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3 **STATE OF OREGON**
4 **DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**
5 **DIVISION OF FINANCE AND CORPORATE SECURITIES**
6 **BEFORE THE DIRECTOR OF THE DEPARTMENT**
7 **OF CONSUMER AND BUSINESS SERVICES**

8 **In the Matter of:**

MSD-11-0110

9 **Fuqua Homes Inc. and Eugene Super**
10 **Sales Center LLC,**

ORDER REVOKING MANUFACTURED
STRUCTURE DEALER LICENSE
NUMBERS MSD-502, MSD-191, MSS-70,
ORDER ASSESSING CIVIL PENALTY
ENTERED BY DEFAULT

11 **Respondents.**

12 On November 16, 2011, the Director of the Department of Consumer and Business
13 Services for the State of Oregon (hereafter the “Director”), acting by and pursuant to the
14 authority of the Oregon Manufactured Structure Dealers and Dealerships Law, ORS 446.661 et
15 seq, issued Administrative Order No. DM-11-0110 entitled “Order Revoking Manufactured
16 Structure Dealer License Numbers MSD-502, MSD-191, MSS-70, Proposed Order Assessing
17 Civil Penalty and Notice of Right to a Hearing” (hereinafter “the Order”) against Fuqua Homes
18 Inc. and Eugene Super Sales Center LLC (hereinafter “Respondents”).

19 On November 16, 2011, Respondents were duly served with true copies of the Proposed
20 Order by regular, first-class mail and by certified mail, postage prepaid, and addressed to
21 Respondent at the following addresses: Fuqua Homes Inc. 20495 Murray Rd. Bend OR 97708;
22 Fuqua Homes Inc. 1209 Orange St. Wilmington DE 19801; Eugene Super Sales Center, LLC
23 90747 Roberts Rd., Coburg, OR 97408; CT Corporation System, 388 State St. Ste 420, Salem,
24 OR 97301; Richard G. Grall, 20495 Murray Rd, Bend OR 97701. The copies of the order sent
25 via regular U.S. mail have not been returned and are therefore presumed to have been delivered
26 as addressed. The copy of the mailing sent to Fuqua Homes Inc.’s registered agent, CT
Corporation System was received by CT Corporation System however they mailed the Order

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1 back to the Division along with a cover letter stating in part: “Our company is agent for
2 thousands of companies and cannot determine the party to which the document(s) is (sic) to be
3 forwarded unless the document(s) is (sic) directed to a particular entity.” The Notice Order was
4 directed to Fuqua Homes Inc. and was properly addressed and delivered to their registered agent,
5 CT Corporation System. Respondents have not made a written request for a contested case
6 hearing in this matter and the time to do so has expired.

7 **NOW THEREFORE**, after consideration of the Investigation Report and accompanying
8 exhibits submitted in this matter by Jason Weber, Financial Enforcement Officer, the Director
9 hereby issues the following Findings of Fact, Conclusions of Law, and Final Orders:

10 **FINDINGS OF FACT**

11 **A. Parties**

12 1. Fuqua Homes Inc. is a Delaware Corporation which first registered with the Oregon
13 Secretary of State on December 31, 1973, and is currently an active foreign business corporation
14 (hereinafter “Fuqua”). According to their website, Fuqua operates two manufacturing facilities,
15 one in Boonville, Missouri and one in Bend, Oregon.

16 2. In addition to manufacturing homes, Fuqua is also a licensed manufactured structure
17 dealer in the state of Oregon, license No. MSD-502. Phillip R. Daniels is listed as the president
18 and owner of Fuqua on the license application submitted to the Director.

19 3. Eugene Super Sales Center, LLC first registered with the Oregon Secretary of State on
20 April 29, 1998, and is currently an active Oregon limited liability corporation (hereinafter
21 “ESSC”). ESSC lists its principal place of business as 90747 Roberts Rd., Coburg, Oregon
22 97408. ESSC is a licensed manufactured structure dealer in the state of Oregon, license No.
23 MSD-191. ESSC also has a Manufactured Structure Supplemental license for a branch sales
24 office located at 1600 N Terry St., Eugene, Oregon 97402, license No. MSS-70. Phillip R.
25 Daniels is listed as the president and owner of ESSC on the license application submitted to the
26 Director. Jonathan Mingus is listed as the general manager.



