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K. Fox

BEFORE THE STATE OF NEVADA,  
DEPARTMENT OF BUSINESS AND INDUSTRY,  
MANUFACTURED HOUSING DIVISION

JIM DEPROSSE, Administrator,  
MANUFACTURED HOUSING DIVISION,  
DEPT OF BUSINESS AND INDUSTRY,  
STATE OF NEVADA,

Case No. EL091211-01

Petitioner,

vs.

STIPULATION FOR SETTLEMENT OF  
DISCIPLINARY ACTION

K.C. GAGE CONSTRUCTION and KEVIN  
GAGE, Owner, License No. B-1442,

Respondent.

**Parties:**

The STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY,  
MANUFACTURED HOUSING DIVISION ("Division"), by and through its counsel, CATHERINE  
CORTEZ MASTO, Attorney General of the State of Nevada, and SARAH A. BRADLEY,  
Deputy Attorney General and its Administrator JIM DEPROSSE, and K.C. GAGE  
CONSTRUCTION and KEVIN GAGE, Owner, License No. B-1442, ("Respondent") by and  
through its counsel BRYON BERGERON, ESQ. Respondent was, at all times relevant to this  
Stipulation, licensed as a general serviceperson by the Division under License No. B-1442.

**Alleged Facts:**

The Division alleges each of the following facts:

1. On or about February 27, 2009, Inspector Steven Terry ("Inspector Terry")  
observed work in progress on a home located at 4655 Hopi Street, Elko, Nevada ("the home").
2. The home was being installed upon a new foundation and basement.
3. Respondent performed this work without receiving approval from the Division for  
Respondent's plans for the home, without obtaining the required permits, and without  
requesting or receiving an inspection by the Division in violation of NRS 489.251,  
NAC 489.405, NAC 489.411, and/or NAC 489.486.

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1           4.     The work on the home involved moving the home approximately thirty (30) feet  
2 from its original location and re-installing it, allowing the homeowner and his/her family to  
3 occupy the home while the new foundation and basement were being constructed, and  
4 without receiving the required permits and inspection from the Division.

5           5.     The work on the home also involved moving the home from the new location  
6 back to the original location and re-installing it on the new foundation and basement, again  
7 allowing the homeowner and his/her family to occupy the home, without receiving the required  
8 permits and inspection from the Division.

9           6.     On March 11, 2009, Supervising Compliance Investigator Gary Childers  
10 ("Investigator Childers") had a telephone conversation with Respondent regarding his work on  
11 the home.

12           7.     On March 12, 2009, Investigator Childers sent Respondent a letter summarizing  
13 the March 11, 2009 phone conversation he had with Respondent and detailing the multiple  
14 violations of law committed by Respondent with regard to his work on the home, (hereinafter,  
15 the "First Letter").

16           8.     In the First Letter, Investigator Childers indicated that to comply and ensure that  
17 the homeowner and his/her family are living in a safe environment, Respondent must submit  
18 plans for the home to the Division for approval, purchase the appropriate and required permits  
19 from the Division, and schedule the required inspections with the Division on or before  
20 March 27, 2009.

21           9.     The First Letter was sent to Respondent via regular and certified U.S. mail and  
22 the certified mailing was signed for by Respondent on or about March 26, 2009. The regular  
23 mailing was not returned to the Division, and, upon information and belief, was delivered to  
24 Respondent.

25           10.    The First Letter was also hand-delivered to Respondent by Inspector Terry on  
26 March 16, 2009.

27           11.    The Division records reflect that, after receipt of the First Letter, Respondent  
28 purchased the required permits for the home and submitted the plans for the home.

1           12. On or about March 20, 2009, Inspector Terry, after reviewing the plans for the  
2 home, sent a letter to George Lostra, the engineer for the basement of the home, (hereinafter  
3 "Engineer Lostra"), requesting more information regarding the plans for the home.

4           13. Inspector Terry's request for more information from Engineer Lostra focuses on  
5 five (5) areas regarding the home's foundation.

6           14. On or about April 21, 2009, Inspector Terry sent Engineer Lostra an e-mail  
7 regarding the five (5) questions he sent to Engineer Lostra on March 20, 2009, regarding the  
8 home's foundation because Inspector Terry had not yet received a response from Engineer  
9 Lostra.

10           15. On or about April 27, 2009, Inspector Terry had a telephone conversation with  
11 Engineer Lostra. In this conversation, Engineer Lostra indicated that he had no answers to  
12 Inspector Terry's questions.

