

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES

In the Matter of
Daniel K. Harmon,

Respondent.

Division Case No. MSD -13-0073
OAH Case No. 1303372

FINAL ORDER TO CEASE AND
DESIST AND ASSESSING CIVIL
PENALTY

HISTORY OF THE CASE

On May 30, 2013, the Department of Consumer and Business Services, through the Division of Finance and Corporate Securities (Division), issued an Order to Cease and Desist, Proposed Order Assessing Civil Penalty and Notice of Right to an Administrative Hearing (Notice) to Daniel K. Harmon (Respondent). Respondent timely requested a hearing and the matter was referred to the Office of Administrative Hearings (OAH). OAH Administrative Law Judge (“ALJ”) Alison Greene Webster was assigned to preside.

On October 25, 2013, Senior Assistant Attorney General Joanna Tucker Davis filed a Motion for Summary Determination on behalf of the Division. On the date Respondent’s response was due, November 25, 2013, Respondent did not file a response but filed a written request to extend the response deadline. By letter dated November 26, 2013, the ALJ extended the due date for Respondent’s response to December 2, 2013. Respondent did not submit a response to the motion.

On December 13, 2013, ALJ Webster issued a Ruling on Motion for Summary Determination and Proposed Order (“Proposed Order”). ALJ Webster concluded that all of the issues were decided and granted summary determination in favor of the Division.

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1 Respondent did not file any exceptions to the Proposed Order and the time for doing so
2 has now passed.

3 Now, therefore, having reviewed the entire record in this matter, the Director
4 issues the following findings of fact, conclusions of law and final order consistent with
5 that proposed by OAH.

6 7 ISSUES ON SUMMARY DETERMINATION

8 1. Whether Respondent engaged in the selling of, or offering to sell, a
9 manufactured structure dwelling while unlicensed in violation of ORS 446.671.

10 2. If so, whether the Division may assess a civil penalty of \$5,000 against
11 Respondent for his violation of ORS 466.671.

12 13 FINDINGS OF FACT

14 Creekside Home Services, Inc. (Creekside) was first registered with the Oregon
15 Secretary of State's office in 1993. Joyce Harmon was listed as the corporation's
16 president, secretary and registered agent. The corporation's principal place of business
17 was listed as 73768 Columbia River Highway, Rainier, Oregon, 97048. The Secretary of
18 State's office administratively dissolved the corporation in December 2009. (Ex. A.)

19 In 2009, the Division issued a Manufactured Structure Dealer license to Creekside,
20 license number MSD-501, based on an application submitted by Joyce Harmon. (Ex. A.)

21 On March 11, 2011, the Division issued a Final Order Revoking Manufactured
22 Structure Dealer License No. MSD-501 and Consent to Entry of Order to Creekside. The
23 Order documented multiple violations by Creekside of laws related to manufactured
24 structure dealers and dealerships, including engaging in the sale of manufactured
25 structures in Oregon without a license, moving a manufactured structure without the
26 Division's approval and without a trip permit from the county assessor, and failing to





1 provide proper notice of transfer of ownership. The Order revoked Creekside's
2 Manufactured Structure Dealer License and disqualified Joyce Harmon from obtaining a
3 Manufactured Structure Dealer License or from working in an administrative or
4 managerial capacity for any type of manufactured structure dealer for a period of five
5 years. (Ex. A.)

6 At the time of the events and violations at issue in the Final Order Revoking
7 Manufactured Structure Dealer License No. MSD-501, Respondent was married to Joyce
8 Harmon. Respondent also worked for Creekside during that time period as a seller of
9 manufactured structures. (Exs. B and H.)

10 When the Division issued the Final Order Revoking Manufactured Structure
11 Dealer License No. MSD-501, it also sent a Warning Letter to Respondent, enclosing a
12 copy of the Order and advising him that Creekside was not licensed as a Manufactured
13 Structure Dealer in Oregon. The letter indicated that the Division had received
14 complaints with regard to Respondent's sale of manufactured structures. The letter also
15 indicated that Respondent's conduct while employed at Creekside had given rise to some
16 of the violations detailed in the Order. The letter advised Respondent that each violation
17 of Oregon's Manufactured Structure Dealer law is subject to a \$5,000 civil penalty. In
18 addition, the letter advised Respondent that, because he was not listed as an owner of the
19 corporation, the Division had elected not to pursue a cease and desist order or civil
20 penalty against him at that time. The letter concluded with the following admonition:

21
22 If the Division learns that you were an owner of Creekside when these
23 violations occurred, or if we learn of any new violations of Oregon's
24 Manufactured Structured Dealers Law committed by you, the Division
will seek to enforce the law by issuing a cease and desist order and civil
penalty directed at you.

25 (Ex. B.)

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(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing[.]

