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

U.S. Department of Housing and Urban Development,	)	
Plaintiff,	)	HUDALJ 10-E-114-PF-17
v.	)	
Nancy Jeanne Sherman,	)	
Respondent	)	

ORDER ON MOTION FOR RECONSIDERATION AND DEFAULT JUDGMENT

The Complaint in this matter was filed on April 26, 2010, by the Plaintiff, U.S. Department of Housing and Urban Development ("HUD" or "Plaintiff"). The Complaint alleges that Respondent Nancy Jeanne Sherman ("Respondent") violated the Program Fraud Civil Remedies Act ("PFCRA"), 31 U.S.C. § 3802(a)(2), by falsely claiming her principal residence in February 2005 as 2408 King Avenue, Pascagoula, MS, in connection with an application to the Katrina Recovery Homeowner Grant Assistance Program. Plaintiff seeks a civil penalty of $6,500.

According to the record, the Complaint was delivered to Respondent on April 28, 2010. The Respondent had thirty days to respond to the Complaint, and that response would be treated as a request for a hearing. 24 C.F.R. § 28.30(a)-(b). Respondent was specifically advised in the Complaint that failure to respond could result in the imposition of the maximum amount of penalties and assessments sought, without right to appeal. To date, Respondent has not filed an Answer to the Complaint.

On July 9, 2010, HUD filed a Motion for Default Judgment citing as its basis Respondent's failure to respond to the Complaint. *See* 24 C.F.R. § 28.30(b). Respondent did not respond to the motion. Citing HUD's failure to allege facts concerning Respondent's address of residence in the service of the Complaint, the Motion for Default Judgment was denied without

prejudice on July 29, 2010.[1] On August 2, 2010, HUD filed a Motion to Reconsider ("Motion") along with additional documentation concerning Respondent's address used for service of the Complaint. Finding that HUD's Motion is sufficient to correct earlier deficiencies, the Motion is hereby **GRANTED.** I now turn to the original Motion for Default Order ("Default Motion").

Regulatory Background

In response to the widespread destruction caused by Hurricane Katrina, Congress passed emergency supplemental appropriations bills to provide, *inter alia*, funding for disaster relief and long-term recovery along the Gulf Coast. *See* Dept. of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006, Pub. L. No. 109-148, 119 Stat. 2680. Congress allocated over $11 billion to HUD's Community Development Block Grant Program, which funded the Katrina Recovery Homeowner Assistance Program ("Program") administered in the State of Mississippi by the Mississippi Development Authority.

The Program was open only to owner-occupied, primary residences damaged by the hurricanes. In order to receive any assistance, an applicant must complete an Affidavit as to Owner Occupancy ("Affidavit"). In the Affidavit, the applicant must certify that "[a]s of August 29, 2005, the home with respect to which I made an application for a grant under the Program was occupied by me as my principal residence." This certification must be notarized and included with the underlying application.

The PFCRA authorizes HUD to seek a civil penalty against any person who makes, presents, or submits, or causes to be made, presented or submitted, a written statement that:

(A) the person knows or has reason to know -
  (i) asserts a material fact which is false fictitious, or fraudulent; or
  (ii)(I) omits a material fact; and
    (II) is false, fictitious, or fraudulent as a result of such omission;
(B) in the case of a statement described in clause (ii) of

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[1] The Order on Motion for Default was sent to 10022 22nd St. rather than 1002 22nd St., but was not returned as undeliverable. HUD's subsequent Motion to Reconsider was sent to the correct address and provided sufficient notice to Respondent.

subparagraph (A), is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and
(C) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

31 U.S.C. § 3802(a)(2).

A "statement" is defined to include a "representation," "certification," or "affirmation," made:

(A) with respect to a claim or to obtain the approval or payment of a claim . . . [from] an authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit."

31 U.S.C. § 3801(a)(9).

"Knows or has reason to know" is defined, for purposes of Section 3802(b), as:

(A) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;
(B) acts in deliberate ignorance of the truth or falsity of the claim or statement; or
(C) acts in reckless disregard of the truth of falsity of the claim or statement, and no proof of specific intent to defraud is required.

31 U.S.C. § 3801(a)(5).

HUD may seek a civil penalty of not more than $5,000 (increased to $6,500 for violations occurring on or after April 16, 2003) for each violation. 31 U.S.C. § 3802(a)(2) as modified by 68 Fed. Reg. 12,787 (Mar. 17, 2003).

Findings of Fact

1. On or about December 28, 2000, Respondent Nancy Jeanne Sherman purchased the property located at 2408 King Avenue, Pascagoula, Mississippi ("the Property").

2. On or about August 29, 2005, Respondent owned but was not residing in the Property.

3. On July 21, 2006, Respondent applied for assistance under the Katrina Recovery Homeowner Grant Assistance Program ("the Program"), claiming the Property to be her residence and that it had been damaged by Hurricane Katrina.

4. The United States Government provides the funding for the Program, which is administered in the State of Mississippi by the Mississippi Development Authority.

5. On or about January 11, 2007, as part of the grant application process under the Program, Respondent executed an Affidavit as to Owner Occupancy, certifying that she resided at the Property as her principal residence on August 29, 2005.

