

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BANKING AND)
FINANCE,)
)
Petitioner,)
)
vs.) Case No. 02-1270
)
LYNN HAVEN HOME CENTER, INC.;)
CHRISTOPHER WILSON; AND DOYCE)
LINDLEY,)
)
Respondents.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing in the above-styled case was held on July 26, 2002, in Crestview, Florida, before Diane Cleavinger, a duly-designated Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Clyde C. Caillouet, Esquire
Department of Banking and Finance
4900 Bayou Boulevard, Suite 103
Pensacola, Florida 32503

For Respondent
Christopher
Wilson: Brant Hargrove, Esquire
Law Offices of Brant Hargrove
2984 Wellington Circle, West
Tallahassee, Florida 32309

For Respondent
Lynn Haven Home
Center, Inc.: No Appearance

For Respondent
Doyce Lindley: No Appearance

STATEMENT OF THE ISSUES

The issues in the case are whether Respondents committed fraud and/or misrepresentation in entering into various retail installment contracts in violation of Section 520.995(1)(b), Florida Statutes; and whether the Department of Banking and Finance is entitled to an Order against Respondents, including fines and a Cease and Desist Order.

PRELIMINARY STATEMENT

On February 4, 2002, the Department of Banking and Finance (Department) filed an Administrative Complaint to Enter a Cease and Desist Order, Imposing Penalties and Notice of Rights against Lynn Haven Home Center, Inc., Christopher Wilson, and Doyce Lindley for entering into various retail installment transactions involving fraud and/or misrepresentation in violation of 520.995(1)(b), Florida Statutes. Respondents Wilson and Lindley denied all of the allegations in the Administrative Complaint, asserted an affirmative defense under Section 517.061(11), Florida Statutes, and requested a formal administrative hearing. Respondent Lynn Haven did not request an administrative hearing and did not respond to the Administrative Complaint. The case was forwarded to the Division of Administrative Hearings.

Prior to hearing, the attorney for Doyce Lindley withdrew from representing him.

At the hearing, the Department called nine witnesses and offered seven exhibits into evidence. Respondent Wilson did not call any witnesses and did not offer any exhibits into evidence. Lynn Haven Home Center did not appear at the hearing. Likewise, Respondent Lindley did not appear at the hearing.

After the hearing, Petitioner and Respondent Wilson filed Proposed Recommended Orders on September 10, 2002.

FINDINGS OF FACT

1. At all times material hereto, Lynn Haven Home Center, Inc. (Lynn Haven), was a licensed motor vehicle retail installment seller with locations at 3250 Highway 77, Panama City, Florida 32405; and 161 Racetrack Boulevard, Fort Walton, Florida 32547.

2. Christopher Wilson was an employee of Lynn Haven Home Center, Inc.

3. Doyce Lindley was allegedly a director of Lynn Haven at its Fort Walton office. However, no competent evidence was submitted at the hearing supporting these allegations and no witness was familiar with Mr. Lindley, his role in Lynn Haven, or his association with any sales of Lynn Haven. Since no relationship with the company was established and no relationship with any of the sales of the company was

established, no findings can be made regarding Mr. Lindley. Therefore, the Administrative Complaint should be dismissed in regards to him.

4. Lynn Haven had a dealer agreement with Bombadier Capital Company (Bombadier) under which Bombadier would finance the purchase of a mobile home by a qualified buyer based, in part, on the buyer's credit application, credit history and manner of financing the mobile home, including the amount of the down payment. The dealer agreement between Lynn Haven and Bombadier stated, in part, as follows:

Each consumer will have paid any specified down payment in cash or by trade-in prior to delivery of Home, and no part of such down payment will have been loaned or otherwise provided directly or indirectly by Dealer or, to Dealer's knowledge, any other person; any property received by Dealer in trade on a Home which secures a Security Instrument shall be free from any liens, security interests, encumbrances or any other claims, and each Consumer at the time of execution of the Security Instrument shall be the legal owner of such Collateral.

