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Audit Case Number 2004-FW-1009
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TO: E. Ross Burton  
Director Fort Worth Multifamily Housing HUB, 6AHMLAS  
Linda K. Hardway  
Director, Little Rock Multifamily Program Center, 6FHM

A handwritten signature in blue ink, appearing to read "D. Michael Beard".

FROM: D. Michael Beard, Regional Inspector General, 6AGA

SUBJECT: Mays Property Management, Inc.  
Multifamily Management Agent  
Little Rock, Arkansas

## **INTRODUCTION**

As part of our initiative to combat equity skimming, we have completed an audit of nine multifamily projects managed by Mays Property Management, Inc. (Mays). HUD either insured or held the mortgages on the properties. The objective of the audit was to determine whether Mays complied with project regulatory agreements and HUD regulations when disbursing project funds.

To accomplish the objective, we reviewed HUD's regulations regarding Sections 202 and 221(d)(3) Programs, project regulatory agreements, HUD handbook requirements, and the owner's and management agent's certifications. We interviewed project owners, Mays' owner and staff, and HUD Multifamily Housing officials in Little Rock, Arkansas. We reviewed accounting records and supporting documents such as bank statements and invoices. The audit covered a period of 6 years and 7 months: from March 1, 1992, the earliest date that Mays had records of project transactions, to October 9, 1998, 39 days after Mays stopped managing the last project. We conducted the audit in accordance with generally accepted government auditing standards.

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 report issuance for

any recommendation without a management decision. Also, please furnish us copies of any correspondence or directives issued because of the audit.

Should you or your staff have any questions, please contact Jerry Thompson, Assistant Regional Inspector General, at (817) 978-9309.

## **SUMMARY**

Mays officials disbursed project-operating funds for items that violated project regulatory agreements with HUD. They charged management agent expenses to projects, paid for unsupported expenditures, diverted project funds to Mays and a property owner, and overcharged expense to projects. In addition, Mays split its management fee with a project owner and transferred project funds to other projects having cash-flow problems. As a result, Mays' officials misspent \$979,333 of project-operating funds and made unauthorized advances of \$20,150 from five projects to other projects.<sup>1</sup> This had a negative financial impact on the projects.

We recommend that HUD require Mays to: (1) repay either the projects or HUD for ineligible payments and (2) either furnish supporting documentation or repay the funds for unsupported payments. For owed funds, we recommend immediate payment of the debt. If Mays does not repay amounts officials misspent, we recommend that HUD impose administrative sanctions against the former principals of Mays.

On July 7, 2004, we provided Mays a copy of the draft report and Mays provided a written response to the draft dated July 12, 2004. In an email dated July 19, 2004, Mays stated that an exit conference would not be necessary. The written response indicates Mays does not agree with many segments of the finding. He said the report misrepresents actions taken by Mays and the local HUD office to save high-risk, troubled apartment complexes. The response did not cause us to change the draft report. We have included the main points of the response at the end of the finding with our evaluation. Mays' complete response is attached as Appendix C.

## **BACKGROUND**

HUD's Office of Multifamily Housing administers programs to provide an adequate supply of quality affordable housing. Programs include the Section 202 Supportive Housing for the Elderly Program<sup>2</sup> and the 221(d)(3) Market Rate Program.<sup>3</sup>

- Section 202 provides capital advances to finance the construction and rehabilitation of structures that will serve as supportive housing for very low-income elderly persons. It also provides rent subsidies for the projects to help make them affordable.
- Section 221(d)(3) provides mortgage insurance to finance rental or cooperative housing for low- to moderate-income and displaced families. Through the program, the Federal

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<sup>1</sup> Mays repaid two projects for the advances but has not repaid three projects \$11,850.

<sup>2</sup> Title 24 Code of Federal Regulations (CFR) Part 891 governs Section 202 of the Housing Act of 1959.

<sup>3</sup> Title 24 CFR Part 221, subparts C and D, governs Section 221 of the National Housing Act.

Housing Administration insures mortgages for the new construction or substantial rehabilitation of multifamily rental properties. HUD may insure up to 100 percent of replacement cost for nonprofit mortgagors and up to 90 percent for profit motivated mortgagors.

The property owner participating in HUD programs has the ultimate responsibility for compliance with HUD regulations and requirements. The property owner pledges compliance by signing a regulatory agreement with HUD. The agreement governs project operations.

The property owner may seek out and hire a management agent, which is subject to HUD approval. HUD expects an owner to oversee the performance of its management agent and take steps to correct deficiencies that occur. If the owner does not, HUD will step in to assure compliance with applicable HUD regulations and program requirements.

Management agents play a key role in helping HUD provide quality affordable housing. The owner and management agent together certify in writing that they will comply with HUD requirements and contract obligations. HUD Handbook 4381.5 REV-2, *The Management Agent Handbook*, provides basic guidance regarding owner and management agent responsibilities and HUD procedures.

During the period of audit, March 1, 1992, through March 31, 1998,<sup>4</sup> Mays managed nine projects that HUD either assisted or insured. HUD held the mortgages of three properties under Section 202,<sup>5</sup> which exceeded \$8.4 million. HUD insured the mortgages of six projects under Section 221(d)(3),<sup>6</sup> which exceeded \$7.5 million.

In July 1997, Mays unofficially turned over management of eight HUD projects to United Properties Management, Inc. (United).<sup>7</sup> Mays paid United nothing for its service. United was an outgrowth of Mays and is owned and operated by former Mays officials. United's majority stockholder had been Mays' executive vice-president, and United's minority stockholder had been Mays' comptroller. Initially, the former Mays' employees made up the principal staff of United. Mays and United commingled their payroll funds until November 1998. Before the end of 1998, HUD approved United to manage the eight projects.

