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

In the Matter of: GLORIETA PARTNERS LTD. and IMPRO SYNERGIES LLC, Respondents.	24-JM-0383-CM-002 March 28, 2025

ORDER GRANTING MOTION TO DISMISS ONE RESPONDENT

This matter arises from a *Complaint for Civil Money Penalties* ("*Complaint*") issued by the United States Department of Housing and Urban Development ("HUD") seeking an award of civil money penalties totaling $6,758,632 against Glorieta Partners Ltd. ("Glorieta") and Impro Synergies LLC ("Impro") pursuant to 42 U.S.C. § 1437z-1 and 24 C.F.R. § 30.68, due to Respondents' alleged failure to maintain assisted rental units in decent, safe, and sanitary condition, thereby committing knowing and material breaches of a Housing Assistance Payments contract with HUD.

HUD has now moved to dismiss Respondent Glorieta on account of settlement, but Respondent Impro opposes the motion.

I. Background and Parties' Positions

The *Complaint* was issued on September 20, 2024. On October 4, 2024, Respondent Glorieta filed a hearing request, initiating proceedings before this administrative Court under 42 U.S.C. § 1437z-1(c) and 24 C.F.R. part 30. Glorieta also requested an extension of time to file an Answer to the *Complaint*.

On October 7, 2024, the Court issued an order scheduling a hearing and granting an extension of time until December 4, 2024, for Glorieta to file an Answer to the *Complaint*. On October 18, 2024, Respondent Impro's newly retained counsel requested that the extension of time be applied to Impro as well. The Court issued an order granting this request. In a footnote, the Court acknowledged that Impro had not filed a hearing request, but indicated Impro would be included as a participant in the hearing proceedings initiated by Glorieta.

On December 4, Respondent Impro filed an Answer to the *Complaint*. Respondent Glorieta did not. Unbeknownst to Impro, Glorieta had filed a motion the day before requesting another extension of time to submit an Answer because HUD and Glorieta were discussing settlement. Thereafter, Glorieta requested and was granted several more extensions.

Glorieta never filed an Answer to the *Complaint*. Instead, on February 24, 2025, HUD filed a *Motion to Dismiss Glorieta Partners LTD. Without Prejudice* ("*Motion to Dismiss*") stating that the parties executed a settlement agreement on February 20, 2025, resolving Glorieta's liability in this matter.

Previously, on February 13, 2025, Respondent Impro had filed a *Notice of Discovery* requesting production of documents from Respondent Glorieta and HUD. On February 25, 2025, Impro sent an email expressing its opposition to dismissal of Glorieta. Impro stated that dismissal would relieve Glorieta of its obligations to respond to discovery in this matter, thereby prejudicing Impro's ability to duly defend itself.

On February 26, 2025, HUD filed a *Reply to Respondent Impro's Opposition to Motion to Dismiss Glorieta Partners LTD. Without Prejudice* noting that Impro had known for several months that HUD and Glorieta were working toward settlement and asserting that Impro's argument against dismissal was meritless on the facts and insufficient as a matter of law to block dismissal. First, HUD asserted that a plaintiff can voluntarily dismiss a party as of right before the party serves a responsive pleading, citing Rule 41(a)(1) of the Federal Rules of Civil Procedure. In response to Impro's complaint that dismissal would prevent it from obtaining discovery from Glorieta, HUD argued that Impro's principals controlled Glorieta until 2024, so they had access to the same information, and even if Glorieta were dismissed as a party, Impro could request a third-party subpoena under 24 C.F.R. § 26.43.

On March 5, 2025, Respondent Glorieta filed an *Objection to Respondent Impro's Request for Production*. Glorieta asserted that the filing of the *Motion to Dismiss*, pending an affirmative ruling from this Court, effectively rendered Glorieta no longer a party to this matter and as such, no longer bound to respond to Impro's request for production. Glorieta cited Rule 41(a)(1) of the Federal Rules of Civil Procedure and requested the entry of an order denying Impro's request for production.

On March 11, 2025, this Court held an oral hearing to gain a better understanding of each party's position on the *Motion to Dismiss*. Following the hearing, Impro filed a *Brief in Opposition to the Government's Motion to Dismiss Glorieta Partners LTD. Without Prejudice*, HUD filed a *Sur Reply to Respondent Impro's Opposition to Motion to Dismiss Glorieta Partners LTD. Without Prejudice*, and Glorieta filed an *Adoption of Government's Sur Reply in Support of Motion to Dismiss*.

