

ENFORCEMENT ACTION AGAINST
VIDA QUE CANTA APARTMENTS, L.P.
WITH RESPECT TO
VIDA QUE CANTA APARTMENTS
(HTC FILE # 05092 / CMTS # 4257)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 16th day of April, 2015, 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 **VIDA QUE CANTA APARTMENTS, L.P.**, a Texas limited partnership (“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 Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by TEX. GOV’T CODE § 2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by TEX. GOV’T CODE § 2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

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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 §1.14¹ and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 Tex. Admin. Code §2 as of November 19, 2014.
2. During 2005, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$953,820.00 to build and operate Vida Que Canta Apartments ("Property") (HTC file No. 05092 / CMTS No. 4257 / LDLD No. 322).
3. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective December 12, 2006, and filed of record at Document Number 1712424 of the Official Public Records of Real Property of Hidalgo County, Texas ("Records").
4. Respondent is a Texas limited partnership 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 Violations:

5. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on June 8, 2011. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards). Notifications of noncompliance were sent and an October 25, 2011, corrective action deadline was set. Partial corrective action was received but violations listed at Attachment 1 were not corrected by the deadline.
6. An informal conference was held on January 22, 2013, but Respondent did not appear. The informal conference was reset as a courtesy and was attended by Respondent on February 26, 2013. The Administrative Penalty Committee recommended a penalty and training, and set a deadline of June 3, 2013 to submit fully acceptable corrective documentation.
7. All findings indicated above have been resolved.

¹ Within this Agreed Final Order, all references to the violations and procedures at 10 TEX. ADMIN. CODE §1.14, 10 TEX. ADMIN. CODE CHAPTER 10, AND 10 TEX. ADMIN. CODE, CHAPTER 60, refer to the versions of the code in effect on February 26, 2013, when the Administrative Penalty Committee held an informal conference with Respondent and recommended an administrative penalty. Procedures have since been replaced by 10 TEX. ADMIN. CODE §2 (Enforcement), but the findings and general procedures remain the same.

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. 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. Respondent violated 10 TEX. ADMIN. CODE § 60.118 in 2011 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.²
5. 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.
6. 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.
7. 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.
8. An administrative penalty of \$0.00 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 \$0.00.

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

² HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TEX. ADMIN. CODE 10.616(a)

Approved by the Governing Board of TDHCA on April 16, 2015.

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 17th day of APRIL, 2015, 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/ Peggy M. Henderson
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 17th day of APRIL, 2015, 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/ Peggy M. Henderson
Notary Public, State of Texas

Attachment 1

2011 UPCS Violations

(see attached)

[intentionally omitted from online version because there is no accessible version]