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.	)	**HUDALJ 10-E-093-PF-12**
DEBRA SHELLMIRE MOLINA,	)	
Respondent.	)	

DEFAULT JUDGMENT AND ORDER

I. Procedural History

On April 6, 2010, the Secretary of the United States Department of Housing and Urban Development ("Complainant" or "HUD") instituted this action by filing a Complaint under the Program Fraud Civil Remedies Act of 1986 ("PFCRA") against Debra Shellmire Molina ("Respondent" or "Respondent Molina"), alleging three counts of false claims under the Officer Next Door Program ("OND Program"), in violation of Section 3802 of the PFCRA, 31 U.S.C. § 3802. Complainant seeks a civil penalty and net assessment totaling $31,650, as authorized by 31 U.S.C. § 3802(a)(1), (3) and 24 C.F.R. § 28.10(a). The regulations governing this administrative proceeding can be found at 24 C.F.R. Parts 26 and 28 ("Rules").

The Complaint informed Respondent, *inter alia*, that --

VIII. NOTICE OF PROCEDURE

1) Filing a Response and Requesting a Hearing:

> You have now been served with a PFCRA Complaint by HUD. You may request a hearing by submitting a written response ("Response") to this Complaint within 30 days of being served with the Complaint. The Response must include: (a) the admission or denial of each allegation of liability made in this Complaint; (b) any defense on which you intend to rely; (c) any reasons why the civil penalties and assessment should be less

than the amount set forth in this Complaint; and (d) the name, address, and telephone number of the person who will act as your representative, if any.

* * * *

2) Effect of Failure to Submit a Response:

> Failure to submit a Response within 30 days of receipt of this Complaint may result in the imposition of the maximum amount of the civil penalties and assessment sought by HUD without right of appeal. If you do not submit a Response, HUD may file a motion for default judgment, in accordance with 24 C.F.R. § 26.41. *See* 24 C.F.R. § 28.30(b). A default shall constitute an admission of all facts alleged in this Complaint and a waiver of your right to a hearing on such allegations. *See* 24 C.F.R. § 26.41(c). The civil penalties and assessment proposed in this Complaint shall be set forth in the default order and shall be immediately due and payable by you without further proceedings. *Id.*

Compl. at 12-13.

Because no response to the Complaint was received, on May 25, 2010, HUD filed a Motion for Default Judgment ("First Motion"), pursuant to 24 C.F.R. § 28.30(b), requesting that a default decision be issued against the Respondent and that relief be ordered in accordance with the prayer for relief set forth in the Complaint. On June 11, 2010, the undersigned issued an Order to Show Cause why the First Motion should not be denied for lack of proof of proper service. HUD was granted a brief extension, until July 7, 2010, to respond to the Show Cause Order. On July 6, 2010, this Tribunal received a Motion to Withdraw Motion for Default Judgment from HUD stating that the Complaint had been re-served on Respondent at her current address of residence. By Order dated July 8, 2010, HUD's Motion to Withdraw was granted.

On September 9, 2010, HUD re-filed its Motion for Default Judgment ("Second Motion") along with a proposed default order, on the basis that the Complaint was successfully served on Respondent on July 27, 2010..

To date, Respondent has not filed a request for a hearing or any other response to the Complaint, and has not filed any response to HUD's Second Motion.

II. Applicable Procedural Rules

The Rules at Part 28 provide in pertinent part that "[t]he respondent may file a written response to the complaint, in accordance with § 26.30 of this title, within 30 days of service of the complaint. The response shall be deemed to be a request for a hearing." 24 C.F.R.

§ 28.30(a). The Rules also provide that "[i]f no response is submitted, HUD may file a motion for default judgment in accordance with § 26.41 of this chapter." 24 C.F.R. § 28.30(b). In turn, Section 26.41 provides as follows:

> § 26.41 Default.
> (a) General. The respondent may be found in default, upon motion, for failure to file a timely response to the Government's complaint. The motion shall include a copy of the complaint and a proposed default order, and shall be served upon all parties. The respondent shall have 10 days from such service to respond to the motion.
>
> (b) Default order. The ALJ shall issue a decision on the motion within 15 days after the expiration of the time for filing a response to the default motion. If a default order is issued, it shall constitute the final agency action.
>
> (c) Effect of default. A default shall constitute an admission of all facts alleged in the Government's complaint and a waiver of respondent's right to a hearing on such allegations. The 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.

