

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

In the Matter of:

47-49 Carroll Street LLC,
Respondent.

21-AF-0009-CM-001

June 11, 2021

DISMISSAL ORDER

This matter arises from a *Complaint* filed by the U.S. Department of Housing and Urban Development (“HUD”) against 47-49 Carroll Street LLC (“Respondent”) seeking civil money penalties pursuant to 42 U.S.C. § 1437z-1 as implemented by 24 C.F.R. part 30.

HUD has filed a *Motion to Dismiss* stating that the parties have reached a settlement of this matter. In accordance with the terms of the settlement agreement, HUD asks the Court to dismiss this proceeding.

Because no issues remain for consideration, HUD’s motion is **GRANTED** and this matter is hereby **DISMISSED**.

So **ORDERED**,

**ALEXANDER
FERNANDEZ-
PONS**

Digitally signed by: ALEXANDER
FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-
PONS C = US O = U.S. Government
OU = Department of Housing and Urban
Development, Office of the Secretary
Date: 2021.06.11 11:48:36 -04'00'

Alexander Fernández-Pons
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **DISMISSAL ORDER** issued by Alexander Fernandez-Pons, Administrative Law Judge, in HUDOHA 21-AF-0131-CM-006 were sent to the following parties on this 11th day of June 2021, in the manner indicated:



Iamanadette Jones, Staff Assistant
HUD Office of Hearings and Appeals

VIA E-MAIL

Judah Skoff, Esq.
Robert Goldsmith, Esq.
Alexander Raap, Esq.
Hunain Sarwar, Esq.
Steven Mlenak, Esq.
Greenbaum, Rowe, Smith & Davis LLP
jskoff@greenbaumlaw.com
rgoldsmith@greenbaumlaw.com
araap@greenbaumlaw.com
hsarwar@greenbaumlaw.com
smlenak@greenbaumlaw.com

Jennifer M. Grim, Esq.
Amanda K. Burkett, Esq.
Barrett R. McVary, Esq.
Joel A. Foreman, Esq.
Michelle Jean-Baptiste, Esq.
Government Counsel
U.S. Dept. of Housing and Urban Development
jennifer.m.grim@hud.gov
amanda.k.burkett@hud.gov
barrett.r.mcvary@hud.gov
joel.a.foreman@hud.gov
michelle.jean-baptiste@hud.gov

Nilda M. Gallegos
Debarment Docket Clerk
nilda.m.gallegos@hud.gov

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

In the Matter of:
47-49 Carroll Street LLC
Respondent.

**HUDOHA: 21-AF-0009-CM-001
OGC Case No. 20-003-CMF**

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between 47-49 Carroll Street LLC, (“Respondent”), West of Hudson Properties (“West of Hudson”), Abraham “Avi” Gagin, Amir Ben-Yohanan, on the one hand (collectively, “Respondent Parties”) and the United States Department of Housing and Urban Development (“HUD” and each individually a “Party” and collectively, the “Parties”), on the other.

RECITALS

WHEREAS, Respondent is the owner of record of Carroll Street Apartments, a 16-unit multifamily property located at 47-49 Carroll Street in Paterson, New Jersey (the “Project”) that received project-based rental assistance from HUD under Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, and pursuant to a housing assistance payments (“HAP”) contract;

WHEREAS, HUD believes it may be able to assert administrative claims against West of Hudson in connection with the Project;

WHEREAS, Abraham “Avi” Gagin and Amir Ben-Yohanan seek to join the Agreement, even though HUD has not identified any potential claims against them;

WHEREAS, pursuant to 24 C.F.R. Part 30, on March 13, 2020, HUD issued a Pre-Penalty Notice to Respondent seeking civil money penalties and alleging that Respondent materially breached its HAP contract by failing to provide decent, safe, and sanitary housing;

WHEREAS, HUD filed a complaint against Respondent in the above-captioned matter on October 19, 2020 (the "Complaint");

WHEREAS, HUD believes it may be able to assert administrative claims against West of Hudson Properties ("West of Hudson") with respect to the allegations raised in the Complaint;

WHEREAS, Respondent has denied any and all liability, has advanced several defenses, but nonetheless desire to reach a satisfactory resolution of this matter; and

WHEREAS, West of Hudson, Abraham "Avi" Gagin, and Amir Ben-Yohanan support the defenses advanced by Respondent, and generally deny any claims and potential claims HUD has asserted or may assert;

WHEREAS, the Parties, collectively, seek to amicably resolve the claims asserted in the Complaint;

WHEREAS, this Agreement shall not constitute an admission of liability or fault on the part of any Party.

