

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:	:	
TRACEY Y. ISHINO,	:	HUDALJ 07-043-CMP
Respondent	:	OGC Case No. 07-008-CMF

**ORDER
GRANTING, IN PART, AND DENYING IN PART,
GOVERNMENT’S MOTION FOR JUDGMENT**

The United States Department of Housing and Urban Development (“HUD” or “the Government”) submitted a Motion for Judgment against Tracy Ishino (“Respondent”) pursuant to 24 C.F.R. § 26.36(d) based on Respondent’s failure to submit a more definite Answer to the Complaint for Civil Money Penalties (“CMP”) issued by HUD, as ordered by the undersigned on July 24, 2007. Pursuant to my Order, Respondent’s Answer was to be filed no later than August 6, 2007. To date no response has been received.

I deem Respondent’s failure to file a more definite Answer as ordered a failure to defend the charges lodged in the Complaint. Accordingly, the motion for judgment will be granted as to the violation. The matter of the appropriate civil money penalty will be considered by separate order.

The Violations

HUD’s Complaint seeks civil money penalties of \$505,000 against Respondent for violations of provisions found at 12 U.S.C. §1735f-15. The regulations governing the

imposition of civil money penalties are found at 24 C.F.R. Parts 26 and 30. In its motion, HUD requests that a Judgment be issued against Respondent pursuant to 24 C.F.R. § 26.36(d) in the amount of \$500,000, the reduction in demand reflecting a reduction in the claim amount for Count 4, based on the statute of limitations having run for two of the twenty-three months included in the Complaint.

Upon the filing of a complaint for civil money penalties, the Office of Administrative Law Judges has jurisdiction over the matter pursuant to 24 C.F.R. §§ 30.90(b), 26.29.

Pursuant to 12 U.S.C. § 1735f-15(c)(1)(B), a civil money penalty may be imposed upon any liable party identified in 12 U.S.C. § 1735f-15(c)(1)(A) who knowingly and materially takes any of the following actions:

(ii) Assignment, transfer, disposition, or encumbrance of any personal property of the project, including rents, or paying out of any funds, except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary.

(vi) Not holding any funds collected as security deposits separate and apart from all other funds of the project in a trust account, the amount of which at all times equals or exceeds the aggregate of all outstanding obligations under the account.

(viii) Failure to maintain at any time the mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other related papers (including failure to keep copies of all written contracts or other instruments which affect the mortgaged property) in reasonable condition for proper audit and for examination and inspection at any reasonable time by the Secretary or any duly authorized agents of the Secretary.

(ix) Failure to maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the Secretary.

(x) Failure to furnish the Secretary, by the expiration of the 60-day period beginning on the 1st day after the completion of each fiscal year, with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared and certified to by an independent public accountant or a certified public accountant and certified to by an officer of the mortgagor, unless the Secretary has approved an extension of the 60-day period in writing. The Secretary shall approve an extension where the mortgagor demonstrates that failure to comply with this subparagraph is due to events beyond the control of the mortgagor.

(xi) At the request of the Secretary, the agents of the Secretary, the employees of the Secretary, or the attorneys of the Secretary, failure to furnish monthly occupancy reports or failure to provide specific answers to questions upon which information is sought relative to income, assets, liabilities, contracts, the operation and condition of the property, or the status of the mortgage.

(xiv) Failure, by a mortgagor, a general partner of a partnership mortgagor, or an officer or director of a corporate mortgagor, to provide management for the project that is acceptable to the Secretary pursuant to regulations and requirements of the Secretary.

12 U.S.C. §§ 1735f-15(c)(1)(A)(i)-(v) provides that for violations occurring after January 7, 2002, as in this case, a civil money penalty may be imposed upon: a mortgagor; a general partner of a partnership mortgagor; any officer or director of a corporate mortgagor; 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, 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, of a multifamily property. *See also* 24 C.F.R. §§ 0.45(c)(5) (added by 66 Fed. Reg. 63436 at 63441-42 (December 6, 2001)).

