

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.

MARK S. SMITH,

Respondent.

17-JM-0135-PF-004 and
18-JM-0208-PF-010

November 15, 2024

**INITIAL DECISION AND ORDER GRANTING THE GOVERNMENT’S
AMENDED MOTION FOR SUMMARY JUDGMENT**

Before the Court is the *Government’s Amended Motion for Summary Judgment* (“Motion”) filed March 15, 2024. In the *Motion*, the United States Department of Housing and Urban Development (“Government” or “HUD”) requests that the Court find Mark S. Smith (“Respondent”) liable for the submission of twenty-five false claims to HUD in violation of the Program Fraud Civil Remedies Act (“PFCRA”), 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28.

PROCEDURAL HISTORY

On July 17, 2017, HUD filed a *Complaint* (docketed as 17-JM-0135-PF-004) alleging that Respondent submitted five false claims through the Section 8 Housing Choice Voucher Program (“Section 8 Program”) between September and December of 2011. Due to these allegedly false claims that were paid to Respondent, the Government sought a total of \$133,780 in civil penalties and assessments.

On February 28, 2018, HUD filed the *Government’s Motion for Summary Judgment*. On May 12, 2018, Respondent filed a timely *Opposition to Government’s Motion for Summary Judgment*. While these motions were under consideration, the parties filed a *Joint Motion for Stay of Proceedings* pending the resolution of parallel criminal proceedings in Guam.

Before the criminal proceedings had concluded, HUD filed its second *Complaint* (docketed as 18-JM-0208-PF-010) against Respondent on June 28, 2018, alleging additional violations of PFCRA. The second *Complaint* also alleged PFCRA violations against two

additional Respondents, Glenn Wong and Rosita Owen, for false claims submitted between August 2012 to May 2014.

On September 25, 2023, HUD was notified that the criminal proceedings were resolved. The Government filed a *Request for Extension of Dispositive Motion Deadline*, which was granted, and the Government was allowed to amend its request for summary judgment. The Court also granted a request to dismiss the allegations as they pertain to Respondents Wong and Owen, who are now deceased.

On March 15, 2024, HUD filed the *Government's Amended Motion for Summary Judgment* ("Motion") to reflect the consolidation of cases 17-JM-0135-PF-004 and 18-JM-0208-PF-10 and additional evidence produced by the parties in the related criminal proceedings. Respondent filed an *Opposition to Government's Amended Motion for Summary Judgment* ("Opposition") on April 22, 2024. The *Opposition* incorporated by reference Respondent's previous filings.

APPLICABLE LAW

Standard of Review. Upon motion of a party, this Court is authorized to "decide cases, in whole or in part, by summary judgement where there is no disputed issue of material fact." 24 C.F.R. § 26.32(1). The Court may exercise its discretion in application of Rule 56 of the Federal Rules of Civil Procedure. 24 C.F.R. § 26.40(f)(2).

Summary judgement is proper where no genuine issue of material fact exists, and the moving party is entitled to judgement as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Fed. R. Civ. P. 56(a). A "genuine" issue exists when the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Id. at 248. Furthermore, a fact is not "material" unless it might affect the outcome of the suit. Id.

Summary judgment is a "drastic remedy" because, when applied, it curtails a party's ability to present its case. Selva & Sons, Inc. v. Nina Footwear, Inc., 705 F.2d 1316, 1323 (Fed. Cir. 1983). Accordingly, the movant bears the burden of demonstrating the absence of any disputes of material fact. Anderson, 477 U.S. at 256. Pursuant to Rule 56, when a party asserts that a fact cannot be genuinely disputed, that party must cite to materials in the record or show the cited materials do not establish the absence or presence of a genuine dispute. Fed. R. Civ. P. 56(c)(1). In considering a motion for summary judgment, the Court's function is not to resolve any questions of material fact, but to ascertain whether any such questions exist. HUD v. Blackmon-Brace, HUDOHA 15-AF-0117-PF-019, at 2 (Aug. 20, 2018).¹ Therefore, when the moving party has met its burden under Rule 56(c), 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) (emphasis added) (citing Fed. R. Civ. P. 56(e)).

PFCRA. PFCRA imposes liability on a person for making, presenting, or submitting a claim that the person knows or has reason to know is false, fictitious, or fraudulent, or that is

¹ This Court's decisions cited herein are available at www.hud.gov/program_offices/hearings_appeals/cases.

supported by a written statement asserting a material fact which is false, fictitious, or fraudulent. 31 U.S.C. § 3802(a)(1). A claim includes any request, demand, or submission made to a recipient of property, services, or money from an authority for the payment of money if the United States provided any portion of the money requested or demanded. 31 U.S.C. § 3801(a)(3)(B)(ii). A person knows or has reason to know a claim falsely asserts a material fact if they possess actual knowledge that the claim is false, act in deliberate ignorance as to the truth or falsity of the claim, or act in reckless disregard as to the truth or falsity of the claim. 31 U.S.C. 3801(a)(5).

Housing Choice Voucher Program. The Section 8 Housing Choice Voucher Program (“Section 8 Program”) is a housing rental subsidy program established by HUD pursuant to Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437(f), to help low-income families afford safe, decent, and sanitary housing. 24 C.F.R. §§ 982.1(a)(1), 982.2, and 982.201(a)-(b). Generally, HUD provides funds to authorized public housing agencies (“PHAs”) who administer the program within their locale. 24 C.F.R. §§ 982.1(a)(1), 982.151, and 982.4(b) (defining “PHA”). Authorized PHAs use the funds to make housing assistance payments (“HAP Payments”) to the owners of the housing units occupied by families approved for participation in the Program. 24 C.F.R. §§ 982.1(a)(1), 982.51, 982.157(b)(1)(i), and 982.4(b) (defining “HAP” and “owner”).

The PHA may not enter into a HAP contract with any of the following classes of persons during their tenure in office or for one year after: (i) any present or former member or officer of the PHA, (ii) any employee, contractor, or agent of the PHA who formulates policy or who influences decisions with respect to the Program, (iii) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs, and (iv) any member of Congress. 24 C.F.R § 982.161(a). Under the terms of a HAP contract, these classes of people are considered “covered individuals.”² Covered individuals must disclose their prohibited interest to both the PHA and HUD, but the HUD field office may waive conflicts for good cause. *Id.* at § 982.161(b)-(c). Unit owners are not entitled to receive housing assistance payments unless they are in compliance with all provisions of the HAP contract.