NOW, THEREFORE, the Parties agree as follows:

1. **Incorporation of Recitals.** The recitals above are incorporated by reference into this Agreement.
2. **Effective Date.** This Agreement shall become effective upon its execution by the Parties ("Effective Date").
3. **Agreement Execution.** Respondent Parties shall execute and submit a copy of this Agreement to HUD via email to jennifer.m.grim@hud.gov. Upon Respondent Parties'

execution of this Agreement and HUD's receipt of the Initial Payment (as defined in Paragraph 4), HUD shall execute this Agreement and provide a copy to Respondent Parties via email to jskoff@greenbaumlaw.com.

4. **Settlement Payments.** Respondent Parties shall pay a Settlement Payment to HUD in the amount of **One Hundred Twenty Thousand Dollars** (\$120,000) to resolve this matter. Of that amount, \$15,000 is due and payable to HUD upon Respondent Parties' execution of this Agreement (the "Initial Payment"). The remaining \$105,000 shall be due and payable in seven monthly installments pursuant to the schedule listed in Attachment A (the "Monthly Payments").

5. **Payment Method.**

a. **Initial Payment.** Payment of the Initial Payment is to be made as an electronic payment through <https://www.pay.gov/public/form/start/76749239>, using Grant # HUD20003CMF as the "Grant Number." Respondent Parties' information should be included in the fields for the "Recipient's Mailing Address" and the "Grantee/Payer Name." Proof of payment and a facsimile of this Agreement, executed on behalf of Respondent Parties, shall be sent concurrently through email to Jennifer Grim at jennifer.m.grim@hud.gov.

b. **Monthly Payments.** Payment of the Monthly Payments is to be made as an electronic payment is to be made as an electronic payment through <https://www.pay.gov/public/form/start/76749239>, using Grant # HUD20003CMF as the "Grant Number." Respondent Parties' information should be included in the fields for the "Recipient's Mailing Address" and the "Grantee/Payer Name."

Proof of each Monthly Payment shall be sent through email to Jennifer Grim at jennifer.m.grim@hud.gov.

6. **Prepayment.** Respondent Parties may pre-pay any payment without penalty.

7. **HUD's Release of Liability.** Upon Respondent Parties' full compliance with all provisions of this Agreement, including the payment of the Initial Payment and the Monthly Payments as set forth in Paragraphs 4 and 5 above, HUD waives, releases, and remits any and all claims under 42 U.S.C. § 1437z-a, 24 C.F.R. § 30.68, 31 U.S.C. § 3901 – 3802, 24 C.F.R. Part 28, and 2 C.F.R. Parts 180 and 2424 with respect to the allegations in the Pre-Penalty Notice and the Complaint. Nothing contained in this Agreement shall limit any Party's ability to enforce the terms of this Agreement.

8. **Respondent Parties' Release of Liability.** Respondent Parties waive, release, and remit all constitutional tort claims against HUD or HUD employees with respect to the on-site review conducted on October 25, 2019, the Pre-Penalty Notice issued to Respondent on March 12, 2020, and the Complaint filed in this matter.

9. **Material Breach.** The failure by Respondent Parties to pay any Monthly Payment due to HUD under this Agreement within thirty (30) days of the due date, without consent to the delay or modification of payment terms by HUD, shall constitute a material breach of this Agreement. In the event of such breach, HUD may pursue either of the following remedies at its discretion:

a. HUD may elect to refile its Complaint against Respondent and/or bring other administrative actions against Respondent Parties, as permitted by law.