The Complaint charges that Respondent was a Managing Member of Southwest High Oak Terrace Investments, L. L. C., which was the general partner of Southwest High Oak Terrace Partners (“Oak Owner”), the Limited Partnership that owned High Oak Terrace Apartments (“Oak”), a project consisting of 130 units financed with a mortgage loan insured against default by HUD under Sections 207 and 233(f) of the National Housing Act. It also charges that Respondent was the Managing Member of Southwest Highland Investments, L. L. C., which was the General Partner of Southwest Highland Meadows Partners, L. P. (“Meadows Owner”), the owner of Highland Meadows Apartments (“Meadows”), a project consisting of 106 units financed with a

mortgage loan insured against default by HUD under Sections 207 and 223(f) of the National Housing Act, and the Managing Partner of Pacific Coast Management, L. P., the Identity of Interest Management Agent for High Oak Terrace Apartments and the unapproved Identity of Interest Management Agent for Highland Meadows Apartments.

The Complaint charges that, Respondent, as a principal of Oak Owner, the owner of High Oak Terrace Apartments and Highland Meadows Apartments, two multifamily housing projects, committed numerous knowing and material violations listed in 12 U.S.C. § 1735f-15(c)(1)(B), including: failing to hold and keep any and all tenant security deposit funds collected in a separate trust account; failing to timely furnish the Secretary of HUD with audited annual financial statements; failing to furnish the Secretary with Monthly Accounting Reports; failing to maintain the project; wrongfully paying out owner distributions; and, failing to provide management acceptable to HUD.

Respondent's Default

The civil money penalty process is commenced by the issuance of a pre-penalty notice to the respondent(s), informing the respondent(s) that the Secretary is considering seeking a civil money penalty, of the specific violations alleged, of the maximum civil money penalty that may be imposed, of the opportunity to reply in writing within 30 days after receipt of the notice, and that failure to respond within the 30-day period may result in issuance of a complaint under 24 C.F.R. § 30.85 without consideration of any information that the respondent may wish to provide. *See* 24 C.F.R. § 30.70.

A complaint may be issued after the appropriate authority reviews the pre-penalty notice, the response(s), if any, and the factors listed at 24 C.F.R. § 30.80. *See* 24 C.F.R. § 30.85.

On July 6, 2005 and March 14, 2006, HUD provided written Pre-Penalty Notices as required by 24 C.F.R. § 30.70, that it intended to seek civil money penalties against Respondent for the violations enumerated above. The Notices offered Respondent an opportunity to reply in writing before HUD took further action. The Notices stated that, pursuant to 24 C.F.R. § 30.70(d), Respondent's reply was due within thirty (30) days of Respondent's receipt of the Notice. HUD did not receive responses to its Notices.

On April 30, 2007, HUD served a Complaint seeking civil money penalties of \$505,000 against Respondent, pursuant to the 12 U.S.C. § 1735f-15 and 24 C.F.R. Part 30. Respondent had fifteen days, as set forth in the regulations, to answer this complaint. 24 C.F.R. § 30.90.

On May 7, 2007, Respondent replied to the Complaint in the form of a letter, stating:

I deny most allegations, all monies that I received were for repayment of advanced monies for Highland Meadows and that the 2001 reports were filed as told to me by the accountants. As far as ability to pay, I have zero assets, savings, checking or other financial accounts. All of my real estate holdings in Texas have been foreclosed upon or the lender took over possession of the properties. The Texas real estate market has completely destroyed my financial and mental condition and has caused personal and business financial hardship and I am contemplating Bankruptcy. I also owe other investors well over \$3,000,000 in cash that I borrowed or guaranteed their monetary investment. The balance sheet with over \$20,373,000 in assets shows that I owned minority interests in properties not the full value. I own no Texas real estate.