FACTS NOT IN DISPUTE

From May 2000 until May 2002, Respondent served as principal legal counsel for the Guam Housing and Urban Renewal Authority (“GHURA”). Then, in June 2004, during the period when Respondent was no longer affiliated with GHURA in an attorney capacity, Respondent became a Section 8 owner-landlord via the Section 8 Program.

I. Respondent as a Section 8 Landlord

As a participating owner-landlord, Respondent was required to execute a HAP contract for each participating property he owned. The HAP contracts contained various terms and conditions including a prohibition on certain conflicts of interests. Paragraph 13 of Part B of the HAP contracts provided in pertinent part:

² The HAP Contract and the regulations recognize the same four classes of covered individuals.

- a. “Covered individual” means a person or entity who is a member of any of the following classes: ...
 - (2) Any employee of the PHA, or any contractor, sub-contractor, or agent of the PHA, who formulates policy or who influences decisions with respect to the program; ...
- b. A covered individual may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or during one year thereafter. ...
- d. The owner certifies and is responsible for assuring that no person or entity has or will have a prohibited interest in the execution of the HAP contract, or at any time during the HAP contract term.
- e. If a prohibited interest occurs, the owner shall promptly and fully disclose such interest to the PHA and HUD.
- f. The conflict-of-interest prohibition under this section may be waived by the HUD field office for good cause. ...

II. Respondent as GHURA legal counsel

In March of 2011, GHURA began the process of hiring legal counsel. GHURA issued a Request for Proposal Legal Services (“RFP”) to solicit proposals from qualified law firms or individuals to provide legal services. The RFP described the preliminary scope of services and included a Sample Professional Services Agreement that outlined additional services to be provided.

Respondent responded to GHURA’s request for proposals and, as part of his application, he delivered a letter certifying that “there is no conflict of interest with regard to [him] providing legal services to GHURA.” Respondent submitted the conflict-of-interest certification in consideration of his representation of past and current clients with interests adverse to GHURA, but did not disclose that he was a Section 8 Program landlord. The RFP did not contain specific notices or requirements about the type of conflicts of interest that required disclosure, however it nevertheless required the disclosure of potential conflicts of interest as well. During his application process, Respondent also met with a three-person selection panel, where the group discussed potential conflicts of interest arising from Respondent’s prior representation of a party in litigation with GHURA. Respondent did not inform the panel that he was a Section 8 landlord.

Later in March 2011, Respondent and GHURA entered into a contract for legal services. The contract prescribed the scope and duties that Respondent would perform for GHURA, which mirrored those previously delineated in the RFP and include:

- Act as counsel to the GHURA
- Prepare opinions, resolutions, and reports at the request of any member of the Board of Commissioners (BOC) or executive Director or its designee
- Undertake such legal research as shall be requested by the BOC or Executive Director or its designee
- Advise the Board and the Executive Director of all legal matters to which the Authority is a party or in which the Authority is legally interested
- Represent the Authority in litigation concerning the affairs of the Authority
- Review and/or prepare contracts, leases, bid invitations, Writ of Possession (WOP) and other documents as may be requested from time to time by the Board, Executive Director or their designee (s)
- Provide legal assistance and advice during any negotiations with the Authority's tenants and contractors[, and]
- Attend all Board of Commissioners meetings

On April 28, 2011, GHURA's Board of Commissioners approved Respondent's contract. Respondent began serving as legal counsel for GHURA on June 3, 2011. During his time as legal counsel, Respondent conducted legal research, analysis, and provided legal advice on issues relating to the Section 8 Program. For example, in an entry dated October 25, 2011, Respondent billed GHURA for research, analysis, and drafting of a memorandum regarding the Section 8 Project Voucher Program. Respondent also reviewed and revised GHURA's conflict-of-interest disclosure form that was used for GHURA's Section 8 Program. Respondent's proposed revisions to the form were approved by GHURA's Board of Commissioners during a February 21, 2012, meeting.

On July 14, 2011, GHURA's Section 8 Administrator informed GHURA's executive management of Respondent's status as a landlord under the Section 8 Program. In an email, she wrote, "I need to let you know that our new attorney, Mark Smith is a landlord under the Section 8 Program, which is a direct conflict of interest. Mr. Smith must disclose his interest." The email was forwarded to Respondent.

Around this time, Respondent discussed the matter with GHURA's Executive Director who told Respondent to review HUD's actions with regard to David Lujan's request for a conflict waiver.³ Respondent was also advised to seek a waiver of the conflict from HUD, unless he chose to transfer ownership interest in the rental properties. Although Respondent was now aware of the conflict of interest, he did not seek a waiver from HUD. Instead, he informed GHURA management that he would transfer his ownership interests in the properties.

³ David Lujan was counsel to GHURA in 2003. When his law firm was awarded the contract to serve as GHURA's legal counsel, Mr. Lujan disclosed to GHURA that he had a conflict of interest arising from his participation as a Section 8 owner-landlord, and requested a waiver from HUD. Mr. Lujan attempted to resolve the conflict by transferring his Section 8 properties to his wife, but HUD did not consent to this approach and concluded that Mr. Lujan was a covered individual with an impermissible conflict. HUD reached this determination even though it was Mr. Lujan's firm that was awarded the contract, and his partner handled the day-to-day legal work. HUD agreed to a temporary waiver to allow certain of Mr. Lujan's tenants to remain in the units until the end of the school year, but GHURA ultimately terminated all of Mr. Lujan's HAP contracts as directed by HUD.

Between September 1, 2011, and December 1, 2011, while Respondent was serving as GHURA's legal counsel, Respondent was the owner of thirteen properties in the Section 8 Program administered by GHURA. Those units were in four different properties Smith owned, known informally as the Smith Apartments, Marigold, Kayen Pution, and the Sunrise D Condo. During this period, Respondent received five HAP payments from GHURA totaling \$48,140.

III. Respondent's involvement of Glen Wong and Rosita Owen

Between November 14-15, 2011, Respondent executed a quitclaim deed claim transferring his interests in the Smith Apartments, Marigold, Kayen Pution, and Sunrise D Condo to Glenn Wong, who was a close friend to Respondent.⁴ In this process, Respondent and Mr. Wong executed additional, related documents and agreements that were not provided or disclosed to GHURA. Mr. Wong also executed a Special Power of Attorney authorizing Respondent Smith's mother, Rosita R. Owen, to operate and manage the rental properties on Mr. Wong's behalf. Ms. Owen, who previously acted as Respondent Smith's Power of Attorney, signed multiple HAP contract documents on Mr. Wong's behalf.