III. Motion for Default

Accompanying the Second Motion is a Certificate of Service and Declaration of David Carter, which states that Mr. Carter is a Special Agent in HUD's Office of Investigations in Los Angeles, CA, and that he personally served the Complaint on Respondent Debra Shellmire Molina on July 27, 2010. Carter Decl. ¶ 2. Also accompanying the Second Motion is a Declaration of Ms. Gallegos, dated September 9, 2010, stating that she is a custodian of records for HUD's Office of Program Enforcement and that she has "not received a response to the Complaint personally served on Respondent on July 27, 2010, or any other pleading or correspondence from the Respondent."

Pursuant to Section 28.25(a) of the Rules, a complaint "shall be mailed, by registered or certified mail, or shall be delivered through such other means by which delivery may be confirmed." 24 C.F.R. § 28.25(a). Because the Rules at Part 28 do not address proof of service of a complaint, the following Rule in Part 26 applies: "[s]ervice is complete when handed to the person or delivered to the person's office or residence and deposited in a conspicuous place." 24 C.F.R. § 26.30(b). The documents of record show that Respondent was properly served with the Complaint in accordance with the Rules on July 27, 2010. The record also evidences that, to date, neither this Tribunal nor HUD has received any response to the Complaint or Second Motion from Respondent.

The undersigned has discretion to decide whether to grant or deny a request for default judgment, as the Rules state that a respondent who fails to file a timely response "*may* be found in default." 24 C.F.R. § 26.41(a) (emphasis added). It has been held that default judgment is disfavored by law, and that all doubts should be resolved in favor of determination on the merits. *Sec'y o/b/o Davis v. Ucci*, HUDALJ 02-94-0016-8 (ALJ, March 17, 1995). However, in the present case, given the evidence of personal service and Respondent's complete failure to respond to the Complaint and the Second Motion, a finding of default is deemed warranted.

It is concluded that Respondent is in default for failure to file a response to the Complaint within the time limits set out in 24 C.F.R. § 28.30. Respondent's default constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing on such allegations. 24 C.F.R. § 26.41.

Accordingly, the Motion for Default is **GRANTED**, based upon the entire record and the following Findings of Fact and Conclusions of Law.

IV. Findings of Fact and Conclusions of Law

1. HUD has authority under the PFCRA, 31 U.S.C. § 3802, to impose a civil money penalty on any person who makes, presents, or submits a claim to HUD that the person knows or has reason to know is false, fictitious, or fraudulent, or that includes or is supported by any written statement which asserts a material fact that is false, fictitious, or fraudulent. Compl. ¶ 5; 31 U.S.C. § 3802(a)(1). Under the PFCRA, a claim includes any request, demand, or submission made to HUD for property or money or which has the effect of decreasing an obligation to pay or account for property or money. Compl. ¶ 6; 31 U.S.C. § 3801(a)(3)(A), (C).

2. Under the PFCRA, liability may also be imposed on a person who makes, presents, or submits a written statement to HUD that the person knows or has reason to know asserts a material fact that is false, fictitious, or fraudulent, and contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement. Compl. ¶ 9; 31 U.S.C. § 3802(a)(2). A statement is defined to include any representation, certification, affirmation, document, or record with respect to a claim or to obtain the approval or payment of a claim, or with respect to a contract with, or a grant or benefit from, HUD. Compl. ¶ 10; 31 U.S.C. § 3801(a)(9).

3. At all times relevant to this matter, HUD administered the OND Program (currently expanded as the Good Neighbor Next Door Sales Program ("GNND")), which enables a law enforcement officer to purchase a HUD-owned, single family property at a 50 percent discount off the list price provided that the officer certifies that he or she will use the property as his or her sole residence and will not own any other residential real property for at least three years from the date of closing. Compl. ¶ 1; 24 C.F.R. § 291.500. Under

the OND Program, the purchasing officer was required to execute a second mortgage and note for the discounted amount that HUD forgave over the course of the three-year residency period. Compl. ¶ 13; 24 C.F.R. §§ 291.510, 291.520, 291.550.

