

UNITED STATES TAX COURT

DOCKET NO. 18038-05L

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ALPHONSE MOURAD,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

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PETITIONER ALPHONSE MOURAD'S BRIEF

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ARGUMENT

PETITIONER MOURAD WAS THE VICTIM OF I.R.S. FRAUD AND MISREPRESENTATION AT THE FIRST CIRCUIT AND THE FIRST CIRCUIT'S MISTAKE AND FAILURE TO LOOK AT THE RECORD OF WHEN THE \$12 MILLION TAX CREDIT WAS APPLIED FOR BY V&M MANAGEMENT'S BANKRUPTCY TRUSTEE (IN 1997, NOTR 1998), SUCH THAT THIS COURT MUST RECTIFY THAT I.R.S. FRAUD AND AWARD THE \$12 MILLION TAX CREDIT TO V&M MANAGEMENT'S SOLE SHAREHOLDER, ALPHONSE MOURAD, AS THE ONLY PARTY/OWNER OF THE PROPERTY FOR THE REQUISITE TEN YEARS AND STATUTORILY (26 U.S.C. § 26) ENTITLED TO THE TAX CREDITS.

STATEMENT OF CASE

This is Alphonse Mourad's petition challenging the Commissioner's Notice of Determination for tax years 1995 and 1999.

However, the crux of the Petitioner's case and his position is that the I.R.S. cannot assess or determine the tax liabilities of Mr. Mourad, the sole stockholder of a bankrupt Subchapter S Corporation, V&M Management, Inc., when, on April 2, 1996, the U.S. Bankruptcy Court appointed a Chapter 11 Trustee, Stephen Gray, who sold the bankrupt V&M property to Beacon Residential Properties on December 18, 1997, as part of the Bankruptcy Court's September 26, 2007 confirmed plan, using a \$12 million tax credit applied for by Trustee Gray in August 1997.

Since the Bankruptcy Trustee stood in Mourad's shoes as the Court-confirmed owner and site-controller, and secured the tax credits in that capacity, then Trustee Gray, and not Mourad, is liable for the taxes.

But more importantly, only Mourad, as the owner of the property for the requisite statutory, 26 U.S.C. § 42, ten year period, qualified for the low-income housing tax credit, under I.R.S. Code § 42. Yet, the Bankruptcy Court, claiming its Chapter 11 Trustee stood in Mourad's shoes, allowed its Trustee to apply for the \$12 million

in tax credits, and then "confirmed" the "sale" or use of those tax credits to Beacon Residential Properties (BRP) for no money, thus depriving Mourad of his thirteen years' investment in the property. Chapter 11 Trustee Gray then turned around and filed corporate tax returns, shifting V&M's tax burden to Mourad, as the sole income-flowed-through shareholder of a Subchapter S Corporation, when Mourad received no money and none of the tax credits out of which to "pay" the taxes. This is a travesty of the tax and bankruptcy codes to deprive Mourad of his rightful, statutory stake in the tax credits.

#### STATEMENT OF FACTS

In 1984, V&M Management, Inc., a Subchapter S Corporation, with Mourad, it's the sole shareholder, purchased, at a HUD foreclosure, a low-income, 276 unit Section 8 project housing 1,500 tenants, mostly minority, in the Roxbury section of Boston. In 1987, V&M Management, Inc. renamed the apartment complex after the imprisoned

Nelson Mandela to support his freedom, and the complex became known as the Mandela Apartments.

V&M Management, Inc. ran a series of programs, medical, social, and athletic, to empower the young African-American community that resided in the complex. (Please refer to [www.bostonmandelascandal.com](http://www.bostonmandelascandal.com), and click on Nelson Mandela's picture for further background information as a reference regarding various social services implemented in honor of Nelson Mandela). Since 1987, Mourad had fueled the drive for tenant ownership in Lower Roxbury. This had been a nine year attempt to sell the development back to the tenants in the form of a housing cooperative, ultimately further empowering the minority (African American and Hispanic) residents of the development.

