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. LYNN LEGGINS, Respondent.	HUDALJ 12-F-037-PF-18 July 10, 2012

DEFAULT JUDGMENT AND ORDER

The above-captioned matter is before this Court on a *Motion for Default Judgment* ("Motion") filed on June 1, 2012, by the United States Department of Housing and Urban Development ("HUD" or "the Government"). Lynn Leggins ("Respondent") did not file an answer to HUD's *Complaint*. Respondent also failed to respond to the *Motion*[1] and to this Court's *Order to Show Cause*, issued on June 15, 2012. Accordingly, the *Motion* is **GRANTED**.

PROCEDURAL HISTORY

On April 12, 2012, HUD filed the *Complaint* against Respondent, seeking civil penalties and assessments totaling $137,936, 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 42 claims to HUD's Section 8 Tenant-Based Housing Choice Voucher Program administered by the Housing Authority of the City of Orlando ("HACO") that Respondent knew or had reason to know were false or fraudulent. The *Complaint* further asserts that Respondent knew or had reason to know that such claims were false or fraudulent because he was in violation of the Housing Assistance Payments Contract ("HAP Contract") and, therefore, was ineligible for any Section 8 housing assistance payments due to his continued residence in the contract unit with the assisted tenant. The Government contends that Respondent knew or had reason to know that the claims made to the PFCRA were supported by his written statements asserting material facts that were false or fraudulent.

The *Complaint* notified Respondent of his 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*

[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, Respondent's reply should have been received on or before July 1, 2012. The *Order to Show Cause* directed Respondent to file a response on or before June 25, 2012.

Judgment with regard to the allegations in the *Complaint*. The *Complaint* instructed Respondent that his response must include:

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

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

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) (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 the *Complaint* upon Respondent at his home address, via United States Postal Service Certified Mail-Return Receipt Requested. Records show the *Complaint* was received by Respondent on April 21, 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 from Respondent on or before May 21, 2012. As of the date of this *Default Judgment and Order*, neither HUD nor this Court have received such a response.

On June 1, 2012, HUD filed the *Motion*. Pursuant to 24 C.F.R. § 26.41(a), Respondent was afforded 10 days to respond to the *Motion*. 24 C.F.R. § 26.41(a) (2012). Upon Respondent's failure to respond to the *Motion*, this Court issued an *Order to Show Cause* instructing Respondent to show why HUD's *Motion* should not be granted. To date, Respondent has filed no such response.

HUD seeks imposition of 42 civil penalties of $2,000 each (totaling $84,000), plus 42 assessments of twice the amount of each such false claim (totaling $53,936), for a total award of $137,936. As listed in 24 C.F.R. § 28.40(b), HUD seeks less than the maximum authorized civil penalty amount ($6,500 or $7,500) for each of the false and fraudulent claims, and the maximum assessment of twice the amount of the false and fraudulent claims.

LEGAL FRAMEWORK

Section 8 Program. The Section 8 Tenant-Based Housing Choice Voucher Program ("Section 8 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. The purpose of this program is to assist eligible low-income families in obtaining decent, safe, and sanitary housing in the private rental market.

In order to implement a particular Section 8 Program, the PHA enters into a 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, at ¶ 3(b), 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, at ¶ 3(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. HUD regulations implementing the Section 8 Program direct that the composition of the family residing in the unit must be approved by PHA, and no one beyond the approved individuals may reside in the contract unit. 24 C.F.R. § 982.551(h)(2).

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) (2012).

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 $6,500.00 for each claim.[2] 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,

[2] 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.

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 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 (2012).

FINDINGS OF FACT

1. Respondent was served with the *Complaint* on April 21, 2012, at his home address.

2. A response to the *Complaint* was due from Respondent on or before May 21, 2012, but Respondent failed to file a response.

3. The *Motion* was sent to Respondent via U.S. first-class mail on June 1, 2012. Respondent failed to respond to the Government's *Motion*, as well as to the subsequent *Order to Show Cause* issued by this Court on June 15, 2012.

4. Respondent has failed to defend this action.

5. Due to Respondent's failure to respond to either the *Complaint* or the subsequent *Order to Show Cause*, all facts alleged by the *Complaint* are deemed to have been admitted by Respondent.