HUD agrees that any amount(s) previously paid by Respondent Parties under this Agreement shall be credited toward any resulting judgment.

b. HUD may elect to treat the entire outstanding balance of the debt due pursuant to this Agreement as a fixed claim administered and processed under the provisions of the Debt Collection Improvement Act, codified at 31 U.S.C. § 3701, *et seq.* Respondent Parties would be jointly and severally liable for such debt. Respondent Parties agree to pay all reasonable costs, fees, and penalties as permitted by law with respect to collection of such debt.

10. **Limitations.** This Agreement does not waive any rights or responsibilities of HUD or any other Federal agency to investigate or initiate other actions pursuant to its lawful authority except as explicitly waived herein.

11. **Disclaimer.** No rights, obligations, representation or terms other than those expressly recited herein are to be inferred from this Agreement.

12. **Severability.** If any provision of this Agreement shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby but shall be enforceable to the fullest extent permitted by law.

13. **Counterparts.** This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

14. **Authority.** By signing below, Respondent Parties represent and warrant that any individual(s) executing this Agreement on their behalf have the requisite power and authority to do so.

15. **Entire Agreement.** This Agreement contains the entire agreement and understanding between the settlement parties. There are no representations or warranties, oral or written, expressed or implied, between the settlement parties relating to the subject matter of this Agreement that are not fully expressed herein.

16. **Signatures.** The Parties agree that facsimile or other electronically transmitted signatures on this Agreement shall be deemed to have the same force and effect as original signatures.

17. **Costs.** Each party to this Agreement shall pay its own costs and any legal fees.

WHEREFORE, the Parties hereto have duly executed this Agreement.

47-49 CARROLL STREET LLC

Date: 6-10-2021

By: Amir Ben-Yohanan
(Signature)

Name: Amir Ben-Yohanan

Title: Manager/Member

WEST OF HUDSON PROPERTIES

Date: 6-10-2021

By: Amir Ben-Yohanan
(Signature)

Name: Amir Ben-Yohanan

Title: Manager/Member

ABRAHAM "AVI" GAGIN

Date: 6-10-2021

By: Abraham Gagin
(Signature)

AMIR BEN-YOHANAN

Date: 6-10-2021

By: Amir Ben-Yohanan
(Signature)

UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

Date: 6-10-2021

By: Craig T. Clemmensen

Craig T. Clemmensen
Director, Departmental Enforcement Center

Date: _____

By: DANA NARODE
Digitally signed by: DANA NARODE
DN: CN = DANA NARODE C = US O = U.S.
Government OU = Department of Housing and
Urban Development, Office of General Counsel
Date: 2021.06.10 15:56:48 -0400

Dane M. Narode
Associate General Counsel, Program
Enforcement

ATTACHMENT A

Payment No.	Due Date	Payment Amount
1	Execution Date	\$15,000
2	July 1, 2021	\$15,000
3	August 1, 2021	\$15,000
4	September 1, 2021	\$15,000
5	October 1, 2021	\$15,000
6	November 1, 2021	\$15,000
7	December 1, 2021	\$15,000
8	January 1, 2022	\$15,000
	TOTAL	\$120,000.00



Your payment has been submitted to the designated government agency through Pay.gov and the details are below. Please note that this is just a confirmation of transaction submission. To confirm that the payment processed as expected, you may refer to your bank statement on the scheduled payment date. If you have any questions or wish to cancel this payment, you will need to contact the agency you paid at your earliest convenience.

Application Name: ONAP Grant Repayment
Pay.gov Tracking ID: 26SC-JESR
Agency Tracking ID: 76114709062

Account Holder Name: Park Street Land Development LLC
Transaction Type: ACH Debit
Transaction Amount: \$15,000.00
Payment Date: 06/11/2021

Account Type: Business Checking
Routing Number: 065000090
Account Number: *****6382

Transaction Date: 06/10/2021 12:37:16 PM EDT
Total Payments Scheduled: 1
Frequency: OneTime

Grant Number: HUD20003CMF
Grantee Name: 47-49 Carroll St LLC

THIS IS AN AUTOMATED MESSAGE. PLEASE DO NOT REPLY.