5. The agreement also required Lynn Haven to give truthful information on retail installment contracts. If the dealer did not supply truthful information, the deal would be cancelled prior to funding. If the false information was discovered after the loan was funded, the dealer would be pursued for repayment of the loan.

6. Around May 1998, Bombadier financed one loan for Royal Gaddy which had been originated by Lynn Haven. Mr. Gaddy did not testify at the hearing. Therefore, no competent evidence regarding the negotiations between or the exact home purchased or seen by Mr. Gaddy was introduced at the hearing. The purchase documents reflect that the serial number of the home was the same on all the purchase documents, indicating that one particular home was being purchased by Mr. Gaddy. However, the invoice for the home and the purchase agreement for the home disagree as to the width of the home. The invoice reflects a width of 24 feet and the purchase agreement reflects a width of 27 feet. It is unclear what documents Bombadier reviewed in agreeing to make the loan to Mr. Gaddy. There was no competent evidence presented at the hearing on how the documents for this purchase and loan were prepared or why there was a discrepancy in the home width among the documents. Collin McGowan, the alleged owner of Lynn Haven, submitted the loan to Bombadier.

7. For unknown reasons, Mr. Gaddy defaulted on his loan and the mobile home was repossessed by Bombadier. The lender discovered by visual inspection that the trailer was not the size represented on the retail installment contract. The trailer was, in fact, 24 feet in width instead of the 27 feet indicated on the sales agreement.

8. No competent evidence was introduced which indicated that Respondent Wilson filled out any document possessed by Bombadier as it relates to Royal Gaddy. Likewise, there was no competent evidence that Respondent Wilson had anything to do with the Gaddy purchase or loan. The documents themselves do not constitute evidence of fraud or misrepresentation since the width discrepancy could just as reasonably be due to a typographical error. Therefore, this allegation of the Administrative Complaint against the Respondents should be dismissed.

9. Around January 1998, Donna Huff bought a home from Lynn Haven. Mrs. Huff talked to Respondent Wilson about the purchase of a mobile home. At some point, she spoke with a salesperson that she could not afford a five percent down payment on a home. She did not know if the salesperson she told this to was Respondent Wilson or another salesperson. The salesperson told her not to worry about it and that she could get into a new mobile home. Ms. Huff put down \$100.00 cash on the mobile home. She purchased the mobile home under an installment contract. The installment contract was later assigned to Green Tree Financial Center, Inc. No one from Green Tree testified at the hearing regarding this loan, any dealer agreement it had with Lynn Haven, or the representations, if any, Green Tree relied on to take assignment of this installment contract. Nor did anyone

from Green Tree or elsewhere testify as to the standards in the industry regarding borrowing a cash down payment.

10. Ms. Huff's retail installment contract states that she paid \$3,602.92 as a cash down payment. Ms. Huff did not notice the amount of the down payment until this investigation, several years after her purchase. She does not know where the amount of the down payment in the installment contract came from.

11. From a review of the documents, it appears that the remainder of the down payment came from money remaining after the seller closed the sale with Ms. Huff. The down payment was generated by adding \$2,003.00 to the setup and delivery costs for the mobile home under the heading "TI over allowance." The setup and delivery costs were included in the total sales price of the home. The cash sale price was \$33,665.00 plus \$2,069.90 in taxes for a total of \$35,734.90. The difference between the cash sale price of \$33,665.00 and the unpaid balance of the loan of \$32,131.98 is \$1,534.92. The difference of \$1,534.92 plus \$2,003.00 equals \$3,602.92 or the down payment amount listed in the retail installment contract for Ms. Huff's home. In effect the money for the down payment came from the amount financed under the installment contract.

12. No evidence was introduced by Petitioner demonstrating that any document Mrs. Huff signed was submitted to any lending institution.

13. No evidence was introduced by Petitioner demonstrating that any document Mrs. Huff signed was utilized by any lending institution for any purpose.

14. No evidence was introduced by Petitioner demonstrating that Respondent Wilson wrote anything on any document submitted to a lending institution regarding the source of any down payment funds provided by Mrs. Huff for the purchase of her home or that the source for such down payment was from borrowed funds. Without such evidence, none of the Respondents are guilty of fraud or misrepresentation and the parts of the Administrative Complaint regarding Ms. Huff's transaction should be dismissed.