On June 21, 2007, HUD filed an eleven-count Complaint against Respondent along with Respondent's above-described letter/answer. On July 19, 2007, the Government filed a motion to require Respondent to file a more definite answer. Because Respondent's letter/answer to the allegations of violations was very general in nature and failed to specifically admit or deny each of the eleven charges in the Complaint (see 24 C.F.R. § 30.90(a)), on July 24, 2007 I ordered Respondent to file, on

or before August 6, 2007, a more definite answer to the allegations of liability contained in each of the eleven counts. The required Answer was to include the admission or denial of each allegation of liability made in the complaint and any defense on which Respondent intended to rely. I did not require Respondent to file a more definite answer contesting the amount of civil money penalty sought, finding the letter answer sufficiently specific as to that part of the Complaint. Respondent has failed to this date to file a more definite answer to the alleged violations as ordered. Therefore, I find the Motion for Judgment is well-founded as to the violations.

FINDINGS OF FACT

The facts, as alleged in the Complaint, are deemed admitted by Respondent based upon Respondent's failure to provide a more specific answer to the alleged violations. As previously stated, I find the failure to respond to be equivalent to a failure to defend the charges.

I. HIGH OAK TERRACE APARTMENTS

At all time relevant to the Complaint, Respondent was the Managing Member of Southwest High Oak Terrace Investments, L.L.C., the general partner of Southwest High Oak Terrace Partners, L.P. ("Oak Owner"). On July 12, 2001, Oak Owner received preliminary approval to purchase High Oak Terrace Apartments. In a purchase transaction on July 13, 2001, Oak Owner executed a Release and Assumption Agreement, thereby agreeing to assume, and be bound by, inter alia, a Regulatory Agreement dated January 6, 1999, entered into by the Seller with HUD. Oak Owner's purchase of High Oak Terrace Apartments was financed with a mortgage loan insured against default by HUD under Sections 207 and 223(f) of the National Housing Act.

Tenant Security Deposits

In the Regulatory Agreement, Oak Owner and Respondent agreed to certain controls over the management and operation of the Project. Paragraph 6(g) of the Regulatory Agreement put Oak Owner and Respondent on notice that HUD required that “any funds collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account.”

For the twenty-three months from February 2002 through December 2003, during which time they collected tenant security deposits, Oak Owner and Respondent failed to hold any and all funds so collected separate and apart from other funds of the project in a trust account. In fact, Respondent admitted to commingling these funds with operating account funds and spending them.

Annual Financial Reports

Paragraph 9(e) of the Regulatory Agreement put Oak Owner and Respondent on notice that HUD required that within sixty (60) days following the end of each fiscal year the Secretary shall be furnished with a complete annual financial report based upon an examination of the books and records of the mortgagor in accordance with the requirements of the Secretary, prepared and certified to by an officer or responsible Owner and, when required by the Secretary, prepared and certified by a Certified Public Accountant, or other person acceptable to the Secretary.

The Project’s fiscal year ended on December 31 each year; therefore, according to the Regulatory Agreement, the annual financial statement for the Project was due on or before February 29th or March 1st of each following year.

By regulation, prior to Oak Owner's and Respondent's purchase of Oak, HUD increased the period to file annual financial reports to 90 days following the end of each fiscal year for owners of multifamily projects whose loans were insured against default pursuant to Section 207 of the National Housing Act. 24 C.F.R. § 5.801. This increased period was effective for Fiscal Year End 2001.

With the exception of fiscal year 2001 annual financial reports, which were due by April 30, 2002, all other financial reports (for fiscal years 2002 and 2003) were due by March 31st of the following year.

Oak Owner failed to timely file its audited annual financial reports for its first fiscal year, 2001, as well as for its 2002 and 2003 fiscal years. On May 3, 2003, Respondent, on behalf of Oak Owner, entered into a Settlement Agreement with HUD for its failure to timely file its fiscal year 2001 and 2002 reports.

As provided in paragraph 7 of the Settlement Agreement, "any breach of the terms and provisions of this Agreement by the Respondent will constitute independent grounds for an administrative action pursuant to 24 C.F.R. Part 30."

The Agreement further provided at its paragraph 6 – "Additionally, if Respondent does not file the Project's audited annual financial statements for fiscal year ending December 31, 2002 on or before May 31, 2003, Respondent understands and agrees that an additional penalty is permitted by the Federal Regulations."

