

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HIGHWAY SAFETY)
AND MOTOR VEHICLES,)
)
Petitioner,)
)
vs.) Case No. 98-4869
)
JAMIE HEWETT,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on February 23, 1999, in Quincy, Florida, before the Division of Administrative Hearings, by its designated Administrative Law Judge, Diane Cleavinger.

APPEARANCES

For Petitioner: Michael J. Alderman, Esquire
Gabrielle L. A. Taylor, Esquire
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building, Room A-432
Tallahassee, Florida 32399-0504

For Respondent: Lawrence F. Kranert, Jr., Esquire
Post Office Box 186
Chattahoochee, Florida 32324

STATEMENT OF THE ISSUE

Whether Respondent's mobile home installer's license should be disciplined, suspended, revoked or fined.

PRELIMINARY STATEMENT

On October 16, 1997, Petitioner, Department of Highway Safety and Motor Vehicles, filed an Administrative Complaint against Respondent, Jamie Hewett, alleging that Respondent's mobile home installer license should be disciplined for violating Section 320.8249, Florida Statutes, and Rules 15C-1.0102 through 15C-1.0104, Florida Administrative Code. Specifically, the Administrative Compliant alleged that Respondent improperly installed a mobile home for David Cay at 7643 Meridale Road in Woodville, Florida. The complaint also alleged that Respondent installed two mobile homes in 1997 which had similar or identical violations. At the hearing, Petitioner stipulated that the 1997 incidents were being offered in aggravation of the proposed penalty and to show knowledge.

Respondent requested a formal administrative hearing. The case was forwarded to the Division of Administrative Hearings.

At the hearing, the Department offered the testimony of two witnesses and submitted six exhibits into evidence. Respondent testified in his own behalf and offered the testimony of one other witness. Respondent did not offer any exhibits into evidence.

FINDINGS OF FACT

1. Respondent is currently and at all times relevant to this proceeding licensed as a mobile home installer pursuant to Section 320.8249(9)(g), Florida Statutes.

2. On August 3, 1998, Respondent installed a 1998 Homes of Merit, triple-wide mobile home for David Cay at 7643 Meridale Road in Woodville, Florida.

3. On August 24, 1998, Petitioner's employee, David Cowfer, conducted a random inspection of the Cay mobile home. The inspection was for the purpose of determining compliance with the manufacturer's installation instructions and component manufacturer's installation instructions.

4. The Cay mobile home had about 40, four foot long rod anchors with shovel-like stabilizer plates attached.

5. When Mr. Cowfer inspected the Cay mobile home, he found that about one-third of the anchors had not been driven to the soil surface or to the top of the plate. The ground surface was about three or four inches below the tension head.

6. Additionally, when Mr. Cowfer inspected the anchors on the Cay mobile home, he found that almost all of them had 10 to 16 inch holes around them exposing the stabilizer plates.

7. When a mobile home's anchors are not properly installed, or buried, they can fail, resulting in the home going off its foundation or going airborne, endangering any people inside.

8. The installation instructions for the type of anchor used on the Cay mobile home provide as follows:

CAUTION: Anchors must be inserted in the ground all the way to the head of the anchor, such that no rod is above the ground. Installer is responsible for compliance with all ordinances, codes, laws and other requirements.

For vertical pull, continue to operate machine until the head of the anchor is flush with the ground. (Illustration B) If the anchor is to be used for horizontal pull, (frame attachment) stop the driver, with the head about 12 inches from the ground, install an approved stabilizer against the anchor shaft with the top flush to the ground. (Illustration C). Now continue to drive the anchor the remaining 12 inches until the anchor head makes contact with the top of the stabilizer, and the head of the anchor is in line with the frame.

Note: For anchors over three feet in length it is acceptable to excavate the first 24 inches of soil either before installing the anchor provided the earth is replaced by backfilling 1 foot, tamping and adding 1 gallon of water, and then complete filling in the hole, tamp earth and spray with one gallon of water.

9. Clearly the anchors which were above the ground were not installed properly. Respondent's employee could not sink the anchors completely into the ground because the ground was too hard. However, the regulations do not appear to address the issue of ground conditions preventing the anchors from being driven completely in the ground or whether alternative types of anchors are available to correct this condition. Importantly, the Cay mobile home was inspected by the local building official after Respondent fixed some of the deficiencies cited by Petitioner. None of the anchors were adjusted during the repair work. The Cay home was issued a certificate of occupancy. The certificate of occupancy indicates that the Cay home met the local code requirements including mobile home installation

requirements and was safe for occupancy. Therefore, Respondent is guilty of committing a technical violation by not installing the anchors according to the component manufacturer's instructions. Proper installation is important and therefore the violation is not de minimus. However, the evidence was not clear about how serious the violation is, given the fact it may have been impossible to comply with the component manufacturer's instructions and the fact that the installation was considered safe by the local building inspector.