In addition to managing the projects, Mays had ownership interest in four of the properties. It was

- Managing general partner of the limited partnerships that owned three apartments: Chicot Apartments, St. John Apartments, and Shorter College Gardens and
- General partner of the limited partnership that owned Pilgrim Rest Apartments.

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<sup>4</sup> For improper payments to owners, we extended our audit period through October 9, 1998.

<sup>5</sup> St. John Alexander Towers, Sarah Daisy Garden Courts, and Theresa James Manor all have nonprofit ownership.

<sup>6</sup> Apollo Terrace Apartments, Chicot Apartments, Pilgrim Rest Apartments, St. John Apartments (26<sup>th</sup> Street), and Shorter College Gardens have limited partnership ownership. West Apartments has nonprofit ownership.

<sup>7</sup> Mays did not manage Apollo Apartments after HUD foreclosed on it.

The owner's father was the managing general partner of the limited partnership that owned Apollo Terrace Apartments.

The projects paid Mays monthly fees for its management services. The fees approximated \$23,000 a month. Over a period of 6 years and 7 months, the fees amount to more than \$1.8 million.

The HUD Office of Inspector General's initiative to combat equity skimming includes audits such as this one where auditors consult with the appropriate United States Attorney's Office and HUD Office of General Counsel to recover project funds used in violation of the regulatory agreements. Under Title 12, United States Code, Section 1715z-4a, HUD may recover double the amount of project assets used for purposes other than those permitted by the regulatory agreements, plus the cost of any audit, litigation, and attorney's fees. We referred this matter to the Office of Investigation and first discussed it with the United States Attorney's Office in April 1999. The Office of Investigation decided not to pursue the matter, criminally, in November 2000. We provided an updated civil prosecution/litigation package to the HUD Assistant General Counsel on March 31, 2003, and to the United States Attorney's Office, Eastern District of Arkansas on May 13, 2003.

However, the United States Attorney has declined prosecution since HUD personnel do not support a lawsuit against Mays and the principals that managed Mays and now manage United. On May 17, 2004, we received a copy of a letter dated May 10, 2004, from the United States Attorney to the Director, Little Rock Multifamily Program Center. In the letter, the United States Attorney advises that he has decided not to institute a civil action against Mays and the involved individuals. He declines because of the Director's assertions about involved individuals, which she expressed in her letter dated April 5, 2004, to the Assistant United States Attorney. In the letter, she states she allowed these agents to continue their business with HUD because:

- Punishment must be consistently applied to HUD partners, and there are examples of more egregious violations in HUD programs where the participant was not suspended or debarred;
- Mays Property Management no longer exists;
- United Properties Management has no, and never had, business affiliation with Mays Property Management<sup>8</sup>; and
- United Properties Management has addressed the financial irregularities with the OIG, and has corrected its previous erroneous accounting practices to HUD's satisfaction.<sup>9</sup>

In addition, she does not see the former Mays' officials as a threat to HUD's interest in multifamily properties. To the contrary, she states that they are one of her best management agent teams to intervene in troubled properties and return them to HUD standards.

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<sup>8</sup> The involved individuals are the same people for both companies except for the owner of Mays.

<sup>9</sup> We are not aware of, and the Director has not provided evidence of, any corrections and paybacks regarding misspent project-operating funds.

The audit results below do not support the Director's assertions about the former principals of Mays, who now own and operate United Properties Management, Inc. Since the United States Attorney has declined civil prosecution, we have addressed this report to HUD management for resolution.

## **FINDING**

### **Mays officials misspent over \$979,000 of project funds.**

In violation of regulatory agreements, and without HUD authorization or knowledge, Mays officials misused project funds. Specifically, they

- Charged \$401,014 of Mays' supervisory salaries to the projects;
- Paid \$360,355 without required documentation;
- Paid \$106,340 of insurance premiums for either Mays' supervisors or persons unknown;
- Diverted \$33,163 through related companies to Mays;
- Diverted \$19,900 through a deceased contractor to a property owner;
- Overcharged the projects \$10,571 for software and related training;
- Charged \$5,352 of management agent expenditures to the properties;
- Paid \$2,600 to a related company without documented justification;
- Agreed to split Mays' management fee; and, paid \$28,188 of its fee to the property owner; and
- Transferred \$20,150 to projects with cash problems without HUD's authorization.

This happened because officials disregarded HUD requirements. As a result, officials had misspent over \$979,000 of project-operating funds. This attributed to cash deficiencies of all nine projects and the foreclosure of Apollo Terrace Apartments. In addition, of the \$20,150 transferred between projects, they had not paid back \$11,850 to three projects. HUD foreclosed on one of the three.

The regulatory agreements direct the following.

- “Neither the mortgagor nor its agents shall make any payment 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. Payments for such services, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.”
- Distributions<sup>10</sup> to owners of limited distribution projects are limited and distributions to owners of nonprofit projects are prohibited.

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<sup>10</sup> A distribution is any withdrawal or taking of cash or any assets of the project other than for the payment of reasonable expenses necessary to the operation and maintenance of the project.

- Distributions to owners are prohibited when a project mortgage is in default, the project is in a non-surplus cash position, or the project is not in compliance with all outstanding notices of requirements for proper maintenance.
- Management agents cannot pay compensation to owners of nonprofit projects without HUD's written approval. For Mays, this applies to St. John Alexander Towers, Sarah Daisy Garden Courts, Theresa James Manor, and West Apartments.
- Management agents must keep the books and accounts of the operations in accordance with HUD's requirements and in reasonable condition for proper audit.