After years of battling the state and local authorities over the proper application of [higher] Chapter 59 real estate taxes versus the lower, Chapter 121A taxes for a Section 8 housing

project, in January 1996, V&M Management, Inc. filed for Chapter 11 Bankruptcy Protection to stop a foreclosure from a third mortgage holder on a fraudulent and forged note. (Please refer to [www.bostonmandelascandal.com](http://www.bostonmandelascandal.com), and click on Judge Maria Lopez and Judge Charles T. Spurlock's pictures for further background information as a reference regarding the forged and fraudulent foreclosed note).

On February 1, 1996, three governmental agencies, The Boston Redevelopment Authority, The City of Boston, and The Massachusetts Department of Revenue, sought to have a Trustee appointed to wrest control of the Mandela Apartments from Alphonse Mourad. After having failed to achieve a receivership over Mourad's company (V&M) in State Court in over 10 years of litigation, in an effort to gentrify the Lower Roxbury area with urban renewal plan, the governmental entities finally had a chance before a friendly, political judge to deliver the 5.5 acres of prime Roxbury property to them. (Please refer to

[www.bostonmandelascandal.com](http://www.bostonmandelascandal.com), and click on Attorney General Scott Harshbarger's picture for further background information as a reference regarding his failed attempt at receivership).

On April 1, 1996, the three governmental entities appeared before the U.S. Bankruptcy Court, Chief Judge Carol J. Kenner, at the evidentiary hearing for the appointment of a Trustee, and to remove Mourad, and relinquished him of his ownership of the Mandela development.

Attorney Saul Shapiro, the lead counsel for the Boston Redevelopment Authority, who also was previously the counsel on record during Attorney General Harshbarger's failed receivership attempt, stated at the evidentiary hearing "The governmental entities involved have no confidence whatsoever in Mr. Mourad, his veracity, his reliability, his credibility, and his ability to deal with a straightforward manner with them. He is in major litigation and has been for ten years.

All—virtually every case commenced by Mr. Mourad against the city, the state, the BRA, HUD, the police department, and everybody else he could find to say that the whole problem with this project is the racist nature of the City of Boston.” Mourad says that the law suites he had filed against the various entities that Shapiro had mentioned were not frivolous and were not without merit. (Please refer to [www.bostonmandelascandal.com](http://www.bostonmandelascandal.com), and click on from left to right, Mayor Raymond Flynn, Mayor Thomas Menino, and former HUD Secretary Henry Cisneros pictures, as well as The Boston Police and The Boston Edison Logos for further background information as a reference regarding Mourad’s previous litigation history).

Attorney Kenneth Gurge, who represented the Department of Revenue at the evidentiary hearing stated “With respect to another question Your Honor asked, I—and on behalf of the Commissioner would negotiate with an appointed Trustee

beginning the day that person was appointed. We will not negotiate with Mr. Mourad; therefore, the ultimate best interest of the debtor, the tenants, and the governmental agencies would be best served by the appointment of a trustee."

Attorney Rose, who represented the City of Boston at the evidentiary hearing, stated "The city would like a Trustee. We, negotiating in any other way would be on shifting sands."

On April 2, 1996, the Bankruptcy Court (Kenner, J.) appointed Stephen Gray as the Chapter 11 Trustee for V&M Management, Inc. and Gray took over the management and books of V&M, ousting Mourad as its President. Although Mourad challenged the Court's appointment of a Trustee, where Mourad had brought sufficient financing to the table to pay off V&M's creditors in full, and to reorganize itself -- the very purpose of Chapter 11, the Court entertained various reorganization plans and then approved the Trustee-backed Final Plan of Reorganization at the September 26, 1997 confirmation Hearing. A

complete copy of the Transcript of the September 26, 1997 confirmation hearing before Judge Kenner was submitted to the Court as Exh. 12-P.

Prior to and central to that confirmed plan, on August 26, 1997, Chapter 11 Trustee Gray made and signed the August 26, 1997 dated One-Stop Application for the Low-Income Tax Credits to the State Department of Housing & Community Development, Tr.pg. 75.

At the September 26, 1997 Confirmation Hearing, the Bankruptcy Court found that Trustee Gray had "site control" and "legal title to the property," "owned" the property and was a co-applicant for the tax credits, Tr. pg. 73-77.

Howard Cohen, of Beacon Residential Properties, states at the September 26, 1997 Confirmation Hearing that Trustee Gray did in fact join the tax credit application from day one with Beacon Residential Properties, Tr. pg. 42.

