



Texas Department of Housing and Community Affairs
Manufactured Housing Board Meeting
on April 26, 2002

Don Stouder, Chair

Jack Davis, Member
Clement "Pete" Moreno, Member

Joan Tavarez, Member
Cary Yates, Member

Texas Department of Housing and Community Affairs
Manufactured Housing Board Meeting
April 26, 2002

ROLL CALL

	<u>Present</u>	<u>Absent</u>
Don Stouder, Chair	_____	_____
Jack Davis, Member	_____	_____
Clement "Pete" Moreno, Member	_____	_____
Joan Tavarez, Member	_____	_____
Cary Yates, Member	_____	_____
Number Present	_____	
Number Absent		_____

_____, Presiding Officer

MANUFACTURED HOUSING BOARD MEETING
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
507 Sabine, Room 437, Austin, Texas 78701
April 26, 2002 1:00 p.m.

AGENDA

**CALL TO ORDER, ROLL CALL
CERTIFICATION OF QUORUM**

Don Stouder
Chair

PUBLIC COMMENT

The Board will solicit Public Comment at the beginning of the meeting and will provide for Public Comment on each agenda item after motions made by the Board.

The Board of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA) will meet to consider and possibly act upon:

ACTION ITEMS

- | | | |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| Item 1. | Presentation, Discussion and Possible Approval of Minutes of Board Meeting of December 19, 2001. | Don Stouder |
| Item 2. | Presentation, Discussion and Consideration of Possible Approval of the State Office of Administrative Hearings (SOAH) Proposal for Decision:
(a) Approval of Manufactured Housing Case:
In the Matter of the Complaint of TDHCA vs Marco A. Jaramillo dba Fiesta Homes, Docket No. 332-02-1159, Complaint Nos. MHD2001001313-IV, MHD2001001913-IV, MHD2002000289-IV.
(b) Approval of Manufactured Housing Case:
In the Matter of the Complaint of TDHCA vs Payless Housing, Inc. dba American Spirit Homes, Docket No. 332-02-1794, Complaint Nos. MHD2000000684-W, MHD2000001391-IV, MHD2001000578-W.
(c) Approval of Manufactured Housing Case:
In the Matter of the Complaint of TDHCA vs C.E. Hitchcock, Mark Hitchcock, and Judith Hitchcock, Et Al, Docket No. 332-01-3183, Complaint No. MHD2000001828-UI.
(d) Approval of Manufactured Housing Case:
In the Matter of the Complaint of TDHCA vs Rikk's New and Used Furniture, Inc., Docket No. 332-01-3062, Complaint No. MHD1999000220-V.
(e) Approval of Manufactured Housing Case:
In the Matter of the Complaint of TDHCA vs James W. Lee III dba Dynasty Housing, Docket No. 332-01-3639, Complaint Nos. MHD2001001248-RD, MHD2001001379-RD, MHD2001001465-RD.
(f) Approval of Manufactured Housing Case:
In the Matter of the Complaint of TDHCA vs Sunriver Homes, Inc., Docket No. 332-02-0931, Complaint No. MHD2001001070-W. | Don Stouder |

EXECUTIVE SESSION

Don Stouder

Personnel Matters under Sec. 551.074, Texas Government Code
The Board may discuss any item on this agenda in Executive Session.

OPEN SESSION

Action in Open Session on Items Discussed in Executive Session

Don Stouder

ADJOURN

Don Stouder
Chair

To access this agenda or request information, please visit our website at www.tdhca.state.tx.us or contact Cindy S. Bocz, TDHCA, 507 Sabine, Austin, Texas 78701, 512-475-2884, cbocz@tdhca.state.tx.us.

Individuals who require auxiliary aids, services or translators for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Agenda Item No. 1

**BOARD MEETING
DIVISION OF MANUFACTURED HOUSING
507 Sabine Street, 4th floor Boardroom
December 19, 2001 9:00 a. m.**

Summary of Minutes

**CALL TO ORDER, ROLL CALL
CERTIFICATION OF QUORUM**

The Board Meeting of the Division of Manufactured Housing of December 19, 2001 was called to order by Board Presiding Officer, Don Stouder at 9:10 a.m. It was held on the 4th floor at 507 Sabine Street, Austin, Texas. Roll call certified a quorum was present. Cary Yates was absent.

Members present:

Don Stouder – Presiding Officer
Jack Davis -- Member
Pete Moreno -- Member
Joann Tavarez -- Member

Select staff members of the Division of Manufactured Housing and the Texas Department of Housing and Community Affairs were also present.

Mr. Stouder opened the meeting by welcoming everyone to the first meeting of the Manufactured Housing Board.

PUBLIC COMMENT

The Board will solicit Public Comment at the beginning of the meeting and will also provide for Public Comment on each agenda item after the presentation made by department staff and motions made by the Board.

Mr. Stouder called for public comment and the following either gave comments at this time or preferred to wait until the agenda item was presented.

Kevin Jewell, Consumer's Union, Austin, Texas

Mr. Jewell stated that they have an interest in manufactured housing because there are a lot of consumers that buy manufactured housing. Mr. Jewell handed out material to the Board developed over the last 25 years.

Steve Rogers, Texas Manufactured Housing Association, Austin, Texas

Mr. Rogers stated that he and his staff have worked with Ms. Bobbie Hill, Executive Director of the Division of Manufactured Housing for the last few weeks as the implementation of House Bill 1869 draws closer. Mr. Rogers stated that he encourages the Board to adopt emergency rules before December 31 so that the industry has some clear direction about the bill, with particular concern about financing opportunities.

Danny Blankenship, Centex Corporation, Dallas, Texas

Mr. Blankenship stated that they are looking at the bill and identifying how a bill so confusing should apply to this business. He would like to see clarification through the rulemaking process.

Scott Sheehan, Attorney at Law, Houston, Texas

Mr. Sheehan attended this meeting on behalf of his clients, Chase Manhattan Mortgage Company, Greenpoint Credit, L.L.C., Origin Finance, Inc. 21st Mortgage Corporation, and Vanderbilt Mortgage and Finance, Inc. He too expressed his thoughts on the need for emergency rules.

ACTION ITEMS

- (1) **Discussion and possible approval to continue contracting with TDHCA to loan or assign TDHCA department employees, equipment and facilities.**

Motion made by Jack Davis and seconded by Pete Moreno to give the Chair the authority to make the necessary changes in the legal representation and for the demands on the audits to give the Board the information they need to the letter.

EXECUTIVE SESSION

Personnel Matters under Section 551.074, Texas Government Code

Personnel Matters on Executive Director Position under Section 551.074, Texas Government Code

The Board may discuss any item listed on this agenda in Executive Session

OPEN SESSION

Action in Open Session on Items Discussed in Executive Session

Motion made by Pete Moreno and seconded by Joan Tavarez to appoint Bobbie Hill Executive Director of the Manufactured Housing Division.

Motion made by Joan Tavarez and seconded by Pete Moreno to hold a Board Meeting to consider emergency rules on House Bill 1869. Where upon the next Board Meeting was set for December 28, 2001.

ADJOURN

The meeting adjourned at 12:07 p.m.

Respectfully submitted,

Cindy Bocz
Board Secretary

cb12-19-01

Agenda Item No. 2(a)



DIVISION OF MANUFACTURED HOUSING

Rick Perry
GOVERNOR

Bobbie Hill
EXECUTIVE DIRECTOR

BOARD MEMBERS
Presiding Officer, Don Stouder
Jack Davis
Clement P. Moreno
Joan Tavarez
Cary Yates

TO: Governing Board of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs

FROM: Jerry E. Schroeder, Resolution Supervisor

THROUGH: Timothy K. Irvine, Attorney

SUBJECT: Summary of Proposal for Decision

Marco A. Jaramillo dba Fiesta Homes, ("Respondent")

License type/number: RBI-32981. Effective dates June 3, 1995 through April 10, 2002

Docket Number: 332-02-1159

Complaint Numbers: MHD2001001313-IV, MHD2001001913-IV, MHD2002000289-IV

Background

It was found and determined by the staff of the Manufactured Housing Division that Respondent had committed the following violations of the Act and Rules:

1. Respondent installed a home constructed to Wind Zone I in a Wind Zone II county in violation of Section 80.50 of the Rules.
2. Respondent also failed to comply with the initial report and Wind Zone Warranty Orders of the Executive Director and provide the Department with corrective action, in a timely manner as required by Sections 80.50 and 80.131 of the Rules.
3. Respondent also incorrectly installed two (2) additional manufactured homes and failed to comply with the initial report and Installation Warranty Orders of the Executive Director and provide the Department with corrective action, in a timely manner as required by Sections 80.55 and 80.131 of the Rules.

The staff initiated the following administrative actions against Respondent.

After proper notice, an administrative hearing was held on January 17, 2002. An Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH) issued the attached Proposal for Decision (PFD) as a result of that meeting. The PFD upholds the findings and determinations of the staff.

Proposal for Decision

The Proposal for Decision dated April 16, 2002 recommends that Respondent's license be revoked and that Respondent be assessed an administrative penalty of Four Thousand Dollars (\$4,000.00).

Recommendation

It is recommended that the Board approve the following administrative action with respect to the Respondent, as supported by the record and the PFD.

Respondent be assessed an administrative penalty of Four Thousand Dollars (\$4,000.00) by the Board.

Additionally, please note that the attached Final Order is in two parts and contains two separate orders. The first part is the order of revocation signed by the Executive Director on April 10, 2002. The Executive Director is authorized to order license sanctions – reprimands, suspensions, and revocations – by TEX. GOV'T CODE ANN. § 2306.604(a). The second part of the attached order is the Board's order to pay an administrative penalty, which is authorized by TEX. GOV'T CODE ANN. § 2306.604(b).

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

April 16, 2002

Ms. Bobbie Hill
Executive Director
Texas Department of Housing and Community Affairs
507 Sabine
Austin, Texas 78701

HAND DELIVERY

**RE: Docket No. 332-02-1159; Texas Department of Housing and Community Affairs
v. Marco A. Jaramillo dba Fiesta Homes**

Dear Ms. Hill:

Enclosed please find the Revised Proposal for Decision in the above-referenced cause for the consideration of the Texas Department of Housing and Community Affairs. Copies of the revised proposal are being sent to Jerry Schroeder, Dispute Resolution Manager for the Texas Department of Housing and Community Affairs, and to Marco A. Jaramillo, Respondent. The Administrative Law Judge (ALJ) has corrected typographical errors on Page 9 V., Proposed Conclusions of Law, Nos. 4 and 5. The ALJ's recommendation remains unchanged.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven M. Rivas", with a long horizontal flourish extending to the right.

Steven M. Rivas
Administrative Law Judge

SMR/ib
Enc.

xc: Docket Clerk, State Office of Administrative Hearings - **HAND DELIVERY**
Jerry Schroeder, Dispute Resolution Manager, Texas Department of Housing and Community Affairs - **HAND DELIVERY**
Marco A. Jaramillo dba Fiesta Mobile Homes, PO Box 843, Pearland, Texas 77581 - **VIA REGULAR U.S. MAIL**

William P. Clements Building
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

DOCKET NO. 332-02-1159

THE TEXAS DEPARTMENT OF
HOUSING AND COMMUNITY
AFFAIRS

Petitioner

VS.

