

1
UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

OLA PROPERTIES, INC, and
AFISU OLABIMTAN

Respondents.

HUDALJ 05-040-CMP
OGC Docket No. 05-002-FW

**ORDER
GRANTING MOTION FOR SUPPLEMENTAL SUMMARY JUDGMENT**

By Order dated March 16, 2006, I granted, in part, and denied, in part, the Government's Motion for Summary Judgment in the above-entitled matter. I granted its motion for summary judgment as to Respondents' liability for the charges alleged in the Complaint, but denied its motion for summary judgment as to its request that the maximum civil penalty be imposed in the case.

On November 6, 2006, the Government filed a Supplemental Motion for Summary Judgment, alleging additional facts and again seeking summary judgment for the imposition of the maximum civil penalty allowed in this case.

By Order dated December 12, 2006, I granted the Government's motion for summary judgment as to the amount of civil penalty that should be imposed against Respondents, jointly and severally. Chief among the reasons for the ruling in favor of the Government was Respondents' failure to oppose the Government's supplemental motion.

On March 7, 2007, I set aside my December 12, 2006, Order imposing the maximum civil penalty against Respondents after Respondents alleged that they had not opposed the Government's November 6, 2007, motion because they had not received notice of the motion. Since then Respondents have had opportunity to, and have submitted opposition to the Government's supplemental motion and the Government has responded. Accordingly, this case is ripe for a decision on the appropriate civil penalty.

The Government seeks the maximum penalty in this case: \$147,500 against Ola Properties, Inc. and \$92,500 against Afisu Olabimtan, personally, as President of Ola Properties, Inc. Respondents argue against any penalty, still contending that my previous finding of liability should be set aside. Respondents contend that the financial statements submitted by them met the requirements of their agreement with the Government and did not violate any regulatory or statutory provision. I continue to find no basis to set aside the finding of liability against Respondents for their failure to file required audited annual reports during the years in question.

Respondents argue both that a maximum civil penalty is not justified, and that they do not have the ability to pay the maximum penalty. Mr. Olabimtan makes numerous other arguments that, I conclude, are not relevant to the issue of an appropriate civil penalty.

On ability to pay a penalty, Respondents argue that as of April 2007, Mr. Olabimtan only had \$2,630 cash in the bank and Ola Properties has \$9,274. Mr. Olabimtan does not own any stock, bond or other liquid asset, other than retirement plan offered through his employer. They state that Ola Properties lost \$474,500 during the 5-year period under consideration and that Mr. Olabimtan never received pay from the project. However, Respondents did not contradict the Government's that Mr. Olabimtan made an annual income of more than \$100,000 during all the years pertinent to the case, or that he was able to finance \$2,000,000 to satisfy, in full, the mortgage loan securing the subject property, or to the Government's claim that they failed to file audited financial statements which came due in the fiscal years 2004 and 2005. He does state that money was borrowed to pay off the mortgage note which payment the Government used to show Respondents' ability to pay the maximum penalty. Respondents have not met their burden of proving that they do not have the ability to pay the maximum penalty.

However, there are reasons to conclude that the maximum penalty is not warranted in this case. First of all, there is no history of any prior offense. Further, I am persuaded by Respondents' argument and evidence that the tenants of the subject property were not, contrary to Government claim, subjected to substandard living conditions and that the property in question was not mismanaged. Respondents submitted evidence that the project received a grade of 97% from the City of Dallas for management of the property. I have also considered a copy of a local newspaper article (Rs' Ex. 17) lauding Respondent Olabimtan's participation in rehabilitating a neighborhood in the wake of hurricane Katrina, calling him an "everyday hero" to his community in helping to turn the neighborhood into a place of community pride.

After careful consideration of the pleadings in this case, I conclude that the maximum penalty is not warranted and that a significantly reduced penalty should be imposed.

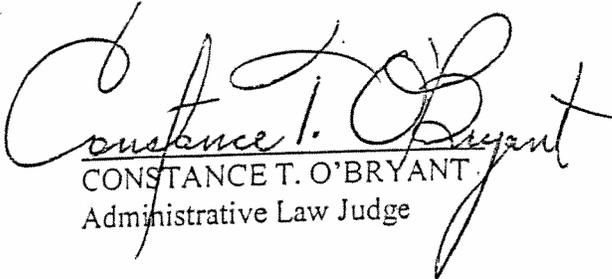
ORDER

Pursuant to 24 C.F.R. §§ 26.37, 26.39, and 30.90, it is hereby ORDERED that:

1. Respondent, Ola Properties, Inc. shall pay to the Secretary of HUD a civil penalty of \$70,000, which penalty shall be due and payable immediately without further proceedings; and
2. Respondent, Afisu Olabimtan, personally, as President of Ola Properties, Inc., shall pay to the Secretary of HUD, a civil penalty of \$40,000, which penalty is due and payable immediately without further proceedings.

Either party may file a petition for review with the Secretary within 30 days after the date of this decision, pursuant to 24 C.F.R. § 26.50(a).

SO ORDERED this 4th day of June, 2007.


CONSTANCE T. O'BRYANT
Administrative Law Judge