

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

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Petitioner,

v.

MELVIN RICE, JR.,

Defendant.

Corrected Copy

HUDALJ 04-210-PF
OGC No. 04-3129-PF

Decided: June 22, 2004

Stanley E. Field, Esquire
For the Petitioner

Melvin Rice, Jr.
For the Defendant, *pro se*

Before: Arthur A. Liberty
Chief Administrative Law Judge

DEFAULT DECISION AND ORDER

The Petitioner, the U.S. Department of Housing and Urban Development ("the Department," "the Government," or "HUD"), seeks the imposition of civil penalties against the Defendant, Melvin Rice, Jr., pursuant to the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812 ("PFCRA"), and HUD's regulations that are codified at 24 CFR Part 28, by which jurisdiction is obtained. The Government's Complaint was mailed to the Defendant on February 25, 2004 and served upon Defendant by certified mail (return receipt requested) on March 29, 2004.

The Complaint contains a section entitled "NOTICE OF PROCEDURE" which provides for a defendant's right to a hearing, specifies what a defendant must do to have a hearing, and informs a defendant of the regulatory requirement that an Answer to the Complaint must be filed within 30 days. This section also informs a defendant that failure to file an Answer within the specified 30 days will constitute an admission of all facts alleged in the complaint, a waiver of defendant's right to a hearing and the

imposition of the proposed civil penalty and assessment without further proceedings.

On May 18, 2004, the Departmental Enforcement Center referred this case to me for action in accordance with 31 U.S.C. § 3803(d)(2)(B) and the regulations found at 24 CFR Parts 26 and 28. The Department filed a Motion for Default Judgement at that time.

On May 20, 2004, I issued an Order To Show Cause in which I ordered the Defendant to show good cause by June 4, 2004 why a default judgement should not be entered against him.¹ In that Order, I further informed the Defendant that failure to “timely file a response shall constitute consent to entry of an Order granting the Motion.”

I issued an Order on June 9, 2004, directing the Government to file an affidavit attesting to service of the Complaint with a copy of the signed return receipt. This was filed on June 18, 2004.

There has been no response to the Complaint or to the Order To Show Cause. Therefore, the Government's request that this forum declare a default against the Defendant is **GRANTED**, and the Decision that follows is entered on the basis of the Defendant's default.

FINDINGS OF FACT

Background

1. Petitioner, HUD, is a federal executive department of the United States Government, established pursuant to 42 U.S.C. § 3531 (1988). It seeks to realize the goal of a decent home and suitable living environment for every American family.
2. The Officer Next Door Sales Program (“ONDSP”) was established in 1997 to promote safe neighborhoods by encouraging law enforcement officers to purchase, and live in as their sole residence, homes located in economically distressed neighborhoods. *See* HUD Notice 97-51 (Aug. 11, 1997); HUD Notice 97-73 (Dec. 31, 1997); 63 Fed. Reg. 1886 (Jan. 12, 1998); 64 Fed. Reg. 36212 (July 2, 1999) (24 C.F.R. Part 291).
3. The ONDSP authorizes a full-time law enforcement officer to purchase a HUD-owned home at a 50 percent discount from the list price.

¹ The Order to Show Cause issued on May 20, 2004, erroneously referred to the Government's motion as a “Motion to Dismiss.” The Government filed a Motion for Clarification on May 24, 2004, and I issued a Corrected Order to Show Cause on May 25, 2004.

4. In order to qualify for the 50 percent discount, the law enforcement officer must agree to own and use the property as his/her principal residence for at least three years from the date of closing.

5. The purchasing law enforcement officer must sign the following "Police Officer Certification" at the time of closing: "This is to certify that I, [name of officer], will use the property I am purchasing from HUD as my principal residence for at least three years from the date of HUD's closing and agree not to resell the property during the three year period." HUD Form 9548-A. This Certification contains the following warning:

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802). Failure to adhere to the residency and resale requirements may result in administrative sanctions being taken against the law enforcement officer.

6. The Police Officer's Certification must be submitted to HUD as an addendum to the Sales Contract in order for the property to be sold at the 50 percent discount under the ONDSP.

False Police Officer Certification

7. On December 18, 1998, Melvin Rice, Jr., a police officer of the Memphis, Tennessee, Police Department, signed a Sales Contract to purchase a property from HUD that was located at 324 McFarland Drive, Memphis, Tennessee, pursuant to the ONDSP.

8. The purchase price for this property was \$64,000. On the Sales Contract, Defendant had checked the box indicating that he was purchasing the property as an "owner-occupant (will occupy this property as primary residence)."

9. The Sales Contract contained a discount provision of 50 percent, or \$32,000, to be taken at the time of closing. Handwritten on the bottom left corner of the contract was, "OND DIRECT SALE."

10. Defendant also executed the "Police Officer Certification," which was submitted with the Sales Contract and contained the following certification: "This is to certify that I, MELVIN RICE, JR., will use the property I am purchasing from HUD as

my principal residence for at least three years from the date of HUD's closing and agree not to resell the property during the three year period."

11. Defendant and HUD closed on the sale of the property on March 24, 1999. The HUD-1 Settlement Statement for this transaction reflects a sales price for the property of \$64,000 and a "50% DISCOUNT FROM HUD" discount of \$32,000. The Settlement Statement incorporated this discount at line 214, decreasing the cash due the Seller, HUD, by \$32,000.

12. The Cash Deed for Tennessee for this property, conveying title from HUD to Defendant, contained a covenant that the property was to be used for home ownership and occupied as a primary residence by a police officer in accordance with the objectives of the Grantor's ONDSP for a period of three years.

13. Defendant received the 50 percent discount (\$32,000) based upon his status as a law enforcement officer and certification to HUD that he would use the property as his principal residence for at least three years from the date of closing.

