

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

In the Matter of:

ADAMS HOUSE OF TAMPA, INC, AND
GEORGE EDWARD FUSIA, JR.,

Respondents.

23-AF-0092-CM-002

September 21, 2023

ORDER OF DISMISSAL

This matter arose from a *Complaint* filed by the U.S. Department of Housing and Urban Development (“HUD”) against Adams House of Tampa, Inc. (“Adams House”) and George Edward Fusia, Jr. (“Fusia”) (collectively, “Respondents”) seeking civil money penalties pursuant to 12 U.S.C. § 1735(c)(1)(A)(i) and (iv). HUD claims Respondents knowingly failed to timely file the audited financial statements for the fiscal year 2019 and 2020; as a result, a civil money penalty of \$59,316.00 per year should be assessed for a total of \$118,632.00.

Adams House of Tampa is a corporation and the owner of Alafia Village Assisted Living (the “Property” or “Project”), an assisted living facility in Brandon, Florida. Respondent Fusia is an Officer of Respondent Adams House of Tampa Inc. The Property was refinanced with the proceeds of a loan insured by the Secretary under Section 223(f) of the National Housing Act (“NHA”), 12 U.S.C. § 1701 et. seq.

HUD now moves for summary judgment. However, after careful consideration, the Court will dismiss this matter for lack of jurisdiction, for the reasons set discussed below.

I. APPLICABLE LAW

HUD may impose a civil money penalty on the mortgagor of a property that includes five or more living units and that has a mortgage insured, coinsured, or held pursuant to the NHA. 12 U.S.C. § 1735f-15(c)(1)(A)(i). HUD may also impose a civil money penalty on any officer or director of a corporate mortgagor of such property. 12 U.S.C. § 1735f-15(c)(1)(A)(iv).

A civil money penalty may be imposed upon a party liable under the statute that knowingly and materially take the following action:

Failure to furnish the Secretary, by the expiration of the 90-day period beginning on the first day after completion of each fiscal year (unless the Secretary has approved an extension of the 90-day period in writing), with

a complete annual financial report, in accordance with requirements prescribed by the Secretary, including requirements that the report be –

- (I) based upon an examination of the books and records of the mortgagor;
- (II) prepared and certified to by an independent public accountant or a certified public accountant (unless the Secretary has waived this requirement in writing); and
- (III) certified to by the mortgagor or an authorized representative of the mortgagor.

See 12 U.S.C. § 1735f-15(c)(1)(B)(x).

HUD may impose a civil money penalty of up to \$59,316.00 for each violation. 12 U.S.C. § 1735f-15(c). 24 C.F.R. § 30.45(g).

Before imposing such penalties, HUD must give the liable parties notice and an opportunity for a hearing on the record. Id. § 1735f-15(d)(1)(B). Congress directed the Secretary of HUD to establish standards and procedures governing the imposition of civil money penalties and providing the opportunity for a hearing on the record. Id. § 1735f-15(d)(1)(B). The Secretary has duly promulgated such regulations in part 30 of title 24 of the Code of Federal Regulations. See 24 C.F.R. part 30.

HUD’s regulations provide that, upon making a determination to seek a civil money penalty, HUD must issue a complaint notifying the respondent of HUD’s determination and of the respondent’s “right to submit a response in writing, within 15 days of receipt of the complaint, requesting a hearing on any material fact in the complaint, or on the appropriateness of the penalty sought.” 24 C.F.R. § 30.85(b)(4). The regulations characterize the 15-day deadline to request a hearing as mandatory, stating that the deadline is “required by statute” and “cannot be extended.” Id. Indeed, 12 U.S.C. § 1735f-15(d)(2) mandates:

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination.

12 U.S.C. § 1735f-15(d)(2). The hearing request must be submitted to this Court. 24 C.F.R. § 30.90(a). Service by electronic means is presumed complete upon electronic transmission. See id. § 26.30(b).

If a respondent has timely requested a hearing, “the respondent shall serve upon HUD and file with the Office of Hearing and Appeals a written answer to the complaint within 30 days of receipt of the complaint, unless such time is extended by the administrative law judge for good cause. The answer shall include the admission or denial of each allegation of liability made in the complaint; any defense on which the respondent intends to rely; any reasons why the civil money penalty should be less than the amount sought in the complaint, based on the factors

listed at § 30.80; and the name, address, and telephone number of the person who will act as the respondent's representative, if any.” 24 C.F.R. § 30.90(b).

