UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, Petitioner, v. DORIS WILKERSON, Respondent.	HUDALJ 12-JM-057-PF-26 October 24, 2012

DEFAULT JUDGMENT AND ORDER

The above-captioned matter is before this Court on the *Government's Motion for Default Judgment* ("Motion") filed on October 5, 2012, by the United States Department of Housing and Urban Development ("Government"). Doris Wilkerson ("Respondent"), through counsel, filed an untimely answer to the Government's *Complaint*. As of the date of this *Default Judgment and Order*, Respondent has not responded to the Government's *Motion*.[1] Accordingly, the *Motion* will be GRANTED.

PROCEDURAL HISTORY

On August 29, 2012, the Government filed the *Complaint* against Respondent, seeking a civil penalty and an assessment totaling $154,515.86 pursuant to the Program Fraud Civil Remedies Act of 1986 ("PFCRA"), 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28. The *Complaint* alleges that Respondent made or caused to be made a claim to the Mississippi Development Authority ("MDA") for a Katrina Homeowner Grant that she knew, or had reason to know, contained false and fraudulent representations. The Government contends that Respondent knew or had reason to know that her claim made to the MDA was supported by her certification and affidavit that asserted material facts that were false or fraudulent.

Respondent was notified of her right to request a hearing by submitting a written response to the *Complaint* within 30 days of being served with the *Complaint* pursuant to

[1] Respondent is allowed 10 days to respond to a default motion. 24 C.F.R. § 26.41(a) (2010). As the *Motion* was served both electronically and via U.S. mail, Respondent's reply should have been received on or before October 15, 2012.

24 C.F.R. §28.30(a). The *Complaint* instructed Respondent that her response must include:

> (a) the admission or denial of each allegation of liability made in this Complaint; (b) any defense on which you intend to rely; (c) any reasons why the civil penalties and assessments should be less than the amount set forth in this Complaint; and (d) the name, address, and telephone number of the person who will act as your representative, if any.

The *Complaint* stated that Respondent's failure to submit a response within 30 days of receipt of the *Complaint* may result in the entry of a default judgment in favor of the Government with regard to the allegations set forth in the *Complaint*.

The Government attempted service of the *Complaint* on Respondent via UPS at the following addresses: "416 Easterbrook Street, Bay St. Louis, MS 39520" and "406 Easterbrook Street, Bay St. Louis, MS 39520," and via at "wilkerson_doris@bellsouth.net." The Government also served the *Complaint* on Respondent's counsel at "1600 24th Ave, Suite B, Gulfport, MS 39501" and at the e-mail address, "wconway@conwaymartin.com." Copies of the UPS Proofs of Delivery indicated that the physical copies of the *Complaint* were received at their respective delivery address on August 31, 2012. Pursuant to 24 C.F.R. § 28.30(a), Respondent was allowed 30 days to respond to the *Complaint*. Thus, a response was due on or before October 1, 2012.

On August 30, 2012, the Court sent a letter to Respondent explaining the role of the HUD Office of Hearings and Appeals, and notifying Respondent of the 30-day period in which she was able to request a hearing. The letter also detailed the type of information required for an adequate response. The letter further informed Respondent that, should she fail to submit a timely response, a judgment in favor of the Government may be imposed making the penalties and assessments immediately due and payable. A copy of the letter was also sent to Respondent's counsel.

On October 5, 2012, the Government requested that this Court issue a scheduling order setting the above referenced matter for hearing. The purpose of the request was to toll the statute of limitations, which was set to expire on October 14, 2012. See 24 C.F.R. § 28.35 (stating that the statute of limitations for commencing hearing will be tolled if a hearing is commenced within 6 years after the date the claim is made). Having received no indication that Respondent had filed a response to the *Complaint* with the Court, the Government also filed a motion for default judgment.

The Court issued the *Notice of Hearing and Order* in the above referenced case on October 9, 2012. In the *Notice of Hearing and Order*, the Court noted Respondent's failure to file a response with the Docket Clerk within the 30-day period mandated by 24 C.F.R. §28.30(a) and required that "any response shall be accompanied by a motion to permit late filing, showing good cause therefor."

