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

In the Matter of:	
ABDULHAMID SHAIKH,	24-JM-0035-CM-001
Respondent.	August 21, 2024

RULING ON SUMMARY JUDGMENT AND INITIAL DECISION

This matter, which was set for hearing beginning on August 27, 2024, arose from a *Complaint* filed on November 17, 2023, by the U.S. Department of Housing and Urban Development ("HUD" or the "Government") against Respondent Abdulhamid Shaikh. Respondent owns Parkview Apartments ("Parkview"), which receives project-based assistance from HUD pursuant to Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f.

HUD seeks $660,000 in civil money penalties from Respondent pursuant to 42 U.S.C. § 1437z–1, as implemented by 24 C.F.R. part 30, for forty-four (44) counts of material violations of a Housing Assistance Payments ("HAP") contract. The contract requires Respondent to annually certify the incomes of his Section 8 tenants to determine the amount of HUD's subsidy. HUD alleges Respondent knowingly failed to do so in twenty-nine (29) instances from 2018 to 2021 (the "relevant period") and submitted requests for assistance based on the uncertified incomes. As a result, HUD further alleges that Respondent received inflated subsidies. In addition, HUD claims Respondent, in fifteen (15) instances, forged a tenant's signature and the dates of other tenants' signatures on tenant income recertification forms.

Each party now seeks summary judgment in their favor. After careful consideration, this Court finds no genuine dispute that Respondent violated the HAP contract in each of the forty-four (44) counts. The Court also finds no dispute regarding HUD's justification for the amount of the penalties sought. Accordingly, as a matter of law, Respondent is liable to HUD for the $660,000 in civil money penalties.[1]

PROCEDURAL HISTORY

On December 8, 2023, the Court set a hearing for March 5, 2024, which after multiple extensions, was rescheduled to the current date. On December 20, 2023, Respondent answered

[1] Respondent's motion for summary judgment was carefully considered but failed to establish undisputed material factual contentions in his favor.

the *Complaint*, denying all counts. Therein, Respondent raised affirmative defenses which have since been struck down.

On December 22, 2023, HUD sent its first of three discovery requests. On February 20, 2024, after several attempts to obtain compliant responses from Respondent, HUD sought the Court's intervention. On March 19, 2024, the Court compelled Respondent to comply.

On April 29, 2024, HUD motioned for sanctions after Respondent's continued noncompliance. The Court agreed in part, and on June 17, 2024, issued its *Order Denying in Part and Granting in Part Government's Motion for Sanctions* ("*Partial Sanctions Order*"). Therein, the Court prohibited Respondent from demonstrating an inability to pay the civil money penalties and struck an affirmative defense challenging HUD's penalty authority.[2] On July 1, 2024, Respondent motioned for reconsideration.

On June 4, 2024, HUD filed the *Government's Motion for Summary Judgment* and Respondent filed his *Respondent's Motion for Summary Disposition.* Both Parties filed opposition briefs. On August 16, 2024, Respondent motioned for an extension of the hearing date, pending the resolution of these dispositive motions.

Also on August 16, 2024, HUD filed a *Government's Emergency Motion in Limine and For Appropriate Sanctions As a Result of Respondent's Witness Tampering* ("*Emergency Motion*"). Therein, HUD claims an agent of Respondent contacted at least one of his tenants, seeking for that tenant to recant their testimony about Respondent's management practices under a threat of eviction. Also before the Court are the Parties' motions in *limine*, Respondent's objection to HUD's exhibits, and a motion by HUD to substitute certain exhibits.

LEGAL FRAMEWORK

Hearings concerning the application of civil money penalties are conducted in accordance with procedures set forth at 24 C.F.R. part 26, subpart B. See 24 C.F.R. §§ 30.1 and 30.95.

Summary Judgment. Pursuant to 24 C.F.R. § 26.40(f), this Court is authorized to decide cases, in whole or in part, by summary judgment where there are no material facts in dispute. See 24 C.F.R. § 26.32(l). Summary judgment motions and answers thereto shall strictly comply with the provisions of Rule 56 of the Federal Rules of Civil Procedure ("FRCP"). See 24 C.F.R. § 26.40(f)(2).

The FRCP and case law interpreting Rule 56 provide useful guidance in setting forth a standard to grant summary judgment. See, e.g., In re Salvador Alvarez, HUDALJ 04-25-PF, at 4 (June 23, 2005) (Rule 56 states that summary judgment shall be granted if the moving party "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law"). A "genuine" issue exists when "the evidence is such that a

[2] Respondent was sanctioned for failing to fully disclose his financial information to HUD so HUD could assess his ability to pay the penalties and failing to provide HUD relevant information to assess his affirmative defense.

reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). A "material" fact is a fact affecting the outcome of the suit. Id.

