

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

In the Matter of:

CHURCH GARDEN APARTMENTS, LTD.,
MICOU HOMES, LIMITED,
SHELBY APARTMENTS NO. 1, LTD.,
C.H.R.C., INCORPORATED,
D&J DEVELOPMENT, INC.,
DEBORAH MAULDIN, and
MARY MORGAN,

Respondents.

23-AF-0107-CM-004

July 18, 2023

**ORDER GRANTING MOTION TO DISMISS, IMPOSING CIVIL MONEY
PENALTIES, AND DISMISSING THE COMPLAINT AS TO CHRC**

On May 26, 2023, the U.S. Department of Housing and Urban Development (“HUD”) issued a *Complaint for Civil Money Penalties* (“Complaint”), which was simultaneously filed with this Court, seeking to impose civil money penalties against Respondents pursuant to 12 U.S.C. § 1735f-15 and 42 U.S.C. § 1437z-1 as implemented by 24 C.F.R. part 30.

On July 6, 2023, HUD filed a *Motion to Dismiss for Lack of Jurisdiction*, because Respondents failed to request a hearing by the statutory deadline. In support of its Motion, HUD failed to submit evidence establishing that Respondents had been served. Therefore, on July 7, 2023, the Court ordered HUD to produce evidence of service of the *Complaint* on Respondents.

On July 12, 2023, HUD filed a *Government’s Response to Order to Submit Proof of Service*. Therein, HUD submitted proof of service for all Respondents with the exception of C.H.R.C. Incorporated (“CHRC”).¹ HUD withdrew its *Complaint* as against CHRC for insufficient service and asked that the Court dismiss without prejudice the matter with regard to CHRC and render no judgment of liability against the same. HUD also renewed its request that the Court issue an order dismissing this proceeding as to the other Respondents and ruling that

¹ Respondents Church Garden Apartments, Ltd. And Micou Homes, Ltd. were served with the Complaint on May 30, 2023, at 109 Executive Drive, Suite 3, Madison, MS 39110. Shelby Apartments, No. 1, Ltd., D&J Development, Inc., Debra Mauldin and Mary Morgan were all served with the Complaint on May 30, 2023, at 203 Charles Street, Petal, Mississippi 39465.

each Respondent is liable for the penalty proposed in the May 26, 2023 *Complaint*, because all failed to request a hearing by the statutory deadline.

Under the governing statutes and implementing regulations, the deadline for all Respondents except CHRC to request a hearing in this matter was June 14, 2023, fifteen days after receiving the *Complaint* providing notice of opportunity for a hearing. See 12 U.S.C. § 1735f-15(d)(2); 42 U.S.C. § 1437z-1(c)(2)(A); 24 C.F.R. § 30.90(a). 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 *PF Sunset Plaza, LLC v. U.S. Dep't of Hous. and Urb. Dev.*, 60 F.4th 691, 697 (D.C. Cir. 2023) (affirming *In re Ralston GA LLC and PF Holdings LLC*, No. 21-JM-0180-CM-007 (HUDALJ Oct. 25, 2021) and *In re PF Sunset Plaza LLC*, No. 21-AF-0131-CM-006 (HUDALJ Oct. 7, 2021)).

Here, all Respondents except CHRC 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 all Respondents except CHRC. Accordingly, HUD's *Motion to Dismiss for Lack of Jurisdiction* is **GRANTED** as to Respondents Church Garden Apartments, Ltd.; Micou Homes, Limited; Shelby Apartments No. 1, Ltd.; D&J Development, Inc.; Deborah Mauldin; and Mary Morgan, who are liable for the penalties proposed in the May 26, 2023 *Complaint* at paragraphs 98 – 102.²

Further, the *Complaint* against CHRC is **DISMISSED** without prejudice and no judgment as to liability is rendered as to CHRC.

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: 2023.07.18 13:44:55 -04'00'

Alexander Fernández-Pons
Administrative Law Judge

² As the penalty proposed in the *Complaint* has been declared the final agency action against all Respondents except CHRC, 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) and 42 U.S.C. § 1437z-1(d).