

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

In the Matter of:)	
Five Star of Central Florida, Inc.,)	HUDALJ 10-M-047-CMP/10
Respondent.)	

DEFAULT JUDGMENT AND ORDER

I. Procedural Background

This case arises from a Complaint by the United States Department of Housing and Urban Development (“HUD” or “Government”) seeking civil money penalties from Five Star of Central Florida, Inc. (“Five Star” or “Respondent”), pursuant to 42 U.S.C. § 1437z-1 and 24 C.F.R. Part 30, for failure to timely submit required audited annual financial reports (“AFRs”).

On June 16, 2009, HUD issued a Pre-Penalty Notice to Respondent, through its President, Surujnauth Bharrat. The notice informed Respondent that HUD was considering seeking civil money penalties for Respondent’s failure to file AFRs for the Daytona Village Apartments (“Project”). The notice provided Respondent with an opportunity to reply in writing within thirty days. That notice was returned to HUD as unclaimed, so on July 15, 2009, HUD re-sent the notice via certified mail. This time, a receipt dated July 21, 2009, was returned signed by “S. Bharrat.” indicating that the notice was received by Respondent. (The same notice was also successfully transmitted to Respondent’s facsimile number on July 15, 2009.) However, Respondent did not respond within thirty days after receipt of the notice.

On February 18, 2010, HUD instituted this action by filing a Complaint for Civil Money Penalties (“Complaint” or “Compl.”), against Respondent, in its capacity as owner of the Project, a 76-unit multi-family property in Daytona Beach, Florida, that receives project-based assistance from HUD under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f (“Housing Act”). The Complaint alleges that Respondent violated its Housing Assistance Payments Contract (“HAP Contract”) with HUD by failing to submit timely audited AFRs for the Project’s fiscal years 2007 and 2008. The Complaint alleges two counts of violation of the Housing Act and seeks a civil money penalty of \$50,000.

The Complaint states in pertinent part in Paragraphs 43, 44 and 48 that --

43. Respondent may submit a written request for a hearing before an administrative law judge no later than 15 days following receipt of the Complaint. This mandated period cannot be extended.

* * * *

44. If Respondent requests a hearing, he shall also submit a written answer to the Complaint (“Answer”) within 30 days of receipt of the Complaint, unless such time is extended by the administrative law judge for good cause.

* * * *

48. If no response is submitted by Respondent, then HUD will file a motion for default judgment, pursuant to 24 CFR §§ 30.90(c), 26.41. If a default judgment is issued, it shall constitute an admission of all facts alleged in the Complaint, and Respondent waives any 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.

* * * *

In a letter dated February 22, 2010, HUD's Office of Administrative Law Judges (OALJ) reiterated to Respondent important procedural deadlines that were also stated in the Complaint. Compl. at 9. The letter notified Respondent, that if Five Star wanted to contest the imposition of the penalties, Respondent "must submit a request for a hearing no later than 15 days following [its] receipt of the Complaint," that if it requests a hearing on time, it has "a total of 30 days from [its] receipt of the Complaint to file a written answer" and that it "may also submit to this Office a request for an extension of time beyond this 30-day period"

On March 26, 2010, HUD filed with the Office of Administrative Law Judges and served on Respondent the Government's Motion for Default Order ("Motion" or "Mot."), pursuant to 24 C.F.R. §§ 26.41 and 30.90(c), on grounds that Respondent failed to submit a request for a hearing or otherwise respond to the Complaint. The Motion seeks a default judgment against Respondent for civil money penalties in the amount of \$50,000.

On June 21, 2010, HUD served on Respondent and filed a Government's Status Report stating that it had received notice from the United States Bankruptcy Court for the Middle District of Florida that, on May 17, 2010, Surujnauth Bharrat and Lilawatti Bharrat had filed for Bankruptcy protection under Chapter 7 of the Bankruptcy Code. HUD's Status Report explains that this Bankruptcy filing was made by an officer of Five Star in his personal capacity, rather than the Five Star corporation. Therefore, HUD explains, the automatic stay provisions of the Bankruptcy Code do not affect this civil money penalty matter against Five Star.

On October 5, 2010, HUD Administrative Law Judge J. Jeremiah Mahoney sent the parties a Notice of Disqualification, removing himself from this case. In a letter dated October 14, 2010, the Director of the HUD OALJ reassigned the case to the United States Environmental Protection Agency's Office of Administrative Law Judges.¹ On October 22, 2010, the undersigned was officially designated to preside over this case.

To date, Respondent has filed no answer to the Complaint and no response to the Motion.