MARCO A. JARAMILLO dba
FIESTA HOMES

Respondent.

§
§
§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Department of Housing and Community Affairs (Department) brought this case against Marco A. Jaramillo dba Fiesta Homes (Respondent) alleging the following violations: that Respondent incorrectly installed a Wind Zone I used manufactured home in a Wind Zone II territory, and on two other instances, improperly installed manufactured homes without taking corrective action. The Administrative Law Judge finds the violations were proved and recommends a \$4,000.00 penalty and revocation of Respondent's Certificate of Registration.

I. PROCEDURAL HISTORY

There are no contested issues of notice, jurisdiction, or venue in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

The hearing in this case commenced on January 17, 2002, in the Stephen F. Austin building, 11th floor, 1700 N. Congress Avenue, Austin, Texas 78701, before Steven M. Rivas, Administrative Law Judge. Jerry Schroeder, Resolution Supervisor, and Jim R. Hicks, Enforcement Coordinator, appeared on behalf of the Department. Respondent appeared *pro se*. Evidence was received and the hearing was closed on the same day.

II. DISCUSSION

A. Evidence

(1) Wind Zone violation

On or about February 11, 2000, Respondent installed the home bearing HUD label NTA0789435 in Brazoria County, Texas. It was sold to Delgado Demetrio and Jose Lopez.

Department inspection revealed the home was built to Wind Zone I standards.¹ Because of its location in Brazoria County, the home was required by Department regulations to be built to Wind Zone II standards.² The Department sent a written notice to correct this problem to Respondent on January 31, 2001.³ The notice required Respondent to correct the violation within 40 days or face a possible \$1,000 fine and/or license suspension or revocation.

On May 9, 2001, the Department sent another notice to Respondent in regard to the Wind Zone violation.⁴ This notice requested Respondent to provide a written statement regarding the status of any corrective action taken or, in the alternative, an explanation as to why no corrective action had been taken. Respondent did not provide the Department with a report on the status of any corrective action.

On November 2, 2001, Department sent an official Notice of Violation to Respondent citing the Wind Zone violation above.⁵ This notice stated Respondent's failure to take corrective action constituted a violation under Department regulations.

Respondent did not dispute the home in question was built to Wind Zone I standards. It was unable to furnish a Wind Zone II home to Mr. Demetrio and Mr. Lopez that was satisfactory to them. Respondent took steps to correct the violation on January 16, 2002.⁶

(2) Longitudinal Tie violation #1

On or about August 28, 2000, Respondent installed a manufactured home bearing HUD label NTA0376954 in Brazoria County, Texas. The home was sold to Ricardo and Alma Guyton. Department inspection revealed the home was installed without longitudinal ties required by Department regulations.⁷ Department sent a written notice to correct this problem to Respondent

¹ TEX. REV. CIV. STAT. ANN. art. 5221f § 6B (b) A manufactured home constructed on or after September 1, 1997, must meet the Wind Zone II standards adopted by the United States Department of Housing and Urban Development in order to be installed in a Wind Zone II county.

² TEX. REV. CIV. STAT. ANN. art. 5221f § 6B (a) Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, and Willacy counties are in Wind Zone II. All other counties are in Wind Zone I.

³ Department's Exhibit D. The notice contains a cover letter, inspection report (Form T) of the home, and an Installation Warranty Order which Respondent received on February 2, 2001.

⁴ Department's Exhibit E.

⁵ Department's Exhibit F. Respondent received this notice on November 7, 2001.

⁶ Respondent's Exhibit #1. This is a document styled, "Collateral Substitution Amendment to Retail Installation Contract," dated January 16, 2002. It was executed one day before the hearing on this matter convened on January 17, 2002.

⁷ Department's Exhibit H is a Form T, inspection report of the home. Department testified homes built with longitudinal ties reduces or prevents lateral movement of the home during hurricane force winds.

on May 3, 2001.⁸ The notice required Respondent to correct the violation within 40 days or face a possible \$1,000 fine and/or license suspension or revocation. A re-inspection of the home on July 19, 2001, found the longitudinal ties still not installed.⁹

On September 7, 2001, Department sent an official Notice of Violation to Respondent citing the longitudinal tie violations.¹⁰ This notice stated Respondent's failure to take corrective action constituted a violation under Department regulations.

Respondent did not dispute he installed the home in question. Respondent did not dispute the home in question was installed without longitudinal ties. Respondent testified that he took corrective action on January 14, 2002.¹¹

(3) Longitudinal Tie violation #2

On or about January 31, 2001, Respondent installed a manufactured home bearing HUD label TRA0240290 in Brazoria County, Texas. Respondent sold this home to Timothy Hall. Department inspection revealed the home was installed without longitudinal ties required pursuant to Department regulations.¹² A written notice to correct this problem was forwarded to Respondent on July 20, 2001.¹³ This notice required Respondent to correct the violation within 40 days or face a possible \$1,000 fine and/or license suspension or revocation. A re-inspection of the home on September 24, 2001, found the longitudinal ties still not installed.¹⁴

On November 9, 2001, Department sent an official Notice of Violation to Respondent citing the longitudinal tie violations.¹⁵ The notice stated Respondent's failure to take corrective action constituted a violation under Department regulations.

⁸ Department's Exhibit I. This exhibit consists of a cover letter, inspection report (Form T) of the home and an Installation Warranty Order which Respondent received on May 5, 2001.

⁹ Department's Exhibit J.

¹⁰ Department's Exhibit L. Respondent received this on September 13, 2001.

¹¹ Although Respondent's Exhibit #4 indicates longitudinal ties were installed on "1/14/01," the Court assumes Respondent meant to write "1/14/02."

¹² Department's Exhibit N.

¹³ Department's Exhibit O. This notice contains a cover letter, inspection report (Form T) of the home and an Installation Warranty Order which Respondent left "unclaimed" at the Post Office. Respondent did not assert that he never received or was unaware of this material.

¹⁴ Department's Exhibit P.

¹⁵ Department's Exhibit Q. Respondent left this "unclaimed" at the Post Office. Respondent did not assert that he never received or was unaware of this material.

Respondent did not dispute he installed the home in question. Respondent did not dispute the home in question was installed without longitudinal ties. Respondent testified that he took corrective action on January 14, 2002.¹⁶

B. Legal authority

Texas Manufactured Housing Standards Act, TEX. REV. CIV. STAT. ANN. art 5221f

Sec. 4(d). All manufactured housing must be installed in compliance with the standards, rules, regulations, or administrative orders of the director. The department shall establish an inspection program whereby at least 25 percent of the manufactured homes installed are inspected on a sample basis for compliance. The department's program shall place priority on multi-section homes and homes installed in Wind Zone II.

* * *

Sec. 6B. (a) Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, and Willacy counties are in Wind Zone II. All other counties are in Wind Zone I.

(b) A manufactured home constructed on or after September 1, 1997, must meet the Wind Zone II standards adopted by the United States Department of Housing and Urban Development in order to be installed in a Wind Zone II county.

* * *

Sec. 14(f). If the manufacturer or retailer fails to provide warranty service within the reasonable time allowed by the rules of the director, the manufacturer or retailer must show good cause in writing why such service was not provided. Failure to show good cause constitutes sufficient basis for suspension or revocation of the license.

* * *

Sec. 14(j). The manufacturer, retailer, and installer shall comply with the initial report and warranty service orders of the director. The department may issue an amended report and warranty orders if all parties receive notification of and are given an opportunity to respond to the report and warranty orders. The amended report and warranty orders must supersede the initial report and warranty orders.

* * *

¹⁶ Although Respondent's Exhibit #5 indicates longitudinal ties were installed on "1/14/01," the Court assumes Respondent meant to write "1/14/02."

TEX. ADMIN. CODE § 80.131. Correction Requirements

(b) Except as provided in subsection (a) of this section, manufacturers, retailers, and installers shall perform their obligations in accordance with their respective written warranty within a reasonable period of time. A reasonable period of time is deemed to be forty (40) calendar days following receipt of the consumer's written notification unless there is good cause requiring more time. The consumer's written notification must be received by the manufacturer, retailer, or installer within forty (40) calendar days following the end of the one (1) year warranty period for new homes and for used homes within sixty (60) calendar days after the date of the sale. by the department.

* * *

TEX. ADMIN. CODE § 80.50. Wind Zone Regulations

(b) A manufactured home constructed on or after September 1, 1997 must meet the Wind Zone II standards adopted by HUD in order to be installed in a Wind Zone II county.

* * *

TEX. ADMIN. CODE § 80.55. Anchoring Systems

* * *

(f) Bracket Installation.

* * *

(6) Longitudinal ties:

(A) Longitudinal ties are required for ALL Wind Zone II installations, regardless of date of manufacture, when installation occurs after the effective date of these rules.

(B) Longitudinal ties are designed to prevent lateral movement along the length of the home.

(C) The strap may be connected or wrapped around front or rear chassis header members, around existing chassis cross members, or spring hangers. Their location along the length of the home is not critical, as long as the number of longitudinal ties required for each end of each home section are installed with their pull in opposite directions. See Figures 1 and 2 in subparagraph (D) of this paragraph.

(D) Units less than 60 feet in box length require at least two longitudinal ties per end per section. These longitudinal ties are in addition to the sidewall ties.

* * *

TEX. ADMIN. CODE § 80.126. Rules for Hearings

(a) Unless otherwise expressly set forth in the Standards Act or this chapter, all hearings shall be held and conducted pursuant to the applicable provisions of Government Code, Chapter 2001.

(b) Any party to a hearing may request that a record of the hearing be made and transcribed by an independent court reporter, other than an employee of the department. Such request must be made not later than seven (7) calendar days prior to the hearing. The additional cost and expense of the independent court reporter may be assessed against the party making the request. In all hearings, the published rules and regulations of the secretary of HUD shall be considered, if relevant. If the department believes that such rules and regulations are relevant to any issue to be involved in the hearing, the notice of hearing shall specifically refer to such HUD rules and regulations.

(c) If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with Government Code, Chapter 2001, the hearing may proceed in that party's absence and a default judgment may be entered.

(d) Any person for whom a license was revoked, denied, or suspended by a final order issued after a hearing under Government Code, Chapter 2001, may only be issued a new license after a hearing under Government Code, Chapter 2001, and determination by the director that the certificate of license may be issued.

(e) Pursuant to the Administrative Procedures Act, each party has the right to file exceptions to the Proposal for Decision and present a brief with respect to the exceptions. All exceptions must be filed with the department within ten (10) working days of the Proposal for Decision, with replies to be filed ten (10) working days after the filing of exceptions.

* * *

TEX. ADMIN. CODE § 80.127. Sanctions and Penalties

(a) In accordance with the provisions of Government Code, Chapter 2306, §2306.604, the director may assess and enforce penalties and sanctions against a person who violates any applicable law, rule, regulation, or administrative order of the department. The director may:

- (1) issue to the person a written reprimand that specifies the violation;
- (2) revoke or suspend the persons license;
- (3) place on probation a person whose license is suspended; or
- (4) assess an administrative penalty in an amount not to exceed \$1,000 for each violation in lieu of, or in addition to, any other sanction or penalty.