4. In order to qualify for the 50 percent discount, the purchasing officer was required to sign a Law Enforcement Officer Certification ("Certification") at closing that stated, in relevant part: "I, [name], 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 this three year period." Compl. ¶ 14; 24 C.F.R. § 291.520. The Certification contained 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. 3279; 3802) Failure to adhere to the residency and resale requirements may result in administrative sanctions being taken against the law enforcement officer.

Compl. ¶ 15; HUD Form 9548-A (2003).

5. Purchasers under the OND Program were required to submit the Certification to HUD as an addendum to the Sales Contract in order for the property to be sold at the 50 percent discount. Compl. ¶ 16; 24 C.F.R. § 291.570(c).

6. On October 21, 2003, Respondent Molina, a San Bernadino County Probation Officer, signed a Sales Contract to purchase a property that was located at 18531 Eleventh Street, Bloomington, California, ("the Property") pursuant to the OND Program. Compl. ¶ 19.

7. Respondent signed the Certification, HUD Form 9548-A, wherein she certified that she would use the Property as her principal residence for three years from the date of closing and agreed not to resell the property during this three-year period. Compl. ¶ 19. Respondent executed the Sales Contract with HUD indicating that she was to occupy the Property as her principal residence. Compl. ¶ 20.

8. On January 9, 2004, HUD transferred the Property to Respondent for the list price of $135,000, with a $60,750 discount pursuant to the OND Program. Compl. ¶ 21.

9. Contrary to her Certification, Respondent did not occupy the Property as her principal residence. Compl. ¶ 23. Respondent never resided at the Property. Compl. ¶ 24.

11. At the time Respondent executed the Certification, she owned and resided in another residential property in Rialto, California. Compl. ¶ 25.

12. In executing the Sales Contract and Certification for the Property, Respondent Molina agreed to a repayment schedule in favor of HUD, which contained a repayment obligation that was reduced each year that the Officer complied with the three-year residency period based on the following scale:

> 1) HUD required repayment of 90% of the discount if the officer violated the residency requirement within one year of closing;
> 2) HUD required repayment of 60% of the discount if the officer violated the residency requirement within two years of closing;
> 3) HUD required repayment of 30% of the discount if the officer violated the residency requirements within three years of closing.

Compl. ¶ 17.

13. At the end of the three-year residency period, an officer's obligation to repay the discount was completely released and the officer had no further financial obligation to HUD. Compl. ¶ 18; 24 C.F.R. § 291.550.

14. In order to continue to comply with the OND Program requirements, on or about March 1, 2005, Respondent signed and submitted to HUD an Annual Certification Letter ("Occupancy Certification") stating that she owned and, since the agreed upon occupancy start date, had continuously resided at the Property as her sole residence and that she did not own any other residential real property. Compl. ¶ 26. At the time of her March 1, 2005, Occupancy Certification, Respondent resided at another property in Rialto, California, which she owned with her husband until July 8, 2005. Compl. ¶ 27.

15. Respondent Molina knew or had reason to know that the Occupancy Certification of March 1, 2005, was false. This statement to HUD was made within two years of the date of closing.

16. In order to continue to comply with the OND Program requirements, on or about January 10, 2006, Respondent signed and submitted to HUD another Occupancy Certification stating that she owned and, since the agreed upon occupancy start date, had continuously resided at the Property as her sole residence and that she did not own any other residential real property. Compl. ¶ 29. At the time of her January 10, 2006, Occupancy Certification, Respondent did not, in fact, reside at the Property. Compl. ¶ 30.

17. Respondent Molina knew or had reason to know that the Occupancy Certification of January 10, 2006, was false. Compl. ¶ 31.

18. In order to continue to comply with the OND Program requirements, on or about December 14, 2006, Respondent signed and submitted to HUD another Occupancy Certification stating that she owned and, since the agreed upon occupancy start date,

had continuously resided at the Property as her sole residence and that she did not own any other residential real property. Compl. ¶ 32. At the time of her December 14, 2006, Occupancy Certification, Respondent did not, in fact, reside at the Property. Compl. ¶ 33.