15. Around March 1998, Rick Laux bought a mobile home from Lynn Haven. Mr. Laux dealt with Respondent Wilson, but did not recognize him at the hearing. Mr. Laux traded in a mobile home to Lynn Haven towards the purchase of a new mobile home. Mr. Laux's equity of \$9,472.68 in the mobile home he traded in was used as a down payment on the new mobile home. No cash down payment was made by Mr. Laux.

16. Lynn Haven set up the new mobile home on ten acres that Mr. Laux owned. Lynn Haven also installed a well, septic system, and power pole on Mr. Laux's ten acres. The land had already been cleared by Mr. Laux. No clearing was done by Lynn

Haven. The ten acres also served as collateral on the mortgage used in part to buy the mobile home from Lynn Haven.

17. Mr. Laux had no knowledge of who arranged for financing of his mobile home. However, the home was financed by Unicorn Mortgage. The loan was closed by Stewart Title of Northwest Florida, a third-party loan closing agent.

18. A review of the HUD statement, a federally required loan closing document, shows that Lynn Haven was paid \$9,996.00 for costs associated with land improvements. The purchase agreement, signed by Mr. Laux, shows that Mr. Laux was charged \$3,500.00 for land preparation that was not done by Lynn Haven. The \$3,500.00 charge was part of the \$9,996.00 in land improvement costs paid to Lynn Haven at closing. The remainder of the land improvement costs were a well (\$3,850.00), septic system (\$1,350.00), and power pole (\$1,296.00). The \$3,500.00 charge appears along with other figures which eventually yield an estimated total cost and an estimated loan amount, which estimated amount became the final amount financed by Mr. Laux and funded by Unicorn. The purpose for the \$3,500.00 charge could only have been to increase the estimated loan amount for the transaction in order to pull money out of the transaction to balance against the equity down payment allowed on the trade in. However, it is unclear that Unicorn relied on or even saw the purchase agreement between Lynn Haven and Mr. Laux. Further, it

is unclear whether the amount allowed for the trade in was accurate or inaccurate. What is clear is that the \$3,500.00 figure was a made-up figure.

19. Mr. Laux had no knowledge of who filled out any form relating to his purchase. No one from Unicor or Stewart Title testified as to who filled out the loan closing documents or who supplied the numbers and information used therein. Likewise, there was no evidence introduced by Petitioner demonstrating that Respondent Wilson wrote anything on any document submitted to a lending institution regarding the source of any down payment funds provided by Mr. Laux for the purchase of his home or that Respondent Wilson filled out the purchase agreement associated with this transaction. However, it is clear an agent of Lynn Haven prepared the sales agreement in which the land improvement costs were included and that underlies the eventual loan amount for the Laux transaction. The \$3,500.00 amount is a fictitious amount and a misrepresentation on the part of Lynn Haven. Therefore, Lynn Haven is guilty of misrepresentation in an installment loan transaction.

20. In 1998, Brian Withey purchased a mobile home in a home package from Lynn Haven. The package included a lot, well, septic tank, and power pole, as well as permits and other necessities for setting up the home. The salesperson for Mr. Withey was Respondent Wilson. Mr. Withey paid \$900.00 as a

cash down payment for the mobile home. The purchase agreement reflects a proposed cash down payment of \$13,075.00. The amount is very hard to read and may actually be a different amount, but the down payment does appear to be over \$10,000.00. It is unclear from the documents exactly where the amount of the proposed cash down payment came from or if it was the amount of payment actually used to close the loan.

21. The HUD Settlement Statement was unreadable. Therefore, it is impossible to determine the closing costs involved in the loan or to trace through other documents the amounts used in the HUD statement.

