

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
SOUTHSIDE COMMUNITY CENTER	§	TEXAS DEPARTMENT OF
WITH RESPECT TO SUNRISE	§	HOUSING AND
VILLAGE PHASE I	§	COMMUNITY AFFAIRS
(HOME FILE # 532336)	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 31<sup>st</sup> day of July, 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 **SOUTHSIDE COMMUNITY CENTER**, a Texas nonprofit corporation (“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. In 1994, Southside Community Center (“Respondent”) was awarded an allocation of HOME funds by the Board, in the amount of \$1,607,121.00 to build and operate Sunrise Village Phase I (“Property”) (HTC file No. 532336 / CMTS No. 2722 / LDLD No. 55).
3. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective July 15, 1994, and filed of record at Volume 1088, Page 75 of the Official Public Records of Real Property of Hays County, Texas (“Records”), as amended by a First Amendment executed on September 12, 2011, and filed in the Records at Volume 4187, Page 374.

4. Respondent is a Texas nonprofit 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 Violations<sup>1</sup>:

1. An on-site monitoring review was conducted on May 11, 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 August 13, 2012 corrective action deadline was set, however, the following violation was not corrected before the deadline:
  - a. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §60.114 (Requirements Pertaining to Households with Rental Assistance).

The affirmative marketing plan violation was not resolved until July 19, 2013, 340 days late, after intervention by the Administrative Penalty Committee.

2. 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 by the last day of April of each year.

Final parts were submitted on July 8, 2013, 69 days late, after intervention by the Administrative Penalty Committee.

3. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on August 26, 2013. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 10.616 (Property Condition Standards). Notifications of noncompliance were sent and a January 26, 2014 corrective action deadline was set.

Partial corrective action was received on May 1, 2014, 95 days late, after intervention by the Administrative Penalty Committee, but the following violation remains unresolved:

- a. Damaged refrigerator gasket in the kitchen of unit 150 of Building 13.
4. The following violations remain outstanding at the time of this order:
  - a. UPCS violation described in FOF #3a;

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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.

## 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 violated 10 TEX. ADMIN. CODE § 60.114 in 2012 by failing to provide an affirmative marketing plan.
4. Respondent violated 10 TEX. ADMIN. CODE § 10.603 in 2013 by failing to submit the Annual Owner's Compliance Reports for the year 2012.
5. Respondent violated 10 TEX. ADMIN. CODE § 10.616 and I.R.C. §42 in 2013, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.
6. 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.
7. 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.
8. 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.
9. An administrative penalty of \$250.00 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 \$250.00, to be submitted to the address below on or before August 30, 2014, in the form of a cashier's check payable to the "Texas Department of Housing and Community Affairs".

**IT IS FURTHER ORDERED** that Respondent shall resolve the damaged refrigerator gasket violation in the kitchen of unit 150 of Building 13, and submit evidence to document the corrections to TDHCA on or before August 30, 2014, in the correct format and including all necessary parts as indicated at <http://www.tdhca.state.tx.us/pmcomp/inspections/docs/UPCS-WorkOrderGuidelines.pdf>.

**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>. 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

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