19. Respondent Molina knew or had reason to know that the Occupancy Certification of December 14, 2006, was false. Compl. ¶ 34.

20. On March 25, 2008, Respondent executed a Plea Agreement in the criminal case brought against her by the United States in the United States District Court for the Central District of California, Eastern Division, in which she pled guilty to count one of the indictment in *United States v. Debra Shellmire Molina*, No. ED CR 08-04-SGL, which alleged:

> On or about March 1, 2005, . . . [Respondent] knowingly and willfully made a false and fraudulent material statement and representation, in that [Respondent] submitted to HUD a written certification that she owned and, since the agreed upon occupancy start date, had continuously resided in a specified property located in Bloomington, California as her sole residence, and that she did not own any other residential real property, in accordance with HUD's Officer Next Door Program, when in truth and in fact [Respondent] had never resided in the specified property in Bloomington, California and did, at the time of her certification to HUD, own and reside in another piece of residential real property located in Rialto, California.

Compl. ¶ 36.

21. As a result of her conviction, Respondent was placed on home detention for six months and she voluntarily paid HUD $60,750 to release the lien on the Property. Compl. ¶ 37.

<u>Count 1:</u>

22. On or about March 5, 2005, Respondent made a submission to HUD on the occupancy Certification in which she represented that since the agreed-upon occupancy start date she had continuously resided at the Property as her sole residence and did not own any other residential real property. This submission concealed from HUD the fact that she did not occupy the Property as of March 5, 2005, which would have required Respondent to repay HUD $36,450, which is sixty percent of the $60,750 discount that she had received from HUD pursuant to the OND Program. Compl. ¶¶ 39, 40.

23. This submission constituted a claim because it had the effect of decreasing Respondent's legal obligation to pay 60% of the $60,750 discount she received from HUD. Compl. ¶ 41.

24. Respondent knew or had reason to know that this claim was false and/or that this claim included or was supported by a written statement which asserted a material fact which was false because she had not continuously resided at the Property as her sole residence in accordance with OND Program requirements. Compl. ¶ 42.

25. For claims or written statements made after March 17, 2003, but before March 8, 2007, HUD may impose a civil penalty not to exceed $6,500 for each such claim or statement. Compl. ¶ 7; 24 C.F.R. § 28.10(a). Accordingly, Respondent is liable for a civil penalty of $6,500 for Count 1.

26. In addition to the civil penalty, the PFCRA authorizes HUD to impose an assessment of twice the amount of the claim where HUD has made any payment or transferred property on the claim. Compl. ¶ 8; 31 U.S.C. § 3802(a)(1), (3); 24 C.F.R. § 28.10(a)(6). Under Count 1, Respondent is liable for an assessment of twice the amount of the reverse false claim of $36,450, which is $72,900, pursuant to the PFCRA, 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28.10(a), less the $60,750 already repaid by Respondent. Compl. p. 11; Compl. ¶ 42.

Count 2:

27. On or about January 10, 2006, Respondent submitted a written statement to HUD, by executing an Occupancy Certification, in which she represented that since the occupancy start date she had continuously resided at the Property and that she did not own any other residential real property. Comp. ¶ 44.

28. Respondent knew or had reason to know that this statement asserted a material fact which was false because she had not continuously resided at the Property as her sole residence in accordance with OND Program requirements, and owned other residential real property. Compl. ¶ 45.

29. This statement contained or was accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents thereof. Compl. ¶ 46.

30. For Count 2, Respondent is liable for a civil penalty of $6,500, pursuant to the PFCRA, 31 U.S.C. § 3802(a)(2) and 24 C.F.R. § 28.10(b) . Compl. ¶ 46.

Count 3:

31. On or about December 14, 2006, Respondent submitted a written statement to HUD, by executing another Occupancy Certification, in which she represented that since the occupancy start date she had continuously resided at the Property and that she did not own any other residential real property. Comp. ¶ 48.