Mays' owner entered into *Project Owner's & Management Agent Certifications for Multifamily Housing Projects for Identity-of-Interest or Independent Management Agents* (Certifications). Those certifications required Mays to comply with the regulatory agreements, HUD handbooks, and other policy directives that related to the management of the projects.

HUD Handbook 4381.5 REV-2, *The Management Agent Handbook*, provides basic guidance regarding owner and management agent responsibilities and HUD procedures. *The Management Agent Handbook* requires salaries of management agents' supervisory staff not assigned to any project, to be paid from the agent's management fee and not from project-operating funds.

According to *The Management Agent Handbook*, Paragraph 6.39(c), agent supervisory personnel must be paid from the management fee, except when the supervisor performs one of two services:

1. Provides oversight of centralized accounting and computer services for projects at a cost that does not exceed the cost of obtaining comparable services from an independent contractor.
2. Replaces a project employee on temporary leave after the first 40 consecutive hours of the assignment.

HUD Handbook 4370.1 REV-2, *Reviewing Annual and Monthly Financial Reports*, requires management agents to keep project funds separate from other funds.

HUD Handbook 4370.2 REV-1, *Financial Operations and Accounting Procedures for Insured Multifamily Projects*, Chapter 2, Section 6, requires support (including approved invoices and bills or other supporting documentation) for all disbursements from project-operating accounts.

***Mays charged \$401,014 of its supervisory staff salaries to the projects.***

Mays paid \$401,014 from project funds for the salaries of six of its supervisors even though they had not met requirements stipulated in *The Management Agent Handbook*. This occurred because Mays officials disregarded the handbook requirements.

Mays used project funds to pay the salaries of its supervisory staff: two district managers, one security manager, two maintenance managers, and the principal owner of Mays. These

management agent supervisors did not meet the requirements in order to be paid from project funds. Officials made the payments between March 1, 1992, and June 30, 1998.

Without records of activities and actual time, officials allocated part of the supervisory salaries to the projects. Officials had nothing to show the work qualified for reimbursement: supervisor had performed either oversight of accounting and computer services, or replaced a project employee on temporary leave after the first 40 consecutive hours of the assignment. Yet, officials used project-operating funds to pay Mays according to their arbitrary allocations. Altogether, officials misused \$401,014:

- \$206,109 for district managers' salaries;
- \$94,913 for the security manager's salary;
- \$91,989 for maintenance managers' salaries; and
- \$8,003 for the salary of the owner.

Officials also allocated and paid Mays for salaries that exceeded the actual amounts paid to the supervisors. Officials overstated allocated salaries by \$31,014: salary of the district manager, \$10,160 and salary of the maintenance manager, \$20,854. The maintenance manager position was vacant at the time.

After a 1997 management review of eight projects that Mays and United managed, HUD staff reproved officials about using project-operating funds to reimburse supervisory salaries. During the reviews, HUD staff found that Mays officials used project-operating funds to pay the salaries and benefits of Mays' supervisory staff. HUD concluded in its report that Mays should have paid those salaries from its management fee. HUD directed Mays to immediately cease the practice of allocating 100 percent of salary and benefits of supervisory staff to project operating accounts. HUD also sent to Mays the handbook instructions on payment of supervisory salaries from project-operating funds, and directed Mays staff to become familiar with it.

However, Mays officials did not follow HUD's instructions. In a letter to HUD dated November 14, 1997, an official wrote that Mays had ceased the practice of paying for supervisors' salaries from project funds. However contrary to the assertion, officials charged supervisory salaries, which did not meet handbook requirements, to the projects after November 14, 1997, and through June 30, 1998.

***Mays paid \$360,355 from project funds without required documentation.***

Between April 1, 1992, and June 30, 1998, officials paid \$360,355 from project-operating funds without having invoices, bills, or other documents to justify the payments. An extensive search of Mays' and project records disclosed nothing. Therefore contrary to regulatory requirements, officials apparently made the payments with nothing to show that the payments were for either reasonable operating expenses or necessary repairs of the projects. Mays made the unsupported payments to a building contractor and to itself, \$224,176 and \$136,179, respectively.

- Without support Mays paid \$224,176 to a building contractor. Between January 1, 1995, and June 30, 1998, officials paid in total \$575,670 to the contractor. Mays had support for \$351,494 of the payments. The contractor issued invoices to the projects for repair

and rehabilitation work. The contractor gave receipts to Mays officials for building supplies that he purchased in order to do the work. The contractor also furnished work proposals that officials sometimes used to support payments. Thereby, Mays should have had support for the \$224,176, too.

- For the remaining \$136,179 of unsupported payments, officials used project-operating funds to reimburse Mays for payments it made to vendors. However, Mays did not have documents to support the payments. Again, officials had nothing to justify the payments as reasonable and necessary for the operation of the projects.

***Officials paid Mays \$106,340 from project-operating funds for insurance that benefited ineligible supervisory and unknown persons.***

Between April 1, 1992, and May 31, 1998, officials paid Mays \$106,340 for insurance premiums that were either ineligible or unsupported. Officials paid \$15,815 for insurance for Mays' central-office supervisors. Mays paid an additional \$90,525 for insurance for unknown persons. The payments violated the regulatory agreements because: (1) supervisors had not provided services stipulated for payment from project-operating funds and (2) Mays did not have support to show that the insurance was for front-line employees essential for the operation of the projects.

