UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

MIRVICE BABAR,

and

NAJIBA BABAR,

Respondents.

HUDALJ 08-074-PF

April 27, 2009

Appearances

Travis J. Ferris, Attorney
Joseph J. Kim, Attorney
United States Department of Housing and Urban Development, Washington, D.C.
For the Complainant

Joseph J. Gigliotti, Attorney
Silver Spring, MD
For Respondents

INITIAL DECISION AND ORDER

BEFORE: Alexander FERNÁNDEZ, Administrative Law Judge

On November 7, 2008, the Secretary of the United States Department of Housing and Urban Development ("HUD" or the "Secretary") filed a Complaint against Najiba Babar ("Respondent Tenant") and Mirvice Babar ("Respondent Landlord") (collectively, the "Respondents") alleging that Respondents should be held liable under the Program Fraud Civil Remedies Act of 1986 ("PFCRA" or the "Act"), 31 U.S.C. §§ 3801-3812, and its implementing regulations found at 24 C.F.R. Part 28, for having submitted false claims and statements to qualify for benefits and receive payments under HUD's Housing Choice Voucher Program.

At all times relevant to this proceeding, both Respondents lived with Mr. Daud Babar. Mr. Daud Babar and Respondent Landlord are Respondent Tenant's sons.

The Secretary asserts that Respondents submitted 43 false claims to the Fairfax County Department of Housing and Community Development ("FCH") and thereby received a total of

$23,603.00 in monthly Housing Assistance Payments ("HAP") paid out of funds supplied by HUD to FCH.

To receive these payments, Respondent Landlord entered into a lease with his brother, Mr. Daud Babar, and a contract for HAP with FCH. In executing the HAP contract, Respondent Landlord certified that, during the term of the contract, the family occupying the housing unit did not have any ownership interest in said housing unit. The Secretary alleges that this certification was false because Respondent Landlord knew or should have known that his mother, Respondent Tenant, held an ownership interest in, and was a part of the family that occupied, the housing unit.[1] The Secretary further alleges that each Housing Assistance Payment constitutes a separate claim because Respondent Landlord's certification was coterminous with the duration of the contract. The Secretary asserts that Respondent Tenant caused, and was complicit in, the submission of these 43 claims.

As remedy, the Secretary seeks to impose an assessment and penalties totaling $318,706 against Respondents, jointly and severally, consisting of:

(1) An assessment in the amount of $47,206.00; and

(2) A penalty of $5,500 per alleged claim for each alleged claim made between September 2002 and April 2003, for a total of $44,000; and

(3) A penalty of $6,500 per alleged claim for each alleged claim made between May 2003 and March 2006, for a total of $227,500.

Moreover, the Secretary asserts that Respondent Tenant submitted six false statements to FCH in order to receive rental assistance for her family as part of HUD's Housing Choice Voucher program. As basis for this assertion, the Secretary alleges that Respondent Tenant affirmed on six separate occasions that she did not own real property when she knew or should have known that she held an ownership interest in the housing unit she occupied with her sons.

As remedy, the Secretary seeks to impose a penalty of $38,000 against Respondent Tenant, consisting of:

(1) A penalty of $5,500 for the false statement contained in Respondent Tenant's declaration made on September 9, 2002; and

[1] The Secretary initially argued that the certification was false not only because Respondent Tenant had an ownership interest in *Healy Drive*, but also because Respondent Landlord himself lived there in violation of Housing Choice Voucher program requirements. (See Compl. ¶¶ 18-20, 37, 42-43, and 74.) However, the Secretary abandoned this second theory because Respondents had informed an FCH inspector that Respondent Landlord was living at *Healy Drive*. (Accord Stipulated Facts ¶ 64 and Government's Post-Hearing Response Brief at p. 2.)

(2) A penalty of $6,500 per statement for each of Respondent Tenant's declarations made on September 15, 2003, January 25, 2004, August 26, 2004, May 5, 2005, and August 30, 2005, for a total of $32,500.

On January 27, 2009, at a hearing held in Washington, D.C., this Court heard testimony from: Danielle Bastarache, Director of the Office of Housing Voucher Programs for HUD; John Turner, Supervisor of the Compliance Unit of FCH; Jeffrey Lowery, Senior Special Agent with HUD's Office of Inspector General; Marie Sherzai, Respondent Landlord's sister and Respondent Tenant's daughter; and Respondent Landlord. Respondent Tenant was deposed by counsel for both parties on February 11, 2009.[2] Her testimony was submitted to and accepted by the Court on February 25, 2009. The parties filed Post-Hearing Briefs on February 24, 2009, and Reply Briefs on March 6, 2009. Accordingly, this case is ripe for decision.

Applicable Law

Program Fraud Civil Remedies Act. The Act creates liability for making, presenting, or submitting a claim or statement to certain entities, including HUD, that the person making the claim or statement "knows or has reason to know" is "false, fraudulent, or fictitious." 31 U.S.C. § 3802(a)(1)-(2). "Knows or has reason to know" means that a person, with respect to a claim or statement:

(A) has actual knowledge that the claim or statement is false, fictitious or fraudulent; or

(B) acts with deliberate ignorance of the truth or falsity of the claim or statement; or

(C) acts in reckless disregard of the truth or falsity of the claim or statement.

31 U.S.C. § 3801(a)(5). The Government is not required to prove specific intent to defraud. Id.

A "claim" includes any "request, demand, or submission" made upon a recipient of money from a federal executive department if the United States provided any portion of the money requested or demanded by the claimant. 31 U.S.C. § 3801(a)(1) and (3). See also 42 U.S.C. § 3532 (establishing HUD as a federal executive department.) Any person who "makes, presents, submits" or causes to be made, presented, or submitted, a claim that the person "knows or has reason to know" is "false, fictitious, or fraudulent," or that the person knows or has reason to know includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent is liable for making a false claim. 31 U.S.C. § 3802(a)(1)(A) and (B).

[2] Respondent Tenant was sworn in at the hearing, but due to her limited English proficiency the Court determined that her testimony would not be reliable and struck the testimony from the record. During a discussion held off the record, the Parties suggested deposing Respondent Tenant during the post-hearing briefing period, using a suitable interpreter, and submitting her testimony on brief. After consideration on the record, the Court acquiesced in the Parties' request.

A "statement" includes "any representation, certification, affirmation, document, [or] record" made with respect to a claim or to obtain the approval or payment of a claim, including relating to eligibility to make a claim. 31 U.S.C. § 3801(a)(1) and (9). A statement may also be defined as "any representation, certification, affirmation, document, [or] record" or made with respect to, including relating to eligibility for, a benefit from a political subdivision of a State if the United States Government provides any portion of the money for the benefit. Id. Any person who "makes, presents, or submits," or causes to be made, presented or submitted a written statement that the person "knows or has reason to know" asserts a material fact which is false, fictitious or fraudulent and that contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, is liable for making a false statement. 31 U.S.C. § 3802(a)(2). Persons found liable for making false statements may be subject to civil penalties of up to $5,500 for false statements made before April 17, 2003, and up to $6,500 for false claims made after that date.[3] 31 U.S.C. § 3802(a)(2) and 24 C.F.R. § 28.10(a).

The Act provides for the cumulative imposition of civil penalties and assessments upon persons who make false claims. 31 U.S.C. § 3802(a). Assessments may consist of up to twice the amount of the claims actually paid out by the government. 31 U.S.C. § 3802(a)(1) and (3). See also 24 C.F.R. § 28.40(b) ("Because of the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need for deterrence, ordinarily twice the amount of the claim as alleged by the government, and a significant civil penalty, should be imposed"). Penalties may consist of up to $5,500 for per claim for false claims made before April 17, 2003, and up to $6,500 per claim for false claims made after that date.[4] 24 C.F.R. § 28.10(a). A civil penalty or assessment may be imposed jointly and severally if more than one person is determined to be liable for making a false claim. 24 C.F.R. § 28.10(e).

The person or persons allegedly liable for making false claims or statements may request a hearing with respect to the allegation. 31 U.S.C. § 3802(d)(2). The hearing must commence within six years of the date on which the allegedly false claim or statement is made, presented, or submitted. 31 U.S.C. § 3808(a). Claims and statements are considered to have been made to HUD at the time the claim or statement is made to a State or political subdivision of a State acting for or on behalf of HUD. 24 C.F.R. § 28.10(a)(3) and (b)(3). The amount of penalties and assessments imposed shall be based on consideration of evidence in support of one or more of the following factors:

(1) The number of false, fictitious, or fraudulent claims or statements;

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[3] 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) requires HUD to periodically adjust the penalty amount. See 28 U.S.C. § 2461 note. See also Inflation Adjustment of Civil Money Penalty Amounts, 72 Fed. Reg. 5,588, (Feb. 6, 2007).

[4] See note 3.

(2) The time period over which such claims or statements were made;

(3) The degree of Respondent's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of investigation;

(6) The relationship of the civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether Respondent has engaged in a pattern of the same or similar misconduct;

(9) Whether Respondent attempted to conceal the misconduct;

(10) The degree to which Respondent has involved others in the misconduct or in concealing it;

(11) If the misconduct of employees or agents is imputed to Respondent, the extent to which Respondent's practices fostered or attempted to preclude the misconduct;

(12) Whether Respondent cooperated in or obstructed an investigation of the misconduct;

(13) Whether Respondent assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of Respondent's sophistication with respect to it, including the extent of Respondent's prior participation in the program or in similar transactions;

(15) Whether Respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly;

(16) The need to deter Respondent and others from engaging in the same or similar misconduct;

(17) Respondent's ability to pay, and

(18) Any other factors that in any given case may mitigate or aggravate the seriousness of the false claim or statement.

24 C.F.R. § 28.40(b).

Housing Choice Voucher Program. The Housing Choice Voucher program is a rental subsidy program established by HUD pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) to assist low-income families to afford decent, safe and sanitary housing. 24 C.F.R. §§ 982.1(a)(1), 982.2, and 982.201(a)-(b). Generally, State or local public housing agencies administer the program using program funds provided by HUD. 24 C.F.R. §§ 982.1(a)(1), 982.4(b) (defining "public housing agency") and 982.151(a). Authorized public housing agencies use these funds to make housing assistance payments to the owners of housing units occupied by families admitted to the program. 24 C.F.R. §§ 982.1(a)(1), 982.4(b) (defining "housing assistance payment" and "owner"), 982.51, and 982.157(b)(1)(i).

