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Texas Department of Housing and Community Affairs  
Manufactured Housing Board Meeting  
on April 22, 2003

Jack Davis, Member  
Clement "Pete" Moreno, Member

Joan Tavarez, Member  
Cary Yates, Member

**Texas Department of Housing and Community Affairs  
Manufactured Housing Board Meeting**

**April 22, 2003**

**ROLL CALL**

	<u>Present</u>	<u>Absent</u>
Jack Davis, Member	_____	_____
Clement "Pete" Moreno, Member	_____	_____
Joan Tavarez, Member	_____	_____
Cary Yates, Member	_____	_____
Number Present	_____	
Number Absent		_____

\_\_\_\_\_, Presiding Officer

**MANUFACTURED HOUSING BOARD MEETING  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
507 Sabine, 4<sup>th</sup> Floor Boardroom, Austin, Texas 78701  
April 22, 2003                      1:00 p.m.**

**AGENDA**

**CALL TO ORDER, ROLL CALL** Chair  
**CERTIFICATION OF QUORUM** Chair

The Board of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA) will meet to consider and possibly act upon:

**ACTION ITEMS**

- Item 1. Presentation, Discussion and Consideration of Possible Approval of Minutes of Board Meeting of January 16, 2003. Chair
  
- Item 2. Presentation, Discussion and Consideration of Possible Approval of the State Office of Administrative Hearings (SOAH) Proposal for Decision: Chair  
Approval of Manufactured Housing Case:  
In the Matter of the Complaint of TDHCA vs Dr. Bacon's Custom Homes, Inc. dba Dr. Bacon's Affordable Housing, Docket Number: 332-03-1541, Complaint Nos: MHD2001001904-W, MHD2002000595-W, and MHD2002001323-IV.
  
- Item 3. Presentation, Discussion and Consideration of Possible Approval to increase fees in proposed rule §80.20 (relating to Fees) and §80.202 (relating to Fees for Title Documents). Chair

**REPORT ITEMS**

- Item 1. Status of the cash receipts/fee audit. David Gaines
- Item 2. Budget and Revenue Status. Kassu Asfaw
- Item 3. Executive Director's Report Bobbie Hill
- Item 4. Legislative Update. Bobbie Hill
- Item 5. Set calendar for future board meetings. Bobbie Hill
- Item 6. Report on Hogstad vs. Division Tim Irvine

**EXECUTIVE SESSION** Chair

- Item 1. Personnel Matters under Sec. 551.074, Texas Government Code

**PUBLIC COMMENT** Chair

**ADJOURN** Chair

*To access this agenda or request information, please visit our website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or contact Nancy Stone, TDHCA, 507 Sabine, Austin, Texas 78701, 512-475-2894, [nstone@tdhca.state.tx.us](mailto:nstone@tdhca.state.tx.us).*

*Individuals who require auxiliary aids, services or translators for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.*

*Agenda Action Item No. 1*

**MINUTES OF THE BOARD OF DIRECTORS**

**DIVISION OF MANUFACTURED HOUSING**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

On Thursday, January 16, 2003, at 10:03 a.m., a duly called meeting of the Board of Directors of the Division of Manufactured Housing (the "Division") was held in the fourth floor board room of the Texas Department of Housing and Community Affairs ("TDHCA"), 507 Sabine, Austin, Texas. Don Stouder presided, and Tim Irvine recorded the minutes. The following directors, constituting a quorum, were in attendance: Don Stouder, Jack Davis and Cary Yates. The following directors were absent: Joan Tavarez and Clement "Pete" Moreno. Bobbie Hill, Executive Director of the Division, was also present.

The following members of Division staff were present: Kassu Asfaw, Cindy Bocz, Ed Cervenka, Sharon Choate, Joe Garcia, Jim Hicks, Tim Irvine, Jerry Jensen, and Barbara Landreth. The following members of TDHCA were present: Bill Dally, David Gaines, and Michael Lyttle. The following members of the public were present: Kevin Jewell and Jody Anderson.

Chairman Stouder opened the meeting by asking if the directors had had an opportunity to review the minutes of the previous meeting, and upon motion of Jack Davis, Duly seconded by Cary Yates, they were duly approved as presented.

Jim Hicks presented to the Board staff recommendations regarding three administrative actions, one involving Clint Luksa, one involving David Zarzour, and one involving Kirby Hawkins. Detailed presentations are in the Board packages. All three recommendations were approved as presented.

Ed Cervenka presented a proposed rule regarding site preparation and site preparation notices. The text is in the Board packages. After an extended discussion the Board approved publication of the proposed rule for public comment but also asked that Division staff bring a proposed rule for presentation at the next meeting that would delineate installers' responsibilities.

Jim Hicks presented a proposed rule regarding guidelines for determining the appropriate range of administrative penalties and other remedies to be pursued under different administrative action scenarios. The text is in the Board packages. The Board approved the proposed rule for publication for public comment.

