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

In the Matter of: STONEBRIDGE APARTMENTS, LTD., and ROBERT SEABURY COMPANY, Respondents.	22-JM-0185-CM-008 October 3, 2022

RULING ON GOVERNMENT'S DISPOSITIVE MOTION AND INITIAL DECISION

This matter arises from a Complaint filed by the U.S. Department of Housing and Urban Development ("HUD" or "the Government") seeking to impose $203,972.00 in civil money penalties against Stonebridge Apartments, LTD ("Stonebridge") and Robert Seabury Company ("Seabury") (collectively, "Respondents") jointly and severally.

HUD now asks the Court to grant summary judgment, as HUD claims there is no dispute as to the material facts and that HUD is entitled to summary judgment as a matter of law. Respondents have not filed any opposition to the *Motion for Summary Judgment*. After careful consideration, the Court will enter summary judgment in favor of HUD against Respondents.

PROCEDURAL HISTORY

On July 19, 2022, HUD issued the *Complaint* to Respondents. The *Complaint* alleged four counts of liability, namely that Respondent Stonebridge had failed to submit required reports for fiscal years 2018, 2019, 2020, and 2021. On August 1, 2022, Respondents requested a hearing pursuant to 24 C.F.R. § 30.90(a). Then, on August 19, 2022, Respondents filed an *Answer* admitting that the required reports had not been filed but raising a number of considerations in mitigation.

On August 30, 2022, HUD filed the present *Motion for Summary Judgment*. HUD asks the Court to grant summary judgment in its favor because, it asserts, that: (1) there is no genuine issue of material fact remaining; and (2) Respondents were required to file reports for the FY 2018, 2019, 2020, and 2021 but did not do so. On September 15, 2022, after not having received a response to the *Motion for Summary Judgment*, the Court issued an *Order to Show Cause*, requiring Respondents to show cause why the *Motion* should not be granted, along with a written explanation of why Respondents did not timely file an opposition to the *Motion*. The *Order to Show Cause* included an advisory that a response to a motion was due within 10 days of service, and a failure to timely respond might be deemed a waiver of any objection to the granting of the

motion. See 24 C.F.R. § 26.40(b). Respondents did not respond to the *Motion* or to the *Order to Show Cause*. This matter is now ripe for decision.

APPLICABLE LEGAL PRINCIPLES

Standard of Review for Summary Judgment. Pursuant to 24 C.F.R. § 26.32(l), this Court is authorized to "decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact." 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 judgment is proper where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (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." Anderson, 477 U.S. at 249. Additionally, a fact is not "material" unless it affects the outcome of the suit. Id.

Summary judgment is a "drastic device" because, when exercised, it diminishes 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 moving party bears the burden of demonstrating the absence of any material issues of fact. See Anderson, 477 U.S. at 256. Rule 56 provides that when a party asserts that a fact cannot be genuinely disputed, that party must: (i) cite to materials in the record; or (ii) show the cited materials do not establish the presence of a genuine dispute. Fed. R. Civ. P. 56(c). 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. *In re* Beta Dev. Co., HUDBCA No. 01-D-100-D1, at *12 (February 21, 2002). Therefore, when the moving party has carried 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)). Where a party has not responded to a motion for summary judgment, the Court may deem the allegations admitted and any objection to the granting of the motion waived. See 24 C.F.R. § 26.40(b).

Standard for Imposition of Civil Money Penalties. Under specific circumstances, the Government may impose civil money penalties on the mortgagor of a property that includes five or more living units and that has a mortgage insured, co-insured, or held pursuant to the National Housing Act of 1937. 12 U.S.C. § 1735f-15(c)(1)(A)(i); 24 C.F.R. § 30.45. Section 1735f-15(c)(1)(B) identifies several actions that would render a mortgagor liable for civil money penalties. Among these violations are the knowing and material:

> Failure to furnish the Secretary, by the expiration of the 90-day period beginning on the first day after the completion of each fiscal year (unless the Secretary has approved an extension of the 90-day period in writing), with a complete annual financial report in accordance with requirements prescribed by the Secretary, including requirements that the report be--
>
> (I) based upon an examination of the books and records of the mortgagor;

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

12 U.S.C. § 1735f-15(c)(1)(B)(x).

The term "knowingly" means "having actual knowledge of or acting with deliberate ignorance of or reckless disregard for" the above-quoted violations. 12 U.S.C. § 1735f-15(h). See also 24 C.F.R. § 30.10.

