



Office of the Attorney General of Guam

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Hon. Leevin Taitano Camacho
Attorney General of Guam

August 31, 2020

The Honorable Joe S. San Agustin
Chairman
Committee on Appropriations, General Government
Operations & Housing
I Mina'trentai Singko Na Liheslaturan Guahan
Suite 3, 2nd Floor, Ran Care Bldg.
761 S. Marine Corps Dr.
Tamuning, Guam 96913

Subject: HUD Demand on GHURA for Repayment of \$83,568.00 for Conflict of Interest Violation (Ref. GHURA 20-0320)

Dear Senator San Agustin:

This is in response to your letter dated July 30, 2020, pertaining to an October 18, 2017 letter from Mr. Jesse Wu, Director of the U.S. Department of Housing and Urban Development (HUD) Office of Public Housing in Honolulu, Hawaii, to former Guam Housing and Urban Renewal (GHURA) Executive Director, Mr. Michael Duenas wherein HUD directed GHURA to remit \$83,568.00 in non-federal funds to the Department of Treasury.

According to HUD, the aforementioned amount was “incorrectly paid to [a former Section 8 landlord] . . . from October 1, 2013 through October 31, 2017.” The assessment ostensibly is the result of HUD’s determination that “[a] conflict of interest exists as [the landlord’s] son . . . is a Senator with the Guam Legislature.”

In a December 12, 2019 letter to Mr. Wu, GHURA’s current Executive Director, Mr. Ray S. Topasna, sent a letter to Mr. Wu seeking HUD’s “reconsideration in requiring GHURA to repay the \$83,564.” To date HUD has not responded to GHURA’s request for reconsideration. GHURA has informed us that it intends to follow up with HUD on its request, if it hasn’t done so already.

Notwithstanding that GHURA may not consider HUD’s demand as final and due pending a response to its request for reconsideration, you pose the following

questions, which we will attempt to answer generally and without specific application or reference to the particular case raised above:


1. **Who is liable for the reimbursement to the U.S. Department of Housing and Urban Development?** The administration of the Section 8 Housing Choice Voucher program for Guam is governed by the Annual Contributions Contract (ACC) between HUD and GHURA, as the Public Housing Authority (PHA). Item 8(c) of the standard ACC provides that the PHA is liable for reimbursement to HUD for excess payments. "The PHA shall take any actions required by HUD respecting the excess payment, and shall, upon demand by HUD, promptly remit the excess payment to HUD." *Id.*
2. **May the Government of Guam and/or GHURA seek reimbursement from any of the parties – landlord, tenant, other?** According to the standard Housing Assistance Payments Contract (HAP Contract) between the Public Housing Authority and an Owner of a Covered Unit, Item 10(b) states, "If the PHA determines that a breach has occurred, the PHA may exercise any of its rights and remedies under the HAP contract, or any other available rights and remedies for such breach." Item 10(c) indicates that "[t]he PHA's rights and remedies for owner breach of the HAP contract include recovery of overpayments. . . ."
3. **Is the failure to disclose a conflict [of] interest in this matter subject to legal action by the Government of Guam and/or GHURA?** See response to Question No. 2. Failure to disclose a prohibited interest under Item 13 Conflict of Interest of the HAP Contract may constitute a breach of the HAP Contract. We believe it would be in GHURA's discretion, as the PHA, on a case-by-case basis to determine how it would handle such matters. .
4. **Who is the responsible party for which the conflict of interest was not declared to HUD?** Item 13(e) of the HAP Contract regarding Conflict of Interest specifies that "[i]f a prohibited interest occurs, the owner shall promptly and fully disclose such interests to the PHA and HUD." This requirement is in line with Item 14(d) of the ACC which states "The PHA shall require any covered individual or entity to disclose his, her or its interest or prospective interest in any contract, subcontract or other arrangement in connection with contract administration under the ACC to the PHA and HUD." ¹

¹ It appears also that the PHA has a responsibility to report a conflict of interest to HUD where a waiver of the conflict of interest prohibition is sought. See *Public Housing Authority ETHICS Reference Manual Guidance on Ethics Matters for Public Housing Authorities (2003)*, p.9 ("The

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We hope we have addressed your questions sufficiently. For more specific information about the Section 8 Housing Choice Voucher program, and in particular the status of the case you raise above, we believe GHURA, as the program's administrator, to be the most equipped and knowledgeable party to respond to these matters in more detail.

Sinceramente,


KARL P. ESPALDON
Deputy Attorney General

cc: Ray S. Topasna, GHURA Executive Director
Anthony Perez, Esq., GHURA Legal Counsel

PHA should not execute the HAP contract until the HUD Field Office makes a decision on the waiver request.”) In this instance, GHURA maintains that it did not learn of the conflict of interest until April 2017, whereupon it submitted a request for waiver to HUD in July 2017, which HUD subsequently denied.