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

In the Matter of: APEX WAUKEGAN, LLC, and INTEGRA AFFORDABLE MANAGEMENT, LLC, Respondents.	22-AF-0129-CM-007 November 30, 2022

ORDER GRANTING SUMMARY JUDGMENT AND INITIAL DECISION

This matter, which was set for hearing beginning November 28, 2022, arose from a *Complaint* filed by the U.S. Department of Housing and Urban Development ("HUD") against Apex Waukegan, LLC ("Apex Waukegan") and Integra Affordable Management, LLC ("Integra") (collectively, "Respondents") seeking civil money penalties pursuant to 42 U.S.C. § 1437z-1 as implemented by 24 C.F.R. part 30. The *Complaint* alleges that civil money penalties in the amount of $1,258,671 should be imposed for Respondents' material violations of a Housing Assistance Payments ("HAP") contract with HUD. Specifically, HUD claims Respondents knowingly failed to provide housing units that are decent, safe, and sanitary.

On March 29, 2022, Respondents filed their *Answer*, wherein Respondents denied that the physical conditions of the units were as alleged in the *Complaint*. Respondents also denied the factual allegations cited in the *Complaint* supporting the civil money penalty sought by HUD.

On October 28, 2022, HUD moved for summary judgment on the basis that there is no genuine dispute that Respondents knowingly failed to maintain units in a decent, safe, and sanitary condition thereby breaching their obligations under the HAP contract. HUD adds that there is no dispute that the factors set forth in 24 C.F.R. § 30.80 justify the $1,258,671 penalty sought by HUD. As such, HUD requests that the Court find that (1) Respondents knowingly breached the HAP contract; (2) Respondents share an identity of interest; and (3) a penalty of $1,258,671 should be imposed.

Respondents did not respond to the *Motion for Summary Judgment* ("Motion").

APPLICABLE LAW

Standard of Review. 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)).

Civil Money Penalties. HUD is authorized to impose civil penalties against any owner, general partner, or identity of interest agent of a property receiving project-based assistance under Section 8 of the United States Housing Act of 1937. 42 U.S.C. §§ 1437f, 1437z-1(b)(1); see also 24 C.F.R. § 30.68. An entity is an "identity of interest agent" if the entity: (1) has management responsibility for the project; (2) in which the ownership entity, including its general partner or partners (if applicable), has an ownership interest; and (3) over which the ownership entity exerts effective control. 24 C.F.R. § 30.68(a).

A civil penalty may be imposed against such parties for the knowing and material breach of a HAP contract. 42 U.S.C. § 1437z-1(b)(2). "Knowing" is defined as "having actual knowledge or of acting with deliberate ignorance of or reckless disregard for the prohibitions under 42 U.S.C. § 1437z-1(h)(2)." Id. at § 1437z-1(h)(2) and 24 C.F.R. § 30.10. A breach may be material if it "has 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.

The failure to provide decent, safe, and sanitary housing in good repair is considered a violation of a HAP contract. 42 U.S.C. § 1437z-1(b)(2). HUD regulations set forth the physical condition standards that housing must meet to be considered decent, safe, sanitary and in good repair. 24 C.F.R. § 5.703. These standards, which are more specifically described further in this Decision, pertain to the major areas of the HUD housing such as a property's common areas and individual dwelling units. Id.

HUD may review projects at any time to ensure compliance with the HAP contract and program requirements. 24 C.F.R. § 886.318(c). For knowing and material breaches of the HAP

contract, HUD may seek a maximum penalty of $40,282. 24 C.F.R. § 30.68(c) (as amended by 86 Fed. Reg. 14371 (Apr. 15, 2021)).

DISCUSSION

HUD moves the Court for summary judgment in HUD's favor because the material facts of this matter cannot be genuinely disputed, HUD is entitled to judgment as a matter of law, and a civil money penalty should be imposed against Respondents.

I. Material Facts are not in Dispute

HUD first claims that summary judgment is warranted, because the material facts in this matter are not genuinely in dispute. Such facts purportedly demonstrate that Respondents, who share an identity of interest, breached the HAP contract by failing to provide decent, safe, and sanitary housing that is in good repair.

HUD, as the moving party, 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: (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).

Here, HUD has submitted extensive evidence that includes: a copy of the HAP contract; incident reports submitted to the National Housing Compliance; inspection reports; email communications between HUD and Respondents; photographs of units at the subject property; corporate records related to Respondents; sworn affidavits; and various court records. The Court has meticulously reviewed the evidence submitted and finds that it supports the material facts alleged in the *Complaint* and cited in HUD's *Motion*.

Conversely, Respondents have produced no evidence that would rebut HUD's claims or even raise a genuine issue for trial. Although Respondents denied many of the allegations contained in the *Complaint*, Respondents neither responded to the *Motion for Summary Judgment* nor otherwise produced evidence in support of the denials made in their *Answer*.[1] Accordingly, the Court finds that Respondents have failed to identify specific facts demonstrating a genuine issue exists requiring a hearing in this matter. See Matsushita Elec. Indus. Co., 475 U.S. at 586-87.

Based on the foregoing, the Court finds that the facts set forth below are not genuinely in dispute. The Court has considered all issues raised and all documentary evidence in the record. Those issues not discussed herein are not addressed because the Court finds they lack materiality or importance to this decision.

[1] In addition to failing to respond to HUD's *Motion*, Respondents failed to comply with the Court's Orders compelling discovery issued on June 28, 2022, and September 2, 2022, respectively. As a result, the Court imposed sanctions by Order dated October 3, 2022. The sanctions included prohibiting Respondents from offering evidence that would have been responsive to an Order to Compel.

A. The Project, Respondents, and Related Corporate Entities

i. Lakeside

Lakeside Tower Apartments is a project-based Section 8 property located at 200 Julian Street, Waukegan, IL 60085 (the "Project" or "Lakeside Tower"). The Project, which consists of 150 units and multiple common areas, receives project-based 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 Payment Contract ("HAP contract").