The State then approved the first \$1 million in tax credits in 1997, not in 1998, as the First

Circuit erroneously found<sup>1</sup> -- the tax credits came in three annual installments -- 1997, 1998 and 1999, Tr. Pg. 44-45. Mourad respectfully asks the Court to allow the attached February 26, 1998 letter from Beacon Residential Properties' Howard Cohen and Mandela Residents Cooperative Association's Glenn Hall to Jane Wallis Gumble of the Department of Housing and Community Development, which clearly reiterates that \$1,000,000 in tax credits was awarded in 1997, not in 1998, as the First Circuit erroneously held.

Absent the awarded tax credits, that is, had the State not awarded the tax credits in 1997, Beacon Residential Properties would not have purchased the V&M property on December 18, 1997, Trustee Gray could not have sold the property to BRP, and the other plan- The Mourad/Owens plan for \$5.5 million, would have been approved.

The Chapter 11 Trustee Gray prepared V&M's corporate returns for tax years 1995, 1996, 1997, 1998, and 1999.

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<sup>1</sup> Mourad v. Commissioner of Internal Revenue, 387 F.3d 27, 31 (1<sup>st</sup> Cir. 2004).

In 1994, V&M had a \$996,357 carryover interest expense. The I.R.S. used an adjusted \$965,226 carryover interest expense for 1997, but refused to use this for 1995, because, according to I.R.S. Examiner Gregory Smith, Trustee Gray (not Mourad, as he was no longer involved) filed the V&M 1995 return late, in 1997. I.R.S. Examiner Smith refused to give Mourad a very small percentage of the carryover credit of \$965,226 for 1995, so Mourad would not incur a tax for 1995. But then, I.R.S. Examiner Smith re-adjusted Mourad's 1997 capital gain by the same \$965,226 carryover interest expense and applied it to 1997.

Had I.R.S. Examiner Greg Smith applied the (1994) carryover credit to 1995, there would be no 1995 I.R.S. levy of \$14,846.47 against Mourad, which is part of this case. This \$14,846.47 should be eliminated.

It makes no sense for the I.R.S. to have applied the 1994 carryover to 1997, and not 1995.

Had the I.R.S. applied only \$14,846.47 of the acknowledged 1994 \$965,226 carryover interest expense loss to 1995, Mourad would owe no 1995

taxes and the 1995 levy of \$14,846.47 would not exist. It should be removed.

There was still over \$950,000 in available carryover losses that could have been applied to subsequent years.

In 1997, the I.R.S. (Examiner Greg Smith) prepared a tax return for Mourad, without my (Mourad's) consent.

Smith used the \$965,226 loss figure, but then takes the bankrupt V&M Management's capital gain of \$2,088,554 (for which Mourad had no ownership, control, equity, standing, involvement in the company, or income from), and finds that Mourad received \$686,011 in income for which Mourad owes \$189,745, according to the Smith-prepared return. These figures are set forth in the Notice of Deficiency for tax year 1997.

Ousted from any ownership or control of V&M Management, Inc. on April 2, 1996, when the U.S. Bankruptcy Court appointed Trustee Gray, as Chapter 11 Trustee of V&M, Mourad received no money from V&M Management in 1997, earned no income and cannot lawfully be assessed any taxes.

I.R.S. Examiner Greg Smith, familiar with Mourad's tax returns for 1996, 1997, and 1998, refused to prepare Mourad's 1999 tax return, because the V&M Management, Inc. property was sold on December 18, 1997, to Beacon Residential Property and Mandela Residents. V&M Management, Inc., as a corporation, was dissolved in 1998.

But, in 1999, Mourad received a 1999 K-1 from V&M's Chapter 11 Trustee Gray, showing a profit of \$536,931. How a bankrupt and dissolved corporation can generate a 1999 K-1 is not explained.

The I.R.S. and its Examiner, Greg Smith, could not justify where the profit came from in 1999, when the V&M property was sold in 1997, and the V&M Management corporation was dissolved in 1998. The only source of the 1999 income would have been the allocated \$12 million in tax credits [based upon three annual installments -- 1997, 1998 and 1999]. Clearly, there were no assets left in the bankrupt corporation after the property was sold on December 18, 1997.

