

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

In the Matter of:

NB-EDEN TIC 1, LLC, a Delaware Limited Liability Company;
NB-EDEN TIC 2, LLC, a Delaware Limited Liability Company;
NB-EDEN TIC 3, LLC, a Delaware Limited Liability Company;
NB-EDEN TIC 4, LLC, a Delaware Limited Liability Company;
NB-EDEN TIC 5, LLC, a Delaware Limited Liability Company;
NB-EDEN TIC 6, LLC, a Delaware Limited Liability Company;
NB-EDEN TIC 8, LLC, a Delaware Limited Liability Company;
NB-EDEN TIC 9, LLC, a Delaware Limited Liability Company;
ESTELLE TENNBAUM; the MARIANNE S. PERAKIS TRUST;
MARIANNE S. PERAKIS as the Sole Trustee of the Marianne S.
Perakis Trust; AIR WAY PARTNERS V, a California General
Partnership; the EDWARD A LADRECH SEPARATE PROPERTY
TRUST; EDWARD A. LADRECH as the Sole Trustee of the Edward
A. Ladrech Trust; LESLEY HITCHINGS; WILLIAM HITCHINGS;
NEIL GAROFANO; the DENIS F. & MARY R. O'CONNOR TRUST
UDT DATED APRIL 9, 1997; DENIS O'CONNER as Trustee of the
Denis F. & Mary R. O'Connor Trust UDT dated April 9, 1997;
MARY O'CONNOR as Trustee of the Denis F. & Mary R.
O'Connor Trust UDT dated April 9, 1997; ELIZABETH KEYS
MACMANUS; and NELSON PARTNERS PROPERTY MANAGEMENT,
INC., a California Corporation,

Respondents.

23-JM-0093-CM-003

October 15, 2024

ORDER OF DISMISSAL

On May 18, 2023, the United States Department of Housing and Urban Development (“HUD”) issued a complaint seeking to impose civil money penalties totaling \$118,632 against 32 respondents pursuant to 12 U.S.C. § 1735f-15(c) as implemented by 24 C.F.R. part 30. On November 29, 2023, HUD filed an amended complaint (“*Complaint*”) adding two respondents and dropping one of the originally named respondents. Eleven respondents have been dismissed from this proceeding on the basis of settlement, leaving HUD to pursue the *Complaint* against the remaining 22 respondents listed in the caption of this order (“Respondents”).

The *Complaint* advised the Respondents that, to contest HUD’s allegations, each Respondent must submit a written request for a hearing before an Administrative Law Judge within fifteen days of receiving the *Complaint*. See 12 U.S.C. § 1735f-15(d)(2); 24 C.F.R.

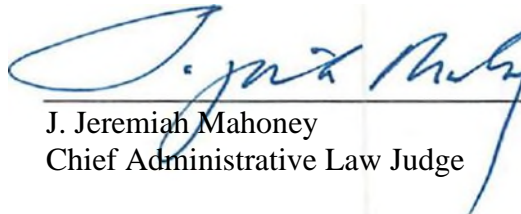
§ 30.90(a). The *Complaint* further warned that this mandatory deadline could not be extended and that, if the Respondents failed to timely submit a hearing request, HUD would move for default judgment and the proposed penalties would become immediately due and payable. However, to date, none of the Respondents have requested a hearing, filed an answer to the *Complaint*, or otherwise appeared before this Court in any capacity.

On May 3, 2024, HUD filed a *Motion for Default Judgment* against the Respondents based on their failure to request a hearing or answer the *Complaint*. This Court issued an *Order to Submit Proof of Service* noting that the motion did not definitively establish effectuation of service on all the Respondents. Thereafter, HUD filed documentation establishing that all the Respondents had been served with the *Complaint* via email or Federal Express (FedEx) between November 29, 2023, and December 5, 2023. The Respondents have not responded to the *Motion for Default Judgment* or HUD's subsequent filing.

Under the governing statutes and implementing regulations, the deadline for each Respondent to request a hearing in this matter was 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). All the Respondents were served with the *Complaint* on or before December 5, 2023, meaning that the latest date any Respondent could request a hearing was December 20, 2023. However, none of the Respondents has filed any such request. Notwithstanding HUD's request for entry of default judgment, 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 Administrative Law Judge 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 the Respondents were placed on notice of the opportunity for hearing, but failed to request a hearing by the statutory deadline, the penalty proposed in the *Complaint* has become final as against the Respondents by operation of 12 U.S.C. § 1735f-15(d)(2). Accordingly, this proceeding is hereby **DISMISSED**.¹

So **ORDERED**,



J. Jeremiah Mahoney
Chief Administrative Law Judge

¹ As the imposition of the penalty proposed in the *Complaint* has become 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).