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. KERRY R. SCHEUERMANN and CATHERINE B. SCHEUERMANN, Respondents.	**CORRECTED COPY** HUDALJ 11-F-065-PF-17 February 1, 2012

DEFAULT JUDGMENT AND ORDER

The above-entitled matter is before this Court on a Motion for Default Judgment filed on November 18, 2011, by the United States Department of Housing and Urban Development ("HUD" or "the Government"). Respondents, Kerry R. Scheuermann and Catherine B. Scheuermann, did not file an answer to the Government's initial Complaint or its Corrected Complaint. Additionally, Respondents have not responded to the Government's Default Motion[1] or to an Order to Show Cause issued by this Court on November 30, 2011. Accordingly, the Motion for Default Judgment will be **GRANTED**.

On September 8, 2011, HUD filed a Complaint seeking two 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 two claims to the Louisiana Office of Community Development for HUD Community Development Block Grant-funded disaster assistance under the Louisiana Road Home Homeowner Assistance Program that Respondents knew or had reason to know were false. (Compl. 8-9.) The Complaint further claims that Respondents knew or had reason to know the claims included or were supported by their materially false statements representing that they owned the Hurricane Katrina-damaged property at issue as of the date of the grant closing, when in fact they no longer owned the property. (Id.) The Complaint seeks civil penalties and assessments totaling $80,692.52. (Id.) 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. (Id. at 9-10.)

[1] A Respondent is allowed 10 days to respond to a default motion. 24 C.F.R. § 26.41(a) (2010). Allowing for 3 days mail time both ways, Respondents' reply should have been received on or before December 5, 2011. The Order to Show Cause directed Respondents to file a response on or before January 3, 2012.

On September 13, 2011, HUD discovered that it had mistakenly named "James R. Scheuermann" rather than "Kerry R. Scheuermann" as a Respondent in the Complaint. A Corrected Complaint — changing the identification to "Kerry R." but otherwise identical to the initial Complaint — was filed on September 13, 2011.

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 both the Complaint and the Corrected Complaint upon Respondents at their home address, via United States Postal Service Certified Mail-Return Receipt Requested. The Corrected Complaint was also sent by electronic mail to the address that Respondents had provided to HUD. Records show that both the Complaint and the Corrected Complaint were received by Respondents on September 13, 2011. A response was therefore due by October 13, 2011. Neither HUD nor this Court have received such a response.

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

24 C.F.R. § 26.41 Default.

(a) General. The Respondents 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 Respondents 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 Respondents without further proceedings.

24 C.F.R. § 26.41 (2010).

FINDINGS OF FACT

1. All facts alleged in HUD's Complaint filed on September 8, 2011, and in HUD's Corrected Complaint filed on September 13, 2011, are hereby found to have been admitted by Respondents;

2. Respondents have failed to defend this action;

3. The civil penalties and assessments proposed in the Complaint and the Corrected Complaint must be imposed; and

4. HUD seeks imposition of two civil penalties in the amount of $7,500.00 each (totaling $15,000.00), plus two assessments of twice the amount of each false claim (totaling $65,692.52).

CONCLUSIONS OF LAW

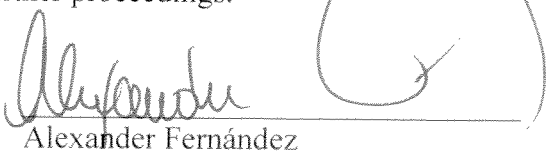
By reason of the facts admitted by Respondents in Counts 1 and 2 of the Complaint and Corrected Complaint, Respondents made or caused to be made two claims to the Louisiana Office of Community Development for HUD Community Development Block Grant-funded disaster assistance, knowing or having reason to know that such claims were false, and knowing or having reason to know that such claims included or were supported by their materially false statements representing that they owned the Hurricane Katrina-damaged property at issue as of the date of the grant closing, when in fact they no longer owned the property. The allegations in the Complaint and Corrected Complaint are legally sufficient to establish that Respondents are liable to HUD under the PFCRA and 24 C.F.R. Part 28. The claims violated 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28.10(a)(1). HUD is therefore entitled to two civil penalties and two assessments, totaling $80,692.52, pursuant to the PFCRA and 24 C.F.R. Part 28.

ORDER

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

Respondents, Kerry R. Scheuermann and Catherine B. Scheuermann, shall pay civil penalties and assessments in the total amount of $80,692.52 to HUD, which amount is due and payable immediately, without further proceedings.

So **ORDERED**,



Alexander Fernández
Administrative Law Judge

Notice of Appeal Rights. This Order constitutes the final agency action. 24 C.F.R. § 26.41(b) (2010). Respondents Scheuermann may seek judicial review of this Order as provided in 31 U.S.C. § 3805 (2006).