***Using related companies, Mays transferred \$33,163 for its own use.***

Between March 1, 1995, and March 31, 1997, officials transferred \$33,163 from five projects through two related companies. The payments benefited Mays. Officials did this even though the projects did not have cash surpluses and officials had not obtained written permission from HUD, which would have made the payments legitimate.

Mays did business with two related companies, Purchasing Warehouse, Inc. (Purchasing Warehouse), and Greval Development Corporation (Greval). Mays partially owned Purchasing Warehouse. Purchasing Warehouse bought supplies in bulk and provided contract labor for the projects. United's majority stockholder owned Greval. Greval provided construction-related services. Mays generally did not obtain bids from other sources to establish a fair price when it used either Purchasing Warehouse or Greval.

Mays officials made eight unsupported payments from project-operating funds totaling \$33,907. They made three payments to Purchasing Warehouse and five to Greval, totaling \$12,100 and \$21,807, respectively. To make the payments, officials used funds from five projects:

- \$16,000 from Apollo Terrace Apartments (Apollo);
- \$9,207 from Shorter College Gardens (Shorter);
- \$4,000 from Theresa James Manor (Theresa);
- \$3,600 from St. John Alexander Towers (Towers); and
- \$1,100 from St. John Apartments (St. John).

Purchasing Warehouse and Greval used the proceeds to make eight payments totaling \$33,163 to and for the following related parties: \$19,560 to Mays; \$7,000 to First Commercial Bank to pay



a line of credit loan for taxes that Mays owed to the IRS; and \$6,603 to “Cash” with at least \$3,000 diverted to Mays’ executive vice-president. Either Mays’ owner or its executive vice-president signed the checks that transferred the funds. Transaction details follow:

- On the same 4 days that officials wrote five project checks totaling \$14,460 to Purchasing Warehouse and Greval, officials made four payments from the bank accounts of Purchasing Warehouse and Greval to Mays and “Cash,” that totaled the same amount, \$14,460. See Appendix B Table B-1. The check payable to “Cash” was for \$3,000, which was paid to Mays’ executive vice-president.
- On different days, officials wrote two project checks totaling \$15,847 to Greval. Three days after each check was written, officials made three payments from Greval’s bank account to Mays and First Commercial Bank. The payments totaled \$15,100. See Appendix B Table B-2.
- From Towers’ bank account on June 20, 1995, Mays officials paid Purchasing Warehouse \$3,600. On the same day officials paid \$3,600 from Purchasing Warehouse’s bank account to Pilgrim Rest Apartments (Pilgrim Rest). Twenty-five days later Pilgrim Rest repaid \$3,600 to Purchasing Warehouse; but Purchasing Warehouse did not repay Towers. Instead, 2 months later Purchasing Warehouse wrote a \$3,603 unnumbered check to “Cash,” which the executive vice-president of Mays signed. See Appendix B Table B-3.

In addition, officials transferred almost one-half of the project-operating funds from a troubled property, Apollo. They made two payments totaling \$16,000 from Apollo’s bank account to Greval. See Appendix B Tables B-1 and B-2. They made the payments at a time when the property was not in good repair and condition. On the basis of the property’s condition and default on the July 1, 1996 mortgage payment, HUD directed the servicing agent to accelerate payment of the outstanding principal balance on the loan. Thereby on August 7, 1996, the servicing agent declared the outstanding principal balance and accrued interest due and payable in its entirety. HUD foreclosed on the property in January 1997. HUD razed Apollo because of extensive damage. In total, HUD sustained a loss of over \$912,000\$ on the property.

***Over a 64-month period, Mays diverted \$19,900 to the owner of a property by making checks payable to a deceased contractor.***

Between June 1, 1993, and September 30, 1998, Mays officials paid \$19,900 to a contractor who died in 1989. The contractor had done landscaping work for Sarah Daisy Garden Courts (Sarah Daisy) before his death. He had had a long relationship with the father of Mays’ owner and the president of Sarah Daisy Garden Courts, Inc., the property owner. Mays made the payments from the project’s operating account. The payments ranged from \$300 to \$500. Officials made the checks payable to the deceased contractor, except in 1995. In 1995, they made the checks payable to Purchasing Warehouse, which in turn paid the contractor. Altogether, officials paid \$15,500 directly to the contractor and paid another \$4,400 to the contractor through Purchasing Warehouse.

The check requests, which were generally unsigned, had a notation that the payments were for a “grounds contract.” However, the Sarah Daisy site manager since January 1997 had never heard of the contractor. The manager stated that Sarah Daisy’s on-site maintenance employees did all the grounds work, not the contractor.

The property owner could not account for the funds. He said he picked up the checks to the contractor. The checks were deposited into the nonprofit corporation’s bank account, the owner’s account. In addition, the owner said that, since the contractor’s death, the funds had been used for tenant assemblies on the apartment grounds. However, the owner did not have support for funds spent on the assemblies. The owner said that some of the money had been saved for a “rainy day.”

***Mays overcharged the projects \$10,571 for a software system and related training.***

The \$10,571 overcharge happened during 1997. Mays officials purchased a software system and related training from CAMS of Atlanta, Inc. Two invoices show that CAMS charged \$16,350 for the software and training. However, officials, for some unknown reason, charged the projects \$26,921. Mays officials could not explain the \$10,571 overcharge.