13           16. On or about May 13, 2009, Investigator Childers sent Respondent a letter  
14 (hereinafter the "Second Letter") indicating that because the Division could not obtain the  
15 additional information from Engineer Lostra, it was unable to approve the plans for the home.

16           17. The Second Letter states, in part, that:

17                   The unresolved issues surrounding this project deal with the  
18 safety of the homeowner and [his] family. The Division is unable to  
19 approve the plans for the basement and the installation of the  
20 home until the questions are satisfactorily answered. Without  
21 approved plans we are unable to inspect the installation of the  
22 home. The Nevada Revised Statute 489.251 does not permit the  
23 utilities to be activated to the home until an inspection has been

24                   satisfactorily completed. Also, Nevada Administrative Code  
25 489.405 prohibits occupancy without a satisfactory inspection.

26                   Your failure to get the plans approved and to secure a permit  
27 before construction started, has possibly put the homeowner and  
28 his family in an unsafe environment. The Division cannot continue  
to allow this family to occupy the home without a satisfactory  
inspection. If a certificate and seal has not been issued to the  
home on or before June 10, 2009, the Division will be forced to  
pursue legal action as prescribed by the statutes.

18           18. The Second Letter was sent to Respondent via regular and certified U.S. Mail  
and the certified mailing was signed for by Respondent on or about May 29, 2009. The

1 regular mailing was not returned to the Division, and, upon information and belief, was  
2 delivered to Respondent.

3 19. On July 21, 2009, the Division sent Respondent a third letter regarding  
4 Respondent's work on the home (hereinafter the "Third Letter") and Respondent's failure to  
5 comply with the Division's First Letter and Respondent's failure to respond to the Division's  
6 Second Letter.

7 20. The Third Letter indicated that Respondent must respond to Inspector Terry's  
8 five questions sent to Engineer Lostra on March 20, 2009 or submit a new complete set of  
9 plans for the installation of the home to the Division by August 21, 2009.

10 21. On or about December 24, 2009, the Division received a written letter sent to  
11 Inspector Terry's attention and titled "Response to the five questions." There was no name or  
12 other identification on this letter.

13 22. On or about January 4, 2010, Investigator Joseph Frades ("Investigator  
14 Frades") reviewed the file and sent Respondent a letter indicating that he had failed to comply  
15 with the Division's previous requests and was still in violation of multiple statutes and  
16 regulations. As a courtesy, Respondent was given until February 4, 2010 to respond to the  
17 Division.

18 23. On or about February 1, 2010, the Division received a response to the Division's  
19 five questions from Respondent. This time there is a cover page and the response is stamped  
20 with Engineer Lostra's stamp.

21 24. Respondent's February 1, 2010 response does not adequately address the  
22 Division's five questions.

23 25. On July 8, 2010, the Division sent a notification to Respondent pursuant to  
24 NRS 233B.127(3) informing Respondent that this matter would be proceeding to a disciplinary  
25 hearing and inviting Respondent to respond, if he wished.

26 26. This letter was sent to Respondent via regular and certified U.S. mail and the  
27 certified mailing was signed for by Respondent on or about July 27, 2010. The regular mailing

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1 was not returned to the Division, and, upon information and belief, was delivered to  
2 Respondent.

3 27. To date, Respondent has submitted no further information to the Division  
4 regarding his work on the home.

5 28. To date, Respondent has not submitted new plans to the Division regarding the  
6 addition he added to the home, nor has Respondent received an approval for the plans he  
7 previously submitted to the Division for the home's addition.

8 29. To date, Respondent has not requested and/or scheduled an inspection of the  
9 home by the Division as required by Nevada law.

10 30. Upon information and belief, the homeowner and his/her family have been  
11 occupying the home in its new location with its new addition, even though no inspection has  
12 been done by the Division and the plans for the addition have not been approved by the  
13 Division.

14 **Alleged Violations:**

15 The Division alleges that, based on the above-recited facts, Respondent committed the  
16 following violations:

17 First Claim for Relief (two counts)

18 By failing to have the home inspected prior to occupancy and/or by failing to receive a  
19 certificate of installation and a matching label, Respondent violated NAC 489.405, which is  
20 grounds for disciplinary action pursuant to NRS 489.421(6).

21 Second Claim for Relief (three counts)

22 By failing to obtain required permits from the Division before constructing the addition  
23 on the home and/or by moving and re-installing the home without obtaining required permits  
24 from the Division, Respondent violated NAC 489.411, which is grounds for disciplinary action  
25 pursuant to NRS 489.421(6).

