



U.S. Department of Housing and Urban Development
Office of District Inspector General for Audit
Capital District
Room 3154
451 7th Street, SW
Washington, DC 20410

**AUDIT MEMORANDUM
NO. 98-AO-211-1803**

August 18, 1998

MEMORANDUM FOR: G. Joann Coats, Director, Multifamily Housing Division, District of Columbia Office, 3GHM

FROM: David J. Niemiec, District Inspector General for Audit, 3GGA

SUBJECT: Multifamily Equity Skimming Review
Capitol View Plaza, Phase II
FHA Project Number 000-44123
Washington, DC

We completed a review of the books and records of Capitol View Plaza, Phase II, a multifamily housing project insured under Section 236 of the National Housing Act. We conducted the review at the request of the former Director, Multifamily Housing Division, District of Columbia Office. Our objective was to determine whether the project owner used project funds in accordance with the regulatory agreement and other HUD requirements. To achieve our objective, we examined the project's audited financial statements for fiscal years 1992 and 1993 and appropriate financial records for fiscal years 1994 through 1996. We also examined the Regulatory Agreement, applicable HUD Handbooks, and other documentation. We discussed the review with HUD staff and with the former management agent, Capitol View Development Corporation, as necessary. The review covered the period January 1, 1992 through December 31, 1996.

We determined that the owner violated paragraph 6(c) of the Regulatory Agreement by withdrawing \$409,700 in project funds between fiscal years 1992 and 1995 while the project was in a nonsurplus cash position. Paragraph 6(c) specifically prohibits the use of project funds for any purpose other than paying reasonable operating expenses and necessary repairs when the project is in a nonsurplus cash position. Details are as follows:

1. The general partner retained \$189,200 in rental income in fiscal years 1994 and 1995. These funds were paid directly to the owner by the District of Columbia government for rent on commercial space at the project. The funds should have been deposited

- into the project's operating accounts. These funds were shown on the project's books as cash received but they were never under the control of the management agent.
2. Checks amounting to \$55,000 were withdrawn from the project's operating accounts and were paid to the general partner during fiscal years 1994 and 1995. These funds were classified as repayments of advances from the general partners on the project's books.
 3. The fiscal 1992 and 1993 audited financial statements show that the general partner was paid \$165,500 from the project's operating accounts during that period. These funds were also classified as repayments of advances from the general partners. The audited statements were not provided to HUD until March 1994.

All of these funds were taken from the project while the project was in a nonsurplus cash position. In addition, while these funds were being withdrawn, the management agent withdrew \$87,000 from the tenant security deposits account to pay operating expenses. At the same time, the management agent was making loans to the project to help pay operating expenses. The tenant security deposits account was not reimbursed for the withdrawals at the time of our review; however, the loans from the management agent were partially repaid from rental income received.

We discussed this case with the Assistant United States Attorney and he is negotiating with the owner to recover the unauthorized distributions. At an April 8, 1998 meeting with the Assistant United States Attorney and us, the owner agreed to repay the \$409,700 in full. However, at this time, the owner has not agreed to a repayment schedule.

We recommend that you pursue appropriate administrative sanctions with the HUD General Counsel. In the meantime, we will continue to work with the Assistant United States Attorney and assist him in his efforts to recover the \$409,700 in project funds that were improperly withdrawn. We will keep you informed of any changes in the situation. We are entering the \$409,700 into the Departmental Automated Audits Management System as a receivable due the project. Any actions that you take should be coordinated with our office.

Should you or your staff have any questions, please contact Donald Cairns, Assistant District Inspector General for Audit, or Watt Sammons, Auditor, on (202) 708-0351.