Lakeside Tower is owned by Respondent Apex Waukegan. Respondent Integra manages the Project, with Shimi Kohn identified as the specific property manager.

ii. Apex Waukegan, LLC

Respondent Apex Waukegan is an Illinois limited liability company, and the owner of record of Lakeside Tower. Respondent Apex Waukegan uses two addresses for itself: 2365 Nostrand Ave, Brooklyn, New York; and 10 Hill St, Newark, New Jersey. It consistently provides the phone number 718-925-4111 as a contact for the company.

Aron Puretz and David Helfgott are members of the limited liability company. Aron Puretz is the person responsible for filings and paying taxes on behalf of Apex Waukegan in the State of Illinois. Mr. Helfgott is the principal of record of Respondent Apex Waukegan on file with HUD. Mr. Helfgott, along with Jonathan Balsam, are the authorized signatories on Respondent Apex Waukegan's accounts at Bank of America.

iii. Integra Affordable Management, LLC

Respondent Integra is a Delaware limited liability company that is also registered in the State of Illinois. Respondent Integra has served as the management agent for the Project since the 2019 HAP assignment to Apex Waukegan, and it also manages other properties in at least six states. However, Integra only manages properties owned or affiliated with the Puretzes.

Respondent Integra uses the Hill Street address also used by Respondent Apex Waukegan. Its Human Resources staff, and accounting and bookkeeping employees work out of the Hill Street office. Naomi Worenklein and Andrew Swinkoski are Respondent Integra's owners of record on file with HUD, with their ownership interests listed as 85 percent and 15 percent, respectively. However, Ms. Worenklein had no involvement with Integra's finances or other operations, and she was only involved in selecting new properties for Integra to manage. Mr. Swinkoski never had meaningful control over Integra and resigned from the company in February 2022.

In May 2019, Respondent Integra listed Andrew Swinkoski, Aron Puretz, and Chaim Puretz as its shareholders. Aron Puretz also approved maintenance and repair expenses paid by Respondent Integra at another property managed by the company.[2]

Jonathan Balsam is the person primarily responsible for financial matters related to Respondent Integra. Mr. Balsam also approved some hiring at Integra and took direction from David Helfgott.

Shimi Kohn was Respondent Integra's asset manager assigned to Lakeside Tower. Mr. Kohn directed how much could be spent on staff wages and salaries at the properties he managed to include Lakeside Tower. Mr. Kohn often took direction from Aron Puretz and reported to David Helfgott. On one occasion, Mr. Kohn told Mr. Swinkoski that Aron Puretz "would kill [Mr. Kohn] if he went over budget." On another occasion in which Mr. Kohn directed payment for repairs at another property managed by Integra, Mr. Kohn noted that Aron Puretz, who was copied in the email, had already approved the repair and the cost of it.

David Helfgott is identified as the registrant, admin, tech for Respondent Integra's Google domain, however his control over the company was much greater. Mr. Helfgott was functionally the COO of Respondent Integra. Mr. Helfgott and Chaim Puretz recruited Mr. Swinkoski to Respondent Integra, and Mr. Swinkoski considered Mr. Helfgott to be his boss and primary point-of-contact for Integra.

iv. Entities related to Respondent Apex Waukegan and Respondent Integra[3]

Apex Equity Group LLC

Apex Equity Group LLC ("Apex Equity") is a New York limited liability company, whose employees were copied on e-mails between Integra and its auditors regarding bookkeeping matters. Apex Equity uses the same addresses as Respondent Apex Waukegan and Integra—namely the Nostrand Avenue and Hill Street addresses.

Aron Puretz is the President of Apex Equity. Naomi Worenklein, who is Respondent Integra's owner of record with HUD, is the Director of Acquisitions. Johnathan Balsam is Apex Equity's CFO. Shimi Kohn is identified as part of the operations team at Apex Equity.

Aloft Mgt LLC

Aloft Mgt LLC ("Aloft"), a New York limited liability company, is identified as being the entity primarily responsible for Respondent Integra's finances and operations. Aloft uses both the Hill Street address and the Nostrand Avenue address. It also uses the same contact phone number as Respondent Apex Waukegan.

[2] These repair expenses were approved by Mr. Aron Puretz using the email address aron@pfholdingsllc.com.

[3] Although not identified as respondents in this matter, the following corporate entities are closely related to Respondents and these facts are relevant to HUD's claim that Respondents share an identity of interest.

Both Chaim Puretz and Aron Puretz are members of Aloft with Chaim Puretz being designated as registered agent and one of the two signatories for Aloft's accounts with Bank of America. Employees of the Puretzes' other companies also hold positions with Aloft. David Helfgott is a member of Aloft. Jonathan Balsam is the controller for the company.

Aloft also handled Integra's human resources with at least one employee having the authority to terminate Integra's employees. For example, that individual, Susan Eshmaway, sent an email instructing Integra employees to send completed forms regarding employee discipline to her stating that "I will not terminate an employee without documentation."

PF Holdings LLC

Chaim Puretz is the owner of PF Holdings LLC ("PF Holdings"). PF Holdings is a New York limited liability company that shares the Hill Street offices with Respondents and Apex Equity. The company employs several individuals that are also employed by Apex Equity, and Aloft Management. Those employees include Naomi Worenklein, David Helfgott, and Shimi Kohn.

B. Project-based assistance and the HAP contract

In 2019, HAP contract IL06E000096 for Lakeside ("the HAP contract") was transferred to Respondent Apex Waukegan. Pursuant to the HAP contract, HUD's assistance payments are conditioned on the Owner complying with HUD's regulations and program requirements for the administration of project-based rental assistance.

C. History of issues at Lakeside Tower prior to HUD's onsite review

National Housing Compliance ("NHC"), the contract administrator for Respondents' HAP contract, maintained a list of tenant complaints and the City of Waukegan inspected Lakeside Tower uncovering violations of local city code. These complaints and the inspection all reflected problems stemming from water issues. Even Integra's own software system recorded service requests related to water.

