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

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, Petitioner, v. RONALD MCGEE, JR., Respondent.	HUDALJ 12-F-026-PF-13 June 27, 2012

DEFAULT JUDGMENT AND ORDER

The above-captioned matter is before this Court on a *Motion for Default Judgment* ("Motion") filed on May 16, 2012, by the United States Department of Housing and Urban Development ("HUD" or "the Government"). Respondent, Ronald McGee, Jr., did not file an answer to HUD's *Complaint*. Respondent also failed to respond to the *Motion*[1] and to this Court's *Order to Show Cause*, issued on June 1, 2012. Accordingly, the *Motion* is **GRANTED.**

PROCEDURAL HISTORY

On February 23, 2012, HUD filed the *Complaint* against Respondent, seeking civil penalties and assessments totaling $116,976 pursuant to the Program Fraud Civil Remedies Act of 1986 ("PFCRA"), 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28. The *Complaint* alleges that Respondent made or caused to be made 15 claims to the North Hempstead Housing Authority ("NHHA") for Section 8 housing assistance payments that he knew or had reason to know were false and fraudulent. The *Complaint* further asserts that Respondent knew or had reason to know that such claims were false and fraudulent because he was in violation of the Housing Assistance Payments Contract("HAP Contract") and, therefore, was ineligible for any Section 8 housing assistance payments due to his parent-child relationship with two members of the tenant's family. The Government contends that Respondent knew or had reason to know that the claims made to the NHHA were supported by his written statements asserting material facts that were false or fraudulent. Respondent was notified of his right to request a hearing by submitting a written response to the *Complaint* within 30 days of

[1] Respondent is allowed 10 days to respond to a default motion. 24 C.F.R. § 26.41(a) (2010). Allowing for 3 days mail time both ways, Respondent's reply should have been received on or before June 1, 2012. The *Order to Show Cause* directed Respondent to file a response on or before June 11, 2012.

being served with the *Complaint* pursuant to 24 C.F.R. §28.30(a). The Complaint instructed Respondent that his response

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

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

HUD regulations provide that a respondent "may file a written response to the complaint, in accordance with § 28.30 of this title, within 30 days of service of the complaint," and that "[t]he response shall be deemed to be a request for a hearing." 24 C.F.R. § 28.30(a) (2010); see also 31 U.S.C. § 3803(d)(2) (2006) (providing a 30-day statutory requirement for requesting a hearing); 24 C.F.R. § 26.38 (2010) ("The respondent's response to the complaint shall be timely filed with the Docket Clerk and served upon the Government in accordance with the procedures set forth in the complaint.").

On February 23, 2012, HUD attempted to serve Respondent with a copy of the *Complaint* via U.S. Postal Service Certified Mail at his address of residence according to public records. However, the U.S. Postal Service returned the *Complaint* to HUD due to the fact that it was "unclaimed" by Respondent.

On March 28, 2012, HUD served Respondent with the *Complaint* by hand at his place of employment. Pursuant to 24 C.F.R. § 28.30(a), Respondent was allowed 30 days to respond to the *Complaint*. Thus, a response was due on or before April 24, 2012. To date, neither this Court nor HUD has received a written response to the *Complaint* from Respondent. Also on February 23, 2012, this Court issued a letter to Respondent explaining the role of the Office of Administrative Law Judges, and notifying Respondent of the 30-day period in which he was able to request a hearing. The letter also detailed the type of information required for an adequate response. The letter further informed Respondent that, should he fail to submit a timely response, a judgment in favor of HUD may be imposed making the penalties and assessments immediately due and payable.

On May 16, 2012, HUD filed the *Motion*. Pursuant to 24 C.F.R. § 26.41(a), Respondent was allowed 10 days to respond to the Secretary's motion. 24 C.F.R. § 26.41(a) (2012). Upon Respondent's failure to respond to the Secretary's motion, this Court issued the *Order to Show Cause* instructing Respondent to show why the *Motion* should not be granted. To date, Respondent has not filed a response.

