

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

In the Matter of:

COASTAL HOUSING CORPORATION, a Rhode Island
Non-profit Corporation,

Respondent.

22-JM-0080-CM-004

March 21, 2023

ORDER GRANTING DEFAULT JUDGMENT

On January 12, 2022, the United States Department of Housing and Urban Development (“HUD”) filed a Complaint for Civil Money Penalties against Quaker Manor, LLC (“Respondent Quaker” & “Owner”), Town of Portsmouth Housing Authority (“Respondent PHA”), and Coastal Housing Corporation (“Respondent Coastal Housing”). The Complaint alleges Respondents failed to submit to HUD the annual audited financial statements for fiscal years ending December 31, 2017, December 31, 2018, and December 31, 2019, within the time frame specified by the Secretary. As a result, the Complaint sought a total penalty amount of \$148,432.00 jointly and severally against Respondents.

Coastal Housing failed to respond to the Complaint. On April 18, 2022, HUD filed Secretary’s Motion for Default Judgment against Respondent Coastal Housing. On April 25, 2022, the Court entered an Order to Show Cause giving Respondent Coastal Housing until May 5, 2022, to show cause why the Motion for Default Judgment should not be granted. Again, on December 29, 2022, this Court ordered Respondent Coastal Housing to file a response to the April 25, 2022, Order to Show Cause by January 17, 2023. Respondent Coastal Housing did not comply with either Order, and they did not answer or otherwise participate in these proceedings, other than to designate a pro se representative.

On January 17, 2023, HUD, Respondent Quaker, and Respondent PHA entered into a settlement agreement. That settlement agreement included, among other items, a \$20,000 civil money penalty, and did not include Coastal Housing. On January 18, 2023, this Court granted HUD’s Motion to Dismiss seeking to dismiss, without prejudice, the civil money penalty proceedings against Respondents Quaker and PHA in accordance with the January 17, 2023, Settlement Agreement.

Procedural History

On January 12, 2022, HUD filed a Complaint for Civil Money Penalties against Respondents Quaker, PHA, and Coastal Housing. The Complaint was sent through USPS certified mail to 2638 East Main Road, Portsmouth, RI 02871 attention Rachel Kelley, Executive Director. On January 27, 2022, Allison Serina emailed the Court to request a hearing and state that she would submit the required Answer to the court. On February 1, 2022, Allison Serina at aserina@cox.net filed a Pro Se Appearance Form indicating that she was representing Coastal Housing.

On January 27, 2022, HUD filed their First Amended Complaint, which was sent to aserina@cox.net. Respondent Coastal Housing was obligated to file an answer within 30 days of receipt of the Complaint in accordance with 24 C.F.R. § 30.90(b). Subsequently, in the Court's February 28, 2022, Order Granting Motion for Leave to Amend Complaint and Second Notice of Hearing and Order, the Court gave a March 21, 2022, deadline to file an Answer. On April 18, 2022, HUD filed Secretary's Motion for Default Judgment against Respondent Coastal Housing. On April 22, 2022, HUD and Respondents Quaker and PHA jointly moved for a stay of the proceeding, which was granted. As a result of subsequent requests for continuances, this matter remained stayed to give time for the Parties to engage in, and potentially finalize, a settlement. On January 17, 2023, HUD filed the Government's Motion to Dismiss, without prejudice, seeking to dismiss the civil money penalty proceedings against Respondents Quaker and PHA. As an exhibit to the Motion to Dismiss, HUD attached a settlement agreement between HUD, Respondent Quaker, and Respondent PHA, which explicitly excluded Respondent Coastal Housing. On January 18, 2023, this Court entered an Order Granting Partial Motion to Dismiss in favor of Respondents Quaker and the PHA. At no point since Respondent Coastal Housing's February 1, 2022, Notice of Appearance have they answered, responded, or engaged in the proceedings of this litigation.

Applicable Law

Default Judgment. Respondent is required to file an answer within 30 days after service of the *Complaint*. 24 C.F.R. § 30.90(b). The failure to answer the *Complaint* within the 30-day period following service shall be deemed an admission of all matters of fact recited therein and may result in the entry of a default decision. *Id.* at § 180.420(b). A default judgment may be entered against a respondent who fails to submit an answer to HUD's complaint. In the matter of Sage Partners, L.P., HUDALJ No. 09-F-046-CMP-12 (June 16, 2009).