Barbara Landreth presented a proposed rule regarding procedures for the handling of matters under the Homeowners' Recovery Fund. The text is in the Board packages. The Board approved the proposed rule for publication for public comment.

Jim Hicks presented a proposed rule regarding defined deceptive or improper practices. The text is in the Board packages. The Board approved the proposed rule for publication for public comment.

Joe Garcia presented for final adoption a rule regarding homes acquired after January 1, 2002. The rule contained several non-substantive changes from prior text: Section (a)(1) was re-worded to track the statutory language *verbatim* because the prior language, interpreting this to include cash transactions had raised serious concerns about the possibility of closing cash transactions in this manner (through a title company, attorney, or financial institution). The Division did not wish to recommend promulgating this rule in a manner that could be construed as reaching beyond the statutory language, even though it has been staff's view that the statute, as written, does not contain

any exception for cash transactions. There was also a non-substantive clarification about the trigger events for filing notices of installation. The text is in the Board packages. The Board approved the rule for adoption.

Joe Garcia presented a proposed rule regarding the adoption of certain official forms. The text is in the Board packages. The Board approved the proposed rule for publication for public comment.

Tim Irvine presented the proposed Human Resources Policy. He pointed out the ways that the policy differs from the TDHCA policy. Cary Yates suggested that language be added to clarify that noting in the policy should be construed as subjecting an employee to disciplinary action for refusing to perform an illegal or unethical act. With the proviso that this be addressed in the policy, the policy was approved and adopted.

Executive Director Bobbie Hill reviewed the Board's fee structure, noting that except for certain licensing fees, much of the fee structure had not been changed since the mid-1980s. Jack Davis suggested consideration of fees on the activity involving units manufactured out of state and shipped into Texas. It was asked that Director Hill bring a formal proposal for revision to the various fees for presentation at the next board meeting

At 12:00 noon the Board went into Executive to discuss a personnel matter that also involved pending or threatened litigation with counsel.

At 12:15 p.m. the Board reconvened in open session. Tim Irvine reported that the Board had discussed a settlement proposal regarding pending TCHR and EEOC charges of age and disability discrimination against Gilbert Mercado, an inspector from the Edinburg office. He recommended that the Board approve and direct the Executive Director to negotiate and carry out a settlement agreement with Mr. Mercado involving reinstatement with payment of back wages and payment of reasonable incidental damages. This was duly approved.

The Chair called for any public comment, and Kevin Jewell, appearing on behalf of Consumers' Union, commented on the recent Consumers' Union report on the Division. He noted that the staff is already working to implement some of the recommendations and looking to address the rest as time and staffing permit. He stressed the importance of ongoing involvement as issues in the industry change. He said that he was willing to meet from time to time to provide his views on proposed rule changes but that he did not want Consumers' Union to become a *de facto* consultant. Executive Director Hill described steps already taken by the Division. The Board expressed a high level of commitment to fulfilling the Division's statutory role of providing regulation that results in consumer protection.

There being no further business to come before the Board, the meeting was adjourned at 12:30 p.m.

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Tim Irvine  
Acting Secretary

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Chairman



## DIVISION OF MANUFACTURED HOUSING

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**Rick Perry**  
GOVERNOR

**Bobbie Hill**  
EXECUTIVE DIRECTOR

**BOARD MEMBERS**  
*Presiding Officer*, Don Stouder  
Jack Davis  
Clement P. Moreno  
Joan Tavarez  
Cary Yates

**TO:** Governing Board of the Manufactured Housing Division of the Texas  
Department of Housing and Community Affairs

**FROM:** Jim R. Hicks, Team Leader

**THROUGH:** Timothy K. Irvine, Attorney

**SUBJECT:** Summary of Proposal for Decision

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Dr. Bacon's Custom Homes, Inc. dba Dr. Bacon's Affordable Housing, ("Respondent")

License type/number: RBI-02871. Effective dates March 3, 1988 through January 30, 2003.

Docket Number: 332-03-1541

Complaint Numbers: MHD2001001904-W, MHD2002000595-W, MHD2002001323-IV

### **Background**

It was found and determined by the staff of the Manufactured Housing Division that Respondent had committed the following violations of the Act and the Rules:

1. Respondent failed to comply with the initial report and Warranty Orders of the Executive Director and provide the Department with corrective action, in a timely manner regarding three (3) manufactured homes (owned by Worden, Murphy, and Evans) as required by Sections 14(f) and 14(j) of the Act and Sections 80.131(b) and 80.132(3) of the Rules.
2. Respondent provided warranty service orders on two of the aforementioned homes stating that all work was completed. Upon re-inspection by the Department, it was determined that violations still existed. Therefore, the Respondent provided the Department with false information on a report in violation of Section 7(j)(7) of the Act.

The staff initiated the following administrative actions against Respondent.

Page 2

Final Order

In the Matter of Clint J. Luksa Mobile Homes

Docket No. 332-02-3610

Complaint No. MHD2001001076-W & MHD2002000851-W

After proper notice, an administrative hearing was held on January 30, 2003. An Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH) issued the attached Proposal for Decision (PFD) as a result of that meeting. The PFD upholds the findings and determinations of the staff.

