents pay additional fees, which were not disclosed on the fee schedule. *See* Minn. Stat. § 259.37, subd. 1 (2006). This provision helps to ensure that prospective parents are not exploited into paying additional fees once the process is underway and they fear losing the opportunity to adopt. It appears, however, that it was common for Reaching Arms to charge prospective parents additional fees above and beyond those disclosed on the fee schedule. For example, the Andersons were required to pay an additional \$300 for “document update fees.” (Anderson Aff. ¶ 9.) The Goras were charged an additional \$200 for translation costs and \$100 in medical costs that were not disclosed on the client fee schedule. (Gora Aff. ¶ 10.) Moreover, while in Guatemala to pick up their daughter, the Guatemalan attorney required the Goras to pay an additional \$250 that they felt they had no choice but to pay. (*Id.* ¶ 11.)

Another common problem prospective parents encountered was the addition of “counseling fees” by Reaching Arms, not disclosed on the fee schedule, which appear to arise only when the prospective parents questioned the organization. The affidavits detail many examples of prospective parents who, after asking questions of the organization, were told they had to pay for, and participate in, counseling with Tom Hilton of Reaching Arms, even though he is not on Reaching Arms’ approved counseling list. The Kantors were told they had to undergo such counseling because “the devil had a hold of them.” (Kantor Aff. ¶ 6.) When they wanted to pursue counseling with their own minister or counselor, Tom Hilton threatened to put their adoption on hold. (*Id.* ¶ 7.) Rick Spaulding was also told he had “anger issues” and their trip to Guatemala was put “on hold” until he agreed to counseling with Tom Hilton for \$40. (Spaulding Aff. ¶¶ 12, 15, 16.) The counseling requirement was dropped when Rick Spaulding

stated he would only seek counseling with someone on Reaching Arms' approved list. (*Id.* ¶ 18.) At least one purpose of the published fee schedule, published timeline, and staged fee payments is to make sure that adopting parents do not fall prey to such conduct.

C. Reaching Arms Has Violated Minn. Stat. § 259.37, Subd. 1, By Increasing the Fee Schedule During the Adoption Process.

On multiple occasions Reaching Arms raised fees during the adoption process, when families would be loathe to object to such increases for fear of losing their children. For example, the Goras' fee disclosure stated the Guatemala program fee range was from \$17,000 to \$18,000. When they accepted a referral for their daughter, however, Reaching Arms increased that amount to \$19,000, claiming the attorney they were using was more expensive. (Gora Aff. ¶ 7.) Reaching Arms disclosed to the Struemkes that the fee for adoption finalization was \$6,000, but then requested \$8,000. (Struemke Aff. ¶ 8.) The Struemkes paid the higher fee, believing they no choice but to do so. (*Id.*)

Another example involved the Nelson family. The Nelsons entered into a contract with Reaching Arms on April 22, 2005, and were given fee schedules and timelines. (Nelson Aff. ¶ 4.) By August 2005, however, Reaching Arms required the Nelsons to sign a new contract with increased fees, such as an increase in the home study fee from \$2,400 to \$2,800 and the post adoption fee from \$650 to \$750. (*Id.* ¶ 5.) Ultimately, the Nelsons refused to pay these increases. (*Id.*) In addition, in Russia, the Nelsons paid Reaching Arms' Russian liaison \$9,500 in cash to cover "overseas expenses," which were identified in the fee schedule as including medical expenses, interpreter fees, transportation and passports for the children. (*Id.* ¶ 8.) Nonetheless, the Nelsons were required to paying additional funds for medical expenses, interpreter fees, transportation and passports while in Russia. (*Id.*) The fee schedule should

protect parents from increases in fees during the adoption process. Reaching Arms' conduct as demonstrated above violates Minn. Stat. § 259.37, subd. 1 (2006).

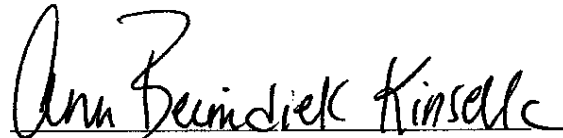
CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court order Reaching Arms International Incorporated to undergo a financial audit, at its expense, by an auditor chosen by the Attorney General.

Dated: Jan. 31, 2007

Respectfully submitted,

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