



Texas Department of Housing and Community Affairs
Manufactured Housing Board Meeting
on November 5, 2002

Don Stouder, Chair

Jack Davis, Member
Clement "Pete" Moreno, Member

Joan Tavarez, Member
Cary Yates, Member

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

November 5, 2002

ROLL CALL

	<u>Present</u>	<u>Absent</u>
Don Stouder, Chair	_____	_____
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, Room 437, Austin, Texas 78701
November 5, 2002 2:00 p.m.**

AGENDA

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

Don Stouder
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 Possible Approval of Minutes of Board Meeting of August 26, 2002. Don Stouder
- Item 2. Presentation, Discussion and Consideration of Possible Approval of the State Office of Administrative Hearings (SOAH) Proposal for Decision: Don Stouder
- (a) Approval of Manufactured Housing Case:
 In the Matter of the Complaint of TDHCA vs Aus-Tex Parts and Service Inc. dba Village Homes, Docket Number: 332-02-3881, Complaint Nos: MHD2001000201-AD and MHD2002001295-AD.

REPORT ITEM

Tim Irvine

Discussion of proposed new rule §80.136.

PUBLIC COMMENT

Don Stouder

ADJOURN

Don Stouder
Chair

To access this agenda or request information, please visit our website at www.tdhca.state.tx.us or contact Nancy Stone, TDHCA, 507 Sabine, Austin, Texas 78701, 512-475-2894, 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 Monday, August 26, 2002, at 10:00 a.m., a duly called meeting of the Board of Directors of the Division of Manufactured Housing (“MHD”) of the Texas Department of Housing and Community Affairs (“TDHCA”) was held in the fourth floor board room of TDHCA’s offices at 507 Sabine, Austin, Texas. Don Stouder presided, and Cindy Bocz recorded the minutes. The following directors, constituting a quorum, were present and voting: Don Stouder (Presiding Officer), Jack Davis, Joan Tavarez, and Cary Yates.

The following members of the MHD staff were present: Bobbie Hill (Executive Director), Kassu Asfaw, Ed Cervenka, Sharon Choate, James Hicks, Tim Irvine, and Nancy Stone. The following members of the TDHCA staff were present: David Aldrich, Bill Dally, Curtis Howe, and Michael Lyttle. Four members of the general public were also in attendance.

Upon motion of Jack Davis, duly seconded by Joan Tavarez, the minutes of the previous meeting were approved as presented.

Bill Dally, Chief Financial Officer for TDHCA, presented the proposed FY 2003 budget. There were a number of questions, including a request for information as to whether the budget components, especially the salary component, and the overall percentage increase were in line with the proposed budget for TDHCA and those of “peer group” agencies. A question concerning the basis for the proposed increase in salary expense was reviewed, but there was no completely adequate response available without going back and reconstructing on a salary-by-salary basis the changes from FY 2002 to FY 2003. It was asked that the peer group data be provided as soon as it is available, estimated to be within ninety (90) days. Projected increases in revenue were discussed, and Bobbie Hill pointed out that in large part these projections relate to the revised schedule of fees taking effect as of September 1, 2002.

Upon motion of Jack Davis, duly seconded by Joan Tavarez, the proposed FY 2003 budget was approved.

Tim Irvine presented a proposed 10 TAC §80.136 for which board approval to publish for comment was sought. Jack Davis expressed concern about any rules that addressed the issue of manufactured homes being treated as chattels. Tim Irvine reviewed the proposed rules on a section by section basis.

Upon motion of Cary Yates, duly seconded by Jack Davis, the proposed rules were approved for publication for comment with subsection (c) deleted.

At 11:12 a.m. the Board went into Executive Session with the Executive Director and the MHD attorney to discuss potential or threatened litigation. The Executive Session concluded at 11:20 a.m., and the members of the general public and the MHD staff rejoined the meeting.

Mr. Stouder called for public comments. Curtis Howe gave a high level overview of possible forthcoming recommendations regarding a new computing system for MHD. Mr. Stouder asked that any formal presentation address issues of cost and the projected efficiencies. There were no other public comments.

There being no further business to come before the Board, the meeting was adjourned at 11:37 a.m.

