



Texas Department of Housing and Community Affairs
Manufactured Housing Board Meeting
on February 17, 2006

Valeri Stiers Malone, Chair

Michael H. Bray, Member

Carlos Amaral, Member

Kimberly A. Shambley, Member

Frances Shannon, Member

Texas Department of Housing and Community Affairs
Manufactured Housing Board Meeting
February 17, 2006

ROLL CALL

	<u>Present</u>	<u>Absent</u>
Valeri Stiers Malone, Chair	_____	_____
Michael H. Bray, Member	_____	_____
Carlos Amaral, Member	_____	_____
Kimberly A. Shambley, Member	_____	_____
Frances Shannon, Member	_____	_____
Number Present	_____	
Number Absent		_____

_____, Presiding Officer

MANUFACTURED HOUSING BOARD MEETING
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
221 E. 11th Street, Room 116, Austin, Texas 78701
February 17, 2006 11:00 a.m.

AGENDA

CALL TO ORDER, ROLL CALL
CERTIFICATION OF QUORUM

Chair
Chair

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 consideration to approve minutes of board meeting of December 9, 2005. Chair
- Item 2. Presentation, discussion and consideration of possible approval of the State Office of Administrative Hearings (SOAH) Proposal for Decision: Jim Hicks
- (a) Approval of Manufactured Housing Case:
In the Matter of the Complaint of TDHCA vs. Ghengis Khan Investments, Docket Number: 332-05-5427.
- (b) Approval of Manufactured Housing Case:
In the Matter of the Complaint of TDHCA vs. Amerihomes of Texas, Inc. dba Hacienda Homes, Docket Number: 332-06-0394.
- Item 3. Presentation, discussion and consideration to approve adoption of rule review of 10 TAC Chapter 80. Tim Irvine

PUBLIC COMMENT

Chair

REPORT ITEMS

- Financial Report
 - Processing Report
 - SAA Report
 - Executive Director's Report
- Kassu Asfaw
Joe Garcia
Cindy Bocz
Tim Irvine

ADJOURN

Chair

To access this agenda or request information, please visit our website at www.tdhca.state.tx.us or contact Sharon Choate, TDHCA, P.O. Box 12489, Austin, Texas 78711-2489, 512-475-2206, sharon.choate@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.

**MINUTES OF THE MEETING OF THE
MANUFACTURED HOUSING BOARD**

On Friday, December 9, 2005, there was a duly-called and posted meeting of the Manufactured Housing Board, held in Room 1-100 of the William B Travis State Office Building at 1701 N. Congress, Austin, Texas. Valeri Malone, presiding officer, chaired the meeting, and Tim Irvine recorded the minutes. The meeting was called to order at 4:26 p.m. The presence of a quorum was ascertained. Valeri Malone, Michael Bray, and Frances Shannon were present. Ms. Kimberly Shambley was absent. Members of staff of the Texas Department of Housing and Community Affairs, Manufactured Housing Division (the "Division"), including Tim Irvine, Joe Garcia, Cindy Bocz, Jim Hicks, and Sharon Choate, were also present.

Upon motion of Michael Bray, duly seconded by Frances Shannon, the minutes of the previous meeting were approved with one correction, noting that Ms. Shambley had seconded the motion on action item number 3.

Jim Hicks presented staff's recommendation to renew the approval of PSIA/TXMHS as a continuing education provider. Upon motion of Michael Bray, duly seconded by Frances Shannon, this was approved.

At 4:30 p.m., in accordance with Texas Government Code, Section 551.071, the board went into closed session to confer with legal counsel regarding proposed rules at 10 TAC Part 80.208. Counsel present were Barbara Deane and Nichole Bunker-Henderson of the Office of the Attorney General.

The board reconvened in open session at 5:36 p.m.

Michael Bray moved adoption of 80.208 to provide for the adoption of subsection (a), requiring that tax liens be filed using the prescribed form (not adopting paragraphs (a)(1) and (a)(2), subsection (b) would not be adopted, subsection (c) would be renumbered as subsection (b), subsection (c) would become subsection (d), and the form would provide that the HUD label, serial or seal number, the tax unit ID number, the year for which taxes were owed, the collector's address, and the signature would all be required. Other fields would be optional. Frances Shannon seconded the motion, and the chair called for discussion. It was suggested that the form provide that the taxing unit ID number be required if one had been assigned but otherwise the units simply be identified by name. The motion was amended to reflect this. The motion was further amended to provide that filings could be made electronically if they supplied the same required information.