***Mays charged \$5,352 of management agent expenditures to the properties.***

Mays paid \$5,352 from project-operating funds to itself for items that were management agent expenditures. Mays paid itself for eight items:

1. \$1,884 of moving expenses for Mays’ maintenance supervisor;
2. \$900 of Federal Express charges not related to the projects;
3. \$700 of payroll costs charged to the wrong project;
4. \$655 of cell telephone charges;
5. \$573 for training that Mays’ comptroller attended;
6. \$382 for a laptop computer used by Mays’ central-office staff;
7. \$250 for Mays’ owner to attend a HUD seminar; and
8. \$8 of duplicate payments.

***Mays paid \$2,600 to Purchasing Warehouse without any support.***

In April 1995, officials paid \$2,600 from project-operating funds to Purchasing Warehouse without having invoices or other documentation to support the payments, which is required. Officials made three payments to Purchasing Warehouse from the operating funds of three projects: Pilgrim Rest, St. John, and Sarah Daisy. However, invoices or other documents did

not support the payments, as regulatory agreements require. Officials had no explanation for the payments.

***Mays split its management fee paying \$28,188 to the property owner.***

Between October 16, 1996, and October 9, 1998, Mays officials paid \$28,188 or about one-third of its management fee to the owner of West Apartments, Inc. HUD officials were not aware of the payments.

In the first paragraph of the project owner's and management agent's certification, the parties agreed to the prohibition against paying an owner in return for awarding the management contract. On September 1, 1996, Mays' executive vice-president certified to HUD that Mays had not and would not make payments to the project owner for the award of the management contract.

Mays officials apparently disregarded the certification. After signing it, Mays, in fact, wrote 11 checks totaling \$11,957 to the project owner, which was 3 percent of collections. The owner of Mays signed a second certification dated September 1, 1997, again certifying that Mays had not and would not make payments to the project owner for awarding the contract. Nevertheless, Mays wrote 13 more checks totaling \$16,231 to the owner, which was 3 percent of collections.

According to Mays' owner, he agreed to pay a tithe to the property owner in return for the award of the management agent contract to Mays. From Mays' management fees, officials made payments to the property owner based on 3 percent of the income collected from the property. This is one-third of the management fee of 9 percent of income collected, which HUD authorized. In total, Mays paid \$28,188 to the owner. The amount is 33 percent (about a third) of the \$85,361 in management fees paid by West Apartments to Mays. Either Mays' owner or its executive vice-president signed the checks. Thereby, they knowingly split Mays' management agent fee with the property owner.

***Mays commingled \$20,150 from five projects without HUD's approval.***

During December 1993 and June 1995, Mays made \$20,150 of transfers from five projects to other projects without HUD's authorization. HUD Handbook 4370.1 does not permit commingling of funds except with prior HUD approval.

Mays officials transferred the funds to help projects with cash shortages. The transfers mixed the funds of one project with another. In the Handbook, HUD describes this practice as "commingling of funds," which is prohibited without HUD approval. Of the \$20,150 transferred, officials had transferred \$8,300 back to two projects. They had not transferred \$11,850 back to three projects: \$9,000 to Chicot Apartments (Chicot) from Pilgrim Rest; \$1,800 to Pilgrim Rest from Apollo; which has been foreclosed; and \$1,050 to Towers from St. John.

In an attempt to hide transfers, officials made the transfers through related companies. For example on December 29, 1993, Chicot paid Greval \$9,000. Two days later, Greval paid Pilgrim Rest \$9,000. On June 15, 1995, Pilgrim Rest paid \$1,800 to Purchasing Warehouse. The same day, Purchasing Warehouse paid Apollo \$1,800. On June 15, 1995, Towers paid Purchasing Warehouse \$1,050. Four days later, Purchasing Warehouse paid St. John \$1,050. Officials made the payments without any written explanation. Therefore, one might assume the payments

were for goods and services and not transfers of funds to other projects. In addition, when officials repaid \$8,300, they paid Purchasing Warehouse, who, in turn, paid the projects. As of September 26, 2002, officials had not returned \$11,850 to the three projects.

### **AUDITEE COMMENTS**

The owner said Mays did allocate project funds for technical personnel. He said this was in total regard for the Handbook. The centralization idea was submitted to the local HUD office as an answer to their on-site staffing problem: inability to get and keep quality people employed at the complexes. They concluded it would benefit all apartments equally. It reduced the salaries for high paid personnel at the complexes thereby freeing up funds for rehabilitation work.

The owner said Mays did show the auditors contracts that supported the costs, which the auditors reported as unsupported. The contracts' costs were either line item or apartment unit oriented with fixed amounts for each item. Upon completion of items, the apartment manager authorized payment and Accounting verified the item amounts with the contract and issued the check. An invoice may not have been issued for every item completed and paid. However, all work was done and at a cost well below market cost. When one considers the properties' physical conditions and limited budgets over the 6 years, the audited period, the people of Mays Property deserve a medal from HUD, not harassment.

The owner said the people whose insurance was paid worked with HUD in rehabilitating all of the apartment complexes for many years and contributed to the success of the complexes.

The owner said the report misstated facts to make a point that Mays misspent funds. The report implies that HUD foreclosed on Apollo Terrace due to financial distress when in truth HUD foreclosed because the community had become impossible to secure. In addition, the report implies that Mays took \$16,000 from Apollo Terrace, a distressed apartment, and gave it to an identity-of-interest company. The owner said this is not true. He says the \$16,000 was the final payment on a contract to restore a fire-damaged building. The insurance company paying the bill found that the overall contract price was below competition.