HUD regulations define a Housing Choice Voucher program "applicant" as "[a] family that has applied for admission to a program but is not yet a participant in the program." 24 C.F.R. § 982.4(b). To be eligible for assistance, a Housing Choice Voucher program applicant must be a "family." 24 C.F.R. § 982.201(a). HUD regulations define family as a single person or group of persons approved by the public housing agency to reside in a housing unit with assistance under the program. 24 C.F.R. §§ 982.4(b) and 982.201(c). Among other configurations, a family may consist of two or more elderly or disabled persons living together, or one or more elderly or disabled persons living with one or more live-in aides. See 24 C.F.R. § 982.201(c)(3). A family must not own or have any interest in the housing unit it occupies with program assistance. 24 C.F.R. § 982.551(j).

Each authorized public housing agency determines which applicants may enter the program it administers, but may only provide assistance to families who meet criteria established by HUD. 24 C.F.R. §§ 982.54(b) and (d), 982.201 and 982.202(a) and (d). A family admitted to the Housing Choice Voucher program selects and rents the housing unit it desires to occupy. 24 C.F.R. § 982.1(a)(2). The tenant, defined as "[t]he person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit," must enter into a written lease with the owner that includes HUD's tenancy addendum. 24 C.F.R. §§ 982.4(b) and 982.308(b). If the public housing agency approves the family's unit and tenancy, the public housing agency enters into a contract with the unit's owner to make rent subsidy payments, called Housing Assistance Payments, on behalf of the family. 24 C.F.R. §§ 982.1(a)(2), 982.4(b), and 982.162(a)(2). The

public housing agency must receive from the owner an executed copy of HUD's HAP contract and tenancy addendum in the form required by HUD prior to paying out housing assistance payments to the owner. 24 C.F.R. §§ 982.52, 982.162, and 982.305(c)(2).

A family becomes a participant on the effective date of the first HAP contract executed by the public housing agency for the family. See 24 C.F.R. § 982.4(b) (defining "participant"). Subsequently, the public housing agency must periodically reexamine the family's composition, assets, income, and expenses for the purpose of making appropriate adjustments to the housing assistance payment. 24 C.F.R. § 982.516(a)(1)-(2). Each participant family must supply any information that the public housing agency or HUD determines is necessary in the administration of the Housing Choice Voucher program. 24 C.F.R. § 982.551(b).

Findings of Fact

1. The Fairfax County Department of Housing and Community Development is a public housing agency that uses funds received from HUD to administer the Housing Choice Voucher program in Fairfax County, Virginia. (Stipulated Facts ("SF") ¶¶ 11-13, 28-29; Hearing Transcript ("Hr'g Tr.") 33:20-23.)

2. The Housing Choice Voucher program is HUD's largest housing subsidy program, and the largest housing subsidy program in the nation. (Hr'g Tr. 22:23-25.)

3. Respondent Tenant is the mother of Respondent Landlord and his siblings, including Mr. Daud Babar, Ms. Marie Sherzai, and Mr. Masood Babar. (SF ¶¶31 and 61; Hr'g Tr. 82:10-12; 98:21-99:9; 144:6-7 and 144:19-20; Dep. Tr. 6:1-4.)

4. Respondent Tenant speaks very little English and neither reads nor writes in English. (Hr'g Tr. 119:7-11 and 156:1-8 and Deposition of Najiba Babar ("Dep. Tr.") 8:6-7, 12:13-20, and 15:18-21.)

5. Respondent Tenant is "on supplemental," and has no employment income. (Hr'g Tr. 105:16-19.)

6. Respondent Landlord is a police officer who earns approximately $50,000 per year. (Hr'g Tr. 156:9-157:5; Joint Exhibit ("JNT") 20.)

7. Mr. Daud Babar is approximately 50 years old, is epileptic, has limited ability to speak English, and has no employment income. (Hr'g Tr. 99:16-17, 101:19-20, 105:16-106:3, 110:6-10, 127:13-14, and 162:20-24; Dep. Tr. 6:5-6 and 18:21-19:5.)

8. On November 21, 1989, Respondent Landlord, Respondent Tenant, and Mr. Daud Babar purchased real estate located at Healy Drive ("*Healy Drive*"). (SF ¶ 30; Hr'g Tr. 142:20-143:22; JNT 2.)

9. Respondent Tenant and Mr. Daud Babar never paid any portion of the mortgage or other expenses incidental to home ownership, and never paid rent to Respondent Landlord. (Hr'g Tr. 105:15-19; 129:20-130:1; 130:13-20 and 145:1-7.)

10. For some period of time between 1989 and 1996, Mr. Daud Babar did not live at *Healy Drive*, but lived in an apartment by himself. (Hr'g Tr. 100:17-20; 101:1-10; 145:13-19.)

11. While living alone, Mr. Daud Babar suffered a grand mal seizure and was taken to the hospital. (Hr'g Tr. 101:11-102:2 and 145:20-146:7.)

12. While Mr. Daud Babar was in the hospital, a social worker advised Ms. Marie Sherzai that Mr. Daud Babar could receive rental assistance from HUD. (Hr'g Tr. 103:18-104:1 and 144:17-24.)

13. Ms. Marie Sherzai also learned that Mr. Daud Babar could not qualify for rental assistance if he owned real estate. (Id.)

14. Mr. Daud Babar moved back to *Healy Drive*. (Hr'g Tr. 101:11-102:2 and 145:20-146:7.) Thereafter, Respondent Tenant served as the principal caretaker for Mr. Daud Babar. (Hr'g Tr. 99:18-23, 121:3-18, 135:3-14, 136:16-137:3, and 145:20-146:12.)

15. Ms. Marie Sherzai advised Respondent Landlord, Respondent Tenant, and Mr. Daud Babar that Mr. Daud Babar could qualify for rental assistance if he did not own real estate. (Hr'g Tr. 144:20-145:9.)

16. On December 18, 1995, Respondent Landlord, Respondent Tenant, and Mr. Daud Babar executed a Deed of Gift which transferred ownership of *Healy Drive* to Respondent Landlord. (SF ¶ 32; Hr'g Tr. 143:23-144:12; JNT 3.)

17. Respondent Tenant and Mr. Daud Babar "gave the house to [Respondent Landlord]" because "they could not afford to live there" and "so they can have [Housing] assistance." (Hr'g Tr. 105:11-19 and 144:14-145:9.)

18. Respondent Tenant did not retain any ownership interest in *Healy Drive* after executing the Deed, on December 18, 1995. (Hr'g Tr. 144:10-12, 164:4-15, and 164:23-165:2; Dep. Tr. 6:17-18; and JNT 3.)

19. On November 18, 1996, Respondent Landlord, as landlord, and Mr. Daud Babar, as tenant, executed an application to participate in the Housing Choice Voucher program. (SF ¶ 33; Hr'g Tr. 107:10-24 and 146:13-147:2; JNT 4.)

20. The application was filled out by Ms. Marie Sherzai. (Hr'g Tr. 107:25-108:2 and 147:3-14.)

21. Respondent Tenant did not sign the application. (See JNT 4.)

22. On December 1, 1996, Respondent Landlord leased the real property located at *Healy Drive* to Mr. Daud Babar. (SF ¶ 34; Hr'g Tr. 108:10-20; 147:15-148:4; JNT 5.)

23. The lease specifically stated that the leased unit was to be occupied by a family that was a participant in the "Section 8 certificate program." (JNT 5.)

24. The lease also stated that it "shall be extended automatically." (Id.)

25. The lease provided for monthly rent in the sum of $790 to be paid in part by the tenant and part by the "Housing Agency." (Id.)

26. The lease was prepared by Ms. Marie Sherzai. (Hr'g Tr. 109:9-110:10 and 148:5-15.)

26.1. Respondent Tenant did not sign the lease. (See JNT 5.)

27. Respondent Landlord never asked Ms. Sherzai to explain Housing Choice Voucher program restrictions to him. (Hr'g Tr. 171:7-9.)

28. Respondent Landlord never collected the portion of the rent not covered by the monthly Housing Assistance Payments from Mr. Daud Babar as provided for in the lease. (Hr'g Tr. 161:6-17.)

29. On December 2, 1996, Respondent Landlord signed a HAP Contract ("First HAP Contract") with the Fairfax County Redevelopment and Housing Authority. (SF ¶¶ 20-22, 35; Hr'g Tr. 110:11-20, 127:21-129:11 and 168:9-12; and JNT 6,.) (See also SF ¶ 23; Hr'g Tr. 26:7-27:8 and 40:25-41:16.)

30. The First HAP Contract stated that: "The HAP [Housing Assistance Payments] contract shall be interpreted and implemented in accordance with HUD regulations, including the HUD program regulations at 24 Code of Federal Regulations part 982." (JNT 10.)

31. The contract further provided that: "The HA [Housing Agency] housing assistance payment to the owner shall be equal to:

(1) The contract rent minus

(2) The tenant rent."

(Id.)

32. The contract also provided that: "The term of the HAP contract begins on the first day of the term of the lease, and terminates on the last day of the term of the lease." (Id.)

33. The contract identified Respondent Landlord as the "owner," Mr. Daud Babar as "tenant," and Mr. Daud Babar and Respondent Tenant as "family members." (JNT 6.)

34. The contract defined "family" as: "The persons who may reside in the unit with assistance under the program." (Id.)

35. The contract also included the following statement: "During the term of this contract, the owner certifies that: . . . The family does not own or have any interest in the contract unit." (Id.)

36. The contract further provided that: "Unless the owner complies with all the provisions of the HAP contract, the owner does not have a right to receive housing assistance payments." (Id.)

37. Respondent Tenant did not sign the First HAP Contract. (See id.)

38. Respondent Landlord never collected the portion of the rent not covered by the monthly HAP from Mr. Daud Babar as anticipated in the First HAP Contract. (Hr'g Tr. 161:6-17.)

39. Respondent Landlord began receiving Housing Assistance Payments on behalf of Mr. Daud Babar and Respondent Tenant shortly after he executed the HAP contract. (SF ¶ 36 and JNT 11 and 22.)