Respondent Impro's position is that Respondent Glorieta should not be dismissed because Impro does not have access to the maintenance records or the property anymore and dismissal will hinder Impro's ability to obtain necessary discovery from Glorieta. Impro also claims that dismissal would be prejudicial because it has been and will be required to expend significant resources to defend itself in this matter and was not given the same opportunity as Glorieta for extensions to respond to the *Complaint*.

HUD continues to assert that dismissal is appropriate under Rule 41(a)(1) and argues that Respondent Impro has failed to show it will suffer prejudice as a result of dismissal. HUD maintains that Impro was manager of the property and controlled all tenant and maintenance files

during the time periods relevant to the *Complaint*, so Impro has access to many records that are electronic, and Glorieta would not have the records in question. HUD also claims that Impro has always been and is still free to request more time and approach HUD for settlement discussions.

Respondent Glorieta's stance is that this should have been a notice to dismiss instead of a motion because HUD has a right to dismiss Glorieta before it files a responsive pleading. See FED. R. CIV. PRO. 41(a)(1). Glorieta also states that the allegations of the *Complaint* stem from a time period when Respondent Impro had full control, so Glorieta would look to Impro to produce records if needed.

II. Legal Principles

Rule 41 of the Federal Rules of Civil Procedure governs dismissal of actions in federal district court. Unless specifically incorporated into 24 C.F.R. Part 26 by statute or regulation, none of the Federal Rules of Civil Procedure govern the proceedings at bar, but they may be looked to for guidance where HUD regulations do not specify the procedure to be followed in a given circumstance. See In re Lowe, HUD ALJ 09-098-PF-19 at 1 (Jan. 6, 2010).

Rule 41(a)(1) permits voluntary dismissal by the plaintiff if all parties agree, or if the opposing party has not yet served an answer or motion for summary judgment, in which case the plaintiff may file a self-executing notice of dismissal. However, when there are multiple defendants, some courts do not allow dismissal of just one defendant under Rule 41(a)(1) and instead permit dismissal of parties only by court order pursuant to Rule 21 or Rule 41(a)(2). See Philip Carey Mfg. Co. v. Taylor, 286 F.2d 782, 785 (6th Cir. 1961); Harvey Aluminum, Inc. v. American Cyanamid Co., 203 F.2d 105, 108 (2d Cir. 1953).

When dismissal is not available under Rule 41(a)(1), voluntary dismissal can still be obtained by getting a court order under Rule 41(a)(2). In general, Rule 41(a)(2) allows dismissal unless the objecting party makes a showing that dismissal would result in "plain legal prejudice." See Arias v. Cameron, 776 F.3d 1262, 1268-69 (11th Cir. 2015).

III. Discussion

HUD and Respondent Glorieta assert that dismissal under Rule 41(a)(1) is appropriate because Glorieta has not filed an Answer to the *Complaint*. However, Glorieta did respond to the *Complaint* by filing a hearing request. Under 42 U.S.C. § 1437z-1, the filing of the hearing request was the event that triggered the Court's exercise of jurisdiction and initiated these hearing proceedings, placing this matter in a somewhat different procedural posture than is typical under the Federal Rules of Civil Procedure.

Moreover, though the Federal Rules of Civil Procedure provide helpful guidance, they are not binding in this matter. The procedural rules that actually govern this matter, which are found in 24 C.F.R. part 26, subpart B, do not include a procedural mechanism equivalent to Rule 41(a)(1) that would allow a party to file a self-executing notice of voluntary dismissal. Further, as noted above, even among courts that are bound by the Federal Rules of Civil Procedure, not all jurisdictions allow voluntary dismissal of just one defendant under Rule 41(a)(1) when a case

involves other defendants. Thus, it is unclear whether Rule 41(a)(1) would be available even if this case were being litigated in a U.S. District Court. For all these reasons, the Court declines to apply Rule 41(a)(1).

Following the guidance of Rule 41(a)(2), the Court may grant dismissal absent a showing of "plain legal prejudice." Respondent Impro identifies four factors courts often apply to determine whether a party opposing dismissal will suffer legal prejudice as a result: 1) the opposing party's effort and expense in preparing for trial; 2) excessive delay and lack of diligence on the part of the movant; 3) insufficient explanation for the need for a dismissal; and 4) the present stage of litigation. See Mitchell v. Roberts, 43 F.4th 1074, 1083-84 (10th Cir. 2022). Citing the first two of these factors, Impro argues that it expended significant resources to file an Answer to the *Complaint* on December 4, 2024, due to HUD and Glorieta's lack of diligence in failing to serve it with the December 3, 2024, extension request. Impro also suggests that HUD and Glorieta unfairly benefited from seeing Impro's Answer during their settlement discussions, and asserts that this will disadvantage Impro in any outside litigation.