HUD, as the moving party, bears the burden of demonstrating the absence of any material issues of fact. See Anderson, 477 U.S. at 256. To meet this burden, HUD must cite materials in the record or show the cited materials do not establish the presence of a genuine dispute. See Fed. R. Civ. P. 56(c)(1).

In reviewing a motion for summary judgment, this Court's function is not to resolve any questions of material fact, but to ascertain whether any such questions exist. In re Beta Dev. Co., HUDBCA No. 01-D-100-D1, at *12 (February 21, 2002). The evidence is viewed in the light most favorable to the nonmoving party. Tolan v. Cotton, 572 U.S. 650, 657 (2014). Summary judgment is not available where "material facts are . . . are susceptible to divergent inferences." Tao v. Freeh, 27 F.3d 635, 638 (D.C. Cir. 1994). However, summary judgment against a party is appropriate where the party has failed to make a sufficient showing on an essential element as to which they have the burden of proof. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). If the moving party has carried its burden, the nonmoving party may not rest upon mere allegations or denials but 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) (citing Fed. R. Civ. P. 56(e)).

Civil Money Penalties. HUD is authorized to impose civil money penalties against any owner of a property that receives Section 8 project-based assistance for a knowing and material breach of a HAP contract including the "knowing or willful submission of false, fictitious, or fraudulent statements or requests for housing assistance payments to [HUD]." § 1437z-1(b); 24 C.F.R. § 30.68; see also 42 U.S.C. § 1437f. "[HUD]'s jurisdiction to impose civil money penalties derives from . . . statute, not from the contract." Yetiv, HUDALJ 02-001-CMP, at 9 (Sept. 2, 2003). Such penalties may not be imposed if HUD's failure or a failure of an agent of HUD is a material cause of the breach. See § 1437z-1(a)(2).

"Knowing" is defined as "having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under [§ 1437z-1]." Id. at § 1437z-1(h)(2); 24 C.F.R. § 30.10. Deliberate ignorance and reckless disregard are given their ordinary meaning. See, e.g., In re Prime Venture Realty Assocs., LLC, HUDALJ-10-F-003-CMP-1, at 25 & n.15 (Mar. 31, 2011) (citing Williams v. Taylor, 529 U.S. 420, 431 (2000)).

"Material" is defined as "[h]aving the natural tendency or potential to influence, or when considering the totality of the circumstances, in some significant respect or to some significant degree." 24 C.F.R. § 30.10. Materiality under the "totality of the circumstances" standard is determined by consideration of the factors identified at § 30.80. See In the Matter of Assoc. Trust Fin. Servs., HUDALJ 96-008-CMP (Nov. 20, 1997) (Secretary remanded to the Court to review for materiality based on the "totality of the circumstances" standard by considering the eight regulatory factors used to determine the amount of the civil money penalty).

The HAP contract incorporates certain HUD regulations and guidelines by reference as "HUD requirements" which are defined therein as those being "issued by HUD headquarters as

regulations, Federal Register notices, or other binding program directives." (underline removed). These include 24 C.F.R. Parts 5 and 880 and HUD Handbook 4350.3 REV-1, CHG-4, Occupancy Requirements of Subsidized Multifamily Housing Programs ("HUD Handbook").

Penalties may be imposed regardless of whether HUD imposes other sanctions. See 42 U.S.C. § 1437z-1(a)(1). The factors used to review the amount of civil money penalties are wide-ranging. See § 1437z-1(c)(3); 24 C.F.R. § 30.80.[3] This Court has recognized that not every factor will apply directly to every charge and the maximum penalty can be supported by a single compelling factor. See Apex Waukegan, LLC, HUDALJ 22-AF-0129- CM-007, at 16.

FACTS NOT IN DISPUTE

Background. Parkview is located at 824 S. 11th Street in Albion, Nebraska, and consists of twenty-four (24) units. On January 31, 2011, Respondent was deeded Parkview after purchasing the property at a HUD foreclosure sale. Respondent agreed to bring Parkview into physical compliance; maintain all units as affordable housing for twenty years in exchange for housing assistance payments; and obtain HUD's written approval for any change in Parkview's management.[4]

On January 14, 2011, Respondent signed a one-year HAP contract with the Bremerton Housing Authority ("Bremerton"). Bremerton administers the contract on behalf of HUD. In exchange for HUD subsidies to cover the difference between each unit's contract (a.k.a. "market rate") rent and the rent each tenant is able to pay based on income, Respondent agreed to comply with "all statutory requirements, and with all HUD requirements, including amendments or changes in HUD requirements during the term of the contract." On January 31, 2012, Respondent renewed the contract for nineteen (19) years and one day. The renewal included all the original terms and conditions that were not expressly modified.