Through these arrangements, Respondent retained an undisclosed security interest in the rental properties, financial interest in the HAP contracts and HAP payments, and had direct access to the bank account where GHURA deposited Mr. Wong's HAP payments.⁵ Respondent's law firm continued to manage the properties as it did before they were transferred, even though there is no record of the firm receiving compensation for doing so from Mr. Wong. Mr. Wong's physical address as a landlord in GHURA's system was the address for Respondent's law office, and tenants continued to pay their portion of the rent at Respondent's law office without ever interacting with Mr. Wong. Mr. Wong's email address in GHURA's system was also the email address of Respondent's legal secretary.

On February 14, 2012, Respondent's legal secretary sent GHURA the direct deposit information for a bank account that was designated to receive HAP fund deposits for the units to which Mr. Wong was identified as the landlord. After GHURA raised concerns that the account certification provided by Respondent's legal secretary listed both Mr. Wong and Respondent as owners of the bank account, Respondent's legal secretary submitted information to GHURA identifying a new account for which Mr. Wong was the sole owner. However, shortly after that information was sent to GHURA, Mr. Wong executed a debit authorization on the account that allowed Respondent to withdraw funds therefrom. The existence of the debit authorization was not disclosed to GHURA or HUD, and Respondent withdrew deposited HAP funds from the account on multiple occasions. Between August 2, 2012, and May 2, 2014, Mr. Wong received twenty HAP payments from GHURA, totaling \$218,296. The entirety of those funds was paid to Respondent by Mr. Wong, or used to pay Respondent's accounts.

⁴ Although there is no blood relationship, Respondent had referred to Mr. Wong as his half-brother and Mr. Wong considered Smith's mother to be his mother also.

⁵ The Government produced evidence of a purchase agreement, mortgage, and promissory note executed by Respondent and Mr. Wong. Mr. Wong also executed and presented Respondent with a "reverse" quitclaim deed that transferred Mr. Wong's interests in the properties back to Smith. None of these documents were provided to GHURA or publicly recorded at the time.

On March 27, 2012, a Section 8 supervisor at GHURA noted the prior concern about Respondent and Mr. Wong's joint bank account, and noted a new concern that Respondent's mother, Ms. Owen, went to GHURA to sign a contract amendment on behalf of Mr. Wong under a Power of Attorney Authorization. The next day, GHURA's Board of Commissioners Chairman learned of these concerns and referred Respondent to Mr. Lujan's situation regarding the conflict of interest. Respondent responded by stating that he did not own the units and that they had been transferred upon the request of GHURA's Executive Director.

On April 12, 2012, Respondent signed a copy of the GHURA conflict of interest form where Respondent marked that no disclosure was required, and that he had "no direct or indirect interest."⁶ That same day, at a GHURA Board of Commissioners meeting, Respondent described his arrangement with Mr. Wong as "all this maneuvering with transferring the title." Respondent argued that he did not decide policy or make decisions with respect to the Section 8 units at issue so he should not be considered to have a conflict. Respondent also noted that, because GHURA had conflicts counsel, they could use said counsel on conflicted matters and screen Respondent from them. The Board of Commissioners Chairman and Vice Chairman expressed their disagreement with Respondent's position, and Respondent was again directed to consult HUD's determination on Mr. Lujan's waiver request. Respondent was also directed to prepare a letter describing his situation that GHURA's Executive Director would send to HUD for a determination as to whether there was a conflict of interest.

Respondent did not prepare the letter as directed. Instead, a few weeks later, GHURA's Executive Director issued an email and a memorandum to GHURA's Section 8 staff stating that the Board of Commissioners concluded Respondent was not a covered individual due to the presence of conflicts counsel, and because Respondent had not participated in any decision-making process nor had he influenced any decision made by GHURA's Board of Commissioners, other than provide legal opinions. However, these assertions were not accurate, in part because the Board of Commissioners had not reached this decision and still expected Respondent and the Executive Director to prepare the letter to HUD.

On September 9, 2012, HUD learned that there was a potential conflict of interest with GHURA's legal counsel, who was later identified as Respondent. On September 20, 2012, HUD notified GHURA that its Board of Commissioners was not authorized to waive HUD's conflict-of-interest requirements and ordered GHURA to stop any conflict "immediately." That day, GHURA suspended payment of HAP funds to Mr. Wong. On September 24-25, 2012, GHURA's Section 8 Administrator explained to GHURA's Executive Director the three bases for concern about Respondent's conflict of interest: the shared business address; the joint bank account; and Mr. Wong giving Respondent's mother the power of attorney.

In November of 2012, Respondent continued to advise GHURA's Board of Commissioners as to how GHURA should frame the conflict-of-interest issues in their responses to HUD's inquiries. Respondent also sent a legal opinion from another attorney to GHURA's Board of Commissioners and executive management regarding a change in Guam procurement law related to conflicts of interest.

⁶ This was the very form that Respondent, as legal counsel, revised and presented to the Board of Commissioners for approval.

On April 23, 2013, GHURA, acting independently from Respondent, submitted a waiver request to HUD that addressed Respondent's conflict of interest. Approximately a month later, while the waiver request was under consideration, Respondent gave GHURA's Board of Commissioners Chairman access to the property transfer documents between Respondent and Mr. Wong. Within a day of the Chairman's review, Respondent resigned as legal counsel to GHURA.

Between September of 2011 and December of 2011, Respondent received five HAP payments from GHURA, totaling \$48,140, which are charged in Counts 1-5 in 17-JM-0135-PF-004. Additionally, all HAP payments Mr. Wong received between August of 2012 and May of 2014, amounting to \$218,296, were ultimately transferred to Respondent or used to make payments on his accounts. Those claims are charged in Counts 1-20 in 18-JM-0208-PF-010.

DISCUSSION

In its *Motion*, the Government seeks summary judgment against Respondent for submitting twenty-five allegedly false claims in violation of PFCRA. Specifically, the Government alleges there is no dispute as to the material facts that Respondent was a covered individual, who knew or should have known that he was not eligible to receive HAP payments while serving as legal counsel to GHURA. The Government claims it is entitled to judgment as a matter of law, because Respondent's prohibited conflict of interest resulted in those HAP payments being falsely claimed in violation of PFCRA.