32. Respondent knew or had reason to know that this statement asserted a material fact which was false because she had not continuously resided at the Property as her sole residence in accordance with OND Program requirements, and owned other residential real property. Compl. ¶ 49.

33. This statement contained or was accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents thereof. Compl. ¶ 50.

34. For Count 3, Respondent is liable for a civil penalty of $6,500, pursuant to the PFCRA, 31 U.S.C. § 3802(a)(2) and 24 C.F.R. § 28.10(b) . Compl. ¶ 46.

Total Penalties and Assessment

35. The total civil penalty to assess against Respondent for Counts 1, 2 and 3 is $19,500.

36. The total assessment imposed against Respondent for Count 1 is $12,150 ($72,900 - 60,750).

37. The total of penalties and assessment imposed against Respondent is $31,650.

38. In determining the amount of penalty to be imposed under 31 U.S.C. § 3802, the Rules provide that the ALJ shall consider evidence in support of one or more of the factors listed at 24 C.F.R. § 28.40(b), which include: the number of false claims, the time period over which such claims were made, the degree of the respondent's culpability, the value of property, services, or benefit falsely claimed, whether the respondent attempted to conceal the misconduct, the need to deter the respondent and others from engaging in the same or similar misconduct, and any other factors that in any given case may mitigate or aggravate the seriousness of the false claim or statement. 24 C.F.R. § 28.40(b).

39. The Complaint does not directly address any of the factors listed in 24 C.F.R. § 28.40(b), nor was any evidence presented in support of any such factors in the Motion or any other filing. Moreover, Respondent has failed to make any arguments against the full imposition of the proposed penalties and assessment. However, the Rules provide that upon a finding of default, "[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. Accordingly, the $31,650 total award proposed by the Government in the Complaint is imposed herein on Respondent pursuant to 31 U.S.C. § 3803(f) and 24 C.F.R. § 26.41.

ORDER

1. HUD's Motion for Default Judgment is hereby **GRANTED**, and Respondent is hereby found in **DEFAULT**, and is deemed to have admitted all the allegations in the Complaint and waived her right to a hearing thereon.

2. Respondent Debra Shellmire Molina shall pay penalties and an assessment, in an aggregate amount of **Thirty One Thousand Six Hundred and Fifty Dollars ($31,650)**, for violations of 31 U.S.C. §§ 3802(a)(1) and 3802(a)(2), for which she is found liable in this action. **Such amount is due and payable immediately without further proceedings**. 24 C.F.R. § 26.41(c).

3. This Order shall constitute the **final agency action** in accordance with 24 C.F.R. § 26.41(b).

Susan L. Biro
Chief Administrative Law Judge
United States Environmental Protection Agency[1]

Dated: October 13, 2010
Washington, D.C.

In accordance with 31 U.S.C. § 3803(i)(1), "the decision, including the findings and determinations, of the presiding officer issued under subsection (h) of this section are final," except that review of the imposition of penalties may be had by filing, within thirty (30) days after the issuance of this Order, an appeal to the authority head. 31 U.S.C. § 3803(i)(2)(A)(i). Further, if Respondents fail to comply with this Order, the Secretary may request the Attorney General of the United States to bring an action against them in an appropriate United States district court to obtain a monetary judgment. 31 U.S.C. § 3806(b).

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[1] The Administrative Law Judges of the United States Environmental Protection Agency are authorized to hear cases pending before the United States Department of Housing and Urban Development pursuant to an Interagency Agreement effective for a period beginning March 4, 2010.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **Default Judgment And Order** issued by Susan L. Biro, Chief Administrative Law Judge, in HUDALJ 10-E-093-PF-12 were sent to the following parties on this 13th day of October, 2010, in the manner indicated:

Maria Whiting-Beale

Maria Whiting-Beale
Staff Assistant

FIRST CLASS MAIL AND CERTIFIED MAIL TO:

Debra Shellmire Molina
19305 Tahoe Street
Rialto, CA 92376

FIRST CLASS MAIL TO:

Terri L. Roman, Esquire
Office of General Counsel
U.S. Department of Housing & Urban Development
Portals Building, Suite 200
1250 Maryland Avenue, SW
Washington, DC 20024