Cindy Bocz, Secretary

Don Stouder, Chairman

Agenda Action Item No. 2(a)



DIVISION OF MANUFACTURED HOUSING

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 Hicks, Resolution Supervisor

THROUGH: Timothy K. Irvine, Attorney

SUBJECT: Summary of Proposal for Decision

Aus-Tex Parts and Service Inc. dba Village Homes, (“Respondent”)

License type/number: RBI-3223. Effective dates September 20, 1991 through September 20, 2003.

Docket Number: 332-02-3881

Complaint Numbers: MHD2001000201-AD, MHD2002001295-AD

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 properly advertise on three (3) separate occasions as required by Section 6(j) of the Act (advertising standards) and Section 226.24 of the Federal Truth in Lending Regulations, 12 C.F.R. (the Federal Truth in Lending Act).
2. Specifically, Respondent placed an advertisement in the Austin American Statesman, on Saturday, May 4, 2002, listing “\$500.00 down buys any home”. The advertisement did not disclose the Annual Percentage Rate, the amount of monthly payments, and the number of payments or the period of repayment.

3. Respondent placed another advertisement in the Austin American Statesman, on Saturday, May 4, 2002, listing "\$650.00 Rent or Buy". The advertisement did not disclose the amount of Down Payment, the Annual Percentage Rate, the amount of monthly payments, and the number of payments or the period of repayment.
4. Respondent also placed an advertisement on a banner, on October 11, 2000, listing monthly payment of \$399.00. The advertisement did not disclose the amount of down payment, the Annual Percentage Rate, and the number of payments or the period of repayment.

The staff initiated the following administrative actions against Respondent.

After proper notice, an administrative hearing was held on September 10, 2002. 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 October 1, 2002, recommends that Respondent be assessed an administrative penalty of Two Thousand Five Hundred Dollars (\$2,500.00).

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 Two Thousand Five Hundred Dollars (\$2,500.00).

DOCKET NO. 332-02-3881
COMPLAINT NO. MHD2001000201-AD and MHD2002001295-AD

THE MANUFACTURED HOUSING	§	BEFORE THE
	§	
DIVISION OF THE TEXAS	§	GOVERNING BOARD OF THE
	§	
DEPARTMENT OF HOUSING AND	§	MANUFACTURED HOUSING DIVISION
	§	
COMMUNITY AFFAIRS	§	OF THE TEXAS DEPARTMENT OF
	§	
Vs. AUS-TEX PARTS AND SERVICE INC.	§	HOUSING AND COMMUNITY AFFAIRS
DBA VILLAGE HOMES		

FINAL ORDER

I. PREAMBLE

CAME ON TO BE CONSIDERED, the matter of the enforcement action identified as MHD2001000201-AD and MHD2002001295-AD, *In the Matter of the Complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Aus-Tex Parts and Services Ltd. dba Village Homes*, 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 \$2,500.00 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 _____, 2002.

Don Stouder, 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 (Number 7002 0860 0001 0643 3482), return receipt requested, to Aus-Tex Parts and Services Ltd. dba Village, 6934 E. Ben White Blvd., Austin TX 78741 and by U.S. certified mail (Number 7002 0860 0001 0643 3475), return receipt requested, to Aus-Tex Parts and Services Ltd. dba Village, P.O. Box 17547, Austin TX 78760 on this the _____ day of _____, 2002.

/s/ _____
Josh Alexander, Administrative Technician

State Office of Administrative Hearings



**Shelia Bailey Taylor
Chief Administrative Law Judge**

October 1, 2002

Ms. Bobbie Hill
Executive Director
Texas Department of Housing and Community Affairs
507 Sabine
Austin, Texas 78701

HAND DELIVERY

**RE: Docket No. 332-02-3881; Texas Department of Housing and Community Affairs
vs. Aus-Tex parts and Services Ltd. d/b/a Village Homes**

Dear Ms. Hill:

Enclosed please find the Proposal for Decision in the above-referenced case for your consideration. Copies of the Proposal are being sent to Jim R. Hicks, Representative for the Texas Department of Housing and Community Affairs, and to Aus-Tex Parts and Services d/b/a Village Homes, Respondent. For reasons discussed in the Proposal, the Administrative Law Judge recommends that the Aust-Tex Parts and Service d/b/a Village Homes be assessed an administrative penalty of \$2,500.00.