40. In 1999, Respondent Landlord sought to refinance *Healy Drive*. (Hr'g Tr. 148:25-149:10.)

41. The bank from which he obtained refinancing would not approve his loan unless he could provide a co-signor. (Hr'g Tr. 149:13-150:4) (See also Hr'g Tr. 166:23-168:3.)

42. On December 22, 1999, Respondent Landlord executed a Deed of Gift ("Deed of Gift") transferring ownership of the real property located at *Healy Drive* to himself and Respondent Tenant in connection with the refinance. (SF ¶¶ 37-38; Hr'g Tr. 148:25-149:12; and JNT 7.)

43. Respondent Landlord read the Deed of Gift before he signed it. (Hr'g Tr. 165:9-165:13.)

44. Also on December 22, 1999, Respondent Landlord and Respondent Tenant executed a Deed of Trust ("Deed of Trust") that identified both Respondents as owners of *Healy Drive*. (Hr'g Tr. 150:23-151:12; Dep. Tr. 14:9 and 14:3-5; and JNT 8.)

45. Respondent Tenant signed the Deed of Trust at the request of Respondent Landlord. (Hr'g Tr. 149:13-150:4 and 165:3-8.)

46. Respondent Tenant did not know what she was signing. (Dep. Tr. 15:3-21.)

47. At deposition, Respondent Tenant recognized her signature on the Deed of Trust, but could not recall the signing that document. (Id.)

48. Respondent Landlord did not inform the Fairfax County Department of Housing and Community Development that Respondent Tenant had become a co-owner of *Healy Drive*. (Hr'g Tr. 168:4-168:8.)

49. Respondent Landlord continued to receive Housing Assistance Payments on behalf of Respondent Tenant and Mr. Daud Babar after Respondent Tenant became a co-owner of *Healy Drive*. (SF ¶¶ 49-57 and JNT 11 and 22.)

50. Between December 22, 1999 and September 11, 2000, Respondent Landlord received $4,419 in Housing Assistance Payments. (See SF 49 and JNT 11 and 22.)

51. On November 21, 2000, Respondent Landlord entered into a new HAP Contract (the "2000 HAP Contract"). (SF ¶ 39; JNT 10, Hr'g Tr. 129:13-19 and 168:13-14.)

52. The 2000 HAP Contract identified Respondent Landlord as "owner," Mr. Daud Babar as "tenant," and Mr. Daud Babar and Respondent Tenant as the "Household." (JNT 10.)

53. The contract defines "Household" as "[t]he persons who may reside in the contract unit" and further provides "[t]he household consists of the family and any [public housing agency] approved live-in aide." (Id.)

54. The contract also defines "family" as "the persons who may reside in the unit with assistance under the program." (Id.)

55. The 2000 HAP Contract further stated that: "The HAP [Housing Assistance Payments] contract shall be interpreted and implemented in accordance with HUD regulations, including the HUD program regulations at 24 Code of Federal Regulations part 982." (Id.)

56. The contract provided that: "The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract unit." (Id.)

57. The contract further provided that: "The family is responsible for paying the owner any portion of the rent to owner that is not covered by the [monthly Housing Assistance Payment]." (Id.)

58. The contract also provided that: "The term of the HAP contract begins on the first day of the term of the lease, and terminates on the last day of the term of the lease." (Id.) (See also SF ¶ 23 and Hr'g Tr. 19:1-14 and 40:25-41:16.)

59. The contract also included the following statement: "During the term of this contract, the owner certifies that: . . . The family does not own or have any interest in the contract unit." (Id.)

60. The contract further provided that: "Unless the owner has complied with all the provisions of the HAP contract, the owner does not have a right to receive housing assistance payments under the HAP contract." (Id.)

61. Respondent Tenant did not sign the 2000 HAP Contract.

62. Respondent Landlord never collected the portion of the rent not covered by the monthly Housing Assistance Payments from Mr. Daud Babar as anticipated in the 2000 HAP Contract. (Hr'g Tr. 161:6-17.)

63. Respondent Landlord did not disclose to the Fairfax County Department of Housing and Community Development that he and Respondent Tenant were co-owners of *Healy Drive* at the time that he executed the 2000 HAP Contract, or any time thereafter. (Hr'g Tr. 168:4-168:8.)

64. Between November 21, 2000 and September 11, 2001, Respondent Landlord received $5,500 in Housing Assistance Payments. (See SF ¶ 50 and JNT 11 and 22.)

65. On September 11, 2001, Respondent Tenant and Mr. Daud Babar signed a Personal Declaration in which each affirmed that they did not own real estate. (JNT 13.)

66. The Personal Declaration contained the following statement above the signature lines:

> I do hereby swear and attest that all of the information above me and my family composition and income is true and correct. Any intentional or willful misrepresentation of the facts included in this declaration may result in termination from any Fairfax County Department of Housing and Community Development assisted housing program, i.e. Choice Voucher, Public Housing, or the Fairfax County Rental Program.

(See JNT 13.)

67. Respondent Tenant did not read the Personal Declaration before she signed it because she does not read English. (Dep. Tr. 7:7-19.) Nor did anyone read it to her line by line. (Dep. Tr. 12:6-9.)

68. The Personal Declaration form was filled out by Ms. Marie Sherzai. (Hr'g Tr. 122:2-5, 134:19-135:2, and 135:125-18.) (See also Hr'g Tr. 124:11-13 and 126:18-20.) (See also Dep. Tr. 12:6-9 and 16:21-17:9.)

69. The form was reviewed by a social worker during an interview with Respondent Tenant and Mr. Daud Babar. (JNT 13-19; Hr'g Tr. 119:16-120:10, 123:6-13, 125:18-126:1, 126:18-20 and 136:16-18; Dep. Tr. 9:17-10:20, 12:1-20, 16:4-16 and 17:18-20.) (See also Hr'g Tr. 43:3-16 and 69:24-71:5 and Dep. 17:18-18:2.)

70. Without translation, Respondent Tenant could not understand the social worker's questions or read or understand the Personal Declarations. (Hr'g Tr. 119:7-11 and 156:1-8; Dep. Tr. 7:11-14, 8:6-7, 8:12-14, 9:2-4, 9:8-10, 9:14-16 and 12:13-20.) (See also Hr'g Tr. 122:13-14.)

71. Ms. Marie Sherzai translated the questions the social worker directly asked Respondent Tenant during the review interview. (Hr'g Tr. 122:9-23, 124:23-125:1 and 16:21-17:6.) (See also Hr'g Tr. 126:21-127:3 and 136:19-20 and Dep. Tr. 12:6-9 and 11:19-21.)

72. Ms. Marie Sherzai never translated a question regarding Ms. Najiba Babar's ownership of real estate because the social worker conducting the interview "never asked about the real estate." (Hr'g Tr. 123:17-124:3, 124:23-125:1, 126:21-127:3, 134:10-18 and 135:24-136:15.) (See also Dep. Tr. 9:17-20, 10:12-15, 12:1-9 and 17:4-14.)

73. Health problems made attending the interview difficult for Respondent Tenant. (Dep. Tr. 17:10-17.)

74. Respondent Tenant signed the Personal Declaration form at the request of her daughter and the social worker during the course of the review interview. (Hr'g Tr. 43:3-16, 119:13-120:10 and 122:6-12; Dep. Tr. 9:17-10:20, 16:4-16 and 16:21-17:3.) (Dep. Tr. 9:17-10:20. 12:1-19 and 16:21-17:3.)

75. Respondent Tenant did not know why she signed the Personal Declaration, or ask why she needed to attend the interview with the social worker. (Dep. Tr. 9:17-20 and 17:18-18:2.) She was not concerned about what the document meant. (Dep. Tr. 7-9.)

76. Between September 11, 2001, and September 9, 2002, Respondent Landlord received $7,020 in Housing Assistance Payments. (See SF ¶ 50-51 and JNT 11 and 22.)

77. On September 9, 2002, Respondent Tenant and Mr. Daud Babar signed a Personal Declaration in which each affirmed that they did not own real estate. (JNT 14.)

78. This declaration contained the same statement as that set forth in ¶ 66, and the circumstances surrounding the execution of this declaration were identical to those set forth in ¶¶ 67-75. (See JNT 14 and the sources cited in ¶¶ 67-75.)

79. Between September 9, 2002, and September 5, 2003, Respondent Landlord received $6,994 in Housing Assistance Payments. (See SF ¶ 51-52 and JNT 11 and 22.)

80. On September 5, 2003, Respondent Tenant and Mr. Daud Babar signed a Personal Declaration in which each affirmed that they did not own real estate. (JNT 15.)

81. This declaration contained the same statement as that set forth in ¶ 66, and the circumstances surrounding the execution of this declaration were identical to those set forth in ¶¶ 67-75. (See JNT 15 and the sources cited in ¶¶ 67-75.)

82. Between September 5, 2003, and November 7, 2003, Respondent Landlord received $1,162 in Housing Assistance Payments. (See SF ¶ 52 and JNT 11 and 22.)

83. On November 7, 2003, Respondent Landlord and Respondent Tenant executed a Credit Line Deed of Trust (Credit Line Deed of Trust) which identified both Respondents as co-owners of *Healy Drive*. (JNT 9.)

84. At deposition, Respondent Tenant recognized her signature on the Credit Line Deed of Trust, but did not recall signing that document. (Dep. Tr. 15:9-17.)

84.1 Respondent Tenant also testified that she never owned *Healy Drive*. (Dep. Tr. 6:17-18.)

85. Between November 7, 2003, and January 25, 2004, Respondent Landlord received $784 in Housing Assistance Payments. (See SF ¶ 53 and JNT 11 and 22.)

86. On January 25, 2004, Respondent Tenant and Mr. Daud Babar signed a Personal Declaration in which each affirmed that they did not own real estate. (JNT 16.)

87. This declaration contained the same statement as that set forth in ¶ 66, and the circumstances surrounding the execution of this declaration were identical to those set forth in ¶¶ 67-75. (See JNT 16 and the sources cited in ¶¶ 67-75.)

88. Between January 25, 2004, and August 26, 2004, Respondent Landlord received $4,018 in Housing Assistance Payments. (See SF ¶ 54 and JNT 11 and 22.)

89. On August 26, 2004, Respondent Tenant and Mr. Daud Babar signed a Personal Declaration in which each affirmed that they did not own real estate. (JNT 17.)