He said Mays used Purchasing Warehouse, which had insurance, to buy maintenance and repair supplies in bulk and to hire day laborers to do the work at the complexes. Mays used Greval the same way. Greval allowed Mays to utilize unlicensed contractors that did not have proper insurance coverage as required by HUD to work. They were covered under Greval's umbrella. Mays billed vendor invoices and labor to the projects. When project funds were short Mays used its funds to pay the vendors and laborers. The projects repaid Mays when they had the funds. To keep costs down, Mays used minority contractors. Although they had skills, they did not have credentials to do the work. Therefore, Purchasing Warehouse and Greval helped minorities earn the credentials and provided required insurance for the contractors. He said if the Handbook encourages participation of women and minority-owned businesses, we must take affirmative steps to allow them the opportunities.

Mays owner said Mays did make checks payable to the grounds contractor but delivered them to the president of the nonprofit property owner, who had donated a \$20,000 van to the complex.

He said his father entered into a contract with the contractor recommended by the president of the nonprofit corporation that owned the complex. The contract was for grounds repair. It was to turn a rocky ravine in the center of a property into a functional park for the residents. He said 1 year they did switch from direct payments from the complex because they were planning to add other complexes to the contract; however, they went back to direct payments when this did not occur.

Mays' owner admitted making mistakes and said they were only mistakes and not attempts to skim for personal gain. He said the commitment to give a percentage of the management agent fee to Ministerial Alliance of the Fort Smith community was at the request of the owner of the complex. He indicated they agreed and implemented the commitment.

Mays said the essence of this report is that Mays Property was dishonest in its operations, dishonest with HUD, and undermined the success of the apartment complexes they managed. This is not true. With the exception of one complex all complexes are still performing the function they were constructed to perform. They all have acceptable REAC scores. It is a fact that HUD was in a major conflict with the syndicates of six of the nine properties managed by Mays and it appears that in some way Mays became a target in this conflict. This was an unwarranted and unnecessary action by government. These actions by the government have served to drive Mays out of the management arena.

### **OIG EVALUATION OF AUDITEE COMMENTS**

Mays' comments did not change our position. As indicated by the report, the purpose of the audit was to determine whether Mays complied with project regulatory agreements and HUD requirements when disbursing project funds. We found that Mays had not complied with regulatory requirements and could not provide adequate documentation to support the questioned cost. As a result, Mays misspent over \$979,000 of operating funds, which hurt the cash position of the projects.

We do not believe the local HUD office approved paying the salaries of management agent central office supervisory personnel from project funds. Although Mays says they concluded it would benefit all apartments equally, Mays has provided nothing and we found nothing at the HUD office to support Mays' statement.

As indicated by the finding and contrary to Mays' comments, Mays could not and did not provide adequate support for the unsupported costs reported. We gave Mays plenty of time to provide the support before we issued the draft report.

Mays' comments regarding the insurance issue do not convince us that the insurance should have been paid with project funds. As indicated by the finding, Mays paid insurance premiums for coverage of management agent employees and for other unidentified persons.

Regarding Apollo Terrace, HUD accelerated payment of the loan balance and foreclosed because the borrower failed to maintain the property in good repair and condition. Failure to maintain the property in good repair and condition violated the covenants of the Regulatory Agreement and mortgage. As indicated by the finding, we believe financial woes led to the poor condition and

final demise of the property. Although Mays now states that they paid \$16,000 for the rehabilitation of a burned building, Mays still has not found adequate support for the payments to the identity-of-interest companies, Purchasing Warehouse and Greval.

Mays' comments regarding the payments to the deceased contractor provide nothing we can use to justify the payments. The payments went to an owner's bank account and appear to be unauthorized distributions that were disguised as payments to a contractor. However, considering Mays' comments, the payments may have been repayment for the \$20,000 van the owner "donated." Either way the payments appear to be ineligible under the regulatory agreement.

Mays' comments admitted he gave a percentage of his fee to the property owner at the owner's request. Mays and the owner provided a certification to HUD that they would comply with HUD requirements and contract obligations; agreed that no payments will be made to the owner in return for awarding the management contract to the agent; and that such payments will not be made in the future. They appear to have provided a false certification to HUD.

In regard to Mays' comments regarding the essence of our report, we believe our report stands on its own. The comments did not persuade us to make any changes to our draft that we provided Mays. Mays' complete written response to our draft is contained in Appendix C of this report.

## **RECOMMENDATIONS**

We recommend the HUD Multifamily Housing Directors:

- 1A. Require Mays to repay the projects \$491,512 for the ineligible expenditures from project-operating funds.
- 1B. Require Mays to repay HUD \$34,341 for ineligible expenditures paid from Apollo's funds, since HUD has foreclosed on the property.
- 1C. Require Mays to furnish required documentation, and if they don't, require Mays to repay the projects \$437,079 for the unsupported expenses.
- 1D. Require Mays to either furnish required documentation or repay HUD \$16,401 for the unsupported amounts paid from Apollo's funds.
- 1E. With HUD review and approval, require projects to pay their debt to other projects.
- 1F. Take administrative sanctions against the principals of Mays if it does not repay the projects and HUD the total amount of misspent project-operating funds.

## **MANAGEMENT CONTROLS**

Management controls include the plan of organization, methods and procedures adopted by management to ensure that its goals are met. Management controls include the processes for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

We determined that the following management controls were relevant to our audit objective to determine whether Mays complied with the regulatory agreements and HUD requirements:

- Disbursements
- Cost allocations

It is a significant weakness if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet an organization's objectives.

Based on our objective we gained an understanding of the applicable controls. However, we did not test or rely on them in conducting the audit. We generally reviewed all allocation and disbursement transactions.

