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

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| UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,<br><br>Petitioner,<br><br>v.<br><br>JENNIFER L. LAURITZEN,<br><br>Respondent. | HUDALJ 12-M-051-PF/24<br><br>November 30, 2012 |

## DEFAULT JUDGMENT AND ORDER

The above-entitled matter is before this Court on a *Second Motion for Default against Respondent* ("Second Default Motion"), filed on November 6, 2012, by the United States Department of Housing and Urban Development ("HUD" or "the Government"). Other than a one-page narrative statement, Respondent Jennifer Lauritzen ("Respondent") did not file an answer to the Government's *Complaint*, did not comply with deadlines set by this Court in its *Notice of Hearing and Order*, and has not responded to the present motion. Accordingly, the *Second Default Motion* is **GRANTED.**[1]

## PROCEDURAL HISTORY

On August 1, 2012, HUD served upon Respondent a *Complaint* seeking civil penalties and assessments 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 Respondent made or caused to be made 35 false and fraudulent claims pertaining to HUD's Housing Choice Voucher Program ("Section 8 Program"). The *Complaint* further alleged that Respondent knew or had reason to know that such claims were false or fraudulent because she asserted in the HAP Contract that she was not related to any of her tenants despite knowing that she was the maternal grandmother of one of the tenants. The *Complaint* notified Respondent of her 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 seek a default judgment against her.

[1] A Respondent is allowed 10 days to respond to a default motion. 24 C.F.R. § 26.41(a). Allowing for three day's mail time both ways, Respondent's reply to the *Second Default Motion* should have been received on or before November 28, 2012.

The Government now seeks civil penalties and assessments totaling $116,208.[2] Government's Second Motion for Default against Respondent, p. 12. 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); see also 31 U.S.C. § 3803(d)(2) (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.").

HUD hand-delivered a copy of the *Complaint* to Respondent on August 1, 2012. Accordingly, a response was due no later than September 1, 2012. Neither HUD nor the Court had received a response by that date. On September 11, 2012, the Government filed a *Motion for Default against Respondent* ("First Default Motion"). Three days later, this Court issued a *Letter to Show Cause* giving Respondent until October 12, 2012, to explain her failure to file an answer. In response, Respondent filed a one-page letter on October 11, 2012. The Government then withdrew its *First Default Motion* and filed a *Motion to Compel an Answer*, arguing that Respondent's letter did not comply with the requirements set forth at 24 C.F.R. § 28.30. The Court granted the *Motion to Compel*, and ordered Respondent to file an answer in compliance with the regulations on or before November 2, 2011. Notice of Hearing and Order, p. 2. To date, Respondent has not responded to that order.

## LEGAL FRAMEWORK

**Section 8 Program.** The Section 8 Tenant-Based Housing Choice Voucher Program is a program through which HUD provides funding through annual contributions contracts with local government entities designated as public housing agencies ("PHAs"), pursuant to Section 8 of the United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f, as implemented by 24 C.F.R. Part 982.

In order to implement a particular Section 8 Program, the PHA enters into a Housing Assistance Payment ("HAP") Contract with the owner of a private rental unit to make monthly housing assistance payments to the owner on behalf of the tenant. 24 C.F.R. §§ 982.311(a); 982.451. The HAP Contract, a standardized form issued by HUD for use by PHAs, consists of three parts: Part A (Contract Information), Part B (Body of Contract), and Part C (Tenancy Addendum). Part A of the HAP Contract identifies the assisted tenant, the contract unit, the persons authorized to reside in the unit, the lease term, the monthly total rent that the owner is entitled to receive, and the monthly housing assistance payment by the PHA to the owner. Part B of the HAP Contract requires the composition of the household to be approved by the PHA, and only allows persons to be added to the household with prior written approval by the owner and the PHA. Part C provides that only PHA-approved household members may reside in the contract unit. These provisions operate as conditions precedent to the monthly housing assistance payments from the PHA to the owner. Paragraph 7(b) of the HAP Contract directs that unless the owner is in compliance with all the provisions of the HAP Contract, he or she does not have the right to receive housing assistance payments.

[2] HUD seeks imposition of 35 civil penalties in the amount of $2,500 each, plus an assessment of twice the amount of each false claim. The Government has not sought the maximum civil penalty amount of $7,500 per offense.

