

ENFORCEMENT ACTION AGAINST THE	§	BEFORE THE
JOHN R. DYKEMA JR. AND	§	TEXAS DEPARTMENT OF
DYKEMA ARCHITECTS, INC.	§	HOUSING AND COMMUNITY
	§	AFFAIRS

FINAL ORDER

General Remarks and official action taken:

On this 21st day of February, 2019, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA" or "Department") considered the matter of whether enforcement action should be taken against **JOHN R. DYKEMA, JR. AND DYKEMA ARCHITECTS, INC.** (collectively, "Respondent"), for providing negligent material misrepresentation or omission with regard to certifications and representations made to the Department on July 30, 2018.

This Final Order is executed pursuant to the authority granted in the Tex. Gov't Code, Chapter 2306.0504, which requires the Board to adopt a policy providing for the debarment of a person from participation in Department programs because of a person's past failure to comply with conditions imposed by the Department in the administration of its programs. The policy was adopted by the Board and is set forth in 10 TAC §2.401.

Upon 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. During 2015, Timbers Clayton 104 Apartments, LP, a Texas limited partnership ("Owner") was awarded an allocation of Low Income Housing Tax Credits by the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA" or the "Department"), to rehabilitate The Timbers Apartments ("Property") (HTC 15412 / CMTS 1612).
2. The Property is required to comply with requirements of the Fair Housing Act and 2010 ADA standards, with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" Federal Register 79 FR 29671, and as otherwise modified in 10 TAC Chapter 1, Subchapter B.
3. John R. Dykema Jr, Vice President and Principal Architect of Dykema Architects, Inc., signed an Architect Certification on April 27, 2015, certifying, among other things, that

the Property would, *“be designed and built to meet the accessibility requirements of the Federal Fair Housing Act as implemented by HUD at 24 C.F.R. Part 100 and The Fair Housing Act Design Manual, titles II and III of the Americans with Disabilities Act (42 U.S.C. Sections 12131-12189) as implemented by the Department of Justice regulations at 28 C.F.R. Parts 35 and 36, and the Department’s Accessibility rules in 10 TAC Chapter 1, Subchapter B, as may be amended from time to time.”*

4. John R. Dykema Jr and Dykema Architects, Inc., are considered a consultant for the Property, and therefore subject to the regulatory authority of TDHCA.

Material Violations Subject To Debarment:

1. On September 20, 2017, a final construction inspection was conducted to verify that the Property had been rehabilitated as required by applicable state and federal laws, and the TDHCA Land Use Restriction Agreement. Deficiencies were identified and corrective documentation received by TDHCA included certifications signed by John R. Dykema Jr on July 30, 2018, that stated deficiencies had been corrected in the cited units, and in all fair housing covered units and/or mobility accessible units. TDHCA re-inspected the property on September 20, 2018, in order to verify correction. It identified the following deficiencies, of which items b through d were part of the certifications of correction that were signed by Mr. Dykema on July 30, 2018:
 - a. Mobility accessible units 104, 203, 701 and 803: Top grab bars at the bathtub exceeded accessibility tolerances. They were located 37-38 inches above the floor and maximum allowed is 36 inches. This was a new deficiency that had not previously been identified, and is a violation of 2010 ADA standards 607.4.2;
 - b. Mobility accessible units 104, 503 and 803: Rear toilet grab bar was L-shaped and returned to the floor. This is not allowed per the access board; the grab bar must be located on a wall. This was Deficiency #27 from the original final construction inspection, and is a violation of 2010 ADA standards 604.5 and 609.8. That original inspection had identified the deficiency for mobility accessible units 104, 203, and 701. The re-inspection proved correction in mobility accessible units 203 and 701, but the deficiency was uncorrected in mobility accessible unit 104, and was newly identified in mobility accessible units 503 and 803;
 - c. Mobility accessible units 104, 503 and 803: Secondary bathroom T-turn space is not clear. There are built-in shelves within the T-turn turning space and the bathroom door needs to swing out the other way for a full T-turn clearance. This was Deficiency #16 from the original final construction inspection, and is a violation of 2010 ADA standards 304.3 and 809.2.2. That original inspection had identified the deficiency for mobility accessible unit 104. The re-inspection found that the deficiency was uncorrected in mobility accessible unit 104, and was newly identified in mobility accessible units 503 and 803; and