Oak Owner and Respondent eventually filed the fiscal year 2001 audited annual financial report, but never filed the fiscal year 2002 report.

In addition, Respondent and Oak Owner failed to file an audited annual financial report for Oak's fiscal year 2003.

Monthly Accounting Reports

In a letter dated July 12, 2001, HUD granted Preliminary Approval of the Transfer of Physical Assets, that is, High Oak Terrace Apartments, to Oak Owner, subject to terms and conditions, which included, inter alia, that the buyer, Oak Owner, would submit: Form HUD-92479, Monthly Report for Establishing Net Income; Form HUD-92480, Schedule B-Schedule of Disbursements; and, Form HUD-93481, Schedule C-Schedule of Accounts payable. These reports were to be submitted commencing the month after acquisition and were to continue monthly until HUD advised Oak Owner that they could be discontinued.

Paragraph 9(f) of the Regulatory Agreement placed Oak Owner and Respondent on notice that HUD could require that:

At the request of the Secretary, his agents, employees, or attorneys, the Owners shall furnish monthly occupancy reports and shall give specific answers to questions upon which information is desired from time to time relative to income, assets, liabilities, contracts, operation, and condition of the property and the status of the insured mortgage.

On May 30, 2002, in a letter addressed to Oak Management, the Identity of Interest Management Agent for Oak Owner of which the Respondent was the General Partner, HUD reminded Respondent of the Monthly Accounting Reports requirement set forth in the Preliminary Approval of the Transfer of Physical Assets. HUD noted it had not received any such reports from Oak Owner and Respondent, and specified it expected to receive such reports commencing with the month of November 2001, the first full month following Oak Owner's receipt of Final Approval of its Transfer of Physical Assets.

In a later letter addressed to Oak Management, in care of Oak Owner, and dated July 26, 2002, HUD again noted it had not received Monthly Accounting Reports from Oak Management, Oak Owner, or Respondent. Respondent and Oak Owner were told they were in violation of the terms of their Regulatory Agreement.

In a letter addressed to Oak Management, in care of Oak Owner, and dated September 30, 2002, HUD told Respondent that he had been flagged in the Active Partner Performance System due to his failure to submit Monthly Accounting Reports, among other things. HUD never received Monthly Accounting Reports from the Oak Management, Oak Owner, or Respondent.

Failure to Maintain the Project

Paragraph 7 of the Regulatory Agreement between Oak Owner and Respondent and HUD put Respondent and Oak Owner on notice that HUD required the Owners to maintain the mortgaged premises, accommodations, and the grounds and equipment appurtenant thereto, in good repair and condition.

On or before February 9, 2004, Respondent and Oak Owner, without HUD's knowledge or authorization, abandoned High Oak Terrace Apartments to HUD, thereafter refusing to maintain the mortgaged premises, accommodations, and the grounds and equipment appurtenant thereto, in good repair and condition, as well as maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the Secretary.

II. HIGHLAND MEADOWS APARTMENTS

On November 29, 2000, the Respondent, acting as the Managing Member of Southwest Highland Meadows Investments, L.L.C., the General Partner of Meadows Owner, executed an Assumption Agreement. The Assumption Agreement provided that, in consideration for the consent of the Secretary of Housing and Urban Development to the transfer of Highland Meadows Apartments to it, Respondent, for Meadows Owner, agreed to assume and be bound by the Note, Mortgage, and Regulatory Agreement executed by its predecessor in interest.

In a letter dated March 19, 2001, HUD gave preliminary approval to Meadows Owner's and Respondent's application to purchase Highland Meadows Apartments using a mortgage loan insured against default by HUD under sections 207 and 223(f) of the National Housing Act. HUD's preliminary approval was subject to the following condition, inter alia: Meadows Owner and Respondent must submit all future audited annual financial reports to the Real Estate Assessment Center.

Tenant Security Deposits

In the Regulatory Agreement, Meadows Owner and Respondent agreed to certain controls over the management and operation of the Project. Paragraph 6(g) of the Regulatory Agreement put Respondent on notice that HUD required that "any funds collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account."

