MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

DOCKET NO. BCD-25-301

GENERAL HOLDINGS, INC.

Plaintiff - Appellee

v.

PAMELA GLEICHMAN, et al.

Defendants - Appellants

APPELLEE'S BRIEF

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GENERAL INTRODUCTION AND BACKGROUND

General Holdings commenced this action to resolve the issue of Pamela Gleichman's status as a general partner in 48 separate limited partnerships. Each of those limited partnerships owns as a single asset a specific subsidized housing project ("Project"). All the limited partnerships were formed under Maine law, although the project locations are divided between Maine and Pennsylvania.

The foreclosure of 100% of Pamela Gleichman's economic interest as a general partner in the Projects was upheld by the Illinois Court in June of 2018. Plaintiff's Exhibit 31. Gleichman also held a limited partnership interest in several of the partnerships, all of which also were foreclosed in the same Illinois case. The specifics of that litigation are discussed below. *See infra* at 5-7. General Holdings concluded that that foreclosure leaving Gleichman with zero economic interest resulted in the dissociation of Gleichman as a general partner without the need for any action by or permission of any limited partner in these Projects. Based on that position, General Holdings issued final K-1s to Gleichman in 2019. General Holdings also sought and obtained the consent of Rural Development ("RD" or the "Agency")[1] for the removal of Gleichman as a general partner in each of the Projects.[2]

[1] This case involves discussions of low-income housing projects regulated by agencies within the U.S. Department of Agriculture, first by the Farmers Home Administration and later by Rural Development. Because the time period involved in this dispute spans the reorganization of these agencies, this brief uses the Agency to refer to either regulatory body.

[2] The K-1s issued to Gleichman for Blair House Associates and Anson Street Associates marked as Exhibits 5-A and 5-B respectively are representative of the K-1s issued for all the Projects. Test. of Scarcelli, Trial

Even though Gleichman did not expressly agree with those actions and/or her dissociation, such disagreement standing alone did not render necessary any action to "resolve" this potential issue, particularly considering the 2020 Settlement Agreement's prohibition on interference by Pamela Gleichman, and by express extension, Ellen Hancock and Eight Penn. That all changed when Ellen Hancock filed a bad faith involuntary bankruptcy petition against Blair House,[3] followed by a civil action to appoint a receiver and dissolve Blair House.[4] Those actions were premised on Pamela Gleichman's alleged status as a general partner, coupled with her refusal to consent to General Holdings' decisions regarding Blair House. What went from being largely a non-issue, or at least not one necessitating litigation, became a critical issue that had to be resolved once and for all because of those pending disputes and the need to prevent similar interference in the management of the projects. Mary Wolfson, Trustee of the HMAN Trust, was included as a party in

Trans. at 33. Plaintiff's Exhibit 3 is the consent of the Agency with respect to Blair House Associates and is representative of the consents issued by the Agency in all other Projects. *Id.*

[3] After the Agency refused to allow Blair House to liquidate and required them to rebuild the Project after the fire, Hancock filed an Involuntary Petition on or about May 5, 2021, to derail the rebuilding process. The Petition was dismissed shortly thereafter in June 2021. The Bankruptcy Court found the filing of the Involuntary Petition to be in bad faith and awarded $100,000 in punitive damages and attorneys' fees. The litigation of those issues spanned from the summer of 2021 through February of 2024. The Court can take judicial notice of that activity. General Holdings Exhibits 2 through 13 in BCD-CIV-2021-00054 capture much of that activity.

[4] The Trial Court was familiar with the rather long saga involving this particular case, which eventually came to a conclusion with the Trial Court's Order granting Defendants' Motion to Dismiss the Third Amended Complaint in *Wolfson v. Blair House Associates, et al.*, BCD-CV-2021-00052. *See* Plaintiff's Exhibit 38. That dismissal was not appealed.

interest in this case only because of her express reliance on Pamela Gleichman's status as a GP in other litigation commenced by her.

The Trial Court's involvement in several cases with these same or related parties provided the Court with a substantial foundation of knowledge and context pertinent to the disputes in this case. The records in certain other cases were made part of the record in this case in order to avoid repetitive evidence, without the risk of prejudicial evidence affecting the fact-finder in this jury waived trial. Although that foundation obviated the need to rehash a substantial amount of background information, distinct aspects of the pending dissociation issues necessitated a more in-depth examination of certain matters. Several factors render the analysis of the various dissociation issues in this case more complicated, or at least more tedious, than otherwise would be the case in a stand alone, plain vanilla partnership dispute.

An appreciation of these critical factors makes the deeper dive into the issues more manageable. These factors include, but are not limited to, the following:

(1) This dispute involves 48 different limited partnerships with approximately 10 different versions of Limited Partnership Agreements ("LPA"), with some differences that are material to the dissociation issues and some that are not.

(2) All of the partnerships were formed during the timeframe from the late 1970s to the mid-1990s and therefore use "old" rather than "modern" terminology in addressing issues of withdrawal and termination of partnership interests. For example, the term "dissociation" was not utilized in any version of the Uniform Partnership

Act ("UPA"), the Uniform Limited Partnership Act ("ULPA") or applicable Maine law until 2004. For that reason, none of the LPAs at issue here use that specific term to identify that specific event. Other terms such as "retirement," "disablement," "event of withdrawal," "involuntary withdrawal," etc., appear in certain agreements, sometimes expressly defined therein and other times not. The formation of these limited partnerships in the 1980s and 1990s also raises issues as to which versions of Maine's ULPA may apply to various issues.

(3) Although a limited partnership agreement is a contract subject to the normal rules of contract interpretation, as concerns limited partnerships formed solely to develop and manage subsidized housing projects, one cannot overstate the dominant role played by applicable federal regulations in that interpretative process. For example, the preemption provisions in the Project Documents[5] and/or in the LPAs require that one ignore even unambiguous provisions in the LPAs relating to withdrawal or dissociation if inconsistent with applicable federal regulation and/or provisions in the Project Documents.