On April 4, 2005, the I.R.S. sent Mourad a 1999 tax levy of \$207,385. A taxpayer/shareholder

of a bankrupt Subchapter S corporation that lost his ownership/control in the corporation in April 1996, when a Trustee was appointed, cannot be assessed taxes for years after he was ousted from control of the corporation. Yet, this is what the I.R.S. did.

The I.R.S., in its May 2, 2000 letter, by Insolvency Adviser, James Clifford, says that the Chapter 11 Trustee has the right to take advantage of the Low Income Housing Credit that belonged to V&M Management's sole shareholder -- the Petitioner, Mourad -- and then continue to have the income of the S-Corp flow to the shareholder, after a bankruptcy petition is filed, and Mourad receives no income from the bankrupt estate. If the income and capital gains of the bankrupt Subchapter S corporation continue to flow to the shareholder for income tax purposes, then the Low Income Housing Tax Credits<sup>2</sup> of \$12 million [in

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<sup>2</sup> To qualify for the low-income housing tax credits, the applicant must have ten years of ownership of the property, 26 U.S.C. § 42(d)(2)(A)(B) & (D)(iii)(II). Only Mourad, as the sole shareholder of V&M Management, Inc., owned the property for the requisite ten years, and not the April 2, 1996 appointed Chapter 11

three annual installments -- 1997, 1998, and 1999] should likewise have flowed to the shareholder (Mourad) and not to the Chapter 11 Trustee or to Beacon Residential Properties (BRP) that purchased V&M's property with the tax credits that belonged to Mourad. That is, BRP bought V&M's \$12 million appraised property with Mourad's [tax credit] money. BRP's President, Howard Cohen, admitted on the stand before Bankruptcy Judge Rosenthal that "no out of pocket money" independent of the tax credits was used to make the purchase. To allow a \$12 million property to be purchased by BRP, with no money other than the tax credit that belonged to Mourad, and not BRP, and to expect Mourad to pay taxes on property taken from him is the height of both folly and tax fraud.

BRP pocketed the money that the V&M creditors should have received. Under the guise of a bankruptcy court-approved reorganization plan, Trustee Gray and BRP were able to steal \$12 million in Low Income Tax Credits from Mourad, and deprived Mourad of the \$12 million in tax credits

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Trustee Gray, or the December 18, 1997 purchaser, Beacon Residential Properties.

and his thirteen year investment in V&M, and low income minority housing in Roxbury.

#### ARGUMENT

PETITIONER MOURAD WAS THE VICTIM OF I.R.S. FRAUD AND MISREPRESENTATION AT THE FIRST CIRCUIT AND THE FIRST CIRCUIT'S MISTAKE AND FAILURE TO LOOK AT THE RECORD OF WHEN THE \$12 MILLION TAX CREDIT WAS APPLIED FOR BY V&M MANAGEMENT'S BANKRUPTCY TRUSTEE (IN 1997, NOTR 1998), SUCH THAT THIS COURT MUST RECTIFY THAT I.R.S. FRAUD AND AWARD THE \$12 MILLION TAX CREDIT TO V&M MANAGEMENT'S SOLE SHAREHOLDER, ALPHONSE MOURAD, AS THE ONLY PARTY/OWNER OF THE PROPERTY FOR THE REQUISITE TEN YEARS AND STATUTORILY (26 U.S.C. § 26) ENTITLED TO THE TAX CREDITS.

At the September 16, 2004 argument before the First Circuit Court of Appeals, the I.R.S. attorney, Teresa McLaughlin, misrepresented the facts regarding the ownership of V&M Management, Inc., and the Court itself failed to "look out the record," Transcript of Argument, p. 23; thus leading to the Court's incorrect application of the facts and the law.

On September 16, 2004, a three judge panel of the First Circuit Court of Appeals (Torruella, Coffin and Lynch) heard oral arguments in Mourad's appeal of the U.S. Tax Court's decision finding

Mourad personally liable for over \$200,000<sup>3</sup> in assessed taxes stemming from the sale of assets of Mourad's bankrupt S Chapter corporation, V&M Management, Inc. V&M Management, Inc. filed for Chapter 11 Bankruptcy protection in January 1996; a Trustee was appointed in April 1996 and the Trustee, on December 18, 1997, "sold" V&M's assets - a 276 unit apartment complex in Roxbury known as the Mandela Apartments for \$2.8 million as part of a September 26, 1997 confirmed bankruptcy reorganization plan developed by the Court appointed Bankruptcy Trustee, Stephen Gray.