1 **B. Respondents Cease Operations**

2 4. In February 2011, Fuqua closed their manufacturing facility located in Missouri.

3 5. On July 8, 2011, Fuqua closed their manufacturing facility located in Bend, Oregon.

4 6. On July 8, 2011, ESSC closed their manufactured structure dealerships located at 90747
5 Roberts Rd., Coburg, Oregon 97408 and 1600 N Terry St., Eugene, Oregon 97402.

6 7. Fuqua did not inform the Director that they had ceased manufacturing structures.

7 8. ESSC did not inform the Director that they had closed their manufactured structure
8 dealerships located in Eugene and Coburg, Oregon.

9 **C. Initial Complaints**

10 9. On August 15, 2011, an employee of the Director received an anonymous complaint with
11 regard to Fuqua's business activities. The complaint alleged that Fuqua had closed their
12 manufacturing facilities but were still accepting customers' deposits for the purchase of
13 manufactured structures that had not been built.

14 10. On August 16, 2011, an employee of the Director received a complaint from a licensed
15 manufactured structure dealer. The licensee explained that in July 2011, one of their customers
16 had paid a deposit of \$50,000 toward the purchase of a home that had not yet been manufactured.

17 11. On August 17, 2011, employees of the Director examined the sales office of ESSC
18 located in Coburg, Oregon. They discovered that the office was closed. By chance they
19 encountered a former employee of ESSC who was stopping by to pick up her personal
20 belongings. She confirmed that the office had been closed since July 8, 2011.

21 **D. Summary of Investigation**

22 12. The Division subsequently undertook an investigation of Respondents' activities. To
23 date this investigation has revealed that Respondents collectively accepted deposits totaling over
24 \$500,000 for the purchase of manufactured structures that have not been built.

25 13. Between October 29, 2008 and August 9, 2011, Respondents accepted at least 26 deposits
26 for manufactured structures with deposits totaling over \$500,000. Despite repeated requests



1 from the customers who paid these deposits, and requests from the Director, Respondents have
2 failed to either deliver the manufactured structures or refund the deposits paid by these
3 customers.

4 **E. Details of the Director’s Investigation**

5 14. During the August 17, 2011, examination of ESSC’s dealership located in Coburg,
6 Oregon, an employee of the Director contacted ESSC’s general manager Jonathan Mingus
7 (hereinafter “Mingus”). The employee specifically requested that Mingus provide a list of all
8 customer deposits received by ESSC for the purchase of manufactured structures that had not yet
9 been built. Mingus provided the following list:

- 10 a. BG deposit of \$136,943;
- 11 b. HP deposit of \$10,800;
- 12 c. THS deposit of \$11,000;
- 13 d. JZ deposit of \$31,000.

14 15. The employee of the director also asked Mingus whether the deposits they received from
15 customers were placed in a trust account. Mr. Mingus explained that the deposits were sent to
16 Fuqua and that he believed they were placed in a “depository account.”¹

17 16. On August 17, 2011, an employee of the Director attempted to contact Daniels at a phone
18 number provided by Mr. Mingus. On August 22, 2011, Daniels returned the phone call and
19 explained the following: Fuqua had been sued by their flooring supplier and as a result of the
20 lawsuit all of ESSC manufactured structure inventory had been seized. The inventory was
21 scheduled to be sold at an auction at the end of September 2011.

22 17. A review of the Oregon Judicial Information Network confirms that Respondents were
23 sued by the flooring manufacturer named by Daniels in February of 2011.

24 18. During the August 17, 2011, telephone conversation with Mr. Daniels, an employee of
25 the Director told Daniels that Respondents were prohibited from accepting customer deposits

26 ¹ The Oregon Manufactured Structure Dealer Law does not require customer deposits to be placed in a trust account.



1 due to the fact that Fuqua was no longer manufacturing structures.

2 19. The Director's employee issued a subpoena directed at Respondents requesting among
3 other things, a list of all customer deposits received for manufactured structures that had not yet
4 been built. In response to this subpoena Respondents provided the following list:

- 5 a. GEL deposit of \$1,000 received on June 6, 2011;
- 6 b. RM deposit of \$1,000 received on June 27, 2011;
- 7 c. KKN deposit of \$1,000 received on June 30, 2011;
- 8 d. JMR deposit of \$1,000 received on August 9, 2011;
- 9 e. AS on behalf of JAM deposit of \$160,198 received on June 30, 2011.