LEGAL FRAMEWORK

Housing Choice Voucher Program. The Section 8 Tenant-Based Housing Choice Voucher Program ("Program") is a program through which HUD provides housing assistance funds to State and local government entities designated as public housing agencies ("PHAs"). 24 C.F.R. § 982.1 (2012). Eligible families select and rent units that meet the Program's standards. Id. If the PHA approves of both the unit and the family's tenancy, it enters into a contract with the unit's owner and makes rental subsidy payments, known as Housing Assistance Payments ("HAPs"), to the owner on behalf of the tenant family. Id. The PHA may not enter into a contract with an owner "if the owner is the parent ... of any member of the family, unless the PHA determines that approving the unit would provide a reasonable accommodation for a family member who is a person with disabilities." 24 C.F.R. § 982.306(d) (2012). As part of the approval process, the owner of the rental unit is required to submit a Request for Tenancy Approval, Form HUD-52517, to HUD. The Request for Tenancy Approval includes, among other things, a certification by the owner that the owner is not the parent, child, grandparent, grandchild, sister, or brother of any member of the prospective tenant family, unless the PHA has made a determination that approving the request would be a reasonable accommodation for someone with disabilities. If the PHA approves the Request for Tenancy Approval, it then enters into a HAP Contract with the owner. 24 C.F.R. § 982.1(a)(2); 24 C.F.R. § 982.4(b); 24 C.F.R. § 982.162(a). The HAP Contract contains a certification identical to the one contained in the Request for Tenancy Approval. This certification is a condition precedent to receipt of the monthly housing assistance payments. After the HAP Contract is executed, HUD then makes housing assistance payments to the owner on behalf of the tenant family in the amount stated in the HAP Contract. 24 C.F.R. § 982.305(e).

Program Fraud Civil Remedies Act. Respondent is charged with a violation of the PFCRA, 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28. The PFCRA imposes liability on

> [a]ny person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—(A) is false, fictitious, or fraudulent; [or] (B) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent....

31 U.S.C. § 3802(a)(1)(A)-(B) (2012).

The PFCRA defines "claim" as "[a]ny request, demand, or submission—...(B) made to a recipient of ... money from an authority or to a party to a contract with an authority— ... (ii) for the payment of money ... if the United States—(I) provided any portion of the money requested or demanded. ... " 31 U.S.C. § 3801(a)(3)(B). Under the PFCRA, "each ... individual request or demand for...money constitutes a separate claim." 31 U.S.C. § 3801(b)(1) (2012). Under the PFCRA, a person knows or has reason to know that a claim is false if the person: (a) has actual knowledge of the claim's falsity; (b) acts in

"deliberate ignorance" as to the truth or falsity of the claim; or (c) acts in "reckless disregard" of the truth or falsity of the claim. 31 U.S.C. § 3801(a)(5) (2012). No specific intent to defraud is required. Id.

A person found liable under the PFCRA may be subject to a civil penalty of not more than $6,500.00 for each claim.[2] 31 C.F.R. § 3802(a)(1)-(2) (2012); 24 C.F.R. § 28.10 (2012). In addition to the civil penalties imposed, a person found liable for making a false claim may also be "subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim, or the portion of such claim, which is determined under this chapter to be in violation of the preceding sentence." 31 U.S.C. § 3802(a)(1); 24 C.F.R. § 28.10(a)(6).

Default Judgments. HUD regulations provide that, "[I]f the respondent fails to submit a response to the Docket Clerk, then the Government may file a motion for a default judgment in accordance with § 26.41." 24 C.F.R. § 28.38 (2012). Section 26.41 provides:

> 24 C.F.R. § 26.41 Default.
>
> (a) General. The respondent may be found in default, upon motion, for failure to file a timely response to the Government's complaint. The motion shall include a copy of the complaint and a proposed default order, and shall be served upon all parties. The respondent shall have 10 days from such service to respond to the motion.
>
> (b) Default order. The ALJ shall issue a decision on the motion within 15 days after the expiration of the time for filing a response to the default motion. If a default order is issued, it shall constitute the final agency action.
>
> (c) Effect of default. A default shall constitute an admission of all facts alleged in the Government's complaint and a waiver of respondent's right to a hearing on such allegations. The penalty proposed in the complaint shall be set forth in the default order and shall be immediately due and payable by respondent without further proceedings.

24 C.F.R. § 26.41 (2012).

FINDINGS OF FACT

1. Respondent was served with the *Complaint* on March 28, 2012, at his place of employment.

---

[2] The offenses alleged here occurred before HUD adjusted the penalty to $7,500, as authorized by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101-410, § 4, 104 Stat. 890) as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701.

2. A response to the *Complaint* was due from Respondent on or before April 24, 2012, but Respondent failed to file a response.

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

4. Due to Respondent's failure to respond to either the *Complaint* or the subsequent *Order to Show Cause*, all facts alleged in the *Complaint* filed on February 23, 2012 are deemed to have been admitted by Respondent.