26 Third Claim for Relief

27 By failing to obtain approval from the Division before constructing the addition on the  
28 home and/or by failing to submit plans for the addition to the home to the Division before

1 constructing the addition, Respondent violated NAC 489.486, which is grounds for disciplinary  
2 action pursuant to NRS 489.421(6).

3 Fourth Claim for Relief

4 Respondent's installation of the home and/or work on the home violated the *Nevada*  
5 *Manufactured Home, Mobile Home and Commercial Coach Installation Standards*, as adopted  
6 by the Division in NAC 489.416, which is grounds for disciplinary action pursuant to  
7 NRS 489.416 and/or NRS 489.421(6).

8 Fifth Claim for Relief

9 By failing to respond to the Division's repeated communications and/or notices in a  
10 timely manner as specified in the Division's communications and/or notices, Respondent is  
11 subject to disciplinary action pursuant to NRS 489.421(3).

12 Sixth Claim for Relief

13 By failing to respond to the Division's notice of correction issued pursuant to  
14 NRS 489.291, Respondent is subject to disciplinary action pursuant to NRS 489.421(4).

15 Seventh Claim for Relief

16 Because Respondent's installation of the home and/or work on the home was not  
17 commensurate with the standards of the trade in general and/or was below the standards  
18 adopted and/or is below standards adopted by the Division or the codes and standards  
19 adopted pursuant to Chapter 489 of NRS, and any regulations adopted pursuant thereto,  
20 and/or endangers the life and safety of an occupant of a manufactured home, mobile home,  
21 manufactured building or commercial coach or factory-built housing, Respondent is subject to  
22 disciplinary action pursuant to NRS 489.416(1).

23 Eighth Claim for Relief

24 Because Respondent's installation of the home and/or work on the home was  
25 performed incompetently and/or negligently, Respondent is subject to disciplinary action  
26 pursuant to NRS 489.416(3).

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**Proposed Settlement:**

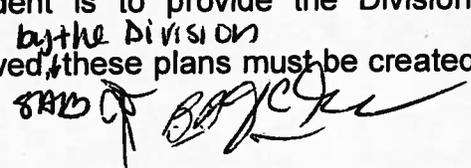
1  
2 1. The Division was prepared to present its case based upon the Complaint and  
3 Notice of Hearing ("Complaint") dated January 27, 2011, and Respondent was prepared to  
4 defend against the Complaint.

5 2. The Parties desire to compromise and settle the instant controversy upon the  
6 following terms and conditions.

7 3. Respondent admits to Violations of Law One through Eight as alleged in the  
8 Complaint.

9 4. Respondent agrees to voluntarily surrender his general serviceperson License  
10 No. B-1442 in lieu of other disciplinary action as of the date of his signature on this Stipulation  
11 for Settlement of Disciplinary Action, and he will not reapply for a general serviceperson license  
12 for not less than three (3) years from the date the effective date of the Hearing Officer's Order  
13 approving this Stipulation for Settlement of Disciplinary Action.

14 5. Respondent agrees to reimburse the Division for a portion of its costs incurred in  
15 this matter in the amount of FIVE HUNDRED DOLLARS (\$500) within sixty (60) days from the  
16 effective date of the Hearing Officer's Order approving this Stipulation for Settlement of  
17 Disciplinary Action. No grace period is permitted. Failure to pay this fine within the time  
18 specified shall be construed as an event of default by Respondent.

19 6. Within sixty (60) days of the approval of this Stipulation for Settlement of  
20 Disciplinary Action by the Hearing Officer, Respondent is to provide the Division with  
21 approved installation plans for the home. To be approved, <sup>by the Division</sup> these plans must be created by a  
22 licensed engineer. 

23 7. Within thirty (30) days after receiving the approved installation plans for the  
24 home, the Division will inspect the home, to determine whether the installation of the home  
25 meets the qualifications required for the Division to issue a certificate of installation for the  
26 home.

27 8. The Division will contact the homeowner in order to coordinate and schedule the  
28 inspection, and the inspection of the home will be conducted by Investigator Childers and a  
third party from the Division, not to include Inspector Terry.

1           9.     Should the home not pass inspection and qualify for a certificate of installation,  
2 Respondent agrees to pay for a Division-approved serviceperson to perform all additional  
3 work necessary so that the home passes inspection and the Division may issue a certificate of  
4 installation for the home.

5           10.    In the case of the event described above in paragraph 10, Respondent and the  
6 Division will confer and determine a mutually agreeable timeline for completion of the  
7 additional work and the second inspection. The parties agree that this new timeline will avoid  
8 any unnecessary delay.