For the thirty-two months from February 2002 through November 2004, during which time they collected tenant security deposits, Meadows Owner and Respondent failed to hold any and all funds so collected separate and apart from other funds of the project in a trust account. In fact, Respondent admitted to commingling these funds with operating account funds and spending them.

Wrongful Distribution of Project Assets

Paragraph 6(e) of Respondent's and Meadows Owner's Regulatory Agreement put them on notice that HUD required that "Owners shall not without the prior written approval of the Secretary ...

(e) Make, or receive and retain any distribution of assets or any income of any kind of the project except surplus cash and except on the following conditions:

(1) All distributions shall be made only as of and after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction;

(2) No distribution shall be made from borrowed funds, prior to the completion of the project or when there is any default under this Agreement or under the note or mortgage;

(3) Any distribution of funds of the project, which the party receiving such funds is not entitled to retain hereunder, shall be held in trust separate and apart from any other funds; and

(4) There shall have been compliance with all outstanding notices of requirements for proper maintenance of the project.

On or about May 2, 2002, Respondent took an Owner's Distribution of \$15,000 from Highland Meadows' assets by means of a check drawn on the Highland Meadows Apartments account and made out to "Ishino Real Estate."

Respondent took this distribution without HUD's permission, and when Meadows was not in a surplus cash position. Further, Respondent did not disburse these funds at the end of a semiannual or annual fiscal period, since this distribution was taken on or about May 2, 2002 and the Project's fiscal year ended on December 31st.

On July 25, 2002, Respondent took an Owner's Distribution of \$15,000 from Highland Meadows' assets by means of a check drawn on the Highland Meadows Apartments account and made out to "Ishino Real Estate." Respondent took this distribution without HUD's permission, and when Meadows was not in a surplus cash position. Further, Respondent did not disburse these funds at the end of a semiannual or annual fiscal period, since this distribution was taken on or about July 25, 2002 and the Project's fiscal year ended on December 31st.

On September 25, 2002, Respondent took an Owner's Distribution of \$10,000 from Highland Meadows' assets by means of a check drawn on the Highland Meadows Apartments account and made out to "Ishino Real Estate." Respondent took this distribution without HUD's permission, and when Meadows was not in a surplus cash

position. Further, Respondent did not disburse these funds at the end of a semiannual or annual fiscal period, since this distribution was taken on or about September 25, 2002 and the Project's fiscal year ended on December 31st.

Annual Financial Reports

Paragraph 9(e) of the Regulatory Agreement put Respondent and Meadows Owner on notice that HUD required that within sixty (60) days following the end of each fiscal year the Secretary shall be furnished with a complete annual financial report based upon an examination of the books and records of the mortgagor in accordance with the requirements of the Secretary, prepared and certified to by an officer or responsible Owner and, when required by the Secretary, prepared and certified by a Certified Public Accountant, or other person acceptable to the Secretary.

The Project's fiscal year ended on December 31 each year; therefore, according to the Regulatory Agreement, the annual financial report for the Project was due on or before February 29th or March 1st of each following year.

By regulation, prior to Respondent's purchase of Meadows, HUD extended the period to file annual financial reports to ninety (90) days following the end of each fiscal year for owners of multifamily projects whose loans are insured against default pursuant to Section 207 of the National Housing Act. 24 C.F.R. § 5.801. This extended period was effective for Fiscal Year End 2001.

With the exception of the fiscal year 2001 annual financial report, which was due by April 30, 2002, all other financial reports (for fiscal years 2002 and 2003) were due by March 31st of the following year.

Meadows Owner failed to file its audited annual financial reports for its first

fiscal year, 2001, as well as for its 2002 and 2003 fiscal years.

Meadows Owner's Provision of Acceptable Management

Paragraph 6(c) of Meadows Owner's and Respondent's Regulatory Agreement addresses the project owner's employment of management, and put Meadows Owner and Respondent on notice that HUD required that:

Owners shall not without the prior written approval of the Secretary:

(c) Convey, assign, or transfer any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property. [Emphasis added]

Pursuant to the provision above, Respondent, as principal of Meadows Owner, was to employ management for the Project satisfactory to HUD.