- d. Fair housing covered units 204, 301, 302, 303, 304, 401, 403, 404, 501, 504, 601, 602, 603, 604, 702, 903, 904, 1001, 1002, 1003 and 1004: Did not have the required 9 inch clearance at the range for a parallel side approach, each range only had 4.5 inches on the side closest to the corner cabinet. This was Deficiency #22 from the original final construction inspection, and is a violation of the Fair Housing Act Design Manual 7.4. That original inspection had identified the deficiency for fair housing covered units 203 and 701. The re-inspection proved correction in fair housing covered units 203 and 701, but the deficiency was newly identified in fair housing covered units 204, 301, 302, 303, 304, 401, 403, 404, 501, 504, 601, 602, 603, 604, 702, 903, 904, 1001, 1002, 1003 and 1004.
2. The architect certifications of correction signed by Mr. Dykema on July 30, 2018, had included representations that the above deficiencies had been resolved in the cited units *and* in all fair housing covered units and/or mobility accessible units. The re-inspection showed that the deficiencies had not been resolved in all fair housing covered units and/or mobility accessible units. Certifying that the findings were corrected was a negligent material misrepresentation. Providing a negligent material misrepresentation with regard to any documentation, certification, or other representation made to the Department is grounds for discretionary debarment.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §2306.0504 and 10 TAC §2.401.
2. Respondent is a "Consultant" as that term is defined in 10 TAC §2.102(1).
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. Pursuant to TEX. GOV'T CODE Chapter 2306, Subchapter DD and TEX. GOV'T CODE §2306.185, TDHCA is authorized to make Housing Tax Credit Allocations for the State of Texas and is required to monitor to ensure compliance.
5. Pursuant to Internal Revenue Code (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;
6. John R. Dykema Jr and Dykema Architects, Inc. violated the Department's Accessibility rules in 10 TAC Chapter 1, Subchapter B, by failing to ensure compliance with the Fair Housing Act and 2010 ADA standards as part of the rehabilitation for The Timbers Apartments.
7. John R. Dykema Jr and Dykema Architects, Inc. violated 10 TAC §2.401(a)(3) by submitting signed certifications to TDHCA, representing that Fair Housing Act and 2010

ADA standards findings had been corrected for the cited units and all fair housing covered units and/or mobility accessible units, as applicable, although the corrections had not been made for all affected units.

8. Pursuant to Tex. Gov't. Code §2306.0504(c), the Department may debar a person from participation in a Department program on the basis of the person's past failure to comply with any condition imposed by the Department in the administration of its programs.
9. Pursuant to 10 TAC §2.401(a) the Department may debar a consultant or vendor for past failure to comply with any condition imposed by the Department in the administration of its programs, including but not limited to providing negligent material misrepresentation with regard to any documentation, certification, or other representation made to the Department.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of material factors including those set forth in 10 Tex. Admin. Code §2.401(j) to be considered for a recommended period of debarment, 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 barred from future participation in all programs administered by the Department for a period of **one** year, to commence upon the date this Order is approved by the Board. This debarment does not prohibit Respondent from participating in any existing engagements funded through the Department, nor affect any responsibilities or duties thereunder.

IT IS FURTHER ORDERED that 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 February 21, 2019.

By: /s/ J.B. Goodwin
Name: J.B. Goodwin
Title: Chair of the Board of TDHCA

By: /s/ James "Beau" Eccles
Name: James "Beau" Eccles
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 21st day of February, 2019, personally appeared J.B. Goodwin, 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 21st day of February, 2019, personally appeared James "Beau" Eccles, 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