UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, Petitioner, v. ELEANOR GARVIN and REINA BROWN, Respondents.	HUDALJ 12-M-006-PF-4 March 5, 2012

DEFAULT JUDGMENT AND ORDER

The above-entitled matter is before this Court on a Motion for Default Judgment filed on February 13, 2012, by the United States Department of Housing and Urban Development ("HUD" or "the Government"). Respondent Reina Brown did not file an answer to the Government's initial complaint. Respondent Garvin responded by letter asking for additional time to return home and obtain legal counsel. By order dated December 29, 2011, the Court afforded her additional time—until January 27, 2012—to file an answer, but she failed to do so. Additionally, neither Respondent has responded to the present motion.[1] Accordingly, the Motion for Default Judgment will be **GRANTED**.

On November 23, 2011, HUD filed a Complaint seeking 28 civil penalties and assessments against Respondents pursuant to the Program Fraud Civil Remedies Act of 1986 ("PFCRA"), 31 U.S.C. §§ 3801-3812, and the applicable regulations at 24 C.F.R. Part 28. The Complaint alleged that Respondents knowingly submitted 28 false claims to the New York City Housing Authority under the Housing Choice Voucher Program ("HCVP"). (Complaint, p. ¶ 1, filed November 23, 2011.) The Complaint further alleged that Respondents knew the claims were supported by their materially false statements representing that Respondent Garvin was not related to her HCVP tenant, Rozalind Garvin ("Tenant Garvin"), when in fact Tenant Garvin was Respondent Garvin's daughter. (Id., p. 6.)

[1] A Respondent is allowed 10 days to respond to a default motion. 24 C.F.R. § 26.41(a) (2010). Allowing for three days mail time both ways, Respondents' replies should have been received on or before February 29, 2012.

The Government now seeks 27 civil penalties and assessments totaling $230,748.18.[2] (Government's Motion for Default Judgment ("Default Motion"), p. 1., filed February 13, 2012.) The Complaint notified Respondents of their right to appeal the imposition of the civil penalties and assessments by filing a written response within 30 days of the receipt of the Complaint, and that failure to file a response may cause HUD to file a Motion for Default Judgment with regard to the allegations in the Complaint. (Compl., at pp. 28-29.)

Applicable HUD regulations provide that a Respondent "may file a written response to the complaint, in accordance with § 26.30 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) (2010); see also 31 U.S.C. § 3803(d)(2) (2006) (providing a 30-day statutory requirement for requesting a hearing); 24 C.F.R. § 26.38 (2010) ("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.").

HUD served Respondent Garvin with the Complaint on December 8, 2011, via certified mail. (Default Motion, p. 2.) On December 21, 2011, the Government and the Court received letters from Respondent Garvin stating that she was out of the country and would respond to the Complaint upon her return. In response, this Court issued a Notice of Hearing and Order Granting Temporary Stay of all Proceedings, and ordering Respondent Garvin to file an answer on or before January 27, 2012. (*Notice of Hearing and Order Granting Temporary Stay of All Proceedings*, issued December 29, 2011.) To date, Respondent Garvin has not filed an answer.

The Government attempted to serve Respondent Brown with the Complaint via certified mail on December 8, 2011. (Default Motion, p. 2.) However, the Complaint was returned by the United States Postal Service as unclaimed. HUD then attempted to serve the Complaint on January 4, 2012, via standard mail, certified mail, and the United Parcel Service. The Complaint served via certified mail was again returned as unclaimed, but the Complaint served via UPS was successfully delivered on January 6, 2012. Respondent Brown's answer would therefore have been due no later than February 6, 2012. To date, no answer has been filed.

Pursuant to 24 C.F.R. § 28.38, "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." That regulation provides as follows:

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

[2] The Complaint originally sought a total award of $242,719.18, representing civil penalties for 28 false claims. (Compl. p. 1.) However, HUD amended this amount, as the six-year statute of limitations (31 U.S.C. § 3806) on the earliest claim expired prior to issuance of the Court's Notice of Hearing and Order Granting Temporary Stay of all Proceedings, which tolled the running of the statute of limitations by commencement of a hearing. 31 U.S.C. § 3803(d)(2). The award requested in the Complaint has been reduced by the amount of $6,258.00 paid by Respondents in partial compliance with restitution ordered in a related criminal matter.

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 (2010).

FINDINGS OF FACT

1. Respondents have failed to defend this action;

2. All facts alleged in HUD's Complaint, filed on November 23, 2011, are hereby found to have been admitted by Respondents;

3. HUD seeks imposition of 27 civil penalties in the amount of either $6,500.00 or $7,500.00 each[3], (totaling $187,500.00), plus the maximum assessment of twice the amount of each of the 27 false claims (totaling $49,506.18), minus $6,258 already repaid in restitution by Respondent Garvin, as ordered in a related state court criminal conviction; and

4. By regulation, the penalty proposed in the Complaint must be imposed.

CONCLUSIONS OF LAW

By reason of the facts admitted by Respondents in Counts 2 through 28 of the Complaint, Respondents made or caused to be made 27 claims to the New York City Housing Authority for HUD-funded Section 8 housing assistance payments, knowing that such claims were false, and knowing that such claims were supported by their materially false statements representing that Respondent Garvin was not related to Tenant Garvin, when in fact Tenant Garvin is Respondent Garvin's daughter. The allegations in the Complaint are legally sufficient to establish that Respondents are jointly and severely liable to HUD under the PFCRA and 24 C.F.R. Part 28. The 27 claims violated 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28.10(a)(1). HUD is therefore entitled to 27 civil penalties and 27 assessments, totaling $230,748.18, pursuant to the PFCRA and 24 C.F.R. Part 28.

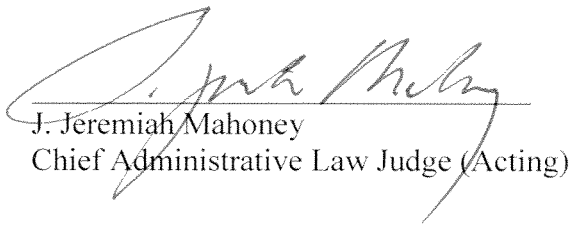
[3] Prior to March 8, 2007, the maximum civil penalty for each claim was $6,500. On or after that date, the civil penalty was $7,500 for each false claim. See 31 U.S.C. § 3802(a)(1); 24 C.F.R. § 28.10(a)(1) (2003-2006); 72 Fed. Reg. 5588 (Feb. 6, 2007).

ORDER

Accordingly, the Government's Motion for Default Judgment is **GRANTED**;

Respondents Eleanor Garvin and Reina Brown shall pay to HUD civil penalties and assessments in the total amount of $230,748.18, 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) (2010). Respondents may seek judicial review of this Order as provided in 31 U.S.C. § 3805 (2006).

CERTIFICATE OF SERVICE

I hereby certify that copies of this DEFAULT JUDGMENT AND ORDER, in HUDALJ 11-M-006-PF-4, issued by Administrative Law Judge J. Jeremiah Mahoney, were sent to the following parties on this 5th day of March, 2012, in the manner indicated:

Becky Black, Docket Clerk

FIRST CLASS MAIL:

Eleanor M. Garvin
[redacted]

Eleanor M. Garvin
[redacted]

Reina N. Brown
[redacted]

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