

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE HOUSING FINANCE AGENCY

In the Matter of the Revenue Recapture of  
Bruce Dreyer and Sara Dreyer

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

The above matter came on for a telephone hearing before Administrative Law Judge James E. LaFave on June 23, 2014.

Darryl J. Henchen, Assistant Attorney General, appeared on behalf of the Minnesota Housing Finance Agency (MHFA or Agency). Respondents Bruce Dreyer and Sara Dreyer (Respondents) did not appear in person or by counsel. They did not contact the Administrative Law Judge to request a continuance of this matter or request any other relief. Based upon Respondents' failure to appear, the Agency moved for a default order.

**STATEMENT OF ISSUES**

1. Whether Respondents are in default of the terms and conditions of the Contract which Respondents executed and whether they are required to repay the monies received?
2. Whether MHFA is entitled to offset the amount owed by the Respondents using revenue recapture in accordance with Minn. Stat. ch. 270A?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

**SUMMARY OF RECOMMENDATION**

The Administrative Law Judge concludes that Respondent is in default and recommends that the allegations in the Notice and Order for Prehearing Conference and Hearing be accepted as true and deemed proven.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. The Respondents were served with the Notice and Order for Hearing on May 15, 2014. The Respondents was served by U.S. Certified Mail with postage prepaid at the last known address of the Respondents.<sup>1</sup>

2. In the Notice and Order for Hearing, MHFA alleged that Respondents received loan funds after executing the Minnesota Housing Finance Agency Home Rental Rehabilitation Program Loan Repayment Agreement and Mortgage (Contract) dated January 26, 2009.<sup>2</sup>

3. Pursuant to Section 2.4.G of the Contract, failure by the Respondents to comply with any of the provisions contained in 24 C.F.R. Part 92 and the Minnesota Housing Finance Agency Home Rental Rehabilitation Program Owner's Manual (Manual) or to fail to supply any required documentation constitute an Event of Default.<sup>3</sup>

4. On December 13, 2013, MHFA sent a Notice of Default requesting specific action by Respondents to demonstrate compliance with the MHFA Home Rental Rehabilitation Program.<sup>4</sup>

5. To date, the following items requested by the MHFA to verify compliance with the requirements mandated in the Contact have not been received:

a. The submission of complete tenant files for Units 1-7 evidencing tenant eligibility, including tenant income certifications and all income and asset files (pursuant to pp. 14 and 16 of the Manual).

b. The Government Data Practices Act Disclosure Statement for all tenant files (pursuant to p. 9 of the Manual).

c. The HOME Lease Addendum for all tenant files (pursuant to p. 56 of the Manual).

d. Evidence of the correction of the following: the power being restored to Unit 3 (pursuant to p. 34 of the Manual); and the servicing of all fire extinguishers so that the service tags are all current (pursuant to the Minnesota State Fire Code).

e. The submission of a written tenant selection policy/plan for the subject property (pursuant to pp. 57 and 58 of the Manual).

f. The submission of all Affirmative Fair housing Marketing done in 2012 and 2013 (pursuant to p. 46 of the Manual).

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<sup>1</sup> See Attachment A at Affidavit of Service.

<sup>2</sup> Notice and Order for Hearing at 2 (May 15, 2014). See, Ex. A.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

g. The submission of tenant information for all units on the online Compliance Monitoring System for 2013 and 2013 (as requested by MHFA).<sup>5</sup>

6. Failure to supply each item listed in 5a through 5g above constitutes an Event of Default under the Contract.<sup>6</sup>

7. To date, Respondents have not cured the Events of Default.<sup>7</sup>

8. On January 21, 2014, MHFA sent a Notice of Acceleration requesting payment in full of the Loan.<sup>8</sup>

9. To-date, Respondents have not repaid any amount of the Loan.<sup>9</sup>

10. In the Notice and Order for Hearing, MHFA alleged that, as of May 14, 2014, there was \$99,999.00 due and owing from Respondents pursuant to the Contract with MHFA. MHFA alleges that it is entitled to use revenue recapture to offset the amount owed by Respondents to MHFA.<sup>10</sup>

11. The Notice and Order for Hearing contained the following warning: "Respondent's failure to appear at the hearing or any prehearing conference may result in a finding that Respondent is in default, that the MHFA's allegations contained in this Notice and Order may be accepted as true, and that its propose action may be upheld."<sup>11</sup>

12. The Respondents failed to appear for the scheduled hearing, and did not make a prehearing request for a continuance or any other relief. The Respondents failed to appear without the prior consent of the Administrative Law Judge. The Respondents are, therefore, in default.

13. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Hearing, a copy of which is attached as Attachment A, are taken as true, deemed proven without further evidence, and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. § 270A.09.

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<sup>5</sup> *Id.* 2 and 3.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.*

<sup>8</sup> Notice and Order for Hearing at 3 (May 15, 2014). See, Ex. D.

<sup>9</sup> Notice and Order for Hearing at 3 (May 15, 2014).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 4.

2. The MHFA gave proper notice of the hearing in this matter, and has complied with all procedural requirements law and rule.

3. Respondents Bruce Dreyer and Sara Dreyer are in default under Minn. R. 1400.6000 as a result of their failure to appear at the hearing.

4. Under Minn. R. 1400.6000, the allegations and the issues set out in the Notice and Order for Hearing may be taken as true or deemed proved without further evidence when a party defaults.

5. The Respondents are in default of the terms and conditions of the Contract.

6. As of May 14, 2014 the balance due and owing from Respondents to MHFA was \$99,999.00.

7. The Respondents are required to repay the money they received.

8. MHFA is entitled to use revenue recapture to offset the amount owed.

9. The action against the Respondents is in the public interest.

Based on the Conclusions of Law, the Administrative Law Judge makes the following:

### **ORDER**

IT IS ORDERED that the Minnesota Housing Finance Agency is entitled to use revenue recapture to offset the amount owed to it by Bruce Dreyer and Sara Dreyer.

Dated: July 24, 2014

s/James E. LAFave  
JAMES E. LAFAVE  
Administrative Law Judge

Reported: Default

### **NOTICE**

Pursuant to Minn. Stat. § 207A.09, subd. 3, this Order is the final decision in this case. Any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.69.