

1 THE VANDEVELD LAW OFFICES, P.C.
2 Curtis c. Van de veld
3 Gill & Perez House, Second Floor
4 Hagatna, Guam 96910
5 Telephone No. (671) 472-4396
6 Email: Curtis@vandeveld.attorney
7 *Counsel for Petitioner Mark S. Smith*

FILED
DISTRICT COURT OF GUAM

APR 10 2025

JEANNE G. QUINATA
CLERK OF COURT

8
9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE TERRITORY OF GUAM

12 MARK S. SMITH, } Case No. 25-00016
13 Petitioner, }
14 v. }
15 UNITED STATES DEPARTMENT OF } PETITION FOR JUDICIAL REVIEW
16 HOUSING AND URBAN DEVELOPMENT, }
17 Respondent. }

18 **NATURE OF ACTION**

19 1. This is a petition for judicial review of administrative orders issued by the
20 United States Department of Housing and Urban Development (“HUD”) in administrative
21 case numbers HUDOHA 17-JM-0135-PF-004, OGC Case No. 15-0076-PF, and HUDOHA
22 18-JM-0208-PF-010, OGC Case No. 18-0026-PF. Administrative Law Judge J. Jeremiah
23 Mahoney entered an order on or about November 15, 2024, and Secretarial Designee
24 Andrew Hughes issued a final Order on Secretarial Review on or about February 11, 2025.
25 The orders found that petitioner Mark S. Smith submitted 25 false and fraudulent claims to
26 HUD and imposed assessments totaling \$532,872, and civil penalties totaling \$202,500 for
27 a total penalty of \$735,372 pursuant to the Program Fraud Civil Remedies Act (“PFCRA”),
28 31 U.S.C. §§ 3801-3812.

JURISDICTION AND VENUE

2 2. This Court has jurisdiction pursuant to 31 U.S.C. § 3805 and 5 U.S.C. §§ 702
3 and 704 and related statutes and constitutional requirements.

4 3. Venue is proper in the District of Guam under 31 U.S.C. § 3805 because Mr.
5 Smith resides and transacts business in the District of Guam and the claims or statements
6 upon which the determination of liability is based were made, presented, or submitted in
7 the District of Guam.

8 4. Counsel for Mr. Smith is serving this petition by electronic mail on attorney
9 William Doolittle, who represented HUD in the administrative proceedings, and Assistant
10 United States Attorney Mikel Schwab.

GROUND FOR REVIEW

12 5. Mr. Smith reserves the right to add to, supplement, and amend the following
13 grounds or claims for review and to submit briefing and argument in support of his claims
14 at a later time. The administrative orders were unlawfully withheld and unreasonably
15 delayed. They were arbitrary, capricious, an abuse of discretion, and otherwise not in
16 accordance with law. They were contrary to constitutional rights, in excess of statutory
17 jurisdiction, authority, and limitations, and short of statutory rights. The orders were
18 without observance of procedure required by law. They were unsupported by substantial
19 evidence and unwarranted by the facts.

20 6. The administrative orders were issued without jurisdiction for exceeding the
21 \$150,000 jurisdictional cap under the version of the PFCRA applicable in this case. *See* 31
22 U.S.C. § 3803(c); *Roberts v. Shinseki*, 647 F.3d 1334, 1341 (Fed. Cir. 2011).

23 7. The assessments totaling \$532,872 and civil penalties totaling \$202,500 for a
24 total penalty of \$735,372 violate the Excessive Fines Clause of the Eighth Amendment, the
25 Due Process and Double Jeopardy Clauses of the Fifth Amendment, and the governing
26 statutes and regulations, including the maximum penalties in 31 U.S.C. § 3802(a)(2) and
27 24 CFR § 28.10, and 24 CFR § 28.40(b).

28 || 8. The administrative orders' interpretation of 24 CFR § 982.161 and the term

1 “covered individual,” which was the basis of the alleged false and fraudulent claims, was
2 erroneous and that regulation is unconstitutionally vague on its face and as applied and
3 otherwise violates due process as interpreted in the administrative orders.

4 9. The statements in the alleged fraudulent claims were not false, were immaterial,
5 lacked a sufficient mens rea, and otherwise failed to meet the requirements for liability
6 under 31 U.S.C. § 3802. *See, e.g., Universal Health Services, Inc. v. United States*, 579
7 U.S. 176 (2016).

8 10. The administrative orders granting summary judgment and the penalty without
9 a hearing and without affording Mr. Smith sufficient time violated statutory requirements,
10 including 31 U.S.C. § 3803, the applicable regulations, and due process, and were
11 otherwise erroneous.

12 11. The administrative orders were not based on substantial evidence, lacked
13 adequate factual support, failed to comply with the standards for summary judgment, and
14 otherwise violated statutory requirements, the applicable regulations, and due process.

PRAYER FOR RELIEF

16 ACCORDINGLY, for the reasons given above and to be submitted in briefing at
17 an appropriate time, Petitioner prays for judgment vacating the administrative orders in
18 full, or reducing the monetary penalties imposed, or for such other and further relief as the
19 Court may deem proper.

RESPECTFULLY SUBMITTED this 10th day of April, 2025.

By:

*CURTIS C. Van de veld
Counsel for Mark S. Smith*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MARK S. SMITH

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Curtis C. Van de veld
Benjamin L. Coleman

DEFENDANTS

UNITED STATES DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT; SCOTT TURNER

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

William M. Doolittle

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input checked="" type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input checked="" type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	INTELLECTUAL PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Product Liability	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Other Fraud	<input type="checkbox"/> 485 Telephone Consumer Protection Act	
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 420 Copyrights	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 861 HIA (1395ff)	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 862 Black Lung (923)	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 864 SSID Title XVI	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 865 RSI (405(g))	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 443 Housing/ Accommodations	FEDERAL TAX SUITS	
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 444 Amer. w/Disabilities - Employment	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
		<input type="checkbox"/> 445 Amer. w/Disabilities - Other	<input type="checkbox"/> 871 IRS-Third Party	
		<input type="checkbox"/> 446 Amer. w/Disabilities - Other	26 USC 7609	
		<input type="checkbox"/> 448 Education		
		Habeas Corpus:	IMMIGRATION	
		<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 462 Naturalization Application	
		<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 465 Other Immigration Actions	
		<input type="checkbox"/> 530 General		
		<input type="checkbox"/> 535 Death Penalty		
		OTHER:		
		<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
---	---	--	---	--	--	---

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
31 USC 3801-3812

VI. CAUSE OF ACTION

Brief description of cause:
Alleged fraud with collecting Section 8 rentals while serving as local counsel for GHURA

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Ramona V. Manglona

DOCKET NUMBER 15-CV00040

DATE

04-09-25

SIGNATURE OF ATTORNEY OF RECORD

Scott Turner

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

APR 10 2025

RECEIVED