90. This declaration contained the same statement as that set forth in ¶ 66, and the circumstances surrounding the execution of this declaration were identical to those set forth in ¶¶ 67-75. (See JNT 17 and the sources cited in ¶¶ 67-75.)

91. Between August 26, 2004, and May 5, 2005, Respondent Landlord received $4,407 in Housing Assistance Payments. (See SF ¶ 54-56 and JNT 11 and 22.)

92. On May 5, 2005, Respondent Tenant and Mr. Daud Babar signed a Personal Declaration in which each affirmed that they did not own real estate. (JNT 18.)

93. This declaration contained the same statement as that set forth in ¶ 66, and the circumstances surrounding the execution of this declaration were identical to those set forth in ¶¶ 67-75. (See JNT 18 and the sources cited in ¶¶ 67-75.)

94. Between May 5, 2005, and August, 30, 2005, Respondent Landlord received $1,695 in Housing Assistance Payments. (See SF ¶ 56 and JNT 11 and 22.)

95. On August 30, 2005, Respondent Tenant and Mr. Daud Babar signed a Personal Declaration in which each affirmed that they did not own real estate. (JNT 19.)

96. This declaration contained the same statement as that set forth in ¶ 66, and the circumstances surrounding the execution of this declaration were identical to those set forth in ¶¶ 67-75. (See JNT 19 and the sources cited in ¶¶ 67-75.)

97. Between August, 30, 2005, and March 1, 2006, Respondent Landlord received $3,951 in Housing Assistance Payments. (See SF ¶ 56-57 and JNT 11 and 22.)

98. The Fairfax County Department of Housing and Community Development terminated Housing Choice Voucher payments after March 1, 2006, following an administrative hearing. (SF ¶ 42; JNT 23-25; Hr'g Tr. 46:14-48:3, 60:14-61:15, 65:13-66:14, 153:6-155:17.) The primary cause for the termination was Ms. Najiba Babar's ownership of the property located at *Healy Drive* while part of the "family" for Housing Choice Voucher purposes. (SF ¶ 42; JNT 23-25.)

99. The Fairfax County Department of Housing and Community Development expended $1,667.20 in investigating this matter. (Hr'g Tr. 53:10-16.) HUD expended $5,861.60 to conduct its investigation. (Hr'g Tr. 79:13-23 and Law Enforcement salary tables for 2006 and 2007, Government's Post-Hearing Brief ("GPB"), attach. B and C.)

99.1. Respondents cooperated in the investigation of this proceeding. (Hr'g Tr. 76:16-21)

100. The total amount of Housing Assistance Payments paid out by the Fairfax County Department of Housing and Community Development during the time period in which Respondent Tenant was a co-owner of *Healy Drive* is $40,932. (JNT 11.) The total amount paid out pursuant to the 2000 HAP Contract is $35,531. (See JNT 10 and 11.) However the Secretary only contends that Respondents are liable for the following Housing Assistance Payments:

a. Three payments of $592.00 each for each month from September 1, 2002, through November 30, 2002, totaling $1,776.00. (SF ¶ 51; Hr'g Tr. 54:22-60:5: JNT 11 and 22.)

b. Twelve payments of $581.00 each for each month from December 1, 2002, through November 30, 2003, totaling $6,972.00. (SF ¶ 52; Hr'g Tr. 54:22-60:5; JNT 11 and 22.)

c. Two payments of $392.00 each for each month from December 1, 2003, through January 31, 2004, totaling $784.00. (SF ¶ 53; Hr'g Tr. 54:22-60:5; JNT 11 and 22.)

d. Ten payments of $574.00 each for each month from February 1, 2004, through November 30, 2004, totaling $5,740.00. (SF ¶ 54; Hr'g Tr. 54:22-60:5; JNT 11 and 22.)

e. Five payments of $424.00 each for each month from December 1, 2004, through April 30, 2005, totaling $2,120.00. (SF ¶ 55; Hr'g Tr. 54:22-60:5; JNT 11 and 22.)

f. Seven payments of $565.00 each for each month from May 1, 2005, through November 30, 2005, totaling $3,955.00. (SF ¶ 56; Hr'g Tr. 54:22-60:5; JNT 11 and 22.)

g. Four payments of $564.00 each for each month from December 1, 2005, through March 31, 2006, totaling $2,256.00. (SF ¶ 57; Hr'g Tr. 54:22-60:5; JNT 11 and 22.)

101. On or about September 24, 2008, Respondents transferred ownership of *Healy Drive* to Mr. Masood Babar in exchange for Mr. Masood Babar's assumption of the mortgage on the property of approximately $316,000. (SF ¶¶ 60 and 62.) (See also Hr'g Tr. 162:11-16.) The property was assessed, for tax purposes, at $445,620 for the 2008 tax year by Fairfax County, Virginia. (SF ¶ 63.)

Discussion

This case involves claims and statements made by Respondents to FCH. Liability under PFCRA accrues to the claims and statements at issue in this case because HUD funds the Housing Choice Voucher program administered by FCH. See 31 U.S.C. § 3801(a)(1) and (3); 42 U.S.C. § 3532; and 24 C.F.R. §§ 982.1(a)(1), 982.4(b), and 982.151(a). (See also Finding of Fact ("FOF") ¶ 1.)

Claims. The claims at issue in this case arise from the 2000 HAP Contract and the Housing Assistance Payments paid out in accordance with this contract.[5] (Compl. ¶¶ 40-42, 58-64, 72-73, 75, and 78.) The contract contains and is supported by a written statement which asserts a material fact that is false. (See FoF ¶¶ 42, 51, and 59.) In executing the contract, Respondent Landlord certified that "[t]he family does not own or have any interest in the contract unit" despite the fact that he had granted an ownership interest in *Healy Drive* to Respondent Tenant, who was a member of Daud Babar's family for purposes of the Housing Choice Voucher program.[6] (See id.) Respondent Landlord's certification is material because the

[5] The record contains evidence of two HAP contracts. (FoF ¶¶ 29 and 51.) Both contracts state: "During the term of this contract, the owner certifies that: . . . The family does not own or have any interest in the contract unit." (FoF ¶¶ 35 and 59.) This statement was true at the time Respondent Landlord signed the first contract, on December 2, 1996. (FoF ¶¶ 16, 18, and 29.) It became false on December 22, 1999, when Respondent Landlord executed a Deed of Gift conveying ownership of *Healy Drive* to himself and Respondent Tenant. (FoF ¶¶ 42.) Also on December 22, 1999, Respondent Tenant executed a Deed of Trust in her capacity as co-owner of *Healy Drive*. (See FoF ¶¶ 45-46.) However, Respondents did not notify FCH that ownership had changed. Respondent Landlord continued to receive Housing Assistance Payments paid out by FCH under the First HAP Contract until it was superseded by the 2000 HAP Contract, which Respondent Landlord executed on November 21, 2000. (FoF 48-51.)

Respondent Landlord's certification contained in the 2000 HAP Contract that "[t]he family does not own or have any interest in the contract unit" was never true. (See FoF ¶¶ 42, 44, 51, and 59.) Because he never alerted FCH to the falsity of this certification, he received payments pursuant to the 2000 HAP contract from the day he executed the contract until payments were discontinued in March 2006. (FoF ¶¶ 63, 100.) FCH ceased making Housing Assistance Payments to Respondent Landlord as the result of its independent discovery of Respondent Tenant's ownership of *Healy Drive*. (FoF ¶¶ 65, 77, 80, 86, 89, 92, 95, and 98-99.)

Notwithstanding the evidence contained in the record that Respondent Landlord wrongfully collected Housing Assistance Payments from January 1997 until March 2006, the Secretary has only alleged that Respondents are liable for those Housing Assistance Payments paid out after August 2002. (FoF 100.) Thus, only the 2000 HAP Contract is relevant to determining Respondents' liability in this case. See *HUD Complaint*, generally.

[6] Respondent Tenant was listed as a member of the family in the First HAP Contract, and was listed as a member of the Household in the 2000 HAP Contract. (FoF ¶¶ 33 and 52.) The 2000 Housing Assistance Payments Contract defines "family" as "[t]he persons who may reside in the unit with assistance under the program," defines "household" as "[t]he persons who may reside in the contract unit," and further states that "[t]he household may consist of the family and any PHA-approved live-in aide." (FoF ¶¶ 53-54.) The Housing Choice Voucher program

regulations governing the Housing Choice Voucher program prohibit the payout of Housing Assistance Payments on behalf of a family who owns or has any interest in the housing unit it occupies with program assistance. See 24 C.F.R. § 982.551(j). Respondent Tenant's ownership interest in *Healy Drive* should have acted as an absolute bar to Respondent Landlord's receiving of Housing Assistance Payments on behalf of Mr. Daud Babar and his family. Id.

Number of claims. The Secretary argues that each of the 43 Housing Assistance Payments paid out pursuant to the 2000 HAP Contract after August 2002 constitutes a separate claim because Respondent Landlord was contractually obligated to inform FCH that his certification that "[t]he family does not own or have any interest in the contract unit" was not accurate. The Secretary states:

> All of the HCV [Housing Choice Voucher] payments are made in reliance upon the written certifications, which are continuing in nature, contained in the Housing Assistance Payments Contracts . . . . Factually, Respondents' acceptance of HCV benefits constituted a separate affirmation of the accuracy of the terms and certifications of the HAP [Housing Assistance Payments] contract[s] and adherence to program requirements.

(GPB 9.) The Secretary also cites HUD v. Turner, HUDALJ 92-1832-PF (September 30, 1992) to support the conclusion that "[t]he Housing Choice Voucher payments at issue in this case constitute claims as defined under the PFCRA. (Id.) Respondents contend that "each payment . . . is not a separate 'claim' but, in fact, each lease/recertification is a claim." Respondents' Response to Government's Post-Hearing Brief ("RRB") ¶ 2.

A claim is defined as any "request, demand, or submission" made upon a recipient of money from a federal executive department if the United States provided any portion of the money requested or demanded by the claimant. 31 U.S.C. § 3801(a)(1) and (3). Thus, in order to show that each Housing Assistance Payment constitutes a separate claim, the Secretary must show that a separate "request, demand, or submission" may be imputed to each of Respondents for each payment.