National Housing Compliance

NHC's records include the following complaints:

> In October of 2019, the tenant in 409 reported problems with her windows and asked that plastic be installed as a seal.
>
> Also, in October of 2019, the tenant reported a leak in the ceiling and bathroom sink.
>
> On Feb. 12, 2020, the tenant in 410 reported to NHC that her unit had mold.

The tenant in 901 reported water damage to the bedroom, mold on the bathroom ceiling, water damage to the kitchen counters, and various missing hardware on Aug. 11, 2020, Dec. 17, 2020, and June 7, 2021.

On Nov. 2, 2020, the tenant in 1411 reported to NHC that her unit contained several problems, including a leaking ceiling and mold.

City of Waukegan

On June 9, 2021, the City of Waukegan's inspection of Lakeside Tower revealed significant damage related to water issues. The City of Waukegan mailed Respondent Apex Waukegan notice that fifteen units at the Property violated the local city code. Later, on June 30, 2021, the City of Waukegan reinspected Lakeside Tower and notified Respondent Apex Waukegan that 108 units, including the units previously inspected on June 9, 2021, violated city code. Forty-seven of the units inspected contained evidence of leaks, window damage, damaged walls, or drainage issues.

Integra

From June 20 to July 19, 2021, Respondent Integra's own management software also recorded at least 22 service requests for issues that Respondent characterized as leaks or damage to walls or ceilings.[4]

D. HUD's September 2021 onsite review

From September 2-3, 2021, HUD conducted an onsite review of Lakeside Tower. That review uncovered systemic problems related to water damage in 34 units and common areas in the Project. These conditions were identified in correspondence from HUD to Respondents sent on September 19, 2021.

Prior to receiving HUD's communication, Lakeside Tower's maintenance personnel entered the 34 units between June and July 2021. HUD's observations and service requests logged by Respondent Integra's management software are the basis for the 34 counts in the *Complaint*.[5]

[4] Unit 1002 (6/25) (water from ceiling); Unit 611 (ceiling tile water stain/leak, sink leaks); Unit 1102, (water leak): Unit 1208 (water leak); Unit 309 (sink leaks); Unit 909 (water from ceiling); Unit 1304 (water from ceiling); Unit 512 (toilet leaks); Unit 703 (sink leaks); Unit 805 (toilet leaks); Unit 1305 (wall ceiling damaged); Unit 1306 (wall ceiling damaged); Unit 1212 (wall ceiling damaged); Unit 1310 (wall ceiling damaged); Unit 1002 (7/18) (wall ceiling damaged); Unit 1003 (wall ceiling damaged); Unit1009 (wall ceiling damaged); Unit 1112 (wall ceiling damaged); Unit 606 (wall ceiling damaged); Unit 612 (wall ceiling damaged); Unit 702 (wall ceiling damaged); Unit 707 (wall ceiling damaged).

[5] The units that are the subject of each count include: Count 1, Unit 1412; Count 2, Unit 1410; Count 3, Unit 1408; Count 4, Unit 1407; Count 5, Unit 1406; Count 6, Unit 1405; Count 7, Unit 1402; Count 8, Unit 1312; Count 9, Unit 1311; Count 10, Unit 1308; Count 11, Unit 1304; Count 12, Unit 1303; Count 13, Unit 1302; Count 14, Unit 1301; Count 15, Unit 1208; Count 16, Unit 1201; Count 17, Unit 1107; Count 18, Unit 1106; Count 19, Unit 1102; Count 20, Unit 1011; Count 21, Unit 1007; Count 22, Unit 1002; Count 23, Unit 909; Count 24, Unit 905; Count 25, Unit 904; Count 26, Unit 809; Count 27, Unit 806; Count 28, Unit 804; Count 29, Unit 702; Count 30, Unit 705; Count 31, Unit 701; Count 32, Unit 405; Count 33, Unit 404; Count 34, Unit 306.

Each of the 34 dwellings contained extensive water damage throughout the units. Ceilings and walls in the units showed signs of water leakage evidenced by cracking plaster, staining, peeling, and bubbling paint. Many of the tenants reported that their windows leaked when it rained. The area around the windows and the windowsills had paint bubbling, plaster cracking and crumbling. Baseboards located under windows were disintegrated or missing altogether.

Other conditions existed that were water related. Electrical outlets did not work because of water damage. In one case, water leaked through the light fixture in a unit's ceiling. The presence of mold growing on ceilings and walls was found in all areas of the units including bathrooms and kitchens.

Kitchens had issues beyond mold or leaking walls and ceilings. Cabinets had bubbling and peeling paint. Other damage included broken cabinets or missing hardware. In one unit the pipe underneath the kitchen sink had burst and it had been that way for months.

Bathrooms also had damage unrelated to ceilings and walls. Units had toilets that were missing caulking around the base, or the caulking was moldy. Toilets were also not properly anchored to the floor. Sinks were pulling away from the wall. Other miscellaneous issues existed such as cracked tile, bathtub surface damage, and sewage backing up in the bathroom sink.

Additional damage not related to water concerned interior doors. The doors were broken, missing hardware, or missing altogether.

One unit had bed-bugs and the issue was not addressed.

The common areas also had water damage including: the south stairwell between the 7th and 8th floors; the laundry room ceiling; and the parking garage ceiling, all primarily containing leaks and peeling paint.

The tenants stated they had reported the problems, but the issues had either not been repaired or not properly addressed. For example, maintenance personnel would paint over the cracks, stains, and mold only to have the problems return due to the underlying water issues not being addressed. One tenant stated that the water issues had been going on since 2019. Other tenants explained the conditions in their units had been ongoing for months sometimes years.

Since the assignment of the HAP contract, Respondents never made any capital improvements to the Project.

E. HUD contact with Respondents after the onsite review

Following HUD's onsite review, HUD's trouble asset resolution specialist assigned to Lakeside Tower attempted to contact Respondents about the state of the Project but could not reach Respondents between the fall of 2021 and October 2022.