Respondent opposes the Government's request for summary judgment countering that disputes as to material facts exist. Respondent also alleges that the term "covered individual" is ambiguous and, therefore, Respondent did not knowingly engage in the misconduct.

I. There is no genuine dispute as to the material facts.

The Government claims that summary judgment is warranted, because there is no genuine dispute as to the material facts. As the moving party, the Government 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 to materials in the record, or show the cited materials do not establish the presence of a genuine dispute. Fed. R. Civ. P. 56(c).

In support of its position, HUD has submitted extensive evidence that includes copies of Respondent's HAP contracts; email communications between HUD, GHURA, and Respondent; trial transcripts from the criminal proceedings; bank statements from Respondent and Mr. Wong; and various court records. The evidence cited in the *Motion* supports the propositions that Respondent was a covered individual, who knew or had reason to know of the alleged conflict of interest as a covered individual, and who submitted false claims or caused false claims to be submitted in violation of PFCRA. After review, the Court finds the evidence presented supports these assertions and HUD has met its initial burden of proof.

Respondent's *Opposition*, however, raises a dispute as to certain facts alleged in HUD's *Motion*. For example, Respondent disputes HUD's claims that he worked on the Section 8

Administrative Plan for GHURA.⁷ Respondent explains that the Section 8 Administrative Plan was prepared by another attorney and Respondent's contribution was limited to a review of a memorandum prepared by that attorney. Thus, Respondent argues, the nature of his work on the Administrative Plan was "limited and of no consequence." Respondent also denied preparing legal opinions regarding the Section 8 Program and cites to an email stating that GHURA did not have in their records any legal opinions from Respondent regarding the Section 8 Program or conflict of interest issues.⁸

Respondent's claims and evidence raise a genuine dispute as to the nature and scope of Respondent's contribution to the preparation of the Section 8 Administrative Plan, and whether Respondent actually prepared any legal opinions related to the Section 8 Program. See HUD v. Thompson, HUDOHA 16-AF-0058-PF-015, at 2 (Aug. 11, 2016) ("In reviewing a motion for summary judgment, the Court's function is not to resolve any questions of material fact, but to ascertain whether any such questions exist."). However, these disputed facts are not material to the Court's determination of whether Respondent was a covered individual because, as more fully explained later, Respondent did in fact influence decisions related to the Section 8 Program. See Anderson, 477 U.S. at 249-50 (explaining that summary judgment may be granted if the evidence is "merely colorable or not significantly probative").

Based on the foregoing, the Court finds the Government has met its burden of showing there is no genuine dispute of material fact. The Court further concludes Respondent has failed to cite to materials in the record showing any material facts are actually in dispute.

II. The Government is entitled to judgment as a matter of law.

HUD claims it is entitled to judgment as a matter of law, because the undisputed material facts in this case support a finding that Respondent violated PFCRA by submitting, and causing to be submitted, false claims to GHURA in the form of housing assistance payment requests, which he knew or should have known were false or were supported by false statements of material fact. Respondent denies that he had the requisite knowledge to support the alleged PFCRA violations.

A. Respondent made or caused claims to be made to GHURA.

HUD claims Respondent made five claims for HAP subsidies that are the subject of Counts 1-5 in 17-JM-0135-PF-004. HUD further claims Respondent caused twenty claims for HAP subsidies that are the basis for Counts 1-20 in 18-JM-0208-PF-010.

A claim includes any request, demand, or submission made to a recipient of property, services, or money from an authority for the payment of money if the United States provided any

⁷ A PHA's Section 8 Administrative Plan sets the local policies for administering the program. HUD's *Motion* alleges that Respondent participated in the preparation of GHURA's Section 8 Administrative Plan.

⁸ HUD preempts this argument and evidence by noting that document productions related to the criminal proceeding against Respondent revealed at least one legal memorandum, from Respondent to GHURA's Deputy Director, providing legal advice regarding the Section 8 Program and the consequences for not following its requirements.

portion of the money requested or demanded. 31 U.S.C. § 3801(a)(3)(B)(ii). When the false claims are housing assistance payments, each payment made by the PHA to the owner constitutes a separate claim. Blackmon-Brace, at 5.

It is undisputed that Respondent began participating in the Section 8 Program as a landlord as early as June of 2004 and continued in this capacity even after he was hired as legal counsel of GHURA. As a landlord, Respondent entered into HAP contracts requiring GHURA to pay HUD-funded housing assistance payments to Respondent on behalf of his tenants. Between September 1, 2011, and December 1, 2011, Respondent requested and received five HAP payments from GHURA, each constituting a separate claim, and totaling \$48,140.

The undisputed material facts also demonstrate that Respondent transferred ownership of the properties to Mr. Wong beginning in November 2011. Thereafter, Mr. Wong, or Ms. Owen as Mr. Wong's power of attorney, executed amendments to the HAP contracts to make Mr. Wong the new landlord and requiring GHURA to make future subsidy payments to him. However, Respondent's legal secretary provided banking information to GHURA that resulted in the subsidy payments being made to an account belonging to Mr. Wong, but for which Respondent also had debit authorization. Respondent used the debit authorization on multiple occasions to withdraw HAP funds from the account or used the funds to pay his own accounts. Mr. Wong also directly paid the HAP funds he received to Respondent. Accordingly, the Court finds that between August 2, 2012, and May 2, 2014, Respondent also caused twenty housing assistant payment requests to be made to GHURA, constituting twenty separate claims, totaling \$218,296.

B. The claims submitted to GHURA were false.

HUD alleges the claims made to GHURA were false, because Respondent, and thereafter Mr. Wong, were not entitled to the subsidy payments as a result of Respondent's prohibited interest in the HAP contracts and HAP payments as a covered individual.

In the present case, as is true for all HAP contracts, a condition precedent for receiving housing assistance payments is the Section 8 owner's compliance with the terms of the contract, one such term being the conflict-of-interest provision. See In re Babar, HUDALJ 08-074-PF, at 2 (HUD Secretary's Order Granting Government's Petition for Review, June 25, 2009) (finding that an initial written certification implies an affirmation of continuing accuracy). The HAP contracts at issue state that, by executing a HAP contract, "the owner certifies and is responsible for ensuring that no person or entity has or will have a prohibited interest, at execution of the HAP contract, or at any time during the HAP contract terms." One such prohibited interest is that of a covered individual.