(b) In determining the amount of a sanction or penalty, the board and the director shall consider:

- (1) the kind or type of violation and the seriousness of the violation;
- (2) the history of previous violations; the kind or type of previous violations, and the length of time between violations;
- (3) the amount necessary to deter future violations;
- (4) the efforts made to correct the violation or previous violations; and
- (5) any other matters that justice may require.

(c) Violations will be subject to sanctions and penalties as set forth in Government Code, Chapter 2306.604. Revocation or suspension of a license may be assessed only for multiple, consistent, and/or repeated violations. For first-time violations of a department rule which does not relate to the construction or installation of the home, a voluntary letter of compliance will be issued in lieu of other sanctions.

C. Analysis

Respondent is in the business of selling repossessed manufactured homes and did not dispute installing or manufacturing the homes in question. Respondent clearly violated 10 TEX. ADMIN. CODE § 80.50, that requires only those homes constructed to Wind Zone II standards be installed in Wind Zone II counties. After receiving several notices about this violation, Respondent failed to take measures to correct the problem. Respondent additionally failed to contact Department to inform it of the status of any measures taken to correct the problem. Respondent began to address the problem only one day before the hearing. The notices sent to Respondent directed Respondent to take corrective action in a reasonable amount of time. Respondent allowed all deadlines to pass before taking overdue action. The habitants of the Wind Zone I home continued to live in a Wind Zone II area while notices of violation were ignored by Respondent. Respondent did not comply with the applicable authority or notices.

Respondent also installed two homes without longitudinal ties in violation of 10 TEX. ADMIN. CODE § 80.55, which hat requires longitudinal ties be installed in manufactured homes in Wind Zone

II counties. As in the case with the Wind Zone violation, Respondent received several notices from Department regarding this violation. Respondent again failed to take steps to correct the problem with these two homes in a reasonable manner. Longitudinal ties are necessary to prevent lateral movement of a manufactured home in hurricane force winds. Respondent ignored the Department's notices of violation.

IV. PROPOSED FINDINGS OF FACT

1. On or about February 11, 2000, Respondent installed a manufactured home sold to Delgado Demetrio and Jose Lopez bearing HUD label NTA0789435 in Brazoria County, Texas. The home was built to Wind Zone I standards. Brazoria County is a Wind Zone II county.
2. Notices directing Respondent to bring the home to Wind Zone II standards were sent to Respondent on January 31, 2001, May 9, 2001, and November 2, 2001. Respondent failed to take any corrective action for the Wind Zone violation until January 16, 2002.
3. On or about August 28, 2000, Respondent installed a manufactured home sold to Ricardo and Alma Guyton bearing HUD label NTA0376954 in Brazoria County, Texas. The home was installed without longitudinal ties.
4. Written notices directing Respondent to install longitudinal ties violation were sent to Respondent on May 3, 2001, and September 7, 2001. Respondent failed to take any corrective action for the installation violation until January 14, 2002.
5. On or about January 31, 2001, Respondent installed a manufactured home sold to Timothy Hall bearing HUD label TRA0240290 in Brazoria County, Texas. The home was installed without longitudinal ties pursuant to Department regulations.
6. Written notice directing Respondent to install longitudinal ties were sent to Respondent on July 20, 2001 and November 9, 2001. Respondent failed to take any corrective action for the installation violation until January 14, 2002.
7. Respondent was provided an opportunity to respond to the allegations and show compliance with regulatory provisions. Respondent failed to resolve the matter in accordance with the notice requirements.
8. Respondent admitted installing the manufactured homes specified in Proposed Findings of Fact Nos. 1 - 6.
9. On December 19, 2002, the Department sent a hearing notice by first class mail and by certified mail, return receipt requested, to the Respondent
10. The hearing notice informed Respondent of the issues to be decided, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.

V. PROPOSED CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter, pursuant to TEX. REV. CIV. STAT. ANN. art. 5221f.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent was afforded notice of the hearing, as required by TEX. GOV'T CODE ANN. ch. 2001 and 10 TEX. ADMIN. CODE §80.126.
4. Based upon Proposed Findings of Fact Nos. - 2, Respondent violated 10 TEX. ADMIN. CODE §§80.131, 80.50.
5. Based upon Proposed Findings of Fact Nos. 3 - 6, Respondent violated 10 TEX. ADMIN. CODE §§80.131, 80.55.
6. Under the provisions of TEX. ADMIN. CODE § 80.127(a)(2), the Director has authority to revoke the Respondent's license.
7. Under the provisions of TEX. ADMIN. CODE § 80.127(a)(4), the Director has authority to assess a penalty up to \$1,000.00 for each violation.
8. According to TEX. ADMIN. CODE § 80.127(b), factors to consider in assessing an administrative penalty include the seriousness of the violation, the history of previous violations, the amount necessary to deter future violations, efforts made to correct the violation, and any other matters that justice may require.
9. Based upon Findings of Fact Nos. 1 - 6, and Conclusions of Law Nos. 1 - 8, Respondent should be assessed an administrative penalty of \$4,000.00 and Respondent's Certificate of Registration should be revoked.

SIGNED this 16th day of April, 2002.



STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 332-02-1159
COMPLAINT NO. MHD2001001313-IV, MHD2001001913-IV, MHD2002000289-IV

TEXAS DEPARTMENT OF	§	BEFORE THE
	§	
HOUSING AND COMMUNITY AFFAIRS	§	EXECUTIVE DIRECTOR OF THE
	§	
VS.	§	MANUFACTURED HOUSING DIVISION
	§	
MARCO A. JARAMILLO DBA FIESTA	§	OF THE TEXAS DEPARTMENT OF
	§	
HOMES	§	HOUSING AND COMMUNITY AFFAIRS

FINAL ORDER

I. PREAMBLE

CAME ON TO BE CONSIDERED, the matter of the enforcement action identified as MHD2001001313-IV, MHD2001001913-IV, MHD2002000289-IV, *Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Marco A. Jaramillo dba Fiesta Homes* (Respondent), pursuant to the Texas Manufactured Housing Standards ACT, TEX. REV. CIV. STAT. ANN. art. 5221f; TEX. GOVT. CODE ANN. ch. 2306; and the Administrative Procedures Act, TEX. GOVT. CODE ANN. ch. 2001. The Executive Director issues this Final Order based on the Findings of Fact and Conclusions of Law set forth in the Proposal for Decision of the Administrative Law Judge in this case, which is attached to this Final Order and adopted in its entirety. The Board will consider assessing the \$4,000.00 penalty at the next Board meeting.

II. ORDER

NOW, THEREFORE, IT IS ORDERED BY THE EXECUTIVE DIRECTOR OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

1. Respondent Marco A. Jaramillo dba Fiesta Homes' Retailer/Broker/Installer License (RBI-32981) is hereby revoked on today's date, April 10, 2002.
2. Respondent must mail the original license certificate back to the Department, PO Box 12489, Austin, TX 78711-2489; upon receipt of the Final Order.

Page 2

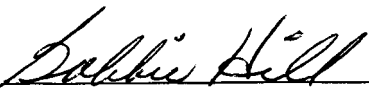
Final Order

In the Matter of Marco A. Jaramillo dba Fiesta Homes

Docket No. 332-02-1159

Complaint No. MHD2001001313-IV, MHD2001001913-IV, MHD2002000289-IV

SIGNED AND ENTERED this 10 day of April, 2002.



Bobbie Hill, Executive Director
Manufactured Housing Division
Texas Department of Housing and Community Affairs

CERTIFICATION

I certify that a true and correct copy of the forgoing has been sent by U.S. certified mail (Number 7001 0360 0004 3905 7030), return receipt requested, to Marco A. Jaramillo dba Fiesta Homes, 4030 South Main, Pearland, Texas 77581 on this the 10 day of April, 2002.



Jim R. Hicks, Enforcement Coordinator



DIVISION OF MANUFACTURED HOUSING

Rick Perry
GOVERNOR

Bobbie Hill
EXECUTIVE DIRECTOR

BOARD MEMBERS
Presiding Officer, Don Stouder
Jack Davis
Clement P. Moreno
Joan Tavarez
Cary Yates

TO: Governing Board of the Manufactured Housing Division of the
Texas Department of Housing and Community Affairs

FROM: Jerry E. Schroeder, Resolution Supervisor

THROUGH: Timothy K. Irvine, Attorney

SUBJECT: Summary of Proposal for Decision

Payless Housing, Inc. dba American Spirit Homes, ("Respondent")

License type/number: RBI-33152. Effective dates May 16, 1996 through May 16, 2001
License type/number: RBI-33291. Effective dates January 11, 1997 through January 12,
2002.

Docket Number: 332-02-1794

Complaint Numbers: MHD2000000684-W, MHD2000001391-IV, MHD2001000578-W

Background

It was found and determined by the staff of the Manufactured Housing Division that Respondent had committed the following violations of the Act and the Rules:

1. Respondent failed to comply with the initial report and Warranty Orders of the Executive Director and provide the Department with corrective action, in a timely manner regarding two (2) manufactured homes as required by Sections 14(f) and 14(j) of the Act and Sections 80.131(b) and 80.132(3) of the Rules.
2. Respondent also incorrectly installed a manufactured home and failed to comply with the initial report and Installation Warranty Orders of the Executive Director and provide the Department with corrective action, in a timely manner as required by Sections 14(f) and 14(j) of the Act and Sections 80.51 (amended 1998) (current version at Section 80.54(a) of the Rules), 80.131(b) and 80.132(3) of the Rules.

The staff initiated the following administrative actions against Respondent.

After proper notice, an administrative hearing was held on March 21, 2002. An Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH) issued the attached Proposal for Decision (PFD) as a result of that meeting. The PFD upholds the findings and determinations of the staff.

Proposal for Decision

The Proposal for Decision dated April 2, 2002 recommends that Respondent be assessed an administrative penalty of Three Thousand Dollars (\$3,000.00).

Recommendation

It is recommended that the Board approve the following administrative action with respect to the Respondent, as supported by the record and the PFD.

Respondent be assessed an administrative penalty of Three Thousand Dollars (\$3,000.00).

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

April 2, 2002

Ms. Bobbie Hill
Executive Director
Texas Department of Housing and Community Affairs
507 Sabine
Austin, Texas 78701

HAND DELIVERY

RE: Docket No. 332-02-1794; TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS v. PAYLESS HOUSING, INC. d/b/a AMERICAN SPIRIT HOMES

Dear Ms. Hill:

Enclosed please find the Proposal for Decision in the above-referenced cause for the consideration of the Texas Department of Housing and Community Affairs (Department). Copies of the Proposal are being sent to Jerry Schroeder, Dispute Resolution Manager for the Texas Department of Housing and Community Affairs, and to Payless Housing, Inc. d/b/a American Spirit Homes, Respondent. For reasons discussed in the proposal for decision, the Administrative Law Judge finds that Respondent should be assessed an administrative penalty of \$3,000.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Director ten days after the party receives the Proposal for Decision. Replies to exceptions should be filed ten days thereafter. A party filing exceptions, replies, and briefs must serve a copy on the State Office of Administrative Hearings and the other party hereto.

