

ENFORCEMENT ACTION	§	BEFORE THE
AGAINST COMMUNITY ACTION	§	TEXAS DEPARTMENT OF
COUNCIL OF SOUTH TEXAS	§	HOUSING AND
(HOME FILE# 532307, 532306 AND	§	COMMUNITY AFFAIRS
532329	§	

AGREED FINAL ORDER

General Remarks and official action taken:

On this 11th, day of November, 2011, the Governing Board of the Texas Department of Housing and Community Affairs (“Board”) considered the matter of whether disciplinary action should be taken against COMMUNITY ACTION COUNCIL OF SOUTH TEXAS, a Texas nonprofit corporation (“CACST” or “Respondent”). The Texas Department of Housing and Community Affairs (“TDHCA” or “Department”) alleges that Respondent violated 10 TEX. ADMIN. CODE, CHAPTER 60 by failing to timely correct tenant file and safety, sanitary and repair violations with respect to the following properties owned by respondent:

1. Arturo Figueroa Homes (HOME 532307 / CMTS No 2668 / LDLD 121);
2. Francisco Zarate Homes (HOME 532306 / CMTS 2665 / LDLD 122); and
3. Tomas Molina Homes (HOME 532329 / CMTS 2663 / LDLD 124).
(together, “Properties” or “Development”)

The Board has jurisdiction over this matter pursuant to TEX. GOV’T CODE § 2306.041-2306.0503 and TEX. GOV’T CODE §§ 2306.261-2306.273. The Board has the authority to dispose of this case pursuant to the provisions of TEX. GOV’T CODE § 2306.044. The Department alleges that Respondent engaged in acts or practices that violated 10 TEX. ADMIN. CODE §§ 60.105, 60.108, 60.110, 60.112, 60.116 and 60.118¹. The Department alleges that such conduct constitutes grounds for the imposition of an administrative penalty pursuant to TEX. GOV’T CODE § 2306.042 and 10 TEX. ADMIN. CODE §§ 60.301-309². In a desire to conclude this matter without further delay and expense, the Board and Respondent, through their respective signatures hereto, announce that they have compromised and settled all claims and they agree to the entry of this Agreed Final Order.

¹ All references to 10 TEX. ADMIN. CODE §§ 60.105, 60.108, 60.110, 60.112, 60.116 and 60.118 refer to the version of the code in effect at the time of the compliance monitoring review that resulted in recording a violation. All past violations remain violations under the current code that became effective May 26, 2011 and all versions in the interim period.

² All references to 10 TEX. ADMIN. CODE §§ 60.301 – 60.309 refer to the version of the code in place at the time Respondent was initially warned that administrative penalties could be assessed for uncorrected violations.

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.

Upon investigation and recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this order:

FINDINGS OF FACT

Jurisdiction:

1. CACST owns numerous properties including Arturo Figueroa Homes, Francisco Zarate Homes and Tomas Molina Homes.
2. Arturo Figueroa Homes, five single family units located in Zapata, Texas and owned by CACST, are subject to a Land Use Restriction Agreement (“LURA”) dated to be effective November 18, 1994, filed of record at Volume 509, Page 680 of the Official Public Records of Real Property of Zapata County, Texas in consideration for an interest free HOME loan in the amount of Two Hundred Twenty-Two Thousand Five Hundred Dollars (\$222,500.00) issued by TDHCA on November 18, 1994;
3. Francisco Zarate Homes, seven single family units located in Rio Grande City, Texas and owned by CACST, are subject to a LURA dated to be effective December 23, 1994, filed of record at Volume 709, Page 160 of the Official Public Records of Real Property of Starr County, Texas in consideration for an interest free HOME loan in the amount of Three Hundred Fifty-Six Thousand Two Hundred Dollars (\$356,200.00) issued by TDHCA on December 23, 1994;
4. Tomas Molina Homes, five single family units located in Freer, Texas and owned by CACST, are subject to a LURA dated to be effective September 9, 1996, filed of record at Volume 212, Page 764 of the Official Public Records of Real Property of Freer County, Texas in consideration for an interest free HOME loan to Owner in the amount of Two Hundred Thirty-Five Thousand and Fifty Dollars (\$235,050.00) issued by TDHCA on September 9, 1996.