1. Respondent was a covered individual.

The Government claims Respondent was a covered individual not eligible to receive HAP payments because of his position as legal counsel to GHURA. As stated in the HAP contracts relevant to the claims in this matter, as well as 24 C.F.R. § 982.161, a covered individual is "[a]ny employee of the PHA, or any contractor, sub-contractor, or agent of the

PHA, who formulates policy or who influences decisions with respect to the [Section 8 Program].”

a. Respondent was an agent of GHURA.

There is no dispute that Respondent was an agent of GHURA. An agent is someone acting on the principal’s behalf and subject to the principal’s control. United States v. Bonds, 608 F.3d 495, 506 (9th Cir. 2010) (analyzing the circumstances under which an independent contractor may be considered an agent). And, “[t]o form an agency relationship, both the principal and the agent must manifest assent to the principal’s right to control the agent.” Id. The lawyer-client relationship fits squarely under the agency relationship. Kay v. Ehrler, 499 U.S. 432, 435-36 (1991); In re Perle, 725 F.3d 1023, 1027 (9th Cir. 2013) (“Ordinarily, a lawyer is a client’s agent.”); see also Link v. Wabash R.R. Co., 370 U.S. 626, 633-34 (1962).

The undisputed facts support both elements of the agency relationship. First, GHURA, the principal, authorized Respondent to act on its behalf when they awarded him the contract for legal services. The Attorney-Client Fee Agreement (“Agreement”) entered into by the parties expressly states, “[GHURA] hereby gives [Smith GHURA’s] power of attorney to execute all documents connected with the claim for the prosecution of which [Smith] is retained, including, pleadings, contracts, commercial paper, settlement agreements, compromises and releases, verifications, dismissals, orders and all documents that [GHURA] would properly execute.” Additionally, the record reflects GHURA’s intent that Respondent was to act subject to its control by the inclusion of various terms and conditions in the RFP and Agreement, as well as the Board of Commissioners directing Respondent’s work once beginning his role as legal counsel.

As to the second element, Respondent undoubtedly manifested his consent to act as GHURA’s agent. The RFP states, “Unless otherwise specified, it is the declared and acknowledged intention and meaning of the General Terms and Conditions for the offeror to provide the Government of Guam ... with specified services.” By submitting a proposal in response to the RFP, Respondent was therefore offering to provide the requested services subject to the terms and conditions GHURA had set forth. Further, upon being awarded the contract, Respondent explicitly consented to the agency relationship by signing the Agreement with GHURA. Therefore, the materials on the record support the conclusion that, from the outset of Respondent’s involvement, he was an agent of GHURA. More than that, because the lawyer-client relationship is an agency relationship, Respondent’s role as legal counsel further confirms that he was an agent of GHURA.

b. Respondent influenced decisions.

There is also no dispute that Respondent influenced decisions regarding GHURA’s Section 8 Program. As legal counsel to GHURA, the scope of Respondent’s responsibilities included attending Board of Commissioner meetings and providing legal opinions to the Board. And Respondent did, in fact, influence the GHURA’s decisions with regard to the Section 8 Program. For example, Respondent’s proposed revisions to the conflict-of-interest disclosure

form applicable to the Section 8 Program was adopted by and implemented by GHURA. Respondent also drafted a legal memorandum for GHURA's former Deputy Director, who oversaw the Section 8 Program. The memorandum addressed potential consequences to GHURA for any failures to comply with HUD regulations, including Section 8 requirements. Invoices generated by Respondent also identified billable hours for research, analysis, and drafting of a legal memorandum related to the Section 8 program. Incredulously, Respondent even billed GHURA for legal services related to GHURA's handling of Respondents *own* conflict issues.

Still, the most worrisome example of Respondent influencing GHURA's Section 8 Program decisions is evidenced by the email and memorandum sent by GHURA's Executive Director to Section 8 staff regarding Respondent's own conflict. In those communications, the Executive Director echoed Respondent's arguments made during a Board of Commissioners meeting, which Respondent had attended in his capacity as legal counsel. During that meeting, Respondent lobbied the Board of Commissioners on his own behalf, claiming that he should not be viewed as having an impermissible conflict. The Executive Director's communications incorrectly informed GHURA's Section 8 staff that Respondent did not have a conflict of interest, and resulted in the release of HAP payments to Mr. Wong that had been withheld pending the resolution of Respondent's conflict.

Respondent's influence continued. In November of 2012, Respondent advised GHURA's Board of Commissioners as to how GHURA should frame Respondent's conflict-of-interest issues in their responses to HUD's inquiries. Respondent also sent a legal opinion from another attorney to GHURA's Board of Commissioners and executive management regarding a change in Guam procurement law related to conflicts of interest. Not only was Respondent in a position to influence GHURA's decisions with regard to the Section 8 Program, but he did so on a number of occasions.⁹

Based on the foregoing, the Court finds the undisputed material facts demonstrate that Respondent, as GHURA's legal counsel, influenced the PHA's decisions with regard to its Section 8 Program. Accordingly, the Court concludes that Respondent was a covered individual.

2. The claims made for HAP payments were false, because Respondent had an impermissible interest.

The HAP contracts at issue include a conflict-of-interest provision that provide, "A covered individual may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or during one year thereafter." This provision stems from HUD's regulation prohibiting PHAs from contracting with covered individuals. See 24 C.F.R. § 982.161(a)(2). The conflict-of-interest provision of a HAP contract can be waived by the HUD field office upon a showing of good cause. Id. at

⁹ The Government and Respondent both discuss, at length, whether Respondent was a covered individual merely because he was in a position to influence Section 8 Program decisions. However, that debate is not material to the Court's consideration, because Respondent *in fact* influenced Section 8 Program decisions in his capacity as GHURA's legal counsel.

§ 982.161(c). The terms of a HAP contract further state, “The owner certifies and is responsible for assuring that no person or entity has or will have a prohibited interest, at the execution of the HAP contract, or at any time during the HAP contract term.”

