

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

UNITED STATES DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT,

Petitioner,

v.

CRAIG FORNETT,

Respondent.

HUDALJ 12-M-004-PF-3
OGC Case No. 12-3805-PF

April 13, 2012

DEFAULT JUDGMENT AND ORDER

The above-entitled matter is before this Court on a Motion for Default Judgment filed on March 8, 2012, by the United States Department of Housing and Urban Development (“HUD” or “the Government”). Craig Fornett (“Respondent”) did not file an answer to the Government’s Initial Complaint and has not filed any response to the present motion.¹ Accordingly, the Motion for Default Judgment will be **GRANTED**.

On November 18, 2011, HUD filed a Complaint seeking 18 civil penalties and assessments against Respondent pursuant to the Program Fraud Civil Remedies Act of 1986 (“PFCRA”), 31 U.S.C. §§ 3801-3812, and the applicable regulations at 24 C.F.R. Part 28. Respondent was served again on January 17, 2012. The Complaint alleged that Respondent knowingly submitted 18 false claims to the Mississippi Regional Housing Authority under the Housing Choice Voucher Program (“HCVP” or “Section 8”). (Complaint, p. 9, filed November 18, 2011.) The Complaint further alleged that Respondent knew the claims were supported by his materially false statements representing that he was not related to his Section 8 tenant, Kawaina M. Franklin (“Franklin”) or her two children, Jermaine and Champayne. (*Id.* at 6.) In fact, Respondent was married to Franklin, and was the father of Champayne. (*Id.*)

The Government now seeks 18 civil penalties and assessments totaling \$132,400. (Government’s Motion for Default Judgment (“Default Motion”), p. 3, filed March 8, 2012.) The Complaint notified Respondent of his right to appeal the imposition of the civil penalties and assessments by filing a written response within 30 days of the receipt of the Complaint, and that failure to file a response may cause HUD to file a Motion for Default Judgment with regard to

¹ A Respondent is allowed 10 days to respond to a default motion. 24 C.F.R. § 26.41(a) (2010). Allowing for three days mail time both ways, Respondent’s reply should have been received on or before March 24, 2012.

the allegations in the Complaint. (Compl., at pp. 28-29.) Additionally, this Office issued a letter to Respondent informing him that “[I]f you do not submit a timely response, the Government may seek a default judgment, which would be immediately due and payable by you.” (Letter to Respondent, issued November 21, 2011.)

Applicable HUD regulations provide that a Respondent “may file a written response to the complaint . . . within 30 days of service of the complaint,” and that “[t]he response shall be deemed to be a request for a hearing.” 24 C.F.R. § 28.30(a) (2010); see also 31 U.S.C. § 3803(d)(2) (2006) (providing a 30-day statutory requirement for requesting a hearing); 24 C.F.R. § 26.38 (2010) (“The respondent’s response to the complaint shall be timely filed with the Docket Clerk and served upon the Government in accordance with the procedures set forth in the complaint.”).

HUD served Respondent with the Complaint on November 18, 2011, via certified mail. (Default Motion, p. 1.) However, because it was not clear that Respondent actually signed the receipt, the Government served Respondent personally on January 17, 2012. (*Id.*) Respondent’s Answer was therefore due no later than February 17, 2012. Government counsel contacted Respondent on February 23, 2012, to inform him that the Answer was overdue. (*Id.* at 2.) To date, Respondent has not filed an Answer.

Pursuant to 24 C.F.R. § 28.38, “If the respondent fails to submit a response to the Docket Clerk, then the Government may file a motion for a default judgment in accordance with § 26.41.” That regulation provides as follows:

24 C.F.R. § 26.41 Default.

(a) General. The respondent may be found in default, upon motion, for failure to file a timely response to the Government’s complaint. The motion shall include a copy of the complaint and a proposed default order, and shall be served upon all parties. The respondent shall have 10 days from such service to respond to the motion.

(b) Default order. The ALJ shall issue a decision on the motion within 15 days after the expiration of the time for filing a response to the default motion. If a default order is issued, it shall constitute the final agency action.

(c) Effect of default. A default shall constitute an admission of all facts alleged in the Government’s complaint and a waiver of respondent’s right to a hearing on such allegations. The penalty proposed in the complaint shall be set forth in the default order and shall be immediately due and payable by respondent without further proceedings.

24 C.F.R. § 26.41 (2010).

FINDINGS OF FACT

1. Respondent has failed to defend this action;
2. All facts alleged in HUD's Complaint, filed on November 18, 2011, are hereby found to have been admitted by Respondent;
3. HUD seeks imposition of 18 civil penalties in the amount of either \$6,500.00 or \$7,500.00 each², (totaling \$120,000.00), plus the maximum assessment of twice the amount of each of the 18 false claims (totaling \$12,400.00 after deducting the amount already repaid in restitution by Respondent, as ordered in a related state court criminal conviction); and
4. By regulation, the penalty proposed in the Complaint must be imposed.


CONCLUSIONS OF LAW

By reason of the facts admitted by Respondent in the Complaint, Respondent made or caused to be made 18 claims to the Mississippi Regional Housing Authority for HUD-funded Section 8 housing assistance payments. Respondent knew that such claims were false, and knew that such claims were supported by his materially false statements representing that he was not related to Franklin or her children, when in fact Franklin is Respondent's wife, and Champayne is Respondent's daughter. The allegations in the Complaint are legally sufficient to establish that Respondent is liable to HUD under the PFCRA and 24 C.F.R. Part 28. The 18 claims violated 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28.10(a)(1). HUD is therefore entitled to 18 civil penalties and 18 assessments, totaling \$132,400.00, pursuant to the PFCRA and 24 C.F.R. Part 28.

ORDER

Accordingly, the Government's Motion for Default Judgment is **GRANTED**. Respondent shall pay to HUD civil penalties and assessments in the total amount of \$132,400.00, which amount is due and payable immediately, without further proceedings.

So **ORDERED**,


J. Jeremiah Mahoney
Chief Administrative Law Judge (Acting)

Notice of Appeal Rights. This Order constitutes the final agency action. 24 C.F.R. § 26.41(b) (2010). Respondent may seek judicial review of this Order as provided in 31 U.S.C. § 3805 (2006).

² Prior to March 8, 2007, the maximum civil penalty for each claim was \$6,500. On or after that date, the civil penalty was \$7,500 for each false claim. See 31 U.S.C. § 3802(a)(1); 24 C.F.R. § 28.10(a)(1) (2003-2006); 72 Fed. Reg. 5588 (Feb. 6, 2007).