STATEMENT OF FACT

A. The limited scope of the issues on appeal determines the facts material to those issues.

[5] Almost all the LPAs contain a definition of "Project Documents" to include the Mortgage and Security Agreement, the Loan Agreement and other ancillary agreements/documents. As pertains to the issues in this case, the Loan Agreements, discussed in detail below, contain the most pertinent provisions.

Appellant Gleichman, if nothing else, is consistent in her methodology when briefing the various substantive issues involved in this and other cases. That methodology includes expending considerable time and effort rehashing grievances mostly resolved in other cases that have no relevance to the substantive issues actually asserted and briefed on appeal in this case. Gleichman's 14-page Statement of Fact is divided into subsections A-K. The majority of those sections have nothing to do with the only issue identified in Appellant's "Statement of the Issues for Review," specifically whether the Trial Court erred in concluding that the foreclosure of Gleichman's entire economic interest in various partnerships resulted in her dissociation as a partner in each of the partnerships. For example, this appeal does not involve any issue relating to the 2014 change in control of General Holdings (Subsection C), the impact of any of the 2020 Settlement Agreement (Subsection D), the personal tax consequences to Gleichman from a dissociation versus a foreclosure (Subsection E), and the largely irrelevant recitation of certain historical communications between counsel (Subsections G and H). As explained in the Standard of Review below, issues not asserted in the "Statement of the Issues for Review" are waived, and even identified issues are waived if not briefed in a meaningful way. For that reason, Appellee General Holdings does not address any of those issues in its Statement of Fact.

B. <u>Overview of the Rural Development subsidized housing program</u>.

The business model underlying federal subsidized housing programs incentivizes investors to invest substantial sums in housing projects for low-income tenants—investments they otherwise would never make—in exchange for substantial upfront tax credits and benefits. To maximize the allocation of those tax credits to the investor limited partners, the allocation of profits, losses, and deductions is typically 99% to limited partners and 1% to general partners. That allocation is completely different from the allocation of net proceeds upon refinancing or in "residuals," such as proceeds from a sale after a project is released from the subsidized housing program. In exchange for those substantial benefits, the projects are subject to extensive regulation, including a commitment to provide subsidized housing for an extended period, typically 50 years. In contrast to that long project life, the tax benefits such as tax credits are front loaded and taken over the first ten years. *See* 26 U.S.C. § 42(f) (2025). The limited partners are allowed to extricate themselves from the project without penalty and transfer their interests after fifteen years. *See id.* § 42(i)(1). Once the limited partners have exhausted the benefits that incentivized the initial investment, these limited partners typically are anxious to transfer their limited partnership interests for minimal, if any, compensation.[6]

[6] Examples of these transfers include Boston Capital's transfer of its limited partnership interests in 23 separate partnerships to GN Holdings Limited Partnership, the current sole limited partner in those partnerships. Other examples include Columbia's transfer of its limited partnership interests in four partnerships to Ellen Hancock as Trustee of the HMAN Trust and Richman Investments (via miscellaneous tax credit funds) transfer of its limited partnership interest in four partnerships to Richard Olson as Trustee of the Promenade Trust. Richman has or will transfer the other four pending final resolution of the Eight Penn case. In addition, Olson has acquired several other limited partnership interests and Pamela Gleichman

Regulatory authorities exercise substantial control over all aspects of the project.[7] Most relevant to this case, that control includes the power to decide who can be a general partner, when and if a general partner can withdraw or be removed, and even whether the partnership can dissolve. Unlike a normal for-profit business, government control over income, expenses and distributions eliminates any potential for substantial operating profits over the long life of the project. All of the Project Documents contain a cap on annual "Returns to Owners" or distributions of cash. This regulatory structure and skewing of normal avenues to make annual operating profits over the life of these projects usually available to for-profit businesses underlies the rationale for establishing the regulatory requirement that those persons with decisional control, whether general partners in a partnership or a managing member in an LLC, must have and maintain a materially significant economic stake—at least a 5% economic interest—in other words, "skin in the game." This economic interest requirement is discussed more fully below. *See infra* at 11.

C. Facts relevant to Pamela Gleichman's dissociation as a general partner in the Projects.

(1) Foreclosure on Pamela Gleichman's general partnership interests

In 2013, Karl Norberg, spouse of Gleichman, assigned to Christopher Coggeshall ("Coggeshall"), Trustee of the Promenade Trust, multiple judgments

acquired limited partnership interests in several of the partnerships once the original limited partners chose to exit.

[7] Even a quick perusal of the regulatory requirements at 7 C.F.R. § 3500, *et seq.*, reveals the pervasive and detailed nature of the regulation of these Projects.

against Gleichman that Norberg had acquired years earlier using funds from a distribution that had belonged to the Promenade Trust. *See* Plaintiff's Exhibit 19. Coggeshall also obtained a default judgment against Gleichman in 2013 relating to that same improper distribution. In 2015, Richard Olson ("Olson") became the successor Trustee of the Promenade Trust and in that capacity owned and controlled both the judgments against Gleichman assigned by Norberg and the judgment against Gleichman obtained directly by Coggeshall.

In 2016, Rosa Scarcelli and entities under her control[8] entered into agreements with Olson resolving several issues and disputes. *See* Plaintiff's Exhibits 25, 26 and 27. Subsequent to those agreements, Olson successfully foreclosed on Gleichman's entire "transferable" interest as a general partner in all the limited partnerships and Gleichman's limited partnership interests in eight limited partnerships. *See* Plaintiff's Exhibit 30. A foreclosure auction was held at which Olson's credit bid of $4.6 million was the winning bid. Gleichman's challenge to the foreclosure auction was rejected by the court in April of 2018. *See* Plaintiff's Exhibit 31. Gleichman's appeal of that decision was denied. *See* Plaintiff's Exhibit 31-A.

