

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

United States Department of Housing
and Urban Development,

Plaintiff,

v.

Mary Marcantonio and
Marie Marcantonio Barry

Defendants.

HUDALJ 93-1905-PF
Decided: June 22, 1993

Mary Marcantonio and
Marie Marcantonio Barry, *pro se*

Bryan Parks Saddler, Esquire
For the Government

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

INITIAL DECISION UPON RECONSIDERATION

Background

On September 30, 1992, Plaintiff, the U.S. Department of Housing and Urban Development ("the Department" or "HUD") issued a Complaint seeking assessments totalling \$45,248.00 and civil penalties totalling \$155,000.00 against Mary Marcantonio and Marie Marcantonio Barry¹ ("Defendants"), 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 Defendants of their 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). Defendants were served with the Complaint on October 23, 1992 (*see id.* at § 28.15), but never filed an answer.

¹Ms. Barry is also known as Marie Marcantonio and Marie F. Marcantonio.

On January 5, 1993, this tribunal issued a notice setting forth its intent to issue an Initial Decision on or after February 1, 1993.² The notice stated 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 penalties allowable under the Act. See *id.* at § 28.19(b) and (c). Defendants failed to answer or to demonstrate that any extraordinary circumstance has prevented them from filing an answer. See *id.* at § 28.19(d) and (e). On February 17, 1993, this tribunal issued an Initial Decision. On March 5, 1993, HUD filed a Notice Of First Amended Complaint And Request for Reconsideration. Defendants did not seek to file any response. On March 31, 1993, this tribunal issued an Order, with the First Amended Complaint attached, which granted HUD's Request for Reconsideration and rescinded the Initial Decision; granted Defendants 30 days to file an answer to the Department's First Amended Complaint; and advised that Defendants' failure to file an answer shall result in the imposition of the maximum amount of penalties and assessments without right to appeal.³ Defendants filed no Answers to the First Amended Complaint. On May 10, 1993, this tribunal issued a Notice setting forth its intent to issue an Initial Decision Upon Reconsideration on or after June 11, 1993.⁴ The notice stated that the Decision would assume the facts alleged in the Department's First Amended Complaint as true, and that if such facts established liability, the Decision would impose the maximum amount of assessments and penalties allowable under the Act. See *id.* at § 28.19(b) and (c). Defendants have yet to answer or to demonstrate that any extraordinary circumstance has prevented them from filing an answer. See *id.* at § 28.19(d) and (e). Accordingly this matter is ripe for decision.

Findings of Fact

1. Mary Marcantonio is an individual residing at 30 Prospect Street, Gloucester, Massachusetts ("the Prospect Street Property").

²The Notice was sent by certified mail to Defendants at their last known address on January 5, 1993. The envelope in which the Notice was sent was returned unopened to the HUD Office of Administrative Law Judges on January 23, 1993. The envelope was stamped "returned to sender" and "unclaimed," and indicated that the post office had issued notices of the envelope's existence to Defendants on January 8, 1993, and January 13, 1993.

³The Order was sent by regular and certified mail to Defendants at their last known address on March 31, 1993. Neither the certified mail nor the return receipts nor the regular mail were returned.

⁴The Notice was sent by regular and certified mail to Defendants at their last known address on May 10, 1993. The envelopes in which the Notice was sent were returned unopened to the HUD Office of Administrative Law Judges. The envelopes were stamped "return to sender" and "unclaimed" and indicated that the post offices had issued notices of the envelopes' existence to Defendants on May 12, 1993, and May 17, 1993. The notices sent by regular mail were not returned.

2. Marie Marcantonio Barry is the daughter of Mary Marcantonio, and also resides at the Prospect Street Property.

3. On or about December 21, 1984, Ms. Marcantonio entered into a Housing Assistance Payments Contract ("HAP Contract") with the Gloucester Housing Authority ("the GHA") pursuant to Section 8 of the United States Housing Act of 1937. The purpose of the HAP Contract was to assist a low income tenant in leasing a decent, safe and sanitary dwelling. The HAP Contract specified that Ms. Marcantonio would lease a unit at the Prospect Street Property to Ms. Barry.