On or about October 1, 2002, Respondent applied for HUD's approval of Pacific Coast Management, L.P., his identity of interest Management Company, as Meadow's new Property Manager. Respondent subsequently provided HUD with a Management Entity Profile, form HUD-9832, and Project Owner's Certification for Owner-Managed Multifamily Housing Projects, form HUD 9839-A, requesting HUD allow him to manage, as well as own, Highland Meadows Apartments.

Respondent's application to manage Highland Meadows Apartments through Pacific Coast Management, L.P. was denied by HUD. HUD had conducted an Onsite Management Review of Highland Meadows Apartments on June 20, 2002, and noted that Meadows Owner had not submitted audited annual financial reports for the project's 2001 fiscal year, tenant security deposits were not maintained in a separate trust account, and no Monthly Accounting Reports had been submitted.

In violation of Paragraph 6(c) of the Regulatory Agreement, beginning in April 2001, Respondent put Pacific Coast Management, L.P., an unapproved Management Agent, in charge of managing Highland Meadows Apartments, without HUD's knowledge, or approval.

PROJECT STATUS

Oak's HUD-insured mortgage was foreclosed upon by its lender and the project sold at a foreclosure sale on August 26, 2004. HUD realized a loss of \$1,892,958.24 on this insured loan.

Meadow's HUD-insured mortgage was foreclosed upon by its lender and the project sold at a foreclosure sale on November 22, 2004. HUD realized a loss of \$811,788.32 on this insured loan.

CIVIL MONEY PENALTY

HUD seeks the maximum civil penalty as to each of the 11 violations previously determined, and a civil money penalty totaling \$500,000.

The Complaint states that the Director considered the materiality of the violations and the amount of any penalty by addressing the factors required by the regulations:

(1) the gravity of Respondent's offense; (2) Respondent's history of prior offenses; (3) Respondent's ability to pay the penalty; (4) the injury to the public; (5) the benefits received by Respondent; (6) the extent of potential benefit to other persons; (7) the deterrence of future violations; (8) the degree of Respondent's culpability; (9) any injury to tenants; and, (10) such other matters as justice may require. The Director determined that the violations were material and that the maximum penalty was appropriate for each violation.

In considering the factor of "ability to pay the penalty," the Complaint states the following as to each of the counts alleged:

"Tracy Ishino's ability to pay the penalty is demonstrated by his application to purchase Highland Meadows Apartments. With his application to purchase Highland Meadows Apartments, Tracy Ishino provided: a resume, indicating he owned multifamily properties in Texas and California with a current value of \$20,375,000; and, a personal balance sheet, which determined his and his wife's net worth as \$2,775,956, computed as of November 30, 2000."

In his May 7, 2007 response to the Complaint, and its allegation that he had ability to pay a civil money penalty, Respondent directly denied any ability to pay a civil penalty. He stated:

As far as ability to pay, I have zero assets, savings, checking or other financial accounts. All of my real estate holdings in Texas have been foreclosed upon or the lender took over possession of the properties. The Texas real estate market has completely destroyed my financial and mental condition and has caused personal and business financial hardship and I am contemplating Bankruptcy.

I also owe other investors well over \$3,000,000 in cash that I borrowed or guaranteed their monetary investment.

The balance sheet with over \$20,375,000 in assets shows that I owned minority interests in properties not the full value. I own no Texas real estate.

I did not benefit any monies but actually in the end lent Highland Meadows and High Oak Terrace over \$100,000 in my own cash before the properties were taken over by HUD.

I don't have \$505,000 and cannot commit to any repayment due to my dire financial conditions. I have no money or assets. You can run all the reports needed and you will see that to be a true and accurate statement.

I would kindly ask for you to close your case so that I don't have to incur any further expenses that I cannot afford.

The Complaint relies upon information and evidence of Respondent's financial condition as of November 2000 to support Respondent's ability to pay the civil penalty requested. Respondent asserts that his current financial condition is dire and that he is unable to pay any civil money penalty. My Order of July 24, 2007 did not require

Respondent to provide any more definitive answer as to his ability/inability to pay a civil penalty. Accordingly, I find that he has not waived his right to a hearing on the amount of civil penalty. HUD's motion for judgment on the civil money penalty is DENIED.

