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. JANELLE L. THOMPSON, and PEGGY L. THOMPSON, Respondents.	16-AF-0058-PF-015 August 11, 2016

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

Currently before this Court are the *Government's Motion for Summary Judgment* (Motion) filed July 11, 2016, and *Respondents' Cross Motion for Summary Judgment* (Cross Motion) filed August 2, 2016.

In the *Motion,* the United States Department of Housing and Urban Development (HUD) asks this Court to find Janelle L. Thompson and Peggy L. Thompson (collectively "Respondents") liable for the submission of false claims to the Housing Authority of the City of San Buenaventura as identified in Counts one through twenty-seven of the *Complaint* filed on March 23, 2016.

In Respondents' *Cross Motion*, Respondents seek an order denying HUD's request for relief on the basis that Respondents have already been ordered to pay restitution to HUD and requiring Respondents to pay civil penalties and assessments would impermissibly permit a double recovery for HUD. In the alternative, Respondents claim that if HUD is able to recover penalties and assessments, the relief granted should not be in the amount sought in the *Complaint.*

Applicable Law

Standard of Review. Pursuant to 24 C.F.R. § 26.32(l), this Court is authorized to "decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact." The Court may exercise its discretion in application of Rule 56 of the Federal Rules of Civil Procedure. 24 C.F.R. § 26.40(f)(2).

Summary judgment is proper where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Fed. R. Civ. P. 56(a). A "genuine" issue exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 249. Additionally, a fact is not "material" unless it affects the outcome of the suit. Id.

Summary judgment is a "drastic device" because, when exercised, it diminishes a party's ability to present its case. Selva & Sons, Inc. v. Nina Footwear, Inc., 705 F.2d 1316, 1323 (Fed. Cir. 1983). Accordingly, the moving party bears the burden of demonstrating the absence of any material issues of fact. See Anderson, 477 U.S. at 256. Rule 56 provides that when a party asserts that a fact cannot be genuinely disputed, that party must: (i) cite to materials in the record; or (ii) show the cited materials do not establish the presence of a genuine dispute. Fed. R. Civ. P. 56(c). In reviewing a motion for summary judgment, the Court's function is not to resolve any questions of material fact, but to ascertain whether any such questions exist. In re Beta Dev. Co., HUDBCA No. 01-D-100-D1, at *12 (February 21, 2002). Therefore, when the moving party has carried its burden under Rule 56(c), the nonmoving party may not rest upon mere allegations or denials, but must come forward with "specific facts showing that there is a *genuine* issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986) (emphasis added) (citing Fed. R. Civ. P. 56(e)).

Program Fraud Civil Remedies Act. The Act places liability on a person for making, presenting, or submitting, or causing to be submitted, a claim that the person knows is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent. 31 U.S.C. § 3802(a)(1)(B). A claim includes any request, demand, or submission made to a recipient of property, services, or money from an authority for the payment of money if the United States provided any portion of the money requested or demanded. 31 U.S.C. § 3801(a)(3)(B)(ii). A liable person may is subject to a maximum civil penalty of $7,500 per claim. 72 Fed. Reg. 5586 (Feb. 6, 2007). In addition, a liable person may be subject to an assessment of twice the amount of the claims if HUD has made any payment on the claim. 37 U.S.C. § 3802(a)(1) and (3); 24 C.F.R. § 28.10(a)(6).

Housing Choice Voucher Program. The Section 8 Program is a rental subsidy program established by HUD pursuant to Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437(f), to help low-income families afford decent, safe, and sanitary housing. 24 C.F.R. §§ 982.1(a)(1), 982.2, and 982.201(a)-(b). Generally, State or local public housing agencies administer the program using program funds provided by HUD. 24 C.F.R. §§ 982.1(a)(1), 982.4(b) (defining "public housing agency") and 982.151(a). Authorized public housing agencies use these funds to make housing assistance payments to the owners of housing units occupied by families admitted to the program. 24 C.F.R. §§ 982.1(a)(1), 982.4(b) (defining "housing assistance payment" and "owner"), 982.51, and 982.157(b)(1)(i).

