

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

UNITED STATES DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT,

Petitioner,

v.

LUSHION LEWIS AND LATRINA LEWIS,

Respondents.

15-JM-0104-PF-016

October 26, 2015

DEFAULT JUDGMENT AND ORDER

This case arises from the *Complaint* filed by the United States Department of Housing and Urban Development (“HUD” or “Department”) against Lushion Lewis and Latrina Lewis (“Respondents”), whereby HUD sought to impose civil penalties and an assessment under the Program Fraud Civil Remedies Act of 1986 (“PFCRA”), 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28.

The *Complaint* alleges the Respondents, in violation of requirements of the Housing Choice Voucher Program (“Voucher Program”), submitted 10 false claims totaling \$6,670 for rental assistance housing vouchers. As authorized by the PFCRA, HUD seeks a judgment imposing an assessment and penalties totaling \$69,000.

Legal Framework

Under the PFCRA, liability may be imposed on a person who makes, presents, submits, or causes to be made, presented or submitted, a claim to the Department that the person knows or has reason to know is for payment for the provision of property or services which the person has not provided as claimed. *See* 31 U.S.C. § 3802(a)(1)(D). A claim includes any request, demand, or submission made to a recipient of property, services, or money from an authority or to a party to a contract with an authority for property or services if the United States provided any portion of the funds for the purchase of such property or services. *See* 31 U.S.C. § 3801(a)(3)(B)(i)(II).

Under the PFCRA, the maximum civil penalty for false, fictitious, or fraudulent claims made on or after March 8, 2007, is \$7,500 per claim. 24 C.F.R. § 28.10(a). In addition to a civil penalty, an assessment of twice the amount of the claim(s) may be imposed on a person if the Department has made any payment or transferred property on the claim. 31 U.S.C. § 3802(a)(1) and (3); 24 C.F.R. § 28.10(a)(6).

Program Background

The program involved in this case is the Voucher Program, through which HUD pays subsidies to public housing agencies (“PHAs”), which in turn pay subsidies to rental housing owners/landlords so that eligible tenants can afford decent, safe and sanitary housing. 24 C.F.R. § 982.1(a).

Process

HUD filed the *Complaint* in this matter on July 30, 2015. Pursuant to 24 C.F.R. § 28.30(b), Respondents must submit a written response to a PFCRA complaint, which shall be deemed to be a request for a hearing, to HUD and the Office of Hearings and Appeals no later than thirty days following service of a complaint. If a respondent does not timely file a request for hearing in response to the Department’s complaint, the Department is authorized to file a motion for default judgment, attaching to it a copy of the complaint, as set forth at 24 C.F.R. §§ 28.30(b) and 26.41(a). 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. 24 C.F.R. § 26.41(c).

According to the U.S. Postal Service, the *Complaint* was successfully delivered to Lushion Lewis’ home in Blue Island, IL on August 3, 2015. The *Complaint* was also successfully delivered to Latrina Lewis’s home on August 3, 2015. Respondents did not file an answer.

Having not received any answer from Respondents, the Government moved for default judgment on September 14, 2015.

The Court mailed an *Order to Show Cause* to Respondents’ respective homes on September 22, 2015. The *Order* designated October 22, 2015, as the deadline for Respondents to submit a response to HUD’s *Motion for Default Judgment*.

As of the date of this *Default Judgment and Order*, Respondents have made no submissions to the Court or otherwise appeared in this matter.

Findings of Fact

1. The factual findings stated in the preceding “Process” section are incorporated herein by reference. In the absence of a timely answer by Respondents, the facts alleged in the *Complaint* are deemed admitted, and summarized below

2. Respondent Lushion Lewis entered into a Housing Assistance Payment (“HAP”) contract with the Housing Authority of Cook County (“HACC”) to participate in the Housing Choice Voucher Program (“HCVP”) as a landlord and receive monthly subsidy payments in

exchange for leasing his property at 1828 High Street, Blue Island, IL (“HAP Unit”) to a claimedly eligible tenant, Respondent Latrina Lewis.¹

3. As part of his request to enter into this HAP contract, Lushion Lewis submitted a Request for Lease Approval on or about December 28, 1998, in which he asserted that he had no familial relationship with Latrina Lewis. Latrina Lewis also executed this form.

4. The Request for Lease Approval form included the following notation, just below where Respondents indicated that they did not have a familial relationship with each other: “[HACC] cannot approve a lease if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the tenant’s household unless that household member is disabled.”

5. Beginning on or about June 1, 1999, and continuing thereafter on the first of each month, HACC paid Lushion Lewis a monthly subsidy on behalf of Latrina Lewis. Lushion Lewis’ HAP contract was renewed on an annual basis, and HACC continued making subsidy payments to him on behalf of Latrina Lewis until and including June 1, 2010.²

6. Upon information and belief, Latrina Lewis moved out of the HAP Unit to another rental unit subsidized by HACC in or about June or July 2010. As of the date of the *Complaint*, Latrina Lewis continued to participate in the HCVP as a subsidized tenant for HACC.

7. In November 2014, HUD contacted Lushion Lewis to inquire about his participation in the HCVP, and he confirmed that Latrina Lewis was his grandchild. In March 2015, HUD contacted Latrina Lewis, and she also verified that Lushion Lewis was her grandparent.