On November 18, 2021, HUD issued Respondents a Pre-Penalty Notice (the "Notice") informing them that HUD was considering imposing civil money penalties for Respondents' violations of the HAP contract. Respondent Apex Waukegan submitted a response to the Notice on December 17, 2021 ("Response") denying the allegations in the Notice, including that Integra shares an identity of interest with Apex Waukegan, and stating that "Apex has no control over Integra [aside from those granted under the management agreement] and no financial interest—**of any kind**—in Integra." The Response also denied that Respondents knew about most of the conditions inside the units and stated that "[u]pon receipt of the HUD inspection report, for the first time, all of the work became known. [] Apex "immediately hired Severn Group LLC to address the conditions identified in the HUD inspection report and to undertake all of the repairs identified. All work was completed by September 5, 2021."

F. Other proceedings involving Respondents, their affiliates, and principals[6]

The City of Waukegan initiated litigation against Apex Waukegan in the Circuit Court for Lake County on September 7, 2022, based on dangerous and unsafe conditions at Lakeside Tower. The suit seeks damages and equitable relief, including receivership.

Wells Fargo Bank as Trustee for Morgan Stanley filed an emergency motion in the United States District Court for the Eastern District of Arkansas to appoint a receiver for Allied Garden Estates, Jefferson Manor, Terrace Green Apartments, and Northwest Acres—four properties owned by entities controlled by Chaim Puretz—and managed by Integra. The motion alleges the owner failed "to address numerous health and safety concerns, including, among other things, mold and insect infestations, flooding and sewage backups due to collapsed pipes, unrepaired structural issues, unrepaired fire damage, and unresolved mechanical problems due to defendants' neglect of at least two of the four properties involved in this action."

In March 2022, Integra was subject to a final order from the Secretary imposing $702,226.75 in civil money penalties based on conditions at Ellis Lakeview, a property that Integra managed as an identity of interest management agent with an affiliate of Respondent Apex Waukegan.

In April 2022, the City of Chicago sought a receiver for Ellis Lakeview, again owned by Respondents' affiliate, and managed by Integra. On June 2, 2022, the Circuit Court of Cook County ordered Respondents' affiliate to replace Integra with another management company at Ellis Lakeview. At that hearing, Respondents' counsel made the following representation about Integra:

> [I]n these conversations with the Ownership Group that we had beginning yesterday afternoon to yesterday evening to this morning, I think that they fully understand and appreciate the concerns that were raised by the Court with regard to Integra's management. Integra

[6] HUD identifies the following proceedings involving Respondents, the Puretzes, and the companies affiliated with the Puretzes and Respondents. The facts in this section are not genuinely in dispute. However, the weight to be attributed to such evidence and the conclusions drawn therefrom will be decided by the Court and explained further in this decision.

> manages properties for this Ownership Group and its affiliates in six different states. Without getting into too much detail, in some of those properties similar concerns about Integra's management have been raised. They have not risen to his level, but they have been raised. And in light of that the ownership wanted to consider the possibility of removing Integra altogether and brin[g]ing (sic) in a new company that could property manage, not only this Ellis entity, and put a real focus on Ellis, but also have the capabilities [o]f (sic) managing in the other areas."

On September 6, 2022, the City of Kankakee, Illinois filed an action against Integra as management agent and against the ownership entity seeking injunctive relief and penalties based on the conditions of 2200 East Court. The Owner entity, JPC East Court LP, is located at 10 Hill St. Ste 1E, Newark, NJ.

II. HUD is Entitled to Judgment as a Matter of Law.

HUD claims it is entitled to judgment as a matter of law, because the material facts demonstrate that Respondents, which share an identity of interest, failed to maintain decent, safe, and sanitary housing. HUD claims such failures constitute knowing and material breaches of the HAP contract warranting the imposition of a civil money penalty.

A. Respondents are the Owner and Identity of Interest Agent.

HUD claims that material facts are not in dispute that Apex Waukegan and Integra share an identity of interest. As a result, HUD contends that the parties are jointly and severally liable for civil money penalties.

Civil money penalties may be assessed against any owner of a property receiving project-based assistance under Section 8, any general partner or a partnership owner of the property, and any agent employed to manage the property that has an identity of interest with the owner of the general partner of a partnership owner of the property. 42 U.S.C. § 1437z-1(b). The three components of an identity of interest entity by definition include: (1) that an entity has management responsibility for a project; (2) in which the ownership entity, including its general partner or partners (if applicable) has an ownership interest, and (3) over which the ownership entity exerts effective control. 24 C.F.R. § 30.68(a).

It is not disputed that Respondent Integra has management responsibility for Lakeside Tower or that Respondent Apex Waukegan is the ownership entity for the Project. Moreover, as explained in the undisputed facts set forth above, Respondent Apex Waukegan is owned by Aron Puretz and Chaim Puretz, who both also effectively control Respondent Integra.

i. Aron Puretz and Chaim Puretz have an ownership interest in and control over Respondent Apex Waukegan.

HUD first claims Aron Puretz and Chaim Puretz, who are brothers, own Respondent Apex Waukegan. An "ownership interest" is any direct or indirect interest in the stock, partnership interests, beneficial interests (for a trust) or other medium of equity participation. 24 C.F.R. § 30.68(a). An indirect interest includes equity participation in any entity that holds a management interest (e.g., general partner, managing member of an LLC, majority stockholder, trustee) or minimum equity interest (e.g., a 25% or more limited partner, 10% or more stockholder) in the ownership entity of the management agent. 24 C.F.R. § 30.68.

Here, it is undisputed that Respondent Aron Puretz and David Helfgott are members of Respondent Apex Waukegan. As members, they have ownership interest in the company. Aron Puretz, as a member for Apex Waukegan, also identified himself in tax filings as being the person responsible for such filings and paying tax on behalf of the company. And, although not identified as a member of Respondent Apex Waukegan, Chaim Puretz is also considered an owner by his relation to Aron Puretz. See Management Agent Handbook 4381.5 Rev-2 at 2-3 (stating "Any ownership, control, or interest held or possessed by a person's spouse, parent, child, grandchild, or sibling or other relation by blood or marriage is attributed to that person...").