Compliance Violations:

ARTURO FIGUEROA HOMES:

5. On May 23, 2008, TDHCA sent notice that CACST had failed to submit their 2007 Annual Owner's Compliance Report which was due April 30, 2008, a violation of 10 TEX. ADMIN. CODE §60.105 which requires each development to submit an Annual Owner's Compliance Report;
6. An on-site monitoring review and property inspection was conducted on October 15, 2008, to determine whether Arturo Figueroa Homes were in compliance with LURA requirements to lease units to low income households, maintain records demonstrating eligibility and keep the properties in good condition. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and the following violations were not corrected before the February 23, 2009 corrective action deadline:
 - a. CACST collected gross rents for unit 4 that exceeded rent limits as a result of a miscalculated utility allowance. TDHCA publishes maximum rent limits for the HOME program annually and owners are responsible for ensuring that the maximum rents that they charge include the amount of rent paid by the household, plus an allowance for utilities, plus any mandatory fees. Exceeding rent limits is a violation of 10 TEX. ADMIN. CODE §60.118 which requires that tenant rents, including mandatory fees and utility allowances, be less than the allowable rent limits;
 - b. CACST failed to include required language in tenant leases, a violation of 10 TEX. ADMIN. CODE §60.110 which requires leases to include language prohibiting evictions or nonrenewal of leases for other than good cause;
 - c. CACST failed to annually perform Housing Quality Standards ("HQS") inspections, a violation of 10 TEX. ADMIN. CODE §60.116 which requires rental developments to conduct annual HQS inspections on each HOME assisted unit;
 - d. A Uniform Physical Condition Standards ("UPCS") inspection showed numerous property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.116. Violations included the following which were not corrected by the corrective action deadline:
 - i. *Unit 103*: broken exterior light fixtures; stained and peeling exterior trim; holes in closet door; deteriorated front door seal; laundry closet door off track; missing entry floor tiles; missing bathroom light fixture; electrical cover plate cracked in second bathroom; inoperable smoke detectors, two-inch hole in the wall near front entry;

- ii. *Unit 104*: missing fence sections; broken exterior light fixtures; stained and peeling exterior trim; missing exterior electrical covers; garbage outside; missing bathroom sink stopper; water damage to living room ceiling; deteriorated entry door seal; missing tiles at entry; stove burner plates missing; outlet cover plates broken in second bedroom; small wall holes; broken bedroom window; mold/mildew on tub surround; evidence of insect and rodent infestation in kitchen;
 - iii. *Unit 105*: missing fence sections; damaged exterior door surfaces; stained and peeling trim; missing exterior light fixtures; mold and mildew on tub surround; shower pulling away from wall; shower knobs missing; laundry closet door off track; front deadbolt inoperable; front door seal deteriorating; bottom of kitchen cabinet below sink damaged; electrical switch cover in third bedroom missing; inoperable smoke detectors; bedroom window paint peeling;
 - iv. *Unit 107*: garbage in yard; fire ant infestation in back yard; bathroom sink stopper missing; shower stopper missing; leaking toilet; top lock on front door missing; loose door knob for bedroom two; rear and front door seals deteriorating; missing kitchen cabinets; deteriorated refrigerator door seal; missing and/or inoperable hallway lights; missing light switch covers in bedroom two and living room cable outlet; missing smoke detector in bedroom 4; inoperable smoke detector in living room; hole in wall near front door; cable wire across living room floor;
 - v. *All units*: lawns severely overgrown; severe driveway potholes; fencing damage;
7. A UPCS inspection was conducted on December 8, 2009. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.116. Reports were mailed to CACST by TDHCA and, in conformance with 10 TEX. ADMIN. CODE § 60.117, a 90-day corrective action deadline of May 4, 2010 was set to provide CACST a reasonable opportunity to respond to the report and bring the property into compliance. Deadlines were extended but only partial corrective action was received. Violations included:
- a. *Unit 105*: Stained and peeling exterior paint; shower head leaking water onto painted wall; tub faucet leaking in hall bathroom; front door keyless deadbolt inoperable; door surface separating from door edge on master bedroom and fourth bedroom doors; inoperable smoke detector in child's bedroom;
 - b. *Unit 107*: Hole in entry gate; stained and peeling exterior paint; tree growing onto roof; shower head leaking water onto painted wall; GFI inoperable in bathroom; water leak under kitchen sink; kitchen cabinets damaged under sink; missing range hood screen; damaged refrigerator door seal; water damage to wall behind shower head;