Jody Anderson asked if lien amounts would be required and was told they would not. He asked how the Division would be able to determine if a tax lien were valid. Mr. Bray responded that such determinations would need to be made by the courts. Mr. Anderson indicated that he thought this would cause more problems. He expressed that if the Division would not enable a consumer to correct an SOL when there is a lien subject to defenses, people would resort more and more to illegal moving of manufactured homes and the Division's and tax collectors' databases would get more and more inaccurate. Jerry Jacquet suggested that the form require

the taxpayer's name but not require that it match the owner in the Division's records. The motion was proposed to be amended accordingly but not seconded.

There was an extended discussion among the board and various members of the public about requiring the amount of the tax lien. There was a discussion of the "stacking" of tax liens, and Gil Bragg explained how that would be illegal and could be referred to a district attorney.

The board took a recess for 6:52 p.m. to 7:10 p.m. Once reconvened Ms. Malone offered a new motion as follows:

Subsection (a) would stay the same (without paragraphs (1) and (2)), subsections (b) and (c) would not be adopted and subsection (d) would become subsection (b), and the form would require the HUD label, serial, or Texas seal number, the tax roll number, the tax unit ID number, and the year for which the taxes were owed would be required, the taxpayer name would be required for informational purposes, the tax collector's address would be required, the signature would be required, and there would be provision for electronic filings. Also if the tax unit ID number were not assigned, the unit could be identified by name. Also, staff would prepare a request to the Attorney General for a formal opinion on whether tax liens attach to the person or the property. Mr. Bray seconded the motion. There was a discussion of resubmitting filings that were timely but were rejected for one reasons or another but would have been recordable under these rules.

It was agreed that the board was giving direction to staff to work with the filing units to allow them to resubmit timely filed liens for recordation where they were rejected for issues such as names not matching or an ID number being provided but not matching a record in the system.

The motion on the table was restated and unanimously adopted.

There being no further business to come before the board, the meeting adjourned at 7:57 p.m.

Tim Irvine, Secretary

Approved:

Valeri Stiers Malone, Chair



MANUFACTURED HOUSING DIVISION

Rick Perry
GOVERNOR

Timothy K. Irvine
EXECUTIVE DIRECTOR

Board Members
Presiding Officer, Valeri Stiers Malone
Carlos Amaral
Michael H. Bray
Kimberly A. Shambley
Frances Shannon

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

FROM: Jim R. Hicks, Consumer Protection Supervisor

THROUGH: Timothy K. Irvine, Executive Director

SUBJECT: Summary of Proposal for Decision

Ghengis Khan Investments ("Respondent")

Docket Number: 332-05-5427

Complaint Numbers: MHD2005000238-W & MHD2005000239-L

Background

It was found and determined by the staff of the Manufactured Housing Division that:

MHD2005000238-W

Respondent violated Sections 1201.354 and 1201.356 of the Act and Sections 80.131(b) and 80.132(3) of the Administrative Rules by not properly complying with the initial report and warranty orders of the Director and provide this Department with copies of completed work orders, in a timely manner, on the home owned by Rickey Whitaker, HUD Label PFS0463829, as required by Sections 1201.357 and 1201.358 and Sections 1201.354 and 1201.356 of the Act and Sections 80.131(b) (40-day allowance for warranty service) and 80.132(3) (requirement for completed warranty service orders) of the Administrative Rules. The chronology of events involving this case is as follows:

- A. The home owned by Rickey Whitaker, HUD Label PFS0463829, was inspected by the Department on November 10, 2004, and a Warranty Order was issued, outlining corrective action required.

- B. Respondent received the Warranty Order on November 30, 2004. The deadline for warranty service work to be performed was January 9, 2005. The deadline for submitting warranty service orders to the Department was January 19, 2005.
- C. Respondent did not fully comply with the Warranty Order by January 9, 2005. Additionally, Respondent did not submit warranty service orders by January 19, 2005.