HUD next claims that Aron Puretz and Chaim Puretz control Respondent Apex Waukegan through employees of their companies that include Aloft, Apex Equity, and PF Holdings.[7] These employees are: David Helfgott, who is Respondent Apex Waukegan's owner of record with HUD, employed by PF Holdings, and is a member of Aloft; Jonathan Balsam, who is employed by Aloft, Apex Equity, and PF Holdings; and Shimi Kohn, who is employed by PF Holdings and Apex Equity. Through these employees, the Puretzes controlled Respondent Apex Waukegan's finances and operations, and controlled the company's only asset, Lakeside Tower.

ii. The Puretzes have effective control over Respondent Integra.

In a tax filing, the Puretzes were identified as Respondent Integra shareholders. In addition to their direct ownership interest in Integra, the Puretzes also exerted effective control over Integra through various employees. "Effective control" is the ability to direct, alter, supervise, or otherwise influence the actions, policies, decisions, duties, employment, or personnel of the management agent. 24 C.F.R. § 30.68(a)(3). As reflected in the facts section above, HUD has meticulously connected and demonstrated through a plethora of evidence such as state business filings, tax records, overlapping employees of related companies, and affidavits, that both Aron Puretz and his brother Chaim Puretz maintained effective control over Respondent Integra.

For example, Aron Puretz approved certain maintenance and repair expenses paid by Respondent Integra and influenced budget decisions related to Lakeside Tower that were being

[7] As previously noted, the undisputed facts demonstrate that both Puretzes own Aloft, Aron Puretz owns Apex Equity, and Chaim Puretz owns PF Holdings.

considered by Integra's asset manager assigned to the Project. David Helfgott, who was functionally the COO of Respondent Integra and supervised the company's asset managers, reported to the Puretzes. Shimi Kohn, who was Respondent Integra's asset manager assigned to the Property, and who directed how much could be spent on staff wages and salaries at the properties he managed, often took direction from Aron Puretz. Aloft, which is owned by the Puretzes, is the entity primarily responsible for Integra's finances and operations. Finally, various individuals who were employees of Aloft, Apex Equity, and PF Holdings, performed services for Respondent Integra that include Human Resources responsibilities, accounting, and bookkeeping. The overwhelming, undisputed evidence demonstrates that Aron Puretz and Chaim Puretz, either through direct oversight or through their employees, had the ability to direct, alter, supervise, or otherwise influence the actions, policies, decisions, duties, employment and personnel of Respondent Integra. 24 C.F.R. § 30.68(a)(1)-(3). Accordingly, the Court finds the Puretzes, who also owned and controlled Respondent Apex Waukegan, had effective control over Respondent Integra.

Based on the forgoing, the Court concludes that there is no dispute as to the material facts that Apex Waukegan and Integra shared an identity of interest. Integra managed the Project owned by Apex Waukegan. Both entities were owned and effectively controlled by the Puretzes. Accordingly, HUD may seek civil money penalties from Respondent Apex Waukegan as the owner of Lakeside Tower and Respondent Integra as an identity of interest agent providing management services to the Project. 24 C.F.R. § 30.68(b).

B. Breaches of the HAP contract

HUD claims that summary judgment for HUD is appropriate on all Counts, because the undisputed facts show that Respondents breached Lakeside Tower's HAP contract that requires owners to provide decent, safe, sanitary dwellings that are in good repair. These requirements are not only set forth in the HAP contract itself, but also contained in HUD's regulations.

An important requirement of HUD's project-based assistance program is that assisted rental units be decent, safe, sanitary, and in good repair. 24 C.F.R. § 5.703. This requirement is also specifically stated in the HAP contract between Respondent Apex Waukegan and HUD. The physical condition standards for HUD housing detail specific requirements. See 24 C.F.R. § 5.703. Those conditions relevant in this case include:

- Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid (if applicable), ceiling, doors, electrical systems, floors . . . kitchen, lighting, outlets/switches . . . smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair. 24 C.F.R. § 5.703(d)(1).

- If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste. 24 C.F.R. § 5.703(d)(3).

- The dwelling units and common areas must be free of health and safety hazards…including … electrical hazards…vermin…have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. 24 C.F.R. § 5.703(f).

Also, relevant to this case, is the requirement that common areas must be free of health and safety hazards, operable, and in good repair. 24 C.F.R. § 5.703(e).

The undisputed facts set forth above describe in detail the conditions at Lakeside Tower that violated the HAP contract and HUD's rules requiring project owners to provide decent, safe, sanitary dwellings that are in good repair. Each of the 34 units have widespread and extreme water damage throughout the dwellings. The majority of the issues are interrelated to these extensive water problems. Residents reported that when it rained water poured in around the windows. Plaster around the windowsills showed cracks, peeling, and in many cases was crumbling. Ceilings and walls also reflected water damage such as cracks, paint bubbling, water streaks, and discoloration. Baseboards under windows were deteriorating or missing. More than half of the inspected units had mold growing on walls and ceilings. The common areas including the south stairwell between the 7th and 8th floors; the laundry room ceiling; and the parking garage ceiling also had evidence of extensive water damage.

The widespread water damage also resulted in hazardous conditions. For example, in one unit water would flow through a ceiling light fixture. In other units, electrical outlets did not work because of water damage surrounding those outlets. Residents stated that the water problems had been ongoing sometimes months, sometimes years. In some units, maintenance personnel painted over the cracks, water discoloration, and mold only to have it return due to the failure to properly address the underlying issue.

