

ENFORCEMENT ACTION AGAINST
SENIOR CITIZEN AID, INC. WITH
RESPECT TO ALAMO PLAZA
APARTMENTS (HOME FILE #
530687)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 8th day of May, 2014, 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 **SENIOR CITIZEN AID, INC.**, a Texas corporation (“Senior” or “Respondent”).

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 Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees 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. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §1.14 and 10 TEX. ADMIN. CODE Chapter 60.
2. Respondent was awarded an interest-free HOME loan by the Board in 2000, in the total amount of \$580,293 to build and operate Alamo Plaza Apartments (“Property”) (HOME file No. 530687 / CMTS No. 3200 / LDLD No. 126).
3. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective November 13, 2002, and filed of record at Volume 1284, Page 752 of the Official Public Records of Real Property of Bastrop County, Texas (“Records”).

4. Respondent is a Texas corporation that is 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 Violations¹:

5. Respondent has a history of violations and previously signed an Agreed Final Order, agreeing to a \$5,000.00 Administrative Penalty which was to be partially forgivable provided that Respondent complied with its requirements on or before April 30, 2010. Respondent submitted acceptable corrective documentation and paid a reduced administrative penalty in the amount of \$500.00.
6. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on April 5, 2011. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards). Reports were mailed to Respondent and, in conformance with 10 TEX. ADMIN. CODE § 60.119 (Notices to Owner), as amended, a 90-day corrective action deadline of July 11, 2011 was set to provide Respondent a reasonable opportunity to respond to the report and bring the property into compliance. Full corrective documentation was not received until October 26, 2011, after intervention by the Administrative Penalty Committee.
7. An on-site monitoring review was conducted on September 27, 2011, to determine whether Respondent was 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 and a January 17, 2012 corrective deadline was set, however, the following violations were not resolved until April 18, 2012, after intervention by the Administrative Penalty Committee:
 - a. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §60.114(d)(3) (Requirements Pertaining to Households with Rental Assistance); and
 - b. Respondent failed to complete or document Income Recertifications for units A3, A4, B1, C1, D1, D2, D5, D11, or D14, a violation of 10 TEX. ADMIN. CODE §60.111 (Annual Recertification), which requires annual recertification of tenants every sixth year of the affordability period.

¹ 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.

8. An on-site monitoring review was conducted on September 20, 2012, to determine whether Respondent was 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 and a January 16, 2013 corrective deadline was set, however, the following violations were not resolved until March 26, 2013, after intervention by the Administrative Penalty Committee:
 - a. Respondent failed to perform Housing Quality Standards (“HQS”) HOME inspections, a violation of 10 TEX. ADMIN. CODE §60.118(g) (Property Condition Standards) which requires rental properties assisted with HOME funds to complete annual HQS inspections;
 - b. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §60.114(d)(3) (Requirements Pertaining to Households with Rental Assistance) which requires developments to prepare affirmative marketing plans; and
 - c. Respondent failed to provide pre-onsite documentation, a violation of 10 TEX. ADMIN. CODE §60.115 (Onsite Monitoring), which requires developments to make all necessary documentation available to the Department.
9. On May 1, 2013, TDHCA sent notice that Respondent had failed to timely submit their 2012 Annual Owner’s Compliance Report, a violation of 10 TEX. ADMIN. CODE §10.603 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report. The final report parts were not received until June 21, 2013, after intervention by the Administrative Penalty Committee.
10. An on-site monitoring review was conducted on October 24, 2013, to determine whether Respondent was 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 and a March 2, 2014 corrective deadline was set, however, no corrective documentation was received until March 17, 2014, after intervention by the Administrative Penalty Committee. The following violations remain unresolved:
 - a. Respondent failed to provide the Fair Housing Disclosure Notice for units B1 and B3, a violation of 10 TEX. ADMIN. CODE §10.608 (Lease Requirements), which requires all developments to provide prospective households with a fair housing disclosure notice within a certain time period;
 - b. Respondent failed to execute required lease provisions regarding lead-based paint for units A4, B1, B3, C1, D1, and D2, a violation of 10 TEX. ADMIN. CODE §10.608(g) (Lease Requirements), which requires all developments built before 1978 to provide lead-based paint disclosures within each lease; and
 - c. Household income above limit upon initial occupancy for unit D2, a violation of 10 TEX. ADMIN. CODE §10.606 (Determination, Documentation, and Certification of Annual Income), which outlines how to properly determine household income.