The Secretary's argument is not persuasive. None of the Housing Assistance Payments at issue were made or received as the result of separate and discrete exchanges. Each was paid out as part of a scheme set forth in the single 2000 HAP Contract. Respondent Landlord *submitted* the 2000 HAP Contract as a single *request* or *demand* for all future payments owed under the contract. Respondent Landlord did not have to submit any monthly documentation and/or additional requests (e.g. vouchers, coupons, receipts, etc.) to ensure that the previously negotiated payments would be forthcoming. In executing the contract, Respondent Landlord provided assurances in exchange for a guarantee that these payments would be paid out every

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regulations include the live-in aide is part of the family for the purposes of Housing Choice Voucher program eligibility. See 24 C.F.R. § 982.201(c)(3). Thus, Respondent Landlord's certification that "the family does not own or have any ownership interest in the housing unit" was false even though Respondent Tenant was listed as a member of the household in the 2000 HAP Contract.

month during the term of the contract.

As required by the Housing Choice Voucher program regulations, the term of the contract was the same as the term of the lease made between Respondent Landlord and Mr. Daud Babar. (See FoF ¶¶ 55 and 58.) See also 24 C.F.R. § 982.309(b). Respondents' failure to inform FCH that Respondent Tenant had an ownership interest in *Healy Drive* does not change the terms of the 2000 HAP Contract from a unitary request or demand for Housing Assistance Payments to be paid out over time into series of individual demands for single payments. Even if a continuing obligation existed to disclose a change in the property's ownership, that issue is separate and distinct from the one at bar. The number of claims remains unaffected. Because all of the Housing Assistance Payments at issue in this case were paid pursuant to a single HAP contract, the Court holds that this case involves a single claim, not 43 claims as alleged by the Secretary.[7]

Respondent Landlord's Liability. The Secretary asserts that Respondent Landlord made, presented or submitted a claim that he knew or should have known was false, fictitious, or fraudulent, or that he knew or should have known included or was supported by a statement which asserted a material fact which was false, fictitious, or fraudulent. (Compl. ¶¶ 39-41.) Respondents do not contest the Secretary's assertion that Respondent Landlord made, presented, or submitted the claim at issue in this case, but argue that Respondent Landlord did not know or have reason to know that the claim was false, fictitious, or fraudulent. (RPB 2 and 9.)

Because Respondent Landlord executed the 2000 HAP Contract, the Court concludes that he submitted the claim at issue in this case. See 24 C.F.R. § 982.305(c)(2) (providing that execution of a HAP contract is a prerequisite to the pay out of Housing Assistance Payments.) Under PFCRA, the assessment and penalty for submitting a false claim may be imposed upon Respondent Landlord only if the Secretary shows that Respondent Landlord knew or had reason to know that the claim was false, fictitious, or fraudulent, or knew or had reason to know that the claim included or was supported by a written statement which asserts a material fact which was false, fictitious or fraudulent. See 31 U.S.C. § 3802(a)(1)(A) and (B).

"Knows or has reason to know" means that a person, with respect to a claim:

> (A) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;
>
> (B) acts in deliberate ignorance of the truth or falsity of the claim or statement; or
>
> (C) acts in reckless disregard of the truth or falsity of the claim or statement[.]

31 U.S.C. § 3801(a)(5).

[7] The holding of HUD v. Turner, HUDALJ 92-1832-PF (September 30, 1992), which equates rental assistance payments paid out pursuant to a Housing Assistance Payments contract to PFCRA claims, is not persuasive because HUD v. Turner does not discuss or purport to interpret the definition of "claim" found in the Act. The opinion reaches its conclusion without explanation, and the Court declines to follow it.

Respondent Landlord's Knowledge. At trial, Respondent Landlord offered detailed testimony regarding the circumstances surrounding his execution of the December 22, 1999, Deed of Gift by which he transferred ownership of *Healy Drive* to himself and Respondent Tenant. (See FoF ¶¶ 40-45.) He also testified regarding the Deed of Trust Respondent Landlord and Respondent Tenant jointly executed, and specifically testified that he read the Deed of Gift before he signed it. (See id.) Therefore, the Court finds that Respondent Landlord had actual knowledge of Respondent Tenant's status as a co-owner of *Healy Drive* when he made the claim (November 21, 2000). Armed with this knowledge, Respondent Landlord falsely certified to FCH that his mother, Respondent Tenant, did not have an ownership interest in *Healy Drive*.

In addition, the Secretary argues that Respondent Landlord knew or had reason to know that his certification that "[t]he family does not own or have any interest in the contract unit" was included in and supported the claim at issue in this case because Respondent Landlord had access to the 2000 HAP Contract, the regulations governing the Housing Choice Voucher program, and guidance from employees of FCH. (GPB 9-10 and GRB 3-6.) Respondent Landlord testified that he did not read the 2000 HAP Contract before signing it, and that he did not understand the material significance of Respondent Tenant's ownership of *Healy Drive*. (Hr'g Tr. 152:1-3.) When presented with a copy of the contract, Respondent Landlord stated that he believed it had been initially presented to him for his signature by an "inspector" who periodically visited *Healy Drive*. (Id. at 152:5-153:1. See also Id. at 168:15-20.) When asked "[w]ere you ever told by any of these inspectors that your mother's being on the deed was a problem," Respondent Landlord testified: "No, I -- to tell you the truth, I never knew until Mr. Turner notified us in 2006." (Id. at 153:2-5.)

Respondents argue that the Secretary "failed to meet [his] burden" because he did not "rebut [Respondent Landlord's] testimony that he [Respondent Landlord] never read the lease agreements which were presented to him by the Fairfax County [Department of Housing and Community Development] Inspectors who regularly visited [*Healy Drive*]." (GPB 9.)

At trial, Respondent Landlord testified that he "never [thought] that [Respondent Tenant's] name was going to go on the deed and she was going to be a half owner." (Hr'g Tr. 148:25-150:9.) He also testified that he "didn't think that [the refinance] had anything to do with HUD since it was a separate loan," and stated, with respect to Housing Choice Voucher program restrictions, that:

> I didn't think I was doing anything wrong in that having my mom on the deed was a problem [,] which I didn't think it was . . . . I didn't think that my mom being on the deed was an issue.

(Hr'g Tr. 165:11-13,169:11-15, and 170:18-19.).

After careful observation of Respondent Landlord's demeanor, candor, and responsiveness, this Court finds that his testimony lacks credibility. Respondent Landlord testified that, on the advice of Marie Sherzai, his sister, he obtained sole ownership of *Healy Drive* for the express purpose of qualifying Mr. Daud Babar for rental assistance under the

Housing Choice Voucher program. (FoF ¶¶ 15-17.) Subsequently, Respondent Landlord executed a lease which operated as pretext to collect Housing Assistance Payments from FCH. (See FoF ¶¶ 22-25 and 28.) His subsequent protestation that "I didn't think I was doing anything wrong in that having my mom on the deed was a problem" flies in the face of his original removal of Respondent Tenant and his brother from the lease so they "can have [housing] assistance." (FoF ¶¶ 15-17.) In addition, the lease required Mr. Daud Babar, his brother, to pay rent to Respondent Landlord in excess of the Housing Assistance Payments. (FoF ¶ 25.) The excess, however, was never collected. (FoF ¶ 28.)

The care which Respondent Landlord took to *appear* to comply with the Housing Choice Voucher program requirements casts grave doubt on his assertion that he did not know and understand those requirements. Furthermore, it strains credulity that Respondent Landlord, a police officer with an appreciation for compliance with the law, would fail to review a contract that set forth his obligations in relationship to a government program. (See FoF 6.)

For these reasons, the Court holds that Respondent Landlord had actual knowledge of the contents of the 2000 HAP contract. His protestations to the contrary strain credulity and lack credibility. The Court also finds that Respondent Landlord knew that the certification that "the family does not own or have any interest in the contract unit" was material to his claim for Housing Assistance Payments because the significance of this certification is clearly emphasized by its inclusion in the 2000 HAP Contract.[8]

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[8] Such findings, however, are not necessary in the case at bar. Deliberate ignorance of, reckless disregard for, and actual knowledge of the truth or falsity of a claim are all equally penalized. See 31 U.S.C. § 3801(a)(5) and 31 U.S.C. § 3802(a). Moreover, as a recipient of public funds, Respondent Landlord had a duty to familiarize himself with the basic requirements of the Housing Choice Voucher program. See Heckler v. Community Health Services of Crawford County, Inc., 467 U.S. 51, 63 (1984) ("Protection of the public fisc requires that those who seek public funds act with scrupulous regard for the requirements of the law . . . .").

Respondent Landlord's testimony is that he never took advantage of any resource that was available to him to discharge his duty to inquire into the requirements of the Housing Choice Voucher program. In addition to stating that he did not read the 2000 HAP Contract, Respondent Landlord testified that he did not read the regulations governing the Housing Choice Voucher program, or any other program documents, or ask any Fairfax County Department of Housing and Community Development employee to explain Housing Choice Voucher program requirements to him. (See Hr'g Tr. 169:11-171:6.) He justified his ignorance of the Housing Choice Voucher program requirements by explaining that he relied on his sister, Ms. Marie Sherzai, to manage his involvement in the Housing Choice Voucher program. (See FoF ¶¶ 15, 20, 26, and 27.) When directly asked if he believed that the Government "just gave out substantial sums of money without restriction," Respondent Landlord responded:

> No, I don't think that. I thought my sister took care of all that[,] and she told me that she spoke to [the] Housing Authority [Fairfax County Department of Housing and Community Development] and the caseworker, and they had worked everything out, all the details.

(Hr'g Tr. 170:2-7.) However, Respondent Landlord testified that he did not ask his sister about program requirements either. (See FoF 27.)

If Respondent Landlord's testimony is believed, he not only made and submitted a claim to FCH about which he knew nothing, despite having had the full opportunity to review the claim, but also entirely failed to make any effort to apprise himself of the publicly available requirements of the Housing Choice Voucher program. His stated failure to exercise the least amount of care with respect to his execution of the 2000 Housing Assistance Payments contract constitutes deliberate ignorance of and reckless disregard for the truth or falsity of his claim for Housing Assistance Payments as well as deliberate ignorance of and reckless disregard for the statements that supported his claim, which were included in the 2000 Housing Assistance Payments Contract. Consequently, even if Respondent Landlord did not have actual knowledge, he demonstrated deliberate ignorance of and reckless disregard for, the truth or falsity of his claim and the statements that supported his claim.