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 in accordance with the applicable deadlines. 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/

Craig Bennett
Administrative Law Judge

CB/ce
Enclosure

xc: Rommel Corro, Docket Clerk, State Office of Administrative Hearings - **HAND DELIVERY**
Jim Hicks, Texas Department of Housing and Community Affairs - **HAND DELIVERY**
Aus-Tex Parts and Services d/b/a Village Homes PO Box 17547, Austin, Texas 78760 - **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

DOCKET NO. 332-02-3881

**THE TEXAS DEPARTMENT OF
HOUSING AND COMMUNITY
AFFAIRS**

Petitioner

VS.

**AUS-TEX PARTS AND SERVICES LTD
d/b/a VILLAGE HOMES**

Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Department of Housing and Community Affairs (Department) brought this case against Aus-Tex Parts and Services Ltd. d/b/a Village Homes (Respondent) alleging that Respondent violated the Texas Manufactured Housing Standards Act by failing to disclose required financing terms in advertisements. After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) finds that Respondent committed the three violations in issue. For the violations, the ALJ recommends a total penalty of \$2,500.00.

I. PROCEDURAL HISTORY

There are no contested issues of notice, jurisdiction, or venue in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

The hearing in this case commenced on September 10, 2002, in the William P. Clements Building, 4th floor, 300 West 15th Street, Austin, Texas 78701, before ALJ Craig R. Bennett. The Department's staff (Staff) appeared and was represented by Jim R. Hicks, Resolution Supervisor, and Nancy Stone, Enforcement Coordinator. Respondent appeared through its co-owner, Donald Dempsey. Evidence was received and the hearing was closed on the same day.

II. DISCUSSION

A. Applicable Law

The Texas Manufactured Housing Standards Act (Act), TEX. REV. CIV. STAT. ANN. art 5221f, proscribes certain conduct and also sets out requirements that must be met by all licensed parties regarding manufactured housing. In particular, Section 6(j) of the Act makes it unlawful "for a retailer or broker to fail to comply with the requirements and provisions of the Texas

Credit Code or the federal Truth-in-Lending Act (TILA) or to advertise any interest rate or finance charge which is not expressed as an annual percentage rate.” Under TILA, if an advertisement sets forth the amount or percentage of any downpayment or the amount of any payment, then the advertisement must also include *all* of the following:

- (i) The amount or percentage of the downpayment.
- (ii) The terms of repayment.
- (iii) The annual percentage rate, using that term, and, if the rate may be increased after consummation, that fact.¹

Failure to include all of that information is a violation of TILA and, thus, the Act.

The Texas Administrative Code provides guidance for assessing administrative penalties when a violation has occurred. In particular, the director of the Department may assess and enforce penalties and sanctions against a person who violates any applicable law, rule, regulation, or administrative order of the Department.² Administrative penalties may not exceed \$1,000 per violation. In determining the amount of a sanction or penalty, the following factors are considered:

- (1) the kind or type of violation and the seriousness of the violation;
- (2) the history of previous violations; the kind or type of previous violations, and the length of time between violations;
- (3) the amount necessary to deter future violations;
- (4) the efforts made to correct the violation or previous violations; and
- (5) any other matters that justice may require.³

The Department, as the party seeking sanctions against the Respondent, has the burden of proving by a preponderance of the evidence that the violations occurred and the appropriate amount of any sanction or administrative penalty.

B. Evidence and Arguments

There are three alleged violations for which Staff seeks penalties. The first allegedly occurred on October 11, 2000, when Staff’s representative Jim Hicks visited the Respondent’s location on Ben White Boulevard in the City of Austin for the purpose of conducting an investigation into potential violations of the Act unrelated to advertising. While at Respondent’s site, Mr. Hicks

¹ 12 C.F.R. 226.24(c).

² 10 TEX. ADMIN. CODE § 80.127(a).