Respondent provided a checking account in the name of Parkview Apartments, LLC ("Parkview LLC") to receive HUD's subsidies. The account was held by Cornerstone Bank located in York, Nebraska. Respondent was a member of Parkview LLC until its dissolution on June 2, 2015.[5] Thereafter, he continued to deposit and withdraw funds from the account. He is the only person associated with the account and his signature is on file. His address is listed on the account's checks.

Respondent's Management of Parkview. Respondent contracted with management companies to oversee Parkview until around June 1, 2018, when the last company withdrew. He

[3] The maximum penalty for each violation occurring between July 16, 2018, and March 14, 2019, is $38,159. 83 Fed. Reg. 32790, 32791 (July 16, 2018). The maximum penalty for each violation occurring between March 15, 2019, and April 5, 2020, is $39,121. 84 Fed. Reg. 9451, 9454 (Mar. 15, 2019). The maximum penalty for each violation occurring between April 6, 2020, and April 14, 2021, is $39,811. 85 Fed. Reg. 13041, 13044 (Mar. 6, 2020). The maximum penalty for each violation occurring on or after April 15, 2021, is $40,282. 86 Fed. Reg. 14370, 14373 (Mar. 16, 2021).

[4] Per HUD Handbook Chapter 2, Section 1, "The project owner is responsible for seeking out and selecting a management agent, but the selection is subject to the approval of the authorizing agency."

[5] Certain papers in the evidentiary record also refer to the entity as "Parkview Apartments, LTD."

then authorized his son, Shahid Shaikh, to perform all management duties.[6] From then until on or about June 2021, Respondent self-managed Parkview through Mr. Shaikh, Jr. and Mr. Shaikh, Jr.'s colleague, Lisa Toth, whom Mr. Shaikh, Jr. recruited to assist. As Mr. Shaikh, Jr. and Ms. Toth lived out-of-state, Debra Carey and Victor Flores provided on-site assistance. Respondent did not ask HUD for approval to self-manage Parkview and did not receive approval to do so.[7] Ms. Toth, Ms. Carey, and Mr. Flores were financially compensated by Respondent.

Both Mr. Shaikh, Jr. and Ms. Toth presented themselves as acting on Respondent's behalf in correspondence with HUD and tenants. Ms. Toth signed correspondence under titles such as "Agent for Owner," "Regional Manager," and "Parkview Apartments." Ms. Toth also met with tenants to recertify their incomes, and Parkview tenants generally recognized her as Respondent's representative. Along with Ms. Carey and Mr. Flores, Ms. Toth obtained tenant signatures on recertification forms. Ms. Toth, Ms. Carey, and Mr. Flores also co-signed and dated the forms as the "agent/owner." In doing so, they certified the "[t]enant's eligibility, rent and assistance payments have been computed in accordance with HUD's regulations and administrative procedures and that all required verifications were obtained."

During the relevant period, Respondent or his agents submitted monthly applications to HUD for subsidies earned by completing a form listing the amount of the request and, for each unit, the unit's contract rent, tenant's rent, and the requested assistance payment. The form required the applicant to certify that the claimed subsidy was computed in accordance with HUD requirements and payable under the HAP contract. Upon HUD's approval, Bremerton deposited the subsidy, typically monthly, into the Cornerstone Bank account.

Cornerstone Bank account statements show Respondent received at least $688,475 in HUD subsidies during the relevant period and wrote $400,000 in checks to himself.[8] "Owner's distribution" or similar language thereto was handwritten in the memo line of each check. While Respondent also deposited tenant rental income into the account, HUD's subsidies constituted a majority of the funds deposited. Respondent also wrote and signed checks from the account to pay Parkview expenses such as utilities, insurance, and mortgage, in addition to periodic payments to Ms. Carey and Mr. Flores.[9] Respondent also paid his counsel from the account.

During the relevant period, HUD provided Mr. Shaikh, Jr. with the names of potential management companies. While he attempted to engage those companies, one was not found

[6] Respondent is 83 years old. He states he authorized his son to manage Parkview due to his age and health. A letter from his doctor, Mahmood Yekta, dated May 24, 2024, states that Respondent suffers from age-related memory decline and cognitive deficit. As Respondent and his son share the same last name, this Ruling respectfully refers to his son as "Mr. Shaikh, Jr." to avoid confusion.

[7] Per HUD Handbook Chapter 2, Section 1, "An owner or agent may assume management of a project without prior . . . approval only in an emergency (e.g., an agent has abandoned a project or HUD has required the owner to terminate a management agreement)."

