

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
SOUTHMORE PARK APARTMENTS,	§	TEXAS DEPARTMENT OF
LTD. (HTC FILE # 94004)	§	HOUSING AND
	§	COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 19th day of February, 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 **SOUTHMORE PARK APARTMENTS, LTD.**, 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.

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 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. On November 20, 1996, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in the amount of \$237,523.00 to build and operate Southmore Park Apartments (“Property”) (HTC file No. 94004 / CMTS No. 1204 / LDLD No. 141).

3. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective November 20, 1996, and filed of record at Document Number S250798 of the Official Public Records of Real Property of Harris County, Texas (“Records”), as amended by a First Amendment executed on April 5, 2004.
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 Violations¹:

1. A Uniform Physical Condition Standards (“UPCS”) inspection was conducted on February 2, 2006. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.13 (Inspection Standard). Reports were mailed to Southmore Park and, in conformance with 10 TEX. ADMIN. CODE § 60.14 (Notices to Owner), as amended, a 90-day corrective action deadline of July 2, 2006 was set to provide Southmore Park a reasonable opportunity to respond to the report and bring the property into compliance. An additional letter was sent on August 6, 2009 providing notice that administrative penalties would be assessed if the remaining violations were not corrected within thirty days. Partial corrective action was received but the following violations were not corrected before the ultimate September 15, 2009 deadline:
 - a. Health and safety violation caused by blocked fire exit in unit 206;
 - b. Holes, deteriorated paint and spalling on exteriors of Buildings 1, 2, 3, 4, 5, 6, 7 and 8;
 - c. Damaged shower/tub in units 117, 119;
 - d. Missing/inoperable refrigerators in units 420, 507;
 - e. Leaking faucet and pipes in the bathroom of unit 507;
 - f. Stains and peeling on exterior of Building 8; and
 - g. Missing and damaged components from gutter downspout of Building 8.

Proof that all corrections were made was submitted on March 4, 2011, 535 days past the deadline. As of the date of this order this violation is considered cured.

2. On May 14, 2007, TDHCA sent notice that Southmore Park had failed to timely submit their 2006 Annual Owner’s Compliance Report that was due on April 30, 2007, a violation of 10 TEX. ADMIN. CODE §60.10 (Annual Owner’s Compliance Report Certification and Review), which requires each development to submit an Annual Owner’s Compliance Report.

The final parts were submitted on November 27, 2009, 942 days past the deadline. As of the date of this order this violation is considered cured.

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.

3. On March 10, 2008, TDHCA sent notice that Southmore Park had failed to timely submit their 2007 Annual Owner's Compliance Report that was due on April 30, 2008, a violation of 10 TEX. ADMIN. CODE §60.105 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report.

The final parts were submitted on November 27, 2009, 576 days past the deadline. As of the date of this order this violation is considered cured.

4. An on-site monitoring review was conducted on February 18, 2009, to determine whether Southmore Park Apartments 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 additional deadlines were set however, the following violations were not corrected before the final September 15, 2009 corrective action deadline:

- a. Southmore Park failed to meet the property set-aside requirement, a violation of the LURA which requires the development to lease or set aside 93 units to residents with income levels at or below 60% of the area median income in accordance with the property's set-aside election in the LURA, a violation of the LURA and 10 TEX. ADMIN. CODE § 60.111 which outlines minimum set-aside requirements for tax credit properties. The minimum set-aside election was made pursuant to IRC §42(g)(1) which requires tax credit properties to make a minimum set-aside election regarding how the property shall be monitored by TDHCA in accordance with 10 TEX. ADMIN. CODE § 60. Southmore Park failed to maintain that minimum setaside election;
- b. Southmore Park collected gross rents that exceeded income limits as a result of an unsupported \$25 application fee charged to the following 45 units: 103, 104, 106, 107, 108, 110, 113, 120, 201, 202, 205, 303, 304, 305, 306, 401, 402, 406, 407, 409, 411, 413, 414, 415, 416, 417, 419, 504, 505, 507, 508, 512, 513, 514, 518, 702, 703, 801, 804, 806, 808, 812, 813, 814 and 816, a violation of 10 TEX. ADMIN. CODE § 60.118 (Special Rules Regarding Rents and Rent Limit Violations). TDHCA publishes maximum rent limits for the tax credit 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. Southmore Park was unable to provide invoices supporting their application fees;
- c. Southmore Park collected gross rents that exceeded income limits as a result of a \$75 mandatory redecoration fee charged to the following 9 units: 105, 120, 302, 508, 516, 601, 804, 805 and 810. TDHCA publishes maximum rent limits for the tax credit 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. The mandatory redecoration fee is a violation of 10 TEX. ADMIN. CODE §60.118 (Special Rules Regarding Rents and Rent Limit Violations) which restricts the maximum applicable limit for rents. The fee also violates IRC § 42(i)(3)(B)(i) and 26 C.F.R § 1.42-5(g), as interpreted by the IRS Guide for

