

HUD Hits Home Run

Normandy Apartments, Ltd. owns and manages an apartment building in Tulsa, Oklahoma, under a Housing Assistance Payments contract with the U.S. Department of Housing and Urban Development (HUD) executed in 1992. Under this agreement, Normandy received housing assistance payments from HUD in exchange for reserving a portion of its apartments for low-income housing. In 2004, Normandy signed a renewal agreement, which the Oklahoma Housing Finance Agency signed but HUD did not. Under the renewal agreement, the Oklahoma Housing Finance Agency assumed HUD's based oversight responsibilities under the original agreement--with HUD retaining the obligation to fund the assistance payments and general oversight.

In 2006, Normandy failed an annual site annual HUD site inspection, which Normandy explained was because the inspection occurred while it was replacing all the windows in the apartment building. Normandy then took steps to sell the apartment building for \$8 million. HUD not only refused to approve Normandy's pending sale, but cancelled its assistance payments while requiring Normandy to continue providing low-income housing.

Normandy sued HUD for a breach of contract, but because HUD never signed the renewal agreement, that claim failed. Normandy also sued for just compensation, arguing that HUD's actions destroyed its property interests in its contract, the apartment complex, and its sale agreement.

The Government moved to dismiss, which the court converted to a motion for summary judgment. In reviewing the motion, the court observed that Normandy's right to receive the housing assistance payments was controlled by the Housing Assistance Payments renewal contract with Oklahoma Housing Finance Agency, subject to HUD oversight. The court stated that Normandy did not have a right to the assistance payments because Normandy "had contracted away" the right to payments without HUD oversight. The court thus stated "[t]he conclusion that inevitably follows is that HUD did not affect a taking when it ended HAP payments."

The court further held that because Normandy had also contracted away the right to sell the property over HUD's veto, that veto "cannot give rise to a regulatory taking because the very ability to interfere with plaintiff's right to alienate the property was given to defendant in exchange for the right to prepay its mortgage and the right to participate in the subsidy program." Because it had given that property right to the Government, it could not claim the Government had later taken that property right.

Read the full opinion [here](#).