- c. *Unit 111*: Fence damaged in back corner and gate damaged at bottom; stained and peeling exterior paint; erosion by condenser unit at side of house; appliance stored on patio; debris in backyard by damaged fence; sink leaking in hall bathroom; missing tub spout; front door keyless deadbolt inoperable; door surface is separating on second bedroom door; damaged door frames, thresholds, lintels, trim; range hood missing screen; refrigerator seal damaged; missing/inoperable dryer vent; inoperable living room smoke detector; and
 - d. *Unit 106 / 2106*: Stained and peeling exterior paint; rotten door frame for water heater closet; weed eater stored in water heater closet; light visible through damaged rear door; kitchen GFI inoperable.
8. Between October of 2008 and October of 2010, twenty-three notices of noncompliance and reminder notices were sent regarding the above violations but only partial compliance was achieved;
9. CACST has since provided documentation to TDHCA demonstrating that all of the above violations with respect to Arturo Figueroa Homes have been resolved. To the best of TDHCA's knowledge, no violations remain outstanding.

FRANCISCO ZARATE HOMES:

1. An on-site monitoring review and property inspection was conducted on October 15, 2008 to determine whether Francisco Zarate Homes was in compliance with LURA requirements to lease units to low income households, maintain records demonstrating eligibility and keep the properties in good condition. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and the following violations were not corrected before the March 4, 2009 corrective action deadline:
- a. CACST failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for unit 5, a violation of 10 TEX. ADMIN. CODE §60.108 and the LURA;
 - b. CACST failed to maintain or provide tenant income certification and documentation for unit 6, a violation of 10 TEX. ADMIN. CODE §60.108, which require annual certifications;
 - c. CACST collected gross rents that exceeded rent limits as a result of a miscalculated utility allowance affecting units 1, 2, 3, 4, 5, 6 and 7. TDHCA publishes maximum rent limits for the HOME program annually and owners are responsible for ensuring that the maximum rents that they charge include the amount of rent paid by the household, plus an allowance for utilities, plus any mandatory fees. Exceeding income limits is a violation of 10 TEX. ADMIN. CODE §60.118 which requires that tenant rents, including mandatory fees and utility allowances, be less than the allowable rent limits;

- d. CACST failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §60.112 which requires owners to create a plan to be used to attract applicants of all minority and non-minority groups in the housing market area, regardless of their race, color, religion, sex, national origin, disability, familial status or religious affiliation;
- e. CACST failed to include required language in tenant leases, a violation of 10 TEX. ADMIN. CODE §60.110 which requires leases to include language prohibiting evictions or nonrenewal of leases for other than good cause;
- f. Development failed to perform HQS inspections, a violation of 10 TEX. ADMIN. CODE §60.116 and HOME program requirements that rental developments conduct annual HQS inspections on each HOME assisted unit;
- g. A UPCS inspection showed numerous property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.116. Violations included the following which were not corrected by the corrective action deadline:
 - i. *Exterior*: damaged fences at all properties; overgrown vegetation in yards; severe potholes in all driveways
 - ii. *Unit 1 (159)*: hole in exterior wall near entryway; trim needs paint; garbage outdoors; missing bathroom sink stopper; holes in bedroom and bathroom doors; rear and front door seals deteriorated; bedroom fire exit blocked;
 - iii. *Unit 2 (163)*: front and back light fixtures missing; exterior trim needs paint; bath faucet leaking into bucket; bathroom sink stopper missing; rear door seal damaged;
 - iv. *Unit 3 (167)*: wrecked car parked in yard; exterior light fixtures inoperable; clogged bathroom sink; bathroom sink stopper missing; rear door seal damaged; broken and missing tiles by back door; insect infestation in kitchen;
 - v. *Unit 5 (175)*: exterior trim needs painting; garbage outdoors; missing bathroom sink stopper; and
 - vi. *Unit 7 (1724)*: damaged security door pulls; exterior trim needs painting; shower handle missing and tub damaged and stained; closet door off track; inoperable light fixture near door; bedroom fire exits blocked.

