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MEMORANDUM NO.
2005-CH-1801

December 22, 2004

MEMORANDUM FOR: Robert M. Brown, Director of Detroit Multifamily Housing Hub, 5FHMLA
Margarita Maisonet, Director of Departmental Enforcement Center, CV

FROM: Heath Wolfe, Regional Inspector General for Audit, 5AGA

SUBJECT: RVA Properties Inc.
Multifamily Equity Skimming
Farmington Hills, MI

INTRODUCTION

We reviewed the records of RVA Properties, Inc., to determine whether it used project funds in compliance with the Regulatory Agreements and the U.S. Department of Housing and Urban Development's (HUD) requirements. RVA Properties, Inc., management agent, inappropriately used \$271,940 from four projects while the projects were in a non-surplus cash position.

BACKGROUND

RVA Properties, Inc., was incorporated in the State of Michigan in February 1990. It operates as a property management, real estate, and marketing consultant; land developer; and real estate agent sales agent. RVA Properties, Inc., was contracted by project owners to manage Taylor Lake Manor, Phillip C. Sims Senior Apartments, Pontiac Townhouse Apartments Cooperative, Slidell Senior Apartments, and Ellis Manor Apartments. Cooper's Lake Manor, Inc., Jefferson-Chalmers Non-Profit Senior Housing Corporation, Pontiac Townhouse Apartments Cooperative, Slidell Senior Citizens Residence, Inc., and Greater Grace Temple Non-Profit Housing Corporation are the owners of the five projects, respectively.

METHODOLOGY AND SCOPE

Our review covered the period between January 1, 2000, and December 31, 2001. We interviewed HUD's staff, and employees of RVA Properties, Inc., Jefferson-Chalmers Non-Profit Senior Housing Corporation, Pontiac Townhouse Apartments Cooperative, Greater Grace Temple Non-Profit Housing Corporation, and The Fourmidable Group. The Fourmidable Group, a property management company, took over the management of Slidell Senior Apartments and Taylor Lake Manor after RVA Properties, Inc., was removed as management agent. We reviewed the projects' files including bank statements, invoices, Regulatory Agreements, and audited financial statements for fiscal years 2000 and 2001. We also reviewed HUD Handbooks 4370.2, REV-1, CHG-1, and 4381.5, REV-2; 24 Code of Federal Regulations, part 24; Title 12 of the United States Code, sections 1715z-4a and 1735f-15; and Title 31 of the United States Code, section 3801.

RESULTS OF REVIEW

Cooper's Lake Manor, Inc., Jefferson-Chalmers Non-Profit Senior Housing Corporation, Pontiac Townhouse Apartments Cooperative, Slidell Senior Citizens Residence, Inc., and/or RVA Properties, Inc., inappropriately used \$271,940 of Taylor Lake Manor's, Phillip C. Sims Senior Apartments', Pontiac Townhouse Apartments Cooperative's, and Slidell Senior Apartments' (Projects) funds between January 1, 2000, and December 31, 2001. The inappropriate expenses included \$23,239 for ineligible expenses and \$248,701 for unsupported expenses. We provided RVA Properties, Inc., the Projects' owners, and HUD's staff schedules of the inappropriate expenses. The Projects were in a non-surplus cash position when the funds were improperly used. As a result, funds were not used efficiently and effectively, and fewer funds were available for the Projects' normal operations.

Federal Requirements

The Projects' Regulatory Agreements require that the Projects or their agents not—without prior written approval of HUD—assign, transfer, dispose of, or encumber any personal property, including rents or charges, and shall not disburse or pay out any funds except as provided in the Building Loan Agreement.

The Projects' Regulatory Agreements, paragraph 11(c), states that neither the Project nor its agents shall make any payments for services, supplies, or materials unless such services are actually rendered for the Project or such supplies or materials are delivered to the Project and are reasonably necessary for its operation.

Paragraph 6 of the Projects' Regulatory Agreements states that the owners may not, without prior written approval of the Federal Housing Administration's Commissioner, assign, transfer, dispose of, or encumber any personal property of the Projects, including rents, or pay out any funds, other than from surplus cash, except for reasonable operating expenses and necessary repairs, or make or receive and retain any distributions of assets or any income of

any kind of the Projects, except from surplus cash and except under certain conditions, including the requirements to comply with all outstanding notices for proper maintenance of the Projects.

Paragraph 17 of the Projects' Regulatory Agreement defines a distribution as any withdrawal or taking of cash or other assets of the Project other than for mortgage payments or for payment of reasonable expenses incident to its construction, operation, and maintenance.

RVA Properties, Inc.'s Management Agreement with the Projects, paragraph 3, requires compliance with the Projects' Regulatory Agreement and HUD Handbooks, notices, or other policy directives that relate to the management of the Project. Paragraph 4 requires RVA Properties, Inc., to assure that all expenses of the Project are reasonable and necessary and to take advantage of discounts, rebates, and similar money-saving techniques. Paragraph 6(b) requires RVA Properties, Inc., to establish and maintain the Project's accounts, books, and records in accordance with HUD's administrative requirements and generally accepted accounting principles and in a condition that will facilitate an audit.

HUD Handbook 4370.2, REV-1, CHG-1, "Financial Operation and Accounting Procedures for Insured Multifamily Projects," page 2-6, requires that all disbursements be supported by approved invoices/bills or other supporting documentation.

HUD Handbook 4381.5, REV-2, "Management Agent Handbook," provides guidance regarding most aspects of HUD's relationship and interaction with owners and management agents of HUD-insured and HUD-assisted properties. Paragraph 1.6 of the Handbook states that the property owners are ultimately responsible for a project's compliance with HUD's regulations and requirements. HUD expects that owners will oversee the performance of their management agents and take steps to correct deficiencies that occur.