[8] The amount HUD overpaid Respondent (which is not in the record) is a portion of the $688,475 total because the amount is based on the difference between tenants' improperly recertified incomes and actual incomes.

[9] Checks written for those expenses are presumed to be Parkview-related because they are from "Parkview Apartments."

until April 2021 and it did not begin management until June 2021. That company was hired to complete tenant income recertifications that a review found were incomplete.

Management and Occupancy Review. On September 14, 2018, Parkview received a below average score during a Management and Occupancy Review ("MOR") for being out of compliance with HUD's requirements. Respondent was cited for, among other items, the failure to use HUD's Enterprise Income Verification ("EIV") system to verify tenant incomes and retain the reports, and for having unsigned and undated tenant income recertification forms.[10] As a corrective action, Respondent was required to verify tenant incomes in the EIV system and with tenants' employers, recalculate HUD subsidies, and reimburse HUD for any subsidies received in error. In addition, Respondent was required to obtain tenant signatures and signature dates on recertification forms. Respondent was also directed not to apply for HUD subsidies for tenants with unsigned recertification forms. On November 2, 2018, HUD received a letter signed by Respondent and Lisa Toth disputing the review.

HUD-OIG Investigation. In April 2021, HUD's Office of Inspector General ("HUD-OIG") opened an investigation into Respondent's management of Parkview after a referral from HUD's Office of Multifamily Housing ("MFH"). MFH alleged Respondent failed to properly complete annual tenant income recertifications after noticing that certain recertifications showed no change in tenant income over multiple years.

HUD-OIG subpoenaed tenant files, interviewed tenants, and compared their incomes with income information in the EIV system. HUD-OIG concluded that, during the relevant period: 1) tenant income recertification interviews were not conducted annually; 2) tenant incomes were not verified against the EIV system annually; 3) Ms. Toth interviewed tenants to recertify their incomes during the first quarter of 2021; 4) the incomes tenants provided did not match their incomes reported in the EIV system; 5) Respondent and/or his agents forged tenant signature dates and one tenant signature on certain income recertification forms; and 6) Respondent used unverified incomes to calculate and claim HUD subsidies.

DISCUSSION

This Court has carefully considered all factual issues and related arguments raised by the Parties in the record and finds no material facts genuinely in dispute regarding HUD's allegations.

I. There is No Material Dispute Regarding the *Prima Facie* Case.

The Court finds no dispute that the facts show the *prima facie* elements necessary to penalize Respondent are met, as discussed herein. Respondent contends he should not be penalized because: 1) HUD lacks authority to do so or waived its authority; 2) he was not involved in the management of Parkview; and 3) he lacked knowledge of HUD's requirements.

[10] The EIV system provides owners with employment, wage, unemployment compensation, and Social Security benefit information for tenants participating in HUD's assisted housing programs. The purpose of EIV is to "reduce administrative and subsidy payment errors in accordance with HUD administrative guidance." HUD Handbook, Chapter 9.

However, his contentions often lack evidentiary support and, in some instances, are based on disingenuous interpretations of law and fact.

A. Respondent is Subject to HUD's Civil Money Penalty Authority.

As explained previously, HUD may impose civil money penalties on "any owner of a property receiving project-based assistance under section 8." 42 U.S.C § 1437z–1. HUD's penalty authority applies to Respondent because he is the owner of Parkview and Parkview receives HUD assistance under Section 8.

Respondent argues HUD waived its authority by: 1) limiting itself to the remedies in the HAP contract and/or 2) contributing to the violations pursuant to § 1437z-1(a)(2).[11] First, HUD's authority is derived from § 1437z–1, not the HAP contract. Moreover, Respondent assented to HUD's authority when he signed the contract, therein agreeing to comply with "all statutory requirements." Second, Respondent offers no evidence to suggest HUD materially contributed to the forty-four (44) violations. Rather, he attempts to shift liability to HUD by arguing that HUD: 1) breached the HAP contract by releasing his previous management company and failing to find him another one and 2) waited so long to penalize him that it led him to believe he was compliant.[12] However, the HAP contract did not require HUD to assist Respondent.[13] Further, Respondent had ample notice of HUD's concerns. He and his agents knew Parkview scored poorly in the 2018 MOR for reasons similar to those before the Court, and they were also aware of HUD-OIG's 2021 investigation. Accordingly, the Court finds Respondent failed to raise a genuine dispute that he is subject to HUD's penalty authority.

B. Respondent Knew HUD's Requirements and Is Liable for His Agents' Actions.

24 C.F.R. Parts 5 and 880 and the HUD Handbook outline the tenant income recertification procedures and the declarations an owner must make to request HUD subsidies. As discussed below, knowledge of those requirements was imputed to Respondent when he signed the contract. The conduct of his agents is also imputed to him.