Respondent Tenant's Liability and Knowledge. Respondent Tenant's ownership of *Healy Drive* is conclusively established by Respondent Landlord's Deed of Gift and Respondent Tenant's subsequent execution, as a co-owner of *Healy Drive*, of the Deed of Trust and Credit Line Deed of Trust. See G.L. Webster Co. v. Trinidad Bean & Elevator Co., 92 F.2d 177, 179 (4th Cir. 1937) ("One cannot enter into a contract and, when called upon to abide by its conditions, say that he did not read it, when he signed it, or did not know what it contained") and Ayers v. Mosby, 504 S.E.2d 845, 848 (Va. 1998) ("In the absence of fraud, duress, or mutual mistake, a person having the capacity to understand a written instrument who reads it, or without reading it or having it read to her, signs it, is bound by her signature."). Likewise, Respondent Tenant's status as a Housing Choice Voucher beneficiary is established by her identification as a member of the family in the First HAP Contract and as a member of the household in the 2000 HAP Contract. See 24 C.F.R. § 982.201(c) (defining family) (See also FoF 53-55.)

The Secretary asserts that "Respondent Tenant, as the co-owner of the Property and a member of the subsidized family, was complicit and caused the submission of false claims so as to also incur liability under the PFCRA." (GPB 10.) Respondents contend that "to allege that Respondent/Tenant was 'complicit' in anything including submitting a false claim is beyond the pale," and further argue that Respondent Tenant did not know or have reason to know that the claim at issue in this case was false, fictitious, or fraudulent, or included or was supported by a statement which asserted a material fact that she knew or had reason to know was false, fictitious, or fraudulent. (RPB 9 and RRB ¶ 5.)

Respondent Tenant may be held to have caused the claim to have been made, presented, or submitted if it can be shown that the claim would not have been made, presented, or submitted but for her actions. See HUD v. Martinez, HUDALJ 08-072-PF (December 22, 2008.) However, nothing in the record indicates that Respondent Tenant caused the claim at issue in this case to be made, presented, or submitted.

Specifically, Respondent Tenant did not sign the application to enter the Housing Choice Voucher program, did not sign the lease made between Respondent Landlord and Daud Babar, and she did not sign either of the HAP contracts executed by Respondent Landlord. (See FoF ¶¶ 21, 26.1, 37 and 61.) Additionally, there is no allegation or proof that Respondent Landlord and Mr. Daud Babar sought Housing Choice Voucher program benefits at the insistence of Respondent Tenant.

Finally, the evidence shows that the first instance of any inquiry being made into Respondent Tenant's ownership of real property occurred on September 11, 2001—nine months after the claim at issue in this case had been made and submitted by Respondent Landlord, and nine months after it had been accepted by FCH. (See FoF ¶¶ 52 and 65.) Therefore, the Court holds that Respondent Tenant is not liable for causing the claim at issue in this case to be made, presented, or submitted. Thus, she cannot be liable for knowing or having reason to know that the claim was false, fictitious, or fraudulent, or included or was supported by a written statement which was false, fictitious, or fraudulent.

Statements. The statements at issue are the six Personal Declarations Respondent Tenant submitted to FCH. (Compl. ¶¶ 45-51 and 84-94.) The Secretary alleges that Respondent Tenant acted in deliberate ignorance or reckless disregard of the truth or falsity of the assertion, contained in each declaration, that Respondent Tenant did not own real estate. (GPB 11-12.) Respondents argue that the Secretary has not met his burden of proof with respect to this allegation, and further contend that the totality of the circumstances justify Respondent Tenant's failure to acknowledge her ownership of *Healy Drive* in the Personal Declarations. (RPB 9 and RRB ¶¶ 7 and 9.)

The Act provides that penalties may be imposed upon any person who makes, presents, or submits a written statement that the person knows or has reason to know asserts a material fact which is false, fictitious, or fraudulent, and that contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement. 31 U.S.C. § 3802(a)(2). The evidence shows that Respondent Tenant made and submitted each Personal Declaration to FCH. (FoF ¶¶ 65, 69, 77-78, 80-81, 86-87, 89-90, 92-3, and 95-96.) The evidence also shows that each Personal Declaration is accompanied by an express certification of the truthfulness and accuracy of the contents of the declaration. (See id. and FoF ¶ 66.) Therefore, in this case, penalties may be imposed upon Respondent Tenant if the evidence establishes that Respondent Tenant knew or had reason to know (1) that, in each Personal Statement, she asserted that she did not own real estate, (2) that each such assertion was material, and (3) that each such assertion was false, fictitious, or fraudulent.

Respondent Tenant's Knowledge. Despite suffering from health problems, Respondent Tenant periodically travelled to the offices of FCH to be interviewed by an employee of FCH, and to sign a Personal Declaration following the interview. (FoF ¶¶ 65-75, 77-78, 80-81, 86-87, 89-90, 92-3, and 95-96.) Each Personal Declaration contained an assertion that Respondent Tenant did not own real estate. (See id.)

Respondent Tenant's daughter, Ms. Marie Sherzai, attended the annual interviews with Respondent Tenant and Mr. Daud Babar, and translated for Respondent Tenant. (FoF ¶¶ 65-75, 77-78, 80-81, 86-87, 89-90, 92-3, and 95-96.) Ms. Sherzai testified that she translated every question FCH employee who conducted the interview asked Respondent Tenant, and further testified that the employee "never asked about the real estate." (Id.)

Respondent Tenant testified that she did not understand why she signed the Personal Declarations. (FoF ¶¶ 65-75, 77-78, 80-81, 86-87, 89-90, 92-3, and 95-96.) She testified that she did not read the Personal Declarations before she signed them because she cannot read English, and further testified that no one read them to her, line by line. (Id.) She also testified that she did not ask what documents she was signing. (Id.) She was not concerned about what the documents meant. (Id., esp. ¶ 75.)

The Secretary argues that Respondent Tenant's decision, as a competent adult, to sign the Personal Declarations without reading them or having them read to her constitutes deliberate ignorance of or reckless disregard for their contents, including the assertion contained in each declaration that Respondent Tenant did not own real estate. (GPB 7 and 13 and GRB 8.)

Specifically, the Secretary contends that:

> Respondent Tenant had a basic duty to inquire into the obligations she was assuming and the representations she was making. Respondent Tenant appeared at the FxDHCD [Fairfax County Department of Housing and Community Development] offices with her daughter who served as translator. Releasing Respondent Tenant from liability based upon what she did, or did not, ask the family member translating puts a duty on the Government in excess of the PFCRA's "knows or has reason to know" definition . . . . Respondent Tenant's failure to inquire into the scope and meaning of her requests and representations, the Government submits, meets the definition of "knows or has reason to know" as both deliberate ignorance and reckless disregard.

(GRB 7.)

The Secretary further contends that Respondent Tenant's failure to inquire as to the contents of the declarations is conclusive evidence of her deliberate ignorance of or reckless disregard for the materiality of her assertion that she did not own real estate. (GPB 11-12 and 13 and GRB 7.) The Secretary argues that:

> While Respondent Tenant does not read English, such fact does not excuse her failure to inquire as to what obligations she was undertaking, and, at a basic level, why it was so important for her to sign documents that she had to, with her health concerns, make the difficult trip to the [Fairfax County Department of Housing and Community Development] offices once a year to execute Exhibits 13-19 [the Personal Declarations].

(GRB 7.)

Respondents argue that Respondent Tenant's relative lack of sophistication and her duty to care for Mr. Daud Babar justify her decision to sign the Personal Declarations without reading them or having them read to her, and excuse her from having failed to appreciate the materiality of her assertion that she did not own real property. (RPB 9-10 and RRB ¶ 9.) Where the Government states that "[Respondent Tenant] merely signed documents put in front of her without inquiring as to their programmatic significance," Respondents contend that: "In the world of judges, lawyers, and litigation, the Government's allegation of programmatic significance is notable." (GRB ¶ 9 (citing GPB 13)) Where the Government states that Respondent Tenant's failure to understand the program in which she participated was "shockingly negligent," Respondents contend that: "Respondent/Tenant Ms. Najiba Babar's responsibility is to her disabled son, Daud." (Id. (citing GPB 14).) Where the Governments asserts that Respondent Tenant "assumed the risk of the programmatic implications of her actions" by using Ms. Sherzai as a translator, Respondents contend that: "For the Government to claim that 'she assumed the risk' is an attempt at a means to connect a specific maternal best

interest of the child standard in order to reach a 'programmatic implications' end." (Id. (citing GPB 13.)

The Secretary's argument of deliberate ignorance of or reckless disregard for the content of each of the six statements is well-founded. Respondent Tenant testified that she did not understand why she was required to sign the Personal Declarations. (See FoF ¶¶ 65-75, 77-78, 80-81, 86-87, 89-90, 92-3, and 95-96.) Yet, all she had to do to find out what the Personal Declarations contained was to ask for a complete translation, either from her daughter, or FCH. Respondent Tenant's failure to make that simple inquiry, prior to signing each Personal Declaration, constitutes a failure to exercise ordinary care sufficient to support a finding that she knew or had reason to know the contents of each declaration, including the assertion that she did not own real estate. Accord H.R. Conf. Rep. 99-1012, reprinted in 1986 U.S.C.C.A.N. 3868, 3903-04 (defining the "knows or has reason to know" standard as including an extreme departure from ordinary care); United States v. Krizeck, 111 F.3d 934, 941-42 (D.C. Cir. 1997) (holding, in a False Claims Act case, that reckless disregard is "an extreme version of ordinary negligence"); United States ex rel. Longhi v. Lithium Power Technologies, Inc., 513 F. Supp. 2d 866, 875-76 (S.D. Tex. 2007) (equating deliberate ignorance to willful blindness and a failure to make simple inquiries in a False Claims Act case). See also Vermont Agency of Natural Resources v. U.S., 529 U.S. 765, 786 (2000) (describing PFCRA as a "sister scheme" that was "designed to act in tandem with the False Claims Act"). Rather than question, Respondent Tenant acknowledged in testimony that she was not concerned about what the documents meant. (FoF ¶ 75)

The language of the each Personal Declaration contained the following statement:

> I do hereby swear and attest that all of the information above me and my family composition and income is true and correct. Any intentional or willful misrepresentation of the facts included in this declaration may result in termination from any Fairfax County Department of Housing and Community Development assisted housing program, i.e. Choice Voucher, Public Housing, or the Fairfax County Rental Program.