24 Code of Federal Regulations, part 24.110, permits HUD to take administrative sanctions against employees or recipients under HUD assistance agreements that violate HUD's requirements. The sanctions include debarment, suspension, or limited denial of participation and are authorized by parts 24.300, 24.400, or 24.700, respectively.

HUD may impose administrative sanctions based upon the following conditions:

- Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations (limited denial of participation);
- Deficiencies in ongoing construction projects (limited denial of participation);
- Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance, or guarantee or to the performance of obligations incurred

pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee (limited denial of participation);

- Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program such as a history of failure to perform or unsatisfactory performance of one or more public agreements or transactions (debarment);
- Any other cause so serious or compelling in nature that it affects the present responsibility of a person (debarment); or
- Material violation of a statutory or regulatory provision or program requirements applicable to a public agreement or transaction, including applications for grants, financial assistance, insurance, or guarantees, or to the performance of requirements under a grant, assistance award, or conditional or final commitment to insure or guarantee (debarment).

Title 12, United States Code, section 1715z-4a, “Double Damages Remedy for Unauthorized Use of Multifamily Housing Project Assets and Income,” allows the U.S. Attorney General to recover double the value of any housing project assets or income that was used in violation of the Regulatory Agreement or any applicable regulations, plus all costs relating to the actions, including but not limited to reasonable attorney and auditing fees.

Title 12, United States Code, section 1735f-15, “Civil Money Penalties Against Multifamily Mortgagors,” allows the Secretary of Housing and Urban Development to impose a civil money penalty of up to \$25,000 per violation against a mortgagor with five or more living units and a HUD-insured mortgage. A penalty may be imposed for any knowing and material violation of the Regulatory Agreement by the mortgagor, such as paying out any funds for expenses that were not reasonable and necessary project operating expenses, or making distributions to owners while the project is in a non-surplus cash position.

Recommendations

We recommend that HUD’s Director of Multifamily Housing Hub, Detroit Field Office, ensure Cooper’s Lake Manor, Inc., Jefferson-Chalmers Non-Profit Senior Housing Corporation, Pontiac Townhouse Apartments Cooperative, Slidell Senior Citizens Residence, Inc., and/or RVA Properties, Inc.,

- A. Reimburse the appropriate Projects’ Reserve Capital Account \$23,239 for the ineligible payments from non-Project funds (see appendix A).
- B. Provide documentation for the \$248,701 of unsupported payments. If adequate documentation cannot be provided, Cooper’s Lake Manor, Inc., Jefferson-Chalmers Non-Profit Senior Housing Corporation, Pontiac Townhouse Apartments Cooperative,

Slidell Senior Citizens Residence, Inc., and/or RVA Properties, Inc., should reimburse the appropriate Reserve Capital Account for the amount that cannot be supported from non-Project funds (see appendix A).

We also recommend that HUD’s Director of Multifamily Housing Hub, Detroit Field Office, in conjunction with HUD’s Office of Inspector General,

- C. Pursue double damages remedy for unauthorized use of multifamily housing project assets and income if Cooper’s Lake Manor, Inc., Jefferson-Chalmers Non-Profit Senior Housing Corporation, Pontiac Townhouse Apartments Cooperative, Slidell Senior Citizens Residence, Inc., and/or RVA Properties, Inc., does not appropriately reimburse the Reserve Capital Account for the ineligible and unsupported payments cited in this report.

We also recommend that the Director of HUD’s Departmental Enforcement Center

- D. Pursue administrative sanctions against Cooper’s Lake Manor, Inc., Jefferson-Chalmers Non-Profit Senior Housing Corporation, Pontiac Townhouse Apartments Cooperative, Slidell Senior Citizens Residence, Inc., and/or RVA Properties, Inc.

SCHEDULE OF QUESTIONED COSTS

<u>Recommendation Number</u>	<u>Type of Questioned Costs</u>	
	<u>Ineligible 1/</u>	<u>Unsupported 2/</u>
A	\$23,239	
B		\$248,701
Total	<u>\$23,239</u>	<u>\$248,701</u>

1/ Ineligible costs are costs charged to a HUD-financed or insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.

2/ Unsupported costs are costs charged to a HUD-financed or insured program or activity when eligibility cannot be determined at the time of the audit. The costs are not supported by adequate documentation, or there is a need for a legal or administrative determination on the eligibility of the cost. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

In accordance with HUD Handbook 2000.06, REV-3, within 60 days, please provide us for each recommendation without a management decision, a status report on (1) the corrective action taken, (2) the proposed corrective action and the date to be completed, or (3) why

action is considered unnecessary. Additional status reports are required at 90 days and 120 days after the report is issued for any recommendation without a management decision. Also, please furnish us copies of any correspondence or directives issued because of the audit.

If you or your staff has any questions, please contact Thomas Towers, Assistant Regional Inspector General for Audit, at (313) 226-6280, extension 8062, or me at (312) 353-7832.

Appendix A

SCHEDULE OF QUESTIONED COSTS BY PROJECT

<u>Recommendation</u> <u>Number</u>	<u>Project</u>	<u>Type of Questioned Costs</u>	
		<u>Ineligible</u>	<u>Unsupported</u>
A	Pontiac Townhouse Apartments	\$9,101	
	Taylor Lake Manor	6,960	
	Slidell Senior Apartments	5,701	
	Phillip C. Sims Senior Apartments	<u>1,477</u>	
B	Pontiac Townhouse Apartments Cooperative		\$ 20,262
	Taylor Lake Manor		17,223
	Slidell Senior Apartments		103,482
	Phillip C. Sims Senior Apartments		<u>107,734</u>
Totals		<u>\$23,239</u>	<u>\$248,701</u>