

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.

RODNEY RUDOLPH, and VIVIANA JOHNSON,

Respondents.

19-AF-0093-PF-005

February 26, 2020

Appearances:

Miniard Culpepper, Jr., Esq.

Joel Foreman, Esq.

United States Department of Housing and Urban Development

Before: Alexander FERNÁNDEZ, United States Administrative Law Judge

INITIAL DECISION AND ORDER

The United States Department of Housing and Urban Development (“HUD” or “Government”) filed a *Complaint* on March 29, 2019, against Rodney Rudolph and Viviana Johnson (collectively “Respondents”). The *Complaint* alleges Respondents violated the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28, by making, or causing to be made, twenty-five false, fictitious, or fraudulent claims to the United States Department of Housing and Urban Development (“HUD” or “Government”). The Government seeks civil penalties and assessments totaling \$134,742 for the allegedly false claims that were made in connection with Respondents’ participation in HUD’s Section 8 Housing Choice Voucher (HCV) program.

On September 16, 2019, the Court issued the *Order Granting Partial Summary Judgment*, wherein the Court found that undisputed material facts exist and support a finding that Respondents were liable for making twenty-five false claims.¹ However, the Court declined to

¹ The Court’s findings of fact and rulings on summary judgment are incorporated into this *Initial Decision*. A copy of the *Order Granting Partial Summary Judgment* is also attached.

impose a penalty or assessment on summary judgment, without affording the parties the opportunity to address the factors to be considered in imposing any penalty or assessment against Respondents. Instead, the Court ordered that the matter should proceed to a hearing so that the Court could compile a complete record for consideration of the penalties and assessments that would be imposed.

The hearing proceeded as scheduled on September 24, 2019, in Washington, D.C. However, Respondents did not appear at the hearing.² The Court received testimony from Rebecca Brady, Director of HUD's Housing Voucher Management and Operations Division; and Kylan Dunn, Special Agent with HUD's Office of Inspector General. Following the conclusion of the hearing, the Government filed a *Post-Hearing Brief* on November 29, 2019. Respondents did not file a post-hearing brief or respond to the Government's brief.

Factual Findings

The Housing Choice Voucher Program is HUD's largest rental housing assistance program. The Program receives \$20 billion in funding, which HUD awards directly to local housing agencies, who in turn use those funds to provide vouchers to low income families seeking housing in the private market. Because of limited funding, HUD does not have the resources to provide housing assistance to all needy families. Families who apply for the program with their local housing agency are put on a waiting list to receive assistance. Needy families who remain on the waiting list are often forced to live in either substandard conditions or be homeless until they can receive assistance. Therefore, it is important to ensure that the limited resources appropriated by Congress is only used to help families that are eligible for the Program.

The Housing Authority of Prince George's County has an especially extensive waitlist for the Housing Choice Voucher Program. In fact, the last time the waitlist was opened for new applicants was 2015. That year, approximately 4,000 people applied to be on the waitlist. However, only two applicants were randomly selected from that pool to be added to the waitlist. Before that, the wait list had remained closed for eight years. To date, approximately 25,000 people are currently on the waitlist to receive a voucher for housing assistance.

Legal Conclusions on Summary Judgment

On summary judgment, the Court found that Respondents are liable for twenty-five violations of the Program Fraud Civil Remedies Act for fraudulently claiming rental subsidies for which they were not eligible due the fact that Respondents were impermissibly living in the unit together despite their status as landlord and tenant. The false claims ranged between \$1,185 and \$1,215.

² Respondents also failed to file exhibits and a prehearing statement in advance of the hearing date. In fact, after Respondent Rodney Rudolph's requested a hearing in May of 2019, Respondent Rudolph did not otherwise participate in this litigation nor did he comply with the Court's order compelling discovery.

PENALTIES AND ASSESSMENTS

The Government seeks twenty-five civil penalties of \$3,000 each, and assessments of twice the amount of each false claim paid to Respondent for a total award of \$134,742. Having concluded that Respondents' actions subject Respondents to penalties and assessments, the Court must consider whether the amounts requested by the Government are appropriate. HUD's regulation implementing the Program Fraud Civil Remedies Act, at 24 C.F.R. § 28.40(b), list the factors to be considered in determining the amount of penalties and assessments. They are:

(1) The number of false, fictitious, or fraudulent claims or statements; (2) The time period over which such claims or statements were made; (3) The degree of the respondent's culpability with respect to the misconduct; (4) The amount of money or the value of the property, services, or benefit falsely claimed; (5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of investigation; (6) The relationship of the civil penalties to the amount of the Government's loss; (7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs; (8) Whether the respondent has engaged in a pattern of the same or similar misconduct; (9) Whether the respondent attempted to conceal the misconduct; (10) The degree to which the respondent has involved others in the misconduct or in concealing it; (11) If the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude the misconduct; (12) Whether the respondent cooperated in or obstructed an investigation of the misconduct; (13) Whether the respondent assisted in identifying and prosecuting other wrongdoers; (14) The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions; (15) Whether the respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; (16) The need to deter the respondent and others from engaging in the same or similar misconduct; and [sic] (17) The respondent's ability to pay; and (18) Any other factors that in any given case may mitigate or aggravate the seriousness of the false claim or statement.

24 C.F.R. § 28.40(b).

1. The number of false, fictitious, or fraudulent claims or statements

As found on summary judgment, Respondents are liable for making, and causing to be made, twenty-five false claims under the PFCRA. In addition, false statements were made to support those false claims. This warrants a severe penalty.

2. The time period over which such claims or statements were made

The false claims for which Respondents are liable under PFCRA were made from June 1, 2013 through June 1, 2015. This demonstrates that Respondents' misconduct was not a fleeting lapse in judgement, but rather an extended fraud committed to impermissibly receive subsidies paid with HUD funds. A severe penalty is warranted.

3. The degree of the respondent's culpability

Respondents are wholly culpable. Respondents intentionally misled the Housing Authority of Prince George's County into paying HCV program subsidies to Respondent Rudolph on behalf of Respondent Johnson. They accomplished this by falsely certifying that the persons residing in the Subject Property would only include PHA-approved. Respondents' degree of culpability warrants a severe penalty.

4. The amount of money or the value of the property, services, or benefit falsely claimed

The twenty-five false claims paid to Respondent Rudolph from June 1, 2013 through June 1, 2015, totaled \$29,871.00. Although Respondents are only liable for the false claims made during this period due to the statute of limitations, there is evidence that Respondents' fraud began earlier than that, because Respondent Rudolph received subsidized rental payments for Respondent Johnson's tenancy as early as 2009. Therefore, this factor weighs strongly for a severe penalty.

5. The value of the Government's actual loss

There is little evidence in the record as to this factor. Agent Dunn testified that this case was with the Inspector General's office for roughly two years. However, the Court cannot speculate as to the amount of time or resources that were expended in the investigation or litigation of Respondents' violations. Accordingly, this factor neither aggravates nor mitigates the penalty to be imposed.

6. The relationship of the civil penalties to the amount of the Government's loss

HUD requests a \$3,000 penalty for each false claim. The false claims paid to Respondent Rudolph ranged between \$1,185 and \$1,215. HUD does not seek the maximum penalty for the false claims and \$3,000 per false claim is reasonable.

7. The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs

Participation in the HCV program is limited due to the amount of funding HUD can provide. Agent Dunn testified at length about the backlog of HCV applicants currently waiting to enter the program but are unable to do so due to insufficient funding. Respondents' fraud meant that another family likely went without suitable housing while waiting on the waitlist.

Moreover, Respondents' fraud harms the public trust in such government-funded programs. A severe penalty is warranted.

8. Whether the respondent has engaged in a pattern of the same or similar misconduct

There is no evidence in the record on this factor.

9. Whether the respondent attempted to conceal the misconduct

As noted *supra*, Respondents attempted to conceal their misconduct by submitting false certifications to HUD. Evidence in the record also suggest that Respondents were able to continue this fraud by taking steps to further hide the fact that Respondent Rudolph resided in the Subject Property. For instance, documents from the investigation suggest that Respondent Rudolph would stay at a hotel when HUD inspectors would inspect the Subject Property during an annual inspection. A severe penalty is warranted.

10. The degree to which the respondent has involved others in the misconduct or in concealing it

There is no evidence that Respondents involved others in the misconduct or in concealing it.

11. If the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude the misconduct

There is no evidence of this factor.

12. Whether the respondent cooperated in or obstructed an investigation of the misconduct

There is no evidence that Respondents cooperated or obstructed the investigation of the misconduct.

13. Whether the respondent assisted in identifying and prosecuting other wrongdoers

There is no evidence of other wrongdoers in this case.

14. The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions

There is no evidence relevant to this factor in the record.