10 20. The Director's employee then undertook an investigation of all manufactured structure
11 dealers that sell Fuqua homes to determine how many had accepted customer deposits for
12 homes that had not been build. The Director's investigation identified one deposit made by
13 DBO on April 13, 2011 in the amount of \$50,000 that Respondents did not report in the
14 subpoena response.

15 21. On August 31, 2011, the Director received a complaint from BG who explained that he
16 had contracted with Respondents for the purchase of a home in February of 2011. ESSC
17 offered BG a discount if he paid for the home in full before production. BG accepted the offer
18 and paid Respondents \$136,943 for a manufactured structure that had not yet been built. BG
19 paid this some in monthly payments beginning in March with the final payment made on June
20 18, 2011.

21 22. The monies paid by BG were not included on the subpoena response provided by
22 Respondents.

23 23. BG explained that Respondents had told him that the blue prints for his manufactured
24 structure were completed in June however after making payment in full he inquired as to why
25 his manufactured structure had not yet been completed. Respondents told him that his blue
26 prints had been held up by the City of Bend. BG then inquired with the City of Bend and



1 learned that the statement made by Respondents was not true, in fact the City of Bend was not
2 holding up his blue prints in anyway.

3 24. On September 1, 2011, the Director received a complaint from DM. DM explained that
4 on May 3, 2011 he had purchased a manufactured structure from Fuqua.

5 25. On May 10, 2011, DM made an additional deposit of \$39,000 and was told by an
6 employee of Fuqua that because he had “made such a big down payment” his manufactured
7 structure would be completed in “four to five weeks.”

8 26. The monies paid by DM were not included on the subpoena response provided by
9 Respondents.

10 27. After July 8, 2011, DM contacted Fuqua because he wanted to add another window to his
11 home. DM personally observed an employee of Fuqua purport to make a phone call to the
12 factory and leave a message requesting the addition of the window. The employee of Fuqua
13 then told DM that he had made the request “just in time” to add the window. In reality the plant
14 was permanently shut down.

15 28. During the month of July, DM continued to inquire as to the status of his home and each
16 time Fuqua provided new excuses with regard to why the home had not been built. At the end
17 of July 2011 DM was told by a Fuqua employee that they had shut down for “re-tooling.” In
18 reality the plant was permanently shut down.

19 29. In addition to DM’s deposit the Director’s investigation identified at least two additional
20 customer deposits that had been provided to Respondents but which Respondents did not
21 disclose after the Director specifically requested a list of all customer deposits for homes that
22 were not yet built.

23 30. The Director’s employee re-contacted Respondents to determine why they had not
24 complied with the Director’s request for a list of all customer deposits for homes that had not
25 yet been built. In response to this third request Respondents provided the following list:

- 26 a. TBS deposit of \$24,143 received on April 2, 2011;



- 1 b. KSJ deposit of \$1,000 received on December 23, 2011;
- 2 c. JJ deposit of \$1,000 received on January 29, 2011;
- 3 d. CG deposit of \$1,000 received on January 31, 2011;
- 4 e. DK deposit of \$1,000 received on April 13, 2011;
- 5 f. KPK deposit of \$1,000 received on February 21, 2011;
- 6 g. SM deposit of \$1,00 received on March 6, 2011;
- 7 h. DNM deposit of \$40,000 received on May 3, 2011;
- 8 i. NM deposit of \$1,000 received on April 2, 2011;
- 9 j. NSM deposit of \$1,000 received on April 16, 2011;
- 10 k. CTN deposit of \$28,984 received on December 29, 2010;
- 11 l. SP deposit of \$1,000 received on February 5, 2011;
- 12 m. BS deposit of \$1,000 received on November 4, 2010;
- 13 n. DPS deposit of \$1,000 received on October 29, 2008;
- 14 o. CS deposit of \$1,000 received on April 12, 2011;
- 15 p. MDS deposit of \$1,000 received on January 24, 2011.