The term "material" or "materially" is defined as "[h]aving the natural tendency or potential to influence, or when considering the totality of the circumstances, in some significant respect or to some significant degree." 24 C.F.R. § 30.10. In civil money penalty cases materiality is to be determined by application of a "totality of the circumstances" standard, which is to be determined in turn by consideration of the eight regulatory factors at 24 C.F.R. § 30.80. See *In re* Crestwood Terrace Partnership, HUD-ALJ 00-002-CMP, 2001 HUD ALJ LEXIS 66, at *7-8 (January 30, 2001). The record need not contain sufficient evidence to satisfy all the factors; a finding on one will support a finding of materiality. See id.

STATEMENT OF MATERIAL FACTS

In its *Motion for Summary Judgment*, HUD identified a number of material facts and cited to specific materials in the record in support thereof. Conversely, Respondents have failed to identify any dispute as to facts demonstrating that there remains an issue for trial. See Fed. R. Civ. P. 56(c) and Matsushita Elec. Indus. Co., 475 U.S. at 586-587 (noting that where the moving party has cited to materials in the record supporting its account of the material facts, the nonmoving party must come forward with specific facts showing that there is a genuine issue for trial.). And, where the nonmoving party has not timely responded to a motion, including a motion for summary judgment, the Court may deem the nonmovant to have waived any objection to the granting of the motion. 24 C.F.R. § 24 C.F.R. § 26.40(b). Accordingly, the Court finds the following material facts to be undisputed:[1]

1. Respondent Stonebridge is a limited partnership formed under the laws of Texas.

2. Respondent Stonebridge is the owner and mortgagor of Stone Creek Ranch Apartments ("the Project").

3. Respondent Seabury, a Texas corporation, is the general partner of Respondent Stonebridge.

4. Respondent Seabury has been Respondent Stonebridge's management agent with an identity of interest since approximately April 17, 2018.

[1] Some proposed facts have been omitted as not material to this decision.

5. The Project is a multifamily housing facility located in Wichita Falls, Texas, that has more than five living units.

6. Respondent Stonebridge took out a loan in the original principal amount of $9,547,500.00 ("the Loan"), which was secured by the Project.

7. The outstanding balance on the Loan as of August 23, 2022, is $8,309,421.01.

8. Repayment of the Loan was insured by HUD under Section 221(d)(4) pursuant to Section 223(a)(7) of the National Housing Act.

9. Respondent Stonebridge, as the Borrower, and HUD entered into a regulatory agreement dated May 30, 2012 ("the Regulatory Agreement"), which was signed by Robert G. Seabury in his capacity as President of Respondent Seabury, the general partner of Respondent Stonebridge.

10. Paragraph 18 of the Regulatory Agreement states:

> Within ninety (90) days, or such period established in writing by HUD, following the end of each fiscal year, Borrower shall furnish HUD and Lender with a complete annual financial report based upon an examination of the books and records of Borrower prepared in accordance with GAAP, audited in accordance with Generally Accepted Auditing Standards ("GAAS") and Government Auditing Standards ("GAS") and any additional requirements of HUD unless the report is waived in writing by HUD.... The report shall include a certification in content and form prescribed by HUD and certified by Borrower. The report shall be prepared and certified by a certified public accountant who is licensed or certified by a regulatory authority of a state or other political subdivision of the United States, which authority makes the certified public accountant subject to regulations, disciplinary measures, or codes of ethics prescribed by law.

11. Audited annual financial reports for Respondent Stonebridge are required to be prepared in accordance with Generally Accepted Accounting Principles as further defined by HUD in supplemental guidance. See 24 C.F.R. § 5.801(b).

12. The fiscal year for Respondent Stonebridge ends on December 31st.

13. The annual financial reports ("AFRs") for the fiscal years ending December 31, 2018 ("FY2018"); December 31, 2019 ("FY2019"); December 31, 2020 ("FY2020"), and December 31, 2021 ("FY2021") were due to HUD on the following dates:

- The FY2018 AFR was due on 03/31/2019;
- The FY2019 AFR was due on 09/30/2020;
- The FY2020 AFR was due on 06/30/2021; and

- The FY2021 AFR was due on 03/31/2022.

