

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

CHERRY ESTATES LP; CHERRY ESTATES INVESTMENT, LLC; FLUSHING ELMCREST LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP; ELMCREST INVESTMENT, LLC; COVENANT APARTMENTS LP; COVENANT APARTMENTS INVESTMENT, LLC; COVENANT PROJECT, LLC; BETHEL TOWER LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP; BETHEL TOWER INVESTMENT, LLC; TRAIL WEST, LTD.; TRAIL WEST INVESTMENT, LLC; TRAIL WEST HOUSING PARTNERS, INC.; ROBINSON HEIGHTS APARTMENTS I, LP; ROBINSON HEIGHTS APARTMENTS INVESTMENT I, LLC; HICKORY CREEK ESTATES, LTD.; HICKORY CREEK ESTATES INVESTMENT, LLC; SHERMAN THOMPSON OH TC, L.P.; SHERMAN THOMPSON TOWERS INVESTMENT, LLC; HIGHLAND PLACE ASSOCIATES I, LTD.; HIGHLAND PLACE INVESTMENT I, LLC; PETOSKEY RIVERVIEW LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP; PETOSKEY RIVERVIEW INVESTMENT, LLC; OAKDALE ESTATES, LTD.; OAKDALE ESTATES II INVESTMENT, LLC; OAKDALE ESTATES INVESTMENT, LLC; OAKDALE ESTATES INVESTMENT GP, LLC; MORNING STAR TOWER, LTD; MORNING STAR TOWER INVESTMENT, LLC; INTERNATIONAL TOWERS I OHIO, LTD; YMHA HOUSING PRESERVATION, LLC; INTERNATIONAL TOWERS INVESTMENT I, LLC; KINGSBURY TOWER I, LTD.; KINGSBURY TOWER INVESTMENT I, LLC; HUNTER'S RUN INVESTMENT, LLC; HALTON HR INVESTORS, LLC; HWFB HR INVESTMENT, LLC; HALTON SPRINGS INVESTMENTS, LLC; MILLENNIA HOUSING MANAGEMENT LTD., and FRANK SINITO,

Respondents.

24-JM-0150-CM-005
24-AF-0151-CM-006
24-AF-0171-CM-008
24-AF-0172-CM-009
24-AF-0173-CM-010
24-AF-0181-CM-011
24-AF-0182-CM-012
24-AF-0186-CM-013
24-AF-0187-CM-014
24-AF-0188-CM-015
24-AF-0189-CM-016
24-AF-0194-CM-017
24-AF-0215-CM-018
24-AF-0216-CM-019
24-AF-0223-CM-020
24-AF-0224-CM-021

May 22, 2025

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

This order resolves cross-motions for summary judgment filed in connection with complaints brought by the United States Department of Housing and Urban Development ("HUD") before this tribunal, the Office of Hearings and Appeals ("OHA"), under 12 U.S.C.

§ 1735f-15 and HUD's implementing regulations at 24 C.F.R. part 30. HUD alleges that Respondents made unauthorized transfers totaling more than \$3.1 million from accounts associated with HUD-insured multifamily housing projects. HUD seeks summary judgment on the merits against all but two Respondents, covering 115 of the 119 alleged violations. Respondents oppose *HUD's Motion* and move for summary judgment in their favor, asserting four constitutional arguments that they contend require dismissal of the proceedings.

PROCEDURAL HISTORY

Respondents are involved in the development, ownership, and management of multifamily housing projects insured by HUD's Federal Housing Administration ("FHA") under the National Housing Act, 12 U.S.C. §§ 1701 *et seq.*

Between February 21 and April 10, 2024, HUD filed sixteen *Complaints* with this Tribunal under 12 U.S.C. § 1735f-15(c)(1)(B)(ii), alleging that Respondents made unauthorized disbursements of project funds without the written approval of the HUD Secretary. On May 2, 2024, the Tribunal consolidated the *Complaints* into a single proceeding, recognizing that the allegations involved overlapping entities and a coordinated pattern of conduct. The hearing was initially scheduled for December 2024.

On May 22, 2024, Respondents filed their initial Answers. Then, on August 1, 2024, they submitted Amended Answers asserting two new affirmative defenses: one based on the U.S. Supreme Court's decision in SEC v. Jarkesy, 603 U.S. 109 (2024), and the Seventh Amendment; the other based on Article II of the Constitution. HUD moved to strike both defenses, maintaining that constitutional questions lie outside this Tribunal's jurisdiction. The Tribunal declined to strike the defenses, concluding that they raised jurisdictional issues that must be addressed in the normal course.

Between August and October 2024, the Tribunal granted three extensions of the prehearing schedule at Respondents' request and continued the hearing to March 2025. On November 22, 2024, the Tribunal denied Respondents' motion to stay proceedings based on a parallel criminal investigation.

Seeking to halt this administrative proceeding, Respondents filed suit in the U.S. District Court for the Northern District of Ohio (the "Federal action") on November 27, 2024. That complaint sought declaratory and injunctive relief against HUD and various HUD officials and components, including this Tribunal. There, Respondents contended that HUD's enforcement proceedings violated the Seventh Amendment, Article III, and Article II of the Constitution. See Millennia Hous. Mgmt. v. U.S. Dep't of HUD, No. 1:24-cv-02084, 2025 WL 1222589, at *2 (N.D. Ohio Apr. 28, 2025). They asked the court to declare that this Tribunal lacked jurisdiction under 12 U.S.C. § 1735f-15 and to enjoin the ongoing administrative case.

On April 28, 2025, the District Court dismissed Respondents' Seventh Amendment and Article III claims for lack of jurisdiction. The District Court also concluded that, even if jurisdiction had existed, Respondents would not have been entitled to declaratory or injunctive

relief on those claims. Id. at *6–9. The District Court further denied Respondents’ Article II claim. Id. at *11-16.

On January 24, 2025, the Tribunal granted the parties’ joint motion to extend the hearing schedule and to allow additional time to brief motions for summary judgment. Accordingly, the hearing was rescheduled to begin on June 2, 2025, with a scheduled conclusion no later than June 20, 2025.

On April 10, 2025, the parties filed a *Joint Stipulation to Limit Discovery and Evidence*. Respondents agreed not to introduce evidence on any issue or penalty factor other than ability to pay, and not to contest any fact previously admitted or conceded, while reserving the right to respond to HUD’s arguments and evidence. In exchange, HUD agreed to limit discovery and withdrew four counts from the *Complaints*: Count 1 in *In re Hunter’s Run Investment, LLC, et al.*, HUDOHA 24-AF-0224-CM-021 (Apr. 10, 2024), and Counts 1, 3, and 5 in *In re Bethel Tower Limited Dividend Housing Association Limited Partnership, et al.*, HUDOHA 24-AF-0172-CM-009 (Mar. 1, 2024).

On April 28, 2025, the parties filed their respective motions for summary judgment. On May 8, 2025, each filed an opposition to the other’s motion.

The cross-motions are now ripe for resolution.

LEGAL FRAMEWORK

Summary Judgment. In resolving the parties’ cross-motions, the Tribunal applies the summary judgment standard set forth in 24 C.F.R. § 26.32(l), which authorizes the Tribunal to “decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact.” The Tribunal may also, in its discretion, apply Rule 56 of the Federal Rules of Civil Procedure. See 24 C.F.R. § 26.40(f)(2).

Summary judgment is appropriate where there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Fed. R. Civ. P. 56(a); see also Dupree v. Younger, 598 U.S. 729, 736 (2023) (stating that motions for summary judgment may be denied either “because the facts are genuinely in dispute” or “because the law does not support the movant’s position”). A genuine dispute exists only where the evidence is such that a reasonable factfinder could rule in favor of either party. Anderson, 477 U.S. at 248. A fact is material only if it could affect the outcome under governing law. Id.

The Tribunal does not weigh evidence or resolve factual disputes at this stage. Rather, it determines whether any material disputes exist that preclude judgment as a matter of law, viewing the record in the light most favorable to the nonmoving party. See Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970). The moving party bears the burden of demonstrating the absence of any genuine issue of material fact. Anderson, 477 U.S. at 256. Once that burden is met, the nonmoving party must come forward with “specific facts showing that there is a genuine

issue for trial.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586–87 (1986) (quoting Fed. R. Civ. P. 56(e)).

Civil Money Penalties. The Federal Housing Administration (“FHA”), established under the National Housing Act, administers mortgage insurance programs to promote the development and availability of affordable housing. As relevant here, the FHA insures mortgages for multifamily housing projects. See 12 U.S.C. §§ 1713, 1715l, 1715n.

Under section 537 of the National Housing Act, enacted through the HUD Reform Act of 1989, Congress authorized the Secretary of HUD to impose civil money penalties on mortgagors and certain affiliated parties for violations of HUD’s multifamily insurance program requirements. See Pub. L. No. 101-235, § 108, 103 Stat. 1987, 2003 (1989) (codified at 12 U.S.C. § 1735f-15); see also 24 C.F.R. § 30.45.

Liable parties under the statute include: (1) mortgagors of HUD-insured properties with five or more living units; (2) general partners of partnership mortgagors; (3) officers or directors of corporate mortgagors; (4) management agents with an identity of interest with the mortgagor or its principals; and (5) members of limited liability companies that are mortgagors or serve in certain controlling ownership roles. 12 U.S.C. § 1735f-15(b)(1), (c)(1)(A). As discussed below, HUD contends that Respondents fall within one or more of these categories based on their roles in the insured projects.

Penalties may be imposed where a liable party knowingly and materially fails to comply with applicable requirements or commits one of the specific violations enumerated in subsection (c)(1)(B). Id. § 1735f-15(b)(1), (c)(1)(B). In this case, HUD alleges violations under subsection (c)(1)(B)(ii), which prohibits the knowing and material “[a]ssignment, transfer, disposition, or encumbrance of any personal property of the project, including rents, other revenues, or contract rights, or paying out any funds, except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary.” Id. § 1735f-15(c)(1)(B)(ii).¹

Before imposing a civil money penalty, HUD must file a complaint and provide the respondent with an opportunity to request a hearing on the record. See id. § 1735f-15(d)(1)(B); 24 C.F.R. § 30.85(b). Hearings are conducted before an Administrative Law Judge in accordance with the Administrative Procedure Act and HUD’s implementing regulations at 24 C.F.R. part 26, subpart B. See 24 C.F.R. §§ 30.1, 30.95.

The Tribunal now applies these standards to the parties’ motions and the underlying record.