[8] As a short refresher, Rosa Scarcelli formed and is the sole member of Preservation Holdings, LLC, an entity created to acquire Gleichman and Norberg debt obligations to JMB, which obligations were secured in part by a pledge of Gleichman's shares in General Holdings, formerly known as Gleichman & Co. Preservation Holdings became the sole shareholder of General Holdings as the result of the 2014 foreclosure auction on Gleichman's shares. Rosa Scarcelli, the majority equity holder in GN Holdings LP, formed and is the sole member of Integro LLC. Scarcelli appointed Integro as the general partner of GN Holdings LP after the entry of the arbitration decision establishing Scarcelli's authority to do so. *See* Plaintiff's Exhibit 21; Test. of Scarcelli, Trial Trans. at 26-27.

Two facts relating to this foreclosure on Gleichman's general partnership interests are not disputed. First, as a result of the foreclosure, Gleichman no longer possessed any "transferable" or economic interest as a general partner in any of the limited partnerships. Second, Olson did not obtain by foreclosure Gleichman's non-economic general partnership interests—her management rights remained intact. Despite that fact, consequences flowed from the transfer of Gleichman's entire economic interests in accordance with the provisions of the various LPAs, Project Documents, and applicable federal regulations incorporated therein.

(2) Summary of the Project Documents and incorporation into the Limited Partnership Agreements

The dissociation issues are influenced substantially by the terms of various Project Documents, applicable federal regulations, and the various LPAs. The LPAs contain several provisions incorporating the Project Documents and applicable federal regulations into the agreements. The LPAs define the term "Project Documents" to include any associated mortgage, security agreement, rental assistance agreement, and the Loan Agreement with the governmental agency, at that time the Farmers Home Administration ("FmHA"). *See, e.g.*, *Bethel Park LPA*, Plaintiff's Exhibit 1-I, Article 1, pg. 9. All the "Boston Capital" agreements contain Section 13.8, stating unambiguously that every provision of the partnership agreement is subject to and the general partners covenant to act in accordance with the Project Documents. That provision expressly provides that the Project Documents govern the rights and

obligations of the partners and that the affairs of the partnership shall be subject to FmHA regulation with any changes or significant actions being subject to FmHA approval. *See* Plaintiff's Exhibits 1-I and 1-J. The eight "Richman" forms of agreement include Article 3.03, expressly stating that the FmHA documents and regulations prevail over any inconsistent provision of the partnership agreement. That provision also incorporates the regulatory 5% financial interest requirement and the need for FmHA approval with respect to admission and removal of general partners. *See* Plaintiff's Exhibit 1-L. The four so-called "Columbia" limited partnership agreements contain similar provisions regarding the preeminence of FmHA regulations in Article XII. These provisions expressly state that in all cases in which the agreement conflicts with FmHA regulations, the regulations shall take precedence. Those provisions state that the Project Documents govern the rights and obligations of the partners and that no new partner shall be admitted, and no partner may withdraw without the consent of FmHA. Those provisions also incorporate the minimum 5% economic interest requirement. *See* Plaintiff's Exhibit 1-K.

The Loan Agreements contain "regulatory covenants." Those regulatory covenants provide in relevant part as follows:

> 6. Regulatory Covenants. So long as the loan obligations remain unsatisfied, the Partnership shall comply with all appropriate FmHA regulations and shall:
>
> d. Agree that if any provisions of its organizational documents or any verbal understandings conflict with the terms of this loan agreement, the terms of the loan agreement shall prevail and govern.

e. Unless the Government gives prior consent:

(3) Not change the membership by either the admission or withdrawal of any general partner(s) nor permit general partner(s) to maintain less than an aggregate of 5 percent, financial interest in the organization nor cause or permit voluntary dissolution of the Partnership nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

i. Not alter, amend, or repeal without the Government's consent this agreement or the Partnership Agreement, which shall constitute parts of the total contract between the Partnership and the Government relating to the loan obligations.

7. General Provisions.

e. This loan agreement shall be subject to the present regulations of the Farmers Home Administration and to its future regulations and provisions hereof.

See Plaintiff's Exhibits 2-A and 2-B.

D. The Trial Court's Order and Judgment below.

The Trial Court issued a detailed 24-page Decision in support of the Judgment entered in favor of General Holdings. That Decision included a detailed description of the applicable provisions of the various Partnership Agreements. The Trial Court found that Gleichman was dissociated as a general partner in accordance with the federal requirement that general partners maintain an economic interest, and that the dissociation was automatic because the consent of other partners was irrelevant to the dissociation issue. Significantly, the Trial Court also held in the alternative that the language of 36 of the Partnership Agreements resulted in the dissociation of

Gleichman regardless of the application of the federal requirement of an economic interest. The Trial Court also held that Gleichman was dissociated as a limited partner in the several partnerships in which Gleichman held that status. Finally, the Court entered Judgment for General Holdings on all aspects of Gleichman's Counterclaim.

STANDARD OF REVIEW

Gleichman's sparse explanation of the standard of review applicable to this appeal ignored important criteria considered by an appellate court when reviewing findings by a court sitting without a jury. Gleichman makes no mention of Rule 52 of the Maine Rules of Civil Procedure or established authority. The Trial Court's Order following the bench trial contained certain findings of fact and conclusions of law. Gleichman did not file a motion under Rule 52(b) requesting the Trial Court to amend its findings or make any additional findings. As provided in Rule 52(c), findings of fact shall not be set aside unless "clearly erroneous." As noted by one respected commentator, "in the absence of a motion for additional findings of fact and conclusions of law, an appellate court will infer that the trial court made any factual inferences needed to support its ultimate conclusion." *See* 3 Harvey & Merritt, *Maine Civil Practice*, Section 52:2 at 139 (3d, 2022-2023); *see also Pelletier v. Pelletier*, 2012 ME 15, ¶ 20, 36 A.3d 903; *Weinstein v. Hurlbert*, 2012 ME 84, ¶ 9, 45 A.3d 743.