6. At all relevant times, HACO administered the Section 8 Program on behalf of HUD and, in connection therewith, received federal Section 8 funding from HUD pursuant to annual contribution contracts with HUD, and disbursed such funds pursuant to HAP Contracts with owners of private rental housing, on behalf of low-income families.

7. In or about December 2001, Respondent signed and entered into a HAP Contract with HACO, agreeing to lease a residential property he owned at 5271 Clarion Oaks Road, Orlando, Florida ("Contract Unit") to tenant Sherry Brown ("Tenant Brown"), in the exchange for monthly Section 8 housing assistance payments from HACO.

8. Respondent continued to occupy and reside in the Contract Unit with the assisted tenant at all relevant times subsequent to his execution of the HAP Contract, despite not being an authorized person to reside in the unit or a member of the household as approved by HACO, and without written approval of HACO to be added to such household.

9. Respondent and Tenant Brown were married on or about June 13, 2002.

10. Respondent's unauthorized occupancy of the contract unit and marriage to the assisted tenant were not made clear to HACO, as Respondent used only post office box numbers on all HACO forms.

11. Between January 2002 and January 2010, HACO disbursed 42 monthly housing assistance payments to Respondent on behalf of Tenant Brown, totaling $76,071.

12. Respondent made or caused to be made 42 claims to HACO by receiving, accepting, and authorizing deposit of such funds into his personal banking account 42 Section 8 housing assistance payments on behalf of Tenant Brown.

13. Respondent knew or had reason to know the 42 claims he made were false and fraudulent, as he continued to reside at the property and became married to the assisted tenant.

14. On January 12, 2010, Respondent visited HACO to report Tenant Brown's death on January 2, 2010, and to request termination of his HAP Contract.

15. Responded provided HACO with a death certificate, identifying Sherry Brown as "Sherrie Leggins" and Respondent as her husband. In so discovering this information, HACO identified Respondent and Tenant Brown as married, and the Respondent as residing in the contract unit in violation of the HAP Contract

16. By letter dated March 1, 2010, HACO demanded Respondent repay the $71,710 in Section 8 housing assistance that he improperly received due to the above-mentioned fraudulent conduct.

17. Responded failed to repay any of the $71,710 of the housing assistance to the HACO or HUD.

18. HUD seeks imposition of 42 civil penalties for a total award of $137,936.

CONCLUSIONS OF LAW

By reason of the facts admitted by Respondent in the *Complaint*, Respondent made or caused to be made 42 claims to HACO when, after receiving and accepting 42 Section 8 housing assistance payments, he authorized deposit of such funds into his personal bank account and thereby demanded payment thereof from HACO. Respondent knew or had reason to know that the 42 claims were false or fraudulent because he was in violation of his Section 8 HAP Contract with HACO and ineligible for any Section 8 housing assistance payments due to his unauthorized occupancy of the Contract Unit with the tenant, and therefore committed 42 violations of 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28.10(a)(1).

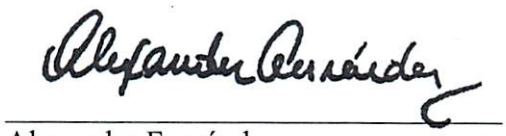
Further, Respondent knew or had reason to know that the 42 claims included or were supported by his written statements asserting material facts that were false in the HAP Contract at Part A, at ¶ (3)(b) and (c) of Part C, and in the Authorization Agreement for Automatic Deposit Credits wherein Respondent certified that the housing assistance payments were in accordance with the provisions of 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. HUD is therefore entitled to 42 civil penalties of $2,000 each (totaling $84,000), plus 42 assessments of twice the amount of each such false claim (totaling $53,936), for a total award of $137,936 pursuant to the PFCRA, 31 U.S.C. § 3802(a)(1), and 24 C.F.R. § 28.10(a).

ORDER

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

Respondent, Lynn Leggins, shall pay civil penalties and assessments in the total amount of $137,936 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) (2012).

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CERTIFICATE OF SERVICE

I hereby certify that copies of this DEFAULT JUDGMENT AND ORDER (CORRECTED COPY), issued by Alexander Fernández, Administrative Law Judge, HUDALJ 12-F-037-PF-18, were sent to the following parties on this 10th day of July, 2012, in the manner indicated:

Cinthia Matos, Staff Assistant

CERTIFIED MAIL:

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[redacted]

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