

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY**

In the Matter of:)	
)	April 7, 2020
)	
EGAE, LLC, and Marlow Family Exempt, Perpetual Trust)	HUDOHA 18-AF-0227-CM-002
)	
Respondents.)	
)	

ORDER ON SECRETARIAL REVIEW

On February 20, 2020, EGAE, LLC, and Marlow Family Exempt Perpetual Trust (collectively, “Respondents”) filed an Appeal for Secretarial Review (“Appeal”) of the Initial Decision and Order (“Decision”) issued by Judge Alexander Fernández (“ALJ”) on January 23, 2020, which imposed civil money penalties in the amount of \$222,954.00 on the Respondents for the failure to file audited financial statements from 2013 to 2017. The ALJ found adequate evidence existed to support the imposition of the penalties sought by the Department of Housing and Urban Development (“HUD”). The ALJ found that Respondents’ failure to file audited financial statements for 2013-2017 constituted violations of its obligations under the Regulatory Agreement. ALJ further found that Respondents were wholly culpable and had not demonstrated an inability to pay. Accordingly, the ALJ found that the imposition of the maximum allowable penalty was warranted for each violation.

Respondents’ Appeal claimed that HUD violated Respondent’s constitutional rights and requested that the Decision be set aside. HUD filed an Opposition Brief on March 10, 2020, arguing that no constitutional rights were violated and the Decision should be completely upheld. Upon review of the entire record of this proceeding, including the briefs filed with the ALJ and the Secretary, and based on an analysis of the applicable law, I hereby DENY the Respondents’ Appeal in its entirety and AFFIRM the ALJ’s Decision.

PROCEDURAL HISTORY

On August 22, 2018, HUD filed an administrative complaint against Respondents for their failure to file audited, annual financial statements (or “reports”) for fiscal years 2013, 2014, 2015, 2016, and 2017, for their HUD insured multi-family property known as McKinley Tower Apartments. HUD sought civil money penalties against the Respondents in the amount of \$222,954.00 pursuant to 12 U.S.C. § 1735f-15 and 24 C.F.R. Part 30.

On November 7, 2018, HUD filed a Motion for Summary Judgment requesting that the Court make a finding that the Respondents were jointly and severally liable for a civil money

penalty of \$222,954.00 for failing to file audited, annual financial reports for the years 2013-2017. On June 28, 2019, the Court issued an Order Granting Partial Summary Judgment in favor of HUD finding that the Respondents failed to file audited, annual financial statements for fiscal years 2013-2017, and that their failure was both knowing and material. The Court ruled that HUD met its burden to prove that there exists no issue of material fact and that Respondents are liable for violations of the Civil Money Penalty statute. The Court determined that questions of fact remained with regard to the appropriate amount of penalties based on the Court's consideration of factors set forth in 24 C.F.R. § 30.80.

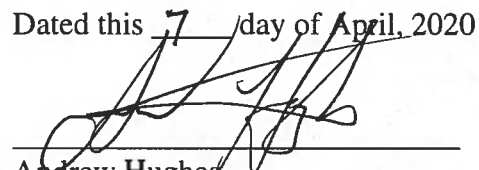
A hearing on the matter regarding the appropriate amount of civil money penalties occurred on July 30-31, 2019, in Anchorage, Alaska. The Government and the Respondents filed Post Hearing Briefs on October 10, 2019. The Government filed its Response Brief to refute the facts and arguments presented by the Respondents on October 24, 2019, and Respondents replied on October 25, 2019. The Court's Decision was issued on January 23, 2020.

CONCLUSION

After reviewing the entire record, I affirm the ALJ's Decision and adopt the findings and legal decisions therein. Therefore, the Respondent's Appeal is hereby DENIED.

IT IS SO ORDERED.

Dated this 7 day of April, 2020



Andrew Hughes
Secretarial Designee