¹ Section 1735f-15(c) also notes that “[t]he pay out of surplus cash, as defined by and provided for in the regulatory agreement, shall not constitute a violation....” 12 U.S.C. § 1735f-15(c)(1)(B).

DISCUSSION

I. RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

On April 28, 2025, Respondents filed their *Motion for Summary Judgment on the Government's Claims* ("Respondents' Motion"), asserting four constitutional violations that, in their view, compel dismissal of this proceeding. Specifically, Respondents argue that (1) the Seventh Amendment entitles them to a jury trial, which this Tribunal cannot provide; (2) the dual-layer removal protections for administrative law judges violate Article II by insulating the presiding judge from presidential oversight; (3) this Tribunal lacks constitutional authority under Article III to adjudicate the claims at issue; and (4) the absence of a publicly available docket violates the First Amendment. Respondents contend that each constitutional defect independently warrants dismissal and, alternatively, that the alleged defects deprive this Tribunal of subject matter jurisdiction.

On May 8, 2025, HUD filed its *Opposition to Respondents' Motion* ("HUD's Opposition"), arguing that no material facts are in dispute and that Respondents have not carried their burden of demonstrating entitlement to judgment as a matter of law. HUD maintains that (1) the Seventh Amendment and Article III do not require a jury trial in this administrative context; (2) Respondents are collaterally estopped from relitigating their Article II challenge, which was already decided in the Federal action; and (3) the First Amendment claim provides no basis for dismissal.

Upon consideration of the parties' submissions and governing law, the Tribunal concludes that none of the constitutional arguments advanced by Respondents supports dismissal. For the reasons that follow, *Respondents' Motion* is **DENIED** in its entirety.

A. The Tribunal Must Address the Constitutional Claims.

Although administrative tribunals generally lack authority to adjudicate the constitutionality of the statutes they administer, this Tribunal must consider the constitutional arguments raised in *Respondents' Motion* because they go directly to the propriety of the Tribunal's continued exercise of jurisdiction in this matter.

The Supreme Court has recognized that constitutional questions are ordinarily "unsuited to resolution in administrative hearing procedures." Califano v. Sanders, 430 U.S. 99, 109 (1977); see also Oestereich v. Selective Serv. Sys. Local Bd. No. 11, 393 U.S. 233, 242 (1968) (Harlan, J., concurring) ("Adjudication of the constitutionality of congressional enactments has generally been thought beyond the jurisdiction of administrative agencies."). However, "[t]his rule is not mandatory." Thunder Basin Coal Co. v. Reich, 510 U.S. 200, 215 (1994).

It is well established that a court—or any decision-making body—has authority to determine its own jurisdiction in the first instance. See, e.g., Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 118 (1998) ("[A] court always has jurisdiction to determine its own jurisdiction."); United States v. United Mine Workers of America, 330 U.S. 258, 310 (1947) (Frankfurter, J., concurring) ("[T]he very existence of a court presupposes its power to entertain

a controversy, if only to decide, after deliberation, that it has no power over that particular controversy.”); Stoll v. Gottlieb, 305 U.S. 165, 171–72 (1938); see also Fed. Power Comm’n v. La. Power & Light Co., 406 U.S. 621, 647 (1972) (recognizing “the primary authority of an agency to determine its own jurisdiction”).

Here, the constitutional challenges raised by Respondents implicate the Tribunal’s authority to adjudicate this proceeding. Accordingly, in order to assess its own jurisdiction, the Tribunal must consider and resolve the constitutional questions presented. Those questions are addressed in turn below.

B. The Seventh Amendment and Article III Do Not Require a Jury Trial.

Respondents’ claims under the Seventh Amendment and Article III fail. Citing SEC v. Jarkesy, 603 U.S. 109 (2024), Respondents argue that HUD’s pursuit of civil penalties entitles them to a jury trial in an Article III court. They contend that the claims at issue resemble traditional common law causes of action and therefore fall outside the public rights exception.

HUD counters that the enforcement scheme at issue arises from a statutory program that fits squarely within the public rights doctrine and bears no meaningful resemblance to a suit at common law. HUD also notes that the U.S. District Court rejected these same constitutional claims in the related Federal action—albeit in dicta, as the court ultimately determined that it lacked jurisdiction. Finally, HUD argues that, by voluntarily participating in FHA-insured programs and executing agreements governed by HUD’s enforcement regime, Respondents waived any right to demand a jury trial.

Because Respondents’ Seventh Amendment and Article III arguments rest on the same core legal theory, the Tribunal addresses them together and rejects both for the following reasons. Moreover, as Respondents are not entitled to a jury trial under the Seventh Amendment, the Tribunal does not reach the issue of whether they have waived that right.

1. HUD’s cause of action is statutory, not legal, in nature.

The cause of action at issue in this case is not legal in nature. It arises from a statutory enforcement scheme that bears no meaningful resemblance to any cause of action known at common law. Accordingly, Respondents’ Seventh Amendment challenge fails at the first prong of the Jarkesy analysis.

In SEC v. Jarkesy, 603 U.S. 109 (2024), the Supreme Court set forth a two-prong framework for determining whether a statutory claim falls within the Seventh Amendment’s jury trial guarantee. A jury trial is required if the claim is “legal in nature,” which in turn depends on the nature of the cause of action and the remedy it provides. Id. at 122–23 (citing Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 53 (1989)). The first prong asks whether the statutory action is “analogous to common-law causes of action ordinarily decided in English law courts in the late 18th century.” Id. (citing Granfinanciera, 492 U.S. at 42). This requires a comparison between the statutory claim and actions historically adjudicated in courts of law, as opposed to courts of equity. See Tull v. United States, 481 U.S. 412, 417–18 (1987).

Respondents argue that HUD’s claims resemble a traditional contract dispute that could have been brought before an English common law court. HUD disputes this, asserting that there is no 18th-century analogue to the type of enforcement action authorized by 12 U.S.C. § 1735f-15. The Tribunal agrees.

The claims in Jarkesy involved securities fraud—a form of deceit that shares a direct lineage with common law fraud and was therefore deemed “legal in nature.” Jarkesy, 603 U.S. at 125. That is not the case here. HUD’s cause of action stems from alleged violations of conditions imposed on recipients of mortgage insurance under a federally administered housing insurance program. The governing statute, 12 U.S.C. § 1735f-15, establishes both the substantive obligations for participants and the exclusive mechanism by which HUD may enforce them. If this statute were invalidated, HUD would have no alternative enforcement authority to pursue civil penalties. Unlike in Jarkesy, there is no preexisting statutory or common law basis upon which the government could proceed.

The structure of the statute reinforces this conclusion. Section 1735f-15 does not replicate a private right of action or substitute for a traditional tort or contract claim. Rather, it empowers HUD, as a regulator and administrator of a federal benefits program, to seek civil penalties against program participants for violations of HUD-imposed conditions. There is no common law analogue. See also Millennia Hous. Mgmt., 2025 WL 1222589, at *9 (noting that, if § 1735f-15 “sounded in common law only, then there would have been no need for its passage in the first place”).

Accordingly, the Tribunal finds that the cause of action asserted here is not legal in nature. Rather, it is a product of a modern, regulatory statute with no historical equivalent in the courts of law. The first prong of the Jarkesy analysis is not satisfied.

2. The civil penalties sought by HUD are not purely legal in nature.

The Tribunal finds that the remedy sought in this matter—civil money penalties under 12 U.S.C. § 1735f-15—is not purely legal in nature. Accordingly, the second prong of the Jarkesy framework is not satisfied, and the Seventh Amendment right to a jury trial does not attach.

In Jarkesy, 603 U.S. at 123–25, the Supreme Court emphasized that the nature of the remedy—particularly whether it is punitive—is central to determining whether a statutory claim is legal in nature. There, the Court found that the SEC’s civil penalties were designed to punish and deter, relying on factors focused on culpability and recidivism, and concluded that such penalties resembled traditional legal remedies enforceable only in courts of law.

This matter is distinguishable. The District Court in the related litigation found that the penalties sought under § 1735f-15 serve broader functions, noting that monetary relief is not always necessarily legal in nature and that the Seventh Amendment “has no application to cases where recovery of money damages is an incident to equitable relief even though damages might have been recovered in an action at law.” Millennia Hous. Mgmt., 2025 WL 1222589, at *9 (citing Curtis v. Loether, 415 U.S. 189, 196 (1974), and quoting NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 48 (1937)).

HUD’s framework for assessing penalties incorporates a range of discretionary factors under § 1735f-15(d)(3) and 24 C.F.R. § 30.80. These include: the gravity of the offense; history of prior violations; ability to pay; injury to the public; benefits received; deterrence of future violations; injury to tenants and/or lot owners; and other considerations “as justice may require.” While certain factors touch on culpability and deterrence, others reflect broader regulatory objectives not traditionally addressed by juries in courts of law. See Millennia, 2025 WL 1222589, at *9.

The penalty factors operate within a regulatory framework aimed at enforcing compliance with HUD’s mortgage insurance programs, not punishing misconduct in the sense contemplated by common law. The relevant considerations—such as ability to pay, public harm, and programmatic impact—reflect a broad, administrative inquiry into whether the program participant’s conduct undermines the goals of the federal housing insurance regime. These are not metrics that a jury would be asked to weigh in on in a traditional legal proceeding. Rather, they guide a discretionary, program-driven assessment of whether and to what extent civil penalties are appropriate to support HUD’s enforcement responsibilities.

This Tribunal’s role under the statute is to weigh those factors holistically and determine whether and to what extent a penalty should be imposed. The nature of that inquiry—flexible, discretionary, and grounded in equitable considerations—confirms that the remedy is not legal in nature. Rather, it reflects a statutory mechanism for enforcing program compliance in a federally administered housing benefit system.

The Tribunal concludes that the relief sought in this case is not purely legal in nature. Accordingly, the Seventh Amendment does not require a jury trial.

3. The public rights exception applies.

Even if HUD’s claims could be analogized to a suit at common law, they are plainly within the public rights exception to the Seventh Amendment.

Under settled doctrine, Congress may assign matters involving public rights to administrative adjudication without violating the Seventh Amendment. Jarkesy, 603 U.S. at 127. A claim qualifies as one involving public rights if it belongs to or exists against the federal government, or is “closely intertwined with a federal regulatory program Congress has power to enact.” Millennia Hous. Mgmt., 2025 WL 1222589, at *9 (quoting Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 54–55 (1989)). The Supreme Court has emphasized that the substance of the claim—not the forum or the identity of the parties—controls the analysis. Jarkesy, 603 U.S. at 134.

