

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

In the Matter of:

MANTUA GARDENS EAST, INC.,
JAMES H. GRIER,

Respondents

HUDALJ 12-F-043-CMP-3

August 30, 2012

**ORDER DENYING GOVERNMENT'S MOTION *IN LIMINE* REGARDING
RESPONDENTS' ADMISSIONS AND DENYING GOVERNMENT'S MOTION
FOR SANCTIONS FOR FAILURE TO RESPOND TO GOVERNMENT'S
DISCOVERY REQUESTS**

On August 21, 2012, the U.S. Department of Housing and Urban Development ("HUD" or the "Government") filed a *Motion In Limine Regarding Respondents' Admissions*. The Government asks the Court to deem admitted and conclusively established all facts contained in the Government's *First Set of Requests for Admissions* ("RFA"), on the grounds that Respondents James H. Grier and Mantua Gardens East, Inc. (collectively "Respondents") have failed to respond within the mandated timeframe. Additionally, HUD seeks an order prohibiting Respondents or their witnesses from offering any testimony to rebut the facts in question.

On August 29, 2012, HUD filed a *Motion for Sanctions for Failure to Respond to Government's Discovery Requests* ("Motion for DR Sanctions") alleging that Respondents have not responded to the *Government's Request for Production of Documents* ("Documents Request") and its *First Set of Interrogatories* ("Interrogatories"). The *Motion* also states that Respondent Grier has failed to provide two documents after promising to do so during his deposition. HUD requests that the Court deem admitted certain allegations found in the *Complaint* and prohibit Respondents from contesting those allegations. Both *Motions* are **DENIED**.

The requests for admissions at bar are governed by 24 C.F.R. § 26.42(c)(2), which states that "[A]ny party may serve upon any other party a written request for the admission of the genuineness of any documents described in the request or the truth of any relevant matters of fact." The language of this section echoes that of Rule 36 of the Federal Rules of Civil Procedure. In both cases, any requested admissions not responded to within 30 days of service are deemed admitted and conclusively established unless the presiding judge permits withdrawal or amendment of the admission. 24 C.F.R. §

26.42(c)(2)(iii); Fed. R. Civ. P. 36(a)(3); Fed. R. Civ. P. 36(b). Caselaw examining Rule 36 is therefore informative here.

HUD served Respondents with the RFA via electronic mail and Certified Mail on July 11, 2012. Accordingly, Respondents' responses were due no later than August 10, 2012. There is no evidence in the record that Respondents ever filed a response or sought leave to extend the filing deadline. Generally, this noncompliance would lead to the admission of each statement contained in the RFA, pursuant to 24 C.F.R. § 26.42(c)(2).

As the Court has noted repeatedly, however, Respondents in this matter are *pro se*. They are therefore afforded leeway with regard to procedural rules. Despite anecdotal evidence that Respondents have access to some degree of legal advice, the Court cannot assume that Respondents are sufficiently fluent in "legalese" to understand and appreciate the full extent of the prehearing rules, much less the consequences for violating those rules. On this point, HUD has offered nothing.

The Government's RFA contains 407 statements over approximately 30 pages, and refers to some 45 separately named individuals and multiple documents. The research necessary to respond confidently and accurately to each requested admission would strain the resources of a well-staffed law firm, much less a lone, untrained individual such as Respondent Grier.¹ The Government's expectation that Respondents could accomplish this task within 30 days is unreasonable, considering Respondent Grier's age and medical history.² The Government is certainly aware that the consequences of mistakenly admitting a fact are severe, as Respondents would then be unable to offer any contradictory evidence at the hearing.³

The burdens placed on Respondent Grier by the *Documents Request* and the *Interrogatories* are potentially even more onerous because respondents have only 20 days to file an answer. 24 C.F.R. §§ 26.42(c)(1)(iii), 26.42(c)(3)(ii). In this case, HUD served both requests on July 30, 2012, giving Respondents until August 20 to provide written replies. Complying within that timeframe would constitute an enormous undertaking for any *Pro Se* litigant.