14. Respondent Stonebridge failed to submit the AFRs for the FY2018, FY2019, FY2020, and FY2021 by the respective due dates.

15. Beginning in May of 2019, HUD's Fort Worth Departmental Enforcement Center ("the DEC") made efforts to try to obtain compliance from Respondents including e-mail and phone communication and pre-penalty notices.

16. By pre-penalty notice dated January 20, 2021, the DEC issued a written notice to Respondent Stonebridge for the failure to file an audited AFR for FY2019 ("January Pre-Penalty Notice").

17. After receiving no response to the January Pre-Penalty Notice, the DEC issued pre-penalty notices dated March 30, 2021, notifying both Respondents of the failure to file the AFRs for FY2018 and FY2019 (collectively, "March Pre-Penalty Notices").

18. After receiving no response to the March Pre-Penalty Notices, the DEC contacted Respondents via e-mail on May 6, 2021 ("Suarez Inquiry") seeking the status of the AFRs for FY2018 and FY2019.

19. After receiving no response to the Suarez Inquiry, the DEC e-mailed Respondents on May 18, 2021, seeking the status of the AFRs for FY2018 and FY2019.

20. The only response to the DEC's outreach efforts in 2021 was an e-mail from robertgseabury@aol.com dated May 19, 2021, which indicated Respondents would be in contact with the DEC to work toward compliance with the filing requirements.

21. By pre-penalty notices dated August 16, 2021, and August 18, 2021, the DEC issued written notices to Respondents for the failure to submit to HUD the AFRs for FY2018, FY2019, and FY2020 (collectively, "August Pre-Penalty Notices").

22. Respondents did not respond to the August Pre-Penalty Notices.

23. On November 3, 2021, the DEC Director determined that a civil money penalty for the failure to submit to HUD the AFRs for FY2018, FY2019, and FY2020 was warranted.

24. On January 10, 2022, HUD filed a complaint seeking civil money penalties against Respondents for the failure to submit to HUD the AFRs for FY2018, FY2019, and FY2020 ("the First Complaint").

25. On April 20, 2022, HUD entered into a settlement agreement with Respondents ("the Settlement Agreement") and agreed to withdraw the First Complaint.

26. Per the terms of the Settlement Agreement, Respondents paid a $65,000 civil money penalty and agreed to submit to HUD the AFRs for FY2018, FY2019, and FY2020 no later than April 30, 2022.

27. Per the terms of the Settlement Agreement, Respondents agreed that HUD would file a complaint if the AFRs for FY2018, FY2019, and FY2020 were not filed by April 30, 2022.

28. Respondents failed to submit the AFRs for FY2018, FY2019, and FY2020 to HUD as agreed in the Settlement Agreement.

29. The AFR for the fiscal year ending on December 31, 2021 ("FY2021") was due no later than March 31, 2022.

30. Respondents did not submit the AFR for FY2021 to HUD by its due date.

31. Per the terms of the Settlement Agreement, the DEC agreed to refrain from pursuing an enforcement action against Respondents for the failure to timely submit the AFR for FY2021 only upon Respondents' submission of that AFR to HUD no later than May 11, 2022.

32. Respondents failed to submit the AFR for FY2021 to HUD by May 11, 2022.

33. By pre-penalty notices dated May 16, 2022, the DEC issued written notices to Respondents for the failure to submit to HUD the AFR for FY2021 (collectively, "May Pre-Penalty Notices").

34. Respondents did not respond to the May Pre-Penalty Notices or to HUD counsel's inquiry on May 25, 2022 regarding the status of the AFRs for FY2018, FY2019, FY2020, and FY2021.

35. On June 27, 2022, the DEC Director determined that a civil money penalty for the failure to file the AFRs for FY2018, FY2019, FY2020, and FY2021 was warranted.

36. As of August 22, 2022, HUD has not received the AFRs for FY2018, FY2019, FY2020, or FY2021.

37. The last AFR submitted to HUD was for FY2017. For FY 2017, Respondent Stonebridge reported cash on hand for operations was $286,712.

38. For FY2017, Respondent Stonebridge reported a cost of $12,600 to acquire the FY2017 audited AFR. Stonebridge also reported a profit before depreciation in the amount of $688,257.