### **Proposal for Decision**

The Proposal for Decision dated March 26, 2003 recommends that Respondent be assessed an administrative penalty of Three Thousand Dollars (\$3,000.00) of which Two Hundred Fifty Dollars (\$250.00) has already been paid leaving a remaining balance of Two Thousand Seven Hundred Fifty Dollars (\$2,750.00).

### **Recommendation**

It is recommended that the Board approve the following administrative action with respect to the Respondent, as supported by the record and the PFD.

Respondent be assessed an administrative penalty of Three Thousand Dollars (\$3,000.00) of which Two Hundred Fifty Dollars (\$250.00) has already been paid leaving a remaining balance of Two Thousand Seven Hundred Fifty Dollars (\$2,750.00).

**DOCKET NO. 332-03-1541**  
**COMPLAINT NO. MHD2001001904-W, MHD2002000595-W and MHD2002001323-IV**

THE MANUFACTURED HOUSING	§	
	§	
DIVISION OF THE TEXAS	§	BEFORE THE
	§	
DEPARTMENT OF HOUSING AND	§	GOVERNING BOARD OF THE
	§	
COMMUNITY AFFAIRS	§	MANUFACTURED HOUSING DIVISION
	§	
VS. DR. BACON’S CUSTOM HOMES, INC.	§	OF THE TEXAS DEPARTMENT OF
	§	
DBA DR. BACON’S AFFORDABLE	§	HOUSING AND COMMUNITY AFFAIRS
	§	
HOUSING		

**FINAL ORDER**

**I. PREAMBLE**

**CAME ON TO BE CONSIDERED**, the matter of the enforcement action identified as MHD2001001904-W, MHD2002000595-W and MHD2002001323-IV, *In the Matter of the Complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Dr. Bacon's Custom Homes, Inc. dba Dr. Bacon's Affordable Housing*, pursuant to the Texas Manufactured Housing Standards ACT, TEX. REV. CIV. STAT. ANN. art. 5221f (“Act”); Chapter 2306 of the TEX. GOVT. CODE ANN. ch. 2306 (“Ch. 2306”); and the Administrative Procedures Act, TEX. GOVT. CODE ANN. ch. 2001 (“ch. 2001”). The Governing Board issues this Final Order based on the Findings of Fact and Conclusions of Law set forth in the Proposal for Decision of the Administrative Law Judge in this case which is hereby adopted in its entirety (a copy of which is attached). The Board’s vote in this case(s) was \_\_\_\_\_ for \_\_\_\_\_ against, and \_\_\_\_\_ abstention(s).

**II. ORDER**

**NOW, THEREFORE, IT IS ORDERED BY THE GOVERNING BOARD OF THE MANUFACTURED HOUSING DIVISION OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:**



1. Respondent be assessed an administrative penalty of Three Thousand Dollars (\$3,000.00) of which Two Hundred Fifty Dollars (\$250.00) has already been paid leaving a remaining balance of Two Thousand Seven Hundred Fifty Dollars (\$2,750.00). for violations of the Act and Rules as detailed in the Proposal for Decision;
2. Respondent shall pay the penalty to the Texas Department of Housing and Community Affairs within thirty (30) days of the date of this FINAL ORDER. The penalty payment shall be mailed to Texas Department of Housing and Community Affairs, PO Box 12489, Austin, TX 78711-2489;
3. **In the event the final decision is appealed by the Respondent, the full cost of the preparation of the transcript and all administrative costs authorized by Ch. 2001, are hereby assessed against the Respondent; and**
4. The determination of the Texas Department of Housing and Community Affairs in the above-captioned matter is approved. The Respondent **SHALL CEASE AND DESIST** from violating the Act and Rules of the Texas Department of Housing and Community Affairs.

SIGNED AND ENTERED this \_\_\_\_\_ day of April, 2003.

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Presiding Officer  
Governing Board of the Manufactured Housing Division  
Texas Department of Housing and Community Affairs

#### **CERTIFICATION**

I certify that a true and correct copy of the forgoing has been sent by U.S. certified mail (7001 2510 0007 6863 7962), return receipt requested, to Dr. Bacon's Custom Homes, Inc. dba Dr. Bacon's Affordable Housing, 13609 North IH-35, Austin, TX 78753 on this the \_\_\_\_\_ day of April, 2003.