Respondents argue that these claims sound in contract and therefore fall outside the public rights doctrine. But that argument mischaracterizes the nature of the statutory scheme and the relationship between the parties. This is not a private dispute between private parties over freely negotiated contractual terms. The claims arise in a market created and regulated by Congress, pursuant to a federal housing insurance program administered by HUD. See Millennia, 2025 WL 1222589, at *9. The statute at issue—12 U.S.C. § 1735f-15—imposes

specific obligations on participants and establishes a novel mechanism for HUD to enforce those obligations. This is not a common law claim recast in administrative form; it is a regulatory enforcement action embedded in a federal benefits regime.

The program itself—FHA mortgage insurance for multifamily housing—exists solely by act of Congress. HUD, acting in its capacity as the arm of the executive branch charged with administering this program, enforces standards for participation in the program. Congress established a novel means for HUD to carry out this executive administrative function that involves more than simply pursuing traditional contract claims available at common law. As the District Court rightly noted, if § 1735f-15 “sounded in common law only, then there would have been no need for its passage in the first place.” Id.

Unlike the scheme challenged in Jarkesy, which allowed the SEC to bring fraud actions that mirrored traditional tort claims, this statute authorizes HUD to enforce compliance with housing program requirements before those violations would be independently justiciable in court. See id. (describing § 1735f-15 as “unique” in allowing HUD to act before a common law action would be ripe). That is precisely the kind of “self-consciously novel” regulatory structure the Court upheld in Atlas Roofing Co. v. Occupational Safety & Health Review Commission, 430 U.S. 442 (1977). Congress may assign public rights disputes to administrative tribunals without violating the Constitution’s judicial power clause. See Jarkesy, 603 U.S. at 127–28.

This Tribunal finds that the statute at issue creates a self-contained enforcement scheme that vindicates public—not private—rights. As such, the public rights doctrine applies. The claims are properly heard in this forum, and the Seventh Amendment does not entitle Respondents to a jury trial.²

C. The Article II Claim Is Precluded.

Respondents’ challenge to the removal protections for HUD administrative law judges is barred by the doctrine of collateral estoppel. The issue was fully litigated and resolved in the Federal action, which resulted in a final judgment on the merits. The same constitutional claim is raised here, between the same parties, and no further analysis is required.

Courts apply a four-part test to determine whether collateral estoppel applies: (1) the precise issue must have been raised and actually litigated in the prior proceeding; (2) its determination must have been necessary to the outcome; (3) the prior proceeding must have resulted in a final judgment on the merits; and (4) the party against whom estoppel is asserted must have had a full and fair opportunity to litigate the issue. Aircraft Braking Sys. Corp. v. Local 856, Int’l Union, United Auto., Aerospace & Agric. Implement Workers, 97 F.3d 155, 161 (6th Cir. 1996); see also B & B Hardware, Inc. v. Hargis Indus., Inc., 575 U.S. 138, 148 (2015).

All four elements are satisfied here. First, Respondents previously raised the same Article II issue in the Federal action, challenging the constitutionality of dual-layer removal protections for HUD ALJs. Millennia Hous. Mgmt., 2025 WL 1222589, at *4. Second, the

² Because the claims at issue fall within the public rights doctrine, their adjudication by this Tribunal does not implicate Article III.

District Court’s rejection of that challenge was necessary to its ruling denying injunctive and declaratory relief. *Id.* at *11–16 (upholding HUD’s ALJ structure as constitutional and finding no cognizable harm entitling Respondents to relief). Third, the case resulted in a final judgment on the merits.³ Fourth, Respondents had a full and fair opportunity to litigate the issue, with control over their legal strategy and incentives aligned with those presented here.

Accordingly, the findings and judgment of the District Court on this issue are entitled to preclusive effect in this proceeding. This Tribunal accepts and adopts those findings as binding here.

D. The First Amendment Does Not Compel Dismissal.

Respondents contend that this matter must be dismissed because HUD does not maintain a publicly accessible docket or post all OHA civil money penalty case materials online. They invoke the First Amendment right of public access to judicial proceedings recognized in Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 575–77 (1980), and extended to quasi-judicial administrative proceedings by cases such as Detroit Free Press v. Ashcroft, 303 F.3d 681, 696 (6th Cir. 2002), and New York Civil Liberties Union v. N.Y.C. Transit Authority, 684 F.3d 286, 300 (2d Cir. 2012). This right applies to the proceedings at hand. But Respondents have failed to establish any violation of it—and even if they had, their proposed remedy is unjustified.

The hearing in this matter is open to the public under 24 C.F.R. § 26.45(f), and the record has not been sealed. HUD publishes final civil money penalty decisions on its website and makes additional documents available through FOIA (the Freedom of Information Act, 5 U.S.C. § 552). Though Respondents complain that the former OHA webpage is no longer available, this is only the case because the entire HUD website was replaced in March 2025. The relevant regulations and decisions remain accessible at <https://www.hud.gov/stat>, and case files are available upon request under 5 U.S.C. § 552. Respondents identify no specific record they requested and were denied. This line of argument stretches the First Amendment well beyond its doctrinal footing. See Phillips v. DeWine, 841 F.3d 405, 419 (6th Cir. 2016) (noting the access doctrine is not a “tool ... to pry open the doors of state and federal agencies”).

To the extent HUD’s practices limit the method or immediacy of access, any such restriction qualifies as a content-neutral, time, place, and manner regulation—permissible so long as it is narrowly tailored to serve a significant government interest. See Globe Newspaper Co. v. Super. Ct. for Norfolk Cnty., 457 U.S. 596, 607 n.17 (1982); Courthouse News Serv. v. Smith, 126 F.4th 899, 908 (4th Cir. 2025). Real-time online publication of case materials is infeasible due to limited resources, and FOIA provides a constitutionally adequate alternative.⁴ The First

³ The District Court’s Memorandum Opinion and Order is a final judgment for purposes of collateral estoppel even if it is pending appeal. See Smith v. SEC, 129 F.3d 356, 362 n.7 (6th Cir. 1997) (noting that a pending appeal does not deprive the appealed judgment of its preclusive effect); Erebia v. Chrysler Plastic Prods. Corp., 891 F.2d 1212, 1215 n.1 (6th Cir. 1989) (“[T]he established rule in the federal courts is that a final judgment retains all of its preclusive effect pending appeal.”).

⁴ OHA proceedings often involve sensitive documents such as financial statements and loan records. Unlike Article III courts, which require litigants to self-redact and use fee-funded systems like PACER, OHA lacks an electronic

Amendment does not require agencies to adopt the most convenient or cost-effective method of access. See Courthouse News, 126 F.4th at 916–17.

Even if a violation had been shown, dismissal would not be an appropriate remedy. First Amendment access claims are typically raised as freestanding causes of action, not asserted defensively, and the remedy—if warranted—is relief tailored to secure access, not termination of underlying proceedings. Here, Respondents allege neither denial of access to specific materials nor particularized harm flowing from any alleged limitation. Their request for dismissal lacks any legal support and is denied.

II. HUD’S MOTION FOR SUMMARY JUDGMENT

On April 28, 2025, HUD filed the *Government’s Motion for Summary Judgment* (“HUD’s Motion”) seeking judgment against Respondents on 115 alleged violations of 12 U.S.C. § 1735f-15(c)(1)(B)(ii). As noted, this provision prohibits the knowing and material “[a]ssignment, transfer, disposition, or encumbrance of any personal property of the project ... or paying out any funds, except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary.”

On May 8, 2025, Respondents filed *Respondents’ Brief in Opposition to the United States’ Motion for Summary Judgment* (“Respondents’ Opposition”). They oppose HUD’s Motion on four grounds: (1) that the Administrative Procedure Act (“APA”) forbids this Tribunal from granting summary judgment in favor of HUD; (2) that issues of fact remain regarding HUD’s argument that Respondents’ alleged actions were “material” within the meaning of 12 U.S.C. § 1735f-15(c)(1)(B); (3) that HUD impermissibly asks this Tribunal to apply state common law veil-piercing doctrine to shift liability to impermissible entities, and presents insufficient factual evidence to justify piercing the corporate veil; and (4) that Respondents lack the ability to pay the civil money penalties HUD seeks.

This Tribunal now determines whether the material facts are undisputed and whether HUD is entitled to judgment as a matter of law.

A. There Is No Genuine Dispute as to the Facts Cited by HUD.

As the moving party, HUD bears the burden of demonstrating the absence of any genuine issue of material fact. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). Once that burden is met, the nonmoving party must come forward with “specific facts showing that there is a genuine issue for trial.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586–87 (1986) (quoting Fed. R. Civ. P. 56(e)).

HUD has met its initial burden. It submitted a *Statement of Undisputed Material Facts in Support of Its Motion for Summary Judgment* (“Statement”) identifying facts material to the issues raised in the *Complaints*. The Statement is supported by citations to Respondents’ *Amended Answers*, admissions, discovery responses, sworn declarations, and accompanying

filing system and cannot charge filing fees to support one. Manual redaction of records for public posting, as well as regular manual uploading and updating of docket information to the HUD website, would require significant administrative resources. Additionally, had Respondents raised this First Amendment claim in an Article III court, it likely would have been dismissed for lack of standing or ripeness. See Ky. Press Ass’n v. Kentucky, 454 F.3d 505 (6th Cir. 2006).

documentary evidence. Upon review, the Tribunal finds these submissions are sufficient to establish the absence of any genuine dispute as to the cited facts.

Respondents do not contest the facts identified in *HUD's Statement*. Instead, they argue that HUD has failed to present sufficient facts to justify legal liability or the imposition of penalties. That argument challenges the legal sufficiency of HUD's case, not the factual record. Because Respondents have failed to raise a genuine dispute as to any material fact, the facts identified in HUD's Statement are deemed undisputed. As addressed below, those facts establish that Respondents made unauthorized transfers of project funds.

1. The following facts, common to all sixteen Complaints, are not in dispute.

Respondent Millennia Housing Management, Ltd. ("Millennia") is a limited liability company that manages more than 30,000 multifamily housing units. Millennia manages all sixteen properties at issue in this proceeding and serves as their identity-of-interest management agent. Each property is owned and mortgaged by a named Respondent. For example, Cherry Estates LP is the owner-mortgagor of the Cherry Estates property, and Covenant Apartments LP is the owner-mortgagor of the Covenant House property.

Each owner-mortgagor entered into a Regulatory Agreement with HUD for its respective property. These Agreements imposed restrictions on the distribution of cash belonging to the project and typically specified when and how often such distributions could be made.