Respondent, through counsel, filed her *Answer* on October 9, 2012. The *Answer* failed to comply with the requirement that it be accompanied by a motion to permit late filing. As of the date of this *Default Judgment and Order*, Respondent has yet to comply with the orders of this Court.[2]

Pursuant to 24 C.F.R. § 26.41(a), Respondent was afforded 10 days to respond to the Government's *Motion*. 24 C.F.R. § 26.41(a). To date, Respondent has not filed a response to the *Motion*. Accordingly, any objection to the granting of the *Motion* is deemed to have been waived. See 24 C.F.R. § 26.40(b).

LEGAL FRAMEWORK

Katrina Homeowner Grant Program. The Secretary of HUD is authorized to provide grants to state and local governments pursuant to the Housing and Community Development Act of 1974, 42 U.S.C. § 5301 *et seq*. 42 U.S.C. § 5303. In 2005, Congress specifically authorized the Secretary to provide such funding to areas especially affected by Hurricane Katrina for the purpose of disaster recovery. Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, Pub. L. No. 109-148, 119 Stat. 2745, 2779-81 (Dec. 30, 2005); Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recover, Pub. L. No. 109-234, 120 Stat. 418, 473-74 (June 15, 2006). As a recipient of such funding, the Mississippi Development Authority ("MDA") established a Homeowner Assistance Program through which it would disburse funds allocated for disaster relief ("Katrina Homeowner Grants") to eligible homeowners.

Program Fraud Civil Remedies Act. Respondent is charged with a violation of the PFCRA, 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28. The PFCRA imposes liability on

> [a]ny person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—(A) is false, fictitious, or fraudulent; [or] (B) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent....

31 U.S.C. § 3802(a)(1)(A)-(B).

The PFCRA defines "claim" as "[a]ny request, demand, or submission—...(B) made to a recipient of ... money from an authority or to a party to a contract with an authority— ... (ii) for the payment of money ... if the United States—(I) provided any portion of the money requested or demanded. ... " 31 U.S.C. § 3801(a)(3)(B). Under the PFCRA, a person knows or has reason to know that a claim is false if the person: (a) has

[2] Respondent's Counsel was also required to file a notice of appearance within three business days of receipt of the *Notice of Hearing an Order*. He has yet to do so.

actual knowledge of the claim's falsity; (b) acts in "deliberate ignorance" as to the truth or falsity of the claim; or (c) acts in "reckless disregard" of the truth or falsity of the claim. 31 U.S.C. § 3801(a)(5) (2012). No specific intent to defraud is required. Id.

A person found liable under the PFCRA may be subject to a civil penalty of not more than $6,500.00 for each claim.[3] 31 C.F.R. § 3802(a)(1)-(2); 24 C.F.R. § 28.10. In addition to the civil penalties imposed, a person found liable for making a false claim may also be "subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim, or the portion of such claim, which is determined under this chapter to be in violation of the preceding sentence." 31 U.S.C. § 3802(a)(1); 24 C.F.R. § 28.10(a)(6).

Default Judgments. HUD regulations provide that a respondent "may file a written response to the complaint, in accordance with § 28.30 of this title, within 30 days of service of the complaint," and that "[t]he response shall be deemed to be a request for a hearing." 24 C.F.R. § 28.30(a); see also 31 U.S.C. § 3803(d)(2) (providing a 30-day statutory requirement for requesting a hearing); 24 C.F.R. § 26.38 ("The respondent's response to the complaint shall be timely filed with the Docket Clerk and served upon the Government in accordance with the procedures set forth in the complaint.").

However, "if the respondent fails to submit a response to the Docket Clerk, then the Government may file a motion for a default judgment in accordance with § 26.41." 24 C.F.R. § 28.38. Section 26.41 provides:

> 24 C.F.R. § 26.41 Default.
>
> (a) General. The respondent may be found in default, upon motion, for failure to file a timely response to the Government's complaint. The motion shall include a copy of the complaint and a proposed default order, and shall be served upon all parties. The respondent shall have 10 days from such service to respond to the motion.
>
> (b) Default order. The ALJ shall issue a decision on the motion within 15 days after the expiration of the time for filing a response to the default motion. If a default order is issued, it shall constitute the final agency action.
>
> (c) Effect of default. A default shall constitute an admission of all facts alleged in the Government's complaint and a waiver of respondent's right to a hearing on such allegations. The penalty proposed in the complaint shall be set forth in the default order and shall be immediately due and payable by respondent without further proceedings.