8. Between September 2009 and June 2010, HACC paid Lushion Lewis \$6,770 in ten subsidy payments on behalf of Latrina Lewis’ rental of the HAP Unit.³

9. As an HCVP landlord, Lushion Lewis received monthly payments for leasing a property to an ineligible family member in violation of 24 C.F.R. § 982.306(d) and in violation of his certification in his HAP contract with HACC.

10. Because he was not entitled to receive subsidy payments from HACC, Lushion Lewis’ monthly receipt of funds to which he was not entitled under the HAP contract was false or fraudulent and is actionable under the PFCRA. 31 U.S.C. § 3802(a)(1)(A); *see also* 24 C.F.R. § 28.10(a)(1)(i).

¹ The original HAP contract that Lushion Lewis executed in 1999 did not include the owner’s certification regarding prohibited familial relationships or the provision regarding an owner’s entitlement to any payment only upon full compliance with the HAP contract. For him, the earliest HAP contract in HUD’s possession that contains those provisions was effective April 1, 2005.

² For reasons unknown to HUD, HACC apparently did not make subsidy payments to Lushion Lewis during April 2004, between April and September 2007, and between April and July 2008.

³ Due to the passage of the six-year statute of limitations applicable to commencing a hearing under PFCRA, 31 U.S.C. § 3808(a), HUD seeks no relief for payments and claims made prior to September 1, 2009.

11. As a party to Lushion Lewis' HAP contract, wherein HUD funds were provided as the monthly subsidy payments, HACC was acting as "an agent, fiscal intermediary, or other entity...acting for or on behalf of such authority, recipient, or party." 31 U.S.C. § 3801(b)(3).

12. Had HACC or HUD known that Lushion Lewis was the grandparent of his tenant, Latrina Lewis, HACC would not have paid, and HUD would not have allowed HACC to pay, monthly subsidy payments to Lushion Lewis.

13. Additionally, by agreeing to lease the HAP unit despite her ineligibility to do so, Latrina Lewis caused the submission of Lushion Lewis' false claims. Therefore, she is also liable under the PFCRA. 31 U.S.C. § 3802(a)(1)(A)-(B); *see also* 24 C.F.R. § 28.10(a)(1)(i)-(ii).

14. Respondents knew or had reason to know that Lushion Lewis' claims were false inasmuch as: a) Lushion Lewis' HAP contract contained a certification, as early as 2005, that he did not have a prohibited familial relationship with Latrina Lewis; and b) both Respondents explicitly indicated to HACC in 1998 that they did not have a familial relationship when, in fact, they did. Thus, Respondents are both liable under the PFCRA pursuant to 31 U.S.C. § 3802(a)(1)(A)-(B).

Penalties and Assessments

Due to their violations of 31 U.S.C. § 3802(a)(1)(A)-(B) and 24 C.F.R. § 28.10(a)(1)(i)-(ii), Respondents are liable for a civil penalty up to \$7,500 for each of the ten subsidy payments Lushion Lewis accepted, or \$75,000 in total civil penalties.

Pursuant to the PFCRA and 24 C.F.R. Part 28, Respondents are also liable for an assessment of twice the amount of claims ($\$6,670 \times 2 = \$13,340$). In total, Respondents are liable for up to \$88,340 in civil penalties and an assessment.

In its prosecutorial discretion, HUD has determined to seek a lesser civil penalty in the amount of \$5,566 for each of the Respondents' actionable false claims.

Respondent's knowing and material submission of false statements in support of false claims to HUD in connection with the Voucher Program warrant HUD's proposed penalty finding Respondent liable for 10 civil penalties totaling \$55,660, plus an assessment of twice the amount of the falsely claimed amounts ($\$6,670 \times 2 = 13,340$), for a total award of \$69,000 pursuant to the PFCRA, 31 U.S.C. § 3802(a), and 24 C.F.R. § 28.10. *See also*, 24 C.F.R. § 26.41(c) ("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.").

Order

1. Respondents have not responded to the Complaint, the Motion for Summary Judgment, or the Order to Show Cause. Accordingly, Respondents are hereby found in **DEFAULT**, and the Department's *Motion for Default Judgment* will be **GRANTED**.

2. Based upon the foregoing findings of fact, both Respondents are liable for ten false claims made between September 2009 and June 2010. 24 C.F.R. § 28.10(e).

3. As this order results from a default, the penalty proposed in the *Complaint* must be set forth in the default order. Respondents are jointly and severally liable to pay to HUD civil penalties and assessments as computed above, totaling \$69,000. Such amount is due and payable immediately without further proceedings.⁴

So **ORDERED**.



J. Jeremiah Mahoney
Chief Administrative Law Judge (Acting)

NOTICE OF APPELLATE RIGHTS. This Order constitutes the **FINAL AGENCY ACTION**. 24 C.F.R. § 26.41(b). Judicial review may be available in accord with applicable statutory procedures and the procedures of the appropriate federal court. 24 C.F.R. § 26.54; 31 U.S.C. § 3805.

⁴ 24 C.F.R. § 26.41(c). "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."