

ENFORCEMENT ACTION AGAINST  
MITAY, INC., EDGAR A. MILES,  
AND JAMES HALLIHAN, WITH  
RESPECT TO 2512 THORNE,  
2904 WALNUT, 1213 PECAN,  
2503 N. WILSON, AND MITAY INC.  
SCATTERED SITE  
(HTC FILES 70046, 70054, 70083,  
70084, AND 92009)

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BEFORE THE  
TEXAS DEPARTMENT OF  
HOUSING AND  
COMMUNITY AFFAIRS

### **AGREED FINAL ORDER**

#### **General Remarks and official action taken:**

On this 10<sup>th</sup> day of October, 2013, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) considered the matter of whether enforcement action should be taken against MITAY, INC., a Texas corporation, EDGAR A. MILES (“E.A. Miles”), an individual residing in Texas, and JAMES HALLIHAN, an individual residing in Tennessee (jointly “Respondents”).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (“APA”), Tex. Gov’t Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondents agree to resolve this matter by this Agreed Final Order. The Respondents agree to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Administrative Penalties Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

### **FINDINGS OF FACT**

#### **Jurisdiction:**

1. On November 15, 1990, Walter C. Spear was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$1,160 to acquire, rehabilitate and operate one unit known as 2512 Thorne (HTC file No. 70046 / CMTS No. 2344 / LDLD No. 352).

2. On November 30, 1990, Walter C. Spear was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$1,173 to acquire, rehabilitate and operate one unit known as 2904 Walnut (HTC file No. 70054 / CMTS No. 2345 / LDLD No. 455).
3. On November 15, 1990, E.A. Miles was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$1,138 to acquire, rehabilitate and operate one unit known as 1213 Pecan (HTC file No. 70083 / CMTS No. 912 / LDLD No. 454).
4. On November 19, 1990, James Hallihan was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$1,175 to acquire, rehabilitate and operate one unit known as 2503 N. Wilson (HTC file No. 70084 / CMTS No. 913 / LDLD No. 313).
5. On February 16, 1994, E.A. Miles was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$4,000 to acquire, rehabilitate and operate four units known as Mitay, Inc., Scattered Site (HTC file No. 92009 / CMTS No. 1026 / LDLD No. 328).
6. Walter C. Spear signed a land use restriction agreement (“LURA”) regarding 2512 Thorne. The LURA was effective November 15, 1990, and filed of record at Volume 2134, Page 842 of the Official Public Records of Real Property of Potter County, Texas (“Records”). In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.
7. Walter C. Spear signed a land use restriction agreement (“LURA”) regarding 2904 Walnut. The LURA was effective November 30, 1990, and filed of record at Volume 2137, Page 390 of the Records. In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.
8. E.A. Miles signed a land use restriction agreement (“LURA”) regarding 1213 Pecan. The LURA was effective November 15, 1990, and filed of record at Volume 2134, Page 271 of the Records.
9. James Hallihan signed a land use restriction agreement (“LURA”) regarding 2503 N. Wilson. The LURA was effective November 19, 1990, and filed of record at Volume 2135, Page 154 of the Records.
10. E.A. Miles, in his capacity as authorized representative for Mitay, Inc., signed a land use restriction agreement (“LURA”) regarding Mitay Inc, Scattered Site. The LURA was effective February 16, 1994, and filed of record at Volume 2394, Page 558 of the Records.

11. Walter C. Spear transferred his interests in 2512 Thorne and 2904 Walnut to Mitay Inc. through a Warranty Deed with Vendor's Lien effective December 15, 1994, and filed in the Records at Volume 2134, page 843. Although Mitay, Inc., did not sign an Agreement to Comply with the LURAs, the restrictions remained in place in accordance with Section 2 of each LURA, thereby binding Mitay, Inc. to the terms of both agreements.
12. Mitay, Inc. is a Texas corporation, represented by its director and president, E.A. Miles. E.A. Miles is an individual residing in Texas, and James Hallihan is an individual residing in Tennessee. All Respondents agreed to be and were represented by E.A. Miles in this matter, and Respondents are approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