39. During FY2017, distributions from the project in the amount of $388,763 were paid out.

DISCUSSION

HUD claims the material facts are not genuinely in dispute and that it is entitled to judgment as a matter of law on all counts. As noted above, Respondents did not dispute any material fact or raise any affirmative defense in the *Answer*, nor did Respondents respond to the

Motion or *Order to Show Cause*. As such, Respondents are deemed to have waived any objection to the granting of the *Motion*.

Respondents were obligated to file reports for FY2018, FY2019, FY2020, and FY2021. See 12 U.S.C. § 1735f-15(c)(1)(B)(x) (stating that a penalty may be imposed for the failure to furnish HUD with complete annual financial reports). It is undisputed that they did not do so. It is also undisputed that not later than May 19, 2021, Respondents knew of their obligation to submit annual financial reports and that they were not incompliance of that requirement. Finally, the undisputed material facts demonstrate that Respondents' failure to submit the annual reports is material. See *In re* Yetiv, HUDALJ 02-001-CMP, 2003 HUD ALJ LEXIS 36, *15 (HUD ALJ Sept. 2, 2003) (finding that the failure to file an annual financial report is an action that materially violates the regulatory agreement entered into with HUD and the 12 U.S.C. § 1735f-15). As such, the Court finds that Respondents are liable under Counts 1 through 4 of the *Complaint*. 12 U.S.C. § 1735f-15(c)(1)(B) (identifying the knowing and material failure to furnish HUD with a complete annual financial report as a violation of the statute).

CIVIL MONEY PENALTY

Having concluded that Respondents' actions subject Respondents to civil money penalties, the Court must consider whether the requested penalty amounts are appropriate. HUD regulations specify that the Court weigh the following aggravating and mitigating factors in determining the penalty amount:

> (a) The gravity of the offense;
> (b) Any history of prior offenses;
> (c) The ability to pay the penalty, which ability shall be presumed unless specifically raised as an affirmative defense or mitigating factor by the respondent;
> (d) The injury to the public;
> (e) Any benefits received by the violator;
> (f) The extent of potential benefit to other persons;
> (g) Deterrence of future violations;
> (h) The degree of the violator's culpability;
> . . . and
> (j) Such other matters as justice may require.

24 C.F.R. § 30.80.

Each factor must be considered, although not every factor will apply directly to every charge. *In re* Sundial Care Center, HUDALJ 08-055-CMP, 2009 HUD ALJ LEXIS 21 (HUDALJ Mar. 25, 2009). However, a particularly compelling factor may be enough to support the imposition of a maximum penalty. Yetiv, HUDALJ 02-001-CMP, 2003 HUD ALJ LEXIS 36.

After considering the penalty factors, the Government elected to pursue the maximum penalties for each violation resulting from Respondents' failure to file audited financial

statements. The rationale for these penalties was laid out in detail in the Government's *Motion* as well as in the *Complaint* itself. In the *Answer*, Respondents raise a number of concerns in mitigation.

1. Gravity of the offense

The failure to file audited annual statements is extremely serious. *In re* Premier Invs. I, Inc., HUDALJ 06-022-CMP, 2007 HUD ALJ LEXIS 61, *13 (HUDALJ Jun. 29, 2007). Risks to the insurance fund may arise from unauthorized distributions and misuse of project funds by HUD-insured mortgagors, which may go undetected where audits are not available. *In re* Entercare, Inc., HUDALJ 01-061-CMP, 2002 HUD ALJ LEXIS 27, *15 (HUDALJ Dec. 31, 2002); and *In re* Lord Commons Apartments, HUDALJ 05-060-CMP, 2007 HUD ALJ LEXIS 59, *18 (HUDALJ Jul. 20, 2007). This weighs in favor of a maximum civil penalty.

2. History of prior offenses

There is no evidence in the record that Respondents have a history of prior convictions.

3. Ability to pay the penalty

Respondents have the burden to establish that they are not able to pay the amount of penalty sought. Premier Invs. I, Inc., 2007 HUD ALJ LEXIS 61 at *15. And, a claim of inability to pay must be supported by documentary evidence. Grier v. United States HUD, 418 U.S. App. D.C. 185, 191 (2015) ("An ability to pay is presumed unless a party raises it as an affirmative defense and provides documentary evidence.")