Each authorized public housing agency determines which applicants may enter the program it administers, but may only provide assistance to families who meet criteria established by HUD. 24 C.F.R. §§ 982.54(b) and (d), 982.201 and 982.202(a) and (d). To be eligible for assistance, a Voucher Program applicant must be a "family." 24 C.F.R. § 982.201(a). HUD regulations define family as a single person or group of persons approved by the public housing

agency to reside in a housing unit with assistance under the program. 24 C.F.R. §§ 982.4(b) and 982.201(c). Eligible families admitted to the Voucher Program select and rent the housing unit they desire to occupy. 24 C.F.R. § 982.1(a)(2). However, under HUD regulations, "[t]he family must not own or have any interest in the unit." 24 C.F.R. § 982.551(j). In addition, program funds may not be applied to a housing unit if the owner is a parent, child, grandparent, grandchild, sister, or brother of any member of the participating family unless the PHA determines that a reasonable accommodation for a family member, who is a person with disabilities, is appropriate. 24 C.F.R. § 982.306(d).

If the public housing agency approves the family's desired unit for tenancy, the public housing agency enters into a contract with the unit's owner to make rent subsidy payments, called Housing Assistance Payments ("HAPs"), on behalf of the family. 24 C.F.R. §§ 982.1(a)(2), 982.4(b), and 982.162(a)(2). HUD regulations define a Voucher Program "tenant" as "[t]he person or persons (other than a live-in aide) who executed the lease and lessee of the dwelling unit." 24 C.F.R. § 982.4. The public housing agency must receive from the owner an executed copy of HUD's HAP contract and tenancy addendum in the form required by HUD prior to paying out housing assistance payments to the owner. 24 C.F.R. §§ 982.52, 982.162, and 982.305(c)(2). The HAP contract sets forth the amount of the monthly housing assistance payments to be paid by the public housing agency to the owner on behalf of the family. 24 C.F.R. § 982.305(e). The HAP contract also identifies the members of the household who are authorized by the PHA to reside in the contract unit and "if any new family member is added, family income must include any income of the additional family member." Id.

A family becomes a participant on the effective date of the first HAP contract executed by the public housing agency for the family. See 24 C.F.R. § 982.4(b) (defining "participant"). Subsequently, the public housing agency must periodically reexamine the family's composition, assets, income, and expenses for the purpose of making appropriate adjustments to the housing assistance payment. 24 C.F.R. § 982.516(a)(1)-(2). Such reexamination must be done annually under HUD regulations. 24 C.F.R. § 982.516(a). Each participant family must supply any information that the public housing agency or HUD determines is necessary in the administration of the Voucher Program. 24 C.F.R. § 982.551(b). For instance, tenants must identify, annually, all individuals who will be living in the assisted unit household and all household income and assets. 24 C.F.R. Part 5; 24 C.F.R. § 982.201 and 24 C.F.R. § 982.308(f)(ii).

Findings of Fact

Janelle L. Thompson is an individual who was, at all relevant times, a landlord receiving HUD-funded rental subsidies. Janelle Thompson is the daughter of Peggy L. Thompson, an individual who was, at all relevant times, a tenant receiving the benefit of HUD-funded rental subsidies. Janelle Thompson as landlord, and Peggy Thompson as tenant, sought and received HUD-funded rent subsidies under the Voucher program through the Housing Authority of the City of San Buenaventura, California (the Housing Authority) beginning on August 23, 2005.

On September 13, 2005, Janelle Thompson, as the property owner, and Peggy Thompson, as tenant, submitted a Request for Tenancy Approval, on form HUD 52517, to the Housing Authority for the property located at 1115 Badger Circle, Ventura, California (the Subject

Property). In the Request for Tenancy Approval, Respondents certified that the owner is not the child or grandchild of any member of the family. Respondents also signed and submitted an additional form created by the Housing Authority entitled, "Request for Tenancy Approval/Basic Information" in which Respondents denied being related.