13. On June 14, 2002, TDHCA sent notice to Mitay, Inc., that it failed to timely submit its 2001 Owner's Certification of Continuing Program Compliance for 2512 Thorne, a violation of 10 TEX. ADMIN. CODE §50.8(g)(1) (Compliance Monitoring, Certification and Review), which requires each development to submit an annual certification of compliance, now known as the Annual Owner's Compliance Report.
14. On-site monitoring reviews were conducted at 2512 Thorne, 2904 Walnut, 1213 Pecan, and Mitay, Inc., Scattered Site, on October 12, 2011 to verify corrections of violations found during previous onsite reviews and to determine whether Respondents were in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent, however, the following violations were not corrected before the May 7, 2012 corrective action deadline:
  - a. Respondents failed to execute required lease provisions or exclude prohibited lease language for 2512 Thorne, 2904 Walnut, 1213 Pecan, and Mitay Inc., Scattered Sites (units 2419 N. Hughes A, 2419 N. Hughes B, 1901 NW 17<sup>th</sup> St, and 1105 NW 19<sup>th</sup> St), a violation of 10 TEX. ADMIN. CODE §60.110 (Lease Requirements) and the LURA.
  - b. Respondents failed to provide documentation that household incomes are within prescribed limits upon initial occupancy for 2512 Thorne, 2904 Walnut, 1213 Pecan, and Mitay Inc Scattered Sites (units 2419 N. Hughes A, 2419 N. Hughes B, 1901 NW 17<sup>th</sup> St, and 1105 NW 19<sup>th</sup> St), a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification of Annual Income) and the LURA.

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 AND 60 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

- c. Respondents failed to correctly document tenant's annual income certifications for units 2904 Walnut and 1213 Pecan, a violation of 10 TEX. ADMIN. CODE §60.111 (Annual Recertification for all Programs) and the LURA.
15. Uniform Physical Condition Standards ("UPCS") inspections were conducted on January 23, 2013 at 2512 Thorne, 2904 Walnut, 1213 Pecan, 2503 N Wilson, and Mitay Inc Scattered Site. The purposes of the inspections were to verify correction of violations found during previous inspections conducted in 2008, 2009, and 2012, and to check for any additional violations that had arisen in the interim period. Inspection reports showed numerous serious property condition violations at each property, violations of 10 TEX. ADMIN. CODE § 10.616 (Property Condition Standards). Reports were mailed to Respondents and, in conformance with 10 TEX. ADMIN. CODE § 10.617 (Notice to Owners), 90-day corrective action deadlines were set for each property to provide Respondents a reasonable opportunity to respond to the report and bring the properties into compliance. Deadlines were as follows: May 9, 2013 for 2512 Thorne, May 11, 2013 for 2904 Walnut, May 13, 2013 for 1213 Pecan, May 11, 2013 for 2503 N. Wilson, and May 13, 2013 for Mitay, Inc., Scattered Site. The violations were not resolved before the respective corrective action deadlines for each property, but acceptable corrective documentation was submitted during an informal conference with the Administrative Penalty Committee on August 27, 2013.
16. On May 1, 2013, TDHCA sent notices that Respondents failed to timely submit their 2012 Annual Owner's Compliance Report for 2512 Thorne, 2904 Walnut, 1213 Pecan, 2503 N. Wilson, and Mitay, Inc., Scattered Site, violations of 10 TEX. ADMIN. CODE §10.603 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report.
17. The following violations remain outstanding at the time of this order:
  - a. Compliance certification violation described in FOF #13;
  - b. All file monitoring violations described in FOF #s 14(a) and 14(b). The file monitoring violation described at FOF#14(c) was not resolved but is no longer a violation under the current rule;
  - c. Annual Owner's Compliance Report violation described in FOF #16;

### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TAC §1.14 and 10 TAC, Chapter 60.
2. Respondents are "housing sponsors" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.

4. Respondents violated 10 TEX. ADMIN. CODE §50.8(g)(1) in 2002 and 10 TEX. ADMIN. CODE §10.603 in 2013 by failing to submit Annual Owner's Compliance Reports for the years 2001 and 2012;
5. Respondents violated representations made on page 1 of the LURAs, Section 4 of the LURAs, and 10 TEX. ADMIN. CODE §60.108, in 2011 by failing to provide documentation that household incomes are within prescribed limits upon initial occupancy for the 2512 Thorne, 2904 Walnut, 1213 Pecan, and Mitay, Inc., Scattered Sites (units 2419 N. Hughes A, 2419 N. Hughes B, 1901 NW 17<sup>th</sup> St, and 1105 NW 19<sup>th</sup> St).
6. Respondents violated 10 TEX. ADMIN. CODE §60.111 in 2011 by failing to provide annual income recertifications for 2904 Walnut and 1213 Pecan.
7. Respondents violated 10 TEX. ADMIN. CODE §60.110 in 2011 by failing to execute required lease provisions or exclude prohibited lease language for 2512 Thorne, 2904 Walnut, 1213 Pecan, and Mitay, Inc., Scattered Sites (units 2419 N. Hughes A, 2419 N. Hughes B, 1901 NW 17<sup>th</sup> St, and 1105 NW 19<sup>th</sup> St).
8. Respondents violated 10 TEX. ADMIN. CODE §10.617 in 2013 and I.R.C. §42, as amended, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.
9. Because Respondents are housing sponsors with respect to the Property, and have violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondents pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
10. Because Respondents are housing sponsors, TDHCA may order Respondents to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondents and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
11. Because Respondents have violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and have violated agreements with the Agency to which Respondents are a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
12. An administrative penalty of \$5,000 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

**IT IS HEREBY ORDERED** that Respondents are assessed an administrative penalty in the amount of \$5,000, subject to deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondents shall pay and are hereby directed to pay a \$2,000 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date this Agreed Final Order is approved by the Board.