Several additional Respondents are identified as general partners or members of the owner-mortgagor entities. For example, Cherry Estates Investment LLC is the general partner of Cherry Estates LP. Covenant Apartments Investment LLC is the managing general partner of Covenant Apartments LP, with Covenant Project LLC also serving as a general partner.

Respondent Frank Sinito is a member of Millennia and serves as its chief executive officer. He is also affiliated with at least one other organizational Respondent for each property and is, in nearly all cases, the sole member of that entity. He executed each Regulatory Agreement on behalf of the relevant owner-mortgagor.

Table 1 summarizes the relationships among Respondents and the properties identified in the *Complaints*.

Table 1

Project Property	Identity-of-Interest Management Agent for Property	Owner-Mortgagor Respondent	Other Organizational Respondent(s) (and relationship to Owner-Mortgagor)	Member(s)
Cherry Estates	Millennia	Cherry Estates LP	Cherry Estates Investment LLC (general partner)	Sinito (sole member)
Covenant House	Millennia	Covenant Apartments LP	Covenant Apartments Investment, LLC (managing general partner) Covenant Project, LLC (general partner)	Sinito (member) Not Established
Elmcrest Village	Millennia	Flushing Elmcrest Limited Dividend Housing Association Limited Partnership (LDHALP)	Elmcrest Investment, LLC (general partner)	Sinito (sole member)
Evergreen Estates	Millennia	Hickory Creek Estates, Ltd.	Hickory Creek Estates Investment, LLC (general partner)	Sinito (sole member)
Highland Place	Millennia	Highland Place Associates I, Ltd.	Highland Place Investment I, LLC (general partner)	Sinito (sole member)
Hunter's Run Apartments	Millennia	Hunter's Run Investment, LLC	Halton HR Investors, LLC (member) Halton Springs Investments, LLC (member)	Sinito (sole member) Sinito (sole member)
International Towers	Millennia	International Towers I Ohio, Ltd.	International Towers Investment I, LLC (managing general partner) YMHA Housing Preservation, LLC (administrative general partner)	Sinito (sole member) Not Established
Kingsbury Tower and Townhomes	Millennia	Kingsbury Tower I, Ltd.	Kingsbury Tower Investment I, LLC (managing general partner)	Sinito (sole member)

Morning Star Towers	Millennia	Morning Star Tower, Ltd.	Morning Star Tower Investment, LLC (managing general partner)	Sinito (sole member)
Oakdale Estates	Millennia	Oakdale Estates Investment, LLC	Oakdale Estates, Ltd. (sole member) Oakdale Estates Investment GP, LLC ⁵ (managing general partner of Oakdale Estates, Ltd.)	Not Applicable Sinito (sole member)
Oakdale Estates – Senior	Millennia	Oakdale Estates II Investment, LLC	Oakdale Estates, Ltd. (sole member) Oakdale Estates Investment GP, LLC (managing general partner of Oakdale Estates, Ltd.)	Not Applicable Sinito (sole member)
Riverview Terrace	Millennia	Petoskey Riverview Limited Dividend Housing Association Limited Partnership	Petoskey Riverview Investment, LLC (general partner)	Sinito (sole member)
Robinson Heights	Millennia	Robinson Heights Apartment I, LP	Robinson Heights Apartment Investment I, LLC (managing general partner)	Sinito (sole member)
Sherman Thompson Towers	Millennia	Sherman Thompson OH TC, L.P.	Sherman Thompson Investment, LLC (general partner)	Sinito (sole member)
St. Antoine Gardens	Millennia	Bethel Tower Limited Dividend Housing Association Limited Partnership	Bethel Tower Investment, LLC (general partner)	Sinito (sole member)
Trail West Apartments	Millennia	Trail West, Ltd.	Trail West Investment, LLC (managing general partner)	Sinito (sole member)

⁵ Mr. Sinito is the sole member of Respondent Oakdale Estates Investment GP, LLC, which is the managing general partner of Oakdale Estates, Ltd., which is the sole member of the owner-mortgagors of the Oakdale Estates and Oakdale Estates – Senior projects. Thus, there is an additional layer of corporate ownership for those two properties as compared to the other fourteen properties.

2. Cherry Estates Project (HUDOHA Docket No. 24-JM-0150-CM-005)

Cherry Estates is a multifamily property in Kent, Ohio, with 5 or more living units that has had a mortgage insured pursuant to Section 223(f) of the National Housing Act, 12 U.S.C. § 1715n, at all relevant times. Respondent Cherry Estates LP entered into a Regulatory Agreement with HUD that allows the distribution of surplus cash from the project's funds only once annually. However, between February 3, 2022, and April 20, 2023, Cherry Estates LP made ten transfers from its bank account, without obtaining HUD's written approval before making the transfers. Those transfers are detailed in *Table 2*.⁶

Table 2

Date:	Amount:	Transfer Caused By:	Receiving Account:
Feb. 3, 2022	\$40,000	Cherry Estates LP, Millennia, Sinito	Sinito
Apr. 21, 2022	\$25,000	Cherry Estates LP, Millennia, Sinito	Sinito
May 10, 2022	\$25,000	Cherry Estates LP, Millennia, Sinito	GMF-Storonybrook, LLC
Aug. 9, 2022	\$15,000	Cherry Estates LP, Millennia, Sinito	Sinito
Sept. 29, 2022	\$5,000	Cherry Estates LP, Millennia, Sinito	Sinito
Oct. 7, 2022	\$15,000	Cherry Estates LP, Millennia	Sinito
Jan. 12, 2023	\$20,000	Cherry Estates LP, Millennia	Not Established
Mar. 29, 2023	\$8,000	Cherry Estates LP, Millennia, Sinito	Sinito
Apr. 18, 2023	\$10,000	Cherry Estates LP, Millennia, Sinito	Sinito
Apr. 20, 2023	\$6,000	Cherry Estates LP, Millennia, Sinito	Sinito

3. Covenant House Project (HUDOHA Docket No. 24-AF-0171-CM-008)

Covenant House is a multifamily property in Toledo, Ohio, with 5 or more living units that has had a mortgage insured pursuant to Section 221(d)(4) of the National Housing Act, 12 U.S.C. § 1715l, at all relevant times. Its owner and mortgagor, Respondent Covenant Apartments LP, entered into a Regulatory Agreement with HUD, dated April 28, 2008. The Regulatory Agreement limits allowable distributions to surplus cash amounts that are distributed "only as of and after the end of [the] semiannual or annual fiscal period[.]" On August 24, 2022, Covenant Apartments LP made an unauthorized transfer of funds to Mr. Sinito's account that did not conform to the terms of the Regulatory Agreement. That transfer is detailed in *Table 3*.

Table 3

Date:	Amount:	Transfer Caused By:	Receiving Account:
Aug. 24, 2022	\$50,000	Covenant Apartments LP, Millennia, Sinito	Sinito

⁶ For each *Complaint* in this matter, the Tribunal has consolidated certain undisputed material facts related to the alleged unauthorized transfers into a table for ease of reference and brevity.

4. Elmcrest Village Project (HUDOHA Docket No. 24-AF-0151-CM-006)

Elmcrest Village is a multifamily property in Flushing, Michigan, with 5 or more living units that has had a mortgage insured under Section 223(f) of the National Housing Act, 12 U.S.C. § 1715n, at all relevant times. Its owner and mortgagor, Respondent Flushing Elmcrest Limited Dividend Housing Association Limited Partnership (“LDHALP”), entered into a Regulatory Agreement with HUD that limits allowable distributions to surplus cash amounts that are calculated “as of the last day of [Borrower’s] fiscal year. Borrower may also, at its election, and if permitted pursuant to Program Obligations, calculate Surplus Cash as of the last day of the sixth month of its fiscal year.” Between August 8, 2022, and April 20, 2023, Flushing Elmcrest LDHALP made ten transfers out of its bank account without HUD’s written approval and in violation of the Regulatory Agreement. Those transfers are detailed in *Table 4*.

Table 4

Date:	Amount:	Transfer Caused By:	Receiving Account:
Aug. 8, 2022	\$18,525	Flushing Elmcrest LDHALP, Millennia	Not Established
Sept. 15, 2022	\$30,000	Flushing Elmcrest LDHALP, Millennia, Sinito	Sinito
Sept. 26, 2022	\$8,000	Flushing Elmcrest LDHALP, Millennia	Oakwood FL, LLC
Sept. 26, 2022	\$7,000	Flushing Elmcrest LDHALP, Millennia	Turtle Oaks, FL, LLC
Sept. 29, 2022	\$26,500	Flushing Elmcrest LDHALP, Millennia, Sinito	Sinito
Oct. 6, 2022	\$30,000	Flushing Elmcrest LDHALP, Millennia	Sinito
Nov. 10, 2022	\$20,000	Flushing Elmcrest LDHALP, Millennia, Sinito	Sinito
Dec. 9, 2022	\$20,000	Flushing Elmcrest LDHALP, Millennia, Sinito	Sinito
Apr. 5, 2023	\$25,000	Flushing Elmcrest LDHALP, Millennia, Sinito	Sinito
Apr. 20, 2023	\$6,000	Flushing Elmcrest LDHALP, Millennia, Sinito	Sinito

5. Evergreen Estates Project (HUDOHA Docket No. 24-AF-0182-CM-012)

Evergreen Estates is a multifamily property in The Plains, Ohio, with 5 or more living units that has had a mortgage insured under Section 221(d)(4) of the National Housing Act, 12 U.S.C. § 1715l, at all relevant times. Respondent Hickory Creek Estates, Ltd., a limited partnership, entered into a Regulatory Agreement with HUD for the property. The Regulatory Agreement limits allowable distributions to surplus cash amounts that are distributed “only as of and after the end of a semiannual or annual fiscal period....” Between April 26, 2022, and April 11, 2023, Hickory Creek Estates, Ltd. made eighteen unauthorized transfers out of its bank account to Mr. Sinito and other entities that are not parties to this litigation. Those transfers are detailed in *Table 5*.