14. Contrary to the Police Officer Certification, the Defendant did not occupy the 324 McFarland Drive, Memphis, Tennessee property as his primary residence.

False Occupancy Certification

15. On or about June 11, 2001, Defendant was asked to again certify that he was residing at the 324 McFarland Drive, Memphis, Tennessee property and was using it as his sole residence. Defendant did so certify, on or about June 11, 2001, as follows:

I certify that I own and am residing in the above subject property [324 McFarland Drive, Memphis, TN 38109] as my sole residence and that I do not own any other residential real property in accordance with the Department of Housing and Urban Development's Officer/Teacher Next Door Sales Program. The following documents are submitted as evidence of my residency.

- 1) Light bill
- 2) Vehicle registration
- 3) Insurance policy

Below this certification, the Defendant checked the box indicating he was an Officer, signed his name, printed his name, and then checked the block for "Occupant" by his name.

16. On June 11, 2002, after trial by jury, the Defendant was found guilty as charged in the indictment of two counts of making a false statement to HUD in violation of 18 U.S.C. §1001. The first count charged the Defendant with, on or about July 11, 2001, knowingly and willfully making and causing to be made a false, fictitious and fraudulent material statement in an "Occupancy Verification Acceptance Form" that he was residing at 324 McFarland Drive, Memphis, Tennessee, as his sole residence, when in truth and fact as he well knew he was not living at 324 McFarland Drive, Memphis, Tennessee as his sole residence. The second count charged the Defendant with knowingly and willfully falsifying, concealing and covering up by trick a material fact by trick, scheme and device the fact that he was not living at 324 McFarland Drive, Memphis, Tennessee, in violation of HUD's Officer/Teacher Next Door Program requirements. Defendant's scheme included his direction to the Tennessee Department of Safety to change his address on his Certificate of Vehicle Registration Renewal for his GMC Yukon to 324 McFarland Drive, Memphis, Tennessee and the submission to the Department of Housing and Urban Development, on or about July 11, 2001, as evidence of his residency at 324 McFarland Drive, Memphis, Tennessee, a Memphis Light Gas and Water bill, a Certificate of Vehicle Registration Renewal for his GMC Yukon, and a letter of insurance from Prudential Insurance Company.

17. In the criminal trial of this matter, the Defendant was given credit for residing in the property prior to his July 11, 2001 certification.

18. On December 5, 2002, based on the jury's verdicts of guilty for the two counts of the indictment, the Defendant had judgment entered against him and was sentenced.

Basis of Liability

19. On or about December 17, 1998, Defendant stated to HUD, by executing the Police Officer Certification, that he would use the 324 McFarland Drive property he was purchasing from HUD under the ONDSP as his principal residence for at least three years from the date of closing.

20. On or about July 11, 2001, the Defendant again certified to HUD, by executing the "Occupancy Verification Acceptance Form," that he was residing at 324 McFarland Drive, Memphis, Tennessee, as his sole residence, when in truth and fact as he well knew, he was not living at 324 McFarland Drive, Memphis, Tennessee, as his sole residence.

21. HUD relied upon these statements in approving and selling the 324

McFarland Drive property to Defendant at a 50 percent discount (\$32,000) off its list price of \$64,000, as well as continuing to allow the Defendant to participate in the ONDSP.

22. These statements were part of a submission to HUD for property, and had the effect of decreasing Defendant's obligation to pay for such property, and thus was a claim under the PFCRA, 31 U.S.C. § 3801 (a)(3)(A) & (C).

23. Defendant knew, or had reason to know, that the claim he submitted to HUD was false, fictitious, or fraudulent, and that it included and was supported by a written statement asserting a material fact that was false. See 31 U.S.C. § 3802 (a)(1).

REMEDIES

The PFCRA authorizes the imposition of an assessment of up to twice the amount of any false claim paid by the Government, as well as the imposition of civil penalties. These are for the purposes of providing a remedy to reimburse the Government for its losses and to deter the making, presenting and submitting of false claims to the Government by others as well as the Defendant. Pub. L. 99-509, Section 6102(b); 31 U.S.C. § 3802(a)(1). In considering the False Claims Act, the Supreme Court has stated, "the Government is entitled to rough remedial justice, that is, it may demand compensation according to somewhat imprecise formulas, such as reasonable liquidated damages or a fixed sum plus double damages " *U.S. v. Halper*, 490 U.S. 435, 446 (1989).

The Government has reduced the amount of the assessment it seeks to \$19,200 from \$64,000. In making a reduction in the amount of its loss, the Government credited Defendant with occupancy of the house prior to July 11, 2001. It has also demanded a civil penalty in the amount of \$5,500 against Defendant Rice based upon his false statements on the Police Officer Certification and the Occupancy Certificate. The assessment of \$19,200 and civil penalty of \$5,500 total \$24,700.

Since these amounts are reasonable and in accord with the PFCRA and since Defendant Rice failed to make arguments against their full imposition, the amounts demanded will be Ordered in the next section of this Default Decision and Order.

ORDER

Having concluded that Defendant, Melvin Rice, Jr., falsified the police officer certification form on which HUD depended to decide whether to approve his participation in the ONDSP and application of the fifty (50) percent reduction in the purchase price of the house in question, and that Defendant further falsified an occupancy certification form, and having further found that this conduct falls within the purview of the Program Fraud Civil Remedies Act, it is hereby

ORDERED that:

1. The Defendant, Melvin Rice, Jr., shall pay to the Secretary of the U. S. Department of Housing and Urban Development a total of \$24,700 in assessments and civil penalties; and
2. This Order is the final agency decision pursuant to 24 CFR 26.39(b).

SO ORDERED this 22nd day of June 2004.

ARTHUR A. LIBERTY
Chief Administrative Law Judge