

# **Bond Case Briefs**

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## **BONDS - NEVADA**

### **Washoe-Mill Apartments v. U.S. Bank Nat. Ass'n**

**United States District Court, D. Nevada - September 30, 2013 - Slip Copy - 2013 WL 5493301**

Washoe-Mill Apartments (WMA) is a Nevada General Partnership. WMA entered into a partnership agreement in order to construct and operate a HUD subsidized facility for seniors and disabled citizens, the Washoe-Mill Apartments. In 1993, Bank of America Nevada (BOAN) and the Washoe Housing Finance Corporation (WHFC) entered into a Trust Indenture Agreement (the "Agreement") regarding bonds used to refinance WMA's mortgage loans for the WMA facility. The Agreement was executed pursuant to HUD's tax-exempt bond financing program regulations. Under the Agreement, BOAN was the trustee of the bond proceeds and was charged with making payment to bondholders. HUD states that these bonds were tax-exempt, the mortgage was insured by HUD, and WMA received rental subsidies from HUD.

The WMA facility was sold on January 21, 2011, and the payoff amount for the mortgage loan was remitted as full settlement of the mortgage. A year later, in January 2012, a trust officer for U.S. Bank informed WMA that it had conducted an audit that revealed the existence of \$229,160.81 remaining in the trust account. U.S. Bank conducted an investigation to determine who the funds belonged to but was unable to reach a conclusion.

WMA brought a claim for the full amount remaining in the trust. HUD counterclaimed and moved for summary judgment on the grounds that the contractual language of the Agreement is clear that the interpleaded funds belong to HUD.

The Agreement was entered into pursuant to Section 11(b) of the United States Housing Act of 1937. HUD explained that Section 11(b) was originally designed to finance the acquisition, construction, or rehabilitation of low income housing. After interest rates dropped in the late 1980s, however, Section 11(b) was used exclusively to pay off existing bonds by issuing new bonds at a lower interest rate. In addition to insuring the mortgage through these tax-exempt bonds, HUD also provides rent subsidies. In exchange for these benefits, "[u]pon full payment of the principle and interest on the obligations (including that portion of the obligations attributable to the funding of the debt service reserve), any funds remaining in the debt service reserve shall be remitted to HUD." 24 C.F.R. § 811.108(a)(3).

HUD asserted that Section 413 of the Agreement incorporates this statutory requirement. Section 413 states that, "[u]pon final payment of all principal of, premium, if any, and interest on the Bonds, and upon satisfaction of all claims against the Issuer and the Trustee hereunder ... any moneys remaining in all Funds shall be paid at the written direction of the Issuer to HUD." The court agreed, granting HUD's motion for summary judgment.