On October 23, 2005, Janelle Thompson entered into a lease agreement with Peggy Thompson for the Subject Property. Then on November 3, 2005, Respondents entered into a HAP contract for Section 8 Tenant-Based Assistance Housing Choice Voucher Program (form HUD-52641) with the PHA, pursuant to which the PHA agreed to pay rental subsidies on behalf of Peggy Thompson, and her mother, Laura Bell Washington, the tenants, to Respondent Janelle Thompson, the landlord for rental of the Subject Property.[1] The HAP contract identified persons who would and could reside in the Subject Property as including Peggy Thompson and Laura Bell Washington.[2] The HAP contract also prohibited the owner/landlord from renting to her parent or grandparent absent specific request and approval. Neither Respondents, nor Laura Washington, sought from the PHA a determination, nor was a determination ever made by the PHA, that the Subject Property would provide a reasonable accommodation for a family member who is a person with disabilities.

Pursuant to the terms of the HAP contract, the PHA paid monthly rental subsidies to Janelle Thompson from 2005 to 2012 for an amount totaling $69,427.50. These monthly rental subsidies were paid to Janelle Thompson using HUD-funded money. Respondents made repeated declarations that they both knew were unlawful for them to obtain Section 8 rent subsidies without a specific waiver.

On April 4, 2013, Respondents were indicted on ten counts of violations of 18 U.S.C. §§ 371 (Conspiracy), 1001 (False Statements), and 1012 (Defrauding HUD) for their actions related to the Section 8 vouchers. On January 16, 2014, Peggy Thompson entered into a Plea Agreement by which she agreed to plead guilty of making false statements to HUD as charged in the superseding information. On February 7, 2014, Janelle Thompson entered into a Plea Agreement by which she agreed to plead guilty to four of the counts of violating 18 U.S.C. § 1012 (Defrauding HUD) as charged in the Indictment. The U.S. District Court, Central District of California sentenced both Respondents to probation and ordered them to pay restitution, jointly and severally, a total of $69,427.50.

Discussion

In the *Motion*, the Government seeks a finding that Respondents are liable for the submission of false claims to HUD as identified in Counts one through twenty-seven pursuant to the PFCRA. In addition, and as a result of such a finding, the Government requests a judgment in the amount of $247,456.00 in its favor.

[1] Laura Bell Thompson is the grandmother of Respondent Janelle Thompson.

[2] The original household included other family members. Those individuals were no longer part of the household during the relevant time period herein.

I. Respondents are precluded from challenging certain material facts based upon their plea agreements and criminal convictions.

The Government moves for a finding of liability for the false claims submitted to HUD identified in Counts one through twenty-seven. Each of the Counts relate to one allegedly false claim that was paid monthly to Respondents by the Housing Authority between the period of May 1, 2010 through July 1, 2012. The *Complaint* details the amount of each of the twenty-seven claims, which range between $830.00 and $862.00.

As noted, *supra*, a person is liable for making, presenting, or submitting a claim that the person knows is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent. 31 U.S.C. § 3802(a)(1)(B). A claim is any request, demand, or submission made to a recipient of property, services, or money from an authority for the payment of money if the United States provided any portion of the money requested or demanded. 31 U.S.C. § 3801(a)(3)(B)(ii). Each housing assistance payment made on behalf of a tenant constitutes a separate claim. HUD v. McGee, HUDALJ 12-F-026-PF-13 (Jun. 27, 2012).

As noted in the *Complaint* and admitted by Respondents in their respective Plea Agreements filed in the United States District Court for the Central District of California, Respondents knowingly made false statements to the Housing Authority. These false statements consisted of several certifications declaring that Respondents had no familial relationship with each other. The false statements were material because the Housing Authority would not have approved Peggy Thompson's tenancy in the Subject Property and would not have continued paying Janelle Thompson monthly rental benefits over the course of seven years. Accordingly, the Court finds that these material facts are not in dispute and that the Government is entitled to summary judgment on the issue of liability with the exception of Count one.