**SCHEDULE OF QUESTIONED COSTS**

<i>Recommendation No.</i>	<i>Type of Questioned Cost</i>	
	<i>Ineligible<sup>1</sup></i>	<i>Unsupported<sup>2</sup></i>
1A	\$491,512	
1B	34,341	
1C		\$437,079
1D		16,401
<b>Totals</b>	<b><u>\$525,853</u></b>	<b><u>\$453,480</u></b>

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<sup>1</sup> Ineligible costs are those that are questioned because of an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds.

<sup>2</sup> Unsupported costs are those whose eligibility cannot be clearly determined during the audit since such costs were not supported by adequate documentation. A legal opinion or administrative determination may be needed on these costs.



## QUESTIONABLE TRANSFERS OF PROJECT-OPERATING FUNDS

<b>Table B-1</b>						
<u>Same Day Transfers of Apollo, Shorter, and Theresa Funds</u>						
<u>Project Bank Accounts</u>				<u>Bank Accounts of Purchasing Warehouse and Greval</u>		
<u>Project</u>	<u>Date of Check</u>	<u>Amount of Check</u>	<u>Payee</u>	<u>Date of Check</u>	<u>Amount of Check</u>	<u>Payee</u>
Theresa	03/08/1995	\$1,000	Purchasing Warehouse	03/08/1995	\$1,000	Mays
Shorter	04/04/1995	7,500	Purchasing Warehouse	04/04/1995	7,500	Mays
Apollo <sup>1</sup>	06/11/1996	1,253	Greval			
Shorter	06/11/1996	1,707	Greval	06/11/1996	2,960	Mays
Theresa	03/21/1997	<u>3,000</u>	Greval	03/21/1997	<u>3,000</u>	“Cash” <sup>2</sup>
		<u>\$14,460</u>			<u>\$14,460</u>	

<b>Table B-2</b>						
<u>Subsequent Day Transfers of Apollo and St. John Funds</u>						
<u>Project Bank Accounts</u>				<u>Greval’s Bank Account</u>		
<u>Project</u>	<u>Date of Check</u>	<u>Amount of Check</u>	<u>Payee</u>	<u>Date of Check</u>	<u>Amount of Check</u>	<u>Payee</u>
St. John	10/02/1995	\$1,100	Greval	10/05/1995	\$1,100	Mays
Apollo <sup>1</sup>	07/17/1996	14,747	Greval	07/20/1996	7,000	Mays
				07/20/1996	<u>7,000</u>	First Commercial
		<u>\$15,847</u>			<u>\$15,100</u>	

<sup>1</sup> It is one of two payments from Apollo’s bank account that total \$16,000.

<sup>2</sup> “For” on the check shows Mays’ executive vice-president received the \$3,000.

Appendix B (Continued)

<b>Table B-3</b>						
<u>Transfer of Towers Funds</u>						
<u>Project Bank Accounts</u>				<u>Purchasing Warehouse's Bank Account</u>		
<u>Project</u>	<u>Date of Check</u>	<u>Amount of Check</u>	<u>Payee</u>	<u>Date of Check</u>	<u>Amount of Check</u>	<u>Payee</u>
Towers	06/20/1995	\$3,600	Purchasing Warehouse	06/20/1995	\$3,600	Pilgrim Rest
Pilgrim Rest	07/05/1995	\$3,600	Purchasing Warehouse	09/15/1995	<u>3,603</u>	"Cash" <sup>3</sup>

<sup>3</sup> Mays' executive vice-president signed the check.

AUDITEE'S RESPONSE

**Mays Property Management, Inc.**  
723 BEECH STREET  
NORTH LITTLE ROCK, ARKANSAS 72114

July 12, 2004

Mr. D. Michael Beard  
Regional Inspector General  
United States Department of Housing and Urban Dev.  
Regional Office of Inspector General for Audit 819 Taylor Street, Room 13A09  
Fort Worth, Texas 76102

Subject: Mays Property Management Audit

Dear Mr. Beard:

It has been very difficult to objectively respond to a report that calls Mays Property Management an "Equity Skimmer". As I read Webster's dictionary the definition of skimming is "To remove top layer, remove floating matter." How can a top layer be removed, if no equity exist. However, this report does not deal with that definition. This report primarily concerns itself misrepresenting actions taken by both the management and the local HUD office to save high risk, troubled apartment complexes. In reading this report I am reminded of a story told by Georgia Representative, Pat Swindall, to Congress, "A woman seeking a divorce went to visit her attorney. The first question he asked her was, "Do you have grounds?" She replied, "Yes, about 2 acres." He said, "Perhaps I am not making myself clear. Do you have a grudge?" She responded, "No but we have a carport." Impatiently, he tried again, "Does your husband beat you up?" "No, I get up before him." She said in reply. In a last effort to communicate the attorney asked, "Do you really want a divorce?" To this she replied firmly, "I don't want one at all, but my husband does. He claims **WE HAVE DIFFICULTY COMMUNICATING.**" I have the same problem relating this report.

This audit/investigation, which ever you prefer, has taken over eight years and it still does not appear complete, and for what? To determine if a minority management company, managing nine "Low Income," "High Risk," subsidized apartments had failed to follow the HUD regulatory agreement to the letter. It is almost as if we were back in the deep south in 1910 and a senior official tells a subordinate, "Bubba, I know those "Boys" are stealing. Go down "thar" and make me a case." That is just what this report represents, "a case".

