

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.,
BASSFIELD APARTMENTS, LTD.,
COLLINS APARTMENTS, LTD.,
CENTREVILLE APARTMENTS, LTD.,
AZALEA ESTATES APARTMENTS, LTD.,
D & J DEVELOPMENT, INC.,
DEBRA MAULDIN, AND
MARY MORGAN,

Respondents.

24-JM-0091-CM-003

February 15, 2024

ORDER OF DISMISSAL

This matter arose from a *Complaint* filed by the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”) against Church Garden Apartments, Ltd., Micou Homes, Limited., Shelby Apartments No. 1, Ltd., Bassfield Apartments, Ltd., Collins Apartments, Ltd., Centreville Apartments, Ltd., Azalea Estates Apartments, Ltd., D & J Development, Inc., Debra Mauldin, and Mary Morgan (collectively, “Respondents”) seeking civil money penalties pursuant to 12 U.S.C. § 1735f-15, 42 U.S.C. § 1437z-1, and 24 C.F.R. Part 30. HUD claims Respondents knowingly failed to timely file audited financial statements for the fiscal year ending December 31, 2022, and/or pass physical inspections regarding their HUD-subsidized properties. As a result, HUD seeks combined civil money penalties totaling \$698,084.

Respondent Debra Mauldin is a general partner of Respondents Church Garden Apartments, Ltd., owner of Church Garden Apartments; Micou Homes, Limited, owner of Herdy Micou Homes for the Elderly; Shelby Apartments No. 1, Ltd., owner of Shelby Apartments; Bassfield Apartments, Ltd., owner of Bassfield Apartments; Collins Apartments, Ltd., owner of Collins Apartments; Centreville Apartments, Ltd., owner of Centreville Apartments; and Azalea Estates Apartments, Ltd., owner of Azalea Estates Apartments. Respondent Mary Morgan is a general partner of Church Garden Apartments, Ltd., and Micou Homes, Limited. Respondent D & J Development is the management agent for each of the aforementioned entities with the exception of Micou Homes, Limited.

Church Garden Apartments and Herdy Micou Homes were financed with mortgage loans insured by HUD under Section 221(d)(4) pursuant to Section 223(a)(7) of the National Housing Act (“NHA”). The Secretary states that the Respondents associated with those properties provided no audited financial statements for the fiscal year ending December 31, 2022, and without those statements, HUD cannot determine, *inter alia*, whether those Respondents made the required payments on the loans. HUD also states the properties failed to meet physical conditions set out in 24 C.F.R. § 5.703.

The other properties received project-based assistance under Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, and pursuant to a Housing Assistance Payments (“HAP”) contract. Each HUD-subsidized property is required to be in decent, safe, and sanitary condition. HUD states that none of the properties were in such condition.

On January 26, 2024, HUD filed a *Motion to Dismiss for Lack of Jurisdiction* (“*Motion*”) seeking to dismiss this matter because the Court lacks jurisdiction. The Court agrees for the reasons discussed below.

I. APPLICABLE LAW

The Secretary 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. See 12 U.S.C. § 1735f-15(c)(1)(A)(i). Specifically, a civil money penalty may be imposed upon a party liable under the statute that knowingly and materially took 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.

12 U.S.C. § 1735f-15(c)(1)(B)(x). A penalty of up to \$59,316 may be imposed for each violation. See § 1735f-15(c)(2) and 24 C.F.R. § 30.45(g). HUD may also impose the civil money penalty on, *inter alia*, any general partner of a limited partnership mortgagor and any agent employed to manage the property that has an identity of interest with the general partner of a partnership mortgagor. See 12 U.S.C. § 1735f-15(c)(1)(A).

In addition, the Secretary may impose a civil money penalty on the owner of a property that receives project-based assistance under Section 8 of the United States Housing Act of 1937, for the knowing and material breach of a HAP contract based on “failure to provide decent, safe,

and sanitary housing pursuant to section 8.” 42 U.S.C. § 1437z-1(b)(2)(A). HUD may impose a civil money penalty of up to \$46,102 for each violation. See 42 U.S.C. § 1437z-1(b)(3) and 24 C.F.R. § 30.68(c). Similar to the above, HUD may impose the penalty on a general partner of a partnership owner of such a property, or an agent employed to manage the property that has an identity of interest with the general partner of a partnership owner of the property. See 42 U.S.C. § 1437z-1(b)(1).

Before imposing such penalties, Congress directed the Secretary to establish standards and procedures governing the imposition of civil money penalties and providing the opportunity for a hearing on the record. See § 1735f-15(d)(1). The Secretary has duly promulgated such regulations in Part 30 of Title 24 of the Code of Federal Regulations.