Count one involves a false claim made on May 1, 2010 in the amount of $830.00. Pursuant to the statute of limitations for PCFRA cases, a hearing must commence within six years of a claim being made. 31 U.S.C. § 3808(a). In this matter, the hearing is deemed to have commenced upon the issuance of the Court's *Notice of Hearing and Order* on May 5, 2016. See 31 U.S.C.A. § 3803(d)(2)(B); 24 C.F.R. § 26.45(d). In the *Opposition*, the Government acknowledges that Count one is untimely. Accordingly, the Court finds that the statute of limitations limits Respondents' liability to Counts two through twenty-seven.

II. Disputes as to material facts relevant to the civil penalty factors exist.

The Government seeks twenty-six civil penalties of $7,500 each and assessments of twice the amount of each false claim submitted by Respondents for a total award to the Government in the amount of $193,340.[3]

In response, Respondents claim that they were already ordered to pay restitution as part of their criminal proceedings, and to permit the Government to collect penalties and assessments

[3] Although the Government requested a $7,500 penalty for each false claim plus an assessment of $44,956 in the *Complaint*, the Government now asks for the assessments they seek to include a credit for "those amounts once the restitution payments are all made."

in this action "would be akin to permitting a double recovery and runs afoul of the Mandatory Restitution Act codified at 18 U.S.C. § 3363A." In addition, Respondents claim that summary judgment is inappropriate on the issue of the amount of penalties and assessments to be imposed.

The Court finds Respondents' first argument regarding the Mandatory Restitution Act to be without merit. The Court has consistently held that penalties and assessments may be imposed in cases where a criminal conviction already exists and in cases where restitution has already been ordered and paid. See HUD v. Abate, HUDOHA 15-JM-0047-PF-007 (Aug. 11, 2015); HUD v. Telfair, HUDOHA 14-JM-0074-PF-004 (Sept. 12, 2014); HUD v. Alvarez, HUDALJ 04-025-PF (Jun. 23, 2005). Moreover, the language of the Mandatory Restitution Act cited by Respondents in the *Cross Motion* states, "Notwithstanding any other provision of law, when sentencing a defendant ... the court shall order, *in addition to ... any other penalty authorized by law*, that the defendant make restitution to the victim of the offense ... ." As the Court has found Respondents liable for the twenty-six false claims alleged to have been made in the *Complaint*, the Government is authorized to seek penalties and assessments pursuant to PFCRA.

As to Respondents' second argument, the Court denies summary judgment in the Government's favor. PFCRA regulations explain that, "Because of the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need for deterrence, ordinarily twice the amount of the claim as alleged by the government, and a significant civil penalty, should be imposed." 24 C.F.R. § 28.40(b). The amount of penalties and assessments imposed must be based on a consideration of one or more of the factors listed at 24 C.F.R. § 28.40(b).

Respondents dispute that the factors set forth in 24 C.F.R. § 28.40(b) warrant the penalties and assessments sought by the Government. Notably, Respondents allege certain facts tending to show an inability to pay significant penalties. The Government claims it has not had an opportunity to seek discovery on such issues, but nevertheless attempts to refute Respondents claims.

Although the factors set forth at 24 C.F.R. 28.40(b) are not defenses against liability, they must be considered in imposing any penalty or assessment against Respondents. Moreover, the Court's consideration of any mitigating or aggravating circumstances must be stated in its decision to impose penalties and assessments. Id. As disputes exist as to the mitigating and aggravating circumstances regarding the amount of penalties and assessments, the Court finds that summary judgment must be denied on this issue.

Conclusion

Based on the foregoing, the Court finds that Respondents made twenty-six false claims enumerated in Counts two through twenty-seven of the *Complaint*. The amount of penalties and assessments to be imposed will be determined following a hearing on the issue.

Accordingly, it is **ORDERED** that:

(1) a hearing will be conducted on the issue of the amount of penalties and assessments to be imposed;

(2) the hearing date and remaining pre-hearing deadlines set forth in the *Notice of Hearing and Order*, dated May 5, 2016, are vacated so that the parties may engage in voluntary discovery regarding the mitigating and aggravating circumstances affecting the amount of penalties and assessments to be imposed; and

(3) a revised hearing and scheduling order will be set.

So **ORDERED**,

Alexander Fernández
Administrative Law Judge