* * * * *

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

Violation

As set out above, the Division alleges that Respondent violated ORS 446.671 on or about September 21, 2011 by selling a manufactured structure dwelling, a 1994 Fleetwood home (ID number 275353), in Oregon without holding a valid license to do so. The material facts are not in dispute. Respondent did not file a substantive response to the Division's Motion, and the evidence submitted in connection with the Motion establishes that Respondent did, in fact, offer for sale and did sell a 1994 Fleetwood home, a manufactured structure, without a valid manufactured structure dealer license.

Oregon law pertaining to manufactured structure dealers and dealerships is set out in ORS 446.661 to ORS 446.995. ORS 446.671 which prohibits the sale of manufactured structures without a license, provides as follows:

(1) Except as provided in ORS 446.676, a person commits the crime of acting as a manufactured structure dealer without a license if the person does not have a valid, current manufactured structure dealer license issued under ORS 446.691 or 446.696 or a temporary or limited manufactured structure dealer license issued under ORS 446.701 or 446.706 and the person:

(a) Sells, brokers, trades or exchanges a manufactured structure, or offers to sell, trade or exchange a manufactured structure, either outright or by means of any conditional sale, consignment or otherwise;

(b) Displays a new or used manufactured structure for sale; or

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1 (c) Acts as an agent for the owner of a manufactured structure to sell the
2 structure or for a person interested in buying a manufactured structure to
buy the structure.

3 (2) Acting as a manufactured structure dealer without a license is a Class
4 A misdemeanor.

5 Although this statute “identifies acting as a manufactured structure dealer without a
6 license” as a crime, ORS 446.995 authorizes the Division to take administrative action
7 and to impose a civil penalty against a person who violates ORS 446.671 by selling a
8 manufactured structure without a license:

9
10 (1) The Department of Consumer and Business Services may impose a
11 civil penalty as provided in ORS 455.895 for each violation, against a
12 licensed manufactured structure dealer or against a person required by a
13 rule adopted pursuant to ORS 446.666 to be licensed, if the dealer or
14 person violates a provision of ORS 446.661 to 446.756 or a rule adopted
15 by the department relating to the sale of manufactured structures. If the
16 dealer authorizes a person licensed pursuant to ORS 446.666 to commit a
violation, the dealer and person are both subject to civil penalty.
17 Notwithstanding subsection (2) of this section, if a dealer expressly or by
18 implication authorizes an act by a real estate agent described in ORS
19 446.676 (14) that is a violation, the dealer is subject to the civil penalty for
the violation.

20 (2) The department may impose a civil penalty, in an amount not to
21 exceed \$5,000 for each manufactured structure improperly sold, brokered
22 or exchanged, or offered or displayed for sale, against a person that:

23 (a) Violates a provision of ORS 446.661 to 446.756 or a rule adopted by
24 the department relating to the sale of manufactured structures if the person
25 does not possess a license required by ORS 446.671 or by rule pursuant to
26 ORS 446.666; or

(c) Violates a rule adopted by the department relating to the sale of
manufactured structures if the person is exempt from licensing under
ORS 446.676.

24 ORS 446.995.

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1 At the time Respondent sold the 1994 Fleetwood home in September 2011, he did
2 not possess a manufactured structure dealer license. Therefore, his September 2011 sale
3 of the 1994 Fleetwood home to the Lenos constitutes a violation of ORS 446.671(1)(a)
4 unless an exception set out in ORS 446.676¹ applies.

5 _____
6 ¹ ORS 446.676 provides as follows:

7 ORS 446.671 does not apply to the following manufactured structures or persons:

- 8 (1) A unit of government or a public or private utility.
- 9 (2) The owner of a manufactured structure, as shown by a document evidencing ownership issued
10 by any jurisdiction if the person owned the manufactured structure for personal, family or
11 household purposes. If the person sells, trades, displays or offers for sale, trade or exchange two or
12 more manufactured structures during a calendar year, the person has the burden of proving that the
13 person owned the structures primarily for personal, family or household purposes.
- 14 (3) A conservator, receiver, trustee, personal representative or public officer while performing any
15 official duties. The exemption provided by this subsection applies to actions taken for the purposes
16 of winding up the affairs of a manufactured structure dealer or dealership and not to the continuing
17 operation of a dealership.
- 18 (4) A real estate licensee representing a buyer or seller in a transaction involving real property
19 under ORS 308.875 or a manufactured structure that is recorded in the deed records of a county.
- 20 (5) An escrow agent making an application for an ownership document as described under ORS
21 446.591 (5).
- 22 (6) The security interest holder of a manufactured structure as shown by a document evidencing
23 ownership issued by any jurisdiction.
- 24 (7) The sale of a manufactured structure by the manufacturer to a manufactured structure dealer.
25 However, a manufacturer must obtain a manufactured structure dealer license under ORS 446.691
26 in order to sell manufactured structures to retail customers.
- 27 (8) An insurance adjuster authorized to do business under ORS 744.505 or 744.515 who is
28 disposing of a manufactured structure for salvage.
- 29 (9) A person who sells or trades or offers to sell or trade a manufactured structure that has been
30 used in the operation of the person's business unless the person's business is the buying, selling,
31 brokering, trading or exchanging of manufactured structures, displaying new or used manufactured
32 structures for sale or acting as agent for an owner selling a manufactured structure or for a person
33 interested in buying a manufactured structure.
- 34 (10) A person who is licensed as a manufactured structure dealer in another jurisdiction and is
35 participating in a temporary exhibition of manufactured structures, if the exhibition includes at least
36 two other manufactured structure dealers licensed in this state or another jurisdiction, lasts 10 days
37 or less and charges admission to the public. An exemption may be claimed under this subsection
38 for a total of not more than 10 days during a calendar year.
- 39 (11) A person who receives no money, goods or services, either directly or indirectly, for
40 displaying a manufactured structure or acting as an agent in the selling or buying of a manufactured
41 structure.
- 42 (12) A manufactured dwelling park or mobile home park owner that consigns a manufactured
43 structure for sale by a licensed manufactured structure dealer.