10. When the soil is not backfilled and tamped properly, rain will wash into the auger hole and cause settling and a hole around the anchor. However, such holes can also develop when the soil is properly backfilled and tamped in the hole around the anchor. Therefore, the Department did not establish by clear and convincing evidence that the holes around the anchor were not filled and tamped properly.

11. The manufacturer's installation instructions for the Cay mobile home provide that all slack be removed from the strapping system.

12. When Mr. Cowfer inspected the side wall strapping on the Cay mobile home, he found that all the slack had not been pulled out of any of the straps, and that they were all very loose. Tight straps prevent the home from moving excessively under storm conditions. Clearly the loose straps were a significant violation.

13. To fasten the halves of the home together, the manufacturer's installation instructions provide that lag screws 24 inches on center must be driven through the floor joists at a 45-degree angle.

14. However, Respondent used another method for joining center line screws. The evidence did not show whether Respondent's method was approved by the manufacturer.

15. Additionally, when Mr. Cowfer inspected the Cay mobile home, he found that about half of the required lag screws were not installed.

16. Missing lag screws constitute's a violation.

17. The manufacturer's installation instructions require that the centerline and any holes made by the lag screws be sealed with foam tape.

18. Failure to properly seal the home can cause air and moisture infiltration and rodent infiltration.

19. When Mr. Cowfer inspected the Cay mobile home, he found that the center line and lag screw holes had not been sealed. Failure to properly seal the mobile home constitutes a violation.

20. When Mr. Cowfer inspected the Cay mobile home, there were no blocks under the sheer walls. Additionally, there were no blocks under the center line columns or they were improperly installed or out of place.

21. If the mobile home is not properly blocked, it could bow, settle and go out of level, or slide to the ground.

22. The manufacturer's installation instructions (Petitioner's Exhibit 2, D-3) for the Cay mobile home contain the following instructions for blocking the mobile home:

LOCATE THE BLOCKING PLAN FOR YOUR HOME IN THE COMPLIANCE PACKAGE LOCATED IN YOUR HOME.

THIS PLAN WILL SHOW WHERE I-BEAM BLOCKING AND ANCHORING IS REQUIRED, AS WELL AS ANY CENTER LINE BLOCKING AND ANCHORING REQUIREMENTS.

IF THIS PLAN CANNOT BE FOUND, PLEASE CALL US AT HOMES OF MERIT.

23. The second page of Petitioner's Exhibit 1 is the floor plan for the Cay mobile home. Respondent claims that this floor plan is not a floor plan for the Cay home but merely a generic floor plan. However, Mr. Cower testified that the floor plan came out of the instruction manual "provided with this particular home." Moreover, the floor plan in question is not bound into the manual, but is a separate sheet. Finally while the manual is dated "1/97," the floor plan is dated "7/9/98," less than one month before the installation date of the mobile home. However, Homes of Merit Homes such as the Cay mobile home have tags on the home to show the installer where blocks should be placed. No testimony from the manufacturer was offered to clarify or authenticate the Cay home's blocking requirements. Therefore, the evidence is unclear as to whether the floor plan marked as Petitioner's Exhibit 1 is in fact the floor plan for blocking the Cay mobile home. Therefore, no clear and convincing evidence was presented by the Department on the blocking of the Cay homes.

24. This action is the first discipline imposed on Respondent. The evidence showed that Respondent or Respondent's employees had been instructed in the past on the proper installation of mobile home anchors, straps, and blocking of mobile homes. However, none of these past incidents were shown to be similar enough to the current case facts to warrant aggravation of any penalty.

25. As indicated earlier, Respondent sent two employees to correct the alleged deficiencies on the Cay mobile home. They did not change any of the anchors on the Cay home. Subsequently, the Cay mobile home was inspected by the local building official and issued a certificate of occupancy.

CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction over this subject matter and the parties to this action pursuant to Section 120.57(1), Florida Statutes.

27. In license discipline cases, the agency has the burden to establish by clear and convincing evidence that Respondent violated the statutes or rules which govern the license at issue. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

28. Section 320.8249(10), Florida Statutes, authorizes the Department to take action against a mobile home installer's license as follows:

Any licensed person or license applicant who violates any provision of subsection (9) may have any of the following disciplinary penalties imposed by the department.