Table 5

Date:	Amount:	Transfer Caused By:	Receiving Account:
Apr. 26, 2022	\$17,000	Hickory Creek Estates, Ltd., Millennia, Sinito	Steamboat Burlington Limited Partnership
Apr. 28, 2022	\$25,000	Hickory Creek Estates, Ltd., Millennia	Century Woods IL TC, LP
May 5, 2022	\$30,000	Hickory Creek Estates, Ltd., Millennia, Sinito	American Preservation Builders, LLC
May 10, 2022	\$35,000	Hickory Creek Estates, Ltd., Millennia, Sinito	GMF-Stornybook, LLC
May 31, 2022	\$25,000	Hickory Creek Estates, Ltd., Millennia, Sinito	GMF Serenity Towers, LLC
July 21, 2022	\$12,000	Hickory Creek Estates, Ltd., Millennia	North River Meadows NY TC LP
July 28, 2022	\$15,000	Hickory Creek Estates, Ltd., Millennia, Sinito	Elm Eagle OK, LLC
Aug. 8, 2022	\$25,000	Hickory Creek Estates, Ltd., Millennia, Sinito	Sinito
Sept. 8, 2022	\$25,000	Hickory Creek Estates, Ltd., Millennia, Sinito	Sinito
Sept. 15, 2022	\$10,000	Hickory Creek Estates, Ltd., Millennia, Sinito	Sinito
Nov. 1, 2022	\$10,000	Hickory Creek Estates, Ltd., Millennia	Linden Terrace PA, LLC
Nov. 10, 2022	\$15,000	Hickory Creek Estates, Ltd., Millennia, Sinito	Sinito
Dec. 8, 2022	\$20,000	Hickory Creek Estates, Ltd., Millennia, Sinito	Sinito
Jan. 5, 2023	\$25,000	Hickory Creek Estates, Ltd., Millennia	Not Established
Jan. 12, 2023	\$3,800	Hickory Creek Estates, Ltd., Millennia	Not Established
Feb. 17, 2023	\$35,000	Hickory Creek Estates, Ltd., Millennia, Sinito	Sinito
Mar. 9, 2023	\$25,000	Hickory Creek Estates, Ltd., Millennia, Sinito	Sinito
Apr. 11, 2023	\$15,000	Hickory Creek Estates, Ltd., Millennia, Sinito	Sinito

6. Highland Place Project (HUDOHA Docket No. 24-AF-0187-CM-014)

Highland Place is a multifamily property in Conneaut, Ohio, with 5 or more living units that has had two mortgages insured under Sections 221(d)(4) and 223(a)(7) of the National Housing Act, 12 U.S.C. §§ 1715l, 1715n, at all relevant times. Its owner and mortgagor,

Highland Place Associates I, Ltd., entered into a Regulatory Agreement with HUD, dated March 27, 2008. The Regulatory Agreement was amended on the same day. The Regulatory Agreement, as amended, limits allowable distributions to surplus cash amounts that are calculated “as of and after the end of [a] semiannual or annual fiscal period[.]” From April 13, 2022, to April 7, 2023, Highland Place Associates I, Ltd. made eleven unauthorized transfers from its bank account totaling \$401,000. Those transfers are detailed in *Table 6*.

Table 6

Date:	Amount:	Transfer Caused By:	Receiving Account:
Apr. 13, 2022	\$100,000	Highland Place Associates I, Ltd., Millennia, Sinito	Sinito
Apr. 28, 2022	\$25,000	Highland Place Associates I, Ltd., Millennia	Heather Ridge II TC, LP
May 5, 2022	\$30,000	Highland Place Associates I, Ltd., Millennia, Sinito	American Preservation Builders, LLC
May 10, 2022	\$40,000	Highland Place Associates I, Ltd., Millennia, Sinito	Sinito
June 10, 2022	\$10,000	Highland Place Associates I, Ltd., Millennia, Sinito	Sinito
Aug. 9, 2022	\$20,000	Highland Place Associates I, Ltd., Millennia, Sinito	Sinito
Sept. 29, 2022	\$30,000	Highland Place Associates I, Ltd., Millennia, Sinito	Sinito
Oct. 7, 2022	\$40,000	Highland Place Associates I, Ltd., Millennia	Sinito
Oct. 11, 2022	\$36,000	Highland Place Associates I, Ltd., Millennia	Bankhead 2192 AL LLC
Mar. 23, 2023	\$50,000	Highland Place Associates I, Ltd., Millennia	Poets Village Apartments PA, LLC
Apr. 7, 2023	\$20,000	Highland Place Associates I, Ltd., Millennia, Sinito	Sinito

7. Hunter’s Run Project (HUDOHA Docket No. 24-AF-0224-CM-021)

Hunter’s Run Apartments is a multifamily property in Lebanon, Ohio, with 5 or more living units that has had a mortgage insured under Sections 207 and 223(f) of the National Housing Act, 12 U.S.C. §§ 1713 and 1715n, at all relevant times. Its owner and mortgager is Respondent Hunter’s Run Investment, LLC, which entered into a Regulatory Agreement with HUD, dated April 12, 2016. The Regulatory Agreement limits allowable distributions to surplus cash amounts that are calculated “as of the last day of [Borrower’s] fiscal year. Borrower may also, at its election, and if permitted pursuant to Program Obligations, calculate Surplus Cash as of the last day of the sixth month of its fiscal year.” Despite these restrictions, Hunter’s Run Investment, LLC made eight unauthorized transfers totaling \$187,000 out of its bank account between July 21, 2022, and April 20, 2023. Those transfers are detailed in *Table 7*.

Table 7

Date:	Amount:	Transfer Caused By:	Receiving Account:
July 21, 2022	\$45,000	Hunter's Run Investment, LLC, Millennia, Sinito	Sinito
Aug. 8, 2022	\$15,000	Hunter's Run Investment, LLC, Millennia, Sinito	Sinito
Nov. 10, 2022	\$15,000	Hunter's Run Investment, LLC, Millennia	Unknown
Feb. 17, 2023	\$20,000	Hunter's Run Investment, LLC, Millennia, Sinito	Sinito
Feb. 28, 2023	\$21,000	Hunter's Run Investment, LLC, Millennia	JFK Towers NC TC, LLC
Mar. 23, 2023	\$30,000	Hunter's Run Investment, LLC, Millennia, Sinito	Sinito
Apr. 13, 2023	\$25,000	Hunter's Run Investment, LLC, Millennia	Not Established
Apr. 20, 2023	\$16,000	Hunter's Run Investment, LLC, Millennia, Sinito	Not Established

8. International Towers Project (HUDOHA Docket No. 24-AF-0216-CM-019)

International Towers is a multifamily property in Youngstown, Ohio, with 5 or more living units that has had a mortgage insured pursuant to Section 221 of the National Housing Act, 12 U.S.C. § 1715l, at all relevant times. Its owner and mortgagor, Respondent International Towers I Ohio, Ltd., entered into a Regulatory Agreement with HUD, dated October 1, 2016. The Regulatory Agreement limits allowable distributions to surplus cash amounts that are calculated “as of the last day of [Borrower’s] fiscal year. Borrower may also, at its election, and if permitted pursuant to Program Obligations, calculate Surplus Cash as of the last day of the sixth month of its fiscal year.” However, between April 6, 2022, and May 6, 2022, International Towers I Ohio, Ltd. transferred \$77,000 over two transactions in violation of the Regulatory Agreement. Those transfers are detailed in *Table 8*.

Table 8

Date:	Amount:	Transfer Caused By:	Receiving Account:
Apr. 6, 2022	\$27,000	International Towers I Ohio, Ltd., Millennia, Sinito	Sinito
May 6, 2022	\$50,000	International Towers I Ohio, Ltd., Millennia, Sinito	Not Established

9. Kingsbury Tower and Townhomes Project (HUDOHA Docket No. 24-AF-0223-CM-020)

Kingsbury Tower and Townhomes is a multifamily property in Cleveland, Ohio, with 5 or more living units that has had a mortgage insured pursuant to Section 221 of the National Housing Act, 12 U.S.C. § 1715l, at all relevant times. Its owner and mortgagor, Kingsbury Tower I, Ltd., a limited partnership, entered into a Regulatory Agreement with HUD, dated October 1, 2013. The Regulatory Agreement allows distributions of surplus cash only annually or semiannually “within the accounting period immediately following the computation of Surplus Cash[.]” Nevertheless, Kingsbury Tower I, Ltd. made six transfers between May 5, 2022, to April 20, 2023, in violation of the Regulatory Agreement. Those transfers are detailed in *Table 9*.

Table 9

Date:	Amount:	Transfer Caused By:	Receiving Account:
May 5, 2022	\$32,000	Kingsbury Tower I, Ltd., Millennia	Peace Lake LA TC
May 10, 2022	\$20,000	Kingsbury Tower I, Ltd., Millennia, Sinito	Sinito
May 26, 2022	\$20,000	Kingsbury Tower I, Ltd., Millennia, Sinito	Sinito
Dec. 8, 2022	\$20,000	Kingsbury Tower I, Ltd., Millennia	Sinito
Apr. 18, 2023	\$10,000	Kingsbury Tower I, Ltd., Millennia, Sinito	Not Established
Apr. 20, 2023	\$11,000	Kingsbury Tower I, Ltd., Millennia, Sinito	Sinito

10. Morning Star Towers Project (HUDOHA Docket No. 24-AF-0215-CM-018)

Morning Star Towers is a multifamily property in Cleveland, Ohio, with 5 or more living units that has had a mortgage insured pursuant to Section 221 of the National Housing Act, 12 U.S.C. § 1715l, at all relevant times. Respondent Morning Star Tower, Ltd., a limited partnership, is the owner and mortgagor of Morning Star Towers, and it entered into a Regulatory Agreement with HUD, dated March 1, 2013. The Regulatory Agreement allows distributions of surplus cash only annually or semiannually “within the accounting period immediately following the computation of Surplus Cash[.]” Morning Star Tower, Ltd. made 21 transfers that were not permitted by the terms of the Regulatory Agreement or otherwise authorized by the Secretary. Those transfers are detailed in *Table 10*.