(See FoF ¶¶ 65-66, 77-78, 80-81, 86-87, 89-90, 92-3, and 95-96.) This statement clearly describes the assertions made in the statement as material to Respondent Tenant and Mr. Daud Babar's eligibility for Housing Choice Voucher benefits. Therefore, Respondent Tenant not only knew or should have known that each Personal Declaration contained the assertion that she owned real estate, but also knew or should have known that each such assertion was material.

The evidence also shows that Respondent Tenant knew or should have known that her assertion that she did not own real estate was false. Respondent Landlord testified that he signed a Deed of Gift conveying ownership of *Healy Drive* to himself and Respondent Tenant, and that he had Respondent Tenant sign the Deed of Trust. (FoF ¶¶ 40-45 and 83.) Respondent Tenant signed the Deed of Trust and Credit Line Deed of Trust as an owner. (FoF 44 and 83.) Nonetheless, at deposition, Respondent Tenant testified that she could not recall signing those documents, and further testified that she never owned *Healy Drive*. (FoF 47, 84, and 84.1.)

However, she recognized her signatures on the Deed of Trust and Credit Line Deed of Trust. (Id. at 15:3-16:3.) She testified that she does not know what a deed of trust is because she does not understand English.[9] (Id. at 15:18-21.) Thus, the record shows that she took no care to ascertain her ownership of *Healy Drive*.

As a competent adult, Respondent Tenant may be held responsible for any contract or agreement she signs, even if she does not read the contract or have it read to her. See G.L. Webster Co. v. Trinidad Bean & Elevator Co., 92 F.2d 177, 179 (4th Cir. 1937) and Ayers v. Mosby, 504 S.E.2d 845, 848 (Va. 1998). Furthermore, as a member of a household receiving Housing Choice Voucher program benefits, she had a duty to answer, truthfully and completely, any inquiry made by FCH into her eligibility to participate in that program. See 24 C.F.R. § 982.551(b). Her execution of the Deed of Trust and Credit Line Deed of Trust should have alerted her to the existence of her ownership interest in *Healy Drive*. Her failure to be diligent and attentive when signing the Deed of Trust and Credit Line Deed of Trust provides sufficient evidence to support a finding that she was deliberately ignorant of and acted with reckless disregard for the veracity of her subsequent assertions that she did not own real estate. None of Respondent Tenant's excuses justify her failure to provide true and accurate information in connection with FCH's annual inquiry. Therefore, the Court holds that Respondent Tenant knew or had reason to know that Respondent Tenant made, presented, or submitted six written statements that she knew or had reason to know asserted a material fact which was, in every instance, false.

Affirmative defenses. Respondents identified the following arguments as affirmative defenses in their Response. (See Resp. at p. 8.) The Secretary contends that these are not true affirmative defenses. (GPB 22.) The Court agrees. Nonetheless, the Secretary did not file a motion to strike affirmative defenses, and so these assertions will be addressed briefly. The first two are potential defenses which have not been proven, and the third would be irrelevant, even if it were proven.[10]

(1) Failure to state a cause of action for which relief may be granted.

Respondents do not put forward any argument to support their assertion that the Secretary's complaint failed to state a claim upon which relief can be granted. As set forth more fully in the Applicable Law section, above, the Program Fraud Civil Remedies Act provides for this proceeding. Furthermore, the Secretary pled all of the elements necessary to establish

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[9] The Court is sensitive to the difficulties encountered by people with limited English proficiency as they attempt to navigate the regulatory channels of various governmental programs. Those difficulties, however, do not obviate an individual's responsibility to at least attempt to understand what they are signing and the various rules and regulations governing the programs designed to assist them. At bar, Respondent Tenant has done nothing to either understand the Program or the various documents she has signed.

[10] On November 10, 2008, the Court commenced the hearing in this matter by sending an appropriate notice to Respondents. 31 U.S.C. § 3803(d)(2)(B). The single claim determined to be at issue in this case was made by submitting a new Housing Assistance Payments Contract on November 21, 2000, over six years before the commencement of this proceeding. Ordinarily, the PFCRA -and its implementation by Departmental regulations, require commencement of the hearing within six years of the date on which the claim was made. Title 31, U.S.C. § 3808; 24 C.F.R. § 28.35. Because Respondents did not raise statute of limitations as a defense, its application has been waived, and it may not be invoked sua sponte by this Court. See, e.g., Eriline Company S.A. v. Johnson, 440 F.3d 648, 653-657 (4th Cir. 2006)

liability under the Act.

(2) Respondents had no knowledge, constructive or otherwise, that Respondents' property interests were material to the awarding of the HC/HAP funds.

Respondents' knowledge of the materiality of Respondent Tenant's ownership of *Healy Drive* is an essential element of the Secretary's burden in this case, and is discussed throughout the Discussion section of this decision.

(3) The only beneficiary of the HCV/HAP funds . . . was Mr. Daud Babar.

This assertion is not relevant to this proceeding. Neither Respondent is being held liable for being a beneficiary of the Housing Choice Voucher program. Respondent Landlord is liable for making and submitting a claim that he knew or had reason to know was false, and included and was supported by a written statement that was false. Respondent Tenant, who was a member of Mr. Daud Babar's family for purposes of the Housing Choice Voucher program, is liable for making and submitting statements that she knew or had reason to know asserted a material fact which was false.

Penalty factors.[11] The following factors support the imposition of assessments and penalties in this case, as indicated:

(1) The number of false, fictitious, or fraudulent claims or statements.

Respondent Landlord. The Court holds that Respondent Landlord made, presented, or submitted a single request, demand, or submission that he knew or had reason to know was false, fictitious, or fraudulent, or included or was supported by a written statement which asserted a material fact which was false, fictitious, or fraudulent.

Respondent Tenant. The Court holds that Respondent Tenant made, presented, or submitted six written statements that she knew or had reason to know asserted a fact material to her eligibility as part of a family that benefitted from the Housing Choice Voucher program which was false.

(2) The time period over which such claims or statements were made.

Respondent Landlord. The Court holds that Respondent Landlord made, submitted, or presented the claim on November 21, 2000, the date on which he executed the 2000 HAP Contract. Pursuant to this contract, FCH paid Housing Assistance Payments to Respondent Landlord from December, 2000, until March, 2006.

Respondent Tenant. The Court holds that Respondent Tenant made, submitted, or presented a written statement that she knew or had reason to know asserted a material fact which was false, fictitious, or fraudulent on September 9, 2002; September 15, 2003; January 25, 2004;

[11] These factors specifically address the claims and statements as delineated in this opinion.

August 26, 2004; May 5, 2005; and August 30, 2005.

(3) The degree of Respondent's culpability with respect to the misconduct.

Respondent Landlord. The Court holds that Respondent Landlord is wholly culpable for making, presenting, or submitting the claim at issue in this case and also that he is wholly culpable with respect to his knowledge of the falsity of the claim. The participation of other parties in his decision to accept Housing Assistance Payments does not diminish his responsibility for failing to make accurate and truthful representations in order to qualify to receive such payments.

Respondent Tenant. The Court holds that Respondent Tenant is wholly culpable for making, submitting, or presenting statements that she knew or had reason to know asserted a material fact which was false, fictitious, or fraudulent. Her reliance on her children to translate for her does not diminish her responsibility, as a competent adult, to inquire into the nature of any documents which she signs.

(4) The amount of money or the value of the property, services, or benefit falsely claimed.

Respondent Landlord. The record shows that Respondent Landlord wrongfully accepted $40,932 in Housing Assistance Payments after conveying an interest in *Healy Drive* to Respondent Tenant on December 22, 1999. (See FoF 100.) This includes $5,401 paid out by FCH pursuant to the HAP Contract Respondent Landlord signed on December 2, 1996, and $35,531paid out pursuant to the 2000 HAP Contract. (See id.) However, the Secretary has only alleged that Respondent Landlord is liable for those payments made after August, 2002, which total $23,603. (Compl. ¶¶ 77-83.)

Respondent Tenant. The Court holds that Respondent Tenant did not make, present, or submit the claim at issue in this case, or cause it to be made, presented, or submitted.

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of investigation.

Respondent Landlord. As described above, FCH wrongfully paid $40,932 in Housing Assistance Payments to Respondent Landlord. Based on the evidence contained in the record, $10,351 is attributable solely to Respondent Landlord and, as set forth below, $30,581 is attributable to both Respondent Landlord and Respondent Tenant. The costs associated with the investigation of this matter and the ensuing litigation and trial, which are attributable to both Respondents, are also set forth below.

Respondent Tenant. The Court holds that Respondent Tenant's failure to disclose her ownership of *Healy Drive* in response to FCH's inquiry into her eligibility to participate in the Housing Choice Voucher program contributed to the continuation of these payments. However, nothing in the record suggests that an inquiry was made into Respondent Tenant's ownership of real property prior to September 11, 2001. (See FoF ¶ 65.) Therefore, only those Housing

Assistance Payments made after September 11, 2001 may be counted as part of the Government's actual loss attributable to Respondent Tenant's statements. These payments total $30,581. (See FoF ¶¶ 76, 79, 82, 85, 88, 91, 94, and 97.) Because these payments were not only caused by Respondent Tenant, but also paid out pursuant to the 2000 HAP Contract, they are attributable to both Respondent Landlord and Respondent Tenant.

Respondent Landlord and Respondent Tenant. In addition to the $40,932 in wrongful Housing Assistance Payments, Fairfax County Department of Housing and Community Development and HUD also expended at least $7,528.80 to investigate the extent of the wrongdoing in this matter. (FoF ¶¶ 99 and 100.) In addition, the attorney time necessary to prepare and litigate this matter was substantial. Likewise, the expenditure of the Office of Administrative Law Judges was also significant. However, an exact estimate of attorney and judicial expenditures on this matter is unavailable. The costs associated with the investigation of this matter and the subsequent litigation and trial are attributable to both Respondents.