If neither party made a request for findings of fact, the appellate court should presume that the trial court found all the facts necessary to support the decision. *See Efstathiou v. Efstathiou*, 2009 ME 107, ¶ 10, 982 A.2d 339, 342; *Fitzpatrick v. Fitzpatrick*,

2006 ME 140, ¶ 17, 910 A.2d 396, 401. Because the trial court assesses the credibility of witnesses, the appellate court also may infer that the trial court rejected the entire testimony of an uncontradicted witness. *See Maine Civil Practice supra*, Section 52:7 at 145-146. Therefore, Gleichman's multiple observations as to what the evidence "established" or "supported" are nothing but irrelevant clutter.

As noted above, the Trial Court expressly held that Gleichman was dissociated in 36 of the limited partnerships based on the language of those Partnership Agreements regardless of the federal regulatory mandate that general partners maintain a 5% economic interest. *See* Order Entering Judgment at 18-19, App. at 25-26. Even if that issue is considered subsumed generally within the Statement of Issues stated by Gleichman, it has not been briefed and therefore has been waived. *See Thurston v. Galvin*, 2014 ME 76, ¶ 5 n. 1, 94 A.3d 16 (stating that an issue not briefed on appeal is deemed waived); *Bayview Loan Servicing, LLC v. Bartlett*, 2014 ME 37, ¶ 24, 87 A.3d 741 (stating that issues raised for the first time in a reply brief are not preserved for appellate review); *Dragomir v. Spring Harbor Hosp.*, 2009 ME 51, ¶ 1 n. 1, 970 A.2d 310 (holding that an issue as stated in a notice of appeal is not sufficient to preserve an argument that is not otherwise adequately briefed).

STATEMENT OF ISSUES

A. Whether the Trial Court erred in finding that Gleichman was dissociated as a general partner after losing her entire economic interest as a general partner through foreclosure.

B. Whether the Trial Court erred in its determination that Gleichman had been dissociated as a limited partner upon foreclosure of her entire economic interest as a limited partner.

ARGUMENT

I. AS A MATTER OF FEDERAL LAW, INCORPORATED INTO THE LOAN DOCUMENTS AND LPAs, THE FORECLOSURE OF PAMELA GLEICHMAN'S ENTIRE ECONOMIC INTEREST AS GENERAL PARTNER IN THE PROJECTS AUTOMATICALLY DISQUALIFIED HER FROM BEING A GENERAL PARTNER SUBSEQUENT TO THE FORECLOSURE.

A. Federal regulation 7 C.F.R. 3560.55(d)(2) requires that each general partner maintain an economic interest and that the aggregate general partnership interest equals at least five percent.

(1) An overview of the history and purpose for the regulatory requirement that general partners have an economic interest.

The regulatory requirement that general partners maintain at least a 5% economic interest in refinancings and residuals was established in the mid-1970s. The initial regulatory notice of this proposed rule appeared in November of 1974:

> A new § 1822.84(a)(10) is added to require that in the case of limited partnerships, the general partners maintain a minimum of 5% financial interest in the organization and to clarify that new partners brought into the organization must receive approval by the government.

See 39 Fed. Reg. 39453 (Nov. 7, 1974).[9] Prior to enactment of the rule, the agency proposed an increase of 5% to 10%, *see* 40 Fed. Reg. 29300 (July 11, 1975), which was ultimately not adopted. The rule establishing eligibility requirements was eventually enacted in 1976 as 7 C.F.R. § 1822.84. That rule provided at Section 1822.84(a)(10) that general partners in a limited partnership were required to maintain a minimum of

[9] Copies of all the C.F.R. and Federal Register references in the section are attached as Appendix A-K to General Holdings' Post-Trial Brief filed below.

5% "financial interest in the organization." This provision was recodified in 1981 as 7 C.F.R. § 1944.211. *See* 44 Fed. Reg. 69130 (Nov. 30, 1979). In March of 1987, FmHA proposed several modifications to the rule relating to both the borrower's initial capital contributions and obligation to maintain a minimum 5% financial interest. *See* 52 Fed. Reg. 7584 (Mar. 12, 1987). FmHA received comments suggesting a distinction between an interest in operating profits and annual cash distributions and an interest in residuals or refinancing proceeds. *See* 53 Fed. Reg. 2150 (Jan. 26, 1988). The revised Section 1944.211(a)(11) implemented this distinction. *See* 7 C.F.R. § 1944.211(a)(11)(ii) (1989). In 2005, the applicant eligibility requirements were recodified as Section 3560.55. The Agency addressed various comments regarding both the initial capital contribution requirements and the obligation to maintain a 5% financial interest. The Agency explained that the 5% requirement applied to residuals and refinancing proceeds and did not preclude a more minimal "ownership interest." *See* 69 Fed. Reg. 69049 (Nov. 26, 2004). In summary, this economic interest requirement has existed in one form or another since the 1970s, even though substantial reorganizations of the regulatory agency structure have occurred over the years, resulting in recodifications of the regulations applicable to the subsidized housing program.

The current requirement at 7 C.F.R. § 3560.55(d)(2) to <u>maintain</u> a 5% economic interest reads as follows:

> (d) Additional requirements for limited partnerships. In addition to the applicant eligibility requirements of paragraphs (a) and (b) of this section, limited partnership loan applicants must meet the following criteria:

. . .

> (2) The general partners must maintain a minimum 5 percent financial interest in the residuals or refinancing proceeds in accordance with the partnership organizational documents.

The indisputable purpose for requiring decisionmakers, in this case general partners, to maintain a minimum percentage economic interest in the residuals or refinancing proceeds is to ensure that general partners have more than a de minimis economic stake in the proper operation and maintenance of the Project. Decisionmakers with no "skin in the game" are not sufficiently incentivized to operate and maintain the property, especially when there is no possibility of substantial distributions to partners from annual operating profits no matter how well the Project is managed.

(2) Gleichman's failure to meet the economic interest requirement resulted in her dissociation by operation of law.

Although Gleichman acknowledges she has lost her entire economic interest by foreclosure, she suggests that this regulatory requirement had no impact on her status as a general partner for several reasons:

(a) Gleichman argues that this regulation reflects an intent to establish the initial investment required for the developer" and applies only to "the initial application phase.