**IT IS FURTHER ORDERED** that Respondents shall correct the violations as indicated in the attachments and submit documentation of the corrections to TDHCA on or before December 9, 2013.

**IT IS FURTHER ORDERED** that if Respondents timely and fully comply with the terms and conditions of this Agreed Final Order, and the violations are corrected as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty in the amount of \$3,000, which will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondents fail to satisfy any conditions or otherwise violate any provision of this order, then the remaining administrative penalty in the amount of \$3,000 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" within thirty days of the date the Department sends written notice to Respondents that it has violated a provision of this order.

**IT IS FURTHER ORDERED** that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS"), emailed to Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) or mailed to one of the addresses below. If it comes due and payable, the penalty payment must be submitted to the following address:

<b>If via overnight mail (FedEx, UPS):</b>	<b>If via USPS:</b>
TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

Approved by the Governing Board of TDHCA on October 10, 2013.

By: /s/ J. Paul Oxe  
Name: J. Paul Oxe  
Title: Chair of the Board of TDHCA

By: /s/ Barbara B. Deane  
Name: Barbara B. Deane  
Title: Secretary of the Board of TDHCA

**THE STATE OF TEXAS** §  
§  
**COUNTY OF TRAVIS** §

Before me, the undersigned notary public, on this 10<sup>th</sup> day of October, 2013, personally appeared J. Paul Oxe, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Leah Sargent Rosas  
Notary Public, State of Texas

**THE STATE OF TEXAS** §  
§  
**COUNTY OF TRAVIS** §

Before me, the undersigned notary public, on this 10<sup>th</sup> day of October, 2013, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Leah Sargent Rosas  
Notary Public, State of Texas





STATE OF TENNESSEE §

§  
COUNTY OF LOUDON §

BEFORE ME, Cindy Auchey, a notary public in and for the State of Tennessee, on this day personally appeared James Hallihan, known to me or proven to me through \_\_\_\_\_ to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is JAMES HALLIHAN, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I am the owner of 2503 N. Wilson, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized to execute this document.
3. I knowingly and voluntarily enter into this Agreed Final Order, and agree with and consent to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs.
4. I hereby waive my rights to any evidentiary hearing and any right to judicial review of this Agreed Final Order.

I, JAMES HALLIHAN, HAVE READ AND UNDERSTAND THE FOREGOING AGREED FINAL ORDER. I UNDERSTAND THAT BY SIGNING THIS AGREED FINAL ORDER, I WAIVE CERTAIN RIGHTS INCLUDING THE RIGHT TO AN EVIDENTIARY HEARING AND ANY RIGHT TO JUDICIAL REVIEW OF THIS ORDER. I SIGN IT VOLUNTARILY, WILLINGLY, AND KNOWINGLY. I UNDERSTAND THIS AGREED FINAL ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL WRITTEN OR OTHERWISE."

**RESPONDENT:**

By: /s/ James Hallihan

Name: James Hallihan

Given under my hand and seal of office this 31st day of October, 2013.

/s/ Cindy Auchey  
Signature of Notary Public

Cindy Auchey  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF TENNESSEE  
My Commission Expires: 11-15-2006

## Attachment 1

### Tenant File Instructions

Follow the instructions below and submit all required documentation on or before 12/9/2013.

1. **Lease provisions:** In accordance with 10 TEX. ADMIN. CODE §60.110 (now 10 TEX. ADMIN. CODE §10.608), the eviction or termination of tenancy of low income households for other than good cause throughout the affordability period is prohibited in accordance with Revenue Ruling 2004-82 and states, “Owners executing or renewing leases after November 1, 2007 shall specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited.” In addition, 10 TAC Section 60.110(e) states that HTC developments are prohibited from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum.

