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Suit Dismissed Against HUD Over Sale of Senior Complex

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The U.S. Court of Appeals for the Second Circuit has dismissed a suit by a New York City property owner accusing the U.S. Department of Housing and Urban Development of illegally excluding him from bidding on a senior housing complex. Emanuel Ku, who owns buildings in New York and has been called a "slumlord" by multiple tenant groups, sued HUD for holding a foreclosure auction on the Burton Towers, a senior housing complex in Newburgh that was originally financed by HUD, restricted to governmental entities, local housing development fund corporations and lien holders. HUD itself submitted the winning bid, for the outstanding value of the mortgage, and then deeded the complex to the city of Newburgh. Ku said he should have been allowed to bid.

Southern District Judge Vincent Briccetti dismissed the case, holding that HUD was protected by sovereign immunity. The circuit panel affirmed, ruling that, even if HUD weren't protected by sovereign immunity, federal law gives HUD the authority to sell its properties "on such terms and conditions as the Secretary may determine" (12 U.S.C. § 1715z-11a(a)). "Here, even assuming there are meaningful standards against which to measure HUD's exercise of discretion, its actions in restricting the bidding were entirely reasonable," the panel wrote in *Ku v. HUD*, 12-2399. "As the district court noted, Burton Towers housed low-income, elderly tenants, and the property had substantial safety deficiencies and needed significant renovations and repairs," it wrote. In light of those circumstances, HUD's decision to limit the auction was "rational," said the panel of Judges Denny Chin and Christopher Droney and, sitting by designation, Eastern District Judge John Gleeson.