9           11.    Should the homeowner not allow the Division to inspect the home and/or not  
10 allow a Division-approved serviceperson to perform the additional work necessary for the  
11 home to pass inspection so that the Division may issue a certificate of installation, or  
12 otherwise impede Respondent's ability to fulfill all the terms of this Stipulation, Respondent is  
13 relieved the requirement to pay for such work as described above in paragraph 9.

14           12.    The Division agrees not to pursue any other or greater remedies or fines in  
15 connection with Respondent's conduct reference herein.

16           13.    Respondent and the Division agree that by entering into this Stipulation, the  
17 Division does not concede any defense or mitigation Respondent may assert and that once  
18 this Stipulation is approved and fully performed, the Division will close its file in this matter.

19           14.    Respondent agrees that the public records law may require the Division to make  
20 available for inspection this Stipulation and related documents. Respondent agrees that the  
21 Division may share the content of this Stipulation and related documents with any  
22 governmental or professional organization or member of the public.

23           15.    Respondent agrees that if the costs assessed above in paragraph 5 are not paid  
24 within the time period set forth hereinabove, or the approved installation plans for the home  
25 not provided according to the terms above in paragraph 6, or the timely completion of all  
26 additional work necessary so that the home passes inspection and the Division may issue a  
27 certificate of installation for the home as described above in paragraphs 10 and 11, the  
28 Division may, at its option, rescind this Stipulation and proceed with prosecuting the Complaint

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1 before the Hearing Officer. Further, debt collection actions for unpaid monetary assessments  
2 in this case may be instituted by the Division.

3 16. Respondent agrees and understands that by entering into this Stipulation, he is  
4 waiving his right to a hearing at which Respondent may present evidence in his defense, his  
5 right to a written decision on the merits of the complaint, his rights to reconsideration and/or  
6 rehearing, appeal and/or judicial review, and all other rights which may be accorded by the  
7 Nevada Administrative Procedure Act, NRS Chapters 233B, 489, 622, and 622A,  
8 NAC Chapter 489, and the federal and state constitutions. The Hearing Officer who reviews  
9 this matter for approval of this Stipulation may be the same Hearing Officer who ultimately  
10 hears, considers, and decides the Complaint if this Stipulation is not timely performed by  
11 Respondent. Respondent fully understands that he has the right to be represented by legal  
12 counsel in this matter at his own expense.

13 16. Each party shall bear its own attorneys' fees and costs.

14 17. Stipulation is Not Evidence. Neither this Stipulation nor any statements made  
15 concerning this Stipulation may be discussed or introduced into evidence at any hearing on  
16 the Complaint, if the Division must ultimately present its case based on the Complaint filed in  
17 this matter.

18 18. Approval of Stipulation. Once executed, this Stipulation will be published for three  
19 business days as required by NRS 622.330. During that period, any person may request that a  
20 meeting be held in order to discuss the terms of the Stipulation. Respondent understands that  
21 the Stipulation will not be final until after the provisions of NRS 622.330 are fulfilled.  
22 Furthermore, should a person request a meeting to discuss the terms of the Stipulation,  
23 Respondent understands that the Division and Respondent may be required to draft a new  
24 Stipulation or withdraw from this Stipulation. At that time, the Division may also pursue its  
25 complaint before the Hearing Officer.

26 19. Withdrawal of Stipulation. If a meeting held pursuant to paragraph 18 above  
27 results in the Division drafting a new Stipulation which adds terms unacceptable to Respondent,  
28 Respondent may withdraw from this Stipulation and the Division may pursue its complaint before  
the Hearing Officer.

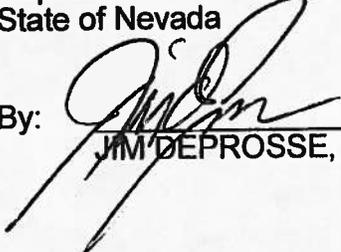


1 22. Respondent has signed and dated this Stipulation only after reading and  
2 understanding all terms herein.

3 **IT IS SO STIPULATED.**

4  
5 Dated: OCT. 5, 2011

6 MANUFACTURED HOUSING DIVISION  
7 Department of Business and Industry  
8 State of Nevada

9 By:   
10 JIM DEPROSSE, Administrator

11 Dated: Oct. 5, 2011

12 K.C. GAGE CONSTRUCTION

13 By:   
14 KEVIN GAGE, Owner  
15 K.C. GAGE CONSTRUCTION

16 Approved as to form:

17 CATHERINE CORTEZ MASTO  
18 Attorney General

19 By:   
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21 Deputy Attorney General  
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25 *Attorneys for State of Nevada,*  
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