

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 12<sup>th</sup> day of March, 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.

#### **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, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. In 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<sup>1</sup>:

5. An on-site monitoring review was conducted on April 15, 2014, 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 an August 17, 2014, corrective action deadline was set. The following violations were not corrected before the corrective action deadline and remain outstanding at the time of this order:
  - a. Respondent failed to provide the Tenant Amenities and Supportive Services Notice for units 118, 417, and 518, a violation of 10 TEX. ADMIN. CODE § 10.613 (Lease Requirements), which requires all developments to provide to each household, at the time of execution of an initial lease and whenever there is a subsequent change in common amenities, unit amenities, or required services, a notice describing those amenities and services. Forms were submitted for the three units on January 31, 2015, but there were problems with the signature dates and the findings remain unresolved.

**CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.
2. Respondent is a “housing sponsor” as that term is defined in Tex. Gov’t Code §2306.004(14).

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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, CHAPTER 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. 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 §10.613 in 2014, by failing to execute the Tenant Amenities and Supportive Services Notice for units 118, 417, and 518.
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 \$200.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

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 \$200.00, subject to deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated in the attachments and submit full documentation of the corrections to TDHCA on or before April 13, 2015.

**IT IS FURTHER ORDERED** that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the assessed administrative penalty and the full amount of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, then the full administrative penalty in the amount of \$200.00 shall be immediately 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 Respondent that it has violated a provision of this order.

**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>. If it comes due and payable, 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

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

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on 3/12, 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 12<sup>th</sup> day of March, 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 12<sup>th</sup> day of March, 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

STATE OF TEXAS                                   §  
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COUNTY OF Harris                          §

BEFORE ME, Carol C. Workman, a notary public in and for the State of Texas, on this day personally appeared P. Rowan Smith Jr, known to me or proven to me through personally known to me 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 P. Rowan Smith Jr, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of G.P. Manager for Respondent. I am the authorized representative of Respondent, owner of Vida Que Canta Apartments, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final 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.”

**RESPONDENT:**  
**VIDA QUE CANTA APARTMENTS, L.P.**, a Texas limited partnership  
**VIDA QUE CANTA APARTMENTS I, L.L.C.**, a Texas limited liability corporation, its general partner  
**BOZRAH INTERNATIONAL MINISTRIES, INC.**, its 100% shareholder

By: /s/ P. Rowan Smith Jr  
Name: P. Rowan Smith  
Title: Manager

Given under my hand and seal of office this 8th day of April, 2015.

/s/ Carol C. Workman  
Signature of Notary Public

Carol C. Workman  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF Texas  
My Commission Expires: 4/28/2015

## **Attachment 1**

### **File Monitoring Instructions**

Upload the following corrective documentation to CMTS by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.

Once uploaded, email Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to indicate that documentation is ready for review.

### **Tenant Amenities and Supportive Services Notice Findings for units 118, 417, and 518:**

An amendment to 10 TEX. ADMIN. CODE §10.613 has condensed the Fair Housing Disclosure Notice and the Tenant Amenities and Supportive Services Notice into a single document called the Tenant Rights and Resources Guide, available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm> along with an Acknowledgement form that must be signed by residents.

Complete the guide, then post a laminated copy in the office.

Provide a copy to the households in units 118, 417, and 518, then have them sign the Acknowledgment. Submit a copy of the completed guide and Acknowledgements. If a household in one of these units has since moved out, please include the move-out date in your response and acknowledge that the finding is uncorrectable.