II. PROCEDURAL HISTORY

On May 12, 2023, HUD served the *Complaint* on the Respondents via email and simultaneously filed it with the Court.¹ A hard copy of the *Complaint* was also served on Respondents by UPS, two-day mail on May 12, 2023. The *Complaint* notified Respondents of the right to request a hearing no later than 15 days following receipt of the *Complaint*, *i.e.*, by May 30, 2023, and to file an answer to the *Complaint* within 30 days, *i.e.*, by June 12, 2023, in accordance with 24 C.F.R. § 30.90. The *Complaint* also warned Respondents that failure to respond might result in imposition of the penalty in the amount sought by HUD. The 15 and 30-day deadlines elapsed without this Court receiving any hearing request, answer, or other correspondence from Respondents.

Respondents filed a combined *Hearing Request and Appeal Petition* (“*Answer*”) received by this Court on June 22, 2023.²

On August 25, 2023, HUD filed its *Motion for Summary Judgment* (“*Motion*”) with the Court via electronic mail and served both Respondents via electronic mail at Respondent Fusia’s email address. HUD moved the Court to impose civil money penalties jointly and severally totaling \$118,632.00 against Adams House and Respondent Fusia for failing to timely file the audited annual financial reports for years 2019 and 2020. Respondents did not file a response to HUD’s *Motion*.

III. DISCUSSION

Pursuant to the NHA and HUD’s implementing regulations, the deadline for Respondent to request a hearing in this matter was May 30, 2023, fifteen days after receiving the *Complaint* providing notice of opportunity for a hearing. See 12 U.S.C. § 1735f-15(d)(2); see also 24 C.F.R. § 30.90(a). Respondents did not submit a request for a hearing until June 22, 2023, 23 days past the 15-day deadline to request a hearing. In fact, Respondents submitted a combined *Hearing Request and Answer* on June 22, 2023, which was late for both filings.³

This Court no longer has jurisdiction over this matter at all under the NHA, given that Respondents failed to request a hearing before the expiration of the 15-day statutory deadline. See id. If the respondent misses the deadline, the validity and basis of the penalty are not in dispute before the ALJ, whose only role is to dismiss any commenced action. This is consistent with the applicable regulation, subsection (a) of § 30.90:

¹ Respondent Adams House of Tampa, Inc. was served via email to the Officer George E. Fusia, Jr.

² The *Hearing Request and Answer* were dated June 20, 2023.

³ The untimeliness of the *Answer* (Appeal Petition) does not impact the Court’s jurisdiction.

If the respondent desires a hearing before an administrative law judge, the respondent shall submit a request for a hearing to HUD and the Office of Administrative Law Judges no later than 15 days following receipt of the complaint, as required by statute. **This mandated period cannot be extended.**

24 C.F.R. § 30.90(a) (emphasis added).

The appropriate course of action when a respondent misses the 15-day deadline in a civil money penalty case is to dismiss any proceedings before the Administrative Law Judge because the penalty proposed in the complaint has already become final by operation of the governing statute and the Court lacks authority to adjudicate the matter. See Sunset Plaza, LLC v. United States HUD, 60 F.4th 692, 697 (D.C. Cir. 2023) (affirming In re Ralston GA LLC and PF Holdings LLC, No. 21-JM-0180-CM-007 (HUDOHA Oct. 25, 2021) and In re PF Sunset Plaza LLC, No. 21-AF-0131-CM-006 (HUDOHA Oct. 7, 2021)).

Here, both Respondents were presented with notice of the opportunity for a hearing, but failed to comply with the statutory deadline to request a hearing. As such, the penalty proposed in the *Complaint* has become final under 12 U.S.C. § 1735f-15(d)(2) and 42 U.S.C. § 1437z-1(c)(2)(A) as to both Respondents.

CONCLUSION AND ORDER

For the foregoing reasons, the Court concludes that the penalty proposed in the *Complaint* has already become final under 12 U.S.C. § 1735f-15(d)(2) and that the Court lacks authority to adjudicate this matter.⁴ Accordingly, HUD's Motion for summary judgment is **DENIED** as moot. This proceeding is hereby **DISMISSED**.

So **ORDERED**,
ALEXANDER
FERNANDEZ-
PONS

Digitally signed by: ALEXANDER
FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-
PONS C = US O = U.S. Government OU
= Department of Housing and Urban
Development, Office of the Secretary
Date: 2023.09.21 11:39:18 -04'00'

Alexander Fernández-Pons
Administrative Law Judge

⁴ As the penalty proposed in the *Complaint* has been declared the final agency action, this matter may be appealed within 20 days to the appropriate court of appeals of the United States in accordance with 12 U.S.C. § 1735f-15(e)(1).