

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

United States Department of Housing
and Urban Development,

Plaintiff,

v.

Malton L. Hines and Ileshia G. Hines,

Defendants.

HUDALJ 95-5035-PF

Decided: March 4, 1996

Malton L. Hines and Ileshia G. Hines, *pro se*

Walter E. Warren, Esquire
for the Government

Before: CONSTANCE T. O'BRYANT
Administrative Law Judge

INITIAL DECISION

On November 13, 1995, the United States Department of Housing and Urban Development ("HUD") referred to the Office of Administrative Law Judges the above Complaint against Defendants Malton L. and Ileshia G. Hines, alleging that they made false statements on three separate occasions that proximately caused, in each instance, a false claim as provided in the Program Fraud Civil Remedies Act of 1986 ("PFCRA"), 31 U.S.C. §§ 3801 (a)(3), 3302(a)(1), and in 24 C.F.R. § 28.5(a). In the Complaint, HUD seeks assessments and civil penalties in the amount of \$35,454. The record shows that the Complaint, along with a Notice of Procedures and a copy of the regulations governing this action (24 C.F.R. Part 28), was served upon the Defendants on September 21, 1995.

By letter dated October 12, 1995, the Defendants acknowledged receipt on September 21, 1995 of documents from HUD. In that letter the Defendants made a

request for a hearing. However, they did not follow the procedures for requesting a hearing outlined in the Notice of Procedures attached to the Complaint, or in the regulations sent to them (24 C.F.R. Part 28). The regulations require that an Answer be filed within 30 days of service of the Complaint. In the Answer, the defendant is required to admit or deny each of the allegations of liability made in the Complaint, and to state any defense on which s/he intends to rely. In the Answer, the defendant may also state any reasons why s/he contends that the penalties and assessments should be less than the statutory maximum. In this case, Defendants letter of October 12, 1995, did not meet the requirements of an Answer. Accordingly, by Notice dated December 4, 1995, they were notified by the undersigned that they were not entitled to a hearing in this matter.

Sections 28.19(a) (b) and (c) provide that if a defendant does not file an answer within the time prescribed in § 28.17(b), the administrative law judge ("ALJ") shall issue an initial decision in which the ALJ shall assume the facts alleged in the complaint to be true, and if such facts establish liability under § 28.5, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

FINDINGS OF FACT

The Complaint alleges the following facts which I, pursuant to § 28.17 and in view of Defendants' failure to answer the Complaint, must assume to be true:

1. Defendants Malton L. and Ileshia G. Hines are individuals, husband and wife, residing at 8414 Navaho Drive, Silver Spring, Maryland 20903. They were, at times relevant to this Complaint, applicants to HUD for certain rental assistance payments paid by HUD to private landlords for the Defendants' rental of Apartment No. 301, 6404 Greig Street, Seat Pleasant, Md. 20703.

2. The HUD program involved is the Section 8 Lower Income Rental Assistance Program, under Section 8 of the U. S. Housing Act of 1937, 42 U.S.C. § 1437f ("Section 8 program"). This program is administered by HUD for the benefit of low-income tenants. In order to be eligible for rent payment assistance, the tenant's family income must not exceed an income limit set by HUD. The eligible tenant selects an apartment approved by HUD, and HUD makes payments to the owner which help pay the tenant's rent. HUD requires that owners annually recertify the eligibility and level of benefits of tenants by submitting the form HUD-50059, entitled "Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures."

3. Each HUD-50059 contains the following certification which must be signed by the tenant:

TENANT(S)' CERTIFICATION - I/We certify that the information in Parts II, III, and IV of this Form are true and complete to the best of our knowledge and belief. I/We understand that I/we can be fined up to \$10,000, or imprisoned up to five years, or lose the subsidy HUD pays and have my/our rent increased, if I/we furnish false or incomplete information.

4. Defendants made statements in applications for rental assistance and signed certifications of their eligibility therefor, for three separate periods of assistance: July 1, 1990 - June 30, 1991; July 1, 1991 - June 30, 1992; and July 1, 1992 - October 31, 1992. These statements are alleged in three separate Counts in the Complaint.

Count 1
(July 1, 1990 - June 30, 1991)

5. On or about June 28, 1990, Defendant Ileshia Hines signed the tenant's certification contained on form HUD-50059. Defendant Malton Hines signed this certification on or about July 19, 1990. This certification contained the language set out in ¶3 above (*see* Exhibit 1).