MHD2005000239-L

Respondent violated the Act, Section 1201.451, by selling a used manufactured home on or about September 16, 2004, without the appropriate, timely transfer of a good and marketable title to Rickey Whitaker for Serial Number 12528886, HUD Label Number PFS0463829, as required by 1201.551(a)(3) (requirement to provide title to consumer) and 1201.451 (requirement of seller to provide a good and marketable title) of the Act.

Respondent violated the Act, Section 1201.451, by selling a used manufactured home to Rickey Whitaker on or about September 16, 2004, Serial Number 12528886, HUD Label Number PFS0463829, without giving a written warranty that the manufactured home was habitable, as required by 1201.455(a) of the Act (prohibits sale of manufactured home for use as residence without providing a written habitability notice).

After proper notice, an administrative hearing was held on May 26, 2005. 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.

Proposal for Decision

The Proposal for Decision dated June 28, 2005, recommends that the Respondent be assessed an administrative penalty of seven hundred fifty dollars (\$750.00). The Proposal for Decision also recommends that the Respondent's license number RB-35629 be revoked.

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 seven hundred fifty dollars (\$750.00).

Additionally, please note that the Final Order is in two parts and contains two separate orders. The first part of the order revoking Respondent's license number RB-35629 was signed by the Executive Director on August 2, 2005. The Executive Director is authorized to revoke a license pursuant to Section 1201.551 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. § 2306.6023(b).

DOCKET NO. 332-05-5427
COMPLAINT NO. MHD2005000238-W and MHD2005000239-L

THE MANUFACTURED HOUSING	§	BEFORE THE
	§	
DIVISION OF THE TEXAS	§	GOVERNING BOARD OF THE
	§	
DEPARTMENT OF HOUSING AND	§	MANUFACTURED HOUSING DIVISION
	§	
COMMUNITY AFFAIRS	§	OF THE TEXAS DEPARTMENT OF
	§	
vs. GHENGIS KHAN INVESTMENTS	§	HOUSING AND COMMUNITY AFFAIRS

FINAL ORDER

I. PREAMBLE

CAME ON TO BE CONSIDERED, the matter of the enforcement action identified as MHD2005000238-W and MHD2005000239-L, *In the Matter of the Complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Ghengis Khan Investments*, pursuant to the Texas Manufactured Housing Standards ACT, previously TEX. REV. CIV. STAT. ANN. art. 5221f (“Act”) re-codified effective June 1, 2003, as under the Occupations Code, Section 1201; Chapter 2306 of the TEX. GOVT. CODE ANN. ch. 2306 (“Ch. 2306”); and the Administrative Procedures Act, TEX. GOVT. CODE ANN. ch. 2001 (“ch. 2001”). The Governing Board 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 hereby adopted in its entirety. The Board’s vote in this case(s) was ____ for ____ against, and ____ abstention(s).

II. ORDER

NOW, THEREFORE, IT IS ORDERED BY THE GOVERNING BOARD OF THE MANUFACTURED HOUSING DIVISION OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

1. Respondent be assessed an administrative penalty of \$750.00 for violations of the Act and Rules as detailed in the Proposal for Decision;

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Final Order
In the Matter of Ghengis Khan Investments
Docket No. 332-05-5427
Complaint No. MHD2005000238-W and MHD2005000239-L

2. Respondent shall pay the penalty to the Texas Department of Housing and Community Affairs within thirty (30) days of the date of this FINAL ORDER. The penalty payment shall be mailed to Texas Department of Housing and Community Affairs, PO Box 12489, Austin, TX 78711-2489;
3. **In the event the final decision is appealed by the Respondent, the full cost of the preparation of the transcript and all administrative costs authorized by Ch. 2001, are hereby assessed against the Respondent; and**
4. The determination of the Texas Department of Housing and Community Affairs in the above-captioned matter is approved. The Respondent **SHALL CEASE AND DESIST** from violating the Act and Rules of the Texas Department of Housing and Community Affairs.

SIGNED AND ENTERED this _____ day of _____, 2006.

Valeri Stiers Malone, Presiding Officer
Governing Board of the 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 (7005 0390 0005 2873 5273), return receipt requested, to Ghengis Khan Investments, 2800 Emerald Sound, Lake Ridge, TX 76019 and sent by U.S. certified mail (7005 0390 0005 2873 5280), return receipt requested to, Ghengis Khan Investments, 5216 Bradford Drive, Dallas, TX 75235 on this the _____ day of _____, 2006.