¹ Respondent Grier is the president of Respondent Mantua Gardens East, Inc., and is acting both *Pro Se* and as the company's lone representative in this matter. As such, the research burden falls entirely upon his shoulders.

² Respondent Grier has stated that he suffers from "failing health," including diabetes and other ailments, and that he suffered a stroke in 2006 and a heart attack in 2008. *Respondents' Motion to Leave*, p. 3, filed August 13, 2012. Understandably, Respondent Grier claims that the sum of these conditions "slows me down." *Id.*

³ Granted, Respondents could file a motion to withdraw or amend the admission, pursuant to 24 C.F.R. § 26.42(c)(2)(iii). However, this would require that Respondents be aware of their error prior to the hearing. In the rush to respond to 407 queries within 30 days, an overwhelmed *pro se* litigant could easily skip a question without realizing the mistake.

The *Documents Request*, for example, instructs Respondents to provide “all documents that are available to you, including those in the possession of your attorneys, investigators, employees, agents, or affiliates and not merely such documents known of your own personal knowledge.” *Documents Request*, p. 1, Instruction 1. It then requests, among other things, “all documents relating to every loan and/or line of credit” involving funds from the Reserve account and every document recounting conversations between Respondents and tenants about lease agreements or rental rates during an 18-month period. *Id.*, at p. 4.

The *Interrogatories* are similarly expansive. For example, HUD demands that Respondents identify and describe “all communications with each and every tenant who resided at the Project at any time during the period from June 1, 2010, to December 31, 2011, regarding (a) lease agreements; (b) rental rates; (c) vacating a rental unit.” *Interrogatories*, p. 4, Question 2. Almost every rent-based conversation between any tenant and any employee during this period would therefore have to be specifically identified and recounted. The legwork necessary to accomplish these tasks within 20 days is likely beyond the capacity of a lone, elderly man, especially when considering that these deadlines overlapped the deadline for the RFA.

This is not to say that Respondents bear no responsibility for their failure to respond to the Government’s discovery requests. All litigants, even *pro se* ones, are expected to comply with procedural rules, and are subject to sanctions when they do not do so. See *Haines v. Kerner*, 404 U.S. 519, 92 (1972); *Tabron v. Grace*, 6 F.3d 147, 153 (3d Cir. 1993); *Padro v. Heffelfinger*, 110 F.R.D. 333, 335 (E.D. Pa. 1986); *Ballard v. Carlson*, 882 F.2d 92 (4th Cir. 1989). As has been noted before, Respondents have disregarded the Court’s filing deadlines and procedural rules. This history of noncompliance has already adversely affected their ability to introduce witnesses and evidence at the upcoming hearing. See *Order On Government’s Motion For Sanctions And Government’s Renewed And Second Renewed Motions For Sanctions*. In the *Order Compelling Respondents to File Exhibits*, the Court put Respondents on notice that continued defiance of Court orders may result in additional sanctions.⁴

Nonetheless, the sanctions requested by HUD are disproportionately punitive. The *Motion in Limine* seeks admission of the facts underlying Counts 8-99 of the *Complaint*, which represent the great bulk of the charges and the associated penalties.

⁴ Although courts have shown a general unwillingness to sanction *Pro Se* litigants for violations of technical procedural rules, this reluctance is reduced if the *Pro Se* party was previously warned of the consequences of noncompliance. See *U.S. v. Renfrow*, 612 F. Supp. 2d 677 (E.D.N.C. 2009) (admissions deemed admitted for summary judgment purposes because plaintiff had been warned of the consequences); *Diggs v. Keller*, 181 F.R.D. 468 (D. Nev. 1998) (warning required on Requests for Admissions);

The Government’s RFA in the instant case stated that “Any matters not responded to within 30 days of service of this request will be deemed admitted.” *Government’s Motion In Limine*, Ex. 2, *First Set of Requests for Admission Directed to Mantua Gardens East, Inc.*, p. 2, ¶ 4. It is not clear, however, if Respondents read this instruction or understood the extent of its implications. Neither the *Documents Request* nor the *Interrogatories* included any warning at all.