24 C.F.R. § 26.41.

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[3] The offenses alleged here occurred before HUD adjusted the penalty to $7,500, as authorized by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101-410, § 4, 104 Stat. 890) as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701.

FINDINGS OF FACT

1. Respondent was served with the *Complaint* on August 31, 2012.

2. A response to the *Complaint* was due from Respondent on or before October 1, 2012.

3. Respondent was served with the *Motion* via U.S. first class mail and e-mail on or about October 5, 2012.

4. Respondent's *Answer* was untimely filed on October 9, 2012.

5. The *Notice of Hearing and Order* issued on October 9, 2012 required that any late filing of Respondent's response to the *Complaint* must be attached to a motion to permit late filing that demonstrates good cause therefor.

6. Respondent neither complied with the Court's order nor responded to the *Motion*.

7. Due to Respondent's untimely *Answer* and failure to demonstrate good cause for the untimely filing, all facts alleged in the *Complaint* filed on August 29, 2012 are deemed to be admitted by Respondent.

8. On or about April 27, 2006, Respondent submitted an application (06HA007666) to the MDA for a Katrina Homeowner Grant to compensate her for Hurricane Katrina-related damage to a property she owned at 406 Easterbrook Street, Bay St. Louis, MS 39520 ("406 Easterbrook Property"). On the application, Respondent entered her name in the section designated "Applicant Information."

9. Katrina Homeowner Grants were not available for second homes or rental properties.

10. To qualify for the Katrina Homeowner Grant, Respondent was required to meet the following criteria: (1) Respondent must have owned and occupied the 406 Easterbrook Street Property as of August 29, 2005; (2) the 406 Easterbrook Street Property must have been located in Harrison, Hancock, Jackson, or Pearl River counties on August 29, 2005; (3) the 406 Easterbrook Street Property must have been Respondent's primary residence on August 29, 2005; (4) Respondent must have maintained homeowners insurance on the property; and (5) the 406 Easterbrook Street Property must be located outside the pre-Katrina designated flood zone on August 29, 2005, and was flooded as a result of Hurricane Katrina.

11. In her application, Respondent stated that the 406 Easterbrook Street Property was her primary residence on the date of the storm.

12. On or about May 2, 2006, in connection with the application, Respondent signed a standard MDA form in which she "assert[ed] and certif[ied] that all the information on this application and any attachments are true to the best of the applicant's knowledge and may be relied upon to provide disaster assistance."

13. On October 14, 2006, Respondent and the MDA closed on the Katrina Homeowner Grant and, in connection therewith, entered into a Grant Agreement. In the Grant Agreement, Respondent certified that "all the information on the application, documents provided and closing documents are true to the best of [her] knowledge" and acknowledged that this information was "relied on by MDA to provide disaster assistance."

14. In connection with closing on the Katrina Homeowner Grant, Respondent signed and submitted an Affidavit of Marital Status and Homestead, dated October 14, 2006, on which she certified that the 406 Easterbrook Street Property was her homestead.

15. The MDA disbursed $74,007.93 in Katrina Homeowner Grant funds via check, dated January 17, 2007, to Respondent.

16. In disbursing the Katrina Homeowner Grant funds to Respondent, the MDA relied upon the truthfulness and accuracy of Respondent's representations that she occupied the 406 Easterbrook Street Property as her primary residence as of August 29, 2005.

17. Unbeknownst to the MDA, Respondent did not occupy the 406 Easterbrook Street property as her principal residence as of August 29, 2005. In truth and in fact, as Respondent well knew, she resided at a property located nearby at 416 Easterbrook Street, Bay St. Louis, MS, 39520 ("416 Easterbrook Street Property") as of August 29, 2005.

18. Respondent was not entitled to the $74,007.93 in Katrina Homeowner Grant funds that she received because she did not occupy the 406 Easterbrook Street Property as her principal residence as of August 29, 2005.

19. Had the MDA known that Respondent's statements in the application (06HA007666), in the Grant Agreement, and in the Affidavit of Marital Status and Homestead were false and fraudulent, it would not have approved the Katrina Homeowner Grant and disbursed $74,007.93 to Respondent.

20. Respondent knew or had reason to know that her representations to the MDA, in the application (06HA07666), in the Grant Agreement, and in the Affidavit of Marital Status and Homestead, were false and fraudulent because, contrary to such representations, she did not occupy the 406 Easterbrook Street Property as her principal residence as of August 29, 2005.