Sincerely,

A handwritten signature in black ink that reads "Craig R. Bennett".

Craig R. Bennett
Administrative Law Judge

CRB/ls
Enc.
xc:

Docket Clerk, State Office of Administrative Hearings - **HAND DELIVERY**
Jerry Schroeder, Dispute Resolution Manager, Texas Department of Housing and Community Affairs - **HAND DELIVERY**
Payless Housing, Inc. d/b/a American Spirit Homes, P. O. Box 267, Sulphur Springs, Texas 75483 - **REGULAR U.S. MAIL**

William P. Clements Building
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

DOCKET NO. 332-02-1794

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
PAYLESS HOUSING, INC. d/b/a AMERICAN SPIRIT HOMES	§	ADMINISTRATIVE HEARINGS
	§	

PROPOSAL FOR DECISION

I. Introduction

The Staff of the Texas Department of Housing and Community Affairs (Staff) brought this action against Payless Housing, Inc. d/b/a American Spirit Homes (Respondent) for alleged violations of the Texas Manufactured Housing Standards Act. Despite being sent proper notice, Respondent failed to appear or be represented at the hearing. Based on the Respondent's failure to appear, a default judgment was rendered against Respondent and Staff's allegations were accepted as true. Based on the deemed factual allegations and the evidence presented by Staff, the Administrative Law Judge (ALJ) finds that Respondent should be assessed an administrative penalty of \$3,000.

II. Notice and Jurisdiction

The Texas Department of Housing and Community Affairs has jurisdiction over this matter pursuant to § 7 of the Texas Manufactured Housing Standards Act (the Act), TEX. REV. CIV. STAT. ANN. art. 5221f, and TEX. GOV'T CODE ANN. § 2306.604. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.

The notice of intention to institute disciplinary action and of the hearing met the notice requirements imposed by statute and rule. The details about notice to Respondent are set forth in the findings of fact and conclusions of law without further discussion here.

III. Procedural History

The hearing in this case was held on March 21, 2002, before ALJ Craig R. Bennett at the Hearings Facility of the State Office of Administrative Hearings, located at 300 West 15th Street, Austin, Texas. Staff was represented by Jerry Schroeder. Respondent did not appear and was not represented at the hearing. Staff moved for a default judgment and sought leave to introduce additional exhibits sufficient to establish jurisdiction, notice, and the substance of the allegations. Numerous exhibits were admitted into the record and the ALJ deemed the factual allegations in the notice as true, based on Respondent's failure to appear.

IV. Recommendation

Based on the evidence and the facts deemed admitted as true, the ALJ concludes that Respondent violated § 14(f) and § 14(j) of the Act and 10 TEX. ADMIN. CODE §§ 80.54(a), 80.131(b), and 80.132. Further, based on the criteria in TEX. GOV'T CODE ANN. § 2306.604, the ALJ concludes that Respondent should be fined \$3,000.

V. Findings of Fact

1. Payless Housing, Inc. d/b/a American Spirit Homes held License Number RBI-33152, effective May 16, 1996 through May 16, 2001, and License Number RBI-33291, effective January 11, 1997 through January 12, 2002. Both licenses were issued by the Texas Department of Housing and Community Affairs (TDHCA).
 2. On February 19, 2002, TDHCA Staff sent notice of an administrative hearing to Respondent at its last known address of P.O. Box 267, Sulphur Springs, Texas 75483, by certified mail, return receipt requested, and by regular mail.
 3. The notice of hearing informed Respondent the hearing would begin at 1:00 p.m. on March 21, 2002, before an administrative law judge at the State Office of Administrative Hearings, 300 West 15th Street, 4th Floor, Austin, Texas. The notice also contained a statement of the nature of the hearing, the matters asserted, the legal authority and jurisdiction under which the hearing was to be held, and the default warning language reflected in 1 TEX. ADMIN. CODE § 155.55(c).
-

4. The hearing convened as scheduled on March 21, 2002. Staff appeared and represented TDHCA. Respondent did not appear and was not represented by counsel.
5. Based on Respondent's failure to appear at the hearing, Staff moved for a default judgment under 1 TEX. ADMIN. CODE § 155.55, and the ALJ granted the request and entered a default judgment against Respondent.
6. On or about February 14, 2000, Respondent was served with a One Year Warranty Order issued by TDHCA, requiring Respondent to correct or repair listed warranty items on the home of Marsha Hess within forty calendar days from the date of receipt of the Order.
7. By April 16, 2000, Respondent had not responded to the One Year Warranty Order regarding the home of Marsha Hess.
8. On or about April 20, 1999, Respondent was served with an Installation Warranty Order issued by TDHCA, requiring Respondent to correct or repair listed warranty items on the home of Phillip Hail within forty calendar days from the date of receipt of the Order.
9. By May 30, 1999, Respondent had not responded to the Installation Warranty Order regarding the home of Phillip Hail.
10. On or about February 10, 2001, Respondent was served with a One Year Warranty Order issued by TDHCA, requiring Respondent to correct or repair listed warranty items on the home of Lode Raspberry within forty calendar days from the date of receipt of the Order.
11. By March 23, 2001, Respondent had not responded to the One Year Warranty Order regarding the home of Lode Raspberry.
12. Respondent has been found in violation of the Act on prior occasions and at least three Agreed Orders against Respondent have been issued by TDHCA since 1998, in which Respondent was required to pay administrative penalties for violation of the Act.
13. At the hearing Staff recommended that a total penalty of \$3,000.00, equal to \$1,000 per violation, be assessed against Respondent.

VI. Conclusions of Law

1. TDHCA has jurisdiction over this matter pursuant to the Texas Manufactured Housing Standards Act (the Act), TEX. REV. CIV. STAT. ANN. art. 5221f, and has authority to discipline and penalize Respondent pursuant to § 7(j) of the Act and TEX. GOV'T CODE ANN. Ch. 2306.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant, to TEX. GOV'T CODE ANN. Ch. 2003.
3. Notice of the hearing was provided to Respondent pursuant to the Act; TEX. GOV'T CODE ANN. Ch. 2001 and Ch. 2306; 1 TEX. ADMIN. CODE § 155.55; and 10 TEX. ADMIN. CODE § 80.126. TDHCA's rules, as reflected by 10 TEX. ADMIN. CODE § 1.21(c), provide for notice to be sent to Respondent's last known address as shown by TDHCA's records.
4. Based on Respondent's failure to appear at the hearing, a default judgment was properly rendered against Respondent pursuant to 1 TEX. ADMIN. CODE § 155.55, and the factual allegations contained in the Notice of Hearing were deemed admitted as true.
5. Based on the above findings of fact, Respondent violated § 14(f) and § 14(j) of the Act and 10 TEX. ADMIN. CODE §§ 80.54(a), 80.131(b), and 80.132.
6. Based on the criteria in TEX. GOV'T CODE ANN. § 2306.604, Respondent should be fined a civil penalty of \$1,000 per violation, for a total of \$3,000.00.

SIGNED this 2nd day of April, 2002



CRAIG R. BENNETT
Administrative Law Judge
State Office of Administrative Hearings

Agenda Item No. 2(c)



DIVISION OF MANUFACTURED HOUSING

Rick Perry
GOVERNOR

Bobbie Hill
EXECUTIVE DIRECTOR

BOARD MEMBERS
Presiding Officer, Don Stouder
Jack Davis
Clement P. Moreno
Joan Tavarez
Cary Yates

TO: Governing Board of the Manufactured Housing Division of the
Texas Department of Housing and Community Affairs

FROM: Jerry E. Schroeder, Resolution Supervisor

THROUGH: Timothy K. Irvine, Attorney

SUBJECT: Summary of Proposal for Decision

C. E. Hitchcock, Mark Hitchcock, and Judith Hitchcock, Et Al (“Respondent”)

License type/number: No license on Record.

Docket Number: 332-01-3183

Complaint Numbers: MHD2000001828-UI

Background

It was found and determined by the staff of the Manufactured Housing Division that Respondent had committed the following violations of the Act and Rules:

1. Respondent offered to sell eleven (11) manufactured homes in twelve consecutive months without possessing a valid retailer's license, a violation of Section 7(b) of the Act and Section 80.123(b) of the Rules.
2. Respondent also installed a manufactured home without possessing a valid installer's license, a violation of Section 7(d) of the Act and Section 80.123(e) of the Rules.
3. Respondent also installed the aforementioned manufactured home without submitting an Installation Report/Form T to the Department, within 10 days after the inspection was completed, a violation of Section 80.119(f) of the Rules.

The staff initiated the following administrative actions against Respondent.

After proper notice, an administrative hearing was held on August 1, 2001. An Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH) issued the attached Proposal for Decision (PFD) as a result of that meeting. The PFD upholds the findings and determinations of the staff.

Proposal for Decision

The Proposal for Decision dated September 25, 2001 recommends that Respondent be assessed an administrative penalty of Twenty-Two Thousand Dollars (\$22,000.00).

Recommendation

It is recommended that the Board approve the following administrative action with respect to the Respondent, as supported by the record and the PFD.

Respondent be assessed an administrative penalty of Two Thousand Dollars (\$2,000.00) by the Board.

Additionally, please note that the attached Final Order is in two parts and contains two separate orders. The first part is the order of assessing an administrative penalty of Twenty Thousand Dollars (\$20,000.00) signed by the Executive Director on April 26, 2002. The Executive Director is authorized to assess penalty pursuant to Section 17(b) of the Act. The second part of the attached order is the Board's order to pay an administrative penalty, which is authorized by TEX. GOV'T CODE ANN. § 2306.604(b).

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

September 25, 2001

Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs
507 Sabine
Austin, Texas 78701

HAND DELIVERY

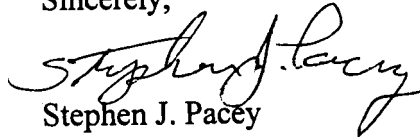
RE: Docket No. 332-01-3183; Texas Department of Housing and Community Affairs vs. C.E. Hitchcock, and Mark and Judith Hitchcock, Et Al

Dear Ms. Stiner:

Enclosed please find the Proposal for Decision in the above-referenced cause for the consideration of the Texas Department of Housing and Community Affairs. Copies of the Proposal are being sent to Jerry Schroeder, Dispute Resolution Manager for the Texas Department of Housing and Community Affairs, and to C.E. Hitchcock, Mark and Judith Hitchcock d/b/a Hitchcock House Movers a/k/a Hitchcock & Sons House & Mobile Home Moving a/k/a C.E. Hitchcock & Sons a/k/a C.E. Hitchcock Mobile Home Movers a/k/a H & H Mobile Home Movers a/k/a Hitchcock House & Mobile Home Movers, Respondent. For reasons discussed in the proposal, I find that Mr. C.E. Hitchcock, and Mark and Judith Hitchcock committed the alleged violations and that they should be assessed an civil penalty of \$22,000.00.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Director ten days after the party receives the Proposal for Decision. Replies to exceptions should be filed seven days thereafter. A party filing exceptions, replies, and briefs must serve a copy on the State Office of Administrative Hearings and the other party hereto.