(b) Gleichman contends that the regulatory requirement expressly requires only an aggregate percentage interest of all general partners and therefore does not prohibit one or more general partners from having zero economic interest as long as at least one general partner has five or more percent.

(c) Gleichman contends that even if her lack of any economic interest in a project is a basis for dissociation, the dissociation is not automatic but presumably requires some affirmative action by other partners, such as a vote, to remove her.

None of these contentions are supported by the language of the regulation, the purpose for the regulation or the regulatory history relating to that specific regulation and similar companion regulations.

(a) The 5% economic interest requirement in "residuals" applies for the duration of a Project

Multiple reasons support the Trial Court's conclusion that the 5% economic interest requirement applies throughout the life of the Project and is not limited in duration to the application phase of a Project. The fact that Section 3560.55 is captioned "Applicant Eligibility Requirements" does not preclude those requirements from addressing promises by the "applicant" regarding future behavior or conditions. The general "eligibility" requirements are set forth in Section 3560.55(a). In each instance, the loan "applicant" is the limited partnership itself, not any specific limited or general partner. For example, the "applicant" with respect to the Blair House Project was Blair House Associates Limited Partnership. It was the "applicant" the day it applied and remained the "applicant" for the entire duration of that Project.[10] The general "eligibility" requirements include an original capital contribution

[10] Gleichman's reliance upon *Huff v. Vilsack*, 195 F.Supp.3d 343 (D.D.C. July 5, 2016) is misplaced. That case had absolutely nothing to do with the regulation requiring general partners to maintain a 5% economic interest in residuals. Rather, it involved a situation in which the regulator made a finding of ineligibility of the applicant based upon facts pertaining to a non-applicant. The Court found that the eligibility criteria only applied to applicants.

requirement. *See* Section 3560.55(a)(6).[11] Those general eligibility requirements are followed by several subsections establishing "additional requirements" for various entities, including non-profit organizations, limited partnerships, and limited liability companies. *See* Section 3560.55(c), (d), and (e) respectively.

Several of the "additional requirements" have an express or inferred temporal element, and others do not. For example, Section 3560.55(d)(1) requires that the general partners must be able to meet the borrower contribution requirements if the partnership is not able to do so "at the time of the loan request." The requirement of a minimum 5% economic interest in residuals is expressly stated as an ongoing requirement throughout the life of the loan. The provision requires that the limited partnership (the "applicant") mandate, through the partnership agreement, that general partners "maintain" that economic interest. An interest in "residuals" or "refinancing proceeds" does not concern an event at the application stage, but rather events well into the 50-year life of these projects. It would be nonsensical to establish a requirement to maintain an economic interest in "residuals," only to have this requirement disappear once the application phase or development phase is complete. The general partner economic interest requirement applies the entire time the Project

[11] The original capital contribution requirements should not be confused with the requirement to maintain an economic interest in residuals, even though both are driven by similar concerns. Pamela Gleichman's testimony at trial related to the original capital contribution requirements and not the separate requirement to maintain an economic interest throughout the life of the project. The regulations allow, in appropriate circumstances, a general partner to be repaid its initial capital contribution long prior to the end of the term of the project. That repayment, if it occurs, has no impact whatsoever on the ongoing requirement to maintain an economic interest.

remains in the program. That explains why RD, when it consented to the removal of Pam Gleichman as a general partner, reiterated the requirement that the remaining general partner General Holdings maintain an economic interest in residuals of at least 5%. *See* Plaintiff's Exhibit 3.

(b) The economic interest rule requires every general partner to have some economic interest, with the aggregate being at least 5%

The clear rationale for requiring a minimum economic interest is to ensure that individuals or entities with decisional authority have a sufficient financial stake in the success of the project. The creation and preservation of a meaningful economic motivation to act in the best interests of the project underlies both the initial capital contribution requirement and the distinct perpetual obligation to maintain a minimum financial interest. Although the regulatory history leading up to the initial enactment of the regulation establishing the 5% rule specific to general partners is quite sparse, the available history relating to similar rules confirms its purpose. For example, the current requirement at Section 3560.55(a)(6) regarding initial capital contributions was addressed by the Agency in 1994:

> 3. Section 1944.211(a)(5)
>
> Comment: Two respondents expressed the opinion that applicants should be required to furnish the 3 percent borrower contribution from its own resources.
>
> FmHA response: Currently, borrowers have no personal financial obligation to serve as an impetus to seeing that the project operates successfully. We agree that such an obligation will encourage continued interest in overseeing the well-being of the project and it makes sense from a business standpoint. Therefore, FmHA agrees that applicants should

> furnish the 3 or 5 percent contribution from their own resources and have changed this section to reflect that requirement.

See 59 Fed. Reg. 6874 (Feb. 14, 1994). After limited liability companies emerged as applicants, a similar regulatory requirement was established for LLCs in 2005. Section 3560.55(e) confirms the critical connection between financial interest and decisional authority:

> (e) Additional requirements for Limited Liability Companies (LLCs). In addition to the applicant eligibility requirements of paragraphs (a) and (b) of this section, LLC loan applicants must meet the following criteria:
>
> (1) One member who holds at least a 5 percent financial interest in the LLC must be designated the authorized agent to act on the LLC's behalf to bind the LLC and carry out the management functions of the LLC.

It makes no sense for the Agency to require that the specific LLC member with authority over management must have an economic interest yet allow general partners with no economic interest to control management authority.

Gleichman's position that the rule does not expressly preclude general partners from having no economic interest as long as one general partner has at least a 5% economic interest improperly decouples the decisional authority from the economic interest, defeating the rule's entire purpose. The references to an "aggregate" interest of 5% is to clarify that it does not require a separate 5% per partner, not to sanction general partners with no economic interest. The rule is meaningless if two general partners with decisional control are allowed to have no interest provided there is a third general partner with a 5% interest, but no control. Similarly, in the case of two

general partners in a partnership requiring unanimity, the purpose of the rule is thwarted if a general partner with zero economic interest can paralyze all decision-making by the general partner with an economic interest, which is exactly what Gleichman was doing with respect to Blair House.

