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. HELEN T. LOWE AND LAUTON R. JOSHUA, Respondents.	HUDALJ 09-M-098-PF-19 January 6, 2010

DEFAULT JUDGMENT AND ORDER

The above-entitled matter is before this Court on a Motion for Default Judgment as to Respondent Lauton R. Joshua. The motion was filed on December 15, 2009 by the United States Department of Housing and Urban Development ("HUD" or "the Government"). Respondent Lauton R. Joshua ("Respondent Joshua") has not answered the motion within the time allowed.[1] Accordingly, the motion for Default Judgment will be **GRANTED**.

On August 31, 2009, HUD filed a Complaint seeking thirty-six (36) civil penalties and assessments against Respondents, jointly and severally, 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 charges that Respondents made and/or caused to be made claims for housing assistance payments under the Section 8 Tenant-Based Housing Choice Voucher Program that they knew or had reason to know were false and fraudulent. It seeks civil penalties and assessments totaling $226,498. The Complaint notified Respondents of their rights 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 would cause HUD to file a Motion for Default Judgment with regard to the allegations in the Complaint.

HUD served each Respondent by certified mail.[2] Records establish that Respondent Joshua received a copy of the Complaint on September 3, 2009. Her response to the Complaint, requesting a hearing, would have been due to HUD on or before October 5, 2009. However, in response to a letter from Respondent Joshua, the Court, by letter dated October 6, 2009, granted Respondent Joshua an extension of time, until October 19, 2009, to file a response to the Complaint. No such

[1] Respondent is allowed ten (10) days to respond to a default motion. 24 CFR 26.41(a).

[2] Respondent Helen T. Lowe submitted a timely response requesting a hearing, and thus no issue of default is present as to her. The findings and conclusions contained in this Order apply only to Respondent Joshua.

response has been received.

The applicable 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); see 31 U.S.C. § 31 U.S.C. § 3803(d); see also 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.").

In addition, the regulations state: "*Failure to respond.* If no response is submitted, HUD may file a motion for default judgment in accordance with § 26.41 of this title." Id. at § 28.30(b). Title 24, Code of Federal Regulations, Section 26.41 provides:

> **§ 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; see also 24 C.F.R. § 26.38 ("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.").

FINDINGS OF FACT

1. Respondent Joshua is in default.

2. Respondent Joshua has failed to defend this action;

3. All facts alleged in HUD's Complaint, dated August 31, 2009, have been admitted by Respondent Joshua;

4. The penalty proposed in the Complaint must be imposed.[3]

CONCLUSIONS OF LAW

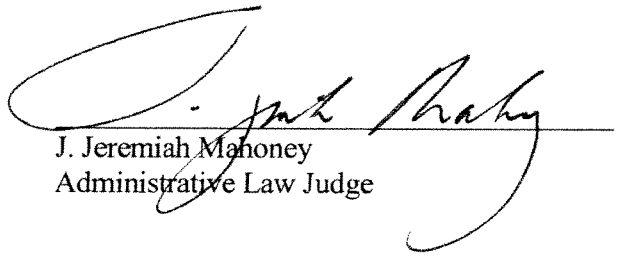
By reason of the facts admitted by Respondent Joshua in Counts 1 through 36 of the Complaint, Respondent Joshua caused 36 claims to be made to the San Francisco Housing Authority for Section 8 housing assistance payments knowing, or having reason to know, that such claims false were and fraudulent, and knowing, or having reason to know, that such claims were supported by materially false statements. Respondent Joshua is liable for 36 civil penalties and assessments, totaling $226,498, pursuant to 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28.10(a)(1).

ORDER

Accordingly, it is **ORDERED**:

1. The Motion for Default Judgment is **GRANTED**.

2. Respondent Joshua shall pay civil penalties and assessments of $226,498 to HUD, which is due and payable immediately, without further proceedings.



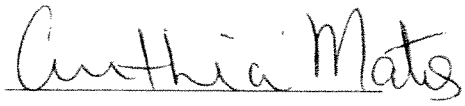
J. Jeremiah Mahoney
Administrative Law Judge

Notice of Appeal Rights. This Order constitutes a final agency action. 24 C.F.R. § 26.41(c). Respondent Joshua may seek judicial review of this Order as provided in 31 U.S.C. § 3805.

[3] HUD prepared and attached to the Motion for Default Judgment an analysis of the factors listed in 24 C.F.R. § 28.40(b) for the purpose of demonstrating that the civil penalties and assessments in this matter, as sought in the Complaint, were appropriate. Based on the analysis, the maximum civil penalties and assessments in this matter were deemed appropriate and sought in the complaint. Respondent Joshua's liability in this matter is joint and several.

CERTIFICATE OF SERVICE

I hereby certify that copies of this RULING ON GOVERNMENT'S MOTION TO STRIKE RESPONDENT HELEN T. LOWE'S AFFIRMATIVE DEFENSES, issued by J. Jeremiah Mahoney, Administrative Law Judge, HUDALJ No. 09-M-098-PF-19, were sent to the following parties on this 6th day of January, 2010, in the manner indicated:



FIRST CLASS MAIL and EMAIL:

Vernon Charles Goins, II, Esq.
Yasmin Gilani, Esq.
Taylor, Goins & Stallworth, LLP
1330 Broadway, Suite 1530
Oakland, CA 94612-2503
vgoins@thebusinesslawyers.com

FIRST CLASS MAIL:

Lauton R. Joshua
[redacted]

INTEROFFICE MESSENGER and EMAIL:

Philip A. Kesaris, Esq.
U.S. Department of Housing and Urban Development
Portals Building, Suite 200, 1250 Maryland Avenue, SW
Washington, DC 20024
philip.a.kesaris@hud.gov

Nilda Gallegos, Docket Clerk
Administrative Proceedings Division
U.S. Department of Housing and Urban Development
Portals Building, Suite 200, 1250 Maryland Avenue, SW
Washington, DC 20024