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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
approved plans we are unable to inspect the installation of the
home. The Nevada Revised Statute 489.251 does not permit the
utilities to be activated to the home until an inspection has been

21 satisfactorily completed. Also, Nevada Administrative Code
22 489.405 prohibits occupancy without a satisfactory inspection.

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

27 18. The Second Letter was sent to Respondent via regular and certified U.S. Mail
28 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:

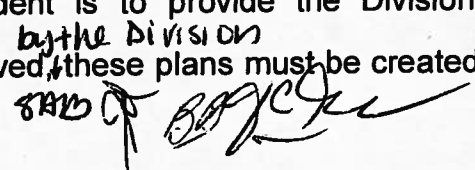
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2 1. The Division was prepared to present its case based upon the Complaint and
3 Notice of Hearing ("Complaint") dated January 27, 2011, and Respondent was prepared to
4 defend against the Complaint.

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, ^{by the Division} 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.

Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89701-4717

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 20. Release. In consideration of execution of this Stipulation, Respondent for
2 himself, his heirs, executors, administrators, successors, and assigns, hereby releases,
3 remises, and forever discharges the State of Nevada, the Department of Business and
4 Industry, and the Division, and each of their respective members, agents, employees and
5 counsel in their individual and representative capacities, from any all manner of actions,
6 causes of action, suits, debts, judgments, executions, claims, and demands whatsoever,
7 known and unknown, in law or in equity, that the Respondent ever had, now has, may have,
8 or claim to have, against any or all of the persons or entities named in this section, arising out
9 of or by reason of the Division's investigation, this disciplinary action, and all other matters
10 relating thereto.

11 21. Indemnification. Respondent hereby indemnifies and holds harmless the State
12 of Nevada, the Department of Business and Industry, the Division, and each of their
13 respective members, agents, employees and counsel in their individual and representative
14 capacities against any and all claims, suits, and actions brought against said persons and/or
15 entities by reason of the Division's investigation, this disciplinary action, and all other matters
16 relating thereto, and against any and all expenses damages, and costs, including court costs
17 and attorneys' fees, which may be sustained by the persons and/or entities named in this
18 section as a result of said claims, suits, and actions.

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

3 **IT IS SO STIPULATED.**

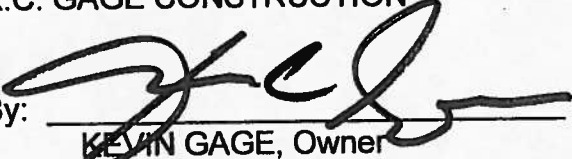
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5 Dated: OCT. 5, 2011

MANUFACTURED HOUSING DIVISION
Department of Business and Industry
State of Nevada

6
7
8 By: 
JIM DEPROSSE, Administrator


9
10 Dated: Oct. 5, 2011

K.C. GAGE CONSTRUCTION


11
12 By: 
KEVIN GAGE, Owner
K.C. GAGE CONSTRUCTION

13 Approved as to form:

14 CATHERINE CORTEZ MASTO
15 Attorney General

16
17 By: 
18 SARAH A. BRADLEY
19 Deputy Attorney General
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22 (775) 684-1213
23 *Attorneys for State of Nevada,*
24 *Department of Business and Industry,*
25 *Manufactured Housing Division*

26 BYRON BERGERON LAW OFFICES

27
28 By: 
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