³ 10 TEX. ADMIN. CODE § 80.127(b).

observed that Respondent had a large banner in front which stated “\$399 MONTH DOUBLE WIDE & LOT.” Mr. Hicks testified that there were no other words on the banner that he could observe.⁴ Staff contends that the reference to “\$399 month” reflects a payment amount, thus triggering the requirements of TILA. Because the banner did not contain the loan terms, including terms of repayment and interest rate, Staff argues it was a violation of TILA and, thus, the Act.

Next, Staff presented copies of advertisements placed by Respondent in the classified advertising section of the *Austin American-Statesman* newspaper on May 4, 2002.⁵ There are two advertisements that Staff contends are unlawful. One advertisement contains the statement “\$500 Down Buys ANY Home” without any reference to additional loan terms.⁶ The other advertisement states “\$650 RENT OR BUY”–also without any reference to additional loan terms.⁷ Staff contends that both of these statements are references to either payment amounts or downpayments, thus triggering the provisions of TILA requiring the inclusion of the terms of repayment and the annual percentage rate for the interest on the financing. Because these additional terms were missing from the advertisements, Staff contends the Respondent violated TILA and, thus, the Act.

Staff contends that the maximum administrative penalty of \$1,000 per violation should be imposed, for a total sanction of \$3,000. In support of this, Staff offered evidence showing that Respondent has had three Agreed Final orders entered against it in the last six years, each for advertising violations connected with Respondent’s failure to fully list the information required by TILA.⁸ Given Respondent’s past misconduct, Staff argues, the maximum penalty is warranted.

The Respondent did not deny using or placing the written advertisements or the banner in question. However, the Respondent argued that it has never to its knowledge used a banner that did not have the language required under TILA. It contends that Staff’s pictures of the banner are not of sufficient quality to enable the viewer to determine if the required language was included at the bottom of the banner in smaller print. Respondent argues that it was not able to properly investigate and present the banner as evidence because it was not notified of the complaint until seven months after the banner was supposedly displayed and Staff’s pictures were taken. By that time, Respondent no longer had the banner in its possession. Moreover, Respondent argues that Staff’s investigator, Jim Hicks, did not get closer than 150 feet from the banner to more thoroughly inspect it for the required language and, therefore, his testimony is unreliable.

⁴ Photographs of the banner are in the record under Ex. C, at 4.

⁵ Ex. E, at 2.

⁶ *Id.*

⁷ *Id.*

⁸ Ex. H, at 7-17.

As to the written advertisements, Respondent first argues that the reference to “\$650 RENT OR BUY” was intended to reflect that the customer had the option of either renting the manufactured home for \$650 per month or entering into a rental contract with an option to buy later. The reference to \$650 was not intended to reflect a down payment or a loan payment. Respondent points out that additional language is not required under TILA if a rental amount is listed. As for the other advertisement, Respondent does not necessarily dispute that it was unlawful, but argues that it was not feasible to list all of the different financing terms that might apply because each would be specific to the particular home (of 32 available) that was being purchased. In this circumstance, it argues that it could not list all of the information required under TILA.

Respondent also disputed the amount of the penalty being sought, arguing that it has been prejudiced by Staff’s delay in notifying it of the complaint regarding the banner, thus leaving it unable to defend itself and show that the required language was on the banner. Second, Respondent argues that three discrete incidents which occurred 5-6 years ago do not reflect a pattern of misbehavior that would justify the maximum sanction. Finally, Respondent points out that the language and intent of one of the written advertisements (regarding the \$650 RENT OR BUY language) is ambiguous and not clearly unlawful. In light of these factors, Respondent asserts that it is not appropriate to impose the maximum penalty against it.

C. ALJ’s Analysis

Respondent is in the business of selling manufactured homes and is under the jurisdiction of the Department. Therefore, there is no dispute that the Department has authority to take action against Respondent. Similarly, there is no dispute that TILA is made applicable to advertisements by virtue of Section 6(j) of the Act. So, the only question is whether the three advertisements in question contained wording that triggered the additional language requirements under TILA.⁹ The ALJ concludes that they do.