Sincerely,


Stephen J. Pacey
Administrative Law Judge

SJP/dms

Enclosure

xc:

Rommel Corro, Docket Clerk, State Office of Administrative Hearings - **HAND DELIVERY**
Jerry Schroeder, Dispute Resolution Manager, Texas Department of Housing and Community Affairs - **HAND DELIVERY**
C.E. Hitchcock and Mark and Judith Hitchcock, 168 Hilltop Rd, Argyle, TX - **REGULAR U.S. MAIL**

William P. Clements Building
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

DOCKET NO. 332-01-3183

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
	§	
THE COMPLAINT AGAINST	§	
	§	OF
C.E. HITCHCOCK, AND MARK AND	§	
JUDITH HITCHCOCK, ET AL	§	
RESPONDENT	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Department of Housing and Community Affairs (Staff/Department) sought to impose a penalty against C. E. Hitchcock and Mark and Judith Hitchcock d/b/a Hitchcock House Movers a/k/a Hitchcock & Sons House & Mobile Home Moving a/k/a C. E. Hitchcock & Sons a/k/a C. E. Hitchcock Mobile Home Movers a/k/a H. & H Mobile Home Movers a/k/a Hitchcock House & Mobile Home Movers (Respondent), whom Staff alleged installed a manufactured home without obtaining, maintaining or possessing a valid installer's license; that the home installation was defective; and that Respondent failed to perform corrective action. Staff further alleged that Respondent's did not file an installation report, and was offering to sell manufactured homes without a retailer's licence. Despite being sent proper notice, Respondent failed to appear or be represented at the hearing. Based on the Respondent's failure to appear, Staff's allegations were accepted as true, and established the violations. The Administrative Law Judge agrees with Staff's recommendation that the Department impose a civil penalty in the amount of \$22,000.00 against Respondent.

I. Procedural History, Notice and Jurisdiction

The Department has jurisdiction over this matter pursuant to § 7 of the Texas Manufactured Housing Standards Act (the Act), TEX. REV. CIV. STAT. ANN. art. 5221f, and § 2306.604 of the Texas Manufactured Housing Standards Code (the Code), TEX. GOV'T CODE ANN. ch. 2306. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On June 21, 2001, Staff mailed a notice of hearing to Respondent alleging that the Respondent had installed a manufactured house without possessing a certificate of registration as required by the Act and the Department's Manufactured Housing Rules, 10 TEX. ADMIN. CODE (TAC) ch. 80 (Rules). Staff further alleged that the installation was defective, and Respondent did not correct the defect. Additionally, Staff alleged that an installation report was not filed, and that Respondent was selling manufactured homes without a retailer's license. Staff asserted that pursuant to its Rules, all of these allegations were violations. Staff further asserted such actions were grounds for sanctioning the Respondent pursuant to the Act, the Code, and the Rules.

The notice of hearing was sent to Respondent at 168 Hilltop Road, Argyle, Texas 76226, the address provided by the home owner. The notice, sent by United States Mail, return receipt requested, was accepted by a green card signed by Mark Hitchcock.

The hearing convened and closed on August 1, 2001, in the Hearings Facility of the State Office of Administrative Hearings, located at 1700 N. Congress Avenue, Suite 1100, Austin, Texas, with Administrative Law Judge Stephen J. Pacey presiding. Staff was represented by Jerry Schroeder, the Dispute Resolution Manager of the Department's Manufactured Housing Division. Respondent did not appear and was not represented. After introducing evidence sufficient to establish jurisdiction and notice, Staff moved for a default pursuant to 1 TAC § 155.55. Based on the Respondents' failure to appear or be represented, the ALJ deemed all Staff's factual allegations true.

II. Recommendation

The Administrative Law Judge recommends that a default be entered against Respondent and that the Department enter an order imposing a civil penalty of \$22,000.00 against Respondent based on the Findings of Fact and Conclusions of Law presented below.

III. Findings of Fact

1. On April 28, 2000, C. E. Hitchcock, Mark and Judith Hitchcock, et al (Respondent) installed a manufactured home, HUD Label PFS0472745, in Navarro County, Texas, for the home's owner, Bill Beach.
2. In April 2000, Respondent did not hold a certificate of registration or a license to install manufactured housing from the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department) or its regulatory predecessor, the Texas Department of Licensing and Regulation.
3. Respondent improperly installed Bill Beach's manufactured home because the anchors were installed without stabilizer plates.
4. On August 22, 2000 and October 31, 2000, Staff requested that Respondent obtain a licensed installer to perform corrective action on Mr. Beach's home, which Respondent did not perform.
5. Respondent did not submit an installation report for Mr. Beaches home.
6. On September 22, 2000, Respondent, without possessing a retailer's license, offered to sell eleven used manufactured homes to department investigators Pam Green and Carolyn Romero.
7. On June 21, 2000, Staff mailed a notice of hearing to Respondent by United States Postal Service first class mail and certified mail, return receipt requested, to 168 Hilltop Road, Argyle, Texas 76226. The notice was accepted by a green card signed by Mark Hitchcock.
- 8.. The notice of hearing informed Respondent the hearing would begin August 1, 2001, at 1:00 p.m. before an administrative law judge at the State Office of Administrative Hearings, 1700 N. Congress Ave., Suite 1100, Austin, Texas, and contained a statement of the nature of the hearing, of the matters asserted, and of the legal authority and jurisdiction under which the hearing was to be held. The notice further provided in boldface type: "**Failure of the party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true,**

and the relief sought in the notice may be granted.”

9. The hearing convened and the record closed August 1, 2001.
10. The Respondent did not attend and was not represented at the hearing.
11. At the hearing, Staff’s motion for a default against Respondent was granted and all Staff’s allegations were deemed true.
12. Respondent’s acts and omissions in installing Mr. Beach’s house endangered the structural integrity of the house and left Mr. Beach unprotected as a consumer.
3. Respondent failed to take action to correct the problems with Mr. Beach’s house installation or obtain the requisite house installer’s license in Texas.
14. At the hearing Staff recommended a penalty of \$22,000.00 be assessed against Respondent.

IV. Conclusions of Law

- 1 The Department has jurisdiction over this matter pursuant to § 7 of the Texas Manufactured Housing Standards Act (the Act), TEX. REV. CIV. STAT. ANN. art. 5221f, and § 2306.604 of the Texas Manufactured Housing Standards Code (the Code), TEX. GOV’T CODE ANN. ch. 2306.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to TEX. GOV’T CODE ANN. ch. 2003.
3. Based upon Findings of Fact Nos. 7 and 8, Respondent was afforded notice of the hearing of the allegations against him as required by TEX. GOV’T CODE ANN. Ch. 2001.
4. Pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55, Staff’s allegations against Respondent are deemed admitted as true.
5. Based on Findings of Fact Nos. 1-4, Respondent violated § 7(b) of the Act by performing an installation function on manufactured housing, as defined in § 3(10) of the Act, in the state without possessing a valid installer’s certificate of registration and without filing proof of insurance with the Department.
6. Based on Findings of Fact Nos. 1-4, Respondent violated 10 TAC § 80.123 (e)(1) by performing installations without submitting the required bond, completing the necessary registration forms and other information needed, and without having a registration card or certificate prior to performing any installation function.
7. Based on Finding of Fact No. 5, Respondent violated 10 TAC § 80.119 (f)(3) by not submitting the Form T/Installation Report for the home owned by Bill Beach.

8. Based on Finding of Fact No. 6, Respondent violated 10 TAC § 80.119 (b)(6) and §§ 7 (b) and (c) of the Act by offering to sell eleven manufactured homes without possessing a retailer's or broker's license.
9. Pursuant to § 9(b) of the Act, the Department's Executive Director has the power to adopt rules and regulations, promulgate administrative orders, and take all action necessary to assure compliance with the intent and purpose of the Act to effectuate and to provide for uniform enforcement of all provisions of the Act and the Code.
10. Pursuant to § 2306.603(a) of the Code, the Department's Executive Director shall adopt rules to administer and enforce the manufactured housing program through the manufactured housing division; rules adopted by the Director are subject to the provisions of the Texas Government Code, Chapter 2001.
11. Pursuant to § 17(b) of the Act, if a person fails to obtain or maintain a registration as required by the Act, the Executive Director can assess against the person a civil penalty payable to the state in an amount not to exceed \$10,000.00 for each violation of the Act in addition to the reasonable attorney's fees, court costs, witness fees, investigative costs, and deposition expenses.
12. To impose penalties under § 17(b) of the Act, the Executive Director has exercised his authority to adopt rules that require a hearing conducted pursuant to the Administrative Procedure Act. The Act at § 9(b); the Code at § 2306.603(a); 10 TAC 80.126.
13. Based upon the foregoing, the Executive Director should assess a civil penalty of \$22,000.00 against Respondent.

SIGNED this 25th day of September, 2001.


STEPHEN J. PACEY
Administrative Law Judge
State Office of Administrative Hearings



DIVISION OF MANUFACTURED HOUSING

Rick Perry
GOVERNOR

Bobbie Hill
EXECUTIVE DIRECTOR

BOARD MEMBERS
Presiding Officer, Don Stouder
Jack Davis
Clement P. Moreno
Joan Tavarez
Cary Yates

TO: Governing Board of the Manufactured Housing Division of the
Texas Department of Housing and Community Affairs

FROM: Jerry E. Schroeder, Resolution Supervisor

THROUGH: Timothy K. Irvine, Attorney

SUBJECT: Summary of Proposal for Decision

Rikk's New and Used Furniture, Inc., ("Respondent")

License type/number: No license on Record.

Docket Number: 332-01-3062

Complaint Numbers: MHD1999000220-V

Background

It was found and determined by the staff of the Manufactured Housing Division that Respondent had committed the following violations of the Act and Rules:

1. Respondent sold three manufactured homes in twelve consecutive months without possessing a valid retailer's license a violation of Section 7(b) of the Act and Section 80.125(b) {amended 1998, now at 80.123(b)} of the Rules.
2. Respondent also sold the three aforementioned manufactured homes without the appropriate seals attached to each of the homes a violation of Section 8(a) of the Act.
3. Respondent also sold the three aforementioned manufactured homes without providing a written warranty that the manufactured homes was habitable a violation of Section 8(b) of the Act.

4. Respondent also sold the three aforementioned manufactured homes without the appropriate transfer of good and marketable titles in violation of Section 8(d) of the Act and also required Section 7(j)(3) of the Act.

The staff initiated the following administrative actions against Respondent.

After proper notice, an administrative hearing was held on July 11, 2001. An Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH) issued the attached Proposal for Decision (PFD) as a result of that meeting. The PFD upholds the findings and determinations of the staff.

Proposal for Decision

The Proposal for Decision dated September 6, 2001 recommends that Respondent be assessed an administrative penalty of Twenty-Nine Thousand Dollars (\$29,000.00).