Knowledge. A party that signs a contract is charged with knowledge of its terms regardless of whether the party read or even understood the contract. See Petersen v. Reeves,

[11] Prior to the *Partial Sanctions Order*, Respondent argued HUD lacked penalty authority over him because HUD paid the subsidies to Parkview LLC, with which Respondent claimed no affiliation, rather than directly to him. Although now stricken by the *Order*, this argument has no merit. Only Respondent controlled Parkview LLC's account with Cornerstone Bank, which he accessed throughout the relevant period to distribute HUD's subsidies to himself. Further, his denial of any affiliation with Parkview LLC borders on dishonesty because he controlled Parkview LLC until its dissolution and continued to use its bank account. Respondent's counsel is reminded of his duty of candor before the Court. See Model Rules of Pro. Conduct r. 3.3 (Am. Bar. Ass'n 2024).

[12] Other of Respondent's contentions are so lacking in merit and/or factual support that little or no discussion is warranted. For example, Respondent argues HUD had a duty to monitor his compliance, suggesting HUD, if understaffed, could have pulled from 3 million federal employees to do so. This argument suggests a fundamental misunderstanding of the Federal Government and its regulations. Respondent's counsel is reminded of his obligation to present only meritorious claims before the Court. See Model Rules of Pro. Conduct r. 3.1 (Am. Bar. Ass'n 2024).

[13] See n.4, *supra*. As also discussed *supra*, HUD provided Mr. Shaikh, Jr. a list of management companies.

304 F.2d 950, 951 (D.C. Cir. 1962) ("One who signs a contract which he had an opportunity to read and understand is bound by its provisions."). See also Circuit City Stores, Inc. v. Ahmed, 283 F.3d 1198, 1200 (9th Cir. 2002). Similarly, a party is presumed to have knowledge of any regulation, statute, or administrative guidance incorporated into the contract. See In re Sundial Care Center, Inc., HUDALJ 08-055-CMP, at 12-13 (imputing knowledge of the terms of a regulatory agreement even if respondent did not read the agreement).

Respondent argues he had no knowledge of HUD's requirements because they were not expressly listed in the HAP contract. However, the contract incorporated those requirements by reference, and he admits he signed the contract. Specifically, Respondent agreed to comply with "all statutory requirements, and with all HUD requirements, including amendments or changes in HUD requirements during the term of the contract." As discussed previously, the contract defined "HUD requirements" as those being "issued by HUD headquarters as regulations, Federal Register notices, or other binding program directives." (underline removed). Thus, as Respondent signed the HAP contract which incorporated HUD's requirements by reference, there is no dispute that knowledge of HUD's requirements was imputed to him during the relevant period even if he did not read or understand the contract.

Agency. "Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." Restatement (Second) of Agency § 1 (1958). In such a situation the agent's conduct may be imputed to the agent's principal. Actual authority exists where "at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act." A-J Marine, Inc. v. Corfu Contractors, Inc., 810 F. Supp. 2d 168, 175 (D.D.C. 2011) (quoting Restatement (Third) of Agency § 2.01 (2006)) (emphasis in original). Apparent authority is "created by a person's manifestation that another has authority to act with legal consequences for the person who makes the manifestation, when a third party reasonably believes the actor to be authorized and the belief is traceable to the manifestation." Id. at 177 (quoting Restatement (Third) of Agency § 3.03).

Respondent also claims he had no knowledge of HUD's requirements because he authorized Mr. Shaikh, Jr. to manage Parkview on his behalf due to his age and health. He contends he knew nothing of Mr. Shaikh, Jr.'s activities nor of those of Ms. Toth, Ms. Carey, and Mr. Flores. Thus, there is no dispute Mr. Shaikh, Jr. acted with Respondent's actual authority. Further, there is no dispute that the others acted with Respondent's apparent authority through Mr. Shaikh, Jr. Specifically, Mr. Shaikh, Jr. recruited Ms. Toth, who HUD-OIG found tenants "generally understood" worked for Respondent when she conducted their income recertification interviews. In addition, Ms. Carey and Mr. Flores distributed and collected the recertification forms, a task that would reasonably be attributed to being done on Respondent's behalf. Thus, there is no dispute Mr. Shaikh, Jr., Ms. Toth, Ms. Carey, and Mr. Flores acted as his agents and their actions and knowledge thereof are imputed to Respondent.[14]

[14] Respondent contends the aforementioned persons were not his agents because he never signed a HUD form evidencing their authority to bind him. However, Respondent cites no legal authority in support of that contention.