21. On or about October 24, 2007, a Grand Jury issued a charging document against Respondent in the case entitled United States of America v. Doris H. Wilkerson, No. 1:07cr139HSO-RHW-001 ("Charging Document").

22. Count 5 of the Charging Document charged:

> On or about April 27, 2006, in Hancock County in the Southern Division of

the Southern District of Mississippi and elsewhere, in a place within the jurisdiction of the Department of Housing and Urban Development, an agency of the United States of America, the defendant, Doris H. Wilkerson, aided and abetted by others known or unknown to the Grand Jury, knowingly and willfully made or caused to be made a false and fraudulent material statement or misrepresentation, in that the defendant filed a homeowner's assistance grant application with the Mississippi Development Authority in which she represented that her primary residence was 406 Easterbrook Street, Bay St. Louis, Mississippi, and that she was living in the residence at the time of Hurricane Katrina when in truth and in fact at the time of Hurricane Katrina she was not living at 406 Easterbrook Street, Bay St. Louis, Mississippi.

23. Respondent agreed to plead guilty to Count 5[4] of the Charging Document.

24. A judgment in the criminal case was entered against Respondent on September 26, 2008, and she was sentenced to a seven-month term of imprisonment and a three-year term of supervised relief. Respondent was ordered to pay $17,133.48 in restitution to the Federal Emergency Management Agency ("FEMA"), an assessment of $300, and a fine of $25,000.

CONCLUSIONS OF LAW

By reason of the facts admitted by Respondent in the *Complaint*, Respondent (1) made, presented, or submitted a claim to the MDA for a Katrina Homeowner Grant when she executed closing documents for a HUD funded Katrina Homeowner Grant of $74,007.93 on October 14, 2006; (2) knew or had reason to know that this claim was false and fraudulent because she was not entitled to the Katrina Homeowner Grant due to the fact that she did not occupy the 406 Easterbrook Street Property as her primary residence as of August 29, 2005, the date of Hurricane Katrina; and (3) knew or had reason to know that this claim included and/or was supported by her materially false statements in the application (06HA007666) and Affidavit of Marital Status and Homestead, wherein she represented that her primary residence on the date of the storm was the 406 Easterbrook Street Property, when in truth and in fact Respondent's primary residence on the date of the storm was actually the 416 Easterbrook Street Property. Due to Respondent's violation of, The allegations in the *Complaint* are legally sufficient to establish that Respondent violated 31 U.S.C. § 3802(a)(1)(A)-(B) and 24 C.F.R. § 28.10(a)(1)(i)-(ii) and is liable to the Government. Accordingly, the Government is entitled to a civil penalty of $6,500.00 and an assessment of twice the amount of the claim totaling $154,515.86, pursuant to 31 U.S.C. § 3802(a)(1)(A) and 24 C.F.R. § 28.10(a)(i).

[4] Respondent also pled guilty to Counts 3 and 4, which pertained to false statements Respondent made in connection with FEMA and Small Business Administration disaster relief funds.

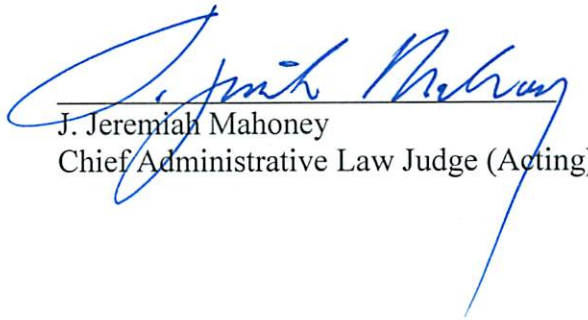
ORDER

Accordingly, the *Motion for Default Judgment* is **GRANTED**;

The *Government's Motion to Strike Affirmative Defenses* is **DENIED** as moot;

Respondent, Doris Wilkerson, shall pay a civil penalty and assessment in the total amount of $154,515.86 to the Government, which amount is due and payable immediately, without further proceedings.

So **ORDERED**,



J. Jeremiah Mahoney
Chief Administrative Law Judge (Acting)

Notice of Appeal Rights. This Order constitutes the final agency action. 24 C.F.R. § 26.41(b).