Respondent Coastal Housing failed to answer the *Complaint*. Respondent Coastal Housing also twice failed to respond to the Courts' Orders to Show Cause or offer any explanation for their failure to answer the *Complaint*. As such, Respondent Coastal Housing is deemed to have admitted the allegations in the *Complaint*, which are set forth below as the Court's findings of fact. As of the date of this *Default Judgment and Order*, Respondent has failed to respond to the *Complaint*, failed to respond to both *Orders to Show Cause*, or otherwise appear in this matter absent a *Pro Se* Notice of Appearance.

Findings of Fact

On October 26, 2017, Quaker Manor, a forty (40) unit multifamily property located in Portsmouth, Rhode Island, (“the Property”), owned by Respondents Quaker and PHA, and managed by Respondent Coastal Housing, converted from a Public Housing project to a Multifamily Housing project with a \$1,233,000.00 mortgage insured by HUD’s Federal Housing Administration (FHA) pursuant to Sections 207 and 223(f) of the National Housing Act. 12 U.S.C. §§ 1713, 1715(n). The conversion was accomplished through HUD’s Rental Assistance Demonstration (“RAD”) program, which allows select Public Housing projects to convert public housing assistance to long-term project-based Section 8 Housing Assistance Payment (“HAP”) contracts and to use mortgage proceeds to make much needed capital improvements to the project. See Consolidated and Further Appropriations Act of 2012, Pub L. No. 112-55, 125 Stat. 552.

In order to be insured under the National Housing Act, the public housing authority must form a single asset company that is the sole owner of the HUD-insured and subsidized Multifamily Housing project. 24 C.F.R. § 200.5(a)(1) (2011). As a result, Respondent PHA formed Respondent Quaker for this purpose and established it as its sole member. As part of the conversion, the Property submitted a HUD form 9839-B certifying the Management Agent, Respondent Coastal Housing, had an identity-of-interest relationship with the Owner, Respondent Quaker. In exchange for receiving the benefits of a loan insured against default by the Secretary, Respondent Quaker executed a Regulatory Agreement with the Secretary on October 26, 2017 (the “Regulatory Agreement”).

Paragraph 18(a) of the Regulatory Agreement requires that “within ninety (90) days, or such period established in writing by HUD, following the end of each fiscal year, Borrower shall prepare a financial report for the Borrower’s fiscal year... and provide such report to HUD in such form and substance as specified by HUD...” See also 24 C.F.R. § 5.801(c)(2) (2021); 24 C.F.R. § 200.36 (2021). The fiscal year for the Property ends on December 31st. Each audited financial statement for the Property is required to be filed electronically. See 24 C.F.R. § 5.801(b)(2) (2021).

On April 11, 2018, the Owner requested and was granted approval by HUD to submit the audited financial statement for fiscal year end December 31, 2017, at the time of submission of the audited financial statement for fiscal year end December 31, 2018. The audited financial statement for fiscal year end December 31, 2018 was due on March 31, 2019. On March 14, 2019, the Owner requested and was denied approval for an extension to submit the audited financial statement for fiscal year end December 31, 2018. The audited financial statement for fiscal year end December 31, 2019, was due on September 30, 2020. Since converting to a Multifamily Housing project, the mortgagor has never timely filed an audited financial statement with HUD.

On January 12, 2022, after the Complaint was filed, the Owner submitted its first audited financial statements to HUD. The audited financial statements were for fiscal years ending December 31, 2017 and December 31, 2018. The Owner’s submission of audited financial statements for fiscal years ending December 31, 2017 and December 31, 2018 were late.

The Owner’s failure to timely file audited financial statements for Fiscal Years 2017 through 2019 subjects Respondents to civil money penalties pursuant to 12 U.S.C. §§ 1735f-15(c)(1)(A)(i); (c)(1)(A)(iv); (c)(1)(A)(v); and (c)(1)(B)(x). On January 6, 2021, Petitioner provided written notice, as required by 24 C.F.R. § 30.70, that it was considering seeking a civil money penalty against Respondents Quaker, PHA, and Coastal Housing for their failure to properly file the required audited

financial statements for fiscal years 2017, 2018, and 2019. On January 12, 2021, all three pre-penalty notices were delivered as confirmed by certified mail receipt cards returned to HUD (hereinafter the pre-penalty notices will be referred to as “the notices”).