2. A UPCS inspection was conducted on December 8, 2009. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.116, as amended. Reports were mailed to CACST by TDHCA, and in conformance with 10 TEX. ADMIN. CODE § 60.117, a 90-day corrective action deadline of May 4, 2010 was set to provide CACST a reasonable opportunity to respond to the reports and bring the property into compliance. Deadlines were extended but only partial corrective action was received. Violations included:
 - a. *Building 1 (159)*: Missing gate; exterior paint stained and peeling; exterior electrical duplex cover missing; second window cracked; missing bathroom sink stopper; bedroom door hardware inoperable; master bedroom door needs paint; missing electrical plug cover in living room; refrigerator seal damaged; inoperable dryer vent; inoperable smoke detectors in living room and fourth bedroom; cracked windows in master bedroom.
 - b. *Building 2 (163)*: Damaged back gate; exterior paint stained and peeling; missing bathroom sink stoppers; refrigerator seal damaged;
 - c. *Building 3 (167)*: Exterior paint stained and peeling; erosion by sidewalk; missing exterior electrical duplex cover; hole in ceiling in laundry room; closet bi-fold door requires paint; back door passage lock inoperable, inoperable smoke detectors in child's room and living room;
 - d. *Building 4 (171)*: Condenser electrical box missing inside cover; gas stored by house; stained exterior paint; back door threshold wood is rotten; missing range hood screen;
 - e. *Building 5 (175)*: Missing gate latch; erosion on side and front of house; bottom of water heater closet rotten; condenser electrical box missing inside cover and unsecured; exposed wires in condenser; broken light fixture at rear door; rotten roof fascia at corner of house; exterior paint stained; back door primed but not yet painted; bedroom door surface separating; inoperable GFI in bathroom;
 - f. *Building 6 (1722)*: Gate and fence falling; back door primed but not painted; exterior wall staining; missing more than three window screens; tub faucet handle missing; sing stoppers missing in both bathrooms; damaged front door; laundry door missing; hole in child's bedroom door; four inoperable/missing smoke detectors;
 - g. *Building 7 (1724)*: Front door primed but not painted; closet door needs paint; inoperable smoke detector in living room.
3. Between December of 2008 and October of 2010, twenty-four notices of noncompliance and reminder notices were sent regarding the above violations but only partial compliance was achieved;
4. CACST has since provided documentation to TDHCA demonstrating that all of the above violations with respect to Francisco Zarate Homes have been resolved. To the best of TDHCA's knowledge, no violations remain outstanding.

TOMAS MOLINA HOMES:

5. An on-site monitoring review and property inspection was conducted on March 1, 2007 to determine whether Tomas Molina Homes were in compliance with LURA requirements to lease units to low income households, maintain records demonstrating eligibility and keep the properties in good condition. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and multiple violations remained uncorrected after the July 1, 2007 deadline. On January 15, 2010, TDHCA provided additional notice of the outstanding violations and provided a new corrective action deadline, after which administrative penalties according to 10 TEX. ADMIN. CODE §60.309 would be recommended for any violations that remained uncorrected. The following violations were not corrected before the extended February 19, 2010 corrective action deadline:
 - a. CACST failed to include required language in tenant leases, a violation of 10 TEX. ADMIN. CODE §60.110 which requires leases to include language prohibiting evictions or nonrenewal of leases for other than good cause;
 - b. CACST failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §60.112;
 - c. CACST collected gross rents that exceeded rent limits as a result of a miscalculated utility allowance affecting units 1, 2, 3, 4 and 5. TDHCA publishes maximum rent limits for the HOME program annually and owners are responsible for ensuring that the maximum rents that they charge include the amount of rent paid by the household, plus an allowance for utilities, plus any mandatory fees. Exceeding income limits is a violation of 10 TEX. ADMIN. CODE §60.118 which requires that tenant rents, including mandatory fees and utility allowances, be less than the allowable rent limits;
6. On March 10, 2008, TDHCA sent notice that CACST had failed to submit the 2007 Annual Owner's Compliance Report which was due April 30, 2008, a violation of 10 TEX. ADMIN. CODE §60.105 which requires each development to submit an Annual Owner's Compliance Report;
7. An on-site monitoring review was conducted on May 11, 2010 to determine whether Tomas Molina Homes 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 and the following violations were not corrected by the corrective action deadline of August 27, 2010:
 - a. CACST collected gross rents that exceeded rent limits as a result of a miscalculated utility allowance affecting units 1, 2, 3, 4 and 5. TDHCA publishes maximum rent limits for the HOME program annually and owners are responsible for ensuring that the maximum rents that they charge include the amount of rent paid by the household, plus an allowance for utilities, plus any mandatory fees. Exceeding income limits is a violation of 10 TEX. ADMIN. CODE §60.118 which requires that tenant rents, including mandatory fees and utility allowances, be less than the allowable rent limits;

8. Between March of 2008 and July of 2010, fourteen notices of noncompliance and reminder notices were sent regarding the above violations but only partial compliance was achieved;
9. CACST has since provided documentation to TDHCA demonstrating that all of the above violations with respect to the Tomas Molina Homes have been resolved. To the best of TDHCA's knowledge, no violations remain outstanding.

