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. SYLVIA A. FLEMING, Respondent.	HUDALJ 12-M-010-PF-8 May 1, 2012

DEFAULT JUDGMENT AND ORDER

The above-entitled matter is before this Court on a Motion for Default Judgment filed on April 13, 2012, by the United States Department of Housing and Urban Development ("HUD" or "the Government"). Sylvia A. Fleming ("Respondent") did not file an answer to the Government's Complaint and has not responded to the present motion. Accordingly, the Motion for Default Judgment will be **GRANTED**.[1]

On January 5, 2012, HUD filed a Complaint seeking a civil penalty and assessment against Respondent pursuant to the Program Fraud Civil Remedies Act of 1986 ("PFCRA"), 31 U.S.C. §§ 3801-3812, and the applicable regulations at 24 C.F.R. Part 28. The Complaint alleged that Respondent knowingly submitted a false claim to the Mississippi Development Authority for a HUD Community Development Block Grant-funded Homeowner Assistance Program grant. (Complaint, p. 8, filed January 5, 2012.) The Complaint further alleged that Respondent knew or had reason to know the claim was supported by her materially false statements representing that she occupied the Hurricane Katrina-damaged property at issue as her principal residence on the date of the storm. In fact, Respondent resided at another property. (Id.)

The Government now seeks a civil penalty and assessment totaling $127,648.68. (Id.) The Complaint notified Respondent of her right to appeal the imposition of the civil penalty and assessment by filing a written response within 30 days of receipt of the Complaint, and that failure to file a response may cause HUD to file a Motion for Default Judgment with regard to the allegations in the Complaint. (Id. at pp. 28-29.)

Applicable HUD regulations provide that a Respondent "may file a written response to the complaint, in accordance with § 26.30 of this title, within 30 days of service of the complaint," and that "[t]he response shall be deemed to be a request for a hearing." 24 C.F.R. § 28.30(a); *see also*

[1] A Respondent is allowed 10 days to respond to a default motion. 24 C.F.R. § 26.41(a). Allowing for 3 days mail time both ways, Respondent's reply should have been received on or before April 30, 2012.

31 U.S.C. § 3803(d)(2) (30-day statutory requirement for requesting a hearing); 24 C.F.R. § 26.38 ("The respondent's response to the complaint shall be timely filed with the Docket Clerk and served upon the Government in accordance with the procedures set forth in the complaint.").

HUD initially attempted to serve the Complaint by United States Postal Service Certified Mail-Return Receipt Requested, addressed to Respondent at her home address. Records show that the Complaint was received by a person other than Respondent. Therefore, HUD re-served the Complaint by hand-delivering it to Respondent on February 23, 2012. Records show that Respondent received the Complaint on that day. A response was therefore due to HUD by March 20, 2012. The Court has received no such response.

Pursuant to 24 C.F.R. § 26.38, "[i]f the respondent fails to submit a response to the Docket Clerk, then the Government may file a motion for a default judgment in accordance with § 26.41." That regulation provides as follows:

24 .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.

FINDINGS OF FACT

1. Respondent has failed to defend this action;

2. All facts alleged in HUD's Complaint, filed on January 5, 2012, are hereby found to have been admitted by Respondent;

3. HUD seeks imposition of a civil penalty in the amount of $7,500, plus an assessment of twice the amount of the false claim ($60,074.34 x 2 = $120,148.68; and

4. By regulation, the penalty proposed in the Complaint must be imposed.

CONCLUSIONS OF LAW

By reason of the facts admitted by Respondent in the Complaint, Respondent submitted a claim to the Mississippi Development Authority for a HUD Community Development Block Grant-funded Homeowner Assistance Program grant. Respondent knew or had reason to know the claim was false, and she knew or had reason to know the claim was supported by her materially false statements representing that she occupied the Hurricane Katrina-damaged property at issue as her principal residence on the date of the storm, when in fact she resided elsewhere. 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 claim violated 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28.10(a)(1). HUD is therefore entitled to a civil penalty and assessment, totaling $127,648.68.

ORDER

Accordingly, the Government's Motion for Default Judgment is **GRANTED.** Respondent shall pay to HUD civil penalties and assessments in the total amount of $127,648.68, which amount is due and payable immediately, without further proceedings.

So **ORDERED**.

J. Jeremiah Mahoney
Chief Administrative Law Judge (Acting)

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

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DEFAULT JUDGMENT AND ORDER**, in HUDALJ 12-M-010-PF-8, issued by Administrative Law Judge J. Jeremiah Mahoney, were sent to the following parties on this 1st day of May, 2012, in the manner indicated:

Becky Black, Docket Clerk

FIRST CLASS MAIL:

Sylvia A. Fleming
[redacted]

INTEROFFICE MESSENGER & ELECTRONIC MAIL:

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

Nilda Gallegos, Docket Clerk
U.S. Department of Housing and
Urban Development
1250 Maryland Avenue, SW., Suite 200
Washington, DC 20024
Nilda.M.Gallegos@hud.gov