Other common problems included missing doors, damaged doors, and those missing hardware. Toilets were in disrepair such as caulk around the base that was either missing or moldy and one toilet that was not secured. Units had bathroom sinks coming away from the wall. Kitchen damage included cabinet doors that were broken or missing hardware, and mold.[8]

Due to the existing conditions, the units and common areas at the Property were not safe, sanitary, or in good repair. The HAP contract and HUD rules set forth the requirements that dwellings receiving Section 8 housing assistance must provide decent, safe, sanitary housing units for its residence. 42 U.S.C. § 1437z-1(b)(2)(A), 24 C.F.R. § 5.703. Therefore, the Court concludes that the HAP contract was breached because at least 34 dwellings were not in compliance with the statutory and regulatory mandated standards. 42 U.S.C. § 1437z-1(b)(2), 24 C.F.R. § 5.703.

[8] There were other issues related to individual units. In one unit a pipe had burst under the sink but had not been repaired. Another resident said the unit had a bed-bug issue that she reported but was not addressed.

C. Breaches are Knowing and Material

HUD claims Respondents' breaches of the HAP contract were knowing and material. The statute defines "knowing" as meaning actual knowledge of or acting with deliberate ignorance of or reckless disregard. 42 U.S.C. § 1437z-1(h)(2).

It is not disputed that Respondent Integra maintained a list of complaints of residents needing maintenance calls for various reasons. Respondent Integra reported that its employee(s) responded to maintenance calls, in or about June – July 2021, during which time they would have observed the issues reported by tenants and confirmed in subsequent onsite inspections performed by the City of Waukegan and HUD.[9] Accordingly, the Court finds Respondents' breaches of the HAP contract were knowing, because they knew the units were not kept in good repair and the conditions in the units and common areas were not decent, safe, or sanitary.

HUD also claims these violations were "material" breaches of the HAP contract. 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.; *see also*, *supra*, In re American Rental Management at 15 (same).

The purpose of the U.S. Housing Act of 1937 was to provide financial assistance to the states and political subdivisions thereof for the elimination of unsafe and insanitary housing conditions, for the eradication of slums, for the provision of decent, safe, and sanitary dwellings for families of low income, and for the reduction of unemployment and the stimulation of business activity, to create a United States Housing Authority, and for other purposes. 42 U.S.C. § 1437. In 1974, the Housing and Community Development Act amended the 1937 law to create Section 8 housing. 42 U.S.C. § 1437f. Section 8 of the Housing Act authorized HUD to devote federal funds to housing assistance for the purpose of aiding lower-income families in obtaining a decent place to live and of promoting economically mixed housing. Id. The requirement that owners provide decent, safe, and sanitary dwellings that are in good repair is so fundamental to the HAP contract that payments are contingent on this requirement being met.

That Respondents failed to provide decent, safe, and sanitary conditions in no less than 34 units and common areas goes to the heart of the agreement itself and defeats the very purpose for which HUD is providing housing assistance pursuant to Section 8 of the Housing Act. Accordingly, Respondents' breaches of the HAP contract on this basis and to the extent that

[9] The conditions in the dwellings such as water damage and mold had been longstanding. The pictures taken at the dwellings during onsite reviews showed the water damage such as walls where the plaster had cracked and fallen away. Also, the pictures of mold demonstrated that the moisture from water damage had been ongoing. These conditions would have been obvious to anyone entering the dwelling, in particular, to someone who has experience as a maintenance professional.

it affected so many units are material. See e.g., U.S. v. NVR, Inc., 2020 U.S. Dist. LEXIS 231615 *9 (December 9, 2020) (wherein the court considering an action brought by the Environmental Protection Agency for a civil money penalty cited New Jersey law stating that a breach is material if it tends to defeat the purpose of the contract).

D. Affirmative Defenses

The Court notes that Respondents' *Answer* purports to raise three affirmative defenses. For the reasons set forth below, the Court concludes that Respondents' arguments are insufficient as a matter of law.

Respondents have the burden to prove any affirmative defense and any mitigating factors by a preponderance of the evidence. 24 C.F.R. § 26.45. An affirmative defense is a defense that defeats a plaintiff's case even if all the allegations in the claim are true. BLACK'S LAW DICTIONARY (9th ed. 2009). An affirmative defense "should give color to the opposing party's claim, i.e., admit an apparent right in the opposite party and rely on some new matter by which that right is defeated." 2A J. Moore, MOORE'S FEDERAL PRACTICE ¶ 8:27(2), at 1843 (2d ed. 1974).

Respondents' first affirmative defense in their *Answer* claims that HUD's *Complaint* fails to state a cause of action upon which relief can be granted.

The Federal Rules of Civil Procedure, which do not govern this proceeding but serve as persuasive authority, provides that a pleading that states a claim for relief must contain a short and plain statement setting forth the court's jurisdiction; a short and plain statement of the claim showing that the pleader is entitled to relief; and a demand for the relief sought. Fed. R. Civ. P. 8(a). In cases where a civil money penalty is sought, HUD's procedural rules provide that the complaint must state the factual basis for the decision to seek a penalty, the applicable civil money penalty statute, and the amount of penalty. 24 C.F.R. § 30.85(b).

A review of HUD's *Complaint* demonstrates that both HUD's pleading requirements and those set forth in the Federal Rules are met. The *Complaint* cites the basis for the Court's jurisdiction and identifies the civil money penalty statute applicable in this matter in addition to other applicable legal authorities. In the *Complaint*, HUD alleges Respondents are liable for 34 counts of violations for failing to maintain decent, safe, or sanitary conditions in Lakeside Tower's units. Each count contains multiple paragraphs and subparagraphs providing extensive detail as to each condition that allegedly violated the rules. HUD also sets forth the factors for determining a civil money penalty and the amount sought for each violation. Moreover, the factual allegations if accepted as true, support HUD's claims for relief. See Lee v. City of Los Angeles, 250 F.3d. 668, 679 (9th Cir. 2001) (When reviewing whether a complaint states a claim upon which relief could be granted, "all factual allegations set forth in the complaint are taken as true and construed in the light most favorable to plaintiffs."). Accordingly, the Court finds Respondent's first affirmative defense is insufficient as a matter of law.