When confronted by two possible interpretations of a rule, the Court should always adopt the interpretation that implements the purpose of the rule, rather than defeats that purpose. *See Dickau v. Vt. Mut. Ins. Co.*, 2014 ME 158, ¶ 21, 107 A.3d 621; *Town of Madison v. Town of Norridgewock*, 544 A.2d 317 (Me. 1988); *In re Connors*, 348 B.R. 1 (Bankr. D. Me. 2006) (review of Maine law on statutory interpretation).

One respected commentator observed:

> A literal interpretation should not prevail if it creates a result contrary to the apparent legislative intent and a statute's words are sufficiently flexible to allow a construction which will effectuate legislative intent. In this view, the intention prevails over the letter, and the letter is read, if possible, to conform to the act's spirit. While legislative intent must be ascertained from the words used to express it, a law's manifest reason and obvious purpose should not be sacrificed to a literal interpretation of such words. Thus words or clauses may be enlarged or restricted to harmonize with other provisions of an act.

2A *Sutherland Statutory Construction*, § 46:7 (7th ed.).

One might query why the Agency, when enacting the rule, did not expressly state that each general partner must have an economic interest, with the aggregate being at least 5%, if that was intended. When promulgating the economic interest rule in the 1970s, the regulators no doubt assumed that the general partners in these

limited partnerships had some economic interest, as that was an established legal requirement in the formation and taxation of limited partnerships.

(c) The requirement of an economic interest held by a general partner under then applicable tax law and the law of limited partnerships.

As established by both longstanding partnership law principles and modern-day statutes, a limited partnership cannot be formed without a general partner having some economic interest in the partnership. A partnership is an "association of 2 or more persons to carry on as co-owners a business for profit." 31 M.R.S. § 1001(6). This definition, though first introduced into Maine's statutes in 1973, merely formalizes centuries of understanding of partnership law: that a partnership exists "where two persons engage in business under a contract to share in the profit and loss arising from such connexion [sic]." *Marshall v. Winslow*, 11 Me. 58, 59 (1833). Indeed, "[t]he agreement to share profit and loss is the essence of a partnership." *Dwinal v. Stone*, 30 Me. 384, 384 (1849).

A partner's interest in the partnership, recognized even in early case law, is "in his portion of the residuum, after all the debts and liabilities of the firm are liquidated and discharged." *Douglas v. Winslow*, 20 Me. 89, 91 (1841). This is true whether a general partnership or a limited partnership is formed. Critically, a limited partnership—or any partnership, for that matter—cannot be formed without all partners having some economic interest in the partnership. *See* Uniform Laws Commission, Revised Uniform Limited Partnership Act of 1976 § 503 ("The profits

and losses of a limited partnership shall be allocated among the partners . . . in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses shall be allocated on the basis of the value (as stated in the certificate of limited partnership) of the contributions made by each partner to the extent they have been received by the partnership and have not been returned."). Consequently, a person cannot be a partner without having made a financial investment in the partnership endeavor. This investment is sometimes called an economic interest, sometimes a "transferable interest." Regardless, the foregoing is fully supported by various modern day statutory provisions.

According to 31 M.R.S. Section 160(2) (1969) a "limited partner shall have the right to receive a share of the profits." This provision from the first Maine Uniform Limited Partnership Act, which has been updated by the current law (31 M.R.S. Chapter 19) informs both the current Limited Partnership Act and the General Partnership Act found in Chapter 17 of M.R.S., and supports the following defined terms:

> "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.
>
> . . .
>
> "Transferable Interest" means a partner's right to receive distributions.

31 M.R.S. §§ 1302(5), (22) (2025).

Additionally, the Maine Uniform Partnership Act[12] provides the following:

Each Partner is deemed to have an account that is:

> A. Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, that the partner contributes to the partnership and the partner's share of partnership profits; and
>
> B. Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, that is distributed by the partnership to the partner and the partner's share of partnership losses.

31 M.R.S. § 1041 (2025).

Without an economic interest, a general partner is reduced to a merely managerial role. Further, loss of an economic interest gives other partners the right to expel the general partner entirely—in general, limited partners would not want to vest managerial control in a general partner who has no economic stake in the partnership. *See* 31 M.R.S. § 1373(4)(B) (2025); *see also* Uniform Laws Commission, Uniform Limited Partnership Act of 2001 (Last amend. 2013) § 603(4)(B)(ii) cmt. ("This paragraph permits expulsion when a general partner no longer has any 'skin in the game.'").

Federal tax law has had a material impact upon development of partnership law. With the rise of "tax shelters" and the "pass-through" of tax benefits and burdens to investors, those looking for liability protection would invest in a limited

[12] The Uniform Partnership Act applies to limited partnerships to the extent that the two are inconsistent. Uniform Laws Commission, Uniform Partnership Act § 101 cmt.

partnership to gain tax benefits that could be used to offset income from other sources. In order for a taxpayer to recognize those tax benefits, a partnership needed to be treated as a partnership for tax purposes and not as an association (corporation). In the 1970s, however, the IRS did not automatically tax everything as a partnership just because the entity called itself a partnership. Entities were taxed as partnerships only if, based on a factor test, they did not resemble corporations. *See* 26 C.F.R. § 301.7701-2(a)(1) (1976) ("An organization will be treated as an association if the corporate characteristics are such that the organization more nearly resembles a corporation than a partnership."); *see also Glensder Textile Co. v. Comm'r*, 46 B.T.A. 176, 185 (1942).

In January 1974, the IRS issued Rev. Proc. 74-17, which stated that "[t]he interests of all of the general partners, taken together, in each material item of partnership income, gain, loss, deduction or credit is equal to at least one percent of each such item at all times during the existence of the partnership." Rev. Proc. 74-17 (IRS RPR), 1974-1 C.B. 438, § 3.01, *superseded by* Rev. Proc. 89-12, 1989-1 CB 798, § 4.01; *see also* Sheldon I. Banoff et al. eds., *How Small Can a Partner's Interest Be?*, 83 J. Tax'n 126, 126 (1995) ("A minimum percentage ownership interest presumably arises from the requirement that a partner have some proprietary interest in partnership profits.").