1 There are 15 exceptions to the prohibition against unlicensed manufactured
2 structure dealer activity set out in ORS 446.676, but there is no evidence in the record to
3 suggest that any of these exceptions are applicable to Respondent’s sale of the 1994
4 Fleetwood home to the Lenos. Respondent is not a unit of government, a public officer, a
5 real estate licensee, an escrow agent, a manufacturer, a mobile home park owner or a
6 financial institution or trust company. There is no evidence suggesting that Respondent
7 owned the 1994 Fleetwood home for personal, family or household purposes. And,
8 because the record demonstrates that the home sold for \$20,000 (including \$15,000 paid
9 to Respondent by check), it cannot be found that he received no money, goods or services
10 in the transaction. Consequently, even when the evidence is viewed in a light most
11 favorable to Respondent, the Division has established that Respondent violated ORS
12 446.671(1)(a) when he sold the 1994 Fleetwood home in September 2011.

13 *Civil Penalty*

14 In the Notice, the Division sought to impose a civil penalty of \$5,000 for
15 Respondent’s violation of ORS 446.671.

16 As noted above, the Division is authorized under ORS 446.995 to impose a civil
17 penalty in an amount not to exceed \$5,000 against a person who violates ORS 446.671 by
18 offering for sale or selling a manufactured structure without a license. In this case,
19 Respondent did not possess a manufactured structure dealer license, yet in September

21 (13) The sale of an abandoned manufactured dwelling by a manufactured dwelling park owner
22 pursuant to
23 ORS 90.675 (10) if the park owner makes a reasonable effort to transfer the title for the
24 manufactured dwelling to the purchaser.

25 (14) A licensed real estate broker acting in the employ of, on behalf of or under the supervision of
26 an individual who is both a licensed principal real estate broker and a licensed manufactured
27 structure dealer.

 (15) A financial institution or trust company acting as attorney in fact under a duly executed power
 of attorney from the owner or purchaser authorizing the selling, leasing or exchanging of the
 owner’s or purchaser’s assets. As used in this subsection, “financial institution” and “trust
 company” have the meanings given those terms in ORS 706.008.



1 2011 he sold a 1994 Fleetwood home to the Lenos for a purchase price of \$20,000.
2 Respondent did so even after being advised by the Division earlier in the year that each
3 violation of the Manufactured Structure Dealer Law is subject to a \$5,000 civil penalty.
4 Under these circumstances, the Division’s proposed civil penalty is affirmed.

5 **CONCLUSIONS OF LAW**

6 Daniel K. Harmon committed one violation of ORS 446.671 by selling one
7 manufactured structure in Oregon without first being properly licensed with the Division.

8 **ORDERS**

9 Based on the foregoing, the Director issues the following ORDERS:

10 **Order to Cease and Desist**

11 1. As authorized by ORS 446.748 the Director hereby ORDERS Respondent
12 Daniel Harmon to CEASE AND DESIST from violating Oregon Manufactured Structure
13 Dealers and Dealerships Laws.

14 As authorized by ORS 446.995 the Director hereby ORDERS Respondent Daniel
15 Harmon to pay a CIVIL PENALTY of \$5,000 (five thousand dollars) for one violation of
16 the ORS 446.671.

17 In accordance with ORS 183.745(2), the civil penalty assessed herein shall
18 become due and payable 10 days after the order becomes final by operation of law or on
19 appeal.

20 **AUTHORITY OF THE DIRECTOR TO SEEK OTHER
21 REMEDIES UNDER OREGON LAW**

22 This Order is a “Final Order” under ORS 183.310(6)(b). Subject to that
23 provision, the entry of this Order does not limit other remedies that are available to the
24 Director under Oregon law.

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IT IS SO ORDERED.

Dated this 4th day of March, 2014.

PATRICK M. ALLEN, Director
Department of Consumer and Business Services

/s/ David Tatman
David C. Tatman, Administrator
Division of Finance and Corporate Securities

NOTICE OF RIGHT TO JUDICIAL REVIEW

You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review is in accordance with ORS 183.482(1) to the Oregon Court of Appeals.

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

