

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

In the Matter of:

JMM OF STATESVILLE, INC.,
a North Carolina corporation, and

JOHN M. MILLER,
President, Individually,

Respondents.

23-AF-0164-CM-005

November 22, 2023

ORDER OF DISMISSAL

On September 5, 2023, the United States Department of Housing and Urban Development (“HUD”) issued a *Complaint for Civil Money Penalties* (“Complaint”) seeking to impose civil money penalties totaling \$165,590.00 against Respondents pursuant to 12 U.S.C. § 1735f-15 as implemented by 24 C.F.R. part 30 due to Respondents’ alleged knowing and material violations of a Regulatory Agreement for Multifamily Housing Projects they had entered into with HUD.

HUD served the *Complaint* and accompanying exhibits upon Respondents via electronic mail on September 5, 2023, and simultaneously filed a copy with this Court as required under 24 C.F.R. § 30.85(b). HUD also served hard copies of the *Complaint* upon Respondents via United Parcel Service (“UPS”) on September 7, 2023.

The *Complaint* advised Respondents that, to contest HUD’s allegations, they were required to submit a written request for a hearing before an Administrative Law Judge. The *Complaint* further advised that the hearing request was due within fifteen days of Respondents’ receipt of the *Complaint*, a deadline which could not be extended, and that failure to timely submit a hearing request and answer would result in the proposed civil money penalties becoming immediately due and payable. Despite this warning, to date, Respondents have not requested a hearing in this matter, nor have they appeared before the Court or communicated with the Court in any way.

On November 7, 2023, HUD filed a *Motion to Dismiss for Lack of Jurisdiction* asking the Court to dismiss this matter based on Respondents’ failure to request a hearing within fifteen days. Respondents have not offered any response to this motion.

Under the governing statutes and implementing regulations, the deadline for Respondents to request a hearing in this matter was September 20, 2023, fifteen days after receiving the *Complaint* providing notice of opportunity for a hearing. See 12 U.S.C. § 1735f-15(d)(2) (“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.”); 24 C.F.R. § 30.90(a). The appropriate course of action when a respondent misses the fifteen-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. & Urban Dev., 60 F.4th 692 (D.C. Cir. 2023) (affirming *In re Ralston GA 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)).

Because Respondents were placed on notice of the opportunity for a hearing, but failed to submit a hearing request by the statutory deadline, the penalty proposed in the *Complaint* has become final as against Respondents by operation of 12 U.S.C. § 1735f-15(d)(2). Accordingly, HUD’s *Motion to Dismiss for Lack of Jurisdiction* is **GRANTED**.¹

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: 2023.11.22 14:03:15 -05'00'

Alexander Fernández-Pons
Administrative Law Judge

¹ 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).