Respondent violated the provisions of the HAP contract while he was participating in the Section 8 Program as a landlord. As found *supra*, he was a covered individual because of his position as GHURA’s legal counsel and the influence he exerted on GHURA’s decisions with respect to its Section 8 Program. It is undisputed that he did not have a waiver from HUD to remain a Section 8 Program landlord while also serving as GHURA’s legal counsel. Therefore, his direct interest in the HAP contracts was impermissible.

After Respondent transferred title of his Section 8 properties to Mr. Wong, Respondent retained an undisclosed interest in the HAP contracts and interest in the payments received under the HAP contracts. As evidenced by the undisputed facts, Respondent maintained a security interest in the properties. In addition, the HAP payments GHURA made to Mr. Wong were either directly accessed by Respondent through debits on the account receiving the HAP payments, or were indirectly paid to Respondent by Mr. Wong. As a covered individual, Respondent was prohibited from having such interests while he was GHURA’s legal counsel and for one year after he resigned from his position. *See* 24 C.F.R. § 982.161.

The HAP contracts explicitly state that, “Unless the owner has complied with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments under the HAP contract.” In addition to ensuring that a covered individual does not have an interest in the HAP contracts or payments, an owner-landlord is also required to “promptly and fully disclose such an interest to the PHA and HUD.” Respondent, and thereafter Mr. Wong, each failed to do so as the owner-landlord to the HAP contracts. *See Babar, supra*, (HUD Secretary reversing in part the ALJ’s decision and concluding that an initial written certification for a HAP contract implies an affirmation of continuing accuracy). Therefore, neither were entitled to receive the HAP payments at issue in this case. Accordingly, the Court finds the undisputed material facts demonstrate that the twenty-five claims identified in this proceeding were falsely made.

3. The claims made for HAP payments were also supported by false statements.

HUD alleges that the claims also violate PFCRA because they were supported by false statements. PFCRA places liability on a person for the submission of a claim that is supported by a written statement, which asserts a material fact which is false, fictitious, or fraudulent. 24 C.F.R. § 28.10(b).

It is undisputed that Respondent completed GHURA’s Disclosure of Conflict of Interest form on April 12, 2012. This occurred on the same day that Respondent attended the Board of Commissioners meeting at which Respondent was confronted about his transactions with Mr. Wong, and was directed to review HUD’s determination concerning Mr. Lujan’s conflict of interest. On this form, Respondent certified that he was in compliance with GHURA and HUD’s conflict-of-interest policy and explicitly denied having a direct or indirect interest. Respondent’s certification was false, because he should have disclosed his interests in the HAP contracts and

the payments between Mr. Wong and GHURA. Respondent's false certification to GHURA supported the claims paid to Mr. Wong identified as Counts 1-20 in 18-JM-0208-PR-010.

C. Respondent knew or had reason to know the claims were false, fictitious, or fraudulent.

The Government also claims that Respondent knew or had reason to know that he was not entitled to the HAP payments made him and Mr. Wong and, therefore, the claims made for said payments were false. Respondent denies that he had the requisite knowledge arguing that the term "covered individual" is ambiguous and that disputing opinions caused confusion.

Liability under PFCRA extends to persons who submit claims that they know or have reason to know are false. 31 U.S.C. § 3802(a). A person "knows or has reason to know" that a claim is false when the person has actual knowledge that the claim is false; acts in deliberate ignorance of the truth or falsity of the claim; or acts in reckless disregard of the truth or falsity of the claim. 31 U.S.C. § 3801(a)(5). No proof of specific intent to defraud is required. Id.

It is undisputed that Respondent signed and submitted his application in response to GHURA's RFP. The RFP included a section outlining the preliminary scope of responsibilities as general legal counsel, such as providing legal advice and representations for, "matters in the housing industry and real estate laws of Guam." Respondent also submitted a letter certifying that he had no undisclosed conflicts of interests.

However, Respondent claims when he was hired he did not know the position involved opinions or that he was a covered individual, because the term is ambiguous and can lead to inconsistent findings. When viewing the facts in a light favorable to Respondent, he did not actually know of the conflict when he applied or entered into a contract to serve as GHURA's legal counsel in March of 2011.

However, even if Respondent was initially unaware of his conflict of interest as a Section 8 landlord when he began serving as GHURA's legal counsel, he was informed that he had "a direct conflict of interest" via an email from GHURA's Section 8 Administrator as early as July 2011. The email also stated that Respondent "must disclose his interest," and in further discussions with GHURA's Executive Director, Respondent was directed review HUD's decision on Mr. Lujan's waiver request. Respondent never disclosed his interest, nor did he request a waiver from HUD. Having an impermissible conflict of interest and failing to promptly and fully disclose the interest to GHURA and HUD were violations of his HAP contracts. The HAP contracts provide that an owner-landlord must be in compliance with all provisions of the contract to be eligible to receive HAP payments. Although Respondent knew or had reason to know that he was in violation of the HAP contracts, he nevertheless submitted five claims for HAP payments.

Respondent also knew or had reason to know that he and Mr. Wong were not entitled to the HAP payments made to Mr. Wong even after Respondent transferred ownership of his Section 8 properties. Respondent knew that GHURA considered him to be a covered individual, and that the HAP contracts prohibited covered individuals from having a direct or indirect

interest in the contracts or the payments. And yet Respondent and Mr. Wong knowingly executed various documents that gave Respondent a security interest in the properties. They arranged for Respondent to either have direct access to the HAP payments, or for Mr. Wong to forward those funds to Respondent. Respondent knew or had reason to know that Mr. Wong was not entitled to the HAP payments made to him, because these arrangements violated the HAP contracts between Mr. Wong and GHURA. Based on these undisputed facts, the Court finds that Respondent knew or had reason to know that Mr. Wong's twenty-five claims for HAP payments were false.

As a defense, Respondent claims the term "covered individual" is ambiguous and has resulted in deferring opinions on whether legal counsel for a PHA is, by default, a covered individual. Because of this, Respondent claims he did not know or have reason to know that the claims at issue were false.

Respondent's position is based on fragmented statements pulled from various opinions of HUD and GHURA staff that omit important analysis. For example, Respondent cites to the 2013 emails from Hugh Lutz, an attorney for HUD, who stated, "With respect to the attorney, it's debatable whether he's a covered individual." Mr. Lutz goes on to say, "Arguably, he (through opinions) might influence decisions with respect to the program, and could be considered a 'contractor.' ... [I]f the mother is still managing the units, that would be a conflict[.]" Mr. Lutz later submitted a declaration dated February 27, 2018, wherein he clarified that, at the time of his statements, he did not know the scope of Respondent's role as legal counsel and reiterated from his 2013 opinion that the determination of whether someone is a covered individual is very "fact specific."