The First Circuit, in its October 20, 2004 ruling, Mourad v. Commissioner of Internal Revenue, 387 F.3d 27 (1<sup>st</sup> Cir. 2004), made a serious and decision-changing mistake, saying the low-income tax credits were granted in 1998, at 31, when the tax credits were granted in 1997. This mistake may be attributed to the misrepresentations by the IRS attorney and the Court's own failure to "look at the record," as

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<sup>3</sup> Mourad's original tax liability in 1997 was \$189,745. As of September 2004, Mourad's updated tax liability is \$335,290.70.

the Court promised to do, Transcript, p. 22. Had the Court "looked at the record," the Court would not have ruled the way it did. Had the Court corrected its manifest error, the Court could have avoided the "injustice" and acknowledged "unfairness...to assess tax liability on shareholders who do not receive the income on which they are obligated to pay the tax," Mourad v. Commissioner of Internal Revenue, supra at 31 (emphasis added). Had the First Circuit corrected its error and correctly ruled, it would have clarified the correct status of the low income housing tax credits, and Alphonse Mourad's entitlement to share in the passed through tax credits.

In fact, in the IRS's brief to the First Circuit, the IRS attorney's wrote:

Taxpayer's argument that he is entitled to the low-income housing credit is a misguided equitable one. He alleges (Br.15) that the bankruptcy trustee obtained the low-income housing credit on behalf of the corporation and (Br.16) that the bankruptcy court allowed the trustee to "strip away ...his right to a tax credit." There is evidence in the record that the entity that bought the Mandela Apartments from V&M, Mandela Homes Limited Partnership, applied after the sale

for a low-income housing credit under IRC §42. (A. 150-151, 160-162, 165-166, 169-172,179, 182-185.) There is no evidence that the credit was obtained while V&M owned the Mandela Apartments. If V&M had obtained the credit during its ownership of the Mandela Apartments, the credit would have passed through to taxpayer under Subchapter S as the corporation's sole owner, at pp.25-26.

As the IRS acknowledges, if the tax credits were obtained while Mourad owned V&M, then the credit would have passed through to Mourad. And, they should have.

As noted earlier, in 1984, Alphonse Mourad became the sole shareholder of V&M Management, Inc. - owning 100% of the stock in that Chapter S corporation.

At that time, V&M Management, Inc. operated 276 units of Sec. 8 housing in lower Roxbury, MA.

In 1987, V&M Management, Inc. renamed the apartment complex after the imprisoned Nelson Mandela to support his freedom, and the complex became known as the Mandela Apartments.

V&M Management, Inc. ran a series of programs, medical, social, and athletic, to empower the young African-American community that resided in the complex.

For the twelve year period, 1984 to 1995, that V&M Management, Inc., owned by its sole shareholder, Alphonse Mourad, ran the complex, Mourad refinanced and personally guaranteed the various loans that V&M Management, Inc. and Mourad had to take out to keep the complex financially afloat, with Mourad's goal of turning the development over to tenant ownership.

Having owned the property for ten, uninterrupted years and having satisfied the requirement for applying for a low income tax credit under 26 U.S.C. § 42, V&M Management, Inc. was prepared to apply for the low income housing tax credit.

Financial, property tax issues and an impending foreclosure of a third mortgage, securing a fraudulent note, prompted V&M Management, Inc. to file for bankruptcy protection in January 1996.

Upon the Joint Motion of the Boston Redevelopment Authority, the City of Boston and the Massachusetts Department of Revenue, the Bankruptcy Court (Kenner, J.) appointed Stephen

Gray as Trustee of V&M Management, Inc. on April 2, 1996, and deprived V&M Management, Inc. of its opportunity to reorganize and refinance its debt, with its considerable, and valuable Roxbury property base, to remove Mourad and deprive Mourad of his property, as Mourad had become a pain to the powerful political forces in the City of Boston and State.