Because Respondent did not previously respond to the Order requiring him to file a more definite answer on liability charges, notice is being sent to him, simultaneously with this ORDER, requiring him to state whether he still desires to defend himself with regard to the amount of civil money penalty.

CONCLUSIONS OF LAW AND DECISION

On August 24, 2007, HUD filed a Motion for Judgment against Respondent based upon Respondent's failure to file a more definite Answer, i.e., to admit or deny the allegations of violations in HUD's Complaint, as I directed in my Order of July 24, 2007. The regulations provide, at 24 CFR § 26.36(d) –Sanctions - that the judge may issue an initial decision against a respondent who fails to defend a pending action. Because Respondent failed to timely and adequately answer HUD's Complaint, I find that Respondent has waived his right to a hearing on the violations. Therefore, the allegations in the Government's Complaint are deemed admitted.

The Complaint alleged, and I hereby find, that Respondent knowingly and materially violated 12 U.S.C. § 1735f-15(c)(1)(B)(x) by: failing to hold and keep any and all tenant security deposit funds collected in a separate trust account; failing to timely furnish the Secretary of HUD with audited annual financial statements; failing to furnish the Secretary with Monthly Accounting Reports; failing to maintain the project; wrongfully paying out owner distributions; and, failing to provide management acceptable to HUD. Specifically, I find that:

-- Respondent knowingly and materially failed, for the twenty-three months from February 2002 through December 2003, to hold any and all tenant security deposit funds collected in a separate trust account in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$30,000 per year, for a total of \$60,000.

--Respondent knowingly and materially failed, for Oak's 2003 fiscal year, to furnish the Secretary with a complete annual financial report in a timely and acceptable manner in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$32,500.

-- Respondent knowingly and materially failed, for Oak's 2002 fiscal year, to furnish the Secretary with a complete audited annual financial report in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$30,000.

--Respondent knowingly and materially failed, for the twenty-one months commencing April 2002 through December 2003, to furnish HUD with Monthly Accounting Reports to establish net income, disbursements, and accounts payable in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$2,500 per month, for a total of \$52,500.

--Respondent abandoned Oak, as noted in HUD's letter to them, dated February 9, 2004, thereafter knowingly and materially refusing to maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto in good repair and condition, as well as maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the

Secretary in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$32,500.

--Respondent failed, for the thirty-two (32) months from February 2002 through November 2004, to hold any and all tenant security deposit funds collected in a separate trust account in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$30,000 per year for a total of \$90,000.

--Respondent wrongfully paid out owner distributions on: May 2, 2002, July 25, 2002, and September 25, 2002, which totaled \$40,000, when the project was not in a surplus cash position. These distributions were not made to pay for reasonable operating expenses or necessary repairs, were taken without obtaining the prior written approval of the Secretary in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$30,000 for each violation, for a total of up to \$90,000.

--Respondent failed, for Meadows' 2001 fiscal year, to furnish the Secretary with a complete audited annual financial report in a timely and acceptable manner, which warrants a penalty of \$15,000.

--Respondent failed, for Meadows' 2002 fiscal year, to furnish the Secretary with a complete audited annual financial report in a timely and acceptable manner in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$32,500.

--Respondent failed, for Meadows' 2003 fiscal year, to furnish the Secretary with a complete audited annual financial report in a timely and acceptable manner in violation

of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$32,500. And,

--Respondent failed to obtain HUD's approval for their identity of interest management company, Pacific Coast Management, L.P., to manage Meadows, prior to, and during, Pacific Coast's management of Meadows in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$32,500.

IT HIS HEREBY ORDERED, that Respondent, Tracy Ishino, having been determined to have committed the violations established above, is subject to a civil money penalty of up to \$500,000.

So ORDERED, this 9th day of October, 2007.

CONSTANCE T. O'BRYANT
Administrative Law Judge