The *Motion for DR Sanctions* asks the Court to further sanction Respondents by deeming admitted the essential facts underlying Counts 1-3 and Counts 8-99.⁵ *Motion for DR Sanctions*, pp. 1-2. These counts represent \$1,467,500 in penalties; nearly 92% of the total penalty amount sought. If the *Motions* were granted, Respondents would have no opportunity to contest these counts. Consequently, the Court cannot see how the requested punishment “reasonably relates to the severity and nature of the failure or misconduct,” as required by 24 C.F.R. § 26.34(b).⁶ Under the circumstances, it is not in the interests of justice to cripple a *Pro Se* litigant’s entire defense solely on the basis of these procedural deficiencies. See U.S. v. Turk, 139 F.R.D. 615, 618 (D. Md. 1991) (“To conclusively find the facts central to this litigation against the defendant without giving him an opportunity to be heard would not be in the interests of justice.”); see also, Petrunich v. Sun Bldg. Systems, Inc., No. 3: CV-04-2234 2006 WL 2788208 *3 (M.D. Pa. Sept. 26, 2006) (“A disposition on the merits is preferred over a decision based upon procedural technicalities.”); Traguth v. Zuck, 710 F.2d 90, 95 (2d Cir. 1983) (“Implicit in the right of self-representation is an obligation on the part of the court to make reasonable allowances to protect *Pro Se* litigants from inadvertent forfeiture of important rights because of their lack of legal training.”); Jones v. Jack Henry & Assocs., Inc., No. 3:06cv428 2007 WL 4226083 *2 (W.D.N.C. 2007 Nov. 30, 2007) (expressing reluctance to “use Rule 36 as a snare” for a *Pro Se* litigant who was unaware of the consequences of not responding); In re Savage, 303 B.R. 766, 772-73 (Bkrcty. D. Md. 2003) (Rule 36 “was not intended to be used as a technical weapon to defeat the rights of *Pro Se* litigants to have their cases fairly judged on the merits.”).

By using these procedural violations as a means to thwart Respondents’ defense, HUD could be seen as engaging in precisely the sort of strategy the aforementioned cases seek to prevent. Although the Court is convinced that such is not the case, the requested sanctions appear heavy-handed and out-of-place given the circumstances. They are also unnecessary in an administrative hearing of this type. See Morgan v. U.S., 304 U.S. 1, 14 (1938) (“[I]n administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.”).

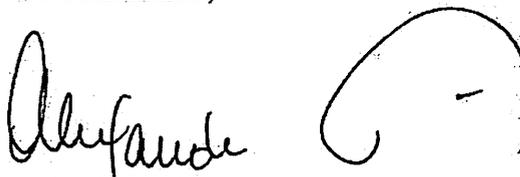
Although Respondents’ failures to respond to the Government’s discovery requests constitute violations of the discovery rules, the sanctions already imposed against them are more than adequate. Accordingly, the Government’s *Motion In Limine*

⁵ Nowhere in the Government’s memorandum supporting the *Motion for DR Sanctions* do they cite any caselaw suggesting that this severe remedy is appropriate for noncompliance of this sort. In fact, the memorandum is devoid of any caselaw at all.

⁶ Moreover, any harm to the Government is minimal at best. HUD is merely required to prove the facts as alleged in the Complaint. Certainly, the Agency which counts 4 lawyers as assigned to work on this matter is not disadvantaged by establishing facts at hearing.

and its *Motion for Sanctions for Failure to Respond to Government's Discovery Requests* are **DENIED**.

So **ORDERED**,

A handwritten signature in cursive script, appearing to read "Alexander Fernández", followed by a large, stylized circular flourish or mark.

Alexander Fernández
Administrative Law Judge