At the April 1, 1996 hearing on the Motion to Appoint a Chapter 11 Trustee, Harold Murphy, V&M's attorney, responded to the governmental entities by stating Mourad and V&M had financing in the amount of \$9,000,000 to satisfy all of V&M's creditors and liabilities in full. Tr. Pg. 32.

As Trustee, Stephen Gray stepped into the shoes of V&M Management, Inc.

After a year and a half of contested bankruptcy proceedings, the Court (Kenner, J.) held a hearing on September 26, 1997 on the competing reorganization plans and approved a final reorganization plan promoted by Trustee Gray

and Beacon Residential Property that September 26, 1997.

Just prior to the Court's approval of Trustee Gray's backed plan, Trustee Gray applied for the low income housing tax credit. Gray's August 26, 1997 letter and One-Step Application was Exhibit 8-J as a part of the Tax Court record and part of the record here. A September 9, 1997 letter by the Beacon Companies also referenced this August 1997 application for the \$1 million in low income housing tax credits, attached hereto.

At the September 26, 1997 hearing on the reorganization plans, Trustee Gray's Attorney, Paul Moore, reminded the Court that Ms. Gumble, the Director of the Department of Housing and Community Development, testified that a "owner has site control" and that as Trustee, Gray has "legal title to the property," Transcript, at 73.

The Bankruptcy Court (Kenner, J) reiterated that "Mr. Gray is V&M Management. He is the Chapter 11 Trustee duly authorized. No one but Mr. Gray can speak for the debtor at this point

and the debtor owns the real estate," Transcript, p. 73.

Attorney Ricotta then reminded the Court that "Mr. Gray was a co-applicant on the tax credit application," Transcript, p. 73-74.

The Court (Kenner, J.) found that Trustee Gray "has site control as an owner. He is the owner in his capacity as Trustee of the debtor," Transcript, p. 77.

Having found Trustee Gray as the site-control owner, the Court then confirmed the Trustee Gray's supported plan to sell the property to Beacon Residential Properties Limited Partnership, based upon the Trustee's site control ownership and August 1997 application for the tax credits on behalf of the debtor, V&M Management, Inc. The first \$1 million in tax credits was approved in 1997, not 1998, as the First Circuit Court mistakenly says, at 31.

At the September 26, 1997 Bankruptcy confirmation hearing, IRS attorney Ms. Marvis

Knospes withdrew her limited objection when she was "advised" that the IRS "administrative claim" was to be paid in full by the Trustee, including interest and penalties. Because Ms. Knospes actually said the IRS will withdraw its objections to the proposed plan on grounds that Trustee Gray said that he would guarantee that all taxes would be paid, then the IRS has committed itself to collect the taxes from the Trustee or whoever took over the assets from the Trustee, and not Mourad. Further, Attorney Knospes obviously knew that Trustee Gray had complete control over the development and was appointed the owner by Judge Kenner. Tr. Pg. 34.

At the September 26, 1997 confirmation hearing, Trustee Gray stated that his appraisal value of the development was only \$100,000. The amount of tax credits received has to be based upon the appraisal value. Mourad had an appraisal done, which is on record in the Bankruptcy Court, which reflects a value of \$12,000,000. Mourad's

\$12,000,000 appraisal was later used to secure \$12,000,000 worth of tax credits. Tr. Pg. 90. The Trustee-backed reorganization plan having been confirmed on September 26, 1997, the tax credits had to have been approved in 1997, to secure the funds for the three consecutive years (1997, 1998, 1999) installments of payments to the debtor's (V&M's) creditors.

Had the tax credit not been approved in 1997, with Stephen Gray as the Court appointed Trustee and site-control owner, Stephen Grey could not have deeded the property to Mandela Homes Limited Partnership and Beacon Residential Property Limited Partnership on December 18, 1996.

Under the low income tax credit statute, 26 U.S.C. § 42, the applicant must have ten years of uninterrupted ownership of the property to qualify for the tax credits. Obviously, Trustee Gray, appointed only on April 2, 1996, did not own the property for ten uninterrupted years to qualify for the tax credits.

Gray's ownership was less than two years, and the tax credits granted to the new owners are invalid or fraudulent. Without Alphonse Mourad's participation or joiner in the application for the tax credits to take advantage of Mourad's twelve years of uninterrupted ownership, to qualify for the tax credits, there are no valid tax credits.