4. Under the HAP Contract, the monthly contract rent was \$386.00 and the tenant rent was \$0.00. As a result, the GHA, which used funds received from HUD, was obligated to make monthly payments in the amount of \$386.00 to Ms. Marcantonio.

5. Section 5(A)(2)(v) of the HAP Contract provides:

(A). The Owner shall be paid under this Contract on or about the first day of the month for which the payment is due. The Owner agrees that the endorsement on the check:

(2). shall be a certification by the owner that:

(v). the [tenant] and the PHA do not have any interest in the Contract unit (except in the case of housing assistance on behalf of the Owner of a manufactured home, to assist in leasing a manufactured home space). If the owner is a cooperative, the [tenant] may be a member of the cooperative....

6. The following warning appears directly below Ms. Marcantonio's signature on the HAP Contract:

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

7. On or about February 11, 1985, Ms. Marcantonio conveyed the Prospect Street Property to herself and Ms. Barry "as joint tenants and not tenants in common."

8. On or about December 17, 1985, Ms. Marcantonio executed the first of four Notifications of Adjustments in Contract Rent Based On: Annual Adjustment ("Notifications"). The four Notifications provided that "[a]ll other provisions of the [HAP] Contract and Lease agreement not modified by the notice shall remain the same." The GHA, which used funds received from HUD, was thereby obligated to make monthly payments to Ms. Marcantonio in the amounts set forth in the Notifications.

9. The December 17, 1985 Notification raised the monthly contract rent to \$411.00. (The monthly tenant remained at \$0.00). Pursuant to the December 17, 1985 Notification, Ms. Marcantonio received checks from the GHA in the amount of \$411.00 on or about November 1, 1986 and December 1, 1986.⁵

10. Ms. Marcantonio executed the second Notification on or about December 19, 1986. Pursuant to that Notification, the monthly contract rent was adjusted upwards to \$436.00. (The monthly tenant remained at \$0.00). As a result, Ms. Marcantonio received monthly checks from the GHA in the amount of \$436.00 on or about the first day of January 1987 through December 1987.

⁵The Complaint does not explain why the rent increase to \$411.00 was first reflected in the check received by Ms. Marcantonio on November 1, 1986.

11. Ms. Marcantonio executed the third Notification on or about December 22, 1987. Pursuant to that Notification, the monthly contract rent was adjusted upwards to \$575.00, and the monthly tenant rent was increased to \$20.00. As a result, Ms. Marcantonio received monthly checks from the GHA in the amount of \$555.00 on or about January 30, 1988, and thereafter, on or about the first day of February through December 1988.

12. Ms. Marcantonio executed the fourth Notification on or about January 4, 1989. Pursuant to that Notification, the monthly contract rent was adjusted upwards to \$590.00, and the monthly tenant rent was increased to \$30.00. As a result, Ms. Marcantonio received monthly checks from the GHA in the amount of \$560.00 on or about the first day of January through March 1989.

13. Ms. Marcantonio endorsed all 29 of the checks she received from the GHA. As a result, she received a total of \$13,403.00⁶ from the GHA which used funds received from HUD.⁷

14. When Ms. Marcantonio endorsed the checks, she knew or had reason to know that Ms. Barry had an ownership interest in the Prospect Street Property.

15. On or about October 20, 1987, and again on September 28, 1988, Ms. Barry executed a Certification/Recertification of Tenant Eligibility ("Certification"). Part IV of the October 20, 1987 Certification document is entitled "Net Family Assets." Ms. Barry, knowingly did not disclose her ownership interest in the Prospect Street Property in Part IV of the October 20, 1987 or in the September 28, 1988 Certification.

16. Part XI of the October 20, 1987 Certification, entitled "Tenant(s)/Owner/PHA Official Certification" provides, in part:

TENANT(S) STATEMENT - I/We certify that the statements in Parts II, III, IV, and VI above are true and complete to the best of my/our knowledge and belief. I/We understand that false statements are punishable under Federal Law.

The September 28, 1988 Certification similarly provides:

TENANT'S STATEMENT - I/We certify that the statements above are true and complete to the best of my/our knowledge and belief. I/We understand that false statements are punishable under Federal Law.

17. At the times she executed the October 20, 1987 and September 28, 1988 certifications, Ms. Barry was fully aware she had an ownership interest in the Prospect Street Property.