C. Respondent Knowingly Failed to Recertify Tenant Incomes Annually.

In signing the HAP contract, Section 8 owners, such as Respondent, certify that "[t]he amount of any housing assistance payment requested or received by the owner is the correct amount due." Accordingly, HUD requires owners to recertify each tenant's income annually. To do so, the owner or their agent must interview each tenant annually and enter their income on a recertification form signed and dated by the tenant. See 24 C.F.R. § 5.657; HUD Handbook Chapter 7. In doing so, the tenant certifies the information is "true and complete to the best of [their] knowledge and belief." The owner or their agent must then verify each tenant's income against that reported in the EIV system and attempt to resolve any discrepancy.[15] See 24 C.F.R. § 5.233; HUD Handbook Chapters 7 and 9. Once complete, the owner or their agent co-signs and dates the recertification form, certifying that the "[t]enant's eligibility, rent and assistance payments have been computed in accordance with HUD's regulations and administrative procedures and that all required verifications were obtained."

HUD asserts Respondent failed to properly recertify tenant incomes during the relevant period by not interviewing tenants annually and/or verifying their incomes with the EIV system. As evidence, HUD submits the MOR report; the declaration of HUD-OIG Special Agent Jahic ("SA Jahic"), who interviewed tenants for the HUD-OIG investigation; tenant recertification forms; and spreadsheets showing discrepancies between the tenants' reported incomes and the EIV system. SA Jahic states tenants confirmed that Respondent and/or his agents failed to recertify their income annually. SA Jahic further attests that some tenants' incomes were less than their incomes reported in the EIV system.

In response, Respondent submits evidence that, when viewed in a most favorable light, suggests the EIV reports for two tenants were possibly inaccurate. However, this evidence does not call into question HUD's evidence that Respondent or his agents failed to verify those tenants' incomes, nor does Respondent submit evidence questioning HUD's other contentions. Thus, Respondent raises no dispute that, during the relevant period, he or his agents knowingly failed to properly follow HUD's recertification procedures.[16]

Failing to properly recertify tenant incomes annually results in false, fictitious, or fraudulent subsidy requests in violation of HUD's requirements in the HAP contract, which in the instant matter, led HUD to overpay Respondent. Thus, the facts show Respondent and/or his agents violated § 1437z-1(b)(2)(B) in each of the twenty-nine (29) instances by failing to follow HUD's recertification procedures.

[15] Each year's EIV report must be retained in the tenant's file.

[16] Respondent also contends he was forced to self-manage Parkview on an emergency basis after HUD released the last management company. He states he attempted to comply with HUD's requirements and any mistakes were inadvertent. However, intent is not an element of the *prima facie* case. He further alleges HUD is withholding relevant information in the 6000 pages of tenant files he provided HUD-OIG that shows his compliance. However, he points to no evidence in support thereof.

D. Respondent Knowingly Committed Forgery on Tenant Recertification Forms.

An owner who commits fraud or makes "any false statement to . . . HUD in connection with the HAP contract" is in default. As such, an owner or their agent who forges a date or signature on a tenant recertification form is in violation of the contract. Further, a tenant who signs the recertification form certifies that the information provided is true and complete and acknowledges that false or complete information can result in a fine, imprisonment, a rent increase, or the loss of HUD's subsidy. Similarly, the co-signing owner or their agent acknowledges they are subject to a civil penalty of not less than $5,000 for making a false or fraudulent claim.

HUD asserts Respondent or his agents forged tenant signature dates and one tenant's signature on income recertification forms. Specifically, SA Jahic attests to tenant statements that Ms. Toth instructed them to leave the signature date on their recertification form blank, and when shown the recertification form, they confirmed the handwritten date was not their own. One tenant also confirmed that the signature on the form was not their own. As Respondent submits no evidence to question that submitted by SA Jahic, there is no dispute Ms. Toth did so, and Respondent and/or his agents handwrote the dates after-the-fact.[17]

Accordingly, the Court finds no dispute that, during the relevant period, tenant signature dates and one signature on the recertification forms were knowingly forged in violation of the HAP contract and that Respondent and/or his agents violated § 1437z-1(b)(2)(B) when Ms. Toth instructed tenants to leave their signature date blank and someone other than the signatory later handwrote the dates and forged a signature. Thus, as Respondent is responsible for the actions of his agents, the Court finds no dispute Respondent may be penalized for knowingly violating § 1437z-1(b)(2)(B) for each of the fifteen (15) instances of forgery.

E. Respondent Knowingly and Fraudulently Requested HUD Subsidies.

An owner is required to calculate the amount of each tenant's rent and provide that information to HUD in a monthly application for subsidies. In doing so, the owner certifies that "[e]ach tenant's eligibility and assistance payment was computed in accordance with HUD's regulations, administrative procedures, and the Contract, and are payable under the Contract." See also 24 C.F.R. § 5.657. The owner also certifies that "all the facts and data on which this request for payment is based are true and correct" and is warned that "HUD will prosecute false claims and statements" which may result in criminal and/or civil penalties.