Table 10

Date:	Amount:	Transfer Caused By:	Receiving Account:
Jan. 6, 2022	\$72,700	Morning Star Tower, Ltd., Millennia	Sinito
Mar. 30, 2022	\$65,000	Morning Star Tower, Ltd., Millennia, Sinito	Sinito
Apr. 13, 2022	\$50,000	Morning Star Tower, Ltd., Millennia, Sinito	Sinito
May 6, 2022	\$50,000	Morning Star Tower, Ltd., Millennia, Sinito	Millennia
July 21, 2022	\$120,000	Morning Star Tower, Ltd., Millennia	Sinito
Aug. 9, 2022	\$25,000	Morning Star Tower, Ltd., Millennia	Sinito
Sept. 15, 2022	\$35,000	Morning Star Tower, Ltd., Millennia, Sinito	Sinito
Oct. 7, 2022	\$15,000	Morning Star Tower, Ltd., Millennia	Sinito

Oct. 27, 2022	\$25,000	Morning Star Tower, Ltd., Millennia	Sinito
Nov. 10, 2022	\$50,000	Morning Star Tower, Ltd., Millennia	Hillsborough FL TC, LP.
Dec. 8, 2022	\$20,000	Morning Star Tower, Ltd., Millennia	Sinito
Dec. 30, 2022	\$47,000	Morning Star Tower, Ltd., Millennia	Not Established
Jan. 9, 2023	\$25,000	Morning Star Tower, Ltd., Millennia	Not Established
Jan. 11, 2023	\$80,000	Morning Star Tower, Ltd., Millennia	Sinito
Mar. 9, 2023	\$25,000	Morning Star Tower, Ltd., Millennia	Sinito
Mar. 23, 2023	\$75,000	Morning Star Tower, Ltd., Millennia, Sinito	Sinito
Mar. 29, 2023	\$25,000	Morning Star Tower, Ltd., Millennia	Sinito
Mar. 31, 2023	\$35,000	Morning Star Tower, Ltd., Millennia	Century Woods IL TC, LP
Apr. 5, 2023	\$75,000	Morning Star Tower, Ltd., Millennia	Sinito
Apr. 18, 2023	\$10,000	Morning Star Tower, Ltd., Millennia	Sinito
Apr. 20, 2023	\$6,000	Morning Star Tower, Ltd., Millennia	Sinito

11. Oakdale Estates Project (HUDOHA Docket No. 24-AF-0194-CM-017)

Oakdale Estates is a multifamily property in West Union, Ohio, with 5 or more living units that has had a mortgage insured pursuant to Section 221 of the National Housing Act, 12 U.S.C. § 1715l, at all relevant times. Its owner and mortgagor is Respondent Oakdale Estates Investment, LLC. On September 1, 2013, Oakdale Estates, Ltd., entered into a Regulatory Agreement with HUD, dated September 1, 2014. The Regulatory Agreement allows distributions of surplus cash only annually or semiannually “within the accounting period immediately following the computation of Surplus Cash[.]” Between April 27, 2022, and April 11, 2023, Oakdale Estates Investment, LLC made four transfers from its bank account as described below that violated the terms of the Regulatory Agreement. Those transfers are detailed in *Table 11*.

Table 11

Date:	Amount:	Transfer Caused By:	Receiving Account:
Apr. 27, 2022	\$25,000	Oakdale Estates Ltd., Millennia, Sinito	Sinito
May 10, 2022	\$10,000	Oakdale Estates Ltd., Millennia, Sinito	GMF-Stonybrook, LLC
Mar. 23, 2023	\$5,000	Oakdale Estates Ltd., Millennia, Sinito	Sinito
Apr. 11, 2023	\$10,000	Oakdale Estates Ltd., Millennia, Sinito	Sinito

12. Oakdale Estates (Senior) Project (HUDOHA Docket No. 24-AF-0189-CM-016)

Oakdale Estates (Senior) is a multifamily property in West Union, Ohio, with 5 or more living units that has had a mortgage insured pursuant to Section 221 of the National Housing Act, 12 U.S.C. § 1715l, at all relevant times. It is owned by Respondent Oakdale Estates II Investment, LLC, which is also its mortgagor. Oakdale Estates II Investment, LLC entered into a Regulatory Agreement with HUD, dated September 1, 2014. The Regulatory Agreement

allows distributions of surplus cash only annually or semiannually “within the accounting period immediately following the computation of Surplus Cash.” Between May 26, 2022, through April 20, 2023, Oakdale Estates II Investment, LLC made five transfers from Oakdale Estates (Senior)’s funds that violated the terms of the Regulatory Agreement. Those transfers are detailed in *Table 12*.

Table 12

Date:	Amount:	Transfer Caused By:	Receiving Account:
May 26, 2022	\$20,000	Oakdale Estates, Ltd., Millennia, Sinito	Sinito
June 10, 2022	\$15,000	Oakdale Estates, Ltd., Millennia, Sinito	Sinito
Mar. 23, 2023	\$25,000	Oakdale Estates, Ltd., Millennia	Not Established
Apr. 18, 2023	\$15,000	Oakdale Estates, Ltd., Millennia, Sinito	Not Established
Apr. 20, 2023	\$6,000	Oakdale Estates, Ltd., Millennia, Sinito	Sinito

13. Riverview Terrace Project (HUDOHA Docket No. 24-AF-0188-CM-015)

Riverview Terrace is a multifamily property in Toledo, Ohio, with 5 or more living units that has had a mortgage insured pursuant to Sections 207 and 223 of the National Housing Act, 12 U.S.C. §§ 1713, 1715n, at all relevant times. Its owner and mortgagor, Respondent Petoskey Riverview LDHALP, entered into a Regulatory Agreement with HUD, dated March 1, 2022. The Regulatory Agreement limits allowable distributions to surplus cash amounts “within the accounting period immediately following the computation of Surplus Cash, and prior to the Borrower’s next calculation of Surplus Cash[.]” Nevertheless, between April 8, 2022, and October 6, 2022, Petoskey Riverview LDHALP made four transfers from its bank account without HUD’s written approval and in violation of the Regulatory Agreement. Those transfers are detailed in *Table 13*.

Table 13

Date:	Amount:	Transfer Caused By:	Receiving Account:
Apr. 8, 2022	\$45,000	Petoskey Riverview LDHALP, Millennia, Sinito	Sinito
Aug. 26, 2022	\$20,000	Petoskey Riverview LDHALP, Millennia	Not Established
Sept. 15, 2022	\$20,000	Petoskey Riverview LDHALP, Millennia, Sinito	Sinito
Oct. 6, 2022	\$20,000	Petoskey Riverview LDHALP, Millennia	Sinito

14. Robinson Heights Apartments Project (HUDOHA Docket No. 24-AF-0181-CM-011)

Robinson Heights Apartments is a multifamily property in Burlington, Iowa, with 5 or more living units that has had a mortgage insured pursuant to Section 221 of the National Housing Act, 12 U.S.C. § 1715l, at all relevant times. Its owner and mortgagor, Respondent Robinson Heights Apartments I, LP, entered into a Regulatory Agreement with HUD, dated June

1, 2012. The Regulatory Agreement was amended on June 1, 2012. The Regulatory Agreement, as amended, allows the owner to distribute from surplus cash only once annually. However, Robinson Heights Apartments I, LP, made two unauthorized transfers in violation of the Regulatory Agreement. Those transfers are detailed in *Table 14*.

Table 14

Date:	Amount:	Transfer Caused By:	Receiving Account:
May 10, 2022	\$10,000	Robinson Heights Apartments I, LP	Sinito
Oct. 6, 2022	\$20,000	Robinson Heights Apartments I, LP	Sinito

15. Sherman Thompson Towers Project (HUDOHA Docket No. 24-AF-0186-CM-013)

Sherman Thompson Towers is a multifamily property in Ironton, Ohio, with 5 or more living units that has had a mortgage insured pursuant to Section 221 of the National Housing act, 12 U.S.C. § 1715l, at all relevant times. Its owner and mortgagor, Respondent Sherman Thompson OH TC, LP entered into a Regulatory Agreement with HUD, dated July 1, 2017. The Regulatory Agreement limits allowable distributions to surplus cash amounts “within the accounting period immediately following the computation of Surplus Cash, and prior to the Borrower’s next calculation of Surplus Cash[.]” Nevertheless, between August 26, 2022, and April 20, 2023, Sherman Thompson OH TC, LP made four transfers out of its bank account in violation of the terms of the Regulatory Agreement. Those transfers are detailed in *Table 15*.

Table 15

Date:	Amount:	Transfer Caused By:	Receiving Account:
Aug. 26, 2022	\$15,000	Sherman Thompson OH TC, Millennia	Not Established
July 28, 2022	\$20,000	Sherman Thompson OH TC, Millennia, Sinito	Sinito
Oct. 7, 2022	\$10,000	Sherman Thompson OH TC, Millennia	Sinito
Apr. 20, 2023	\$11,000	Sherman Thompson OH TC, Millennia, Sinito	Sinito

16. St. Antoine Gardens Project (HUDOHA Docket No. 24-AF-0172-CM-009)

St. Antoine Gardens is a multifamily property in Detroit, Michigan, with 5 or more living units that has had a mortgage insured pursuant to Section 221 of the National Housing Act, 12 U.S.C. § 1715l, at all relevant times. Its owner and mortgagor, Respondent Bethel Tower LDHALP, entered into a Regulatory Agreement with HUD, dated November 27, 2013. The Regulatory Agreement limits allowable distributions to surplus cash amounts that are calculated “at the end of the semiannual or annual fiscal period.” From August 26, 2022, through April 18,

2023, Bethel Tower LDHALP made four transfers out of its bank accounts in violation of the terms of the Regulatory Agreement. Those transfers are detailed in *Table 16*.

Table 16

Date:	Amount:	Transfer Caused By:	Receiving Account:
Aug. 22, 2022	\$12,000	Bethel Tower LDHALP, Millennia	Not Established
Oct. 27, 2022	\$20,000	Bethel Tower LDHALP, Millennia	Sinito
Mar. 23, 2023	\$10,000	Bethel Tower LDHALP, Millennia, Sinito	Sinito
Apr. 18, 2023	\$10,000	Bethel Tower LDHALP, Millennia, Sinito	Sinito

17. Trail West Apartments Project (HUDOHA Docket No. 24-AF-0173-CM-010)

Trail West Apartments is a multifamily property in Newark, Ohio, with 5 or more living units that has had a mortgage insured pursuant to Section 221 of the National Housing Act, 12 U.S.C. § 1715l, at all relevant times. Its owner and mortgagor, Respondent Trail West, Ltd., a limited partnership, entered into a Regulatory Agreement with HUD, dated July 13, 2009. The Regulatory Agreement was amended on September 28, 2021. The Regulatory Agreement, as amended, allows the owner to distribute from surplus cash once annually. From December 8, 2022, through April 20, 2023, Trail West, Ltd. made six transfers from its bank account without authorization. Those transfers are detailed in *Table 17*.