**Program Fraud Civil Remedies Act.** Respondent is charged with a violation of the PFCRA. 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, "each ... individual request or demand for ... money constitutes a separate claim. 31 U.S.C. § 3801(b)(1) (2012). Under the PFCRA, a person knows or has reason to know that a claim is false if the person: (a) has 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). Furthermore, "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 $7,500.00 for each claim. 31 C.F.R. § 3802(a)(1)-(2) (2012); 24 C.F.R. § 28.10 (2012). 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." 31 U.S.C. § 3802(a)(1); 24 C.F.R. § 28.10(a)(6).

**Default Judgment.** HUD regulation provides that, "[I]f 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 (2012). 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.

## FINDINGS OF FACT

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

2. A response to the *Complaint* was due from Respondent on or before September 1, 2012, but Respondent failed to file a response.

3. The *First Default Motion* was sent to Respondent via U.S. first-class mail and regular mail on September 11, 2012, followed by a *Show Cause Letter* issued by this Court on September 14, 2012.

4. Respondent's one-page letter, filed on October 11, 2012, did not admit or deny the specific allegations and did not comply with the requirements set forth at 24 C.F.R. § 28.30(a).

5. Respondent failed to respond to the *Notice of Hearing and Order* issued on October 18, 2012, and to the *Second Default Motion*, filed on November 6, 2012.

6. Respondent has failed to defend this action.

7. Due to Respondent's failure to adequately respond to the *Complaint*, the two *Default Motions*, the *Show Cause Letter*, or the *Notice of Hearing and Order*, all facts alleged in the *Complaint* are deemed to have been admitted by Respondent.

8. At all relevant times, the Schuylkill County Housing Authority (the "PHA") administered the Section 8 Program on behalf of HUD.

9. At all relevant times, Respondent was a participant in the PHA's Section 8 Program as an owner/landlord.

10. On or about July 17, 2007, Respondent signed and submitted a Request for Tenancy Approval to the PHA.

11. The Request for Tenancy Approval listed Kathleen Boyer, Randy Boyer, Stephanie Deibert, and Deven Boyer as tenants, and contained Respondent's certification that she was not related to any of the proposed tenants.

12. On or about September 28, 2007, Respondent entered into a HAP Contract with the PHA, in which she certified that she was "not the parent, child, grandparent, grandchild, sister, or brother" of any of the tenants.

13. Respondent is the maternal grandmother of tenant Deven Boyer.

14. When questioned in 2007 about her familial relationship with tenant Deven Boyer, Respondent denied that she was his grandmother.

15. On or about July 27, 2008, and on or about September 16, 2009, Respondent signed and submitted Requests for Tenancy Approval that listed Deven Boyer among the tenants and that stated that Respondent was not Deven Boyer's grandmother.

16. Between October 1, 2007, and September 1, 2010, the PHA made 35 housing assistance payments to Respondent, totaling $14,354.

17. Respondent knew or had reason to know the 35 claims were false and fraudulent because she knew she was, in fact, directly related to tenant Deven Boyer.

## CONCLUSIONS OF LAW

By reason of the facts admitted by Respondent in the *Complaint*, Respondent made or caused to be made 35 claims to the PHA when, after receiving and accepting 35 Section 8 housing assistance payments, she authorized deposit of such funds into her personal bank account and thereby demanded payment thereof from the PHA. Respondent knew or had reason to know that the 35 claims were false or fraudulent because she was in violation of her Section 8 HAP Contract and thus ineligible for any Section 8 housing assistance payments. Respondent therefore committed 35 violations of 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28.10(a)(1).

Further, Respondent knew or had reason to know that the 35 claims included or were supported by her false statements in the Requests for Tenancy Approval and the HAP Contract. The allegations in the *Complaint* are legally sufficient to establish that Respondent is liable to HUD under the PFCRA and 24 C.F.R. Part 28. By regulation, in the event of a default "[t]he 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(c). HUD is therefore entitled to 35 civil penalties of $2,500 each (totaling $87,500), and 35 assessments of twice the amount of each such false claim (totaling $28,708), for a total award of $116,208 pursuant to the PFCRA, 31 U.S.C. § 3802(a)(1), and 24 C.F.R. § 28.10(a).

## ORDER

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

Respondent shall pay civil penalties and assessments in the total amount of $116,208 to HUD, 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).

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing DEFAULT JUDGMENT AND ORDER, issued by J. Jeremiah Mahoney, Chief Administrative Law Judge (Acting), HUDALJ No. 12-JM-051-PF/24, were sent to the following parties on this 30th day of November, 2012, in the manner indicated:

Iamanadette Jones, Staff Assistant

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