/s/ \_\_\_\_\_  
Nancy Stone, Complaint Specialist

# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
**Chief Administrative Law Judge**

March 26, 2003

Ms. Bobbie Hill- Executive Director  
Manufactured Housing Division  
Texas Department of Housing and Community Affairs  
507 Sabine, Ste 400  
Austin, Texas 78711

**HAND DELIVERY**

**RE: Docket No. 332-03-1541 ; Manufactured Division of the Texas Department of Housing and Community Affairs vs. Dr. Bacon's Custom Homes, Inc., d/b/a Dr. Bacon's Affordable Housing.**

Dear Ms. Hill:

Enclosed please find the Proposal for Decision in the above-referenced cause for the consideration of the Texas Department of Housing and Community Affairs. Copies of the Proposal are being sent to Jim Hicks, Resolution Supervisor for the Texas Department of Housing and Community Affairs, and to Dwayne R. Bacon, Respondent. For reasons discussed in the proposal, the Administrative Law Judge concurs with Staff's recommendation that the Texas Department of Housing and Community Affairs, (Department) should assess an administrative penalty against the Respondent for each of the allegations.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Director ten days after the party receives the Proposal for Decision. Replies to exceptions should be filed ten days thereafter. A party filing exceptions, replies, and briefs must serve a copy on the State Office of Administrative Hearings and the other party hereto.

Sincerely,

/s/

James W. Norman  
Administrative Law Judge

JWN/all  
Enclosure  
xc:

Rommel Corro, Docket Clerk, State Office of Administrative Hearings - **HAND DELIVERY**  
Jim Hicks, Dispute Resolution Manager, Texas Department of Housing and Community Affairs - **HAND DELIVERY**  
Nancy Stone, Resolution & Enforcement Coordinator, Texas Department of Housing and Community Affairs - **HAND DELIVERY**  
Dwayne R. Bacon, President-Dr. Bacon's Custom Homes, Inc., 2925 E. Ben White Blvd., Austin, Texas 78741 - **VIA REGULAR MAIL**

Post Office Box 13025 ◆  
(512) 475-4993

William P. Clements Building  
300 West 15th Street, Suite 052  
Docket (512) 475-3445  
<http://www.soah.state.tx.us>

◆ Austin, Texas 78711-3025  
Fax (512) 475-4994

**SOAH DOCKET NO. 332-03-1541**

<b>TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, Petitioner</b>	§ § § § § § § § § § § §	<b>BEFORE THE</b>
<b>V.</b>		<b>STATE OFFICE OF</b>
<b>DR. BACON’S CUSTOM HOMES, INC., d/b/a DR. BACON’S AFFORDABLE HOUSING, Respondent</b>		<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Texas Department of Housing and Community Affairs (Department) manufactured housing division staff (Staff) brought an action against Dr. Bacon’s Custom Homes, Inc., d/b/a Dr. Bacon’s Affordable Housing (Respondent), based on three allegations that it violated the Texas Manufactured Housing Standards Act (the Act) and Department rules by not properly installing a home and by not complying with Department orders or providing the Department with completed work orders in a timely manner for three homes.

The Department initially sought a revocation of the Respondent’s license, a \$1,000 administrative penalty for each allegation, and \$200 for two re-inspections to determine whether corrections were made. The Department withdrew its request for revocation when the Respondent stated into the hearing record its agreement to voluntarily surrender its license in lieu of revocation proceedings. The Respondent stipulated to two of the Department’s allegations, but contested the third. It also argued that the requested penalty amounts were too high.

The Administrative Law Judge (ALJ) concludes the Department proved the third allegation (as well as the first two stipulated allegations) and recommends that it assess a \$1,000 penalty against the Respondent for each allegation, for a total of \$3,000. The ALJ does not recommend that the Department recover \$200 for re-inspections because that matter was not alleged in the Notice of Hearing.

**I. Procedural History**

On January 30, 2003, a hearing convened before James W. Norman at the State Office of Administrative Hearings (SOAH), 300 West 15th Street, Austin, Texas. Resolution Supervisor Jim R. Hicks represented Staff. The Respondent appeared and was represented by its president, Dwayne R. Bacon. This is the second hearing on this matter, the first having resulted in a default against the Respondent after it failed to appear. The Department reopened that hearing when the Respondent

asked that it be allowed to present its case. This hearing was left open until January 31, 2003, for the Department to submit an additional evidentiary citation; it closed on that date. As there were no contested issues concerning notice or jurisdiction, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

## II. Discussion

### A. Allegations Concerning Sheila Worden and Alice C. Murphy Homes

As indicated above, the factual matters for the first two allegations were stipulated. As a result, the fact findings and legal conclusions in relation to the referenced allegations are set forth in the findings of fact and conclusions of law. The appropriate penalty for these allegations and the third allegation is discussed at Part II.D. below.

### B. Allegations Concerning Gala Evans

Mr. Bacon chose not to testify at the hearing and did not present any other evidence. The Department submitted documentary evidence which showed the following:

A January 24, 2002, inspection of Gala Evans' home concluded:

1. the consumer had not received a warranty for her home;
2. the master bedroom and a half center bedroom interior doors rubbed the striker plate door jamb;
3. the floor decking in the utility room, kitchen, and hallway to the utility room was loose in areas, wavy, and was weak when walked on and there was a leak in the air conditioner drain line (referred to as "Item three");
4. the bottom board was open into the floor cavity at the air conditioning lines and at the electrical cross over; and
5. the frames were not bonded at the rear-end bonding lugs.<sup>1</sup>

The Department issued a "warranty order" on January 28, 2002, directing the Respondent to perform the warranty services and fix the defects listed above within 40 calendar days of its receipt of the order. The order said a failure to perform the services would result in administrative disciplinary proceedings. The Respondent received the order on January 30, 2002.<sup>2</sup>

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<sup>1</sup>Ex. F.