Pursuant to 24 C.F.R. § 30.70(a)(4), the notices stated that Respondents had an opportunity to reply in writing within thirty (30) days after receipt of the notice. The Respondents failed to respond in writing to the notices within the required time frame. On or around March 4, 2021, HUD received a letter from Respondent PHA seeking to explain its failure to timely respond to the notices and seeking to provide other justifications for its non-compliance with program regulations, including a change in its Board of Directors. The letter, however, failed to address the factors set forth in 24 C.F.R. § 30.80 and failed to provide an argument in opposition to the imposition of a civil money penalty as required by the notices. See 24 C.F.R. § 30.75(a). On or around February 5, 2021, Respondent Coastal Housing forwarded a letter from their auditors to HUD. In a subsequent phone call, HUD informed Respondent Coastal Housing that the letter from their Auditors was insufficient to qualify as a response because it did not address the issues in the Pre-penalty Notice.

After the expiration of the thirty-day period, the Director of HUD’s Departmental Enforcement Center, New York Satellite Office (the “Director”), as the Secretary’s designee, reviewed the allegations against the Respondents and Respondents’ earlier written responses. In determining the amount of the civil money penalty and whether the violations were material, the Director considered the following factors set forth in 24 C.F.R. § 30.80: (1) the gravity of Respondents’ offense; (2) Respondents’ history of prior offenses; (3) Respondents’ ability to pay the penalty; (4) the injury to the public; (5) the benefits received by Respondents; (6) the extent of potential benefit to others; (7) the deterrence of future violations; (8) the degree of Respondents’ culpability; (9) any injury to tenants; and (10) other matters as justice may require.

(1) Gravity of the Offense

The failure to submit audited financial statements significantly impacts HUD’s ability to determine the financial health of the Property or take timely action to address financial non-compliance. Timely audited financial statements are necessary for HUD to assess the management of the Property. Mismanagement of the Property could divert resources needed to improve the quality of housing received by tenants and increases the risk that Respondents will default on its FHA-insured mortgage. Should the Property default on the mortgage, HUD would be liable for an insurance claim for any of the lender’s losses on the \$1,233,000.00 note—depleting the Mutual Mortgage Insurance Fund and diminishing HUD’s ability to promote additional housing for the American public. Furthermore, Respondents’ repeated refusal to timely file audited financial statements, after being made aware of the offense by HUD and given opportunities to correct, constitutes a deliberate violation of the Regulatory Agreement. Compliance with the Regulatory Agreement is not voluntary, and three deliberate violations harms HUD’s ability to effectively monitor the risk of default on the Property’s mortgage.

(2) History of prior offenses

Although the project has no history of prior offenses with respect to non-filing of required audited financial statements, it has never timely complied with its obligation to furnish the Secretary with audited financial statements.

(3) Liabe Party's ability to pay the penalty

HUD possesses no information suggesting Respondent Coastal Housing is unable to pay the proposed penalty. Respondent Coastal Housing has not responded to repeated notifications from the Court, including two Orders to Show Cause, and failed to respond to the Complaint. Respondent has the burden to establish its inability to pay the penalty because that information is within their knowledge and control. In the matter of Lord Commons Apartments, LLC, HUDALJ No. 05-060-CMP (July 20, 2007).

(4) Injury to the public

Respondents' failure to file audited financial statements prevents HUD from determining whether the Property is being properly managed and whether it can meet its financial obligations. This impairs HUD's ability to assess the risk to the insurance fund. If Project funds were used in any unauthorized or inappropriate way, the public has been harmed. As custodians of Project funds, Respondents have a duty to safeguard such funds. Without the audited financial statements, HUD cannot determine whether Respondents have breached this duty through mismanagement. Instead, HUD can only determine that Respondents have breached their contractual obligation to timely file the audited financial statements. If HUD's contractual partners are permitted to remain in breach of contractual provisions to which they have agreed, the relationship between HUD and its contractual partners, Respondents and others, are threatened. If HUD is unable to penalize those who violate the terms of their agreements, HUD's contractual position and credibility are undermined in all its relationships, including that with the general public.