22. A new home closeout sheet reflects an over-allowance of \$12,225.00 and an item labeled "extra gross" of \$7,075.00. The extra gross item was made up of amounts for a well (\$900.00), power (\$710.00), septic system (\$700.00), and driveway (\$4,765.00). Lynn Haven did not install a driveway for Mr. Withey. The extra gross amounts were the differences between dollar figures listed in a column labeled "charged" and dollar figures listed in a column labeled "actual." The figures appear to be related to costs. However, there was no evidence to support that conclusion. The figure in the charged column for the driveway was \$4,765.00, but the figure in the actual column was \$0. There was no evidence regarding this extra gross sheet and the document was not recognized by Mr. Withey at the

hearing. Likewise, there was no evidence regarding how these two documents were used in closing the loan, what the loan amount was, or even who the lender was.

23. No evidence was introduced by Petitioner demonstrating that any document introduced into evidence was submitted to any lending institution or utilized by any lending institution for any purpose. Likewise, none of these documents can be linked to Respondent Wilson as providing any of the information on any documents submitted to a lending institution regarding the source of any down payment funds provided by Mr. Withey for the purchase of his home. Therefore, Respondent Wilson is not guilty of fraud or misrepresentation and the portions of the Administrative Complaint relating thereto should be dismissed. The evidence regarding whether Lynn Haven charged Mr. Withey for a driveway which he did not receive is not clear since how the extra gross sheet was used in the eventual loan or purchase is not clear. The suspicion is that the driveway value was used to inflate the requested loan amount in order to yield enough cash for a down payment. However, there was insufficient evidence to support such a conclusion since the HUD statement was unreadable. Therefore, the portions of the Administrative Complaint related to the Withey transaction against Lynn Haven should be dismissed.

24. Betty Brown bought a home from Lynn Haven in March of 1998. The salesperson she dealt with was Randy, last name unknown. Respondent Christopher Wilson had no involvement with her purchase. Ms. Brown traded in her mobile home for a new mobile home, and she was allowed \$7,000.00 for her trade in. No other cash was deposited by Ms. Brown. The new mobile home was placed on the lot owned by her where the old mobile home had been. No land improvements were required and no septic system, power pole, or well was required since those items were already present on the property.

25. However, the salesperson for Lynn Haven told her they would add charges for a septic tank and well to account for a \$10,000.00 down payment. In essence, false charges or allowances for improvements would be added to the loan amount to increase the loan amount to balance against a \$10,000.00 cash down payment. Ms. Brown was uncomfortable with this process and questioned the salesperson about it. She was told that it was standard practice in purchasing a mobile home.

26. The lender for Ms. Brown's transaction was Unicorn Mortgage, Inc., and the closing agent was Stewart Title of Northwest Florida, Inc. No one from either of these corporations testified as to this loan or who supplied the figures used in the HUD closing statement.

27. No evidence was introduced by Petitioner demonstrating that any document signed by Ms. Brown was submitted to any lending institution. Likewise, no evidence was introduced by Petitioner demonstrating that any document Ms. Brown signed was utilized by a lending institution for any purpose.

28. No evidence was introduced by Petitioner which demonstrated that Respondent Wilson wrote anything on any document submitted to a lending institution regarding the source of any down payment funds provided by Ms. Brown for the purchase of her home. Therefore, Respondent Wilson is not guilty of fraud or misrepresentation and the portions of the Administrative Complaint relating thereto should be dismissed. The evidence did show Lynn Haven charged or included in the purchase agreement amounts for a well, power pole, and septic system which were already present on her property in order to inflate the value of the loan so that a \$10,000.00 down payment could be reflected for the loan. This practice is at worst fraud, at best an intentional misrepresentation of the actual down payment for the mobile home. Therefore, Lynn Haven is guilty of fraud and misrepresentation in an installment contract.

29. Around June 1998, Maureen Pooler purchased a mobile home from Lynn Haven. The salesperson she dealt with was Randy,

last name unknown. Ms. Pooler never dealt with Respondent Wilson.

30. Ms. Pooler did not discuss any down payment requirements with the salesperson, but did tell him that she only had \$2,000.00 to put down on a mobile home. While looking at the homes on Lynn Haven's sales lot, the salesperson told Ms. Pooler that Lynn Haven would reduce the price of any mobile home on the lot because the business was moving down the road. Ms. Pooler picked out two mobile homes and gave the salesperson a check for \$2,000.00. Lynn Haven ran a credit history on Ms. Pooler. Later, the salesperson called to inform Ms. Pooler that she had been approved for a loan on the lesser of the two mobile homes. The evidence did not demonstrate if any sales contract or other paperwork was submitted to gain such approval.

