

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

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT,

Petitioner,

v.

ZVI FEINER,

Respondent.

HUDOHA 19-JM-0009-CM-007
OGC 18-006-CMF

August 8, 2019

INITIAL DECISION AND CONSENT JUDGMENT

This matter is before the Court upon a *Complaint for Civil Money Penalties* (“Complaint”) filed by the United States Department of Housing and Urban Development (“HUD” or “Government”) against Zvi Feiner (“Respondent”) (collectively, the “Parties”) pursuant to 12 U.S.C. §1735f-15(c)(1)(B)(x), as implemented by 24 C.F.R. § 30.45(c). The *Complaint* alleges that Respondent is liable to HUD in the amount of \$965,678 for the failure to submit annual audited financial reports for the fiscal years of 2015, 2016, and 2017 by Alton Real Estate, Inc.; East Peoria Real Estate, Inc.; Joliet Real Estate Holding Co.; Moline Real Estate, Inc.; Peoria Real Estate, Inc.; Schuetz Road Real Estate, Inc.; and Wood River Real Estate Holding Co. (collectively, the “Rosewood Corporations”). On July 1, 2019, the Parties filed a joint motion seeking entry of a consent judgment.

Pursuant to 24 C.F.R. § 26.28, this proceeding is subject to the provisions of the Administrative Procedure Act (“APA,” 5 U.S.C. §§ 551-559). Although HUD’s civil money penalty authority does not expressly mention consent judgments, the Parties assert that this Court is authorized to enter a consent judgment pursuant to 5 U.S.C. § 554(c), which provides a general right of settlement in APA proceedings, and 24 C.F.R. § 26.32(o), which permits the Court to “[e]xercise such other authority as is necessary to carry out the responsibilities of the ALJ [Administrative Law Judge]” in APA proceedings. See also 5 U.S.C. § 556(c)(11) (permitting presiding officer in APA proceeding to take any action authorized by agency rule consistent with APA); HUD v. Cuccia, No. 13-AF-0066-PF (Dec. 28, 2012) (entering consent judgment in PFCRA proceeding); U.S. Dept. of Housing & Urban Dev. v. Wilson, No. 18-AF-0062-PF-002 (Nov. 27, 2018) (same). Accordingly, the Court enters the following judgment in this matter.

I. LIABILITY

Respondent admits that the Rosewood Corporations are the ownership entities of six nursing homes and one assisted living facility located throughout the state of Illinois and one located in the state of Missouri (collectively, the “Rosewood Corporation Facilities”), each which entered into a mortgage insured by the Federal Housing Administration (“FHA”) under Sections 232 and 223(a)(7) or 223(f) of the National Housing Act.

Respondent admits that he is liable pursuant to 12 U.S.C. §1735f-15(c)(1)(B)(x) and 24 C.F.R. § 30.45(c) in the amount of \$965,678 for the Rosewood Corporations’ failure to submit annual audited financial reports for the fiscal years of 2015, 2016, and 2017. In consideration of Respondent’s admissions, the Court finds that Respondent is liable for such violations.

II. PENALTIES

HUD may impose a civil money penalty against any liable party that is the mortgagor of a property that includes five or more living units and that has a mortgage insured, coinsured, or held pursuant to the National Housing Act. 12 U.S.C. § 1735f-15(c)(1)(A)(i). For purposes of imposing civil money penalties, “liable parties” include “any officer or director of a corporate mortgagor” 12 U.S.C. §1735f-15(c)(1)(A)(iii); 24 C.F.R. §30.45(c)(3). Civil money penalties may be imposed on such liable parties for, among other things, “knowingly” and “materially” taking the following action:

Failure to furnish the Secretary, by the expiration of the 90-day period beginning on the first day after the completion of each fiscal year (unless the Secretary has approved an extension of the 90-day period in writing), with a complete annual financial report, in accordance with requirements prescribed by the Secretary, including requirements that the report be—

- (I) based upon an examination of the books and records of the mortgagor;
- (II) prepared and certified to by an independent public accountant or a certified public accountant (unless the Secretary has waived this requirement in writing); and
- (III) certified to by the mortgagor or an authorized representative of the mortgagor...

12 U.S.C. §1735f-15(c)(1)(B)(x); see also 24 C.F.R. § 30.45(c) (permitting civil money penalty actions for violations of 12 U.S.C. § 1735f-15(c)(1)(B)(x)).

For violations that took place between February 19, 2013 and August 15, 2016, HUD may impose a civil money penalty of up to \$42,500 per violation. For violations that took place between August 16, 2016 and June 28, 2017, HUD may impose a civil money penalty of up to \$47,340 per violation. For violations occurring on or after June 29, 2017, HUD may impose a civil money penalty of up to \$48,114. See 78 Fed. Reg. 4057, 4059 (Jan. 18, 2013); 81 FR 38931, 38935 (June 15, 2016); 82 Fed. Reg. 24521, 24524 (May 30, 2017) (adjusting penalty amounts for inflation).

The Parties jointly acknowledge that HUD has experienced significant losses to date due to the Rosewood Facilities'¹ numerous failures. Respondent concedes he is liable for a total of \$965,678 in penalties, and asks the Court to issue a consent judgment against Respondent in this amount.

III. CONCLUSION

Respondent has accepted liability for \$965,678 in civil penalties. Based on the allegations in the *Complaint* and Respondent's admissions, he is liable for the Rosewood Corporations' failure to submit annual audited financial reports for the fiscal years of 2015, 2016, and 2017 to HUD. Civil penalties are warranted in this case to provide recompense for such violations and to deter future misconduct by others similarly situated.

For the foregoing reasons, the proposed penalties appear appropriate, and after careful review of the record, the Court sees no reason to disturb the Parties' agreement that Respondent is liable to HUD in the amount of \$965,678 for his violations.

ORDER

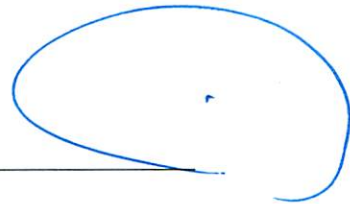
The Parties' *Joint Motion for Entry of Consent Judgment* is **GRANTED**.

Pursuant to that judgment, Respondent is hereby **ORDERED** to pay to HUD civil money penalties in the amount of \$965,678.

SO ORDERED,



Alexander Fernández
Administrative Law Judge



¹ The seven Rosewood Corporation Facilities consist of seven out of thirteen total healthcare facilities under the Rosewood healthcare portfolio (the thirteen facilities are collectively identified as the "Rosewood Facilities").