

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

In re:)	
)	
2929 N. Western Avenue, L.L.C. and)	HUDALJ 05-042-CMP
Western Phase II, L.L.C.,)	OGC No. 2005-04-ILS/CMP
)	
Respondents.)	
)	

Yvonne Jones, Esquire
for the Government

Before: ARTHUR A. LIBERTY
Chief Administrative Law Judge

DEFAULT ORDER

The above entitled matter has been referred to me pursuant to the Interstate Land Sales Full Disclosure Act, Title 15 U.S.C. Section 1701 *et seq.* (the "ILSFDA"), and the regulations codified at 24 C.F.R. Parts 26 and 30. The Department of Housing and Urban Development (ADepartment@ or HUD@) has issued to the Respondents a complaint alleging failure to register the offer to sell or sale of lots or units at three residential real estate developments in Chicago, Illinois. The complaint alleges that the failure to register gives rise to liability under the ILSFDA and seeks the award of civil money penalties totaling \$230,400. The record shows that the Complaint, along with a copy of the regulations governing this action (24 C.F.R. Parts 26 and 30), was served upon the Respondents on April 29, 2005. HUD filed a Motion for Default Judgment on May 27, 2005. To date, Respondents have not filed an answer to the complaint.

24 C.F.R. ' 30.90 (a) provides that a respondent may file a written response (Aanswer@) within 15 days of service of the complaint. Section 30.90 (b) allows HUD to file a motion for default if no response is submitted. Finally, ' 26.39 directs the administrative law judge ("ALJ") to issue an initial decision establishing the default. The effect of the default is an admission by the respondent of all facts alleged in the Government complaint, a waiver of the right to a hearing on those allegations, and imposition of the penalties sought in the complaint. 24 C.F.R. ' 26.39 (b) and (c).

FINDINGS OF FACT

Pursuant to ' 26.39 (c) and in view of Respondents= failure to answer the Complaint, I hereby find that Respondents= have admitted all facts alleged in the Complaint and waived their right to a hearing.

ANALYSIS

24 C.F.R. ' 30.55 provides that a person shall be subject to a civil penalty of not more than \$1,100 for each violation of the Interstate Land Sales Full Disclosure Act. Each sale, lease or offer to sell or lease constitutes a separate violation of the ILSFDA.

24 C.F.R. ' 30.55. Section 30.10 defines Aa person@ as an individual, corporation, company, association, authority, firm, partnership, society, State, local government or agency thereof, or any other organization or group of people.

The evidence establishes that the Respondents are Illinois limited liability companies owned by Antoin Rezko and Daniel Mahru. Both Rezko and Mahru are experienced developers with a long history of developing residential real estate. Respondents offered to sell, or sold, lots and/or units in the River Walk Lofts Condominiums, River Walk Townhomes Condominium and Tamarack at River Walk Subdivision, all located in Chicago, Illinois. HUD refers to these three endeavors collectively as the ARiver Walk Project.@ The River Walk Project lots and units were sold or offered for sale as part of a common promotional plan that constituted a subdivision as defined in the ILSFDA. Therefore, the River Walk Project was not exempt from the registration requirements of the ILSFDA. However, Respondents have never registered the River Walk Project as required by law. From 1998 to 2005, Respondents made use of means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or to sell units and lots in the River Walk Project Respondents sold approximately 192 lots or units at the River Walk Project without delivering Property Reports to the buyers as required by the ILSFDA. Based on the foregoing, Respondents have knowingly and materially violated 15 U.S.C. ' 1703(a)(1)(A) and (B).

As noted previously, Respondents were provided with a copy of the applicable regulations, including 24 C.F.R. ' 26.39 (b) and (c). I find, therefore, that Respondents have admitted the allegations and waived their right to a hearing. 24 C.F.R. ' 26.39.

PENALTY

24 C.F.R. ' 26.39(c) provides that if a respondent does not file an answer within the time prescribed, the administrative law judge ("ALJ") shall issue a decision on the motion for default in which the ALJ shall set forth the penalty amount proposed in the complaint.

In the instant case HUD seeks imposition of civil money penalties in the total amount of \$230,400.00.

I find that the amount of civil money penalties sought by HUD is allowed under the statute. Accordingly, I impose upon Respondents civil money penalties totaling \$230,400.00.

CONCLUSION AND ORDER

Having found that Respondents violated 15 U.S.C. ' ' 1703(a)(1)(A) and 1703(a)(1)(B) and 24 C.F.R. ' 30.55, and having imposed civil money penalties totaling \$230,400.00, I hereby issue the following **ORDER**:

1. Respondents 2929 N. Western Avenue, L.L.C. and Western Phase II, L.L.C. shall immediately pay to the United States Treasury (through the Department of Housing and Urban Development) civil money penalties in the amount of \$230,400.00; and
2. Respondents 2929 N. Western Avenue, L.L.C. and Western Phase II, L.L.C. are jointly and severally liable for payment of the \$230,400.00 in civil money penalties.

This decision is the final agency action pursuant to 24 C.F.R. ' 26.39 (b).

ARTHUR A. LIBERTY
Chief Administrative Law Judge

Dated: June 2, 2005

CERTIFICATE OF SERVICE

I hereby certify that copies of this DEFAULT ORDER, issued by ARTHUR A. LIBERTY, Chief Administrative Law Judge, in HUDALJ Case No. 05-042-CMP, were sent to the following parties on this 2nd day of June 2005, in the manner indicated:

Acting Chief Docket Clerk

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