<sup>2</sup>*Id.*

The Department received letters from the Respondent indicating that warranty service work had been performed on February 19, 2002, and July 10, 2001. However, the service orders did not properly address Item three.<sup>3</sup>

In a conversation with the Department on June 17, 2002, Ms. Evans said the Respondent had not provided warranty service after the January 24, 2002, inspection. On May 19, 2002, the Respondent had promised to have the repairs to Item three completed by May 30, 2002, but did not do so. Later, the Respondent exceeded another deadline, July 17, 2002, by not completing the repairs.<sup>4</sup> As of the date of the hearing, the Department had not received warranty service orders from the Respondent fully addressing Item three.<sup>5</sup>

Mr. Bacon argued, but did not testify, that he should not be responsible for a water leak to the air conditioner drain line and resultant water damage because the line was chewed through by a rat. The air conditioner installer wrote on February 8, 2002, that a line “had apparently been chewed through and was leaking;” the installer replaced the line.<sup>6</sup> Mr. Bacon contended that Ms. Evans should seek reimbursement from her insurance company.

The Department presented live testimony from Travis Holcomb, an eleven-year veteran Department investigator who has inspected over 10,000 homes. He inspected Ms. Evans’ home on January 24, 2001, but saw nothing to lead him to believe a rat had caused a problem. During a July 25, 2002, inspection, he looked for evidence of rat infestation and damage, but could find none. He has inspected homes with rodent problems before and can recognize signs of those problems.

Mr. Holcomb stated his professional opinion that a drain line from the air conditioner was crimped rather than turned at a ninety degree angle. Both the homeowner and the manufacturer said they thought the line leaked because it had been crimped. Mr. Holcomb said that explanation was consistent with the damage he saw. He asserted that a retailer is responsible for an improperly installed air conditioner in a mobile home.

C. Appropriate Penalty

Dr. Bacon argued that any administrative penalty he receives should be light. He maintained that previous agreed orders against him from the Department involved small advertising “glitches” and other minor matters. He said, but did not testify, that he has never been sued in 25 years of business and that his manager told him the problems in the first two allegations had been remedied.

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<sup>3</sup>Exs. G, H, and I. It appears the Department concluded that all problems except Item three were satisfactorily resolved.

<sup>4</sup>Ex. J.

<sup>5</sup>Ex. L.

<sup>6</sup>Ex. H.

Mr. Hicks testified the Department is asking the maximum penalty, \$1000 per violation, for each allegation. He said Mr. Bacon has already paid \$250 for the allegation regarding Ms. Evans.

Mr. Hicks contended the Department's request is justified under its rules at 10 TEX. ADMIN. CODE (TAC) § 80.127(b), which lists the following standards to determine the amount of a sanction or penalty: the kind or type of and seriousness of the violation; the history of, kind of, and length of time between previous violations; the amount necessary to deter future violations; the efforts made to correct the violation or previous violations; and any other matters that justice may require.<sup>7</sup> Mr. Hicks said the Department's request for the maximum penalty is based on Mr. Bacon's history of violations, the nature of current violations, and the absence of the Respondent's efforts to correct the violations.

Mr. Hicks testified the Department is also requesting \$100 for each of two re-inspections it had to perform to determine whether corrections were made.

D. Analysis

The ALJ concludes the Department proved the allegation relating to Gala Evans (in addition to the stipulated matters in the Sheila Worden and Alice C. Murphy allegations). The opinions of Mr. Holcombe, the air conditioner manufacturer, and Ms. Evans that the drain line leaked because it was crimped during installation was more persuasive than the air conditioner-installer statement that the drain line had "apparently" been chewed through. Mr. Holcomb's opinion was stated under oath and based on eleven years of inspection experience.

The Respondent's failure to abide by its warranty obligations<sup>8</sup> after being ordered to do so by the Department or to provide the Department with completed work orders (in relation to all three allegations) was a violation of § 14(f) of the Act (failure, without good cause, to provide warranty service within a reasonable time allowed by Department rules), § 14(j) of the Act (failure to abide by report and warranty service orders of the Department director), 10 TAC § 80.131(b) (retailers must perform their warranty obligations within a reasonable period of time), and 10 TAC § 80.132(3) (when service or repairs are completed, the retailer must forward to the Department documentation that the service or repairs have been completed.) In addition, the Respondent did not properly install the Alice C. Murphy home in violation of § 14(d) of the Act (the retailer must warrant that the installation of the home will be in accordance with all standards, rules, orders and requirements of the Department) and submitted a false report to the Department (which is a ground for disciplinary action under § 7(j)(7) of the Act).