HUD contends Respondent requested subsidies based on improperly recertified tenant incomes. As evidence, HUD submits samples of Respondent's monthly subsidy applications. SA Jahic further states the subsidies sought are based on tenant incomes that did not change annually during the relevant period although the requested subsidies and the contract rents increased.

[17] Respondent merely states, without support, that the tenant's statements were investigated, and corrective measures implemented. He also argues, without support, that HUD-OIG coached or coerced the tenants' statements.

Respondent suggests HUD fabricated the application forms because they are unsigned but submits no evidence in support thereof. However, he does not explain why Cornerstone Bank statements show that the amounts requested from HUD were deposited into his account. Thus, there is no dispute Respondent knowingly submitted the forms and claimed HUD assistance based on uncertified tenant incomes.

F. Respondent Violated § 1437z-1(b)(2).

Accordingly, there is no dispute Respondent is subject to HUD's civil money penalty authority and, through his own actions or those of his agents in forty-four (44) instances, he knowingly failed to properly recertify tenant incomes and/or forged tenant signature dates and one tenant signature on tenant income recertification forms. He then knowingly requested HUD subsidies based on improperly recertified tenant incomes. Thus, the record reveals no dispute Respondent knowingly and materially breached the HAP contract in violation of 42 U.S.C. § 1437z-1(b)(2) for each of the forty-four (44) counts HUD has levied against him.

II. HUD is Entitled to Judgment as a Matter of Law.

A. Respondent is Liable for Civil Money Penalties.

Because the record shows no dispute Respondent violated § 1437z-1(b)(2) in the forty-four instances asserted by HUD, Respondent, as a matter of law, is liable to pay a civil money penalty for each violation. As such, the Court now reviews whether HUD's proposal of $15,000 per violation is appropriate and for any dispute in that regard.

B. Respondent is Liable for the Full Amount of the Penalties Sought.

Pursuant to the factors in 42 U.S.C. § 1437z-1(c)(3) (see also 24 C.F.R. § 30.80), HUD contends that $15,000 per violation is appropriate because Respondent breached the HAP contract; made false claims; harmed the integrity of the Section 8 program; injured tenants in other projects by requesting more assistance than warranted; misused taxpayer dollars; and unjustly benefitted from unwarranted financial gain. HUD further contends the amount will deter others from doing the same and will emphasize the importance of compliance. As a mitigating factor, HUD notes this is Respondent's first offense.

In response, Respondent claims his most recent management company reimbursed HUD for any subsidy overpayments but submits no evidence in support thereof. He further argues that the differences between the claimed tenant incomes and tenant incomes in EVS were minor such any overpayments by HUD were *de minimis*. Again, Respondent does not provide evidentiary support. Rather, the spreadsheets that SA Jahic compiled show differences of thousands of dollars between unverified tenant incomes and those in EVS. Respondent further argues each violation should be tied to each submission of a subsidy application form rather each instance misconduct in regard to a given tenant. However, each failure of Respondent to properly recertify a tenant's income and each instance of forgery is a single breach of the HAP contract, and therefore a violation of § 1437z-1(b)(2) because each instance pertains to a false, fictitious or

fraudulent statement.[18] Lastly, Respondent states he had no intent to defraud HUD, but intent is not an element of § 1437z-1(b)(2). All that is required is statements or requests for housing payments made to HUD that were knowingly false, fictitious, or fraudulent. As found *supra*, there is no dispute such statements and requests were made and that Respondent, as a signatory to the HAP contract was responsible for knowledge of HUD's requirements. Accordingly, Respondent has failed to show any dispute that $15,000 per violation is an appropriate penalty.

III. All Outstanding Motions are Denied or Moot.

Respondent's Objections to Exhibits and Motion in *Limine*. On June 11, 2024, and June 14, 2024, respectively, Respondent filed an objection and a motion in *limine* seeking to exclude the majority of HUD's exhibits.[19] Specifically, Respondent alleges that: late notifications of certain exhibits and a HUD witness materially prejudiced his hearing preparation; HUD improperly subpoenaed Cornerstone Bank and violated privacy laws in doing so; HUD failed to respond to his discovery requests; and certain HUD exhibits included hearsay contrary to the Federal Rules of Evidence ("FRE").