Recommendation

It is recommended that the Board approve the following administrative action with respect to the Respondent, as supported by the record and the PFD.

Respondent be assessed an administrative penalty of Nine Thousand Dollars (\$9,000.00) by the Board.

Additionally, please note that the attached Final Order is in two parts and contains two separate orders. The first part is the order of assessing an administrative penalty of Twenty Thousand Dollars (\$20,000.00) signed by the Executive Director on April 26, 2002. The Executive Director is authorized to assess penalty pursuant to Section 17(b) of the Act. The second part of the attached order is the Board's order to pay an administrative penalty, which is authorized by TEX. GOV'T CODE ANN. § 2306.604(b).

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

September 6, 2001

Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs
507 Sabine
Austin, Texas 78701

HAND DELIVERY

**RE: Docket No. 332-01-3062; Texas Department of Housing and Community Affairs
vs. Rikk's New and Used Furniture, Inc.**

Dear Ms. Stiner:

Enclosed please find the Proposal for Decision in the above-referenced cause for the consideration of the Texas Department of Housing and Community Affairs. Copies of the Proposal are being sent to Jerry Schroeder, Dispute Resolution Manager for the Texas Department of Housing and Community Affairs, and to Frances Wampler aka Dick Wampler dba Rikk's New and Used Furniture, Respondent. For reasons discussed in the proposal, the Administrative Law Judge recommends the assessment of an administrative penalty of \$29,000.00.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Director ten days after the party receives the Proposal for Decision. Replies to exceptions should be filed ten days thereafter. A party filing exceptions, replies, and briefs must serve a copy on the State Office of Administrative Hearings and the other party hereto.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet Dewey", written over a circular scribble.

Janet Dewey
Administrative Law Judge

JD/nl
Enclosure
xc:

Rommel Corro, Docket Clerk, State Office of Administrative Hearings - **HAND DELIVERY**
Jerry Schroeder, Dispute Resolution Manager, Texas Department of Housing and Community Affairs - **HAND DELIVERY**
Frances Wampler aka Dick Wampler, dba Rikk's New and Used Furniture, Inc., 7516 IH27, Lubbock, Texas 79404 - **REGULAR U.S. MAIL**
Frances Wampler aka Dick Wampler, dba Rikk's New and Used Furniture, Inc., 5608 Martin L. King, Lubbock, Texas 79404 - **REGULAR U.S. MAIL**

William P. Clements Building
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4004

SOAH DOCKET NO. 332-01-3062
Complaint No. MHD1999000220V

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS	§	BEFORE THE STATE OFFICE
	§	
v.	§	OF
RIKK'S NEW AND USED FURNITURE, INC.	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Department of Housing and Community Affairs (Department) brought this case against Rikk's New and Used Furniture, Inc. (Respondent) seeking administrative penalties based on the complaint that Respondent improperly sold three used manufactured homes within the same consecutive twelve month period without obtaining, maintaining, or possessing a valid manufactured housing retailer's license; without affixing the appropriate seals or labels to the homes; without giving a written warranty that the manufactured homes were habitable; and without the appropriate, timely transfer of good and marketable titles to the homes. Respondent did not appear at the hearing. The Administrative Law Judge (ALJ) recommends the assessment of an administrative penalty of \$29,000.00, as recommended by Staff.

I. Procedural History, Notice, and Jurisdiction

On July 11, 2001, ALJ Janet Dewey convened a hearing at the Stephen F. Austin Building, 1700 North Congress Avenue, 11th Floor, Suite 1100, Austin, Texas. Jerry Schroeder, Resolution Supervisor for the Department's Manufactured Housing Division, appeared on behalf of the Department. Respondent did not appear and was not represented at the hearing. Staff presented documents related to notice and jurisdiction and moved for a default under 1 TEX. ADMIN. CODE § 155.55. The ALJ closed the record on July 11, 2001. Because the ALJ recommends that the Department's motion for a default judgment be granted, the ALJ deems all the Department's factual allegations as true. Therefore, the allegations and applicable law are set forth in the Findings of Fact and Conclusions of Law without further discussion.

II. Recommendation

The ALJ recommends that a default be entered against Respondent and that the Department enter an order imposing a civil penalty of \$29,000 against Respondent based on the Findings of Fact and Conclusions of Law presented below.

III. Findings of Fact

1. Rikk's New and Used Furniture, Inc. (Respondent) of Lubbock, Texas, does not presently possess a valid manufactured housing retailer's license from the Texas Department of Housing and Community Affairs (Department).
2. On or about May 5, 1998, Respondent sold a used manufactured home, serial number 75860987, to Susan Nickerson in Plainview, Texas.
3. On or about May 5, 1998, Respondent sold a used manufactured home, serial number W60L2DU10625R, to Susan Nickerson in Plainview, Texas. The sale of this home was within a consecutive twelve month period of the sale of the home referenced in Finding of Fact No. 2.
4. On or about May 5, 1998, Respondent sold a used manufactured home, Serial Number 3017A5711, to Susan Nickerson in Plainview, Texas. The sale of this home was within a consecutive twelve month period of the sale of the homes referenced in Finding of Fact Nos. 2 and 3.
5. Respondent did not possess a valid manufactured housing retailer's license when it sold the used manufactured homes referenced in Finding of Fact Nos. 2 - 4 on or about May 5, 1998.
6. Respondent sold the used manufactured homes referenced in Finding of Fact Nos. 2 - 4 without the appropriate seal or label affixed to the homes.
7. Respondent sold the used manufactured homes referenced in Finding of Fact Nos. 2 - 4 without giving a written warranty that the manufactured homes were habitable.
8. Respondent sold the used manufactured homes referenced in Finding of Fact Nos. 2 - 4 without the appropriate, timely transfer of good and marketable titles to the homes to the consumer, Susan Nickerson.
9. On June 12, 2001, the Department sent a hearing notice by first-class mail and by certified mail, return receipt requested, to Respondent at 7516 IH-27, Lubbock, Texas 78404.
10. The hearing notice informed Respondent of the issues to be decided, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.
11. The hearing notice advised Respondent in 10-point bold-face type that failure to appear at the hearing would result in the factual allegations in the notice being admitted as true and the relief sought being granted by default.

12. In determining the fine requested under TEX. GOV'T CODE § 23604(b), the Department considered the seriousness of the violation, the history of previous violations, the amount necessary to deter future violations, and efforts made to correct the violation.

The hearing was convened as scheduled on July 11, 2001, in the Stephen F. Austin State Office Building, 1700 North Congress Avenue, 11th Floor, Suite 1100, Austin, Texas.

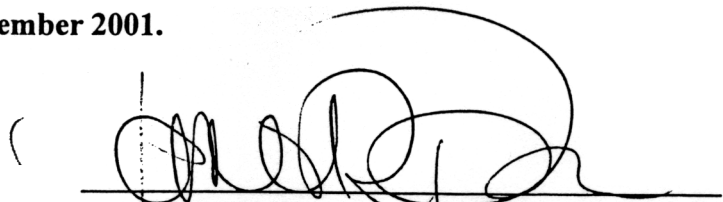
Respondent did not appear and was not represented at the hearing.

IV. Conclusions of Law

1. The Department has jurisdiction over this matter pursuant to the Texas Manufactured Housing Standards Act (the Act), TEX. REV. CIV. STAT. ANN. art. 5221f, § 7 (Vernon 1987 & Supp. 2001).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. The Respondent was afforded notice of the hearing, as required by TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000 & Supp. 2001) and 1 TEX. ADMIN. CODE (TAC) § 155.55.
4. Based on Findings of Fact Nos. 9 - 14 and Conclusion of Law No. 3, a default should be entered against Respondent as permitted by 1 TAC § 155.55.
5. Based on Findings of Fact Nos. 2 - 5, Respondent violated § 7(b) of the Act and 10 TAC § 80.125(b) (amended 1998, now at 10 TAC § 80.123(b)) by selling two or more used manufactured homes to consumers in a consecutive twelve month period without a valid manufactured housing retailer's license.
6. Based on Finding of Fact No. 6, Respondent violated § 8(a) of the Act (Vernon 1987 & Supp. 2001) by selling used manufactured homes without the appropriate seal or label affixed to the homes.
7. Based on Finding of Fact No. 7, Respondent violated § 8(b) of the Act (Vernon Supp. 2001) by selling used manufactured homes without giving a written warranty that the manufactured homes were habitable.
8. Based on Finding of Fact No. 8, Respondent violated § 7(j)(3) and 8(d) of the Act (Vernon Supp. 2001) by selling used manufactured homes without the appropriate, timely transfer of good and marketable titles to the homes.

9. Under the provisions of art. 5221f, § 17(b) of the Act (Vernon Supp. 2001), the Department may assess a penalty of up to \$10,000 for each failure to obtain or maintain a valid manufactured housing retailer's license in violation of the Act.
10. Under TEX. GOV'T CODE § 2306.604(b), the Department may assess an administrative penalty in an amount not to exceed \$1000 for each violation of a law or rule relating to the regulation of manufactured housing.
11. Based on consideration of the above Findings of Fact and Conclusion of Law No. 5 an administrative penalty of \$20,000 for the violations of § 7(b) of the Act is reasonable and justified.
12. Based on consideration of the above Findings of Fact and the factors set forth in TEX. GOV'T CODE § 2306.604(c), an administrative penalty of \$9,000 for the remaining nine violations set forth above is reasonable and justified.
13. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent should be assessed a total administrative penalty of \$29,000.

SIGNED this 6th day of September 2001.



JANET DEWEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



DIVISION OF MANUFACTURED HOUSING

Rick Perry
GOVERNOR

Bobbie Hill
EXECUTIVE DIRECTOR

BOARD MEMBERS
Presiding Officer, Don Stouder
Jack Davis
Clement P. Moreno
Joan Tavarez
Cary Yates

TO: Governing Board of the Manufactured Housing Division of the
Texas Department of Housing and Community Affairs

FROM: Jerry E. Schroeder, Resolution Supervisor

THROUGH: Timothy K. Irvine, Attorney

SUBJECT: Summary of Proposal for Decision

James W. Lee, III dba Dynasty Housing, ("Respondent")

License type/number: RBI-34591. Effective dates September 13, 2000 through
September 13, 2001

Docket Number: 332-01-3639

Complaint Numbers: MHD2001001248-R, MHD2001001379-R, MHD2001001465-R

Background

It was found and determined by the staff of the Manufactured Housing Division that Respondent had committed the following violations of the Act and Rules:

1. Respondent failed to refund the deposits of three (3) separate consumers totaling Twenty-One Thousand Dollars (\$21,000.00) violating Section 6(m) of the Act.
2. Respondent also did not refund the deposits of the same three (3) consumers within fifteen (15) days of receiving written notice as required by Section 6(m)(1) of the Act.
3. Respondent also failed to deliver the Formaldehyde Health Notice to a consumer prior to the execution of any mutually binding sales agreement as required by Section 20(a) of the Act and Section 80.180(b) of the Rules.

4. Respondent also failed to deliver the Site Preparation Notice to a consumer prior to the execution of any mutually binding sales agreement as per Section 80.54(b) of the Rules.