Completing Form 8823, Chapter 11, Category 11g² which states that fees to prepare a unit for occupancy may not be charged because owners are responsible for keeping units suitable for occupancy;

- d. Southmore Park collected gross rents that exceeded income limits as a result of excessive mandatory utility fees charged to units 107 and 113 in January and February of 2009. TDHCA publishes maximum rent limits for the tax credit 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. For Unit 107, the maximum rent allowed was \$953, but Southmore charged \$1,015.02 in January and \$1,023 in February of 2009. For Unit 113, the maximum rent allowed was \$952, but Southmore charged \$1,048.04 in January and \$1,034.33 in February of 2009. Exceeding the maximum rent is a violation of 10 TEX. ADMIN. CODE §60.118 (Special Rules Regarding Rents and Rent Limit Violations). It is also a violation of 26 C.F.R § 1.42-11, as interpreted by the IRS Guide for Completing Form 8823, Chapter 11, Category 11g, which stipulates that all required costs or fees be included in the rent computation;
- e. Southmore Park failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §60.112 (Requirements Pertaining to Households with Rental Assistance); and
- f. Southmore Park failed to provide documentation that household incomes are within prescribed limits upon initial occupancy for units 107, 205, 402, 407, 504, 508, 518, 702, 703, 801, 804, 806 and 812, a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification of Annual Income) and the LURA.

The property set-aside and the gross rent violations were corrected on January 1, 2010, 108 days past the deadline. As of the date of this order this violation is considered cured.

The affirmative marketing finding was corrected March 4, 2011, 535 days past the deadline. As of the date of this order this violation is considered cured.

The household income above limit upon initial occupancy findings for units 205, 402, 407, 504, 508, 518, 804, 806 and 812 were corrected on various dates between August 15, 2009 and October of 2010. The violations for units 107, 702, 703 and 801 were never corrected.

5. On March 16, 2009, TDHCA sent notice that Southmore Park had failed to submit their 2008 Annual Owner's Compliance Report that was due on April 30, 2009, a violation of 10 TEX. ADMIN. CODE § 60.105 (Reporting Requirements) which requires each development to submit an Annual Owner's Compliance Report.

² References to the IRS Guide for Completing Form 8823, Chapter 11, Category 11g are to the version of the guide in place at the time of the monitoring review conducted on February 18, 2009

The final parts for the 2008 report were submitted on September 21, 2009, 144 days past the deadline. A UPCS inspection was conducted on April 14, 2009. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.116 (Property Condition Standards). Reports were mailed to Southmore Park and, in conformance with 10 TEX. ADMIN. CODE § 60.117 (Notice to Owners), a 90-day corrective action deadline of May 24, 2010 was set to provide Southmore Park a reasonable opportunity to respond to the report and bring the property into compliance. Deadlines were extended to October 27, 2010 but no response was received by the deadline.

Proof that corrections were made was received on March 4, 2011, 128 days past the deadline. As of the date of this order this violation is considered cured.

6. On March 25, 2011, TDHCA sent notice that Southmore Park had failed to submit their 2010 Annual Owner's Compliance Report that was due on April 30, 2011, a violation of 10 TEX. ADMIN. CODE §60.105 (Reporting Requirements) which requires each development to submit an Annual Owner's Compliance Report. Parts A, B and C were received, but Part D, the Owner's Financial Certification, remains outstanding.
7. An on-site monitoring review was conducted on March 15, 2012, to determine whether Southmore Park Apartments 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 June 13, 2012 corrective action deadline. The violations remain uncorrected.
 - a. Southmore Park failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 112, 120, 201, 203, 204, 409, 418, 503, 805 and 813, a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification of Annual Income) and the LURA, both of which require developments to ensure that tenants meet income eligibility requirements;
 - b. Southmore Park failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §60.114 (Requirements Pertaining to Households with Rental Assistance) which requires developments 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;
 - c. Southmore Park failed to properly calculate utility allowance, a violation of 10 TEX. ADMIN. CODE §60.109 (Utility Allowances) which requires that all properties comply with published rent limits which include an allowance for tenant paid utilities;