As found above, the material facts not in dispute support the conclusion that Respondent was a covered individual while serving as GHURA's legal counsel. Any ambiguity or uncertainty perceived by Respondent as to whether he had a conflict of interest was caused by his own actions and omissions. Respondent was repeatedly told to disclose his circumstances to HUD and request a waiver. He never did. When Respondent was confronted about his conflict of interest involving Mr. Wong, Respondent misleadingly claimed he divested any interest in the properties but did not disclose the agreements the two had that resulted in Respondent directly and indirectly receiving the HAP payments made to Mr. Wong. Therefore, any uncertainty as to whether Respondent had a conflict of interest was the result of Respondent's failure to disclose important information to GHURA and HUD, or to request a waiver.

Moreover, Respondent cannot reasonably claim that he did not have reason to know that his position as legal counsel would qualify him as a covered individual. On multiple occasions when Respondent was confronted regarding his own conflict of interest, Respondent was directed to review Mr. Lujan's waiver denial. If he had, he would have actual knowledge that HUD considered GHURA's legal counsel to be a covered individual.

Drawing reasonable inferences in Respondent's favor, as the Court must do on summary judgment, Respondent never actually reviewed Mr. Lujan's situation. Assuming this to be true, the undisputed material facts would still support a finding that Respondent had the requisite knowledge for a PFCRA violation, because he acted in deliberate ignorance of the truth or falsity

of the claims. Specifically, Respondent was aware that GHURA's Section 8 Administrator believed Respondent had a direct conflict of interest. He also knew that Mr. Lujan was formerly GHURA's legal counsel and, therefore, in the same position as Respondent. Respondent also understood that HUD had reached a determination regarding Mr. Lujan's conflict of interest. That Respondent did not review HUD's determination demonstrates Respondent did not want to know whether HUD considered the legal counsel position to be a covered individual. He was deliberately ignorant. See United States ex rel. Schutte v. SuperValu Inc., 598 U.S. 739, 751 (2023) (explaining that deliberate ignorance applies in claims concerning the False Claims Act when a person is "aware of a substantial risk that their statements are false, but intentionally avoid taking steps to confirm the statement's truth or falsity"); see also Vt. Agency of Nat. Res. v. United States ex rel. Stevens, 529 U.S. 765, 786 (2000) (wherein the Supreme Court described PFCRA as a "sister scheme" to the False Claims Act by providing administrative remedies for false claims). Accordingly, the Court is not persuaded by Respondent's claims that he did not know or have reason to know that the claims at bar were false.

D. Respondent is liable for twenty-five violations of PFCRA.

After reviewing the Government's *Motion*, and the evidence offered in support thereof, the Court concludes that the Government has met its initial burden of showing there is no genuine dispute as to the material facts. The Court further finds that Respondent did not meet his burden to raise a genuine issue to warrant a hearing in this matter.

The undisputed material facts demonstrate that Respondent made five claims for HAP payments while he was serving as legal counsel for GHURA. Respondent also caused Mr. Wong to make twenty claims for HAP payments after he transferred ownership of his properties. When the claims were made to GHURA, Respondent was a covered individual who had an impermissible interest in the HAP contracts and the HAP payments. This violated the HAP contracts he and Mr. Wong entered into. As a result, the claims Respondent and Mr. Wong made were false, fictitious, or fraudulent because neither individual was entitled to them. Respondent knew or had reason to know the claims were false because GHURA staff informed him that he had a conflict of interest, and he was directed on multiple occasions to review a similar case in which HUD determined that the legal counsel for GHURA is considered a covered individual. Accordingly, the Court concludes that Respondent is liable for PFCRA violations because he made, or caused to be made, twenty-five claims that he knew or had reason to know were false, fictitious, or fraudulent.

PENALTY

The Government seeks assessments totaling \$532,872 for the twenty-five (25) false claims Respondent submitted or caused to be submitted to HUD. The Government further seeks civil penalties totaling \$202,500 for the false claims.¹⁰

¹⁰ The maximum penalty for false claims made before February 19, 2013, is \$7,500 per claim. 72 Fed. Reg. 5586, 5588 (Feb. 6, 2007) (HUD final rule, effective March 8, 2007). The cap for civil penalties was increased to \$8,500 per claim made on or after February 19, 2013. 78 Fed. Reg. 4059 (Jan. 18, 2013) (HUD final rule, effective February 19, 2013).

Ordinarily, twice the amount of the claims alleged by the Government and a significant civil penalty should be imposed in PFCRA cases to offset the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need for deterrence. 24 C.F.R. § 28.40(b). The amount of penalties and assessments imposed must be based on the Court's consideration of seventeen delineated factors set forth in the regulations as well as any mitigating and aggravating circumstances. Id. The Court has considered the factors set forth at 24 C.F.R. § 28.40(b) and finds the assessment and penalties sought by HUD are appropriate.

This was not a momentary mistake. Rather, the undisputed facts demonstrate that Respondent's conduct resulted in twenty-five false claims being paid to him over a period of almost three years. See 24 C.F.R. § 28.40(b)(1) and (2) (requiring consideration of the number of false claims and the time period over which such claims were made). Those false claims demonstrate a pattern of the same misconduct because Respondent and Mr. Wong made numerous false statements in support of those claims and intentionally withheld material information from GHURA and HUD for years. See Id. at § 28.40(b)(8) (requiring consideration as to the existence of a pattern of the same or similar misconduct); see also HUD v. Telfair and Nixon, HUDOHA 14-JM-0074-PF-004, at 8 (Sept. 12, 2014) (concluding a respondent's four false claims made over a period of nearly six months constituted a pattern of the same or similar misconduct).

When Respondent engaged in the misconduct at issue, he had been a Section 8 landlord for seven years with multiple properties in the program. He was familiar with the terms and requirements of the HAP contracts having personally entered into them. In addition, Respondent was a practicing attorney who had previously served as GHURA's legal counsel. As such, he was familiar with conflicts of interest in general. See Id. at § 28.40(b)(14) (requiring consideration of the complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of respondent's prior participation in the program or in similar transactions).

