

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF ADMINISTRATIVE LAW JUDGES

U.S. Department of Housing and  
Urban Development,

Plaintiff,

v.

Frank Munton,

Defendant.

HUDALJ 92-1851-PF

Decided: September 10, 1992

Frank Munton, *pro se*

Georjan Overman, Esquire  
For the Government

Before: ALAN W. HEIFETZ  
Chief Administrative Law Judge

**INITIAL DECISION**

**Background**

On April 28, 1992, plaintiff, the U.S. Department of Housing and Urban Development ("the Department" or "HUD") issued a Complaint seeking an assessment of \$52,000 and a civil penalty of \$65,000 against Frank Munton ("Defendant"), pursuant to the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812 ("the Act"), and HUD's implementing regulations, 24 C.F.R. Part 28. The Complaint notified Defendant of his right to request a hearing by filing an answer, and that failure to answer the Complaint within 30 days would result in imposition of the maximum amount of penalties and assessments without right to appeal. 24 C.F.R. § 28.13(b)(4). Defendant received the Complaint by certified mail on May 8, 1992, but never filed an answer.

On August 11, 1992, this tribunal notified Defendant of its intent to issue an Initial Decision on or after September 1, 1992.<sup>1</sup> The notice informed Defendant that the Decision would assume the facts as alleged in the Department's Complaint as true, and that if such facts established liability, the Decision would impose the maximum amount of assessments and liabilities allowable under the Act. *See* 24 C.F.R. § 28.19(b) and (c). Defendant has yet to answer or to demonstrate that any extraordinary circumstance has prevented him from filing an answer. *See* 24 C.F.R. §§ 28.19(d) and (e). Accordingly, this matter is ripe for decision.

### Findings of Fact

1. Frank Munton, an individual residing at [REDACTED] Garden Grove, California 92644, was a licensed real estate broker doing business as Acorn Realty Investment/Richland Investments Corporation, located in Moreno Valley, California.

2. In August of 1988, Defendant submitted 13 sales contracts, HUD Forms 9548, to HUD on behalf of [REDACTED] Jackson for the purchase of 13 HUD owned, single family properties that were to be sold through HUD's Property Disposition Program.

3. The 13 properties are located in California at the following addresses and are identified by the following HUD case numbers:

	<u>Property</u>	<u>HUD Case No.</u>
1.	[REDACTED] Fontana	[REDACTED]
2.	[REDACTED], La Quinta	[REDACTED]
3.	[REDACTED], Rialto	[REDACTED]
4.	[REDACTED] La Quinta	[REDACTED]
5.	[REDACTED] San Bernardino	[REDACTED]
6.	[REDACTED] Riverside	[REDACTED]
7.	[REDACTED], Joshua Tree	[REDACTED]
8.	[REDACTED] Twentynine Palms	[REDACTED]

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<sup>1</sup>Defendant refused delivery of the Notice that was sent by certified mail, return receipt requested.

- 9. [REDACTED] Mira Loma [REDACTED]
- 10. [REDACTED], Indio [REDACTED]
- 11. [REDACTED]  
San Bernardino [REDACTED]
- 12. [REDACTED]  
Desert Hot Springs [REDACTED]
- 13. [REDACTED]  
Twentynine Palms [REDACTED]

4. Defendant also submitted Earnest Money Certifications ("Certifications") to HUD for each of the 13 properties. The Certifications contain the following language:

I hereby certify that I have collected from the above purchaser(s), in connection with their offer to purchase the above property, an Earnest Money deposit in the amount of \$2,000. This amount will be held and disbursed only as directed by HUD or an authorized agent (Escrow, Loan Packager, etc.) of HUD.

5. The 13 HUD Forms 9548 state that "the purchaser has paid \$2,000 as earnest money to be applied on the purchase price [and to] be held by Acorn Realty in Trust Account til [sic] notified by HUD as to its disposition."

6. HUD accepted the 13 sales contracts submitted by Defendant on behalf of Ms. Jackson.

7. Ms. Jackson subsequently defaulted on the 13 contracts, and HUD demanded the earnest money as damages.

8. Defendant never collected any earnest money deposits from Ms. Jackson, nor has he paid the earnest money to HUD.

9. HUD sustained losses of \$2,000 on each of the 13 contracts.

**Discussion**

The Program Fraud Civil Remedies Act provides that any person submitting a claim to the Government:

that the person knows or has reason to know . . . is false, fictitious, or fraudulent [or] includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent . . . shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,000 for each such claim.

31 U.S.C. § 3802(a)(1); 24 C.F.R. § 28.5(a). Moreover, "such person shall also be subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim. . . ." 31 U.S.C. § 3802(a)(1); 24 C.F.R. § 28.5(a)(5). A claim includes any "submission made to . . . HUD for . . . property, services, or money (including money representing grant, loans, insurance, or benefits)," or any "submission made to . . . HUD which has the effect of decreasing an obligation to pay or account for property, services, or money."

24 C.F.R. § 28.3. The Act is only applicable, however, if the claim is not in excess of \$150,000. 31 U.S.C. § 3803(c)(1).

The Forms and accompanying documentation constitute "claims" under the Act. The Forms are submissions that Defendant made to the Department for the purpose of effecting the buyer's purchase of the properties. *See* 24 C.F.R. § 28.3 for the definition of "claim." Defendant knew when he submitted the claims that he held no earnest money deposits, and therefore, he knew that the submissions were false. Accordingly, the Defendant is liable for a civil penalty of \$5,000 for each false claim, a total penalty of \$65,000.<sup>2</sup>

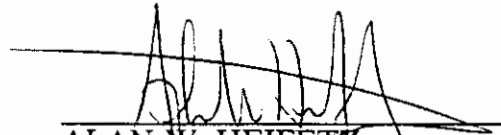
Defendant is also liable for an assessment of \$52,000, double the amount of the \$2,000 earnest money deposits that were to have been escrowed and paid as liquidated damages under the 13 separate contracts of sale. *See* 31 U.S.C. § 3802(a)(1). The earnest money deposits were intended to ensure HUD's legitimate expectation of receiving sums certain should the buyer default on the contracts. When the buyer did, in fact, default on the 13 contracts, HUD was entitled to a payment of \$26,000. Because of Defendant's false statements, HUD suffered a loss of \$26,000, and the buyer was unjustly enriched by that amount. Defendant is liable for the maximum assessment of twice that amount. *Id.*

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<sup>2</sup>Although certain factors ordinarily may be considered in determining the amount of penalties, *see* 24 C.F.R. § 28.61, Defendant's failure to file an answer requires imposition of the maximum amount of penalties and assessments allowable under the Act, *see* 24 C.F.R. § 28.19.

**DETERMINATION**

Defendant's false statements in the HUD Forms 9548 and the accompanying Certifications violate 24 C.F.R. § 28.5. Accordingly, Defendant is liable under 31 U.S.C. § 3802 for a civil penalty of \$65,000 and an assessment of \$52,000.



ALAN W. HEIFER  
Chief Administrative Law Judge

**NOTICE**

Defendant has the right:

- (1) within thirty (30) days of the issuance of this initial decision, to file with this tribunal a motion to reopen on the grounds that extraordinary circumstances prevented his failure to file a timely answer to the Department's Complaint; and
- (2) to file a notice of appeal with the Secretary or Deputy Secretary of HUD within fifteen (15) days after this tribunal denies any motion to reopen.