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<sup>7</sup>Essentially the same standards are stated at TEX. Occ. Code Ann. § 2306.604(e).

<sup>8</sup>Section 14(d) of the Act, TEX. REV. CIV. STAT. ANN. art. 5221f, requires the retailer to warrant that the installation of a new HUD manufactured home will be completed in accordance with all standards, administrative orders, and requirements of the Department, and that appliances and equipment will be installed in accordance with manufacturer instructions or specifications.

The \$1000 administrative penalty per allegation requested by the Department staff is reasonable and should be assessed given the seriousness of the violations and the Respondent's failure to fix the problems. All three allegations involved warranty breaches. The Alice C. Murphy case also involved improper installation. There were pictures of the Gala Evans home in the evidentiary record showing extensive damage.<sup>9</sup> All three homeowners said the corrections had not been made as of the day of the hearing, January 28, 2003.<sup>10</sup>

There was also evidence of previous violations by the Respondent. The Respondent signed an agreed order dated July 27, 2001, finding that he failed to deliver a title to a consumer and failed to submit a Form T/Installation for the home; it paid a \$1000 administrative penalty. It signed agreed orders on April 21, 1998, February 9, 1998, and June 2, 1997, finding advertising violations and an agreed order on April 8, 1998, finding it did not install a home properly; those violations resulted in cease and desist orders.

The ALJ does not recommend that the Department recover \$200 for re-inspections because that was not alleged in the Notice of Hearing as a matter to be considered.

### **III. Findings of Fact**

1. At the time of the hearing in this docket, Dr. Bacon's Custom Homes, Inc. (Respondent) held License Number RBI-02871.
2. In relation to problems with a home it sold to Sheila Worden, HUD Label PFS0681726/27, the Respondent failed to properly comply with the initial report and warranty orders of the Texas Department of Housing and Community Affairs (Department) and provide the Department with copies of completed work orders in a timely manner.
  - a. The Department inspected Ms. Worden's home on August 29, 2001, and issued a warranty order specifying the corrective action required.
  - b. The Respondent received the warranty order on September 6, 2001, stating an October 16, 2001, deadline for warranty service work to be performed and a November 5, 2001, deadline for submitting warranty service orders to the Department.
  - c. The Respondent requested and was granted an extension of the October 16, 2001, deadline until October 23, 2001.

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<sup>9</sup>Ex. C.

<sup>10</sup>Ex. L.

- d. The Respondent provided warranty service orders to the Department on October 25, 2001, indicating that warranty service had been performed on or before that date.
  - e. The Department performed a re-inspection on January 15, 2002; there were still outstanding violations because items four through eight of the August 29, 2001, inspection still required corrective action.
  - f. Required corrective action had still not been performed as of the date of the hearing.
3. In relation to problems with a home it sold to Alice C. Murphy, HUD Label RAD1331749/50, the Respondent failed to properly install the home, to comply with the initial report and warranty orders of the Department, and provide the Department with copies of completed work orders in a timely manner.
- a. The Department inspected Ms. Murphy's home on February 27, 2002, and issued a warranty order specifying the corrective action required.
  - b. The Respondent received the warranty order on March 9, 2002, stating an April 22, 2002, deadline for warranty service work to be performed and a May 2, 2002, deadline for submitting warranty service orders to the Department.
  - c. The Respondent provided warranty service orders to the Department on April 30, 2002, indicating that warranty service had been performed on April 21, 2002.
  - d. The Department performed a re-inspection on May 9, 2002; there were still outstanding violations because all the items from the original February 27, 2002, inspection still required corrective action.
  - e. The Respondent submitted a false report to the Department.
  - f. Required corrective action had still not been performed as of the date of the hearing.
4. In relation to problems with a home it sold to Gala Evans, HUD Label RAD1307657/58, the Respondent failed to properly comply with the initial report and warranty orders of the Department and provide the Department with copies of completed work orders in a timely manner.
- a. The Department inspected Ms. Evans' home on January 24, 2002, and issued a warranty order specifying the corrective action required.
  - b. The Respondent received the warranty order on January 30, 2002, stating a March 12, 2002, deadline for warranty service work to be performed and a March 22, 2002, deadline for submitting warranty service orders to the Department.