5. At all relevant times, the North Hempstead Housing Authority ("the NHHA"), located in North Hempstead, New York, administered the Section 8 Program on behalf of HUD and, in connection therewith, received federal Section 8 funding from HUD pursuant to annual contribution contracts with HUD, and disbursed such funds pursuant to HAP Contracts with owners of private rental housing, on behalf of low-income families.

6. Respondent signed and submitted a Request for Tenancy Approval to the NHHA, proposing to lease the residence at 347 Magnolia Avenue to tenant Tonya Culbreath and her family for $1,350.00 per month.

7. In the Request for Tenancy Approval, Respondent certified that he was not the parent of any member of tenant Culbreath's family.

8. The NHHA, relying on the truthfulness of Respondent's certification in the Request for Tenancy Approval, approved the Section 8 tenancy and entered into a HAP Contract with Respondent in July 2002.

9. The HAP Contract incorporated the certification made by Respondent in the Request for Tenancy Approval.

10. Between May 1, 2006 and July 1, 2007, the NHHA disbursed 15 monthly housing assistance payments to Respondent, amounting to $9,738.00.

11. Respondent made or caused to be made 15 claims to the NHHA by receiving, accepting, and depositing into his personal bank account 15 Section 8 housing assistance payments on behalf of tenant Culbreath and her family.

12. Respondent knew or had reason to know the 15 claims he made were false and fraudulent, as he is the father of two of tenant Culbreath's children, both of whom reside with her at the Magnolia Avenue property.

13. Respondent's parent-child relationship with two of tenant Culbreath's children renders him ineligible for any Section 8 housing assistance payments and places him in violation of the HAP Contract.

14. The NHHA would not have approved the Section 8 tenancy of Culbreath and her family had it known Respondent's certifications in the both the Request for Tenancy Approval and HAP Contract were false.

15. Respondent has failed to defend this action.

16. The civil penalties and assessments proposed in the Complaint must be imposed.

17. HUD seeks imposition of 15 civil penalties in the amount of $6,500.00 each (totaling $97,500), plus 15 assessments of twice the amount of each false claim of $697.00 (totaling $19,476), for a total award of $116,976.

CONCLUSIONS OF LAW

By reason of the facts admitted by Respondent in Counts 1 through 15 of the *Complaint*, Respondent (1) made or caused to be made 15 claims to the NHHA for Section 8 housing assistance payments, (2) knowing or having reason to know that such claims were false, and (3) knowing or having reason to know that such claims included or were supported by his materially false statements representing that he was not related to any of the tenants residing at the property in question. The allegations in the *Complaint* are legally sufficient to establish that Respondent is liable to HUD under the PFCRA and 24 C.F.R. Part 28. The claims made by Respondent violated 31 U.S.C. § 3802(a)(1)(A) and 24 C.F.R. § 28.10(a)(i). Therefore, HUD is entitled to 15 civil penalties of $6,500.00 each and 15 assessments of twice the amount of each claim, totaling $116,976.00, pursuant to 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28.10(a)(1).

ORDER

Accordingly, the *Motion for Default Judgment* is **GRANTED**;

Respondent, Ronald McGee, Jr., shall pay civil penalties and assessments in the total amount of $116,976.00 to HUD, which amount is due and payable immediately, without further proceedings.

So **ORDERED**,

Alexander Fernández
Administrative Law Judge

Notice of Appeal Rights. This Order constitutes the final agency action. 24 C.F.R. § 26.41(b) (2012).

CERTIFICATE OF SERVICE

I hereby certify that copies of this DEFAULT JUDGMENT AND ORDER, issued by Alexander Fernández, Administrative Law Judge, in HUDALJ 12-F-026-PF-13, were sent to the following parties on this 27th day of June, 2012, in the manner indicated:

Cinthia Matos, Staff Assistant

CERTIFIED MAIL:

Ronald McGee, Jr.
[redacted]

and

Ronald McGee, Jr.
[redacted]

INTEROFFICE MESSENGER AND EMAIL:

Philip A. Kesaris, Esq.
Office of the General Counsel
U.S. Department of Housing and Urban Development
Portals Building, Suite 200
1250 Maryland Avenue, SW
Washington, DC 20024
philip.a.kesaris@hud.gov

Nilda Gallegos, Enforcement Technician
HUD Office of General Counsel
Office of Program Enforcement
Portals Building, Suite 200
1250 Maryland Avenue, SW
Washington, DC 20024
nilda.m.gallegos@hud.gov