Respondent's requests are denied because: the extension of the previous hearing date removed any prejudice to him; HUD corrected the issue regarding its witness; Respondent was notified of HUD's intent to subpoena Cornerstone Bank; HUD complied with said privacy laws; and Respondent did not give HUD insufficient time to respond to his requests prior to the discovery deadline. Lastly, Respondent's hearsay objections are not sustained because the Court is not bound by the FRE. See 24 C.F.R. § 26.47.

Respondent's Request to Reconsider the Partial Sanctions Order. On July 1, 2024, Respondent motioned for reconsideration of the Court's *Partial Sanctions Order* wherein he was sanctioned for non-compliance with HUD's discovery requests. Therein, Respondent alleges errors of law and fact he believes warrant reconsideration of the sanctions. However, reconsideration is only granted based on newly discovered evidence that was not previously available to Respondent. See In re Louisiana Hous. Fin. Agency, Petitioner, HUDBCA No. 02-D-CH-CC006, 2004 WL 3560942 (Mar. 1, 2004) (denying reconsideration for lack of newly discovered evidence, stating "[i]t is not the purpose of reconsideration to afford a party the opportunity to reassert contentions that have been fully considered and determined by the Board."). Here, Respondent offers evidence not previously submitted without explaining why it was not known to him or available prior to the *Partial Sanctions Order*. Respondent also fails to describe with any particularity the alleged errors of law. Rather, he propounds arguments that are immaterial to the sanctions imposed. Thus, the request for reconsideration is denied.

[18] Respondent also contends, without support, that the penalties should be mitigated because the funds from the checks he wrote to himself from his Cornerstone account went to Parkview and related legal expenses. Regardless, Respondent's use of the funds he claimed as "Owner's distribution" is immaterial to the fact that he fraudulently obtained a portion of those funds due to his failure to comply with HUD's recertification procedures.

[19] On July 11, 2024, HUD filed a motion to strike Respondent's motion in *limine*. On July 13, 2024, HUD filed its own motion in *limine*, seeking to exclude testimony by Mr. Shaikh, Jr. for Respondent's alleged failure to comply with HUD's request to depose him. These filings, as well as Respondent's motion to extend the hearing dates, HUD's motion to substitute certain exhibits, and HUD's *Emergency Motion* are rendered moot by this Ruling, but they will remain as part of the record.

CONCLUSION AND ORDER

The Court finds that HUD has demonstrated no genuine issues of material fact exist in this matter. The material facts support finding Respondent: 1) is subject to HUD's civil money penalty authority under 42 U.S.C. § 1437z-1(b)(2); 2) knowingly violated the HAP contract in twenty-nine (29) instances for failure to properly recertify tenant incomes and in fifteen (15) instances by forging tenant signature dates and one tenant signature on tenant income recertification forms; and 3) submitted requests for HUD subsidies based on unverified tenant incomes due to his failure to properly recertify tenant incomes. These undisputed material facts further establish that HUD is entitled to judgment as a matter of law and Respondent is liable for $660,000 (44 violations) in civil money penalties.

Based on the foregoing, the Court orders the *Government's Motion for Summary Judgment* **GRANTED**. *Respondent's Motion for Summary Disposition* and all other outstanding requests and motions before the Court are **DENIED** or rendered **MOOT**.

So **ORDERED**,

J. Jeremiah Mahoney
Chief Administrative Law Judge

Notice of appeal rights. The appeal procedure is set forth in detail in 24 C.F.R. §§ 26.50 and 26.52. This Order may be appealed by any party to the Secretary of HUD by petition for review. Any petition for review and the required brief must be received by the Secretary within 30 days after the date of this Order. An appeal petition shall be accompanied by a written brief, not to exceed 15 pages, specifically identifying the party's objections to the *Ruling on Summary Judgment and Initial Decision* and the party's supporting reasons for those objections. Any statement in opposition to a petition for review must be received by the Secretary within 20 days after service of the petition. The opposing party may submit a brief, not to exceed 15 pages, specifically stating the opposing party's reasons for supporting the ALJ's determination, or for objecting to any part of the ALJ's determination.

Service of appeal documents. Any petition for review or statement in opposition must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development
Attention: Secretarial Review Clerk
451 7th Street S.W., Room 2130
Washington, DC 20410
Facsimile: (202) 708-0019
Scanned electronic document: secretarialreview@hud.gov

Copies of appeal documents. Copies of any Petition for Review or statement in opposition shall also be served on the opposing party(s), and on the HUD Office of Hearings and Appeals.

Finality of decision. The agency decision becomes final as indicated in 24 C.F.R. § 26.50.

Judicial review of final decision. After exhausting all available administrative remedies, any party adversely affected by a final decision may seek judicial review of that decision in a United States Court of Appeals. A party must file a written petition in that court within 20 days of the issuance of the Secretary's final decision.