31. The retail installment contract shows a down payment of \$13,000.00. A separate document titled "Purchase agreement" lists no amounts for a down payment. The purchase agreement does contain a net trade amount of \$13,000.00. The New Home Washout Sheet reflects a \$10,000.00 over allowance. However, none of these figures can be traced through to the installment contract and the evidence did not demonstrate the relationship, if any, among these various documents.

32. The installment contract was assigned to Green Tree Financial Center, Inc. No one from Green Tree testified at the

hearing regarding this loan, any dealer agreement it had with Lynn Haven, or the representations, if any, Green Tree relied on to take assignment of this installment contract. Nor did anyone from Green Tree or elsewhere testify as to the standards in the industry regarding borrowing a cash down payment.

33. No evidence was introduced by Petitioner demonstrating that any document signed by Ms. Pooler was submitted to any lending institution. Likewise, no evidence was introduced by Petitioner demonstrating that any document Ms. Pooler signed was utilized by any lending institution for any purpose.

34. No evidence was introduced by Petitioner which demonstrated that Respondent Wilson wrote anything on any document submitted to a lending institution regarding the source of any down payment funds provided by Ms. Pooler for the purchase of her home. Therefore, the portions of the Administrative Complaint relating to the Pooler transaction against the Respondents should be dismissed.

35. Around April 1998, Larry Laux purchased a mobile home from Lynn Haven. The salesperson he dealt with was Randy Wilson. Mr. Laux never dealt with Respondent Wilson in any material manner.

36. Mr. Laux did not make a cash down payment on the mobile home. He did use some land he owned and had been living on as collateral. Mr. Laux told the salesperson that he could

not make a cash down payment. The salesperson replied that, given Mr. Laux's credit rating, the lack of a down payment should not be a problem.

37. The alleged purchase agreement for the mobile home contained two signatures for Mr. Laux and his wife. However, the signatures were not those of the Laux's, and Mr. Laux did not recognize the purchase agreement.

38. In any event, the home was purchased and a loan was closed by Mr. Laux. The lender was Green Tree Financial Services and the closing agent was Stewart Title of Northwest Florida, Inc. No one from either corporation testified as to the Laux loan or the paperwork relied on for that loan. The HUD statement for the loan does not reflect a down payment. However, the HUD statement does reflect a disbursement of funds to Lynn Haven for land improvements in the amount of \$4,450.00. The land improvement figure consisted of charges for a power pole (\$1,000.00), water, and sewer hookups (\$3,000.00) and land clearing (\$450.00). Except for the power pole, Lynn Haven did not provide these items to Mr. Laux, and Mr. Laux was never given the money for the hookups or land clearing. Lynn Haven kept the money for services it did not provide. Therefore, Lynn Haven is guilty of fraud in a financial transaction for home improvements.

39. No evidence was introduced by Petitioner demonstrating that any document signed by Mr. and Mrs. Laux was submitted to any lending institution. Likewise, no evidence was introduced by Petitioner demonstrating that any document Mr. and Mrs. Laux signed was utilized by any lending institution for any purpose.

40. No evidence was introduced by Petitioner which demonstrated that Respondent Wilson wrote anything on any document submitted to a lending institution regarding the source of any down payment funds provided by Mr. and Mrs. Laux for the purchase of their home. Therefore, the portions of the Administrative Complaint related to the Laux transaction against the Respondent Wilson should be dismissed.

41. In December 1997, Terries Mesiner bought a home from Lynn Haven. Respondent Wilson was the salesperson who dealt with Mr. Mesiner. The facts surrounding the Mesiner negotiations and eventual sale are unclear. There appears to have been some sort of prequalification or approval for a purchase of a mobile home. However, there were two different mobile homes involved. The first was the one the Mesiner's wanted but did not purchase. At some point there were discussions for additions to a mobile home they wanted to purchase which included a whirlpool tub, large deck, and extra insulation. However, the evidence did not show to which mobile home the discussion of these additions pertained. Likewise the

evidence did not demonstrate that these discussions resulted in a contractual agreement that Lynn Haven would provide these additions.