- d. Southmore Park failed to pay compliance fees, a violation of Section 7 of the LURA which requires owner to pay an annual compliance fee to the Department in the amount of \$15 per unit, for a total of \$1,395 per year. It is also a violation of TEX. GOV'T. CODE §2306.176 and §2306.266 which permit the Department to set, charge, and collect fees. At the time, Annual Compliance fees had not been paid for the years 2006 through 2011, leaving a total unpaid balance of \$8,370 for those years; and
 - e. Southmore Park failed to submit pre-onsite documentation, a violation of 10 TEX. ADMIN. CODE §60.115 (Onsite Monitoring) which allows TDHCA to perform onsite monitoring of any TDHCA funded low income development and requires owners to submit requested information.
8. A UPCS inspection was conducted on March 19, 2012. The inspection report, attached hereto as **Exhibit 1**, showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards). Reports were mailed to Southmore Park and, in conformance with 10 TEX. ADMIN. CODE § 60.119 (Notice to Owners), a 90-day corrective action deadline of July 12, 2012, was set to provide Southmore Park a reasonable opportunity to respond to the report and bring the property into compliance. No corrections have been received.
9. On May 23, 2012, TDHCA sent notice that Southmore Park had failed to submit their 2011 Annual Owner's Compliance Report that was due April 30, 2012, a violation of 10 TEX. ADMIN. CODE §60.105 (Reporting Requirements) which requires each development to submit an Annual Owner's Compliance Report. Part B was submitted, but no response has been received.

Part B was received, but the following parts remain outstanding: Part A, the Owner's Certification of Program Compliance; Part C, the Housing for Persons with Disabilities Report; and Part D, the Owner's Financial Certification.
10. On November 1, 2012, TDHCA sent an invoice for annual compliance fees that had come due. Southmore Park failed to pay the invoice within thirty days, a violation of Section 7 of the LURA which requires owner to pay an annual compliance fee to the Department in the amount of \$15 per unit, for a total of \$1,395 per year. At the time, Annual Compliance fees had not been paid for the years 2006 through 2012, leaving a total unpaid balance of \$9,765.
11. On November 1, 2013, TDHCA sent an invoice for annual compliance fees that had come due. Southmore Park failed to pay the invoice within thirty days, a violation of Section 7 of the LURA which requires owner to pay an annual compliance fee to the Department in the amount of \$15 per unit, for a total of \$1,395 per year. It is also a violation of TEX. GOV'T. CODE §2306.176 which permits the Department to set, charge, and collect fees. Annual Compliance fees have not been paid for the years 2006 through 2013, leaving a total unpaid balance of \$11,160.
12. TDHCA has not received evidence of correction of the following violations:

- a. Household Income Above Income Limit Upon Initial Occupancy: Units 107, 112, 120, 201, 203, 204, 409, 418, 503, 702, 703, 801, 805 and 813;
- b. Failure to provide an affirmative marketing plan;
- c. Failure to properly calculate utility allowance;
- d. Failure to submit pre-onsite documentation;
- e. Failure to correct UPCS violations listed at **Exhibit 1**;
- f. Failure to pay 2006 through 2013 compliance fees in the total amount of \$11,160.