1. A good example of this is utilizing misstatements to make a point. This report implies that it was do to financial distress that HUD foreclosed on Apollo Terrace Apartments in Little Rock, when in truth HUD foreclosed on the property because

the community had become impossible to secure as detailed to HUD by the Little Rock Police Department. Also torn down was a 400 unit Public Housing Complex, directly across the street from Apollo Terrace Apartments. In the same paragraph this report implies that Mays Property took \$16,000.00 from this distressed apartment and gave it to an identity of Interest Company. It does not mention that the \$16,000.00 was the final payment on a contract to rebuild Building D of the apartment complex, which had been damaged by fire and that the overall contract was \$80,000.00 below competition as determined by the insurance company paying the bill. Other examples of ignored facts, misstatements and innuendos that are included in this report are as follows:

2. Yes! Project funds were allocated to fund technical personal. Not in disregard for, but in total regard for the Handbook. The idea was submitted to the local HUD office as a solution to the inability to get and keep quality people employed, to develop a central continuity in resolving problems that existed and expected. The conclusion reached was that allowing centralization would benefit all apartments equally. Local HUD officials dealt with "Risk Assessment," "Trend Analysis" and "Allowing the management to adapt to changing conditions". The adoption of this system reduced the financial hardship on individual apartment complex and thereby saved each complex funds on higher salaries and allowed those funds to be used for complex rehabilitation.
3. The auditors were shown the contracts for the items specified in those areas reflected as being paid without documentation. They that they were line item oriented or apartment unit oriented contracts with fixed amounts affixed to each line item. As the work was completed the apartment manager authorized payment and accounting verified the amount of that line item and issued the check. If the problem is that no invoice was submitted on every payment, this may be true, however, all the work was done and at a cost the well below market cost for the actions taken. When the physical conditions of the properties and their overall budget are considered over the six years of this report, which can be accessed by review of the inspection reports issued by HUD, the people of Mays Property deserve a medal for HUD, not harassment.
4. The Insurance issue is ludicrous, petty and self explanatory. These people worked with to solve extremely difficult apartment problems and worked with HUD personal in rehabilitating all of the apartment complexes week after week for many years and their insurance should be disapproved and their contribution to the success of the complexes ignored.

It is amazing when I read the summary of the auditors/investigators. Purchasing Warehouse was used to procure both labor and material for the apartment complexes in bulk. Items such as paint, vinyl tile, blinds and etc. It was also used to hire individual labors for specific repair efforts in a single apartment complex. The funds for those items were charged to individual projects as used upon completion of the work effort. When invoices came in the projects were billed, upon occasion the projects and Mays used their fee to cover those items and repaid them to Mays when funds were available. This process was also utilized with labor as well. In order to keep cost to a minimum, minority contractors were utilized, these contractors had skills but not the credentials to

perform the task. Purchasing Warehouse provided a base for development of the necessary credentials and also obtain the required insurance. The same is true for Greval Corporation. Greval allowed Mays to utilize unlicensed Contractors that did not have proper insurance coverage as required by HUD to work and be covered under Greval's umbrella. This facilitated the accomplishment of the task at a much lower cost to the complex than would have existed by using market contracting firms. This can be verified easily by comparing our cost of repair to the average cost per item in the Means Construction Cost Index for the years in question. You will find that on an average our cost was 50% to sometime 70% lower than the average for our region of the country. If chapter 5 of the Handbook encourages participation of women and minority owned business, we must take affirmative steps to allow them the opportunities.


Communication with our auditors/investigators was extremely difficult. We entered into a contract with a yard contractor recommended by the President of the non-profit corporation. This contract was for grounds repair. This contract was issued by Barnett Mays the owner of Mays Property Management. This contract rehabilitated a distracting, rocky ravine in the center of the property and made it a functional park for the residents. Mays always made checks payable to the contractor and gave them to the President of the non-profit. One year we did switch his payments from the complex direct because we were planning to add other complexes to his contract, however, when this was never accomplished we went back to project direct payments. The President of the non profit donated a van to the complex at a value in excess of \$20,000.00. There was no mention of this in the report. Ms. Ward and not Ms Blanks was Manager when this contract was initiated and supervised its implementation. However, this contract was insufficient to cover all the work required to maintain the grounds and on site maintenance did perform yard duties.

I am not implying that over the years of managing very high risk apartment complexes that we did not make some mistakes, but they were just that, mistakes. Not attempts to skim for personal gain but to maintain these complexes to the level required by HUD. We were audited every year as required by HUD. All identity of interest companies identified by the auditor and delineated in the auditors notes. Our commitment to give a percentage of our fee to Ministerial Alliance of the Fort Smith community was at the request of the owner of the complex. He indicated that it was his way of giving back to the community and since he would no longer be managing the complex could we assist in this effort. We agreed and implemented that commitment through the Ministerial Alliance.

The essence of this report is that Mays Property was dishonest in its operations, dishonest with HUD and undermined the success of the apartment complexes they managed. This is simply untrue. The fact is with the exception of one complex all complexes are still performing the function that they were constructed to perform, "House Low Income Individuals." They all have acceptable REAC scores. It is a fact that National HUD was in a major conflict with the syndicators of 6 of the nine apartments managed by Mays and it appears that in some perverted way Mays became a target in this conflict. This was both an unwarranted and unnecessary action by government. These actions, by the

government, have served to drive Mays out of the management arena. It eliminated a minority business that did all the things required to insure that its "High Risk" apartments would remain viable. No additional funds were contributed by the owners but Mays contributed by not taking fees when apartments needed those funds elsewhere. In the opinion of this writer, OIG's dishonesty in this matter has been blatant and ongoing and their objectivity non existent. Allegations based on assumption and innuendo, equals guilt by implication. Everyone that spoke on our behalf was lying. Under the terms of this Audit/Investigation we were guilty from at the inception.

Sincerely,

  
George Mays