The Secretary alleges that the Babar family's wrongful participation in the Housing Choice Voucher program denied another family the opportunity to participate in that program. (GPB 15.) This is undoubtedly correct. This loss is accounted for by including the value of the benefit falsely claimed as part of the Government's actual loss. Therefore, the Secretary's suggestion that FCH's inability to serve another family should be counted as part of the foreseeable losses attributable to Respondents' wrongdoing in this case is rejected, as doing so would improperly increase the loss appropriately attributed to the Respondents' wrongful participation in the Housing Choice Voucher program.

(6) The relationship of the civil penalties to the amount of the Government's loss.

Respondent Landlord. The PFCRA's implementing regulations note that: "Because of the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need for deterrence, ordinarily twice the amount of the claim as alleged by the government, and a significant civil penalty, should be imposed." 24 C.F.R. 28.40(b). As noted above, the Secretary has only alleged that Respondent Landlord is liable for $23,603 stemming from his false claim. The record also contains evidence of an additional $17,329 ($40-932 - $23,603) wrongfully paid out in this matter. In addition, the Government paid $7,528.80 to investigate this matter, and a substantial, but not calculable, sum to litigate and decide this matter. Therefore, the Court holds that the maximum penalty of $5,500 is reasonable with respect to the amount of the Government's loss.

Respondent Tenant. As noted above, $30,581 of the Housing Assistance Payments wrongfully paid to Respondent Landlord is attributable to Respondent Tenant's failure to inform FCH of her ownership interest in *Healy Drive*. Some portion of the costs associated with the investigation and subsequent trial are also attributable to Respondent Tenant. The Secretary has asked for the maximum penalty with respect to the false statements submitted by Respondent Tenant, which amounts to a penalty of $38,000. (Compl ¶¶ 95-96.)

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs.

Respondent Landlord and Respondent Tenant. It is a simple mathematical certainty that the Babar family's receipt of benefits for which it did not qualify prevented the Government from extending similar assistance to a family that did qualify. Likewise, fraud or other wrongful behavior on the part of any recipient of governmental assistance undermines the public's confidence in that program. Therefore, the Court holds that Respondents' wrongful actions in this matter negatively impacted the public confidence in the management of the Housing Choice Voucher program and operations, and particularly harmed the intended beneficiaries of the program.

(8) Whether Respondent has engaged in a pattern of the same or similar misconduct.

Respondent Landlord and Respondent Tenant. The Government did not allege that Respondent Landlord or Respondent Tenant has engaged in a pattern of the same or similar misconduct, and the record does not contain any evidence of the same. (See GPB 16.)

(9) Whether Respondent attempted to conceal the misconduct.

Respondent Landlord. Respondent Landlord testified that he did not report Respondent Tenant's ownership of *Healy Drive* to FCH because he "didn't think [his] mom being on the deed was an issue." (Tr. 170:18-19.) In light of the Court's credibility findings regarding Respondent Landlord, the Court finds that there was some attempt at concealment.

Respondent Tenant. Although the Court holds that Respondent Tenant's failure to read the Deed of Trust, Credit Line Deed of Trust, and each Personal Declaration constitutes deliberate ignorance of, and reckless disregard for the veracity of her assertion, contained in each Personal Declaration, that she did not own real estate, the Court holds her testimony, that she did not actually know that she owned *Healy Drive*, to be credible. One cannot conceal that which one does not know.

(10) The degree to which Respondent has involved others in the misconduct or in concealing it.

Respondent Landlord and Respondent Tenant. The Government did not allege that Respondent Landlord or Respondent Tenant engaged or involved others in the misconduct or in concealing it. The Court does observe, however, that Respondent Landlord's sister was acquainted with programmatic requirements and served as a translator for Respondent Tenant on several occasions.

(11) If the misconduct of employees or agents is imputed to Respondent, the extent to which Respondent's practices fostered or attempted to preclude the misconduct.

Respondent Landlord and Respondent Tenant. This factor is not applicable to this proceeding.

(12) Whether Respondent cooperated in or obstructed an investigation of the misconduct.

Respondent Landlord and Respondent Tenant. Respondents cooperated in the investigation of this proceeding. (FoF 99.1)

(13) Whether Respondent assisted in identifying and prosecuting other wrongdoers.

Respondent Landlord and Respondent Tenant. This factor is not applicable. All individuals involved in the scheme in evidence were identified in this proceeding.

(14) The complexity of the program or transaction, and the degree of Respondent's sophistication with respect to it, including the extent of Respondent's prior participation in the program or in similar transactions.

The record does not contain sufficient evidence for this Court to find that the Housing Choice Voucher program is simple or complex with respect to all participants in every case. However, there is ample evidence to make a finding regarding the complexity of the Housing Choice Voucher program with respect to Respondents at bar, and the degree of each Respondent's sophistication with respect to the program.

Respondent Landlord. Nothing in the record suggests that Respondent Landlord previously participated in the Housing Choice Voucher program or was party to any similar transactions. Nonetheless, he accepted Housing Assistance Payments for nearly ten years. (See FoF 19 and 98.) He is also a police officer, and so has a sophisticated understanding of the importance of complying with the law. (See FoF 6.) The requirements of the Housing Choice Voucher program that he violated are clearly set forth in the 2000 HAP contract. Therefore, the Court holds that the Housing Choice Voucher program requirements ignored by Respondent Landlord are not complex, and that Respondent Landlord understood his duty to disclose to FCH that Respondent Tenant was an owner of *Healy Drive*.

Respondent Tenant. Nothing in the record suggests that Respondent Tenant actively sought to participate in the Housing Choice Voucher program. Likewise, nothing in the record suggests that she was ever provided access to a full description of her duties as a program beneficiary. Because Respondent Tenant does not read English, Housing Choice Voucher program requirements are not accessible to her, accept via translation. This does not obviate Respondent Tenant's responsibility, however, to familiarize herself with the programs requirements, especially after lengthy participation.

(15) Whether Respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly.

Both Respondent Landlord and Respondent Tenant. The record does not contain any evidence relevant to this factor.

(16) The need to deter Respondent and others from engaging in the same or similar misconduct.

Respondent Landlord and Respondent Tenant. At trial, Danielle Bastarache, Director of the Office of Housing Voucher Programs for HUD, testified that the Housing Choice Voucher program is the largest program at HUD, and the largest housing subsidy program in the nation. (FoF 2.) The Secretary contends that "a high penalty in this egregious case would have substantial deterrent value." (GPB 19.)

(17) Respondent's ability to pay.

Respondent Landlord. The regulations implementing PFCRA define "ability to pay" as including "Respondent's resources available both presently and prospectively." The evidence in the record shows that Respondent Landlord earns approximately $50,000 per year as a police officer. (FoF 2.) Nothing in the record suggests that his employment will end in the foreseeable future. Therefore, the Court concludes that Respondent Landlord has the ability to pay a substantial penalty and assessments.

Respondent Tenant. There is evidence in the record to show that Respondent Tenant receives "benefits," but nothing in the record indicates the amount of these benefits, or that Respondent Tenant receives any additional income. Therefore, the Court holds that Respondent Tenant has only limited ability to pay a penalty. However, the Court also notes that ability to pay is not the only factor that must be considered in a PFCRA proceeding, and does not preclude imposition of a penalty even in the absence of ability to pay.

Respondent Landlord and Respondent Tenant. The Secretary alleges that the value of *Healy Drive* should be attributed to Respondent Landlord and Respondent Tenant, notwithstanding the fact that they no longer own the house, because, the Secretary alleges, the transfer is voidable as a fraudulent conveyance. (GPB 19-20.) The transfer cannot be voided by this Court, and nothing in the record indicates that the potential sale price of *Healy Drive* would exceed the mortgage debt already attached to that property. The Secretary has not submitted a valuation of the property. The information provided is, at best, speculative. Therefore, the Court declines to consider the value of *Healy Drive* in calculating either Respondent's ability to pay, as the Secretary has not demonstrated what that value would be.

(18) Any other factors that in any given case may mitigate or aggravate the seriousness of the false claim or statement.

Respondent Landlord and Respondent Tenant. No other factors are relevant to this proceeding.

CONCLUSIONS and ORDER

The Secretary's request for relief is summarized supra. Consistent with the foregoing findings, discussion, and holdings, the Court concludes as follows:

The evidence establishes that Respondent Landlord is solely liable for making and submitting a single claim that he knew or had reason to know was false, and which he knew or had reason to know included—and was supported by—a written statement that asserted a material fact which was false. The amount of the claim was $23,603. The Court holds that the maximum assessment and civil penalty are appropriate in this case. Accordingly, Respondent Landlord shall pay to the Secretary of HUD an assessment of $47,206 and civil penalty of $5,500, which is immediately due and payable without further proceedings.

Respondent Tenant is not liable for making, presenting, or submitting, or causing to be made, presented, or submitted the claim at issue in this case.

Respondent Tenant however, is liable for making and submitting six statements that she knew or had reason to know asserted a material fact which was false. Despite Respondent Tenant's lack of financial means, a civil penalty is appropriate in this case as a means of deterring Respondent Tenant and others similarly situated from failing to take due care with regard to the representations they make as recipients of government assistance. However, in light of Respondent Tenant's financial situation, the Court concludes that deterrence may be achieved without the imposition of the maximum civil penalties for each statement, and concludes that a penalty of $3000 per statement is appropriate in this case. Accordingly, Respondent Tenant shall pay to the Secretary of HUD civil penalties of $18,000, which are immediately due and payable without further proceedings.[12]

So **ORDERED,**

Alexander Fernández
Administrative Law Judge

[12] Notice of Appeal Rights on next page.

Notice of Appeal Rights. The appeal procedure is set forth in detail in 24 C.F.R. § 26.52 (2009). This order may be appealed to the Secretary of HUD by either party within 30 days after the date of this decision. The Secretary (or designee) may extend this 30-day period for good cause. If the Secretary (or designee) does not act upon the appeal within 90 days of its service (30 days for cases brought under the Program Fraud Civil Remedies Act), this decision becomes final.

Service of Appeal. Any appeal must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development
Attention: Secretarial Review Clerk
1250 Maryland Ave, S.W., Portals Bldg., Suite 200
Washington, DC 20024
Facsimile: (202) 401-5153
Scanned electronic document: secretarialreview@hud.gov