⁶Although the amounts received by Ms. Marcantonio as set forth in the Complaint total \$14,394.00, the Department alleges that she received \$13,403.00, and thereby seeks imposition of an assessment based upon the latter amount. Because this Decision is issued after default upon Respondents' failure to file an answer, any finding made as to the amount of money received by Ms. Marcantonio and thereby, the basis for imposition of any assessment, is limited to the lesser amount alleged by the Department in its Complaint. See 24 C.F.R. § 28.19(c).

⁷Ms. Barry also endorsed the checks received on February 1, 1987, January 30, 1988, June 1, 1988, July 1, 1988, September 1, 1988, and January 1, 1989. However, in its Complaint, the Department alleges that the GHA made its payments to Ms. Marcantonio and that only she received money by virtue of the check endorsements.

18. Ms. Barry, by executing her October 20, 1987 and September 28, 1988 Certification(s)/Recertification(s) of Tenant Eligibility, knowingly made two false certifications to HUD regarding her ownership of the Prospect Street Property.

19. Following execution of the October 20, 1987 Certification through on or about March 1, 1989, Ms. Marcantonio received monthly checks from the GHA on or about the following dates: November 1, 1987 and December 1, 1987 (see Finding No. 10), January 30, 1988 through December 1, 1988 (see Finding No. 11), and January 1, 1989 through March 1, 1989 (see Finding No. 12). As stated above, Ms. Marcantonio endorsed all those checks and, as a result, received \$9,212.00⁸ from the GHA, which used funds provided by HUD, for a unit owned by Ms. Barry.⁹

20. As a result of Ms. Barry's false certifications and claims for Section 8 rental assistance Ms. Barry and Ms. Marcantonio illegally received a total of \$9,212.00 in money and services.

Discussion

The Program Fraud Civil Remedies Act ("the 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 [or] includes or is supported by any written statement that. . . omits a material fact; is false, fictitious, or fraudulent as a result of such omission; and is a statement in which the person. . . submitting such statement has a duty to include such material fact. . . shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty or not more than \$5,000 for each such claim.

31 U.S.C. § 3802(a)(1). See also 24 C.F.R. § 28.5(a)(1). 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). See also 24 C.F.R. § 28.5(a)(5).

⁸Due to an apparent transposing of numbers, the Department alleges that Ms. Marcantonio received \$9,221.00. See Complaint at 19. Addition of the amounts set forth in the Complaint yield the lower figure of \$9,212.00 used in this Decision.

⁹The \$9,212.00 figure is the portion of the \$13,403.00 which Ms. Marcantonio received after execution of the October 20, 1987 Certification through on or about March 1, 1989. Thus, the difference of \$4,191.00 was received by Ms. Marcantonio prior to October 20, 1987. See Finding No. 13.

Under the Act, a "claim" includes "any request, demand, or submission. . .made to a recipient of. . .money from an authority [e.g., an executive department, such as HUD]. . .for the payment of money (including money representing. . .benefits) if the United States. . .provided any portion of the money requested or demanded. . . 31 U.S.C. §§ 3801(a)(1)(A), 3801(a)(3)(B)(ii)(I). See also 24 C.F.R. § 28.3.¹⁰ A "statement" includes "any. . .certification. . .made. . .with respect to a claim or to obtain. . .payment of a claim. . . ." 31 U.S.C. § 3801(a)(9)(A). See also 24 C.F.R. § 28.3. Each individual request or demand for money constitutes a separate claim. 31 U.S.C. § 3801(b)(1). See also 24 C.F.R. § 28.5(a)(2). The Act is only applicable if, with respect to a claim (or group of related claims submitted at the same time), the money requested or demanded does not exceed \$150,000.00. 31 U.S.C. § 3803(c)(1).