(5) Benefits received by the Respondents

Respondents directly benefit from their deliberate failure to timely file the audited financial statements by retaining the funds that would otherwise be used to hire an independent public accountant or a certified public accountant to conduct the audit. The failure to timely file the required audited financial statements suggests mismanagement of the Property.

(6) Extent of potential benefit to other persons

Other participants may benefit from the failure to timely file the audited financial statements due to mismanagement of the Property's operating funds. The extent to which such mishandling may benefit others cannot be known without timely audited financial statements.

(7) Deterrence of future violations

Here, the Respondents' failure to timely file the audited financial statements is not the result of mistake, recklessness, or confusion. Rather, it arose from repeated conscious decisions to violate the terms of the Regulatory Agreement. HUD represents that Respondents Quaker and the PHA informed HUD that the management of the Property changed in 2021 and that the new management is bringing the project into compliance. HUD also represents that despite new management working towards bringing the project into compliance, it took over a year to produce the audited financial statements for fiscal years ending December 31, 2017 and December 31, 2018, and the audited financial statement for fiscal year end December 31, 2019 was submitted late.

Though new management was able to file the audited financial statements, this does not excuse the deliberate violation of provisions of the Regulatory Agreement. HUD-insured mortgagors must not form the belief that they can fail to comply with the statutory, regulatory, and contractual obligations they agreed to assume without suffering significant penalties. The penalties assessed must be greater than the benefits enjoyed from the failure to comply with the law and contractual obligations. This is especially so for violations, like the failure to timely submit audited financial statements, that may severely restrict HUD's ability to monitor and enforce other regulatory requirements. Otherwise, mortgagors may believe that it pays to breach their HUD agreements and violate the law, and the penalties will have no deterrent value.

(8) Degree of the violator's culpability

As per the January 17, 2023, Settlement Agreement entered into between HUD, Respondent Quaker and Respondent PHA, Respondent Coastal Housing bears substantial responsibility for the Property's failure to file the 2017, 2018, and 2019, annual audited financial statements.

(9) Injury to tenants

RAD conversions allow for formerly Public Housing projects to make much needed capital improvements to the project. See Consolidated and Further Appropriations Act of 2012, Pub L. No. 112-55, 125 Stat. 552. Without timely information provided in the audited financial statements, HUD cannot provide the requisite oversight to ensure that Respondents are using the project funds in a way that provides tenants with decent, safe, and sanitary housing. Tenants receiving Section 8 assistance are low-income individuals and families. Any errors in appropriation of funds concealed by Respondents' failure to timely file required reports may contribute to a decline in the quality of housing and may result in a default with potentially devastating consequences for the tenants who are already in vulnerable positions.

Conclusion and Order


The Court finds Respondent Coastal Housing is in default due to its failure to answer the *Complaint* or otherwise respond to this matter. As a result, the allegations set forth in the *Complaint* are deemed to be admitted. The admitted facts support HUD's claims that Respondent Coastal Housing knowingly and materially committed violations pursuant to 12 U.S.C. §§ 1735f-15(c)(1)(A)(i); (c)(1)(A)(iv); (c)(1)(A)(v); and (c)(1)(B)(x) as documented in the *Complaint* by failing to properly and timely file annual financial statements as set out above.

HUD's request for civil money penalties against Respondent Coastal Housing in the amount of \$148,432.00 (less \$20,000 recovered from Respondents Quaker and PHA) for their failure to file annual audited financial statements for fiscal years 2017, 2018, and 2019, is appropriate.

The Government's Motion for Default Judgment is **GRANTED**. Respondent Coastal Housing shall pay to the Secretary of HUD a civil money penalty of \$128,432, which is immediately due and payable by said Respondent Coastal Housing, without further proceedings.

This Order constitutes the final agency action, pursuant to 24 C.F.R. § 26.41(b). Under 24 C.F.R. § 26.41(c), these penalties are immediately due and payable by Respondents without further proceedings, except as described below. Respondents are prohibited from using Project income to pay these penalties.

So, Ordered.



J. Jeremiah Mahoney
Chief Administrative Law Judge

Notice of appeal rights. This Order constitutes the final agency action under 24 C.F.R. § 26.41(b). This decision may be appealed to the appropriate United States court of appeals within 20 days pursuant to 12 U.S.C. § 1735f-15(e).