This rule was a response to a recurring issue in partnership classification tax disputes, where partnerships would meet the undesirable "centralization of

management"[13] test because general partners did not own a "meaningful proprietary interest." *See Larson v. Comm'r*, 66 T.C. 159, 177 (1976). If the limited partners owned "all or substantially all" the interests in the partnership, the IRS could conclude that the partnership should be taxed as a corporation. At the time, this was a much less favorable position than it is today. If general partners owned a meaningful proprietary interest, they were "not 'analogous to directors of a corporation' because they act[ed] in their own interests 'and not merely in a representative capacity for a body of persons having a limited investment and a limited liability.'" *Id.* (quoting *Glensder Textile Co.*, 46 B.T.A. at 185). In other words, the general partners needed to have "skin in the game." *See* Note, *Tax Classification of Limited Partnerships*, 90 Harv. L. Rev. 745, 755 n.87 (1977).

In November 1974, the 5% rule was proposed by FmHA in the Federal Register. The low-income housing tax credit had not yet been established. Instead, the investors in limited partnerships that developed these low-income properties at that time secured the benefits of their investment through often substantial non-cash depreciation deductions. However, for the partnerships to secure these benefits for the partners, the entity had to be taxed as such. This is true especially because the Tax Reform Act of 1976 clawed back a lot of benefits available to partnerships—unless

[13] A key corporate characteristic is the "centralization of management." 26 C.F.R. § 301.7701-2(c)(1) (1976). Corporations have this in the form of boards of directors, who can make managerial decisions that bind the corporation without ratification of the corporation's shareholders. *Id.* § 301.7701-2(c)(3). According to the Regulations, limited partnerships usually lacked this characteristic, but it could "exist in such a limited partnership if substantially all the interests in the partnership are owned by the limited partners." *Id.* § 301.7701-2(c)(4).

the partnerships were involved in real estate. *See* Pub. L. No. 94-455, tit. II, § 204, 90 Stat. 1520, 1531–33 (1976) (codified at 26 U.S.C. § 465) (eliminating the rule that a partner's adjusted basis in their partnership interest includes their share of nonrecourse debt for limited partnerships involved in certain activities, but retaining it for those engaged in real estate); *see also* Staff of J. Comm. on Tax'n, 94th Cong., General Explanation of the Tax Reform Act of 1976 33–40 (Dec. 29, 1976). In critiquing the IRS's strategy of conferring partnership status on any organization that did not resemble a corporation, the Harvard Law Review observed that because the "presence of a general partner is what differentiates a limited partnership from a corporation, the regulations should require that partnership status be afforded only when the general interest is the most substantial." *Id.* at 759. However, it also observed that "to require any significant ownership interest in the general partner would severely reduce desired investments in real estate." *Id.* at 761.

By adopting the 5% rule, FmHA addressed many of the concerns voiced in this law review article. A limited partnership where the general partners owned 5% financial interest would likely qualify as a partnership for tax purposes, promoting investment in low-income properties. Although many tax benefits for limited partnerships were stripped by the Tax Reform Act of 1976, those benefits were left intact for limited partnerships engaged in real estate. The 5% rule went into effect in January 1976, right alongside the Tax Reform Act. The amount of 5% was a high enough ownership interest to ensure that the general partners had a stake in the

project, but not so high as to dissuade limited partners from investing. The requirement that the economic interest be "maintained" was to ensure that the general partners had an economic incentive throughout the typical fifty-year duration of the commitment to provide affordable housing.

(d) The economic interest requirement applies by operation of law without the need for action by other partners

As noted above, the mandate that general partners with management authority have an economic interest is established by federal law and not within the discretion of other partners. All partners agreed to those conditions when entering the partnership. Because other partners have no discretion regarding enforcement of the requirement, its operation and effect cannot be dependent on any action or inaction they may take. Even a unanimous vote by all limited partners to waive the requirement would be ineffectual. Although there is no need for further input from the Agency because dissociation is compelled by the application of its own rule, the Agency consented to the removal of Gleichman as a general partner in each of the limited partnerships. See Plaintiff's Exhibit 3.

II. GLEICHMAN HAS WAIVED ANY ARGUMENT THAT THE TRIAL COURT ERRED IN ITS DETERMINATION THAT THE FORECLOSURE OF PAMELA GLEICHMAN'S ENTIRE ECONOMIC INTEREST AS A GENERAL PARTNER IN THE PROJECTS HAS RESULTED IN HER DISSOCIATION UNDER THE TERMS OF THE LPAs REGARDLESS OF THE APPLICATION OF 7 C.F.R. 3560.55(d)(2).

The Trial Court found that the foreclosure of Pamela Gleichman's entire economic interest as a General Partner in the housing properties has resulted in her dissociation under the terms of the respective LPAs in 36 of the Projects, regardless of the application of 7 C.F.R. § 3560.55(d)(2). See Order Entering Judgment at 18-19, App. 25-26. Although the foreclosure by Olson did not dissociate Gleichman by effecting a transfer to him of her managerial, non-economic interest, it served as the predicate for and trigger of the dissociation process under the terms of each of the LPAs.

Gleichman's entire argument on this "issue" is limited to two sentences that mimic an argument heading rather than a developed argument parsing the partnership language and applicable authorities. See Appellant Brief at 26. Gleichman's brief does not even contain a single reference to any of the applicable provisions in the 36 LPAs addressed by the Trial Court in its holding on this alternative ground for dissociation. Because the Appellant Gleichman has offered no developed argument as to why the Trial Court erred in this aspect of its Order, Appellee has no obligation to offer a "response" in anticipation of arguments that might be set forth for the first time in Appellant's reply brief.[14]

[14] Appellee considers it a near certainty that Appellant will assert argument for the first time in her reply brief given past practice. Gleichman filed a 50-page sur-reply brief in the lower court doing just that. This Court should not consider any such argument.

