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

In the Matter of:	
SAGE PARTNERS, L.P. AND SAGE PARTNERS, LLC.	**HUDALJ : 09-F-046-CMP-12**
Respondents.	June 16, 2009

RULING ON MOTION FOR DEFAULT JUDGMENT

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 Sage Partners, L.P. and Sage Partners, L.L.C. ("Respondents") pursuant to 42 U.S.C. § 1437z-1 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 Brownsville Apartments for fiscal years 2003, 2004, 2005, 2006 and 2007.

Procedural History

HUD provided Respondents with a Prepenalty Notice, dated December 17, 2008, pursuant to 24 C.F.R. § 30.70. Respondents received the Prepenalty Notice on December 22, 2008, but did not provide a written response to the notice.

The Complaint for Civil Money Penalties was mailed by the Government a via FedEx Priority Overnight and U.S. Postal Service first-class mail, and was delivered and received by Respondents on March 30, 2009 and March 31, 2009. HUD filed a copy of the Complaint with this Court on March 30, 2009.

Under 42 U.S.C. § 1437z-1(c)(2)(A), 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). On April 14, 2009, the Respondents requested a hearing to contest the imposition of Civil Money Penalties by HUD.

On April 15, 2009, this Court issued a Notice of Hearing and Order ("the Notice"), which ordered Respondents to file an Answer within 30 days of the Respondents' receipt of the Complaint, pursuant 42 U.S.C. §1437z-1 and 24 C.F.R. Part 30. Respondents have yet to file an answer with this Court.

Respondents failed to file the requisite Answer/Response as ordered by the Notice of Hearing and Order. May 6, 2009, HUD filed a motion for Default Judgment and in the Alternative to Compel an Answer (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 either submit an answer to the Complaint or a response to HUD's Default Motion.

On May 19, 2009, this Court ordered Respondents to Show Cause as to why the Government's Motion for Default should not be granted ("Show Cause Order"). In that Show Cause Order, the Court instructed Respondents to specifically address why "they have failed to respond to both the Secretary's Complaint and the Secretary's Motion." Respondents never filed a response to the Court's Show Cause Order.

As Respondents have failed to Show Cause pursuant to the Court's May 19, 2009, Show Cause Order, a ruling on the Motion for Default Judgment is ripe.

Legal Framework

HUD is authorized to impose civil money penalties against "any owner, any general partner of a partnership owner, or any agent employed to manage the property that has an identity of interest with the owner or the general partner of a partnership owner of a property receiving project-based assistance under section 8 of the United States Housing Act of 1937." 42 U.S.C. §1437z-1(b)(1)(A-C); see 24 C.F.R. §30.68(b). A penalty against such a liable party may be imposed for "knowingly and materially" breaching a housing assistance payments contract. 42 U.S.C. §1437z-1(b)(2); 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." 42 U.S.C. §1437z-1(h)(2); 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. 42 U.S.C. §1437z-1(b)(3); 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." 42 U.S.C. §1437z-1(c)(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." 42 U.S.C. § 1437z-1(c)(2)(A). 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. The factual findings stated in the Procedural History supra are incorporated here by reference.

2. Sage Partners, L.P. is the Owner of Brownsville Apartments, a multifamily property located in Brownsville, Pennsylvania ("the Property) and is subject to liability under 42 U.S.C. §1437z-1(b)(1)(A). (Compl. ¶ 1.)

3. Sage Partners L.L.C. is the General Partner of Sage Partners, L.P., and is the Management Agent of the Property and is subject to liability under 42 U.S.C. §1437z-1(b)(1)(B) -(C). (Comp. ¶ 2.)

4. On April 12, 2001, Sage Partners L.L.C., on behalf of Sage Partners, L.P., entered into a Housing Assistance Payments renewal contract ("the HAP Renewal Contract") with the Secretary to renew an April 16, 1984 HAP contract ("the HAP Contract"). The HAP Renewal Contract would renew all applicable terms and provisions of the HAP contract. (Compl. ¶ 12.)

5. The HAP contract provides that each violation of the Owner's Regulatory Agreement is a default of the Owner's HAP contract. (Compl. ¶13; Ex. B, HAP Contract, Section 26(a)(3).)

6. On April 27, 2001, the Owner entered into a HUD held mortgage restructuring mortgage, as authorized by the Multifamily Assisted Housing Reform and Affordability Act of 1997. (Compl. ¶ 14.)

7. In consideration of, and in exchange for, the making of a mortgage restructuring mortgage for the Property, the Owner executed a Regulatory Agreement for Insured Multi-Family Housing Projects ("the Regulatory Agreement") with a

Rider for Properties with Section 8 Housing Assistance Payments Contracts ("the Rider"). (Compl. ¶ 15; Ex. C. Regulatory Agreement, dated April 27, 2001).

8. Paragraph 4(f) of the Rider requires that within 90 days following the end of each fiscal year, the Secretary shall be furnished with a complete annual financial report based upon an examination of the books and records of the Owner in accordance with the requirements of HUD, certified by an officer of the Owner, and when required by HUD, prepared and certified by a Certified Public Accountant, or other person acceptable to HUD. (Compl. ¶ 16; Ex. C. Rider, dated April 27, 2001, ¶ 4.)

9. The fiscal year for this project ends on December 31st. (Compl. ¶ 17.)

10. Generally, each annual financial report for this Property is due on March 31st, except where extended by HUD notice and, pursuant to 24 C.F.R. §5.801(b)(2), is required to be filed electronically. (Compl. ¶ 18.)

11. The Owner did not file the annual financial reports for fiscal years 2003, 2004, 2005, 2006, and 2007. (Compl. ¶ 20; Ex. B, HAP Contract, section 26.)

Penalty

Based on HUD's analysis of the factors listed under 24 C.F.R. § 30.80, HUD proposed a penalty of $25,000 for each violation, for a total of $125,000. Therefore, pursuant to 42 U.S.C. § 1437z-1(b)(2-3) and (c)(3) and 24 C.F.R. § 30.68, the penalty proposed in the Complaint must be imposed and shall constitute a final determination.

Order

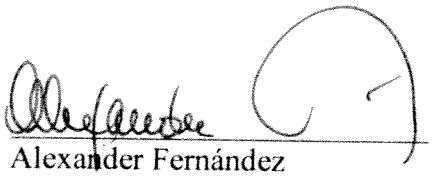
As Respondents have failed to respond to this Court's Order to Show Cause and HUD's Complaint, Default is appropriate. 24 C.F.R. §§ 26.41(a).

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. Respondents **SHALL PAY** HUD a total of **$125,000** in civil money penalties, such amount being due and payable immediately without further proceedings. 24 C.F.R. § 26.41(c)

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



Alexander Fernández
Administrative Law Judge

Notice of Appeal Right. Judicial review of this decision may be sought pursuant to 12 U.S.C. § 1735f-15(e).