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

In the Matter of: Lakeview Sheridan, LLC and Lakeview Sheridan II, LLC Respondents.	**HUDALJ 10-M-10-CMP-3** February 1, 2010

ORDER GRANTING DEFAULT

This case arises from a Complaint by the United States Department of Housing and Urban Development ("HUD" or the "Government") seeking civil money penalties from Lakeview Sheridan, LLC ("Lakeview") and Lakeview Sheridan II, LLC ("Lakeview II") (collectively, "Respondents") pursuant to 12 U.S.C. § 1735f-15 and 24 C.F.R. Part 30. The Government alleges that Respondents failed to submit, within the time specified by HUD, the appropriate financial reports for Lakeview-Sheridan Apartments for fiscal years 2006, 2007, and 2008.

Procedural History

HUD provided Respondents with a Prepenalty Notice, dated April 3, 2008, pursuant to 24 C.F.R. § 30.70(d). Respondents received the Prepenalty Notice on or about April 10, 2008, but did not provide a written response to the notice.

HUD issued separate amended Prepenalty Notices to Lakeview and Lakeview II on July 21, 2008. Lakeview received the Prepenalty Notice on or about August 1, 2008 and Lakeview II received the Prepenalty Notice on or about July 24, 2008. Neither Lakeview nor Lakeview II provided a written response to these notices.

A third Prepenalty Notice was sent to Lakeview II on August 12, 2009. Lakeview II received the Prepenalty Notice on or about August 18, 2009, but did not file a timely response.

On November 17, 2009, the Government served Respondents with a Complaint for Civil Money Penalties pursuant to 12 U.S.C. § 1735f-15 and 24 C.F.R. Part 30. The Complaint was simultaneously filed with the Office of Administrative Law Judges. Respondents received the Complaint on or about November 20, 2009.

Under 12 U.S.C. § 1735f-15, Respondents had 15 days from the date of receipt of the Complaint to request a hearing before this Court and 30 days from that same date to answer said Complaint. 24 C.F.R. § 30.90(a) and (b). Therefore, Respondents had until December 5, 2009 to request a hearing. Respondents failed to request a hearing.

On January 6, 2010, HUD filed a motion for Default Judgment (the "Default Motion"). The Default Motion was also mailed to Respondents via regular mail at the same addresses as the Complaint. Pursuant to 24 C.F.R. § 26.41(a), Respondents had ten days from service of the Motion for Default to respond. Respondents again failed to submit an answer to the Complaint or submit a response to HUD's Default Motion.

As Respondents have failed to request a hearing, a ruling on the Motion for Default Judgment is ripe.

Legal Framework

HUD is authorized to impose civil money penalties against "a mortgagor of property that includes 5 or more living units and that has a mortgage insured, co-insured, or held pursuant to this chapter." 12 U.S.C. §1735f-15(c)(1)(A)(i). A penalty against such a liable party may be imposed for "knowingly and materially" breaching a housing assistance payments contract. 12 U.S.C. §1735f-15(b)(1); see 24 C.F.R. §30.68(b).

The term "knowingly" means "having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section." 12 U.S.C. §1735f-15 (h); see 24 C.F.R. § 30.10. A violation is "material" if it has "the natural tendency or potential to influence, or when considering the totality of the circumstances, in some significant respect or to some significant degree." 24 C.F.R. § 30.10. The maximum penalty per violation may not exceed $25,000. 12 U.S.C. §1735f-15(c)(2); 24 C.F.R. § 30.68(c).

In determining the amount of a civil money penalty, the following factors should be taken into account by the Secretary: "the gravity of the offense, any history of prior offenses . . . the ability of the violator to pay the penalty, any injury to tenants, any injury to the public, any benefits received by the violator as a result of the violation, deterrence of future violations, and such other factors as the Secretary establish by regulation." 12 U.S.C. §1735f-15(d)(3); see 24 C.F.R. § 30.80.

Prior to determining whether to file a complaint against an alleged liable party, HUD must issue a prepenalty notice pursuant to 24 C.F.R. § 30.70, allowing a respondent 30 days to present any argument in opposition to the imposition of a civil money penalty. 24 C.F.R. § 30.75(a). If a determination is then made to seek a civil money penalty, the Government shall serve a complaint upon a respondent and file the complaint with the Office of Administrative Law Judges. 24 C.F.R. § 30.85(b).

If no hearing is requested in fifteen days from receipt of the Complaint, "the imposition of the penalty...shall constitute a final and unappealable determination." 12 U.S.C. §1735f-15

(d)(2). Moreover, a respondent may be found in default, upon motion, for failure to file a timely response to the Government's Complaint. 24 C.F.R. §§ 26.41(a). If a default order is issued, it shall constitute an admission by Respondent of all facts alleged in the Complaint and a waiver of its right to a hearing on the allegations contained in the Complaint. 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 without further proceedings. Id. A default order by this Court shall constitute the final agency action. 24 C.F.R. § 26.41(b).

Findings of Fact

1. Respondent Lakeview is the former mortgagor and owner of Lakeview-Sheridan Apartments, a property that includes five or more living units and that has a mortgage insured pursuant to the National Housing Act ("the Project") and is subject to liability under 12 U.S.C. §1735f-15.

2. Respondent Lakeview II is the sole member of Lakeview.

3. Respondents failed to submit an annual financial report to HUD for fiscal year 2006.

4. Respondents failed to submit an annual financial report to HUD for fiscal year 2007.

5. Respondents failed to submit an annual financial report to HUD for fiscal year 2008.

Analysis & Order

The record shows that Respondents received copies of the Complaint on or about November 20, 2009. Respondents had 15 days from the date of receipt of the Complaint to request a hearing before this Court and 30 days from that same date to answer said Complaint. 24 C.F.R. § 30.90(a) and (b). Respondents to date have not requested a hearing. Respondents to date have not filed a response. Respondents are therefore in default.

Based on HUD's analysis of the factors listed under 24 C.F.R. § 30.80, HUD proposed a penalty on Lakeview of $50,000, and on Lakeview II of $37,500. Therefore, pursuant to 12 U.S.C. § 1735f-15 and 24 C.F.R. § 30.68, the penalties proposed in the Complaint must be imposed and shall constitute a final determination.

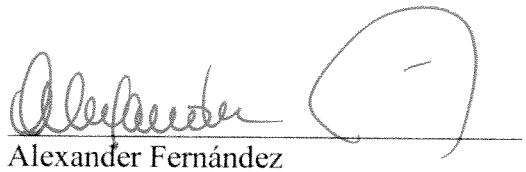
Accordingly, it is **ORDERED**:

1. Pursuant to the foregoing, the Government's **MOTION FOR DEFAULT JUDGMENT** is **GRANTED**, and Respondents are hereby found in **DEFAULT**.

2. Respondent Lakeview **SHALL PAY** HUD a total of **$50,000** in civil money penalties, such amount being due and payable immediately without further proceedings. 24 C.F.R. § 26.41(c)

3. Respondent Lakeview II **SHALL PAY** HUD a total of **$37,500** in civil money penalties, such amount being due and payable immediately without further proceedings. 24 C.F.R. § 26.41(c)

4. This Order constitutes **FINAL AGENCY ACTION**. 24 C.F.R. § 26.41(b).



Alexander Fernández
Administrative Law Judge