15. Whether the respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly

Although Respondents pled guilty in a related criminal proceeding, there is no evidence that Respondents previously engaged in similar misconduct or dealt dishonestly with the federal or state government.

16. The need to deter the respondent and others from engaging in the same or similar misconduct

“Deterrence is a permissible and socially useful goal. Any penalty will theoretically provide deterrence.” In re Sundial Care Center, HUDALJ 08-055-CMP, 2009 HUD ALJ LEXIS 21 (HUDALJ Mar. 25, 2009).

The need to deter similar misconduct is great. The limited amount of funds for HCV program subsidies that can be provided to needy families is far exceeded by the demand. A severe sanction in this case, could help curtail the fraud in the program by deterring similar bad actors.

17. The respondent’s ability to pay

There is no evidence in the record that Respondent’s ability to pay should temper the civil penalties to be imposed. Respondents have the burden to establish that they are not able to pay the amount of penalty sought. In re Premier Invs. I, Inc., HUDALJ 06-022-CMP, 2007 HUD ALJ LEXIS 61, *15 (HUDALJ Jun. 29, 2007). And, a claim of inability to pay must be supported by documentary evidence. Grier v. United States HUD, 418 U.S. App. D.C. 185, 191 (2015) (“An ability to pay is presumed unless a party raises it as an affirmative defense and provides documentary evidence.”)

Here, Respondents did not provide any evidence demonstrating that they are unable to pay the civil penalties sought by HUD. Moreover, evidence presented by HUD demonstrates that Respondent Rudolph owns multiple real estate properties and Respondent Johnson is employed and earning an income. Respondent’s ability to pay, therefore, does not mitigate the amount of civil penalties sought by HUD. See Orfanos v. Dep’t of Health and Human Services, 896 F. Supp. 23, (D.D.C. 1995) (The penalty shall not be “disproportionate when compared to the petitioner’s total, rather than liquid, assets.”).

18. Any other factors that in any given case may mitigate or aggravate the seriousness of the false claim or statement

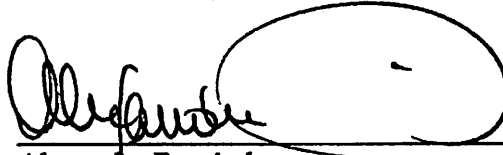
There are no other factors to consider.

Conclusion

Based on the foregoing, the Court finds that Respondents made twenty-five false claims enumerated in Counts one through twenty-five of the *Complaint*. Evidence in the record supports the imposition of civil penalties and assessments in the amount requested by HUD.

It is hereby **ORDERED** that Respondents, jointly and severally, shall pay in full \$134,742 in civil penalties and assessments to the HUD Secretary. These penalties and assessments are immediately due and payable by Respondents without further proceedings, except as described below.

So **ORDERED**,

A handwritten signature in black ink, appearing to read "Alexander Fernández", is written over a horizontal line. To the right of the signature is a large, empty oval shape.

Alexander Fernández
Administrative Law Judge

Attachments: *Order Granting Partial Summary Judgment*, issued September 16, 2019.

Notice of appeal rights. The appeal procedure is set forth in detail at 24 C.F.R. §§ 26.50, 26.52. This *Initial Decision and Order* may be appealed by any party to the HUD Secretary by petition for review. Any petition for review must be received by the Secretary within 30 days after the date of this *Initial Decision and Order*. An appeal petition shall be accompanied by a written brief, not to exceed 15 pages, specifically identifying the party's objections to the *Initial Decision and Order* and the party's supporting reasons for those objections. Any statement in opposition to a petition for review must be received by the Secretary within 20 days after service of the petition. The opposing party may submit a brief, not to exceed 15 pages, specifically stating the opposing party's reasons for supporting the ALJ's determination.

Service of appeal documents. Any petition for review or statement in opposition must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development
Attention: Secretarial Review Clerk
451 7th Street S.W., Room 2130
Washington, DC 20410
Facsimile: (202) 708-0019
Scanned electronic document: secretarialreview@hud.gov

Copies of appeal documents. Copies of any petition for review or statement in opposition shall also be served on the opposing party(s), and on the HUD Office of Administrative Law Judges.

Finality of decision. If not timely appealed, the *Initial Decision and Order* becomes the final agency decision as indicated in 24 C.F.R. § 26.50.

Judicial review of final decision. After exhausting all available administrative remedies, any party adversely affected by a final decision may seek judicial review of that decision in the appropriate United States Court of Appeals. A party must file a written petition in that court within 20 days of the issuance of the Secretary's final decision.