The staff initiated the following administrative actions against Respondent.

After proper notice, an administrative hearing was held on August 30, 2001. An Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH) issued the attached Proposal for Decision (PFD) as a result of that meeting. The PFD upholds the findings and determinations of the staff.

Proposal for Decision

The Proposal for Decision dated September 20, 2001 recommends that Respondent's license be revoked and that Respondent be assessed an administrative penalty of Five Thousand Dollars (\$5,000.00) by the Board.

Recommendation

It is recommended that the Board approve the following administrative action with respect to the Respondent, as supported by the record and the PFD.

Respondent be assessed an administrative penalty of Five Thousand Dollars (\$5,000.00).

Additionally, please note that the attached Final Order is in two parts and contains two separate orders. The first part is the order of revocation signed by the Executive Director on April 26, 2002. The Executive Director is authorized to order license sanctions – reprimands, suspensions, and revocations – by TEX. GOV'T CODE ANN. § 2306.604(a). The second part of the attached order is the Board's order to pay an administrative penalty, which is authorized by TEX. GOV'T CODE ANN. § 2306.604(b).

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

September 20, 2001

Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs
507 Sabine
Austin, Texas 78701

HAND DELIVERY

RE: Docket No. 332-01-3639; Texas Department of Housing and Community Affairs vs. James W. Lee III dba Dynasty Housing

Dear Ms. Stiner:

Enclosed please find the Proposal for Decision in the above-referenced cause for the consideration of the Texas Department of Housing and Community Affairs. Copies of the Proposal are being sent to Jerry Schroeder, Dispute Resolution Manager for the Texas Department of Housing and Community Affairs, and to James W. Lee, III dba Dynasty Housing, Respondent.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig R. Bennett".

Craig R. Bennett
Administrative Law Judge

CRB:dc

Enclosure

xc: Rommel Corro, Docket Clerk, State Office of Administrative Hearings - **HAND DELIVERY**
Jerry Schroeder, Dispute Resolution Manager, Texas Department of Housing and Community Affairs - **HAND DELIVERY**
James W. Lee, III, dba Housing Dynasty, 18211 HWY 6, Manvel, Texas 77578 - **REGULAR U.S. MAIL**
James W. Lee, III, dba Housing Dynasty, 2219 Dunraven, Houston, Texas 77019 - **REGULAR U.S. MAIL**

William P. Clements Building
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

DOCKET NO. 332-01-3639

**TEXAS DEPARTMENT OF
HOUSING AND COMMUNITY AFFAIRS,
Petitioner**

V.

**JAMES W. LEE III d/b/a
DYNASTY HOUSING,
Respondent**

§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. Introduction

The Staff of the Texas Department of Housing and Community Affairs (Staff) brought this action against James W. Lee III d/b/a Dynasty Housing (Respondent) for alleged violations of the Texas Manufactured Housing Standards Act. Respondent did not attend the hearing, either in person or through an authorized representative or attorney. A default judgment was rendered against the Respondent. Based on the factual allegations, which are deemed admitted as true pursuant to the default judgment, the Administrative Law Judge (ALJ) finds that Respondent should be assessed an administrative penalty of \$5,000 and his license should be revoked.

II. Jurisdiction and Notice

The Texas Department of Housing and Community Affairs has jurisdiction in this case pursuant to the Texas Manufactured Housing Standards Act (the Act), TEX. REV. CIV. STAT. ANN. art. 5221f. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing, including the authority to issue a proposal for decision, pursuant to TEX. GOV'T CODE ch. 2003. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ch. 2001 and § 7(k) of the Act.

The notice of intention to institute disciplinary action and of the hearing met the notice requirements imposed by statute and rule. The details about notice to Respondent are set forth in the findings of fact and conclusions of law without further discussion here.

III. Procedural History

The hearing in this case was held on August 30, 2001, before ALJ Craig R. Bennett at SOAH's hearing facilities, Suite 1100, 1700 N. Congress Ave., Austin, Texas. Staff was represented by Jerry E. Schroeder. Respondent did not appear and was not represented at the hearing. Staff moved for a default judgment and sought leave to supplement its motion with Exhibits A, B, and S (first page only) which established proper notice, proper jurisdiction, and the complaint history on Respondent to justify recommended penalties. Those exhibits were admitted into evidence. Because the hearing proceeded on a default basis pursuant to 1 TEX. ADMIN. CODE § 155.55, Staff's factual allegations are deemed admitted as true, and the ALJ has incorporated those allegations into findings of fact six through ten below. Based on the facts deemed admitted as true, the ALJ concludes that Respondent violated section 6(m)(1)-(3) and 20(a) of the Act, and 10 TEX. ADMIN. CODE §§ 80.180(b) and 80.54(b). Further, based on the criteria in TEX. GOV'T CODE ANN. § 2306.604, the ALJ concludes that Respondent should be fined \$5,000 and have his license revoked for such violations.

IV. Findings of Fact

1. James W. Lee III d/b/a Dynasty Housing (Respondent) holds License No. RBI-34591 issued by the Texas Department of Housing and Community Affairs (TDHCA) and effective September 13, 2000 through September 13, 2001.
2. On August 7, 2001, TDHCA Staff sent notice of an administrative hearing to Respondent at his last known address of 2219 Dunraven, Houston, Texas 77019, by certified mail, return receipt requested, and by regular mail.
3. The notice of hearing informed Respondent of the matters asserted; the right to appear and be represented by counsel; the time and place of the hearing; the default warning language pursuant to the requirements of 1 TEX. ADMIN. CODE § 155.55(c); the legal authority and jurisdiction under which the hearing would be held; and the statutes and rules involved.

4. The hearing convened on August 30, 2001. Staff appeared and represented TDHCA. Respondent did not appear and was not represented by counsel.
5. Based on Respondent's failure to appear at the hearing, Staff moved for a default judgment under 1 TEX. ADMIN. CODE § 155.55, and the ALJ granted the request and entered a default judgment against Respondent.
6. On or about September 16, 2000 and October 3, 2000, Respondent improperly accepted a deposit from Cynthia K. Morgan for the purchase of a home that was in Respondent's inventory. Further, despite receiving a written notice from Ms. Morgan requesting a refund of the deposit, Respondent has failed to fully refund the deposit within 15 days of receiving the notice.
7. On or about January 12, 2001, Respondent improperly accepted a deposit from Fransico Guerrero, Jr. for the purchase of a home that was in Respondent's inventory. Further, despite receiving a written notice from Mr. Guerrero requesting a refund of the deposit, Respondent has failed to fully refund the deposit within 15 days of receiving the notice.
8. On or about April 17, 2001, Respondent improperly accepted a deposit from Bobby and Jessie Courtney for the purchase of a home that was in Respondent's inventory. Further, despite receiving a written notice from Bobby and Jessie Courtney requesting a refund of the deposit, Respondent has failed to fully refund the deposit within 15 days of receiving the notice.
9. On or about April 17, 2001, Respondent failed to deliver the Formaldehyde Health Notice to Bobby and Jessie Courtney prior to the execution of a mutually binding sales agreement.
10. On or about April 17, 2001, Respondent failed to deliver the Site Preparation Notice to Bobby and Jessie Courtney prior to the execution of a mutually binding sales agreement.

11. Based on the violations alleged in the Notice of Hearing, Staff requested that Respondent be assessed a \$5,000.00 administrative penalty and that Respondent's license be revoked.

V. Conclusions of Law

1. TDHCA has jurisdiction in this case pursuant to the Texas Manufactured Housing Standards Act (the Act), TEX. REV. CIV. STAT. ANN. art. 5221f and has authority to discipline and penalize Respondent pursuant to § 7(j) of the Act and TEX. GOV'T. CODE ANN. ch. 2306.
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing, including the authority to issue a proposal for decision, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was provided to Respondent pursuant to the Act, TEX. REV. CIV. STAT. ANN. art. 5221f; TEX. GOV'T CODE ANN. ch. 2001; TEX. GOV'T CODE ANN. ch. 2306; 1 TEX. ADMIN. CODE § 155.55; and 10 TEX. ADMIN. CODE § 80.126. TDHCA's rules, as reflected by 10 TEX. ADMIN. CODE § 1.21(c), provide for notice to be sent to Respondent's last known address as shown by TDHCA's records.
4. Based on Respondent's failure to appear at the hearing, a default judgment was properly rendered against Respondent pursuant to 1 TEX. ADMIN. CODE § 155.55, and the factual allegations contained in the Notice of Hearing were deemed admitted as true.
5. Based on the above findings of fact, Respondent violated section 6(m)(1)-(3) and 20(a) of the Act and 10 TEX. ADMIN. CODE §§ 80.180(b) and 80.54(b).
6. Based on the criteria in TEX. GOV'T CODE ANN. § 2306.604, Respondent should be fined \$5,000 and have his license revoked.

SIGNED this 19th day of September, 2001.



CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Agenda Item No. 2(f)



DIVISION OF MANUFACTURED HOUSING

Rick Perry
GOVERNOR

Bobbie Hill
EXECUTIVE DIRECTOR

BOARD MEMBERS
Presiding Officer, Don Stouder
Jack Davis
Clement P. Moreno
Joan Tavarez
Cary Yates

TO: Governing Board of the Manufactured Housing Division of the
Texas Department of Housing and Community Affairs

FROM: Jerry E. Schroeder, Resolution Supervisor

THROUGH: Timothy K. Irvine, Attorney

SUBJECT: Summary of Proposal for Decision

Sunriver Homes, Inc., ("Respondent")

License type/number: RBI-34692. Effective dates December 13, 2000 through December 13, 2001

Docket Number: 332-02-0931

Complaint Numbers: MHD2001001070-W

Background

The Department performed a new home warranty inspection on March 29, 2001 and issued an order to the Respondent to take appropriate corrective action. The time period to make such repairs expired May 21, 2001.

The Department performed a re-inspection on June 19, 2001 and determined that not all assigned items were properly corrected.

The Department issued an Administrative Action letter on July 2, 2001, citing violations of Sections 14(f) and 14(j) of the Act and Sections 80.131(b) and 80.132(3) of the Rules (failing to comply with an order) and requesting a \$500.00 penalty pursuant to Section 80.127 of the Rules regarding the penalty.

The Respondent admitted responsibility and paid \$500.00 on September 21, 2001.

The consumer alleged that the Respondent had not completed all assigned responsible items.

The Department performed another re-inspection on November 2, 2001 and determined that one of the assigned items was still not properly corrected.

After proper notice on November 28, 2001, an administrative hearing was held January 8, 2002. An Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH) issued the attached Proposal for Decision (PFD) as a result of that hearing.

The Respondent's license expired on December 13, 2001.

The Respondent took corrective action on or about February 2, 2002.

Proposal for Decision

The Proposal for Decision dated March 8, 2002 recommends against assessing an additional Five Hundred Dollars (\$500.00) in penalty.

Recommendation

It is recommended that the Board approve the following administrative action with respect to the Respondent because the Respondent is now out of business and has taken corrective action. The ALJ recommends against the imposition of any additional administrative penalty and states the belief that to assess an additional penalty would be outside the scope of the Act and Rules.