On the other hand, if Trustee Gray, standing in the shoes of the debtor V&M Management, Inc., by virtue of his April 2, 1996 appointment, also became the "owner" of the debtor's property, as the Bankruptcy Court (Kenner, J.) so ruled at the reorganization hearing on September 26, 1997, then Mourad no longer "owned" the property and no longer could be assessed for taxes on property he no longer owned or had not owned since Trustee Gray stepped into V&M Management's shoes on April 2, 1996.

Trustee Gray cannot step into V&M Management's shoes on April 2, 1996, run and operate V&M Management, Inc., collect all the rents and pay all (or some of) the bills and distribute no income to the former sole

shareholder, Alphonse Mourad, and then expect that tax to be passed through to Mourad personally.

In the First Circuit's earlier February 24, 2003 decision, In Re: V&M Management, Inc., 321 F.3d 6 (1<sup>st</sup> Cir. 2003), the Court, with Judge Torruella sitting on that panel, affirmed the Bankruptcy Court's ruling that Mourad lacked standing and lacked an equity interest in the debtor to pursue his claims against the Trustee and debtor's prior counsel. The First Circuit's February 24, 2003 ruling that Mourad lacked standing or an equity interest is totally inconsistent with the First Circuit's October 20, 2004 ruling, 387 F.3d 27 (1<sup>st</sup> Cir. 2004) that Mourad was still the sole shareholder of V&M Management, Inc. for purposes of being assessed taxes on Chapter S passed through income and gains that Mourad never received. That is, Mourad v. C.I.R., supra contradicts In re: V&M Management, Inc., supra, and vice versa. The First Circuit cannot have it both ways. Either Mourad is an owner or holder of an equity interest, or he is not

It is illogical, unfair and a misapplication of the tax code to assess taxes against a sole shareholder of a bankrupt Chapter S corporation, when the shareholder of the debtor is not the site owner or operator of the property (Trustee Gray was), or the person deeding the property to the new owners (Trustee Gray was). Only the true owner can execute a valid deed and convey the property to the new buyers. That was Trustee Gray, not Alphonse Mourad. Gray, as Trustee, should have been assessed the taxes and not Mourad, as Gray sold the bankrupt V&M Management, Inc. estate, deeded the property and secured the tax credits for the debtor's creditors. Mourad got nothing. How, then, is it possible that Mourad is saddled with the substantial taxes on a capital gain he did not receive. The IRS Code may have its oddities, quirks, and irrationalities, but it cannot be this odd, quirky or irrational. This Court cannot allow such an absurd or perverse result to stand.

If Mourad is personally liable for the taxes, (on unreceived capital gains), then he is entitled to the tax credits. Trustee Gray and Beacon

Residential Properties cannot validly take advantage of the tax credits, as neither owned the property for the requisite, statutory, uninterrupted ten years, and cannot take the proceeds of the sale of those credits and pass through the taxes to Mourad, simply because the shareholder and S corporation are separate tax entities. Once the Bankruptcy Court appointed Gray as Trustee, Gray stood in V&M Management's shoes and become the owner/operator/site controller of the property. Mourad, as the sole shareholder, lost his equity and standing. If Mourad had no standing or equity -- findings/rulings affirmed by the First Circuit on February 24, 2003, In re: V&M Management, Inc., 321 F.3d 6 (1<sup>st</sup> Cir. 2003), then Mourad cannot be assessed taxes on property he no longer owned, operated, controlled or had an equitable interest in, and the First Circuit's decision in Mourad v. Commissioner of Internal Revenue, 387 F.3d 27 (1<sup>st</sup> Cir. 2004) is wrong.

In her argument to the First Circuit panel, IRS Attorney McLaughlin stated that the buyers of the complex applied for the housing tax credits and obtained them for the 1998 tax year, and that

V&M Management, Inc. never applied. Ms. McLaughlin then furthers her misrepresentations when she says that "nobody for the tax year 1997 ever applied to the state and the application was granted for the year 1998, when V&M Corporation didn't own the complex," September 16, 2004 Transcript of Oral Argument, at 20.

The Court then agrees, adding "Right, right, right...there's a mismatch in time," Transcript, at 20.