III. THE FORECLOSURE OF PAMELA GLEICHMAN'S LIMITED PARTNERSHIP INTEREST IN CERTAIN PROJECTS RESULTED IN THE REMOVAL OF PAMELA GLEICHMAN AS A LIMITED PARTNER AND SUBSEQUENT ADMISSION OF RICHARD OLSON, TRUSTEE OF THE PROMENADE TRUST, AS A SUBSTITUTE LIMITED PARTNER.

Pamela Gleichman was the original Limited Partner in Pheasant Run Associates Limited Partnership. Over the years, she acquired Limited Partnership Interests from original Limited Partners in 8 other Limited Partnerships.

The foreclosure of Pamela Gleichman's Limited Partnership Interest in certain Limited Partnerships resulted in the removal of Pamela Gleichman as a Limited Partner and assignment of her Limited Partnership Interests to Richard Olson, Trustee of the Promenade Trust. Richard Olson, as Trustee of the Promenade Trust, was thereafter admitted as a Substitute Limited Partner in those Limited Partnerships by General Holdings, Inc., the sole General Partner in those Limited Partnerships.

The Limited Partnership Interest, as distinguished from a General Partnership Interest, is not composed of two severable components. A General Partnership Interest has a management component and an economic (transferable interest) component. According to the Statute, Limited Partners, expressly, do not have management prerogative. 31 M.R.S. § 1342. A Limited Partner may have rights with respect to certain decisions that relate to management of the Limited Partnership, but those rights derive solely from the contractual relationship evidenced by the LPA. They do not flow separately from the Limited Partnership Statute. Consequently,

foreclosure of Pamela Gleichman's Limited Partnership Interests in 9 Limited Partnerships is prescribed by the Chicago foreclosure proceeding and informed by each of the 9 Limited Partnership Agreements, where applicable.

A. **Pheasant Run Associates.**

Per Section 7.1 of the Pheasant Run Associates LPA, "no Limited Partner may transfer, sell, alienate, assign or otherwise dispose of all or any part of his interest in the Partnership, whether voluntarily, involuntarily or by operation of law or a judicial sale or otherwise, without the consent of the General Partners." Pamela Gleichman's Interest as a Limited Partner in Pheasant Run Associates was foreclosed upon by Richard Olson as Trustee of the Promenade Trust and acquired at the foreclosure auction. Accordingly, Pamela Gleichman's Limited Partner Interest in Pheasant Run Associates was assigned to Richard Olson as Trustee of the Promenade Trust with the consent of the General Partner, and Trustee Richard Olson was substituted for Pamela Gleichman as a Limited Partner.

B. **Anson Street Associates.**

Per Section 6.1 of the Anson Street Associates LPA, "except by operation of law . . . a Limited Partner may not assign all, or any part, of his Interest in the Partnership without the written consent of the General Partners, the giving or withholding of which is exclusively within their discretion. As discussed above with respect to Pheasant Run Associates, Pamela Gleichman's Limited Partner Interest in Anson Street Associates is foreclosed upon by Richard Olson, Trustee of the Promenade Trust who in connection

therewith became the Assignee of Pamela Gleichman's Partner Interest in Anson Street Associates. Thereafter, General Holdings, Inc., the General Partner of Anson Street Associates, consented to substitution of Richard Olson as Trustee of the Promenade Trust with respect to the Limited Partner Interests of Pamela Gleichman in Anson Street Associates.

C. **Greenbrier Form.**

Four LPAs discussed above, including Greenbrier Associates, LP, Helen Noreen Associates, LP, Mallard Pond Associates, LP, and On the Green Associates, LP, deploy the same form of LPA. The Greenbrier Associates LPA is used as the example, again, in this analysis. Section 10.2 of this form of LPA provides, in pertinent part: "In the event of any involuntary transfer by operation of law (except as otherwise provided herein) or a transfer by judicial sale of the Limited Partners Interests in a Partnership." The quoted provision goes on to afford a right of first refusal for the Limited Partners and then the General Partners to acquire the foreclosed (in this case) Limited Partner Interest. The record does not indicate whether the right of first refusal process was pursued in the case of the foreclosure of Pamela Gleichman's Limited Partner Interest in these four Limited Partnerships. Nevertheless, those rights may still be pursued by the affected Limited Partners and has no bearing upon the efficacy of the foreclosure of Pamela Gleichman's Limited Partner Interests in these Limited Partnership, and Pamela Gleichman was dissociated as a Limited Partner.

D. **Farmington Form.**

Three of the LPAs with multiple individual Partners, including Farmington Hills, LP, Dixfield Square, LP, and Rumford Island Associates, LP, deploy a similar form of Agreement with respect to transferability of Limited Partner Interests. The applicable language for Farmington Hills, LP, is found in Section 8.1. The applicable language for Dixfield Square and Rumford Island Associates is found in Section 6.1. Each of these Agreements (Farmington Section 8.1, Dixfield Square and Rumford Island Associates Section 6.1) provide, in pertinent part:

> Except by operation of law (including the laws of dissent and distribution), the Limited Partner may not assign all or any part of his interest in the Partnership without the written consent of the General Partners, the giving or withholding of which is exclusively within their discretion.

As described above, Olson foreclosed upon Pamela Gleichman's Limited Partner Interest in these three Limited Partnerships and purchased these Interests at a foreclosure sale. Thereafter, Olson was substituted as Limited Partner in lieu of Pamela Gleichman with respect to her Interests in these three Limited Partnerships by action of the sole General Partner, General Holdings, Inc.

Accordingly, Pamela Gleichman breached the terms of each of the above-referenced 9 LPAs due to the foreclosure of her Limited Partner Interest in each of these Limited Partnerships. Therefore, Pamela Gleichman has been dissociated of her Limited Partner Interest in these 9 Limited Partnerships consistent with 31 M.R.S. § 1371(2)(B) (2025).

CONCLUSION

For the foregoing reasons, Appellee respectfully requests that the Court deny the appeal and affirm the Judgment below in all respects.

DATED at Portland, Maine, this 12th day of November 2025.

/s/ James D. Poliquin
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