

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
AVALON APARTMENTS, L.L.C. WITH	§	TEXAS DEPARTMENT OF
RESPECT TO	§	HOUSING AND
AVALON APARTMENTS	§	COMMUNITY AFFAIRS
(LIHTC FILE # 91036 / CMTS # 954)	§	

ORDER TO CORRECT CLERICAL MISTAKE

On the 28th day of July, 2016, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) signed an order (“Agreed Final Order”) resolving an enforcement matter against **AVALON APARTMENTS, L.L.C.**, a Texas limited liability corporation. The owner as of July 28, 2016, Ms. Flaza Jazaroski, and the proposed new owner of the property, Dante Andrade, Manager of Touro Enterprises LLC, a Texas limited liability corporation, as manager for Avalon Living LLC, a Texas limited liability company, signed the Agreed Final Order. The transfer to the proposed New Owner was approved by the Department’s Asset Management Division, and the sale closed on August 12, 2016.

Certain language included in the Agreed Final Order should not have been included in the ordering paragraphs applying to the proposed new owner. The Board finds that this clerical error will work an injustice against the new owner if not corrected, and does not satisfy the requirements of Tex. Gov’t Code §2306.042, regarding factors to consider when assessing administrative penalties.

Upon recommendation of the Legal Division and the Enforcement Committee, the Board makes the following findings of fact and conclusion of law, and enters this order:

FINDINGS OF FACT

1. On July 28, 2016, the Board signed the Agreed Final Order in an enforcement action against Avalon Apartments, L.L.C., a Texas limited liability corporation (“Property”) (HTC file No. 91036 / CMTS No. 954 / LDLD No. 102).
2. The Agreed Final Order was signed by the former owner of Avalon Apartments, Avalon Apartments, LLC, by its owner Flaza Jazaroski, and by the current owner, Dante Andrade, Manager of Touro Enterprises LLC, a Texas limited liability corporation, as manager of Avalon Living LLC, a Texas limited liability company.
3. At the time the Agreed Final Order was signed by both parties, they had already entered into a contract for sale of Avalon Apartments to Mr. Andrade, which sale had the approval of the Department’s Asset Management Division. Upon sale, control of Avalon Apartments, LLC was to transfer from Ms. Jazaroski to Avalon Living LLC.
4. The Agreed Final Order included a \$62,000 penalty, \$20,000 of which was to be paid to the Department at closing by the former owner, Ms. Jazaroski (who was responsible for the existing violations) and the remaining \$42,000 to be paid by the new owner, Mr. Andrade if

he did not place Avalon Apartments in full compliance with all applicable requirements in the Agreed Final Order within 180 days of the date of closing.

5. Mr. Andrade timely addressed all UPCS and file monitoring violations within the 180 days as required by the Agreed Final Order, bringing the property into full compliance for the first time since at least 2009. Many pre-existing violations could not immediately be fully corrected during the 180 day period, and the Agreed Final Order required Mr. Andrade to submit notices to the Department relating to those violations. Although all substantive requirements of the Agreed Final Order were timely met, there were twelve instances of failure to provide notice to the Department that vacant units were ready for occupancy, three instances of not providing copies to the Department of notices of nonrenewal of leases that had been issued to pre-existing nonqualified households, and one instance of not providing notice to the Department that lease addenda had been signed by all households. There were also four instances of illegible or unsigned employer verifications submitted. Upon being notified of the problems, Mr. Andrade provided corrective documentation as soon as the affected units were vacated by the pre-existing noncompliant households and became available for occupancy by qualified Low Income tenants. Although having placed the property in actual compliance with all substantive physical and file requirements, Mr. Andrade was technically in violation of notification requirements found in the attachments to the Agreed Final Order.
6. Because the new owner did not fully satisfy all conditions of the Agreed Final Order by failing to notify the Department as required in the attachments to the Agreed Final Order, the new owner was notified to pay the remaining \$42,000 penalty.
7. Neither the Enforcement Committee nor the Board intended for a new owner, approved by the Asset Management Division, to be subject to the full remaining amount of the penalty simply for failing to timely notify the Department of its efforts to address the prior owner's violations that were not immediately able to be corrected, provided all prior compliance violations were corrected.
8. Staff determined that the new owner, Mr. Dante Andrade, has complied with all substantive terms and conditions of the Agreed Final Order and has satisfactorily addressed all prior compliance violations.

CONCLUSIONS OF LAW

1. The Board retains jurisdiction and authority to enforce or make clerical corrections to its final orders. Tex. Gov't Code §§2306.041-.0503.
2. Correction of this Agreed Final Order is necessary to assure that the penalty assessed in the Agreed Final Order is based on the factors required to be considered in assessing a penalty under Tex. Gov't Code §2306.042.¹

¹ Requires that the amount of the penalty shall be based on: (1) the seriousness of the violation, (2) history of previous violations, (3) amount necessary to deter future violations, (4) efforts made to correct the violation, and (5) any other matter that justice may require

Based upon the foregoing findings of fact and conclusions of law, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that numbered paragraph 7, on page 7 of 25 of the Agreed Final Order is amended as indicated below:

If Buyer timely ~~and fully complies with the terms and conditions of this Agreed Final Order,~~ correct~~ing~~^{sing} all violations as required, the satisfactory performance under this Order will be accepted in lieu of a \$42,000 portion of the assessed administrative penalty and that amount will be deferred and forgiven.

IT IS FURTHER ORDERED that paragraph 8, on page 7 of 25 of the Agreed Final Order is amended as indicated below:

If Respondent or Buyer fails to timely correct all violations ~~satisfy any conditions or otherwise violates any provision of this Order,~~ then the remaining administrative penalty in the amount of \$42,000 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order.

IT IS FURTHER ORDERED that this order shall have no precedential value, and is limited to the facts and circumstances in this contested case.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

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