11. The following violations remain outstanding at the time of this order:
 - a. Fair Housing Disclosure Notice violations described in FOF #10a;
 - b. Lease language violations described in FOF #10b; and
 - c. Household income above limit upon initial occupancy violation described in FOF #10c.

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. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Respondent has a history of violations as described in FOF#5
4. Respondent violated 10 TEX. ADMIN. CODE § 60.118 in 2011 by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.
5. Respondent violated 10 TEX. ADMIN. CODE § 60.114 in 2011 and 2012 by failing to provide an affirmative marketing plan.
6. Respondent violated 10 TEX. ADMIN. CODE § 60.111 in 2011 by failing to complete tenant income recertifications.
7. Respondent violated 10 TEX. ADMIN. CODE § 60.118 in 2012 by failing to perform HQS inspections.
8. Respondent violated 10 TEX. ADMIN. CODE § 60.115 in 2012 by failing to provide required pre-onsite documentation.
9. Respondent violated 10 TEX. ADMIN. CODE § 10.603 in 2013 by failing to timely submit the 2012 Annual Owner's Compliance Report.
10. Respondent violated 10 TEX. ADMIN. CODE § 10.608 in 2013 by failing to provide fair housing disclosure notices.
11. Respondent violated 10 TEX. ADMIN. CODE § 10.608 in 2013 by failing to execute required lease provisions regarding lead-based paint.
12. Respondent violated 10 TEX. ADMIN. CODE § 10.606 in 2013 by failing to properly document household income.

13. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
14. Because Respondent is a housing sponsor, TDHCA may order Respondent 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 Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
15. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
16. An administrative penalty of \$2,500 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 Respondent is assessed an administrative penalty in the amount of \$2,500, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$1,000.00 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before June 9, 2014.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in Attachment 1 and submit full documentation of the corrections to TDHCA on or before June 9, 2014.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this Order will be accepted in lieu of the \$1,500.00 remaining assessed administrative penalty, and that remaining amount of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, then the remaining administrative penalty in the amount of \$1,500.00 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 Respondent 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”) by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. Penalty payments must be submitted to the following address:

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

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Approved by the Governing Board of TDHCA on 5/8, 2014.

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 8th day of May, 2014, 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 8th day of May, 2014, 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

Attachment 1

Tenant File Instructions

Follow the instructions below and submit documentation on or before June 9, 2014:

1. Failure to execute required lease provisions regarding lead-based paint for units A4, B-1, B-3, C-1, D1, and D-2.

Lead-based paint disclosure forms are available online at: <http://www.tdhca.state.tx.us/pmcdocs/Disclosure-LeadBasedPaint-Hazards.pdf>.

Disclosure forms were previously submitted for multiple units, but the forms were all filled out incorrectly. Instruction: read the forms, answer the questions properly, have tenants sign and date the form, then submit. Problem examples:

- a. Unit A4, B-1, C-1, D1 – All of the boxes were checked. This is not an option under the form.
 - b. Unit B-3 – None of the boxes were checked. This is not an option under the form.
 - c. Unit D-2 – No form submitted.
2. Failure to provide Fair Housing Disclosure Notice for units B-1 and B-3.

A set of Fair Housing Disclosure Notices were submitted but are not acceptable because the property was not using the form at all when TDHCA performed its onsite review and the forms were not signed during the required time period. Form is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingChoiceDisclosureNotice.pdf>.

In order to correct the Fair Housing Disclosure Notice violation for units B-1 and B-3, you must have the household sign the form no more than 120 days and no less than 30 days prior to the date that the unit's lease requires the household to provide notice of renewal or notice to vacate. A calculator to help determine the appropriate execution date is available at <http://www.tdhca.state.tx.us/pmcdocs/FHDNoticeCalculator.xls>.

Instruction: Use the calculator tool indicated above to determine the appropriate execution dates for units B-1 and B-3 and submit a letter to TDHCA by the deadline above indicating when the forms will be executed, then submit the executed forms during the appropriate time frame. If the calculator indicates that the forms can be executed between now and the June 9, 2014 deadline, then submit the new executed forms.

If a household did not sign the form within the required time period and later moves out without signing the form, the finding is uncorrectable.

3. Household income above limit upon initial occupancy / program not leased to low-income household for unit 2 in Building D.

An updated Tenant Income Certification was submitted but is unacceptable because it was back-dated. It would have been accepted if it had been dated as of the date that it was actually signed by the tenant. Instruction: re-do the certification and ensure that it is dated as of the date the form is actually signed by the tenant.