4. Injury to the public

"In considering the factor of injury to the public, an assessment of the harm caused to the integrity of HUD's programs and the costs of enforcement and litigation should be made." Premier Invs. I, Inc., 2007 HUD ALJ LEXIS 61 at *15. And, "damage to the integrity of HUD programs, exhibited by an inability to accurately assess risk to its insurance fund occurs when Respondents fail to submit audited financial statements." Id.

As noted *supra*, Respondents' failure to file audited financial statements deprived HUD of the opportunity to assess the projects finances. HUD was, therefore, without crucial information to assess the risk to its insurance fund. However, this is not a concrete loss to HUD and the public. The fact that HUD had the flexibility to wait for years in hopes that Respondents would file audited financial statements suggests that receipt of the reports, though undoubtedly required, was not as urgent as HUD suggests.

Still, HUD presented records demonstrating the efforts made by HUD staff to obtain Respondents' compliance with their obligations under the Regulatory Agreement. Documents in the record demonstrate numerous communications among HUD field offices, HUD's Enforcement Center, and Respondents. The time and resources expended to gain Respondents' compliance constitute an injury to the public. Id.

5. Benefits received by the violator

HUD claims Respondents benefited by not incurring the costs for audited financial statements. HUD's records show that Respondents spent $12,600 to prepare the FY2017 AFR. Respondents do not dispute this. Therefore, by failing to conduct four audits, Respondents had a windfall of about $50,000. See Lord Commons Apartments, 2007 HUD ALJ LEXIS 59 at *20 ("Respondents benefitted economically from the violations in an amount at least equal to the total costs that they would have incurred if the audited financial reports had been prepared and submitted to HUD as required.")

6. Extent of potential benefit to other persons

HUD acknowledges that it is impossible to determine the potential benefit to others in this case without the audited financial statements that would reveal any such benefit.

7. Deterrence of future violations

"Deterrence is a permissible and socially useful goal. Any penalty will theoretically provide deterrence." Sundial Care Center, Inc., 2009 HUD ALJ LEXIS 21 at *52-53 (taking into consideration the respondents' interest in land, which had a value that exceeded the penalty sought by HUD). However, for a penalty to be effective in deterring future violations, the penalty imposed must be substantially greater than the cost of compliance to encourage compliance within the industry. Crestwood Terrace P'ship, 2001 HUD ALJ LEXIS 66 at *15.

Here, HUD presented evidence that each audited financial statement would cost Respondents roughly $12,600 for a total of approximately $50,000. For the each of the four audited financial statements between 2018 and 2021 that Respondents failed to file, HUD seeks penalties between $49,096 and $51,827.[2] Therefore, the penalty HUD seeks is more than three times the amount it would have cost for Respondent's compliance and is adequate for deterring future violations.

8. Degree of the violator's culpability

"The responsibility for insuring that annual financial statements are filed in a timely and acceptable manner lies squarely with [the persons], who executed the agreement on behalf of [the respondent company]. Lord Commons Apartments, 2007 HUD ALJ LEXIS 59 at *22.

There is no evidence in the record that Respondents were unable to pay for the audits. In fact, Respondents stated in the *Answer* that they have funds reserved for completion of required AFRs. Based on this evidence, the Court reasonably concludes that Respondents had the means to pay for the FY2018 through FY2021 AFRs.

[2] Violations of 12 U.S.C. § 1735f-15(c)(1)(B) that occurred between August 15, 2018, and April 14, 2019 are subject to a maximum civil money penalty of $49,096. See 12 U.S.C. § 1735f-15(c), 24 C.F.R. § 30.45(g) (2013); and 83 Fed. Reg. 32,790 (July 16, 2018). For violations occurring between April 6, 2020, and April 14, 2021, the Secretary may impose a civil money penalty of up to $51,222. See 85 Fed. Reg. 13,041 (March 6, 2020). For violations occurring between April 15, 2021, and May 25, 2022, the Secretary may impose a civil money penalty of up to $51,827. See 86 Fed. Reg. 14,370 (March 16, 2021).

In addition, HUD has produced evidence that it made repeated attempts to obtain Respondents' compliance. For instance, HUD sent several pre-penalty notices to Respondents before ultimately filing the *Complaint*. Accordingly, the Court finds that Respondents are wholly culpable for the violations.