Kristina Loera, Investigator

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 28, 2005

Tim Irvine
Executive Director
Texas Department of Housing
and Community Affairs, Manufactured Housing Division
507 Sabine St., 10th Floor
Austin, Texas 78711-2489

VIA HAND DELIVERY

**RE: Docket No. 332-05-5427; Manufactured Housing Division of the Texas
Department of Housing and Community Affairs vs. Ghengis Khan Investments**

Dear Mr. Irvine:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "H. D. Card".

Henry D. Card
Administrative Law Judge

HDC/vg
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings - **VIA HAND DELIVERY**
Jim Hicks, Texas Department of Housing and Community Affairs, Manufactured Housing Division, 507 Sabine St., 10th Floor, Austin, TX 78711-2489- **VIA HAND DELIVERY**
Ghengis Khan Investments, 5216 Bradford Drive, Dallas, TX 75235- **VIA REGULAR MAIL**
Ghengis Khan Investments, 2800 Emerald Sound, Lake Ridge, TX 76019- **VIA REGULAR MAIL**

SOAH DOCKET NO. 332-05-5427

MANUFACTURED HOUSING DIVISION	§	BEFORE THE STATE OFFICE
OF THE TEXAS DEPARTMENT OF	§	
HOUSING AND COMMUNITY	§	
AFFAIRS,	§	
Petitioner	§	OF
	§	
V.	§	
	§	
GHENGIS KHAN INVESTMENTS,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Manufactured Housing Division (the Division) of the Texas Department of Housing and Community Affairs (the Department) brought this proceeding against Ghengis Khan Investments (Ghengis Khan), alleging that Ghengis Khan violated portions of the Texas Manufactured Housing Act (the Act)¹ and the Department’s rules. Ghengis Khan did not appear at the hearing. The Administrative Law Judge concludes that Ghengis Khan committed the alleged violations, that its license should be revoked, and that it should be assessed an administrative penalty of \$750.00.

I. DISCUSSION

On April 25, 2005, the Department sent a notice of administrative hearing to Ghengis Khan. The notice was sent by U.S. regular mail and certified mail, return receipt requested, to the two addresses in the Department’s records. Those two addresses are: 2800 Emerald Sound, Lake Ridge, Texas 76019 and 5216 Bradford Drive, Dallas, Texas 75235. One receipt was not returned; the other was returned marked “no such number.” Under the Department’s rules at 10 TEX. ADMIN. CODE § 1.12, service may be made by sending the notice to the party’s last known address, as shown by the Department’s records, by certified mail, return receipt requested. If the party does not appear

¹ TEX. OCC. CODE ANN. Ch. 1201.

at the hearing, a default judgment may be entered in accordance with State Office of Administrative Hearings rule 1 TAC § 155.55. The Department's notice included the language required by that rule, in twelve-point, bold-faced type.

Ghengis Khan did not appear at the hearing. Therefore, the entry of a default judgment is appropriate pursuant to 1 TAC §155.55. Under that rule, the allegations set forth in the notice of hearing are deemed admitted. Those are set out in the Findings of Fact.

The Division presented evidence that revocation of Ghengis Khan's license and assessment of an administrative penalty of \$750.00 are appropriate sanctions for the violations. The Administrative Law Judge concludes those sanctions should be imposed.

II. FINDINGS OF FACT

1. On April 25, 2005, the Texas Department of Housing and Community Affairs (the Department) sent a notice of administrative hearing to Ghengis Khan Investments (Ghengis Khan).
2. Ghengis Khan holds Department license number RB-35629.
3. The Department sent the notice of hearing by U.S. regular mail and certified mail, return receipt requested, to the following addresses, which are the last known addresses for Ghengis Khan shown in the Department's records: 2800 Emerald Sound, Lake Ridge, Texas 76019 and 5216 Bradford Drive, Dallas, Texas 75235.
4. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
5. The notice disclosed, in at least twelve-point, bold-face type, that if Respondent failed to appear at the hearing, the factual allegations in the notice could be deemed admitted, and the relief sought might be granted by default.