The December 3, 2024, extension request should have been served on Impro. However, there is no evidence that HUD or Glorieta were acting in bad faith when they failed to serve Impro or that this failure was anything more than an oversight. Also, Impro could have submitted its own extension request before December 4 if it had wanted to postpone the effort and expense of preparing an Answer or avoid sharing its Answer with the other parties at that time. Regardless, Impro still would have been required to file an Answer eventually. Under Rule 41(a), the fact that a party has invested effort and expense in a litigation can support a finding that dismissal will cause prejudice, but only if that party is the one being dismissed, in which case dismissal may cause prejudice by rendering the party's investments worthless and/or threatening to require duplication of its efforts and expenses if the action is later refiled. In this case, Impro is not at risk of this type of prejudice because it is not the party facing dismissal.

Impro's claim that it will be prejudiced if Respondent Glorieta is dismissed as a party and does not respond to its discovery request is also unavailing. Impro has not identified specific discovery materials necessary to its defenses that it will not be able to obtain if Glorieta is dismissed. Impro states that it needs the maintenance records for the subject property, but the record indicates that Impro is the entity that handled day-to-day activities on the property, created the records in question, and had control over the property during the relevant time periods. And even if Impro did not preserve the records, it can seek discovery from Glorieta through a third-party subpoena. Impro argues this would be costly, but ordinary litigation costs do not constitute legal prejudice. Impro cites no legal authority or precedent for forcing a party that has already settled to continue litigating a case simply to reduce another party's discovery costs.

When deciding whether to grant dismissal over a defendant's objection, courts should "consider the equities facing not only the defendant but also those facing the plaintiff" to "endeavor to insure substantial justice is accorded to both parties." See Mitchell, 43 F.4th at 1084. HUD argues that the logical consequence of allowing Impro to block dismissal would be to compel the government to spend taxpayer resources maintaining an enforcement action against a respondent who has already settled, which would pose a serious obstacle to the

government's ability to settle cases; would contravene 24 C.F.R. § 30.100, which authorizes HUD to settle civil money penalty actions; and would be grossly unfair to both HUD and Glorieta. Glorieta adds that it would be contradictory and prejudicial for this Court to deny dismissal after having issued scheduling orders encouraging settlement.

The Court finds that requiring HUD to maintain an action against Glorieta, and requiring Glorieta to continue defending the action, after they have already executed a settlement agreement, would not make sense and would be inequitable to both parties. On balance, the equities weigh in favor of dismissal. Though Impro's ability to gather information may be hindered if Glorieta is dismissed, any litigation disadvantage in this regard is hypothetical and likely curable. Discovery has barely begun. This matter is still in the early stages of adjudication and all deadlines have been extended for six months to allow the parties sufficient time to conduct discovery and engage in settlement discussions. If more time is needed, the parties are welcome to file motions for extension of time in accordance with 24 C.F.R. § 26.16(d). Impro will have time and opportunity to seek discovery from HUD and third parties. To the extent Impro cannot obtain discovery it needs, it is not without recourse. If it seeks but is unable to obtain specific materials or information that are needed for its defense, this is a factor the Court can and will consider when deciding the case.

HUD and Respondent Glorieta have reached a settlement resolving the issues between them. Respondent Impro has not articulated a legally supported basis for how it would suffer meaningful prejudice if Glorieta is dismissed, or explained what legal grounds this Court has to continue asserting jurisdiction over Glorieta when there is no longer a controversy. Doing so would be inequitable to HUD and Glorieta and could have a chilling effect on parties' willingness to engage in settlement negotiations with HUD in the future. Accordingly, the Court will grant dismissal.

IV. Conclusion and Order

For good cause, the *Motion to Dismiss* is **GRANTED** and the *Government's Complaint for Civil Money Penalties* is **DISMISSED** as against Respondent Glorieta without prejudice. Because Respondent Glorieta is dismissed in this matter, the *Objection to Respondent Impro's Request for Production* is hereby **DENIED** as moot.

So **ORDERED**,

J. Jeremiah Mahoney
Chief Administrative Law Judge