

Landlord may sue prosecutor  
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U.S. attorney's suit against apartment owner was thrown out

Federal housing officials knew as early as 1993 about rundown, substandard living conditions at a Jackson apartment complex but continued to subsidize it, records show.

No effort was made to stop funding or force improvement until U.S. Attorney Brad Pigott filed a lawsuit five years later against the property owner on behalf of the U.S. Department of Housing and Urban Development.

But that lawsuit failed when a federal judge found HUD continued to subsidize Metro Manor Apartments knowing the conditions that existed. Now the owner, Steve Nail, is contemplating his own lawsuit against Pigott for malicious prosecution.

"The case is over and we won. ... it is obvious that this was a malicious lawsuit filed by one of the biggest threats to our nation today – an extortionist with a badge," Nail said.

Pigott would not respond to Nail's assessment.

Because of possible litigation, Pat Hoban Moore, HUD's senior community builder/state coordinator, would not comment on Nail's case. She had earlier said HUD was technically not responsible for allowing the complex to slip through the cracks because HUD works through local housing authorities.

But Hickman Johnson, executive director of the Jackson Housing Authority, said the inspection findings were always passed on to HUD, which decides whether to continue funding the properties.

And the inspection reports of Metro Manor in 1995 alone, done by employees of local housing authorities and independent contractors, outlined potentially hazardous conditions that existed at the complex on Jackson West Boulevard.

While he did not address the Jackson cases directly, Ferdinand Juluke, director of HUD's Jacksonville Multi-Family Hub of Florida, Mississippi and Alabama, acknowledge HUD decides when to cut off funding.

HUD normally moves quickly to correct problems pointed out in reports by forcing property managers to make repairs or stopping the payment of HUD funds if they do not, Juluke said.

Pigott had sued Nail and, in a second lawsuit, W. Thad McLaurin, Charles C. Taylor Jr. and Arthur W. Doty, former owners of Jackson Apartments, in 1998 under the False Claims Act, a civil statute that allows prosecutors to seek repayment of federal housing funds obtained by submitting false reports.

The act calls for landlords to provide "safe, decent and sanitary" living conditions for tenants in HUD's Section 8 housing program.

Pigott lost both suits.

In dismissing the \$2.78 million lawsuit against McLaurin, Taylor and Doty on Jan. 28, U.S. District Judge Tom Lee said, since HUD knew of the problems and corresponded with the defendants, there could be no reasonable finding the owners knowingly made a false statement or claim to HUD.

U.S. District Judge William H. Barbour Jr. had to come to the same conclusion in August in dismissing the government's \$9.8 million lawsuit against Nail.

Pigott said he expects an appeal of the Jackson Apartments dismissal to be filed. But an appeal of the Metro Manor case was withdrawn Jan. 18, at the discretion of Department of Justice attorneys.

Nail's attorney, Grey Lewis of Washington, surmised the Nail appeal was dismissed because it had no merit.

Lewis also has hinted at a possible lawsuit against Pigott for what he claims was malicious prosecution and character damage for making Nail appear a negligent landlord and a "criminal."

Pigott said the Nail appeal was withdrawn "for a variety of complex reasons," on which he would not elaborate. Justice Department attorneys also would not discuss their reasons.

The inspection reports of Metro Manor Apartments listed as a danger to the health and safety of residents: exposed wiring on a laundry room heater, live roaches and an unorganized maintenance shop.

The reports also allege employees of Intervest Corp., owner of Metro Manor Apartments, intimidated tenants with evictions when they complained about repairs that management ignored.

A report by Jackson Housing Authority inspector B.J. Walker on June 21, 1994, on Metro Manor states: "The living conditions on the property are unacceptable and do not meet minimum basic standards required by HUD.

"The physical conditions on site endanger the health and safety of the residents... nine of the 21 units inspected (43%) had evidence of roach infestation or several live roaches were observed. Three of these nine occupied units were reported on the last HUD inspection 11 months ago. The conditions are still unacceptable. This is a health and safety matter."

In another report, Jackson Housing Authority inspector Brenda Mason on July 19, 1995, rated the Metro Manor below average.