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

March 8, 2002

Ms. Bobbie Hill.
Executive Director
Texas Department of Housing and Community Affairs
507 Sabine
Austin, Texas 78701

HAND DELIVERY

**RE: Docket No. 332-02-0931; Texas Department of Housing and Community Affairs
vs. Sunriver Homes, Inc.**

Dear Ms. Hill:

Enclosed please find the Proposal for Decision in the above-referenced cause for the consideration of the Texas Department of Housing and Community Affairs. Copies of the Proposal are being sent to Jerry Schroeder, Dispute Resolution Manager for the Texas Department of Housing and Community Affairs, and to Sunriver Homes, Inc., Respondent. For reasons discussed in the proposal, the Administrative Law Judge recommends against the assessment of the additional \$500.00 penalty.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Director ten days after the party receives the Proposal for Decision. Replies to exceptions should be filed ten days thereafter. A party filing exceptions, replies, and briefs must serve a copy on the State Office of Administrative Hearings and the other party hereto.

Sincerely,

A handwritten signature in black ink, appearing to read "Cassandra J. Church".

Cassandra J. Church
Administrative Law Judge

CJC/ib
Enc.

xc: Docket Clerk, State Office of Administrative Hearings - **HAND DELIVERY**
Jerry Schroeder, Dispute Resolution Manager, Texas Department of Housing and Community Affairs - **HAND DELIVERY**
Sunriver Homes, Inc., 115 Peters Road, El Campo, Texas 77437 - **REGULAR U.S. MAIL**

William P. Clements Building
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

SOAH DOCKET NO. 332-02-0931

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, Petitioner	§	BEFORE THE STATE OFFICE
	§	
v.	§	OF
	§	
SUNRIVER HOMES, INC., Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Department of Housing and Community Affairs (Department) brought this case against Sunriver Homes, Inc. (Respondent) seeking an administrative penalty of \$500.00 based on the complaint that Respondent failed to obey a Warranty Order to correct an installation violation on a manufactured home (the home). Respondent asserted that the Department was being unreasonable in seeking an additional penalty since he had already paid a \$500.00 penalty in regard to the violation, and also had made good faith efforts to correct the matter.

The Administrative Law Judge (ALJ) recommends against the assessment of the additional \$500.00 penalty on the basis the Department determined the penalty for this violation when it entered into an Agreed Final Order in September 2001.

There being no contested matters concerning notice or jurisdiction, those are set out below in the Findings and Conclusions.

I. Discussion

In this case, the Department is seeking assessment of a \$500.00 penalty for Respondent's failure to obey an order of the Department, rather than for the installation violation itself. After an inspection in March 2001, the Department issued a Warranty Order to Respondent, requiring him to correct several items on installation of the home. (Dept. Exh. D, P. 8). Respondent had not completed all items of work by May 21, 2001, the deadline for compliance with the Warranty Order.

On July 2, 2001, the Department issued a Notice of Violation in which it determined that \$500.00 would be the appropriate penalty for Respondent's failure to correct all installation violations within 40 days. On September 20, 2001, Respondent and the Department entered into an Agreed Final Order. Under the terms of that order Respondent acknowledged that he had failed to timely correct all violations, agreed to pay a \$500.00 fine, agreed to take necessary corrective action for compliance, and to "maintain compliance" with the law and rules of the Department. (Dept. Exh. L, Pp. 2-3).¹ A third inspection of the manufactured home on November 2, 2001 revealed that one item, the siding installation, had not yet been corrected.

The Texas Manufactured Housing Standards Act (the Act)² clearly lays the responsibility for proper installation on the retailer or installer of the manufactured home. The Department's Director is given authority to enforce provisions of the Act and implementing rules as well as orders of the Department. 10 TEX. ADMIN CODE (TAC) § 80.127. Under the applicable administrative rules, an installer "must complete the installation in accordance with the standards and requirements of this chapter." 10 TAC § 80.119(h). Timely compliance with Department directives in regard to resolution of consumer complaints is required. 10 TAC §§ 80.131(b) and 80.132(3). The Director may determine a violation has been committed, assess the appropriate penalty -- up to \$1,000.00 -- and issue an enforceable order requiring an installer to pay that penalty. The specific provision as to the penalty order reads as follows:

The installer's acceptance portion of the Agreed Final Order contains the following key language:

Sunriver Homes Inc. dba R-034692, hereby accepts the determination made by the Executive Director as identified in this Notice of Violation. In accepting the determination, Sunriver Homes Inc. dba [R-034692] hereby waives any rights to a formal adjudicatory hearing. In [waiving] an adjudicatory hearing, Sunriver Homes Inc. dba [R-034692] acknowledges that adequate and sufficient notice has been provided to include full understanding of the alleged violations at issue. It is now the expressed desire of Sunriver Homes Inc. dba [R-034692] to enter into an Agreed Final Order. Sunriver Homes Inc. dba [R-034692] agrees to pay the recommended penalty, take necessary corrective action for compliance and maintain compliance with the laws and rules of the TDHCA. (Bracketed material supplied).

² TEX. REV. CIV. STAT. ANN. art 5221f (Vernon Supp. 2001).

- (i) If the person charged with the violation accepts the determination of the director, the director shall issue an order approving the determination and ordering that the person pay the recommended penalty. TEX. GOVT. CODE ANN. § 2306.6023 (Vernon Supp. 2002) (formerly § 2306.604).

Although the Director may determine the appropriate fine and order its payment, the ALJ has been unable to locate any passages in either the Act, or in the implementing regulations, which authorize the Director to redetermine the appropriate penalty once a final order assessing that penalty has been issued. Respondent's payment of the recommended penalty of \$500.00 appears to have ended the penalty matter for this violation. Considering all facts and circumstances, the ALJ concluded the imposition of an additional \$500.00 administrative penalty for Respondent's continuing violation of the Warranty Order is not authorized under the terms of the Act or its implementing rules.³

II. Findings of Fact

Sunriver Homes, Inc. (Respondent) installed a manufactured home (the home), Serial No. CSS002381TX A & B, for Richard Oman in Humble, Texas.

- 2. Staff members (Staff) from the Texas Department of Housing and Community Affairs (Department) inspected the home on March 29, 2001, and issued a Warranty Order on April 9, 2001, ordering Respondent to correct 18 installation deficiencies, including the improper affixing of the vinyl siding to the home. Respondent received the Warranty Order on April 11, 2001.
- 3. As of the date of inspection, the vinyl siding had not been affixed in a manner to permit expansion and contraction under varying weather conditions.

³ However, the ALJ notes that this Proposed Decision does not rule on the propriety of other types of measures the Department may be able to pursue in order to enforce Respondent's failure to correct the siding violation within 40 days of the issuance of the Warranty Order. Further, this Proposal for Decision does not address what, if any, enforcement options are available to the Department to enforce Respondent's compliance with terms of the Agreed Final Order on its own terms, as an order of the Department separate and apart from the Warranty Order.

4. The deadline for Respondent to correct installation errors cited in the Warranty Order was May 21, 2001; the deadline for advising the Staff that repairs or corrections were completed was June 1, 2001.
5. Staff re-inspected the home on June 19, 2001; Respondent had not corrected all violations listed in the Warranty Order.
6. Following the re-inspection in June 2001, Respondent corrected all outstanding violations -- except the adjustment of the vinyl siding.
7. On July 2, 2001, in a Notice of Violation, the Department determined that Respondent had violated the Warranty Order by failing to timely correct all violations listed in that Warranty Order and recommended assessment of a penalty of \$500.00.
8. On September 20, 2001, Respondent entered into an Agreed Final Order with the Department. Under the terms of the Agreed Final Order, Respondent accepted the determination of violation made by the Department, paid the recommended penalty of \$500.00, and agreed to take necessary corrective action to comply with Department rules and regulations, and also to maintain such compliance.
9. A contractor employed by Respondent performed work on the vinyl siding on the home between June 19, 2001, and November 2, 2001, the date of the Staff's third inspection of the home site. Work done between those dates did not correct the faulty siding installation, although the contractor advised Respondent's president, Charles Willett, that the faulty siding installation had been corrected to meet the Department's regulations.
10. On November 2, 2001, the Department re-inspected the home, and determined the vinyl siding had not been installed according to the Department's regulations.

11. After the November 2, 2001, inspection, Respondent continued to attempt to gain access to the home site to permit the construction siding contractor which he had employed correct the siding installation. Access scheduling difficulties arose during those attempts.
12. On November 28, 2001, the Staff sent a hearing notice by first-class mail and by certified mail, return receipt requested, to Respondent at 115 Peters Road, El Campo, Texas 77437. This address was Respondent's last known address per the records of the Department.
13. The hearing notice informed Respondent of the issues to be decided, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.
14. The notice of hearing was published in the *Texas Register* on December 7, 2001, at 26 TexReg 10164.
15. After one agreed continuance, the hearing was convened on January 8, 2002, in the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin, Texas. Respondent appeared through its president, Mr. Willett. The record closed that day.
16. The maximum fine for an installer's noncompliance with a Warranty Order issued by the Department is \$1,000.00.


III. Conclusions of Law

1. The Department has jurisdiction over this matter pursuant to TEX. REV. CIV. STAT. ANN. art. 5221f, the Texas Manufactured Housing Standards Act (the Act) (Vernon Supp. 2001), and pursuant to TEX. GOV'T CODE ANN §§ 2306.6003 through 2306.6023 (Vernon Supp. 2002).⁴

⁴ The statutes creating the Manufacturing Housing Division were amended and renumbered by legislation effective September 1, 2001. Former TEX. GOV'T. CODE ANN § 2306.604 (Sanctions and Penalties) was renumbered as § 2306.6023. The substantive portions of the Government Code relevant to this case were not amended.

2. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2001).
3. Based upon Findings of Fact Nos. 14 - 16, Respondent was given notice of the hearing on the allegations against it as required by TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 (Vernon 2000 & Supp. 2001), and as required by TEX. GOV'T CODE ANN. § 2306.6023(j).
4. An administrative penalty of \$500.00 for an installer's failure to complete items listed on a Warranty Order is consistent with the Board's application of penalties in similar circumstances, under the criteria set forth in TEX. GOV'T CODE ANN. § 2306.6023.
5. The terms of TEX. GOV'T CODE ANN. § 2306.6023 do not authorize the Department to redetermine and reassess a penalty levied in a Notice of Violation, and accepted and paid by an installer under an Agreed Final Order.

SIGNED March 8, 2002.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

CASSANDRA J. CHURCH
ADMINISTRATIVE LAW JUDGE

EXECUTIVE SESSION

Don Stouder

Personnel Matters under Sec. 551.074, Texas Government Code
The Board may discuss any item on this agenda in Executive Session.

OPEN SESSION

Action in Open Session on Items Discussed in Executive Session

ADJOURN

Don Stouder
Chair

To access this agenda or request information, please visit our website at www.tdhca.state.tx.us or contact Cindy S. Bocz, TDHCA, 507 Sabine, Austin, Texas 78701, 512-475-2884, cbocz@tdhca.state.tx.us.

Individuals who require auxiliary aids, services or translators for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.