First, the banner photographed by Staff clearly stated “\$399 MONTH.” The Respondent did not attempt to argue that this reflected a rental payment and, thus, did not trigger the provisions of TILA. Under the circumstances, where the Respondent’s commercial location was primarily a sales lot, the most reasonable interpretation of “\$399 MONTH” is that it was intended to reflect a monthly payment amount to purchase a manufactured home from Respondent. Because it reflected a payment amount, TILA requires that additional financing terms be disclosed. Respondent contends that it is possible that such terms were on the banner in smaller print at the bottom. While the pictures offered by Staff are not perfectly clear, they are clear enough for the ALJ to conclude that there is not any language elsewhere on the banner regarding financing terms. To the extent that the wording was so small as to not be visible to either Mr. Hicks or the ALJ on reviewing the pictures, it is questionable as to whether it would even comply with TILA. But, the ALJ need not reach this issue because Respondent did not affirmatively represent or offer evidence showing that the language was there. Rather,

⁹ Specifically, under 12 C.F.R. 226.24.

Respondent merely raised the possibility that the language might have been there, but there is no way to know because of Staff's delay in notifying Respondent of the alleged violation. While the ALJ does not condone Staff's delay, this does not alter the fact that the pictures and the testimony support the conclusion that no such language was on the sign. Therefore, the ALJ concludes that the banner did not contain the language required under TILA and, as such, was in violation of the Act.

The ALJ also concludes that both written advertisements in the *Austin American-Statesman* violated TILA and the Act. There is no dispute that the reference to "\$500 Down" reflected a downpayment on the purchase of a manufactured home. As such, TILA required that additional financing terms be included, but the advertisement contained no such terms. This is a clear violation of TILA and the Act. The ALJ is not persuaded by Respondent's argument that it would not have been feasible to place the financing terms in the advertisement, given the different homes available. If the Respondent could not comply fully with the requirements of TILA, then Respondent could have simply omitted the downpayment amount from the advertisement. But, once the Respondent decided to place an advertisement with the downpayment amount included, it was required to fully comply with TILA.

The statement "\$650 RENT OR BUY" is slightly more ambiguous. But, given the context of the advertisement, the ALJ concludes that the most reasonable interpretation of the language is that Respondent was willing to rent the home in question for \$650 per month or to sell it with a monthly payment of \$650 per month under specific financing terms. In particular, the advertisement goes on to state elsewhere, "Rent or buy. Owner will finance." This leads to the conclusion that \$650 is the monthly payment amount under either a rental agreement or an owner-financed purchase agreement. As such, \$650 represents a payment amount under a financing arrangement, and this triggers the requirement under TILA that the advertisement disclose the financing terms of such an arrangement. The advertisement did not contain such disclosures and, thus, violated TILA and the Act.

Having concluded that all three advertisements violated TILA and the Act, the ALJ next must calculate the appropriate penalty. Staff seeks the maximum penalty allowed for each violation – \$1,000. The Department's rules set out the standards to be considered in calculating the penalty. In particular, in making a recommendation the ALJ must consider (1) the kind or type of violation and the seriousness of the violation; (2) the history of previous violations; the kind or type of previous violations, and the length of time between violations;(3) the amount necessary to deter future violations; (4) the efforts made to correct the violation or previous violations; and (5) any other matters that justice may require.

After considering the applicable factors, the ALJ concludes that the maximum penalty is warranted in regard to the two violations involving written newspaper advertisements. Respondent did not present any good faith justification for the language of the advertisements. Rather, Respondent simply concluded that it would have been impractical to attempt to include all the necessary language in one of them, and argued that the other was worded ambiguously and did not intend to reflect a payment amount. As discussed above, these arguments are without merit. Respondent has had past violations of a similar nature, and Respondent has not provided any specific evidence showing how it was attempting to ensure that similar flagrant violations of TILA would not occur again. Under the circumstances, the maximum penalty is

necessary to deter this type of conduct by Respondent in the future and there are no mitigating factors that might justify a lesser penalty.