6. Respondent made this certification under penalty of perjury.

7. This certification was false because Respondent did not reside at the Property as of August 29, 2005.

8. On February 22, 2008, Respondent, in a statement to HUD Office of Inspector-General Investigators, admitted that she had left the Property and moved into her father's home in May or June of 2005 and remained there through August 29, 2005.

9. In fact, since February 2005, the Property had been rented out to Jeff Cramer, who began paying utilities in late April 2005 and was still paying the utilities in August 2005.

10. The Respondent knew, or had reason to know, that her occupancy certification was false at the time she made it.

Conclusions of Law

11. Respondent's January 11, 2007, Affidavit as to Owner Occupancy was a "statement" under 31 U.S.C. § 3801(a)(9).

12. Respondent made that statement with actual knowledge that it was false, fictitious, or fraudulent.

13. By knowingly submitting a false Affidavit as to Owner Occupancy, Respondent violated 31 U.S.C. § 3802(a)(2) and 24 C.F.R. § 28.10(b).

14. Respondent's failure to respond to the Answer constitutes a default.

Penalty

The penalty specified in the Complaint is $6,500. Pursuant to 24 C.F.R. § 28.30(b), section 26.41 applies for purposes of a default motion under the PFCRA. Under section 26.41(c), "[t]he penalty proposed in the complaint shall be set forth in the default order and shall be immediately due and payable by respondent without further proceedings." 24 C.F.R. § 26.41(c).

Order

Pursuant to the foregoing, the Motion for Default Order is hereby **GRANTED** and Respondent is found in **DEFAULT**. Respondent shall pay HUD a civil penalty of **$6,500**, such amount is due and payable immediately without further proceedings. 24 C.F.R. § 26.41(c).

This Order constitutes the **FINAL AGENCY ACTION**. 31 U.S.C. § 3805; 24 C.F.R. § 26.41(b).

So **ORDERED**.

Barbara A. Gunning
Administrative Law Judge

Dated: August 19, 2010
Washington, DC

In the Matter of U.S. Department of Housing and Urban Development, Plaintiff, v. Nancy Jeanne Sherman, Respondent.
Docket No. HUDALJ-10-E-114-PF-17

Certificate of Service

I hereby certify that true copies of this **Order On Motion For Reconsideration And Default Judgment,** issued by Barbara A. Gunning, Administrative Law Judge, in HUDALJ-10-E-114-PF-17, were sent to the following parties on this 19th day of August, in the manner indicated:

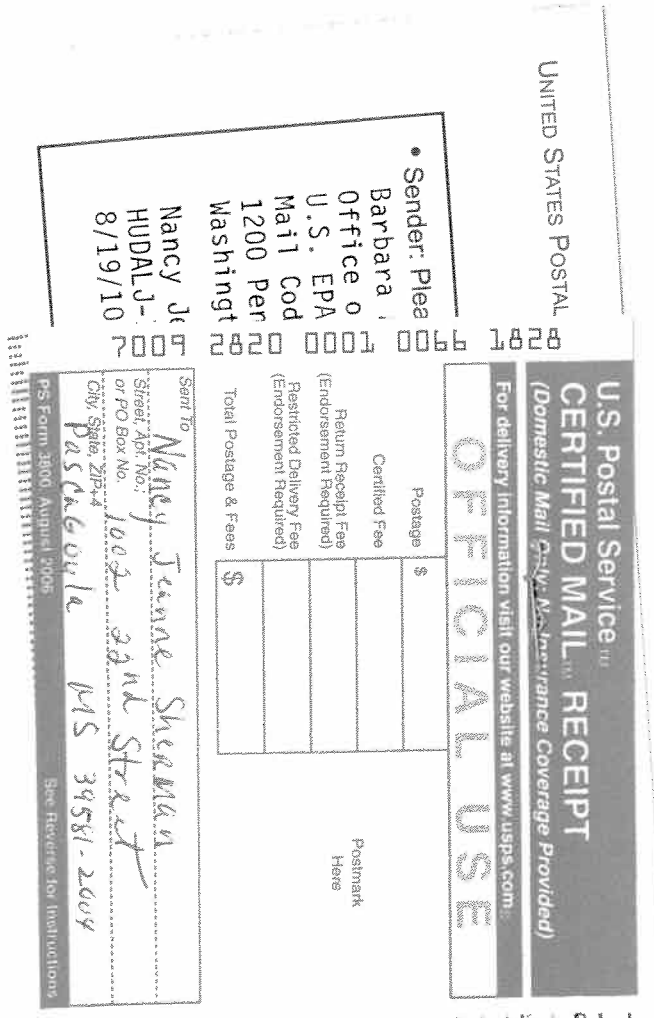
Maria Whiting-Beale
Staff Assistant

Original By Hand Delivery To:

HUD Chief Docket Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350
Washington, DC 20005

Copy By Regular Mail To:

Stanley E. Field, Esquire
Government Counsel
U.S. Department of Housing &
Urban Development
1250 Maryland Avenue, SW, Suite 200
Washington, DC 20024

Copy by Certified Mail Return Receipt
and Regular Mail To:

Nancy Jeanne Sherman
1002 22nd Street
Pascagoula, MS 39581-2004