Respondents' second and third affirmative defenses do not require analysis, because they are not affirmative defenses. Rather, Respondents' second and third affirmative defenses, taken

together, reiterate Respondents' claim that the facts in this matter do not support a cause of action. Specifically, Respondents' second affirmative defense claims the factual allegations against Respondents are false, and Respondents' third affirmative defense claims the facts do not support a valid cause of action against Respondents. As concluded by the Court, there are no genuine dispute as to the material facts alleged in the *Complaint* and those facts demonstrate that HUD is entitled to judgment as a matter of law. Accordingly, the Court finds that Respondents' affirmative defenses are insufficient and HUD is entitled to judgement as a matter of law.

In summary, the Court finds the undisputed material facts demonstrate that Respondent Apex Waukegan and Respondent Integra share an identity of interest. Each of Respondents' failures to provide decent, safe, and sanitary housing that is in good repair constitute a material breach of the HAP contract. Respondents knew that impermissible conditions existed in the 34 units and in multiple common areas but did not remedy the situation. In addition, Respondents' affirmative defenses raised in their *Answer* are not only unproven but are also insufficient as a matter of law. Accordingly, the Court finds HUD is entitled to judgment as a matter of law.

III. Civil Money Penalty

HUD seeks a total civil penalty of $1,258,671 for the 34 breaches of the HAP contract. Having concluded that Respondents' material and knowing breaches of the HAP contract subject them 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;
> (i) Such other matters as justice may require; and
> (j)(1) Injury to tenants.

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. *In re* Yetiv, HUDALJ 02-001-CMP, 2003 WL 2596134, *11 (HUD ALJ Sept. 2, 2003).

1. Gravity of the offense

Respondents failed to maintain the Lakeside Tower dwellings in a manner where the physical standards are decent, safe, sanitary, and in good repair. See 42 U.S.C. § 1437z-1(b)(2)(A), 24 C.F.R. § 5.703. And, as determined above, the failure to maintain units that are decent, safe, sanitary, and in good repair is a serious violation of the HAP contract. Such violations defeat the purpose of the housing assistance HUD provides to aid families in obtaining a decent place to live. Moreover, the violations were numerous and widespread with over 20 percent of the units and multiple common areas affected. See *In re* American Rental Management Company, HUDALJ 99-01-CMP at *19 (HUDALJ May 26, 2000) (finding that a large number of violations makes the offenses more serious as opposed to if only a handful of violations occurred).

Moreover, the City of Waukegan inspected Lakeside Tower on June 9, 2021, and then again on June 30, 2021, finding significant water issues in 108 units that violated city code.

The violations found at the Project were significant and longstanding. As a result of Respondents' failure to properly maintain the Project, the residents were forced to live in deplorable conditions such as units with substantial water damage resulting in, among other things, leaking windows, peeling paint, crumbling walls, leaking ceilings, and mold. See 24 C.F.R. § 5.703(d)-(f) (identifying conditions that are deemed to be impermissible health and safety hazards). Such conditions did not occur overnight. Rather, they were longstanding having been reported not later than February 2020 and persisting even after HUD conducted its onsite review in September 2021.[10] The Court therefore finds that Respondents' breaches of the HAP contract were grave warranting a severe penalty.

2. History of prior offenses

HUD identified several proceedings in which Respondents, their affiliates, or their principals—namely the Puretzes—are alleged to have similarly failed to maintain units that are decent, safe, sanitary, and in good repair.

Where Respondents have a history of prior offenses, the Court may find that a significant monetary penalty is appropriate. See *In re* Felicity Harmony Limited Partnership, 2007 HUD ALJ LEXIS 56, *15 (HUDALJ May 15, 2007) (default decision in which the court cited two prior judgments against the respondent for similar violations and imposing a significant penalty).

Of the proceedings cited by HUD, Respondents in this matter have only been adjudged to have committed a similar prior offense in one proceeding. Although one or both Respondents have been named in other proceedings, HUD has not provided evidence that judgments have been entered supporting HUD's suggestion that an extensive history of prior offenses exists. As such, the Court will only attribute the one proceeding as a prior offense to be considered for this factor. See *In re* Partnership for Urban Housing Development, Inc., HUDOHA 14-AF-0102-

[10] Tenants also reported that water leaks were occurring as early as the fall of 2019. There is no evidence in the record that the existing conditions were adequately remedied by Respondents.

CM-001 at 15 (HUDOHA Apr. 28, 2016); *In re* Lord Commons Apartments, LLC et.al, HUDALJ 05-060-CMP at 8 (HUDALJ July 20, 2007) (stating that only adjudicated offenses qualify as historical offenses).

In that matter identified by HUD, Respondent Integra and Respondent Apex Chicago were assessed a civil money penalty of $720,266.75 for the poor conditions at a property managed by Integra. *In re* Apex Chicago Il, LLC and Integra Affordable Management, LLC, 22-AF-0111-CM-005 (March 28, 2022). The basis for the civil penalty in this case is the same as the matter at bar. The fact that Integra has recently been adjudged to have engaged in comparable violations warranting a severe civil money penalty supports a similarly severe penalty in this matter.

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.")

As noted *supra*, Respondents' repeated refusal to comply with Orders related to discovery resulted in sanctions being imposed on October 3, 2022. Among the sanctions imposed was the determination that the Court would infer that Respondents have the ability to pay the penalty sought in HUD's *Complaint*. Accordingly, the Court finds Respondents' ability to pay is not a mitigating factor.

4. Injury to the public and tenants

"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.

This Court has already found that Respondents breached the HAP contract when they failed to provide safe and sanitary dwellings in good repair to the residents of Lakeside Tower. This significant failure to comply with HUD's rules governing the Section 8 program harmed the residents by subjecting them to conditions that were not decent, safe, sanitary, or in good repair for an extended period. These tenants are some of the most vulnerable due to their need for HUD assistance to secure housing.

Second, this type of neglect undermines HUD's Section 8 program. As noted repeatedly, the purpose of housing assistance provided pursuant to Section 8 of the Housing Act is to help lower-income families in obtaining a decent place to live. The violations identified in this matter undoubtedly harms the integrity of HUD's program.