CONCLUSIONS OF LAW

1. Pursuant to TEX. GOV'T CODE §2306.041 and §2306.177, the board has personal and subject matter jurisdiction over CACST;
2. Pursuant to TEX. GOV'T CODE §2306.267, the Board may order CACST to bring the Properties into compliance with the law, Department rules and any contract or agreement, including a LURA, to which CACST is a party;
3. CACST violated 10 TEX. ADMIN. CODE § 60.105 by failing to submit Annual Owner's Compliance Reports;
4. CACST violated 10 TEX. ADMIN. CODE § 60.108 by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy;
5. CACST violated 10 TEX. ADMIN. CODE § 60.108 by failing to perform annual income certifications;
6. CACST violated 10 TEX. ADMIN. CODE § 60.110 by failing to provide language in the lease or in an addendum that evictions or terminations of tenancy for other than good cause are prohibited;
7. CACST violated 10 TEX. ADMIN. CODE § 60.116 by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected;
8. CACST violated 10 TEX. ADMIN. CODE § 60.116 and HOME program requirements that rental developments conduct annual Housing Quality Standards (24 CFR § 982.401) inspections on each HOME assisted unit; and
9. CACST violated 10 TEX. ADMIN. CODE §60.118 by charging rents which exceeded allowable limits.

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, within twenty days of executing this order, CACST shall execute amendments to the LURAs on the Properties in forms acceptable to the Department, extending the term of each LURA by the amount of time each property was out of compliance since the LURAs became effective:

- 3726 days for Arturo Figueroa Homes, for a final termination date of January 30, 2030;
- 4125 days for Francisco Zarate Homes for a final termination date of April 8, 2026; and
- 3348 days for Tomas Molina Homes, for a final termination date of November 8, 2030.

IT IS FURTHER ORDERED that CACST shall pay, and is hereby directed to pay, an administrative penalty of ELEVEN THOUSAND TWO HUNDRED SEVENTY-FIVE DOLLARS AND NO CENTS (\$11,275), which penalty is fully probated for five (5) years, with the five (5) year term beginning on the date the Board approves this Agreed Final Order. Provided that the probationary period is completed without CACST violating any of the terms of this agreement or failing to timely correct violations found during future file monitoring reviews or inspections (“Inspections”), the full amount of the administrative penalty will be forgiven.

IT IS FURTHER ORDERED that timely correction of future violations of 10 TEX. ADMIN. CODE § 60 will be determined as follows. There will be a 90-day period to submit corrective documentation for all violations discovered during future Inspections. The period to submit corrective documentation for online reporting violations varies but will be between 30 and 90 days, as defined in correspondence from TDHCA. Extensions may be allowed for good cause, but must be requested in writing before the end of the corrective period set in TDHCA correspondence and are at the discretion of the compliance monitor who performed the review or inspection. Any corrective documentation not submitted on or before a deadline shall be considered untimely and will constitute a violation of this agreement.

IT IS FURTHER ORDERED if CACST violates any provision of this order, then the full administrative penalty in the amount of ELEVEN THOUSAND TWO HUNDRED SEVENTY-FIVE DOLLARS AND NO CENTS (\$11,275) is 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 CACST that it has violated a provision of this order.

STATE OF TEXAS §
 §
COUNTY OF STARR §

BEFORE ME, Dalinda Olivares, a notary public in and for the State of Texas, on this day personally appeared Juan M. Cantu, known to me or proven to me through TX Driver's License to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Juan M Cantu, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of Executive Director. I am the authorized representative of the Community Action Council of South Texas which currently holds multiple Land Use Restriction Agreements with the TDHCA in the State of Texas, and I am duly authorized by Community Action Council of South Texas to execute this document.
3. Community Action Council of South Texas knowingly and voluntarily enters into this Agreed Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

/s/Juan M Cantu
Signature

/s/Juan M Cantu
Typed/Printed Name

Given under my hand and seal of office this 13th day of October, 2011.

/s/ Dalinda Olivares
Signature of Notary Public

/s/ Dalinda Olivares
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My Commission Expires: 10/28/2012

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