

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
THE SHIRE APARTMENTS, LTD.	§	TEXAS DEPARTMENT OF
WITH RESPECT TO THE SHIRE	§	HOUSING AND
APARTMENTS (HTC FILE # 02470 /	§	COMMUNITY AFFAIRS
CMTS # 3273)		

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 16<sup>th</sup> day of April, 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 **THE SHIRE APARTMENTS, LTD.**, a Texas Limited Partnership (“The Shire” or “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.

**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.

The Board makes the following findings of fact and conclusions of law and enters this Order:

**FINDINGS OF FACT**

*Jurisdiction:*

1. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.
2. During 2003, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$554,837.00 to build and operate The Shire Apartments (HTC file No. 02470 / CMTS No. 3273 / LDLD No. 173).

3. Respondent signed a Declaration of Land Use Restrictive Covenants / Land Use Restriction Agreement for Low-Income Housing Credits (“LURA”) regarding The Shire. The LURA was effective July 6, 2005, and filed of record under Document Number 2005039185 of the Official Public Records of Real Property of Jefferson 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.
5. Control of Respondent was transferred on or about March 25, 2015 from The Shire Apartments GP, LLC, the outgoing general partner of The Shire Apartments, Ltd., to Avery Trace, LLC, a Florida limited liability company.

Compliance Violations<sup>1</sup>:

6. An on-site monitoring review was conducted on January 18, 2011, 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 the following violations of the LURA and TDHCA rules:
  - a. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 9-4120-203, 15-4000-131, 12-4080-216, 13-4040-123 and 3-4240-107, a violation of 10 TEX. ADMIN. CODE §60.108 and Section 4 of the LURA;
  - b. Respondent failed to include required language in tenant leases, a violation of 10 TEX. ADMIN. CODE §60.110 which requires leases to include language prohibiting evictions or nonrenewal of leases for other than good cause.Notification of noncompliance was sent on January 26, 2011 and documentation was submitted to correct the majority of the findings, but the household income findings for units 3-4240-107, 12-4080-216, and 13-4040-123 remained outstanding because of discrepancies between the tenant file reviewed by TDHCA during the file monitoring review and the file that was later submitted as evidence of correction.
7. On October 25, 2011, representatives of Respondent met with the TDHCA Administrative Penalties Committee, now known as the Enforcement Committee (“Committee”), to discuss discrepancies in the tenant files that had been presented as evidence of correction for units 3-4240-107, 12-4080-216 and 13-4040-123. Representatives of Respondent alleged that a former property manager who worked at the property from January through April of 2011 had altered tenant records for units 3-4240-107, 12-4080-216 and 13-4040-123 and presented what Respondent termed, “bogus” files, to TDHCA.

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 AND 60 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

8. The Committee voted to send TDHCA Compliance Division staff to perform an additional file monitoring review to analyze the falsified files for unit 3-4240-107, 12-4080-216, and 13-4040-123, along with other files, after which the Committee would make a final decision based upon those results.
9. On November 17, 2011, a monitoring review was performed and new findings were identified for units 6-4180-202, 8-4140-201, 18-3900-256, 19-3940-163, 19-3940-168 and 20-3980-273. Department staff sampled several tenant files and photocopied employment verification forms found in the resident files. Department staff then contacted the employers directly and obtained copies of the employment verification forms sent to Respondent. Several employment verification discrepancies were noted for units 6-4180-202, 8-4140-201, 19-3940-163, and 19-3940-168. For example:
  - a. The employment verification form in Respondent's file for unit 8-4140-201 indicated an hourly wage of \$14.00, an overtime rate of \$21.00 per hour and that the applicant works 40 hours per week. Department staff contacted the employer and obtained a copy of the employment verification form that was sent to Respondent. The employer verified an hourly wage of \$21.50, an overtime rate of \$32.25 hourly and that the applicant works 48 hours per week. The annual income for this household, as verified by the employer, was \$58,136. The income limit was \$30,660.
  - b. The employment verification form in Respondent's file for unit 19-3940-168 indicates an hourly wage of \$12.00 and that the applicant works 30 hours per week. Department staff contacted the employer and obtained a copy of the employment verification form that was sent to Respondent. The employer verified an hourly wage of \$15.00 and that the applicant works 40 hours per week. The annual income for this household, as verified by the employer, is \$31,200. The income limit was \$27,240.
10. Upon receipt of the new monitoring report based on the monitoring review performed on November 17, 2011, Respondent alleged that another employee who worked at the property from April through December of 2011 had falsified files as well, including files for units 6-4180-202, 8-4140-201, 19-3940-163 and 19-3940-168.
11. The Shire has submitted satisfactory evidence that all of the above identified issues of noncompliance have been resolved.
12. The Shire Apartments GP, LLC, the former general partner of Respondent, has agreed to be responsible for payment of the administrative penalty on Respondent's behalf.

### **CONCLUSIONS OF LAW**

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, as 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).
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 Section 4 of the LURA and 10 TEX. ADMIN. CODE §60.108 in 2011 when seven tenant files were falsified for units 3-4240-107, 12-4080-216, 13-4040-123, 6-4180-202, 8-4140-201, 19-3940-163 and 19-3940-168. Providing falsified tenant income documentation constitutes a lack of proper documentation of household income in violation of 10 TEX. ADMIN. CODE §60.108.
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.

An administrative penalty in the negotiated amount of \$5,000.00 is an appropriate amount 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 \$5,000.00.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay the \$5,000.00 administrative penalty by cashier’s check payable to the “Texas Department of Housing and Community Affairs” on or before 30 days from the date this order is executed, to the following address:

<b>If via overnight mail (FedEx, UPS):</b>	<b>If via USPS:</b>
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TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711
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**IT IS FURTHER ORDERED** that The Shire Apartments GP, LLC, the former general partner of Respondent, shall be responsible for payment of the administrative penalty on Respondent's behalf.

**IT IS FURTHER ORDERED** that the Department's EARAC Committee shall not consider violations described in this order that occurred prior to March 25, 2015 in making recommendations to the Board on future applications or awards to Avery Trace, LLC.

**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 4/16, 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 16<sup>th</sup> day of April, 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/ Misael Arroyo  
Notary Public, State of Texas

**THE STATE OF TEXAS** §  
§  
**COUNTY OF TRAVIS** §

Before me, the undersigned notary public, on this 16<sup>th</sup> day of April, 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/ Misael Arroyo  
Notary Public, State of Texas