- c. The Respondent provided warranty service orders to the Department, indicating that warranty service had been performed on July 10, 2001, and February 19, 2002.
  - d. The warranty service orders did not properly address item three of the original inspection, involving extensive floor damage caused by a drainage-line leak that resulted from an improperly installed air conditioner.
  - e. The Respondent represented that it had corrected all matters noted on the January 24, 2002, inspection, but did not do so.
  - f. As of the date of the hearing, the Department had not taken corrective action for item three of the original inspection.
5. The matters addressed in Findings of Fact Nos. 2 through 4 were serious because they materially interfered with the home owners' ability to use their homes, including failures to properly install homes and appliances.
  6. The Respondent has a history of five violations in the last six years.
  7. The Respondent made inadequate or no efforts to correct the matters described in Findings of Fact Nos. 2 through 4.
  8. The hearing in this docket was set by the Department, on the Respondent's request, after the Respondent failed to appear at a hearing on the same allegations held on September 25, 2002, in Docket No. 332-02-3943; that hearing resulted in a default.
  9. All parties received not less than ten days notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
  10. All parties were allowed to respond and present evidence and argument on each issue involved in the case.
  11. The Respondent has already paid \$250 in administrative penalties in relation to the matter described in Finding of Fact No. 4.
  12. The Department requested that the Respondent be ordered to pay \$100 each for two re-inspections that were necessary to determine whether corrective measures were taken, but the Department did not state that matter in its notice of hearing.

## **II. Conclusions of Law**

1. The Department has jurisdiction over this matter pursuant to the Texas Manufactured Housing Standards Act (the Act), TEX. REV. CIV. STAT. ANN. art. 5221f, § 7(j) and (k); and TEX. OCC. CODE ANN. § 2306.604.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was provided to the Respondent pursuant to TEX. GOV'T CODE ANN. ch. 2001.
4. Based on Findings of Fact Nos. 2 through 4, the Respondent violated § 14(d), (f), and (j) of the Act and 10 TEX. ADMIN. CODE §§ 80.131(b) and 80.132(3).
5. Based on Conclusion of Law No. 4, there are grounds to take disciplinary action against the Respondent under TEX. GOV'T CODE ANN. § 2306.604.
6. Based on Findings of Fact Nos. 2 through 4 and 11, and Conclusions of Law Nos. 4 and 5, the Department should assess a total of \$3,000 in administrative penalties against the Respondent, and in doing so should collect an additional \$2,750, taking into account the \$250 already paid.
7. Because there was no hearing notice of the Department's request to be reimbursed for re-inspections, there should be no order on that matter.

**SIGNED this 26<sup>th</sup> day of March, 2003.**

/s/  
**JAMES W. NORMAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

## **Proposed Increase to Fees in §80.20 and §80.202**

### **SUBCHAPTER C. FEE STRUCTURE**

#### **§80.20. Fees.**

- (a) Annual License Fees and Renewal Fees:
  - (1) \$425 for each manufacturer's plant license;
  - (2) \$275 for each retailer's sales license;
  - (3) \$275 for each rebuilder's license;
  - (4) \$175 for each broker's license;
  - (5) \$175 for each installer's license; and
  - (6) \$100 for each salesperson's license.
  
- (b) Installation Fees:
  - (1) There is a reporting fee of **\$100** ~~[\$20]~~ for the installation of each manufactured home which is not installed on a permanent foundation.
  - (2) There is a reporting fee of **\$150** ~~[\$100]~~ for the installation of a manufactured home permanently affixed to real estate or on a permanent foundation.
  - (3) Installation fees shall be submitted to the department as follows:
    - (A) When the installation occurs in conjunction with a title transfer, the fee must be submitted to the department along with the application for title and the Notice of Installation Affidavit; or
    - (B) For secondary moves (when there is no title transfer), the fee must be submitted to the department along with a completed Notice of Installation Affidavit within ten (10) working days following the installation date.
  - (4) Fee distributions to local governmental entities performing inspection functions pursuant to contract with the department shall be made in accordance with department procedures and the provisions of the contract.

- (c) Alteration Fee: There is a fee of ~~\$60~~ ~~[\$30]~~ per hour or a minimum fee of ~~\$60~~ ~~[\$30]~~ for the inspection of alterations made upon the structure, plumbing, heating, or electrical systems of manufactured homes. The fee is paid to the department by the person making the alterations. The person shall also reimburse the department for mileage and per diem incurred by department personnel to and from the place of inspection.
- (d) Seal Fee: There is a fee of ~~\$35~~ ~~[\$15]~~ for the issuance of Texas Seals. Any person who sells, exchanges, lease purchases, or offers for sale, exchange, or lease purchase a used HUD-Code manufactured home manufactured after June 15, 1976, that does not have a HUD label affixed, or a used mobile home manufactured prior to June 15, 1976, that does not have a Texas Seal affixed shall file an application to the department for a Texas Seal. The application shall be accompanied by the seal fee of ~~\$35~~ ~~[\$15]~~ per section made payable to the department.
- (e) Monitoring Fee: There is a fee, as required by HUD, to be paid by each manufacturer in this state for each HUD-Code manufactured home produced. The monitoring inspection fee is established by the secretary of HUD, (pursuant to 24 CFR §3282.307) who shall distribute the fees collected from all manufacturers among the approved and conditionally approved states based on the number of new homes whose first location after leaving the manufacturing plant is on the premises of distributor, retailer, or purchaser in that state, and the extent of participation of the state in the joint monitoring program established under the National Manufactured Housing Construction and Safety Standards Act of 1974.
- (f) Homeowner's Temporary Installer's License: There is a fee of ~~\$100~~ ~~[\$40]~~ for the issuance of a homeowner's temporary installer's license, which shall also include the cost of the installation inspection. The fee shall be made payable to the department.
- (g) Education Fee: Each attendee at the course of instruction in the law and consumer protection regulations for license applicants shall be assessed a fee of \$250. If a manufacturer requests the training be performed at his or her facility, the manufacturer shall reimburse the department for the actual costs of the training session (educational fee plus actual cost of travel).
- (h) Habitability Inspection:
  - (1) There is a fee of ~~\$150~~ ~~[\$100]~~ for the inspection of a manufactured home which is to be titled for use as a residence after the title has been previously canceled for business use or to become real estate. The inspection is to determine if the home is habitable as defined by §8 of the Standards Act. The fee shall accompany a Form A to apply for reinstatement of the title along with those documents set forth in §80.207 of this title (relating to Reinstatement of Canceled Documents of Title). The person requesting the inspection for the use change of a manufactured home shall be charged for mileage and per diem incurred by department personnel traveling to and from the location of the manufactured home. The inspector shall advise the