"Laundry – exposed wire on heater, this has been on previous reviews, counter top damaged, wall needs repair and painting. Maintenance shop unorganized, safety hazards for employees. ... This office continuously receives complaints from tenants stating they have placed work orders which are not responded to by management.

"Tenants have stated if they continue to question management regarding the work orders, they are advised they will be evicted for one reason or another. Tenants feel they are being intimidated by management and being threatened with eviction if they complain to this office or the managing agent," Mason wrote.

An inspector from Management Solutions of America on Aug. 8, 1995, wrote: "The living conditions on this property are unacceptable and do not meet minimum basic standards required by HUD."

Nail said the reports were not totally accurate because none of his staff had ever threatened a tenant with eviction for making complaints.

"That was never proven. That was just a statement when (the government) was trying to make a case against us," Nail said.

In addition, Nail said monthly pest control efforts were made, but the uncleanliness of some tenants made elimination of roaches impossible.

"The problem we got out there is when people do not keep their house in a neat and sanitary manner, you're going to continue to have roaches and rats. When we get a complaint we tell the guy to go back out and spray," Nail said.

Juluke said up to 95 percent of property owners who receive HUD subsidies are satisfied with the amount they are paid and maintain the properties to HUD standards. HUD calculates the amount an owner will need to maintain properties before the agreement is approved and the owner agrees with he enters the contract, Juluke said.

HUD also has instituted new rules to more rapidly terminate future payments to property owners who allow their buildings to fall into disrepair or force the owner to more quickly repair them.

Pigott earlier said he would propose to HUD's Washington office that Nail and others who accepted federal monies but allowed their apartment complexes to deteriorate be debarred.

On Friday, he clarified his previous statement to say he supports ongoing efforts by others to debar Nail.

HUD officials in January 1999 began the process of trying to debar Nail for allegedly failing to maintain the physical upkeep of Eastover Apartments in Indianola and mismanaging finances for the complex.

A Jan. 26, 1999, audit report from the office of Nancy H. Cooper, HUD's district inspector general for audit for the Southeast/Caribbean Region, accused Intervest Corp. of mismanagement and deferring maintenance that cause the Indianola structure to require more than \$900,000 in repairs.

She also accused Intervest Corp. of overbilling HUD for \$26,508 in Section 8 subsidies by improperly calculating rent. HUD pays 70 percent of rent for Section 8 tenants and the tenants pay 30 percent.

Government documents also accuse Nail of taking from Metro Manor \$489,307 above money allotted for management fees, which they said could have been used to fix the property.

"Our office certainly concurs in the recommendation that the HUD inspector general has already made, that serious administrative sanctions be made against Intervest based also on the findings on their conduct that we were able to discover during our litigation involving Metro Manor," Pigott said Friday.

Nail, who has five government financed apartment complexes, denied any wrongdoings in the matters. HUD's unwillingness to increase payments to him or offer other financial incentives to finance upgrades of the properties is the root of the problem, he said.

"HUD sued me before they lost. They have no grounds to debar me," Nail said. "If (HUD) would have done anything that I would have asked them to do, this whole issue would not have been a problem. This is something that HUD has to fund.

"We have audits that approved by HUD on an annual basis. It's prima facie evidence that you have to have more money in the project ... they quit giving us rent increases. Instead of doing anything to help the property, they blame the owner which helps them breach their contract."

Lewis said, in good faith, the government should have exhausted other remedies to clarify the Metro Manor dilemma before filing suit against Nail. Among those remedies are increasing the amount of rent payments to Nail or offering him other financial incentives to upgrade the apartments.

"I think it's very unethical to have used the False Claims Act in a situation like this. The False Claims Act is probably the most dangerous law the government has. (Pigott) never once asked for any of the contractual remedies they had a right to use," Lewis said.

"(Pigott) is attempting to have (Nail) debarred although we've won every case. We haven't even begun on Brad Pigott. The fact that he's going to debar Steve Nail means 'I'm going to put you out of business and I'm going to destroy all of your companies.' (Pigott) is just using his office for political purposes."