9. Other matters as justice may require

In the *Answer*, Respondents cite to seven concerns in mitigation: (1) in early 2019, the firm that Respondents had retained to complete the FY2018 AFR notified Respondents that it would not do so; (2) in 2020, the COVID pandemic caused operational difficulties that made it difficult to devote resources to filing the FY2018 and FY2019 AFR's; (3) in February 2021, buildings operated by Respondents were deprived of power for three days and were damaged by a malfunction in the fire protection system; (4) from January 8, 2022 to approximately February 5, 2022, the individual responsible for recordkeeping was ill and unavailable; (5) the owner of Respondents Stonebridge and Seabury was injured in a fall in late 2021; (6) Respondents report that it was difficult to locate a firm to complete the belated AFRs; and (7) some emails relating to pre-penalty notices may not have been received prior to the filing of a complaint in a prior proceeding.

The Court takes the concerns raised by Respondents at face value for purposes of summary judgment. Even taken in the light most favorable to Respondents, however, it is difficult to comprehend how any one of the above concerns, or even all of them together, could explain a three-year delay in filing the FY2018 AFR; a two-year delay in filing the FY2019 AFR; a one-year delay in filing the FY2020 AFR; and several months' delay in submitting the FY2021 AFR. If Respondents had responded to the *Motion* or the *Order to Show Cause*, perhaps they could have articulated some basis for the Court to find otherwise. Therefore, this factor neither aggravates nor mitigates the civil money penalties to be imposed.

CONCLUSION

Consistent with the foregoing, HUD has demonstrated that the material facts are not in dispute as to all counts. Accordingly, HUD is entitled to judgment as a matter of law for Counts 1, 2, 3, and 4 of the *Complaint*, and the *Motion* is **GRANTED**.

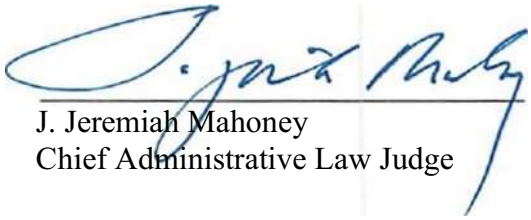
Based on the foregoing, the Court also finds adequate evidence exists supporting the imposition of the penalties sought by HUD. Respondents' failure to file audited financial statements for FY2018 through FY2021 constitute violations of obligations under the Regulatory Agreement. Such violations caused injury to the public while Respondents received a windfall of about $50,000. Respondents are wholly culpable and have not demonstrated an inability to pay. Accordingly, the imposition of the maximum allowable penalty is warranted for each violation.

It is hereby **ORDERED** that Respondents, jointly and severally, shall pay in full

$ 138,972 in civil money penalties to the HUD Secretary.[3]

These penalties are immediately due and payable by Respondents without further proceedings, except as described below. Respondents are prohibited from using Project income to pay these penalties. 12 U.S.C. § 1735f-15(d)(5); 24 C.F.R. § 30.45(h); 24 C.F.R. § 30.68(d).

So **ORDERED**,



J. Jeremiah Mahoney
Chief Administrative Law Judge

Notice of appeal rights. The appeal procedure is set forth in detail in 24 C.F.R. §§ 26.50 and 26.52. This Order may be appealed by any party to the Secretary of HUD by petition for review. Any petition for review and the required brief must be received by the Secretary within 30 days after the date of this Order. An appeal petition shall be accompanied by a written brief, not to exceed 15 pages, specifically identifying the party's objections to the *Initial Decision and Order* and the party's supporting reasons for those objections. Any statement in opposition to a petition for review must be received by the Secretary within 20 days after service of the petition. The opposing party may submit a brief, not to exceed 15 pages, specifically stating the opposing party's reasons for supporting the ALJ's determination.

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) 708-0019
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 Administrative Law Judges.

Finality of decision. The agency decision becomes final as indicated in 24 C.F.R. § 26.50.

Judicial review of final decision. After exhausting all available administrative remedies, any party adversely affected by a final decision may seek judicial review of that decision in the appropriate United States Court of Appeals. A party must file a written petition in that court within 20 days of the issuance of the Secretary's final decision.

[3] This consists of the maximum civil penalty applicable for each required but not filed AFR, less the $65,000 previously paid by Respondents.