- (a) License revocation;
- (b) License suspension;
- (c) A fine not to exceed \$1,000 per violation;
- (d) A requirement to take and pass, or retake and pass, the department-approved examination;
- (e) Probation;
- (f) Probation subject to such restriction of practice as the department chooses to impose;
- (g) A notice of noncompliance; or
- (h) Refusal of licensure application.

29. The specific violation of Section 320.8249(9), Florida Statutes, which with the Department charged Respondent with in the administrative complaint was paragraph (g), which reads:

(9) No licensed person nor licensed application shall;

* * *

(g) Commit violations of the installation standards for mobile homes or manufactured homes contained in rules 15C-1.0102 to 15C-1.0104, Florida Administrative Code.

30. The standard for installation of anchors is set by Rule 15C-1.0102(3), Florida Administrative Code, which reads in relevant part:

Installation of such anchors and components shall be in accordance with the manufacturer's instructions.

31. In this case, the Department has proven by clear and convincing evidence that the Respondent violated Rule 15C-

1.0102(3), Florida Administrative Code, by installing one-third of the anchors on the Cay home in a manner inconsistent with the anchor manufacturer's instructions.

32. Subsection (1) of Rule 15C-1.0102, Florida Administrative Code, provides in relevant part:

Installation standards for the set-up of new or used manufactured homes and part trailers shall be in compliance with the manufacturer's installation instructions unless otherwise specified in this rule.

33. The Petitioner has shown by clear and convincing evidence that Respondent failed to set up the Cay home in accordance with the manufacturer's instructions with regard to installation of the lag screws in the center line, sealing the center line and lag screw holes, and installing the strapping. The Department did not show by clear and convincing evidence that the blocking of the Cay home was not done in accordance with the manufacturer's installation instructions.

34. Section 320.8249(10), Florida Statutes, authorizes the Department to take a wide range of actions against licensees who violate subsection (9) of that section. The evidence did not demonstrate that Respondent's failure to comply with the manufacturer's or component manufacturer's installation instructions or use of alternative methods of installation were life-threatening. However, the violations were serious. Moreover, the Department did not show that the Respondent has committed similar violations on other occasions in the past and

has been educated about them. Given these factors, the penalty for Respondent's violations should not be aggravated but should be sufficient to equal the seriousness of the violations since they do involve improper installation of mobile homes. The proper penalty would therefore be probation for one year with monitoring by another licensed mobile home installer at Respondent's expense who should inspect Respondent's installations for compliance and a fine of \$500.

35. Respondent argues that the Department is barred from revoking Respondent's license by the doctrine of election of remedies, based on the Department's demand that the Respondent repair the deficiencies in the Cay home. However, in order for the doctrine to apply, the allegations of fact necessary to support one remedy must be substantially inconsistent with those necessary to support the other. American Process Company v. Florida White Pressed Brick Co., 56 Fla. 116, 122, 47 So. 942, 944 (1908). In this case, the factual basis for the demand that Respondent put right the Cay home is identical to the factual basis for this administrative action, namely, that Respondent set the home up improperly as to certain items. Moreover, the purpose of the doctrine is to prevent a double recovery for the same wrong. Barbe v. Villeneuve, 505 So. 2d 1331, 1332 (Fla. 1987). In this case there is no such "double recovery" requiring that Respondent do what he should have done in the first place, i.e., set the home up properly. The concern is with the

protection, safety and investment of the owners of the Cay home. The Department has a right to demand this regardless of whether it chooses to impose sanctions under Section 320.8249, Florida Statutes; license discipline is concerned with protecting the general public from future violations by Respondent. Thus, these goals concern different aspects of the Department's duties under the mobile home licensing statute and will not result in a "double recovery" by the Department.

RECOMMENDATION

Based upon the findings of fact and conclusions of law, it is,

RECOMMENDED:

That the Department of Highway Safety and Motor Vehicles place Respondent Jamie Hewett's mobile home installer's license on probation for one year with supervision by another licensed mobile home installer in good standing and impose a fine of \$500.

DONE AND ENTERED this 6th day of May, 1999, in Tallahassee, Leon County, Florida.

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of May, 1999.

COPIES FURNISHED:

Michael J. Alderman, Esquire
Gabrielle L. A. Taylor, Esquire
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building, Suite A-432
Tallahassee, Florida 32399-0504

Lawrence F. Kranert, Jr., Esquire
Post Office Box 186
Chattahoochee, Florida 32324

Enoch Jon Whitney, General Counsel
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building
Tallahassee, Florida 32399-0500

Fred O. Dickinson, III, Executive Director
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building
Tallahassee, Florida 32399-0500

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.