HUD’s regulations provide that, upon determining to seek a civil money penalty, HUD must issue a complaint notifying the respondent of HUD’s decision 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.” See § 30.90(a)(1). Indeed, Congress mandates a 15-day deadline to request a hearing from receipt of the notice of opportunity for a hearing in civil money penalties against both multifamily mortgagors and Section 8 owners. See 12 U.S.C. § 1735f-15(d)(2) and 42 U.S.C. § 1437z-1(c)(2)(A). The hearing request must be submitted to this Court. See 24 C.F.R. § 30.90(a).

II. PROCEDURAL HISTORY

On December 29, 2023, HUD served the *Complaint* on Respondents for whom HUD had email addresses. HUD also simultaneously filed the *Complaint* with the Court. On January 2, 2024, HUD additionally served the *Complaint* on all Respondents via Federal Express.¹ See 24 C.F.R. § 26.30(b). The *Complaint* notified Respondents of the right to request a hearing no later than 15 days following receipt of the *Complaint*.² See 24 C.F.R. § 30.85(b). The *Complaint* also warned Respondents that the 15-day deadline was not extendable and failure to respond might result in the imposition of the penalty amount sought by HUD. None of the Respondents filed a request for a hearing. Consequently, on January 26, 2024, HUD filed its *Motion* with the Court via email. HUD served Respondents via Federal Express and email (pending the availability of Respondents’ email addresses).

¹ The Certificate of Service HUD filed with its *Complaint* states that service via Federal Express was accomplished on December 29, 2023, while the present *Motion* states the same was accomplished on January 2, 2024.

² In the present *Motion*, HUD lists January 18, 2024, as the hearing request deadline. However, the deadline for those Respondents who first received the *Complaint* by email would have been January 13, 2024. See 24 C.F.R. § 30.90(a).

III. DISCUSSION

Pursuant to the NHA and HUD's implementing regulations, the deadline for Respondents to request a hearing in this matter was either January 13, 2024, or January 18, 2024, fifteen (15) days after first receiving the *Complaint* providing notice of opportunity for a hearing.

As none of the Respondents submitted a request for a hearing before the expiration of the 15-day statutory deadline, this Court no longer has any jurisdiction over this matter except to order it dismissed. Thus, the validity and basis of the penalties are not in dispute before the undersigned, whose only role now is to dismiss any commenced action. This is consistent with the applicable regulation, subsection (a) of § 30.90:

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 Hearings and Appeals 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).

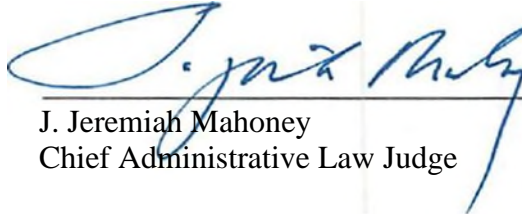
The appropriate course of action when a respondent misses the 15-day deadline in a civil money penalty case is to dismiss any proceedings before the Court because the penalty proposed in the *Complaint* has already become final by operation of the governing statute and the Court lacks authority to adjudicate the matter. See Adams House of Tampa, Inc., HUDOHA No. 23-AF-0092-CM-002 (Sept. 21, 2023); Sunset Plaza, LLC v. United States HUD, 60 F.4th 692, 697 (D.C. Cir. 2023) (aff'g Ralston GA LLC and PF Holdings LLC, HUDOHA No. 21-JM-0180-CM-007 (Oct. 25, 2021) and PF Sunset Plaza LLC, HUDOHA No. 21-AF-0131-CM-006 (Oct. 7, 2021)).

Here, each of the Respondents was presented with notice of the opportunity for a hearing but failed to comply with the statutory deadline to request the same. As such, the penalties proposed in the *Complaint* became final under 12 U.S.C. § 1735f-15(d)(2) and/or 42 U.S.C. § 1437z-1(c)(2)(A).

CONCLUSION AND ORDER

For the foregoing reasons, the penalties proposed in the *Complaint* have become final under 12 U.S.C. § 1735f-15(d)(2) and 42 U.S.C. § 1437z-1(c)(2)(A), and this Court lacks authority to adjudicate this matter. Accordingly, the Secretary's *Motion to Dismiss for Lack of Jurisdiction* is granted. This proceeding is hereby dismissed.

So **ORDERED**,



J. Jeremiah Mahoney
Chief Administrative Law Judge

Notice of appeal rights. This Order constitutes the final agency action under 12 U.S.C. § 1735f-15(d)(2). This matter may be appealed within 20 days to the appropriate United States court of appeals in accordance with 12 U.S.C. § 1735f-15(e)(1).