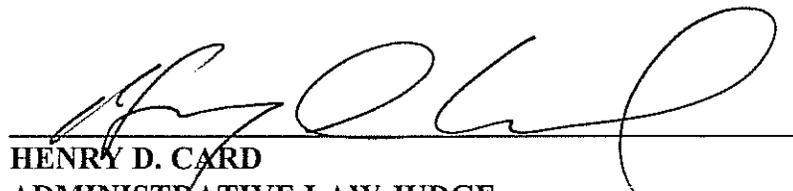
6. The notice set out the following allegations:
- a. Ghengis Khan Investments violated Sections 1201.354 and 1201.356 of the Act and Sections 80.131(b) and 80.132(3) of the Administrative Rules by not properly complying with the initial report and warranty order of the Director and providing this Department with copies of completed work orders, in a timely manner, on the home owned by Rickey Whitaker, HUD Label PFS0463829, as required by Section 1201.357 and 1201.358 and Sections 1201.354 and 1201.356 of the Act and Sections 80.131(b) (40-day allowance for warranty service) and 80.132(3) (requirement for completed warranty service order) of the Administrative Rules. The chronology of events involving this case is as follows:
 1. The home owned by Rickey Whitaker, HUD Label PFS0463829, was inspected by the Department on November 10, 2004, and a Warranty Order was issued, outlining corrective action required.
 2. Ghengis Khan Investments received the Warranty Order on November 30, 2004. The deadline for warranty work to be performed was January 9, 2005. The deadline for submitting warranty service orders to the Department was January 19, 2005.
 3. Ghengis Khan Investments did not fully comply with the Warranty Order by January 9, 2005. Additionally, Ghengis Khan Investments did not submit warranty service orders by January 19, 2005.
 4. The Department has not received warranty service orders from Ghengis Khan Investments, as of the date of this notice.
 - b. Ghengis Khan Investments violated the Act, Section 1201.451, by selling a used manufactured home on or about September 16, 2004, without the appropriate, timely transfer of a good and marketable title to Rickey Whitaker for Serial Number 12528886, HUD Label Number PFS0463829, as required by 1201.551(a)(3) (requirement to provide title to consumer) and 1201.451 (requirement of seller to provide a good and marketable title) of the Act
 - c. Ghengis Khan Investments violated the Act, Section 1201.451, by selling a used manufactured home to Rickey Whitaker on or about September 16, 2004, Serial Number 12528886, HUD Label Number PFS0463829, without giving a written warranty that the manufactured home was habitable, as required by 1201.455(a) of the Act (prohibits sale of manufactured home for use as a residence without providing a written habitability notice).

7. The hearing was convened, as scheduled, on May 26, 2005, with Administrative Law Judge Henry D. Card presiding. A representative of the Manufactured Housing Division (the Division) of the Department appeared at the hearing.
8. Ghengis Khan did not appear at the hearing either in person or through a representative.
9. The factual allegations set out in Finding of Fact No. 6 are true.

III. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter under the Texas Manufactured Housing Act, TEX. OCC. CODE ANN. Chapter 1201.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052, 1 TEX. ADMIN. CODE (TAC) § 155.55, and 1 TAC § 1.12(c).
4. A default judgment should be entered against Ghengis Khan pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55 and 1 TAC § 1.12(c).
5. Pursuant to 1 TAC § 155.55, the factual allegations contained in the notice of hearing are deemed admitted.
6. Ghengis Khan violated TEX. OCC. CODE ANN. §§ 1201.354, 1201.356, and 1201.451, as well as 10 TAC §§ 80.131(b) and 80.132(3).
7. Ghengis Khan's license should be revoked pursuant to TEX. OCC. CODE ANN. §§ 1201.551 and 1201.552 and 10 TAC §§ 80.126 and 80.127.
8. An administrative penalty of \$750.00 should be assessed against Ghengis Khan pursuant to TEX. GOV'T CODE ANN. §. 2306.6023 and 10 TAC §§ 80.127.

SIGNED June 28, 2005.


HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



MANUFACTURED HOUSING DIVISION

Rick Perry
GOVERNOR

Timothy K. Irvine
EXECUTIVE DIRECTOR

Board Members
Presiding Officer, Valeri Stiers Malone
Carlos Amaral
Michael H. Bray
Kimberly A. Shambley
Frances Shannon

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

FROM: Jim R. Hicks, Consumer Protection Supervisor

THROUGH: Timothy K. Irvine, Executive Director

SUBJECT: Summary of Proposal for Decision

Amerihomes of Texas dba Hacienda Homes ("Respondent")

Docket Number: 332-06-0394

Complaint Numbers: MHD2005001066-LRV

Background

It was found and determined by the staff of the Manufactured Housing Division that:

Respondent violated Section 1201.151 of the Act by refusing to refund the deposit given by Betty Montano. Respondent accepted a deposit of \$2,000.00 from Betty Montano, on December 11, 2004, to purchase a home which was in Respondent's inventory. Because the home was in Respondent's inventory, Respondent is not entitled to retain any part of the deposit received from Ms. Montano, pursuant to the Act, Section 1201.151(b) (requirements for retaining a deposit), yet it has refused to return \$2,000.00 received as a deposit.

Respondent also violated Section 1201.151(a) of the Act. It did not return the deposit given by consumer Betty Montano within 15 (fifteen) days of receiving written notice from the consumer requesting the refund, as required by the Act, Section 1201.151(a). The consumer requested a return of their deposit, in writing, on March 21, 2005. Respondent has refused to return the consumer's deposit, as of the date of this notice.

After proper notice, an administrative hearing was held on November 22, 2005. 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.

Proposal for Decision

The Proposal for Decision dated December 16, 2005, recommends that the Respondent be assessed an administrative penalty of two hundred fifty dollars (\$250.00).

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 hundred fifty dollars (\$250.00).

DOCKET NO. 332-06-0394
COMPLAINT NO. MHD2005001066-LRV

THE MANUFACTURED HOUSING	§	BEFORE THE
	§	
DIVISION OF THE TEXAS	§	GOVERNING BOARD OF THE
	§	
DEPARTMENT OF HOUSING AND	§	MANUFACTURED HOUSING DIVISION
	§	
COMMUNITY AFFAIRS	§	OF THE TEXAS DEPARTMENT OF
	§	
vs. AMERIHOMES OF TEXAS INC. DBA	§	HOUSING AND COMMUNITY AFFAIRS
HACIENDA HOMES		

FINAL ORDER

I. PREAMBLE

CAME ON TO BE CONSIDERED, the matter of the enforcement action identified as MHD2005001066-LRV, *In the Matter of the Complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Amerihomes of Texas Inc. dba Hacienda Homes*, pursuant to the Texas Manufactured Housing Standards ACT, previously TEX. REV. CIV. STAT. ANN. art. 5221f (“Act”) re-codified effective June 1, 2003, as under the Occupations Code, Section 1201; Chapter 2306 of the TEX. GOVT. CODE ANN. ch. 2306 (“Ch. 2306”); and the Administrative Procedures Act, TEX. GOVT. CODE ANN. ch. 2001 (“ch. 2001”). The Governing Board 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 hereby adopted in its entirety (a copy of which is attached). The Board’s vote in this case(s) was _____ for _____ against, and _____ abstention(s).

Page 2

Final Order

In the Matter of Amerihomes of Texas Inc. dba Hacienda Homes

Docket No. 332-06-0394

Complaint No. MHD2005001066-LRV

II. ORDER

NOW, THEREFORE, IT IS ORDERED BY THE GOVERNING BOARD OF THE MANUFACTURED HOUSING DIVISION OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

1. Respondent be assessed an administrative penalty of \$250.00 for violations of the Act and Rules as detailed in the Proposal for Decision;
2. Respondent shall pay the penalty to the Texas Department of Housing and Community Affairs within thirty (30) days of the date of this FINAL ORDER. The penalty payment shall be mailed to Texas Department of Housing and Community Affairs, PO Box 12489, Austin, TX 78711-2489;
3. **In the event the final decision is appealed by the Respondent, the full cost of the preparation of the transcript and all administrative costs authorized by Ch. 2001, are hereby assessed against the Respondent; and**
4. The determination of the Texas Department of Housing and Community Affairs in the above-captioned matter is approved. The Respondent **SHALL CEASE AND DESIST** from violating the Act and Rules of the Texas Department of Housing and Community Affairs.