The other violation—in relation to the banner—is different, occurring under mitigating circumstances. Respondent was hampered in its ability to present a defense to the complaint regarding the banner because of Staff’s seven-month delay in notifying Respondent of the alleged violation. While this in itself is not a mitigating factor, the delay leads the ALJ to infer that the violation was not considered serious by Staff. This is particularly true where the violation would have been ongoing in nature (*i.e.*, the banner would have continued to remain in place absent intervention by Staff). Presumably, for a serious violation that is ongoing in nature, Staff would take steps to intervene to prevent the violation from continuing.¹⁰ Moreover, Staff did not present any evidence that would justify the ALJ finding the violation to be serious. Therefore, the ALJ concludes the violation was not serious. And, there is no evidence indicating that Respondent has had similar problems with banners in the past. Moreover, because of the delay, Respondent was not given any opportunity to correct the violation. Under the circumstances, where the violation was not serious, Respondent was not given an opportunity to correct the violation, and Respondent was hampered in his defense of the violation by a seven-month delay in Staff notifying him of the violation, the ALJ concludes that a lesser penalty is warranted. Therefore, the ALJ recommends a penalty of \$500 for this violation.

In conclusion, the ALJ finds that Respondent committed three distinct violations of the Act, and that the appropriate combined administrative penalty for the three violations is \$2,500. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. Aus-Tex Parts and Service, Inc. d/b/a Village Homes (Respondent) holds a Texas Certificate of Registration with the Texas Department of Housing and Community Affairs (Department) and is subject to the jurisdiction of the Department, pursuant to the Texas Manufactured Housing Standards Act (the Act), TEX. REV. CIV. STAT. ANN. art. 5221f, and TEX. GOV’T CODE ANN. ch. 2306.
2. Respondent has had three Agreed Final orders entered against it by the Department in the last six years (signed and entered on February 10, 1997; November 21, 1997; and November 1, 1998, respectively). Each Agreed Final Order imposed sanctions for advertising violations connected with Respondent’s failure to fully list the information required by the Truth-in-Lending Act (TILA).
3. On October 11, 2000, Respondent placed a banner in front of its facility on Ben White Boulevard in the City of Austin that stated “\$399 MONTH DOUBLE WIDE & LOT.”

¹⁰ While there certainly may be exceptions to this, Staff did not present evidence of circumstances that would have justified a delay in notifying the Respondent of the violation.

There were no other words on the banner. More specifically, the banner did not indicate any other loan terms, including terms of repayment or interest rate.

4. On May 23, 2001, the Department's staff (Staff) sent Respondent a Notice of Violation regarding the banner observed on October 11, 2000, and informing Respondent that Staff was seeking an administrative penalty of \$1,000 for the purported violation.
5. Respondent placed an advertisement in the classified advertising section of the *Austin American-Statesman* newspaper on May 4, 2002, which stated "\$500 Down Buys ANY Home" without any reference to additional loan terms, including terms of repayment or interest rate.
6. Respondent placed an advertisement in the classified advertising section of the *Austin American-Statesman* newspaper on May 4, 2002, which stated "\$650 RENT OR BUY" without any reference to additional loan terms, including terms of repayment or interest rate.
7. On June 18, 2002, Staff sent Respondent a Notice of Violation regarding the advertisements placed in the *Austin American-Statesman* newspaper on May 4, 2002, and informing Respondent that Staff was seeking an administrative penalty of \$1,000 per violation, for a total penalty of \$2,000 for the two purported violations.
8. On July 3, 2002, Respondent submitted a written request for a hearing regarding the violations alleged and discussed in Findings of Fact Nos. 4 and 7.
9. On August 6, 2002, Staff sent notice of the administrative hearing to Respondent by first class mail and by certified mail, return receipt requested.
10. The hearing notice informed Respondent of the issues to be decided, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.
11. On September 10, 2002, the hearing in this matter convened before Administrative Law Judge Craig R. Bennett. Staff appeared and was represented by Jim R. Hicks, Resolution Supervisor, and Nancy Stone, Enforcement Coordinator. Respondent appeared through its co-owner, Donald Dempsey. Evidence was received and the hearing was closed on the same day.
12. At the hearing Staff recommended that a total penalty of \$3,000.00, equal to \$1,000 per violation, be assessed against Respondent.
13. Respondent has not had prior violations related to banners. Because of Staff's seven month delay in notifying Respondent of the purported violation regarding the banner, Respondent was not given any opportunity to correct the violation.
14. The purported violation regarding the banner placed in front of Respondent's facility is not a serious violation.