16 31. Despite repeated requests from customers and the Director, as of the date of this order,
17 Respondents have failed to either refund the deposits or deliver the real estate, goods, and
18 services contracted for.

19 CONCLUSIONS OF LAW

20 The Director **CONCLUDES** that:

- 21 1. Respondents violated ORS 646.607 in each of the 26 transactions described herein when
22 they failed to deliver all or any portion of real estate, goods, or services as promised, and upon
23 request of the customer, failed to refund any money that has been received from the customer
24 that was for the purchase of the undelivered real estate, goods or services.
- 25 2. Respondents violated OAR 441-446-0210(7) when they repeatedly violated ORS 646.607
26 which demonstrates a habitual disregard for the law.



- 1 3. Pursuant to ORS 446.741(1)(a) and OAR 441-446-0300(5), the Director may revoke
2 Respondents’ manufactured structure dealer’s license based on the pattern of violations of OAR
3 441-446-0210(7) described herein.
- 4 4. Respondents violated ORS 446.741(1)(i) when they engaged in an act practice or course
5 of business that operated as a fraud or deceit on its customers in each of the 26 transaction
6 described herein when they accepting deposits for the manufacture structures that have not been
7 built and by failing to refund the deposits to those customers in a timely manner.
- 8 5. Respondents violated ORS 446.741(1)(j) when they knowingly made a misstatement of
9 material fact to BG when they told him that the reason the manufactured structure that he had
10 paid \$136,943 for had not been built was because “his blue prints had been held up by the City of
11 Bend.”
- 12 6. Respondents violated ORS 446.741(1)(j) when they knowingly omitted to state a material
13 fact to BG to wit: that the reason his home had not been built was due to the fact that
14 Respondents were no longer manufacturing structures.
- 15 7. Respondents violated ORS 446.741(1)(j) when they knowingly made a misstatement of
16 material fact to DM when they told him his request for an additional window had been received
17 “just in time” when in reality the structure had not been built due to the fact that the factory was
18 permanently shut down.
- 19 8. Respondents violated ORS 446.741(1)(j) when they knowingly omitted to state a material
20 fact to DM to wit: that the reason his home had not been built was due to the fact that
21 Respondents were no longer manufacturing structures.
- 22 9. Respondents violated ORS 446.741(1)(j) when they knowingly made a misstatement of
23 material fact and omitted to state a material fact to DM to wit: that the reason his home had not
24 been built was because the factory was “re-tooling” when in reality the factory was permanently
25 shut down.
- 26 ///



ORDER

NOW, THEREFORE, THE DIRECTOR ISSUES THE FOLLOWING ORDERS:

The Director, pursuant to ORS 446.714(1) hereby **REVOKES** Respondents' manufactured structure dealer's license Numbers MSD-191, MSS-70, and MSD-502.

The Director, pursuant to ORS 446.996 hereby orders Respondents to pay a CIVIL PENALTY of \$155,000 calculated as follows: \$130,000 (\$5,000 X 26) \$5,000 for each of the 26 instances where respondents accepted deposits and failed to either deliver the goods or refund the deposits in violation of ORS 446.741(1)(i) and OAR 441-446-0210(7); and \$25,000 (\$5,000 X 5) for each of the five separate instances of fraud in violation of ORS 446.741(1)(j) described herein. This civil penalty is joint and several against Respondents.

The Director, pursuant to ORS 446.741(5) hereby **ORDERS** that Phillip R. Daniels is disqualified from obtaining a license as a manufactured structure dealer or from working in an administrative or managerial capacity for any type of manufactured structure dealer for a period of five years from the date this Revocation Order becomes affective.

The date of this Order is the day the Director or Director's nominee signs the Order. The entry of this Order does not affect or limit in any manner the Director's ability to invoke further remedies, which may be available to the Director under Oregon law based upon the violation(s) noted in this Order or any other violations specifically including but not limited to assessing additional civil penalties.

Dated this 14th day of December, 2011.

PATRICK ALLEN, Acting Director
Department of Consumer and Business Services

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

1 **NOTICE:** You are entitled to judicial review of this Order. Judicial review may be obtained by filing
2 a petition with the Court of Appeals in Salem, Oregon within 60 days from the service of this Order.
3 Judicial review is pursuant to the provisions of ORS 183.482 to the Oregon Court of Appeals.
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