Table 17

Date:	Amount:	Transfer Caused By:	Receiving Account:
Dec. 8, 2022	\$50,000	Trail West, Ltd., Millennia, Sinito	Not Established
Apr. 13, 2022	\$150,000	Trail West, Ltd., Millennia, Sinito	Sinito
Mar. 23, 2023	\$15,000	Trail West, Ltd., Millennia, Sinito	Not Established
Mar. 29, 2023	\$10,000	Trail West, Ltd., Millennia, Sinito	Not Established
Apr. 11, 2023	\$20,000	Trail West, Ltd., Millennia, Sinito	Sinito
Apr. 20, 2023	\$6,000	Trail West, Ltd., Millennia, Sinito	Sinito

18. Audit findings and prior HUD warnings

At all relevant times, audits were conducted for the Projects. Several audits revealed that the owner-mortgagor Respondents withdrew and used operating funds for purposes unrelated to the properties, distributed funds in excess of available surplus cash, and made distributions without the required authorization. Respondents agreed with the auditors' findings and agreed with the recommendation that internal controls be enhanced to ensure project funds are used solely for project-related expenses and operations. As of November 30, 2023, however, Respondents had not repaid any portion of the distributions at issue in this proceeding.

The unauthorized transfers identified here are not the first of their kind. On June 22, 2021, HUD's Departmental Enforcement Center issued a cease-and-desist letter to Mr. Sinito concerning similar unauthorized distributions dating back to at least 2019 at another FHA-insured multifamily property within the Millennia portfolio.

B. HUD is entitled to partial summary judgment.

A civil money penalty may be imposed upon any liable party that knowingly and materially transfers project revenues or pays out project funds without the prior written approval of the Secretary. 12 U.S.C. § 1735f-15(c).

HUD claims it is entitled to summary judgment that Respondents engaged in violations of the statute, because the undisputed material facts demonstrate that Respondents knowingly and materially made 115 transfers of project funds without prior written approval from HUD. As a result of these violations, HUD seeks the maximum civil money penalty for each unauthorized transfer.

As a threshold matter, Respondents claim that the APA precludes this Tribunal from granting summary judgment in HUD's favor. Respondents also dispute that HUD has presented sufficient evidence to establish liability because HUD has not proven that Mr. Sinito is personally liable for actions taken with regard to three of the properties, nor has HUD proven that any of the alleged violations are material. Finally, Respondents dispute HUD's claim that the maximum civil money penalty should be imposed for each violation, arguing that Respondents do not have the ability to pay.

1. The APA does not preclude the Tribunal from granting summary judgment.

As an initial matter, Respondents argue that the APA bars this Tribunal from granting summary judgment in HUD's favor. It does not. The statute ensures that a party may present its case, not that every case must proceed to hearing regardless of the record. Nothing in 5 U.S.C. § 556(d) prohibits summary judgment where, as here, there are no genuine disputes of material fact.

2. There is no dispute that nearly all Respondents are liable parties.

HUD claims that all but two Respondents are liable parties under the statute and subject to civil money penalties.⁷ The statute identifies categories of entities that may be held liable for civil money penalties. See 12 U.S.C. § 1735f-15(c)(1)(A).⁸ As discussed below, the undisputed record shows that nearly all Respondents fall into at least one of those categories.

As shown in *Table I*, sixteen Respondents are each an owner-mortgagor of a property that includes five or more living units and that has a mortgage insured pursuant to the National

⁷ HUD no longer seeks penalties against Trail West Housing Partners, Inc. or HWFB HR Investment, LLC.

⁸ "The Secretary may... impose a civil money penalty... on—(i) any mortgagor of a property that includes 5 or more living units and that has a mortgage insured, coinsured, or held pursuant to this chapter; (ii) any general partner of a partnership mortgagor of such property; (iii) any officer or director of a corporate mortgagor; (iv) any agent employed to manage the property that has an identity of interest with the mortgagor, with the general partner of a partnership mortgagor, or with any officer or director of a corporate mortgagor of such property; or (v) any member of a limited liability company that is the mortgagor of such property or is the general partner of a limited partnership mortgagor or is a partner of a general partnership mortgagor." *Id.*

Housing Act.⁹ Fifteen Respondents are each a general partner of a limited partnership mortgagor.¹⁰ Three Respondents are each a member of a limited liability company that is a mortgagor.¹¹ Millennia is a management agent with an identity of interest for all 16 projects. Accordingly, these Respondents fall within the liability categories set forth in 12 U.S.C. § 1735f-15(c)(1)(A)(i), (ii), (iv), and (v).

HUD also states that the evidence illustrates that Oakdale Estates Investment GP, LLC, Halton Springs Investments, LLC, and Halton HR Investors, LLC – and likely every Respondent – is an alter ego of Mr. Sinito. In support, HUD cites Rutherlan Enters., Inc. v. Zettler Hardware, 700 Fed. Appx. 398, 403 (6th Cir. 2017) for the proposition that courts consider certain factors in determining whether one party is the alter ego of another.¹² HUD further claims Mr. Sinito should not be able to rely on illusory corporate forms to circumvent the statutory language and escape liability for his own wrongdoing.

For 13 projects, it is not disputed that Mr. Sinito is a member of a limited liability company that is a general partner of a limited partnership mortgagor.¹³ The indirect ownership structures of the remaining three projects raise questions about whether Mr. Sinito and Oakdale Estates Investment GP, LLC fall within the statutory definition of a liable party. For these three projects, HUD has not established that Mr. Sinito qualifies as a liable party under the statute. Specifically, he does not fall into one of the categories identified under the statute, because he is a member of limited liability companies that are members of the limited liability company mortgagor, or he is a member of a limited liability company that is the general partner of a limited partnership that is a member of the limited liability company mortgagor. See 12 U.S.C. § 1735f-15(c)(1)(A)(i)-(v). Oakdale Estates Investment GP, LLC has also not been established as a liable party under the statute because it is the general partner of a limited partnership that is a member of the limited liability company mortgagor. See id.

⁹ Those 16 Respondents are: Cherry Estates LP; Covenant Apartments LP; Flushing Elmcrest LDHALP; Hickory Creek Estates, Ltd.; Highland Place Associates I, Ltd.; Hunter's Run Investment, LLC; International Towers I Ohio, Ltd.; Kingsbury Tower I, Ltd.; Morning Star Tower, Ltd.; Oakdale Estates Investment, LLC; Oakdale Estates II Investment, LLC; Petoskey Riverview LDHALP; Robinson Heights Apartments I, LP; Sherman Thompson OH TC, LP; Bethel Tower LDHALP; and Trail West, Ltd.

¹⁰ Those 15 Respondents are: Cherry Estates Investment LLC; Covenant Apartments Investment, LLC; Covenant Project, LLC; Elmcrest Investment, LLC; Hickory Creek Estates Investment, LLC; Highland Place Investment I, LLC; International Towers Investment I, LLC; YMHA Housing Preservation, LLC; Kingsbury Tower Investment I, LLC; Morning Star Tower Investment, LLC; Petoskey Riverview Investment, LLC; Robinson Heights Apartment Investment I, LLC; Sherman Thompson Towers Investment, LLC; Bethel Tower Investment, LLC; and Trail West Investment, LLC.

¹¹ Those three Respondents are: Oakdale Estates, Ltd.; Halton HR Investors, LLC; and Halton Springs Investments, LLC.

¹² Those factors include: (1) grossly inadequate capitalization, (2) failure to observe corporate formalities, (3) insolvency of the debtor corporation at the time the debt is incurred, (4) shareholders holding themselves out as personally liable for certain corporate obligations, (5) diversion of funds or other property of the company property for personal use, (6) absence of corporate records, and (7) the fact that the corporation was a mere facade for the operations of the dominant shareholder(s).

¹³ Those thirteen projects are the Cherry Estates Project, the Covenant House Project, the Elmcrest Village Project, the Evergreen Estates Project, the Highland Place Project, the International Towers Project, the Kingsbury Tower and Townhomes Project, the Morning Star Towers Project, the Riverview Terrace Project, the Robinson Heights Apartments Project, the Sherman Thompson Towers Project, the St. Antoine Gardens Project, and the Trail West Apartments Project.

Moreover, whether *every* Respondent is an alter ego of Mr. Sinito is dependent on facts that HUD has yet to establish as being undisputed. Because the Tribunal must view these facts in the light most favorable to the nonmoving party, these questions cannot be resolved on summary judgment. See Anderson, 477 U.S. at 256. Therefore, HUD has not established that Mr. Sinito or Oakdale Estates Investment GP, LLC are liable parties subject to civil money penalties for transfers related to the Oakdale Estates and Oakdale Estates – Senior projects.¹⁴

3. Respondents took action in violation of the statute.

As noted *supra*, a civil money penalty may be imposed where a liable party has transferred revenue or paid out project funds without the prior written approval of the Secretary. 12 U.S.C. § 1735f-15(c)(1)(B)(ii).¹⁵ Respondents do not dispute that, for each of the project properties, project funds were transferred as set forth above without the Secretary’s written approval. Mr. Sinito, Millennia, and the owner-mortgagor Respondents admitted to having initiated, directed, caused, or approved the subject transfers of project funds. Accordingly, the Tribunal finds the undisputed facts demonstrate that those Respondents took actions that violate the statute when they caused the unauthorized transfers.¹⁶

HUD has not proffered that the Respondent entities serving as general partners or members of the owner-mortgagors actually initiated, directed, caused, or approved the transfer of project funds. Accordingly, HUD has not established that the entities took action for which a civil money penalty can be imposed.

4. Respondents’ actions were knowing and material.

A civil money penalty may be imposed if the impermissible action taken by the liable party was knowing and material. 12 U.S.C. § 1735f-15(c)(1)(B)(ii). “Knowingly” is defined as “having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under [12 U.S.C. § 1735f-15].” *Id.* § 1735f-15(h); see also 24 C.F.R. § 30.10.

Here, the Transferring Respondents knowingly transferred project funds without HUD’s prior written approval, in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(ii). For each property, the applicable Regulatory Agreement expressly limited the conditions under which distributions could occur. Mr. Sinito executed each Agreement in his capacity as a member of the relevant

¹⁴ On the issue of HUD’s alter ego theory of liability, Respondents claim the Tribunal does not have the authority to apply alter ego liability theory as it is a matter of state law. This argument is not addressed as HUD has not established that undisputed material facts exist to support its position that all Respondents are alter egos of Mr. Sinito.

¹⁵ This provision of the statute makes an exception for the payment of reasonable operating expenses and necessary repairs. However, it is not disputed that the transfers in question were not made for the purposes of paying project expenses.