SIGNED AND ENTERED this _____ day of _____, 2006.

Valeri Stiers Malone, Presiding Officer
Governing Board of the Manufactured Housing Division
Texas Department of Housing and Community Affairs

Page 3

Final Order

In the Matter of Amerihomes of Texas Inc. dba Hacienda Homes

Docket No. 332-06-0394

Complaint No. MHD2005001066-LRV

CERTIFICATION

I certify that a true and correct copy of the forgoing has been sent by U.S. certified mail (Number 7001 0360 0004 3904 8380), return receipt requested, to Amerihomes of Texas Inc. dba Hacienda Homes, 10931 S. State Hwy 16, San Antonio, TX 78244 on this the _____ day of _____, 2006.

Kristina Loera, Investigator

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

December 16, 2005

Tim Irvine
Executive Director
Texas Department of Housing
and Community Affairs, Manufactured Housing Division
507 Sabine St., 10th Floor
Austin, Texas 78711-2489

VIA HAND DELIVERY

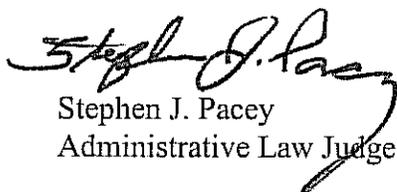
RE: Docket No. 332-06-0394; Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Amerihomes of Texas, Inc., d/b/a Hacienda Homes

Dear Mr. Irvine:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,


Stephen J. Pacey
Administrative Law Judge

SJP/tp(pp)
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings - **VIA HAND DELIVERY**
Jim Hicks, Texas Department of Housing and Community Affairs, Manufactured Housing Division, 507 Sabine St., 10th Floor, Austin, TX 78711-2489- **VIA HAND DELIVERY**
Amerihomes of Texas Inc., d/b/a Hacienda Homes, 10931 S. State Hwy. 16, San Antonio, TX 78244- **VIA REGULAR MAIL**

RECEIVED
DEC 19 2005
ENFORCEMENT SECTION

**SOAH DOCKET NO. 332-06-0394
TDHCA COMPLAINT NO. MHD2005001066-LRV**

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, Petitioner	§ § § § § § § § § § § §	BEFORE THE STATE OFFICE
vs.		OF
AMERIHOMES OF TEXAS, INC. D/B/A HACIENDA HOMES, Respondent		ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Manufactured Housing Division staff of the Texas Department of Housing and Community Affairs (Department) brought this enforcement action alleging that Amerihomes of Texas, Inc., d/b/a Hacienda Homes (Respondent) violated the Texas Manufactured Housing Standards Act (Act) by refusing to refund a deposit to a consumer, and by failing to return such deposit to the consumer within fifteen (15) days. The staff requests assessment of an administrative penalty of \$250.00. The Administrative Law Judge (ALJ) recommends that the Department enter a default judgment assessing that penalty.

I. NOTICE AND JURISDICTION

The Department has jurisdiction over this matter pursuant to section 7 of the Texas Manufactured Housing Standards Act (the Act), TEX. OCC. CODE ANN. § 1201, and TEX. GOV'T CODE ANN. § 2306.6023. 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 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 notice of 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.

II. PROCEDURAL HISTORY

The hearing convened on November 22, 2005, before ALJ Stephen J. Pacey at the Hearings Facility of the State Office of Administrative Hearings, 300 West 15th Street, Austin, Texas. Jim Hicks, Consumer Protection Supervisor, represented the Department. Respondent did not appear and was not represented by counsel at the hearing. After introducing exhibits related to notice, jurisdiction, substantive allegations, and testimony as to the appropriate penalties, the Department moved for a default under 1 TEX. ADMIN. CODE (TAC) § 155.55. Based on the Respondent's failure to appear, the ALJ deemed the factual allegations admitted by Respondent and granted the motion. The record closed on November 22, 2005.

III. RECOMMENDATION

The ALJ recommends that the Department enter a default judgment against Respondent and adopt the Findings of Fact and Conclusions of Law, assessing an administrative penalty of \$250.00 against Respondent for the violations alleged and established in this proceeding.