42. What is clear is that Respondent Wilson told Mr. Mesiner he needed 15 percent of the purchase price as a down payment on the purchase of mobile home. Mr. Mesiner indicated he could only pay \$3,000.00 as a down payment. Respondent Wilson told him they would "work around it." Mr. Mesiner paid \$3,000.00 as a down payment on the mobile home. The down payment shown on the HUD settlement statement was \$13,001.83. There was no evidence which demonstrated where the figure used for the down payment in the HUD statement came from. Neither the lender nor the closing agent testified at the hearing and none of the documents introduced into evidence pertaining to this transaction seem to relate to this figure. Moreover, the HUD statement does not list Lynn Haven as the seller, but some other individuals whose roles were not identified at the hearing.

43. Mr. Mesiner performed a walk-through of his newly-purchased home and approved of everything as being appropriate that was included in his home.

44. Mr. Mesiner further signed all closing documents, none of which mentioned a deck, a whirlpool, or extra insulation or charges for such items.

45. No evidence was introduced by Petitioner demonstrating that any document signed by Mr. Mesiner was submitted to any lending institution or utilized by any lending institution for any purpose.

46. No evidence was introduced by Petitioner which demonstrated that Respondent Wilson wrote anything on any document submitted to a lending institution regarding the source of any down payment funds provided by Mr. Mesiner for the purchase of his home. Therefore, the portions of the Administrative Complaint regarding the Mesiner transaction should be dismissed.

CONCLUSIONS OF LAW

47. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. Chapter 120.57(1), Florida Statutes.

48. The Department is authorized to enforce the provisions of Chapter 520, Florida Statutes, and the rules promulgated thereunder.

49. Section 520.995(1)(b), Florida Statutes, states:

(1) The following acts are violations of this chapter and constitute grounds for the disciplinary actions specified in subsection (2):

* * *

(b) Fraud, misrepresentation, deceit, or gross negligence in any home improvement

finance transaction or retail installment transaction, regardless of reliance by or damage to the buyer or owner

50. In this case, the evidence demonstrated that Lynn Haven committed fraud and misrepresentation in both retail installment transactions and home improvement transactions. However, no competent evidence was introduced which indicated that Respondent Wilson lied about the source of down payment funds on documents submitted to any lender in order to obtain financing for retail installment contracts. Further, there was no competent evidence introduced by Petitioner that Respondent Wilson charged buyers for improvements that were never delivered. Finally, there was no competent evidence that any of the Respondents fraudulently contracted with any buyer for a 27-foot home, but delivered a 24-foot home to him. Of great concern in this case is, that while the evidence in some cases did not support a finding of fraud or misrepresentation, the documents and the numbers contained in those documents are highly suspicious as to whether various costs and allowances for improvements were being inflated to result in borrowing the money for the down payment from the purchase loan. If lenders or assignees are unaware of the inflation and the information is material to a lender's decision, then the practice is violative of Chapter 520, Florida Statutes. However, except for

Bombadier, none of the lenders or closing agents testified at this hearing.

RECOMMENDATION

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

RECOMMENDED that the Department of Banking and Finance enters a final order as:

1. That Lynn Haven Home Center, Inc., cease and desist any and all further violations of Chapter 520, Florida Statutes, and the rules duly promulgated thereunder, including, but not limited to Section 520.995(1)(b), Florida Statutes; and

2. That Lynn Haven Home Center, Inc., pay a fine in the amount of \$1,000.00 (one thousand dollars) per violation; and

3. That the Administrative Complaint filed against Christopher Wilson and Doyce Lindley be dismissed.

DONE AND ENTERED this 6th day of November, 2002, in Tallahassee, Leon County, Florida.

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of November, 2002.

COPIES FURNISHED:

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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.