¹⁶ The full list of these Respondents is as follows: Mr. Sinito, Millennia, Cherry Estates LP, Covenant Apartments LP, Flushing Elmcreek LDHALP, Hickory Creek Estates, Ltd., Highland Place Associates I, Ltd., Hunter’s Run Investment, LLC, International Towers I Ohio, Ltd., Kingsbury Tower I, Ltd., Morning Star Tower, Ltd., Oakdale Estates Investment, LLC, Oakdale Estates II Investment, LLC, Petoskey Riverview LDHALP, Robinson Heights Apartments I, LP, Sherman Thompson OH TC, LP, Bethel Tower LDHALP, and Trail West, Ltd (collectively, the “Transferring Respondents”). For each unauthorized transfer, the specific Respondent(s) who admitted to causing the transfer is indicated in *Tables 2-17* above.

general partner or member entity and on behalf of the owner-mortgagor. Despite willingly entering into the Agreements, Mr. Sinito, Millennia, and the owner-mortgagor Respondents initiated, directed, caused, or approved transfers that did not comply with the Agreements or the statute.

Mr. Sinito had notice of this issue as early as 2021, when HUD's Departmental Enforcement Center issued a cease-and-desist letter ordering him to stop unauthorized distributions at another FHA-insured multifamily property within the Millennia portfolio. Additionally, project audits revealed unauthorized distributions across the properties at issue in this proceeding. Mr. Sinito, acting on behalf of the owner-mortgagors, signed those audits certifying their accuracy. Millennia, as management agent, made the same certifications. Although both acknowledged in the audits that unauthorized distributions had occurred, they continued to engage in the same conduct.

Accordingly, based on the undisputed material facts, the Tribunal finds that the transfers at issue were knowingly made.

For a civil money penalty to be imposed under the statute, the action must also be material. 12 U.S.C. § 1735f-15(c)(1)(B)(ii); 24 C.F.R. § 30.45(c). The term "material" or "materially" is defined to mean "having the natural tendency or potential to influence," or "in some significant respect or to some significant degree." 24 C.F.R. § 30.10. This Tribunal has previously held that the use of project funds for non-project purposes is a material violation of the statute. See *In re P'ship for Urban Hous. Dev., Inc.*, HUDOA No. 14-AF-0102-CM-001, at *13 (Apr. 28, 2016) ("The misuse of Project funds puts HUD at enhanced risk of paying an insurance claim on the mortgage loan...These concerns undoubtedly have a significant impact on HUD's interests.").¹⁷

The undisputed record establishes materiality as a matter of law. The total amount transferred without authorization—\$3,111,525—is both substantial and well documented. The undisputed facts demonstrate that these funds were not used for the projects from which they were drawn. Rather, the vast majority were issued to Mr. Sinito's personal accounts or unrelated entities. Several independent audits also concluded that Respondents distributed funds in excess of available surplus cash, and that those distributions were not authorized. Respondents concurred with the audit findings and agreed to strengthen internal controls—yet did not repay a single dollar. The volume and nature of the transfers, their destinations, the lack of documentation, and the complete absence of approval all support a finding of materiality. No reasonable factfinder could conclude otherwise.¹⁸

¹⁷ Available at <https://www.hud.gov/sites/dfiles/HA/documents/14-AF-0102-CM-001.pdf>.

¹⁸ Respondents claim HUD failed to demonstrate the materiality of the violations, because factors including the gravity of the offense; any history of prior offenses; the ability to pay; the injury to the public; any benefits received by the violator; extent of potential benefit to others; deterrence of future violations; degree of violator's culpability; and such other matters as justice may require were not addressed in *HUD's Motion*. These factors are used to determine the amount of civil money penalties to be imposed. See 12 U.S.C. § 1735f-15(d)(3); 24 C.F.R. § 30.80. Although this Tribunal has considered these factors to determine materiality in some cases, that analysis is not required here, because established case law supports the legal conclusion that misuse of project funds is a material violation of the statute.

Based on the undisputed material facts described above, this Tribunal concludes that liability under 12 U.S.C. § 1735f-15 is established as to the Respondents named in paragraphs 1 through 16 below.

1. Millennia and Cherry Estates LP are jointly and severally liable for the 10 unauthorized transfers in the Cherry Estates Project; Mr. Sinito is jointly and severally liable with these Respondents for eight unauthorized transfers in the Cherry Estates Project;
2. Millennia, Mr. Sinito, and Covenant Apartments LP are jointly and severally liable for the unauthorized transfer in the Covenant House Project;
3. Millennia and Flushing Elmcresc LDHALP are jointly and severally liable for the 10 unauthorized transfers in the Elmcresc Village Project; Mr. Sinito is jointly and severally liable with these Respondents for six unauthorized transfers in the Elmcresc Village Project;
4. Millennia and Hickory Creek Estates, Ltd. are jointly and severally liable for the 18 unauthorized transfers in the Evergreen Estates Project; Mr. Sinito is jointly and severally liable with these Respondents for 13 unauthorized transfers in the Evergreen Estates Project;
5. Millennia and Highland Place Associates I, Ltd. are jointly and severally liable for the 11 unauthorized transfers in the Highland Place Project; Mr. Sinito is jointly and severally liable with these Respondents for seven unauthorized transfers in the Highland Place Project;
6. Millennia and Hunter's Run Investment, LLC are jointly and severally liable for the unauthorized transfers in the Hunter's Run Project;
7. Millennia, Mr. Sinito, and International Towers I Ohio, Ltd. are jointly and severally liable for the two unauthorized transfers in the International Towers Project;
8. Millennia and Kingsbury Tower I, Ltd. are jointly and severally liable for the six unauthorized transfers in the Kingsbury Tower and Townhomes Project; Mr. Sinito is jointly and severally liable with these Respondents for four unauthorized transfers in the Kingsbury Tower and Townhomes Project;
9. Millennia and Morning Star Tower, Ltd. are jointly and severally liable for the 21 unauthorized transfers in the Morning Star Towers Project; Mr. Sinito is jointly and severally liable with these Respondents for five unauthorized transfers in the Morning Star Towers Project;
10. Millennia and Oakdale Estates Investment, LLC are jointly and severally liable for the four unauthorized transfers in the Oakdale Estates Project;
11. Millennia and Oakdale Estates II Investment, LLC are jointly and severally liable for the five unauthorized transfers in the Oakdale Estates (Senior) Project;

12. Millennia and Petoskey Riverview LDHALP are jointly and severally liable for the four unauthorized transfers in the Riverview Terrace Project; Mr. Sinito is jointly and severally liable with these Respondents for two unauthorized transfers in the Riverview Terrace Project;
13. Robinson Heights Apartments I, LP is liable for the two unauthorized transfers in the Robinson Heights Apartments Project;
14. Millennia and Sherman Thompson OH TC, LP are jointly and severally liable for the four unauthorized transfers in the Sherman Thompson Towers Project; Mr. Sinito is jointly and severally liable with these Respondents for two unauthorized transfers in the Sherman Thompson Towers Project;
15. Millennia and Bethel Tower LDHALP are jointly and severally liable for the four unauthorized transfers in the St. Antoine Gardens Project; Mr. Sinito is jointly and severally liable with these Respondents for two unauthorized transfers in the St. Antoine Gardens Project; and
16. Millennia, Mr. Sinito, and Trail West, Ltd. are jointly and severally liable for the six unauthorized transfers in the Trail West Apartments Project.

C. The appropriate remedy remains in dispute.

HUD asserts that, in consideration of the civil money penalty factors at 12 U.S.C. § 1735f-15(d)(3) and 24 C.F.R. § 30.80, the Tribunal should enter an order imposing the maximum penalty allowed for each violation in this matter. Respondents, however, assert that they cannot pay the proposed penalties. In support, Respondents cite several documentary exhibits they have already adduced in this proceeding bearing on their ability to pay, which is one of the factors that must be considered by the Tribunal in determining the appropriate penalty.

Respondents' ability to pay is a disputed factual question that is material to the determination of the appropriate penalty. Accordingly, summary judgment on the penalty amount is unavailable at this time. *HUD's Motion* is therefore **DENIED** with respect to penalties.

CONCLUSION AND ORDER

For the reasons set forth above, this Tribunal concludes that Respondents have not demonstrated any constitutional basis warranting dismissal of these proceedings. Their arguments under the Seventh Amendment, Article III, Article II, and the First Amendment fail as a matter of law. Accordingly, *Respondents' Motion for Summary Judgment on the Government's Claims* is **DENIED** in its entirety.

With respect to *HUD's Motion* for summary judgment, most of the material facts relevant to liability under 12 U.S.C. § 1735f-15(c)(1)(B)(ii) are not in dispute. The record establishes that the identified Respondents knowingly and materially violated statutory and regulatory requirements by initiating, directing, causing, or approving unauthorized transfers of project

funds. These violations occurred despite clear contractual obligations, repeated audit findings, and prior warnings. Based on this undisputed evidence, the *Government's Motion for Summary Judgment* is **GRANTED IN PART** on the issue of liability, as detailed in the findings above.

However, genuine issues of material fact remain regarding the appropriate penalty amounts and Respondents' ability to pay. HUD also has not established alter ego liability. Accordingly, the *HUD's Motion for Summary Judgment* is **DENIED IN PART** as to the issues of penalty, ability to pay, and alter ego liability.

Having resolved the parties' dispositive motions, the Tribunal directs the parties to prepare for the in-person hearing on June 2, 2025. The remaining issues—including penalty calculation and the scope of Respondents' financial liability—will be resolved based on the evidence presented at hearing.

So **ORDERED**,



ALEXANDER FERNANDEZ-PONS
CN = ALEXANDER FERNANDEZ-
PONS C = US O = U.S.
Government OU = Department of
Housing and Urban Development,
Office of the Secretary
2025.05.22 11:19:30 -04'00'

Alexander Fernández-Pons
Administrative Law Judge

CERTIFICATE OF SERVICE

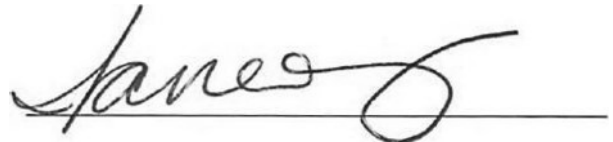
I hereby certify that copies of the foregoing **ORDER ON MOTIONS FOR SUMMARY JUDGMENT** issued by Alexander Fernández-Pons, Administrative Law Judge, HUDOHA 24-JM-0150-CM-005, were sent to the following parties on this 22nd day of May 2025, in the manner indicated:

VIA E-MAIL

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A handwritten signature in black ink, appearing to read 'Cinthia Matos', is written over a horizontal line.

For Cinthia Matos, Docket Clerk
HUD Office of Hearings and Appeals