6. On the form HUD-50059 signed June 28, 1990, Defendant Ileshia Hines reported that her annual income was \$21,736, and that Defendant Malton Hines had no occupation and no income.

7. On or about March 16, 1990, and on or about April 12, 1991, Defendant Malton Hines provided the landlord with notarized certifications of "zero income" (*see* Exhibits 2 & 3, respectively).

8. The applicable income limit in effect under the Section 8 program at the time with respect to the Defendants and families similarly situated, was \$21,350.

9. Based upon the Defendants' representation of their income on Exhibit 1, and a \$960 deduction for dependents, and upon the representations in Exhibits 2 and 3, Defendants were determined to be eligible for assistance under the Section 8 program, and their landlord submitted claims for HUD rental assistance with respect to them.

10. The Defendants received \$4,383 in assistance from HUD from July 1990 through June 1991 under the Section 8 program.

11. The income information provided by both Ileshia and Malton Hines in Exhibits 1, 2 and 3, was materially false, and was information each had a duty to truthfully provide.

12. Contrary to the Tenant's Certification on Exhibit 1, and contrary to the information in Exhibits 2 and 3, Defendant Malton Hines was employed by the United States Department of the Navy ("Navy") during this period and was paid compensation at the rate of approximately \$18,158 per annum.

13. Had the Defendants truthfully reported their total family income during this period it would have exceeded the limit then in effect, the Defendants would have been ineligible for assistance under this program, and no claim for HUD rental assistance could have been made with respect to them.

14. The Defendants knew or should have known that the landlord's claim for rental assistance with respect to them would be false, because the statements appearing in Exhibits 1, 2 and 3 were false.

15. The statements made in Exhibits 1, 2 and 3 amount to false statements that proximately caused a false claim as provided in the PFCRA, 31 U.S.C. §§ 3801(a)(3), 3302(a)(1), and create joint and several liability on the part of the Defendants under the PFCRA § 3802(a)(1) and 24 C.F.R. § 28.5(a).

COUNT 2

(July 1, 1991- June 30, 1992)

16. On or about June 4, 1991, Defendant Ileshia Hines signed the certification contained on form HUD-50059 (*see* Exhibit 4). The form shows that Defendant Ileshia Hines' annual income was \$22,705, and that Defendant Malton Hines had no occupation and no income.

17. On or about March 26, 1992, Defendant Malton Hines provided the landlord with a notarized certification of "zero income" (*see* Exhibit 5).

18. The income limit in effect under the Section 8 program at that time with regard to the Defendants was \$38,000.

19. Based upon the Defendants' representation of their income on Exhibits 4 and 5,

they were determined to be eligible for assistance under the program.

20. The Defendants received \$4,440 in assistance from HUD from July 1991 through June 1992 under the Section 8 program.

21. The income information provided by the Defendants on Exhibits 4 and 5 was false.

22. Contrary to the Tenant's Certification on Exhibits 4 and 5, Defendant Malton Hines was employed by the Navy during this period and was paid at the rate of approximately \$18,864 per annum.

23. Had the Defendants truthfully reported their total family income during the period from July 1991 to June 1992, it would have exceeded the limit then in effect and the Defendants would have been ineligible for assistance under the Section 8 program.

24. The Defendants knew or should have known that the claim and statements appearing in Exhibits 4 and 5 were false.

25. The statements made in Exhibits 4 and 5 amount to false statements that proximately caused a false claim as provided in the PFCRA, 31 U.S.C. §§ 3801(a)(3), 3302(a)(1), and in 24 C.F.R. § 28.5(a), and create joint and several liability on the part of the Defendants under the PFCRA § 3802(a)(1) and 24 C.F.R. § 28.5(a).

Count 3

(July 1, 1992 - October 31, 1992)

26. On or about June 22, 1992, Defendant Ileshia Hines signed the certification contained on a form HUD-50059 (*see* Exhibit 6).

27. On Exhibit 6 Defendant Ileshia Hines reported that her annual income was \$24,312 and that Defendant Malton Hines had no occupation and no income.

28. The income limit in effect under the Section 8 program at the time with regard to the Defendants was \$38,600.

29. Based upon the Defendants' representation of their income on Exhibit 6, they were determined to be eligible for assistance under the Section 8 program.