Instructions:

- a. Have the current tenants in 2512 Thorne, 2904 Walnut, 1213 Pecan, and Mitay Inc Scattered Sites (units 2419 N. Hughes A, 2419 N. Hughes B, 1901 NW 17<sup>th</sup> St, and 1105 NW 19<sup>th</sup> St) sign lease addenda that include the above language. TDCHA can provide a sample upon request, but there is no TDHCA form.
- b. Submit to the Department a copy of the lease addendum form that you are using;
- c. After addenda have been signed by all tenants (but no later than 12/9/2013), submit to the Department a letter indicating that the tenants in the following units have signed the lease addendum (if units are occupied):
  - i. 2512 Thorne;
  - ii. 2904 Walnut;
  - iii. 1213 Pecan;
  - iv. Mitay Inc Scattered Site:
    1. 2419 N. Hughes A;
    2. 2419 N. Hughes B;
    3. 1901 NW 17<sup>th</sup> St; and
    4. 1105 NW 19<sup>th</sup> St.

## 2. Household income violations:

- a. **2512 Thorne, 2904 Walnut, and Mitay Scattered Site (units 2419 N. Hughes A, 2419 N. Hughes B, and 1105 NW 19<sup>th</sup> St):** On 8/27/2013, corrected Section 8 verification forms were submitted to TDHCA for review, but staff was unable to determine whether the forms were for the same households that had previously been submitted for review. Submit a copy of the full tenant files for the current households to TDHCA. Each file must include: application, verifications of all sources of income and assets (including the Section 8 verification, where applicable), tenant income certification, lease, lease addendum (described in #1 on the previous page), and section 8 lease (if applicable).
- b. **1213 Pecan:** On 8/27/2013, a partial file for a new household was submitted to TDHCA, but staff was unable to determine whether the rent is restricted. Submit to TDHCA the following documents relating to the current household: a copy of the lease, lease addendum (described in #1 on the previous page), and section 8 lease (if applicable).

### Additional recommendations:

- Previous file submissions from Respondents have been of very poor quality. During the informal conference on 8/27/2013, Byron Miles indicated that he would be checking the tenant files completed by his mother, Annie Miles. Staff recommends that Byron carefully review all forms listed above before submitting them to ensure that they are complete and that the questions were answered appropriately.
- Staff recommends organizing the documents in the same order that they are listed above. This will help to ensure that all required documents are submitted.

### Tools and Training:

- TDHCA offers First Thursday Income Eligibility Training on the first Thursday of every month to teach owners how to document household income and assets, and how to properly complete a tenant income certification form. Staff recommends that Byron attend training as soon as possible. You may register online at the bottom of this page: <http://www.tdhca.state.tx.us/pmcomp/COMPtrain.html>
- Appropriate income and rent levels are determined using the 2013 Project Income and Rent Tool, available at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>.
- Copies of TDHCA forms referenced above are available at <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.
- An Income and Rent Limits Webinar is available online at <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>.
- An Income Eligibility Presentation is available online at <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>.

## Attachment 2:

### **Instructions for Annual Owner's Compliance Reports**

The following Annual Owner's Compliance Reports remain outstanding and must be submitted:

**2001 Annual Owner's Compliance Report for 2512 Thorne**, reporting data as of 12/31/2001. A copy of the form will be enclosed with this Agreed Final Order but is not incorporated within the order itself.

**2012 Annual Owner's Compliance Reports for 2012 Annual Owner's Compliance Report for 2512 Thorne, 2904 Walnut, 1213 Pecan, 2503 N. Wilson, and Mitay Inc Scattered Site**, reporting data as of 12/31/2012. A copy of the form will be enclosed with this Agreed Final Order but is not incorporated within the order itself.

#### **Technical Support:**

1. **Training:** Please see <http://www.tdhca.state.tx.us/pmcomp/reports.htm> for training materials that will help you when completing these annual reports. If you have looked at the training materials but don't see an answer to your annual reporting question, you may contact Stephanie Naquin at [stephanie.naquin@tdhca.state.tx.us](mailto:stephanie.naquin@tdhca.state.tx.us) or 512.475.2330.
2. **Online Reporting Option:** These properties have electronic reporting waivers and the owners are currently permitted to submit the reports in paper format, however, the 2012 Annual Owner's Compliance Reports may be submitted online at <https://pox.tdhca.state.tx.us/aims2/pox>. A user guide for the electronic system is available at: <http://www.tdhca.state.tx.us/pmcdocs/03-CMTSUserGuide-030122.pdf>. In order to get a user ID and password to use the system, you would first need to submit to TDHCA the "Electronic Compliance Reporting Filing Agreement" and the "Owner's Designation of Administrator of Accounts" forms that can be downloaded from the "Set up to Report Online" section of: [http://www.tdhca.state.tx.us/comp\\_reporting.htm](http://www.tdhca.state.tx.us/comp_reporting.htm).