Each endorsement by Ms. Marcantonio of the checks she received from the GHA constitutes a false claim under the Act. Each endorsement was a request, demand or submission made to the GHA, a public housing authority, for money, representing Section 8 housing assistance, provided by HUD. Ms. Marcantonio's contract with the GHA explicitly provided that each such endorsement constituted a certification by her that the tenant, Ms. Barry, did not have an ownership interest in the property. Because Ms. Marcantonio knew or had reason to know when she endorsed the checks that Ms. Barry had an ownership interest in the Prospect Street Property, she knew or had reason to know that each claim was false. Accordingly, Ms. Marcantonio is liable for a civil penalty of \$5,000.00 for each of the 29 false claims, a total penalty of \$145,000.00.¹¹

Ms. Marcantonio is also liable for an assessment of \$26,806.00, double the amount of money (\$13,403.00) she received upon endorsing the 29 checks she received from the GHA. See 31 U.S.C. § 3802(a)(1); 24 C.F.R. § 28.5(a)(5). By specifying the meaning and import of each check endorsement, the HAP Contract sought to ensure that only intended beneficiaries of HUD's Section 8 Program were receiving housing assistance. Because Ms. Marcantonio failed to disclose her conveyance to Ms. Barry of an ownership interest in the property, Ms. Marcantonio received money from the GHA representing Section 8 housing assistance to which she was not entitled. Thus, as a result of Ms. Marcantonio's false submissions, HUD suffered a loss of \$13,403.00. Ms. Marcantonio is liable for the maximum assessment of two times that amount. *Id.*

¹⁰A "claim" also includes "any request, demand, or submission. . .made to an authority for. . .money (including money representing. . .benefits). . . ." 31 U.S.C. § 3801(a)(3)(A). See also 24 C.F.R. § 28.3. A claim is considered to have been submitted to an authority when the claim "is actually submitted to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority. . . ." 31 U.S.C. § 3801(b)(3). See also 24 C.F.R. § 28.5(a)(3).

¹¹Although certain factors ordinarily may be considered in determining the amount of penalties and assessments (see 24 C.F.R. § 28.61), Defendants' 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(c).

The Department's Complaint similarly supports a finding of liability under the Act for the certifications executed by Ms. Barry on October 20, 1987 and September 28, 1988. She is liable, under the Act, because she submitted the claims knowing or having reason to know that the claims were false. 31 U.S.C. § 3802(a)(1). See *also* 24 C.F.R. § 28.5(a). Accordingly, Ms. Barry is liable for a civil penalty of \$5,000 for each of the 2 false claims, a total penalty of \$10,000.00.¹²

¹² See Footnote 12, *supra*.

Ms. Barry is also liable for an assessment of \$18,424.00, double the amount of money (\$9,212.00) received by Ms. Marcantonio from the GHA subsequent to and as a result of the two false certifications signed by Ms. Barry falsely stating that she did not own the Prospect Street Property. Ms. Barry, as a result of the false certifications, received the benefit of the apartment, rent free, with GHA paying the value of the rent, \$9,212.00, to Ms. Marcantonio. It should be noted that the \$9,212.00 is included in the \$13,403.00 that is the basis of the assessment against Ms. Marcantonio.

The \$18,424.00 assessment against Ms. Barry is included in the \$26,806.00 assessment against Ms. Marcantonio because both assessments are based on the \$9,212.00 illegally received by Ms. Marcantonio subsequent to and as a result, in part, of Ms. Barry's false certifications. Accordingly, they are jointly and severally liable for this \$18,424.00 assessment; but, HUD is not entitled to recover assessments in excess of \$26,806.00.

DETERMINATION

Defendant Mary Marcantonio's endorsements of the 29 checks sent to her by the Gloucester Housing Authority violate 24 C.F.R. § 28.5. Accordingly, Defendant Mary Marcantonio is liable under 31 U.S.C. § 3802 for a civil penalty of \$145,000.00 and an assessment of \$26,806.00.

Defendant Marie Marcantonio Barry's execution of the two certifications, knowing them to be false, violate 24 C.F.R. § 28.5. Accordingly Defendant Marie Marcantonio Barry is liable under 31 U.S.C. § 3802 for a civil penalty of \$10,000 and an assessment of \$18,424.00.

Defendants are jointly and severally liable for the \$18,424.00 assessment set forth above, but the Department is not entitled to recover assessments in excess of \$26,806.00.

/s/

SAMUEL A. CHAITOVITZ

Administrative Law Judge

NOTICE

Defendants have the right:

- (1) within thirty (30) days of the issuance of this initial decision upon reconsideration, to file with this tribunal a motion to reopen on the grounds that extraordinary circumstances prevented their 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.