30. The Defendants received \$1,404 in assistance from HUD from July 1992 through October 1992 under this program.

31. The income information provided by the Defendants on Exhibit 6 was false. Contrary to the certification on Exhibit 6, Defendant Malton Hines was employed by the Navy during this period and paid at the rate of approximately \$20,446 per annum.

32. Defendants' rental assistance was terminated on October 31, 1992, based upon the landlord's discovery of Defendant Malton Hines' employment.

33. Had the Defendants truthfully reported their total family income during this period, it would have exceeded the limit then in effect and the Defendants would have been ineligible for rental assistance under the Section 8 program.

34. The Defendants knew or should have known that the claim and statement appearing in Exhibit 6 were false.

35. The statement in Exhibit 6 amounts to a false statement that proximately caused a false claim as provided in the PFCRA, 31 U.S.C. §§ 3801(a)(3), 3302(a)(1), and in 24 C.F.R. § 28.5(a), and create joint and several liability on the part of the Defendants under the PFCRA § 3802(a)(1) and 24 C.F.R. § 28.5(a).

GOVERNING LAW AND REGULATIONS

24 C.F.R. § 28.5 (b)(1)(i)(A) provides that a person shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each statement, except as provided in paragraph (c) of that section, when that person makes a written statement that the person knows or has reason to know asserts a material fact which is false, fictitious, or fraudulent.

The evidence establishes that both Mr. and Mrs. Hines made statements during each of the periods covered by Counts 1-3 which they knew or had reason to know asserted a material fact which was false, fictitious or fraudulent. Both declared in written documents intended to establish eligibility for Section 8 housing assistance that Mrs. Hines' income was the sole income for the family. These statements were false when made, and known by both Defendants to be false when they were made. Moreover, it is clear that both Defendants knew that the false statement provided information material to the determination of their eligibility for housing assistance. Further, the false statements proximately caused the landlord to file claims falsely

asserting their eligibility for assistance. Accordingly, the statements amount to false statements as provided in the PFCRA, 32 U.S.C. §§ 3801(a)(3), 3302(a)(1) and in 24 C.F.R. § 28.5(a), and the Defendants are liable under 24 C.F.R. § 28.5 therefor.

PENALTY

Sections 28.19(a) (b) and (c) provide that if a defendant does not file an answer within the time prescribed in 24 C.F.R. § 28.17(b), the administrative law judge ("ALJ") shall issue an initial decision in which the ALJ shall assume the facts alleged in the complaint to be true, and if such facts establish liability under 24 C.F.R. § 28.5, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

In the instant case HUD seeks imposition of civil penalties and assessments in the total amount of \$35,454. This includes \$15,000 in civil penalties or \$5000 for each of the three false claims and statements shown in Exhibits 1 - 6, and an assessment of \$20,454 or twice the amount of the false claims for overpaid assistance received by Defendants, calculated as follows:

overpaid assistance July 1, 1990 - June 30, 1991	\$4,383	
overpaid assistance July 1, 1991 - June 30, 1992	\$4,440	
overpaid assistance July 1, 1992 - Oct. 31, 1992	\$1,404	
		Total <u>\$10,227</u>
		x2
		<u>\$20,454</u>

I find that the amount of civil penalties and assessments sought by HUD is allowed, indeed required, under the statute. Accordingly, I impose upon Defendants a total civil penalty of \$15,000 and assessment of \$20,454.

CONCLUSION AND ORDER

Having found that Defendants made statements which violated 32 U.S.C. §§ 3801(a)(3) and 3302(a)(1) and 24 C.F.R. §28.5, and having imposed civil penalties totalling \$15,000 and an assessment of \$20,454, I hereby issue the following **ORDER**:

Defendants, Malton L. Hines and Ileshia G. Hines, jointly and severally, shall pay to the United States Department of Housing and Urban Development civil penalties in the

amount of \$15,000.

Defendants, Malton L. Hines and Ileshia G. Hines, jointly and severally, shall pay to the United States Department of Housing and Urban Development the assessed amount of \$20,454.

This decision will be final and binding unless either Defendant files, within 30 days of its issuance, a motion with the undersigned seeking to reopen the initial decision on the grounds stated at 24 C.F.R. §28.19(d),(e) and (f).

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CONSTANCE T. O'BRYANT
Administrative Law Judge