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. Southmore Park violated 10 TEX. ADMIN. CODE § 60.13 in 2006, 10 TEX. ADMIN. CODE § 60.116 in 2009, 10 TEX. ADMIN. CODE § 60.118 in 2012, 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;
5. Southmore Park violated 10 TEX. ADMIN. CODE § 60.10 in 2007 and 10 TEX. ADMIN. CODE § 60.105 in 2008, 2009, 2010, 2011 and 2012 by failing to submit Annual Owner's Compliance Reports for the years 2006, 2007, 2008, 2009, 2010 and 2011;
6. Southmore Park violated the LURA in 2009 by failing to meet the property set-aside requirement on or before the associated deadline in violation of the LURA, 10 TEX. ADMIN. CODE § 60.111, and IRC § 42(g)(1);
7. Southmore Park violated 10 TEX. ADMIN. CODE § 60.118 in 2009 by charging excessive application fees resulting in gross rents exceeding the allowable limits, and not making timely corrections once the violations were discovered;
8. Southmore Park violated 10 TEX. ADMIN. CODE § 60.118 in 2009 and violated IRC § 42(i)(3)(B)(i) and 26 C.F.R § 1.42-5(g), as interpreted by the IRS Guide for Completing Form 8823, by charging mandatory redecoration fees and not making timely corrections once the violations were discovered;
9. Southmore Park violated 10 TEX. ADMIN. CODE § 60.118 and 26 C.F.R § 1.42-11 in 2009 by charging rents that exceeded income limits as a result of excessive mandatory utility charges and not making timely corrections once the violations were discovered;
10. Southmore Park violated 10 TEX. ADMIN. CODE § 60.112 in 2009 and 10 TEX. ADMIN. CODE § 60.114 in 2012 by failing to provide an affirmative marketing plan;

11. Southmore Park violated 10 TEX. ADMIN. CODE § 60.108 and § 60.111 in 2009 and 10 TEX. ADMIN. CODE § 60.108 and § 60.111 in 2012 by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy and to maintain periodic tenant income certifications;
12. Southmore Park violated 10 TEX. ADMIN. CODE § 60.109 in 2012 by failing to properly calculate a utility allowance;
13. Southmore Park violated Section 7 of the LURA and TEX. GOV'T. CODE §2306.176 and §2306.266 by failing to pay required annual compliance fees for the years 2006 through 2013 in the total amount of \$11,160;
14. Southmore Park violated 10 TEX. ADMIN. CODE § 60.115 in 2012, by failing to submit pre-onsite documentation and/or permit access to the Property premises and records;
15. The penalty amount of \$5,000.00 is appropriate under the penalty matrix that was in place under 10 TEX. ADMIN. CODE § 60.309³, if the respondent corrects all outstanding violations in a timely manner and reimburses the annual compliance fees due in the amount of \$11,160.

Based upon the foregoing findings of fact, conclusions of law, and an assessment of the factors in Tex. Gov't Code §2306.042, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent shall pay and is hereby directed to pay the administrative penalty in the amount of \$5,000.00 by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before March 20, 2015..

IT IS FURTHER ORDERED that Respondent shall pay the 2006 through 2013 compliance fees, as discussed in Finding of Fact 12(f), in the total amount of \$11,160 to the "Texas Department of Housing and Community Affairs" via cashiers' checks by March 20, 2016. Payments shall be made on or before the 20th of each month, for 11 months, in the amount of \$700.00 per month starting on or before March 20, 2015, with the last payment of \$700.00 to be made on or before January 16, 2016. A final payment in the amount of \$3,460.00 shall be paid to the Department on or before February 16, 2016. The full amount due may be paid in full at any time before the expiration of the one year due date.

IT IS FURTHER ORDERED that all 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

³ Reference to the administrative penalty matrix at 10 TEX. ADMIN. CODE § 60.309 (Penalty Table) refers to the version of the code in place on May 5, 2011, when the TDHCA Executive Director gave a report to the Governing Board of TDHCA regarding administrative penalties to be pursued.

IT IS FURTHER ORDERED that Respondent shall correct the violations that remain outstanding as listed in Finding of Fact 12(a-d), and submit clear and complete documentation of the corrections to TDHCA on or before April 15, 2015.

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>.

IT IS FURTHER ORDERED that Respondent shall repair all UPCS violations as discussed in Finding of Fact 12(e) that remain outstanding and are listed in Exhibit 1 and submit work orders, including all necessary parts thereof that clearly and completely document the corrections to TDHCA on or before July 15, 2015.

The terms of this Agreed Final Order shall be published on the TDHCA website.

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Approved by the Governing Board of TDHCA on 2/19/2015, 2015.

By: /s/ J. Paul Oxer
Name: J. Paul Oxer
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 19th day of February, 2015, personally appeared J. Paul Oxer, 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 19th day of February, 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/ Leah Sargent Rosas
Notary Public, State of Texas

Exhibit A - Omitted from web version