Respondent was wholly culpable for his actions that resulted in the false claims being made to HUD. See Id. at § 28.40(b)(3) (requiring consideration of the degree of the respondent's culpability with respect to the misconduct). He applied for the position of legal counsel while he was already participating in the Section 8 Program as a landlord. Then, after being notified of his direct conflict of interest, he ignored repeated instructions to disclose his conflict to HUD and seek a waiver.

Instead, he recruited Mr. Wong, Ms. Owen, and his own legal staff to help conceal and perpetuate the fraud for years. See Id. at § 28.40(b)(9) (requiring consideration of whether respondent attempted to conceal the misconduct) and (10) (requiring consideration of the degree to which the respondent involved others in the misconduct or in concealing it). Respondent did nothing to preclude these individuals from participating in his scheme. See Id. at § 28.40(b)(11) (requiring consideration of the extent to which respondent's practices fostered or attempted to preclude the misconduct of employees or agents imputed to the respondent). Rather, he caused Mr. Wong to submit the false claims, and even provided GHURA with a false statement in order to support Mr. Wong's claims. These actions resulted in \$266,436 of Section 8 Program funds

being falsely claimed by and paid to Respondent. See Id. at § 28.40(b)(4) (requiring consideration of the amount of money falsely claimed).

Despite the existence of these other individuals, who were complicit in Respondent's misconduct, Respondent did not assist in identifying or prosecuting them. See Id. at § 28.40(b)(13) (requiring a consideration of whether the respondent assisted in identifying or prosecuting other wrongdoers). Respondent also never cooperated with the investigation of his own misconduct. See Id. at § 28.40(b)(12) (requiring consideration of whether Respondent cooperated in or obstructed an investigation of the misconduct).

With regard to the investigation, the Government does not provide the costs it incurred. See Id. at § 28.40(b)(5) (requiring a consideration of the value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of investigation). Instead, the Government estimates, "the investigation of Smith's misconduct has consumed hundreds, if not, thousands of federal man-hours by dozens of individuals" across several agencies. This has not been disputed by Respondent. Accordingly, the Court agrees that the imposition of the maximum civil penalties would still be insufficient to fully reimburse the United States' costs of investigation. See Id. at § 28.40(b)(6) (requiring a consideration of the relationship of the civil penalties to the amount of the Government's loss).

Respondent's actions also potentially caused a negative impact on the public's confidence in HUD and GHURA's management of the Section 8 Program. See 24 C.F.R. § 28.40(b)(7) (requiring consideration of the potential or actual impact of the misconduct upon public confidence in the management of Government programs). The Government explained that Respondent's criminal trial was heavily publicized in Guam which was likely to hurt the public's confidence in HUD's ability to prevent fraud in its programs.¹¹ However, Respondent's false claims do not appear to have negatively impacted the Section 8 Program tenants, because the subsidies were still paid on their behalf. See Id. (requiring also a consideration of the impact on the intended beneficiaries of such programs).

Nevertheless, the need to deter similar misconduct is significant. See Id. at § 28.40(b)(16) (requiring consideration of the need to deter the respondent and others from engaging in the same or similar misconduct). The Government presented examples of numerous conflict issues previously reported to HUD and explains that "[c]onflicts of interest historically have presented a challenge for GHURA and for HUD's efforts to support assisted housing on Guam, which has a tight rental housing market."

The Government proffers that Respondent is still a practicing attorney, and presents evidence that he is still a landlord owning multiple properties. As such, the Government asserts that Respondent is able to pay the penalty and assessments sought by HUD. See Id. at § 28.40(17) (requiring a consideration of Respondent's ability to pay), and § 28.5 ("Ability to pay is determined based on an assessment of the respondent's resources available both presently and prospectively from which the Department could ultimately recover the total award, which

¹¹ Whether Respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct is a factor to be considered in imposing penalties and assessments. See Id. at § 28.40(b)(15). Although the Court is aware that criminal proceedings were brought against Respondent for the same misconduct, there is no evidence of any proceedings against him for other similar misconduct.

may be predicted based on historical evidence.”). Respondent has not presented any evidence demonstrating an inability to pay the assessments and penalties in this case. See also Blackmon-Brace, at 8 (noting “it is generally a respondent’s burden to demonstrate inability to pay as a mitigating factor”).

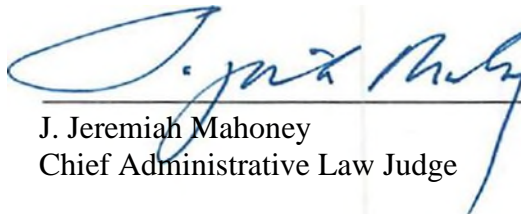
Based on the foregoing consideration of the factors set forth at 24 C.F.R. § 28.40(b), including the absence of any other aggravating or mitigation factors, the Court finds the imposition of maximum assessments and penalties to be appropriate.

CONCLUSION

The Court finds that HUD has met its burden to demonstrate that no genuine issue of material fact exists in this matter. The material facts support the conclusion that Respondent engaged in misconduct constituting twenty-five violations of PFCRA. Accordingly, the Government’s *Amended Motion for Summary Judgment* is **GRANTED**.

After considering the factors set forth at 24 C.F.R. § 28.40, the Court also concludes that the imposition of assessments totaling \$532,872, and civil penalties totaling \$202,500, is warranted.¹² Accordingly, Respondent shall pay the Government a total of \$735,372, which is immediately due and payable.

So ORDERED.



J. Jeremiah Mahoney
Chief Administrative Law Judge

¹² For Counts 1-5 in Case No. 17-JM-0135-PF-004, an assessment totaling \$96,280 and five (5) civil penalties totaling \$37,500. For Counts 1-20 in Case NO. 18-JM-0208-PF-010, an assessment totaling \$436,592, and twenty (20) civil penalties totaling \$165,000, which comprises fifteen (15) civil penalties of \$8,500 and five (5) civil penalties of \$7,500 each.

Notice of appeal rights. The appeal procedure is set forth in detail in 24 C.F.R. § 26.52. This order may be appealed to the Secretary of HUD by either party within 30 days after the date of this decision. The Secretary (or designee) may extend this 30-day period for good cause. If the Secretary (or designee) does not act upon the appeal within 30 days, this decision becomes final.

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) 485-9475

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.

Judicial review of final decision. Judicial review of the final agency decision in this matter is available as set forth in 31 U.S.C. § 3805.