consumer of the charges incurred and no title shall be issued until all fees have been paid.

- (2) There is a fee of ~~\$200~~ ~~[\$125]~~ for the plan review and inspection of a salvaged manufactured home which is to be rebuilt to determine if the home is habitable for reinstatement of the title. The fee shall accompany a written request for the inspection. The rebuilder shall also be charged for mileage and per diem incurred by department personnel traveling to and from the location of the home. See §80.66 of this title (relating to Rebuilding or Repairing a "Salvaged" Manufactured Home). The inspector shall advise the rebuilder of the charges incurred and no title shall be issued until all fees have been paid.
- (i) Consumer Complaint Inspection:
    - (1) There is a fee of ~~\$150~~ ~~[\$100]~~ for the initial inspection of a consumer's home in accordance with a consumer complaint when requested by a license holder or party other than a consumer. The fee shall accompany a written request for the inspection.
    - (2) There is a fee of ~~\$150~~ ~~[\$100]~~ for the reinspection of a consumer's home. The fee shall be paid by the party deemed responsible by the department.
  - (j) Titles: Fees relating to titles and title transactions are set forth in §80.202 of this title (relating to Fees for Title Documents).

### **SUBCHAPTER G. TITLING**

#### ***§80.202. Fees for Title Documents.***

- (a) Title Transaction Fees.
  - (1) There shall be a fee of ~~\$55~~ ~~[\$35]~~ for each title transaction. The fee shall be submitted in the form of a cashier's check or money order payable to the Texas Department of Housing and Community Affairs. The fee shall accompany the required documents forwarded to the Manufactured Housing Division of the department at its principal office in Austin. Ten dollars of the fee for each title transaction shall be deposited in the HORF. A title transaction is the issuance, reissuance, reinstatement, cancellation or recordation of:
    - (A) a document of title;
    - (B) Certificate of Attachment;
    - (C) a salvage title;

- (D) a Manufacturer's Certificate of Origin;
  - (E) the filing of an inventory financing lien;
  - (F) the filing of foreclosure documents or a repossession affidavit; and
  - (G) the recording of a transfer of ownership from a lienholder to or through a retailer.
- (2) There shall be a separate filing fee of \$150 [~~\$100~~] when a certification form is provided for a home that is permanently affixed.
- (3) There shall be a separate transaction fee of \$55 [~~\$35~~] for Quick Title Service related to the issuance of titles in addition to the \$55 [~~\$35~~] for each title transaction. Quick Title Service shall be defined as the processing of the documents related to a title transfer within three (3) working days from the day the application is received in the Manufactured Housing Division. Title transfer documents must be received in good order in the department's manufactured housing division in Austin for the issuance of a manufactured housing title on a Quick Title Service basis. Title transfer documents which are not in good transfer order or which are incomplete will be returned to the sender, and the title application will be processed within three (3) working days from the date that correct and completed documents are received. All quick title applications must be submitted by overnight mail or delivered in-person.
- (b) If a correction of a document is required as a result of a mistake by the department, the issuance of a new document shall not require a fee.
- (c) All persons licensed with the department as a manufacturer, retailer, broker, or installer may submit company or business firm checks in payment of any fee described herein. All state or federally chartered banks, savings banks or savings institutions and all commercial lenders or mortgage bankers who extend credit for the retail purchase of manufactured homes may also pay any fees with company or business firm checks at the discretion of the department. All checks shall be made payable to the Manufactured Housing Division of TDHCA.
- (d) One check may be submitted in payment of the aggregate fees for multiple transactions or the issuance of more than one document. When multiple applications are submitted, a form prescribed by the department must be included which shall identify each application and reconcile the fee for each application with the total amount of the check.
- (e) There shall be a fee of \$20 [~~\$10~~] for any title search which shall be paid to the department by the requesting party in the form of a cashier's check or money order. The request must be in writing and must state the specific information being requested.