Finally, the Court notes that no evidence has been presented on the issue of the cost of enforcement and litigation in this case. Although it is reasonable to infer that HUD expended

resources investigating, enforcing, and litigating Respondents' violations in the matter, the Court declines to speculate the cost of such resources. Nevertheless, the Court finds that the injury to the tenants and the public is sufficient to warrant a severe penalty.

5. Benefits received by the violator

Respondents reaped the benefit of violating the statute and regulations that breached the HAP contract. Despite the frequent service requests and the impermissible conditions of the units, Respondents never actually fixed the underlying issues. Instead, any attempts Respondents made to address problems with the units were shoddy and superficial—such as painting over water damage and mold without actually resolving the water leaks by making repairs. Respondents also made no capital improvements to Lakeside Towers. Rather, they continued to accept Government assistance payments without investing in the necessary repairs and upkeep for the Property.[11] Moreover Respondents, through their principals, intentionally imposed cost control measures that resulted in the properties managed by Integra being inadequately staffed. Therefore, the Court finds that Respondents benefited financially by ignoring their obligations to keep the dwellings at Lakeside Tower safe, sanitary, and in good repair.

6. Extent of potential benefit to other persons

HUD does not claim, nor does the record reflect that other persons benefitted from Respondents' breaches of the HAP contract. Although it may be inferred that Respondents' affiliates or principals may have benefited, the Court declines to speculate how or the degree to which they benefitted from Respondents' breaches.

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.

The goal of future deterrence with regard to Respondents is important and beneficial. The fact that Aron and Chaim Puretz are members of both Apex Waukegan and Integra provides the opportunity to encourage deterrence as to both companies. Further, Integra provides management services to other Section 8 properties and a significant penalty should encourage Integra's decision makers to meet with the requirements of their HAP contracts. Moreover, there is undisputed evidence that affiliates and principals of Respondents likely own and manage other properties in which similar deficient conditions exist. A severe penalty in this case would deter

[11] The Court notes that even if Respondents attempted to mitigate their liability, Respondents never produced any evidence in support of this claim. In point-of-fact, Respondents' refusal to comply with discovery orders resulted in the Court imposing the sanction that the inference would be made that Respondents took no steps to mitigate the HAP contract violations set forth in Counts 1-34 of the *Complaint*.

those affiliates and other Section 8 project owners by demonstrating that failing to comply with their statutory, regulatory, and contractual obligations will result in substantial financial consequences.

8. Degree of violator's culpability

As reflected in the findings of fact, Respondents made policy and staffing decisions regarding Lakeside Tower to intentionally keep costs at a minimum. Even when aware that Lakeside Tower was considerably understaffed, Respondent Integra's asset manager stated Aron Puretz directed him not to expend additional resources. Respondents' scheme to save money by refusing to make necessary repairs to the units and common areas of the Project directly resulted in the impermissible conditions suffered by the residents of Lakeside Tower. Respondents' culpability warrants a severe penalty.

9. Other matters as justice may require

A significant penalty may also be appropriate where Respondents have failed to understand the gravity of this matter. There is no evidence that Respondents have attempted to remediate the unacceptable conditions existing in units and common areas of the Project. Respondents have also not participated in this proceeding in a meaningful manner since May 2022. They have ignored this Court's Orders including two Orders to Compel Discovery and an Order for Sanctions. In terms of the current *Motion*, Respondents neither responded, nor asked for an extension of time to do so. Respondents have also ignored HUD counsel's attempts to discuss and compromise as to the stipulated facts to be submitted with their Prehearing Statements. Respondents' counsel not only ignored HUD's attempts to develop stipulated facts, they did not themselves file a prehearing statement. Respondents' inaction strongly suggests that they do not intend to defend against the claims in this matter. Although this consideration might not, in itself, warrant a more severe penalty, the Court finds there is no basis to reduce the penalty proposed by HUD and thoroughly considered by this Court.

IV. Conclusion and Order

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 following findings (1) Respondent Waukegan and Respondent Integra share an identity of interest; (2) Respondents breached the HAP contract by failing to provide decent, safe, sanitary housing that was in good repair; and (3) the breaches were knowing and material. HUD is therefore entitled to judgment as a matter of law. After considering the factors set forth at 24 C.F.R. § 30.80, the Court also concludes that the imposition of civil money penalties totaling $1,258,671 is appropriate.

So **ORDERED,**

ALEXANDER FERNANDEZ-PONS

Digitally signed by: ALEXANDER FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-PONS email = ALEXANDER.FERNANDEZ-PONS@HUD.GOV C = AD O = OFFICE OF THE SECRETARY OU = OHA
Date: 2022.11.30 15:27:48 -05'00'

Alexander Fernández-Pons
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 Hearings and Appeals.

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.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER GRANTING SUMMARY JUDGMENT AND INITIAL DECISION** issued by Alexander Fernandez-Pons, Administrative Law Judge, in HUDOHA 22-AF-0129-CM-007 were sent to the following parties on this 30th day of November 2022, in the manner indicated:

Cinthia Matos, Docket Clerk
HUD Office of Hearings and Appeals

VIA E-MAIL

Joshua Kahane
Aubrey B. Greer
6000 Poplar Avenue
Suite 400
Memphis, TN 38119
jkahane@glankler.com
agreer@glankler.com

OFFICIALS:

Dan Starck, Esq.
Jennifer Grim, Esq.
Shari Nikoo, Esq.
Adam E. Cearley, Esq.
Government Counsel
U.S. Dept. of Housing and Urban Development
1250 Maryland Avenue, SW
Suite 200
Washington, DC 20024
daniel.g.starck@hud.gov
jennifer.m.grim@hud.gov
shahrzad.nikoo@hud.gov
adam.e.cearley@hud.gov

Tammie M. Parshall, Paralegal Specialist
HUD Office of General Counsel
Office of Program Enforcement
tammie.m.parshall@hud.gov