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OPINION COMMITTEE



RD-0262-KP

FILE # ML-48472-18
I.D.# 48472

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MANUFACTURED HOUSING DIVISION

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December 20, 2018

The Honorable Ken Paxton
Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Certified Mail No:
91 7199 9991 7030 6238 6418
Return Reciept Requested

Re: Request for Opinion Regarding Manufactured Homeowner Consumer Claims Program

Dear General Paxton:

The Texas Department of Housing and Community Affairs, Manufactured Housing Division (Department) respectfully requests the Attorney General's opinion on the following matter:

I. Issue

The Manufactured Housing Division has the ability to distribute funds to injured consumers through the Manufactured Homeowner Consumer Claims Program. The Department is seeking clarification on whether an arbitration judgment meets the intent of the law when the law refers to a contested trial. If it does is the Department required to pay all arbitration awards; or may it retain some discretion in validating claims with evidence and ensuring the claim is within its jurisdiction. If it does not meet the definition of a contested trial, may the Department use the arbitration judgment as supporting evidence to consider payment from the Manufactured Homeowner Consumer Claims Program when payment is appropriate in accordance with the law with the Department's discretion?

II. Applicable Law

Tex. Occ. Code § 1201.405. (e) In determining the amount of actual damages under this section, the director shall make an independent inquiry as to the damages actually incurred, unless the damages have been previously established through a contested trial. (Also see attached laws and rules for consideration in this decision.)

Also See Texas Occupations Code Chapter 1201, Subchapter I., Manufactured Homeowner Consumer Claims Program.

Also See Title 10, Texas Administrative Code, Chapter 80, Subchapter F., Manufactured Homeowner Consumer Claims Program.

III. Background:

The Manufactured Housing Division (Department) is expecting to receive numerous claims for funds from our Manufactured Homeowner Consumer Claims Program based on allegations against one respondent. The Department had previously investigated these cases and in some they were found to be out of our jurisdiction; some violations were thought to possibly be DTPA violations, and the remainder of claims were paid. There is a small portion of the law that allows us to pay claims if a contested trial results in a judgment that determines the actual damages. A request was made for the Department to accept arbitration judgments in lieu of contested trials in order to save resources. The Department in an effort to be cooperative accepted the request. All complaints that were found to lack jurisdiction and possibly be DTPA cases are now being held in arbitration with the intention of seeking reimbursement from the Department, regardless if the Department believes sufficient evidence or jurisdiction is found.

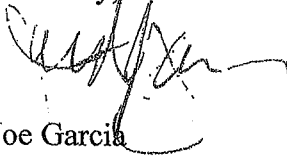
The arbitrations are being held over video conference with the respondent present over the telephone. The Manufactured Housing Division has an attorney observing the arbitrations to ensure the respondent is present. The attorney for the consumer has acquired both a bankruptcy and a district court judgment accepting the arbitration judgments to finalize the arbitration decisions.

Based on these judgments is the Department bound by the arbitrator's decisions to make all of these payments? Does a contested arbitration qualify as a contested trial pursuant to Tex. Occ. Code §1201.405(e)? If a contested arbitration does not qualify as a contested trial may the Department use the arbitration as additional evidence to assist the Department in determining the appropriate amount to be refunded to the consumer?

The Department is now concerned that all claims will be awarded in arbitration as DTPA violations, regardless of the Department's jurisdiction to pay the claims or their determination that there may be a lack of evidence to demonstrate a violation. If a Department's investigation and determination conflicts with an arbitrator's judgment; can the Department retain some discretion in what claims shall be paid?

We have provided copies of relevant information. Please let me know if you require additional information and thank you for your assistance.

Sincerely,



Joe Garcia
Executive Director,
Manufactured Housing Division
512-475-4999 (Phone)

Attached:
Relevant Texas Occupations Code Ch. 1201
Relevant 10 Tex. Admin. Code § 80.80
Judgements from the District Court and Bankruptcy Court
Letter issued by the Manufactured Housing Division
E-mails from the Manufactured Housing Division

CC: Raul Noriega