IV. FINDINGS OF FACT

1. On December 11, 2004, Amerihomes of Texas, Inc. d/b/a Hacienda Homes (Respondent) accepted a deposit of \$2,000.00 from a consumer, Betty Montano, for the purchase of a manufactured home that was in Respondent's inventory.
2. Respondent failed to return the deposit within fifteen (15) days of receiving the consumer's March 21, 2005 written notice that requested the deposit's refund.
3. Respondent holds License No. RBI-35622, issued by the Department.

4. On November 2, 2005, Department staff sent a notice of administrative hearing to Respondent at Respondent's last known address as shown in the Department's records, specifically: 10931 S. State Highway 16, San Antonio, Texas 78244, both by certified mail, return receipt requested, and by regular mail.
5. The notice of hearing informed Respondent of the matters asserted, the time and place of the hearing, the right to appear and be represented by counsel, the legal authority and jurisdiction under which the hearing would be held, and the statutes and rules involved in the proceeding.
6. The notice of hearing advised Respondent in 12-point bold-face type that failure to appear at the hearing could result in the factual allegations within the notice being deemed true and the granting by default of the relief sought in the notice.
7. The notice of hearing was also published in the Texas Register on November 18, 2005.
8. The hearing was convened before SOAH as scheduled on November 22, 2005, in the William P. Clements Building, 300 W. 15th St., Austin, Texas.
9. The Department staff appeared at the hearing, but Respondent was neither present nor represented. Respondent did not file for a continuance or provide either prior or subsequent explanation for his failure to appear. The staff moved for default judgment, which was granted, pursuant to 1 TAC § 155.55.
10. The Department considered the factors outlined in 10 TAC § 80.127(b) and concluded that Respondent should be assessed a penalty of \$250.00, consistent with past Department practice, because the action represents a significant financial imposition upon a consumer.

V. CONCLUSIONS OF LAW

1. The Department has jurisdiction in this case, pursuant to TEX. OCC. CODE ANN ch. 1201 (Act), and has authority to discipline and penalize an owner registered with the Department pursuant to §1201 of the Act and TEX. GOV'T CODE ANN. ch. 2306.
2. SOAH has jurisdiction over matters related to the hearing in this action, 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. GOV'T CODE ANN. chs. 2001 and 2306, 1 TAC § 155.55, and 10 TAC § 80.126(a).

4. Respondent violated § 1201.151 of the Act by refusing to refund the deposit given by a consumer.
5. Respondent violated TEX. OCC. CODE ANN. § 1201.151(a) and 10 TAC § 80.124(b) by not returning the deposit within 15 days of receiving written notice from the consumer, requesting refund of the deposit.
6. Based upon the foregoing Findings of Fact and Conclusions of Law, and the criteria set forth in TEX. GOV'T CODE ANN. § 2306.6023 and 10 TAC § 80.127(a)(4), Respondent should be assessed an administrative penalty of \$250.00.

SIGNED December 16, 2005.


STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**MANUFACTURED HOUSING DIVISION OF THE
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
ADOPTION OF RULE REVIEW**

In accordance with the proposed rule review published in the January 28, 2005 issue of the *Texas Register* (30 TexReg 413) and the requirements of Texas Government Code, §2001.039, the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department) has conducted a review of all rule sections in 10 TAC Chapter 80, Manufactured Housing, and readopts administrative rules with changes.

The Department conducted a thorough review of Chapter 80 to determine whether the rules were obsolete, whether the rules reflected current legal and policy considerations, and whether the rules reflected current procedures of the Department. As part of the review process and in conjunction with changes made as a result of the 79th Legislative Session rule amendments were proposed and published in the August 12, 2005 issue of the *Texas Register* (30 TexReg 4550) and the November 4, 2005 issue of the *Texas Register* (30 TexReg 7112) in accordance with requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The Department did not receive comments specifically related to the rule review; however, the Department did receive comments in the public comment period during the proposed rule making process.

The public comments are addressed with the adopted amendments that are published in the November 11, 2005 issue of the *Texas Register* (30 TexReg 7434) and the December 30, 2005 issue of the *Texas Register* (30 TexReg 8871).

The Department has determined that the rules, as amended, are essential in accomplishing the provisions of Texas Occupations Code, Chapter 1201. The rules are readopted with changes in accordance with Texas Government Code, §2001.039.