This is wrong. Trustee Gray was a "co-applicant" for the tax credits in 1997. See his August 26, 1997 letter, and the September 26, 1997 hearing confirmed this, Transcript, pp. 73-74. That 1997 application was approved in 1997, or else the September 26, 1997 confirmed plan and December 18, 1997 Trustee Gray executed deed would not have transferred the property/assets, including the tax credits, in 1997.

The Bankruptcy Court found Trustee Gray as the "site control/owner," Transcript, at 77.

Having had all its assets sold under the September 26, 1997 confirmed plan, on December 18, 1997, the Court-appointed Trustee Gray did not pay

any state corporation fees and V&M Management, Inc. was dissolved on August 31, 1998.

Dissolved on August 31, 1998, the dissolved V&M Management, Inc. would not be entitled to any 1998 tax credits, thus supporting the view that the tax credits were approved and obtained and used in 1997 -- not the 1998 year of V&M's dissolution, as the First Circuit erroneously says, at 31.

The First Circuit then says that Mourad took no steps to terminate V&M Management's S corporation status, at 30-31. The reason for not electing to terminate its Chapter S status is that Mourad was not in control of V&M Management, Inc., to terminate its tax status, since Trustee Gray was the only "person to speak for V&M Management," as the Bankruptcy Court (Kenner, J.) put it at the September 26, 1997 Confirmation Hearing, Transcript, p. 73.

But if Mourad were in control, there were good reasons not to terminate V&M Management, Inc.'s S Chapter status, and that was V&M Management, Inc.'s ability to apply for and obtain \$12 million in tax credits -- an asset to the S

corporation that had owned the property for over ten uninterrupted years, and the only entity statutorily eligible for the credits.

The real issue here is what happened to the profit on the sale.

How could an S corporation generate, in 1999, another \$536,000, when the property was sold on December 18, 1997, and that V&M Management dissolved on August 31, 1998. Where did the \$536,000 come from.

The First Circuit said it would "look into the record," Transcript of September 16, 2004 Oral Argument, p. 22. The Court did not. Had the Court carefully examined the record, as the Court is obligated to do in bankruptcy cases, the Court would not have rendered the erroneous October 20, 2004 decision it made.

The First Circuit refused to consider Mourad's attorney's rebuttal to the IRS position that the tax credits were granted in 1997, and not in 1998. The Tax Court recognized that Trustee Gray complied with the tax credit statute and regulations, as V&M's owner, as found by the

Bankruptcy Court at the September 26, 1997 confirmation hearing.

WHEREFORE, Alphonse Mourad respectfully requests this Court to cancel Mourad's tax liability, to restore to Mourad the \$12 million low income tax credit stolen from him, as neither Trustee Gray nor Beacon Residential Properties are statutorily entitled to it; to invalidate Trustee Gray's December 18, 1997 deed and transfer of the property to Beacon Residential Properties as fraudulent; to order the IRS to not recognize the fraudulent and statutorily invalid tax credits, unless Alphonse Mourad is made a partner with Beacon Residential Properties and he receives his just due and deserts of the \$12,000,000 in tax credits, as Mourad is the only party statutorily entitled to the tax credits; and to award Mourad damages to compensate him for his lost and stolen property, profits and suffering.

Alphonse Mourad refuses to be a victim of the political and legal forces that have come to bear and that have deprived him of his thirteen year investment in the Mandela property, with nothing to show for it but impossible to pay tax

liabilities and life-time tax liens, destroying  
his ability to ever own property and do business  
again.

Respectfully submitted,  
ALPHONSE MOURAD,

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August 15, 2007

CERTIFICATE OF CERTIFIED MAIL SERVICE

I, Alphonse Mourad, hereby certify that I have, this August 15, 2007, mailed, by Certified Mail, Mourad's Brief, to:

Clerk  
The United States Tax Court  
Room 428  
400 Second Street, NW  
Washington, MA 20217

Louise R. Forbes  
Senior I.R.S. Attorney  
Small Business/Self-Employed  
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Alphonse Mourad

ADDENDUM TO BRIEF

August 26, 1997 One-Stop Application for Tax Credits, Exh. 11P.

December 18, 1997 Deed, Exh. 13P.

February 26, 1998 letter

August 31, 1998 V&M Management Company Corporate dissolution, exh. 14P.