



U.S. Department of Housing and Urban Development
Southwest District Office of Inspector General
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August 25, 1999

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MEMORANDUM FOR: Roy Reyna, Director, Multifamily Housing Division, 6EHM

FROM: D. Michael Beard, District Inspector General for Audit, 6AGA

SUBJECT: Enforcement of Compliance Agreement with Herbert J. Zieben and H.J.Z., Inc.

We conducted a limited internal review to determine if Multifamily Housing staff are ensuring that Mr. Zieben complies with the Compliance Agreement. Our review found that Multifamily staff are not taking action to enforce the agreement. As a result, Mr. Zieben is continuing to use his identity of interest companies without obtaining HUD's written approval for payments totaling over \$1.4 million. In addition, distributions totaling \$185,000 have occurred from Haverstock I to other projects even though Haverstock I had insufficient surplus cash.

Background

On March 6, 1998, Herbert J. Zieben signed an Agreed Judgment. The Agreed Judgment was to globally settle criminal and civil claims of equity skimming against himself and his related entities: Herbert J. Zieben Interests, Inc. and H.J.Z., Inc. The companies pled guilty to criminal equity skimming. As part of the Agreed Judgment, Mr. Zieben also entered into a Compliance Agreement. The Compliance Agreement was to provide guarantees to HUD that civil or criminal equity skimming violations would not continue to occur. The Compliance Agreement contained specific requirements for Mr. Zieben and H.J. Z., Inc. to prevent further diversions of funds.

Houston Multifamily Housing received copies of the Agreed Judgment and the Compliance Agreement shortly after their execution. OIG also provided additional guidance on enforcing the Compliance Agreement in a memo to Houston Multifamily Housing dated April 8, 1998.

Finding:

HUD Multifamily staff are not taking action to enforce the Compliance Agreement. Multifamily staff tasked with enforcing the agreement did not take action for several reasons: (1) they were not reviewing the reports submitted by Mr. Zieben; (2) they were not aware of the Compliance Agreement; and (3) they assumed it was OIG's responsibility to enforce the agreement. As a result, Mr. Zieben made payments totaling over \$1.4 million to his identity of interest companies. In addition, transfers of funds totaling \$185,000 have occurred out of one property that had no surplus cash available.

HUD Multifamily staff did ensure that Mr. Zieben provided signed and certified quarterly financial statements as required. Even though the reports showed that Mr. Zieben continued to use his identity of interest companies, HUD Multifamily took no action. Mr. Zieben agreed as part of the Compliance Agreement that he would not obligate or pay out project funds to any construction or other company owned by, controlled by, or otherwise affiliated with him, except as follows:

- “a. HUD’s prior express written approval will be obtained for any obligation or pay out of Project funds other than for HUD’s previously approved management fees and for reimbursement of necessary and reasonable expenses related to operation of the Projects;
- b. Reimbursement for payroll costs will be made only for on-site Project employees and must be supported by adequate documentation, showing that H.J.Z., Inc. actually incurred and paid out such costs; and
- c. Reimbursement for other necessary and reasonable operating costs must be supported by adequate documentation showing that the costs were incurred for the operation of the Projects and H.J.Z., Inc. actually paid out funds for such costs.”

From January 1, 1998, to March 31, 1999, Mr. Zieben’s properties have made the following payments to these identity of interest companies:

Project	Payment to			Totals
	Prudential Construction	First Class Maintenance	Douglas Utility	
Haverstock I	181,350	24,956	97,443	303,749
Haverstock II	249,572	39,271	153,859	442,702
Haverstock III	310,294	30,829	154,661	495,784
Coolwood Oaks	134,073	42,011	0	176,084
Totals	875,289	137,067	405,963	1,418,319

In addition to payments to related entities, Mr. Zieben withdrew \$185,000 from Haverstock I when the project had no surplus cash available.¹ Mr. Zieben transferred the funds in violation of the Regulatory and Compliance Agreements to other properties as follows:

¹ Haverstock I had \$198,679 in surplus cash available at December 31, 1998. HUD disbursed these funds to the owner in August 1999 with the stipulation that the cash be applied to the outstanding civil settlement amount of \$1.4 million. Since all of the surplus cash for Haverstock I was disbursed, no additional funds exist to support the “transfers”.

Quarterly Financial Statement	Amount Transferred	Property Transferred To
3/31/99	\$100,000	Haverstock II
12/31/98	\$10,000	Haverstock II
9/30/98	\$30,000	Haverstock II
3/31/98	\$45,000	Coolwood Oaks
Total	\$185,000	

The transfers are improperly classified on the quarterly financial reports for the receiving properties as owner contributions, even though Mr. Zieben did not provide any new sources of cash to the projects.

HUD Multifamily staff did not take action to prevent prohibited payments due to a variety of reasons. The previous Asset Manager did not review the reports and stated he was unaware of identity of interest payments. The current Asset Manager was unaware of the Compliance Agreement and had not reviewed the project files. Finally, the former Financial Analyst assumed that providing the reports to OIG auditors relieved her of the responsibility to enforce compliance. As a result, HUD Multifamily has allowed Mr. Zieben to continue to improperly divert project funds.

Recommendations:

We recommend that you:

- 1A. Provide specific guidance and monitoring responsibilities to staff members for this owner and his multifamily properties. The guidance should include procedures and controls for monitoring the owner's compliance with HUD regulations, regulatory agreements, and the Compliance Agreement.
- 1B. Review payments to identity of interest companies to determine specifically what services were performed. If payments are not for: (a) previously approved management fees; (b) reasonable, supported, operating costs; or (c) if HUD written approval was not obtained, recover any portion of the \$1.418 million that was improperly paid.
- 1C. Inform the owner of his noncompliance with the Regulatory Agreement concerning the transfers of non-surplus cash. Require the owner to repay the \$185,000 to Haverstock I.
- 1D. Depending on the corrective actions taken by the owner under Recommendations 1B and 1C, consider whether administrative sanctions are appropriate, and if so, initiate such sanctions.

Within 60 days, please give us, for each recommendation made in this memorandum report, a status report on: (1) corrective action taken; (2) the proposed corrective action and the date to be

completed; or (3) why action is considered unnecessary. Also, please furnish us copies of any correspondence or directives issued related to the review.

Should you have any questions, please call Theresa Carroll, Assistant District Inspector General for Audit, at (817)-978-9309.

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