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

II. Applicable Procedural Rules

The rules governing proceedings on complaints issued by HUD for civil monetary penalties are 30 C.F.R. Parts 26 and 30 (“Rules”). The Rules at Part 30 provide in pertinent part that “[t]he complaint shall be served on the respondent by first class mail, personal delivery, or other means.” 24 C.F.R. § 30.85(d). The Rules provide further that “[i]f the respondent desires a hearing before an administrative law judge, the respondent shall submit a request for a hearing to HUD and the Office of Administrative Law Judges no later than 15 days following receipt of the complaint, as required by statute.” 24 C.F.R. § 30.90(a). Also, “[i]n any case in which the respondent has requested a hearing, the respondent shall serve upon HUD and file with the Office of Administrative Law Judges a written answer to the complaint within 30 days of receipt of the complaint, unless such time is extended by the administrative law judge for good cause.” 24 C.F.R. § 30.90(b). The Rules also provide that “[i]f no response is submitted, then HUD may file a motion for default judgment, together with a copy of the complaint, in accordance with [the Rules at Part 26].” 24 C.F.R. § 30.90(c). In turn, Part 26 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. Service of a motion may be made by delivery, first-class mail, overnight delivery, facsimile transmission, or electronic means, at a respondent's address of residence or principal place of business. 24 C.F.R. § 26.30(b). Service is complete when delivered to the person's office or residence. *Id.*

III. Motion for Default

HUD mailed the Complaint via United Parcel Service Ground to Surujnauth Bharrat, President of Respondent at 2133 Kroat Lane, Maitland, FL 32751 on February 18, 2010, and it was delivered on February 23, 2010. *See* Memorandum (“Mem.”) in Support of Government's Motion for Default Order ¶¶ 8, 11 and Ex. 6 (UPS Proof of Delivery). The Complaint was mailed to the same address for Respondent as the Pre-Penalty Notice was sent via certified mail return receipt. Mem. ¶¶ 1, 3. The return receipt for the Pre-Penalty Notice indicates that it was signed for by “S. Bharrat,” President of Five Star. Mem., Ex. 4. Fifteen days after the date on which Respondent received the Complaint is March 10, 2010. HUD represents that Respondent did not file a request for hearing within this fifteen day period. Mem. ¶ 12. To date, Respondent has not filed a request for hearing or any other written response to the Complaint. The

documents of record show that Respondent was properly served with the Complaint in accordance with the Rules.

The documents of record show that Respondent was properly served with the Complaint in accordance with the Rules. The Motion was served on Respondent in the same way as the Complaint was served, according to the Motion's Certificate of Service, and therefore was also properly served on Respondent under the Rules. To date, Respondent has not responded to the Motion.

It is concluded that Respondent is in default for his failure to file a response to the Complaint within the time limits set out in 24 C.F.R. § 30.90. Respondent's default constitutes an admission of all facts alleged in the Complaint and a waiver of his right to a hearing on such allegations. 24 C.F.R. § 26.41.

Accordingly, the Government's Motion for Default Order is granted, based upon the entire record and the following Findings of Fact and Conclusions of Law.

IV. Findings of Fact

1. HUD is an executive department of the United State Government, established by 42 U.S.C. § 3531 *et seq.* Compl. ¶ 1.
2. Five Star of Central Florida, Inc. a Florida corporation, is the owner of Daytona Village Apartments ("Project"), a 76-unit multifamily property located in Daytona Beach, Florida. The Project receives project-based assistance from HUD under section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, and a Housing Assistance Payments ("HAP") Contract. Compl. ¶ 2.
3. In 1976, the then-owner of the Project signed a HAP Contract with HUD to receive project-based assistance under Section 8 of United States Housing Act of 1937. Compl. ¶ 8.
4. In 2004, Elite Commercial Properties, Inc., purchased the Project and assumed the Project's HAP Contract. Compl. ¶ 9.
5. On or about April 6, 2007, Elite Commercial Properties, Inc., Respondent, and HUD executed a Housing Assistance Payments Contract Assignment, Assumption and Amendment Agreement ("HAP Assignment Agreement") in connection with Respondent's purchase of the Project from Elite Commercial Properties, Inc. Compl. ¶ 10.
6. The HAP Assignment Agreement provided that Respondent assume all the obligations contained in the Project's HAP Contract. In addition, Respondent agreed to be responsible for filing the Project's annual financial statement. Finally, the HAP Assignment Agreement explicitly required Respondent to comply with HUD's Uniform Financial Reporting Standards, codified at 24 C.F.R. Part 5, Subpart H. Compl. ¶ 11.
7. 24 C.F.R. Part 5, Subpart H, and other implementing regulations require owners of multifamily properties with HAP contracts to submit annual audited financial reports within 90 days of the end of their fiscal year. Compl. ¶ 12.
8. The fiscal year for the Project ends on December 31. Therefore, the annual audited financial report is normally due on March 31 of the following year. Compl. ¶ 13.

9. HUD extended the annual audited financial report deadline for all HUD-assisted multifamily projects with fiscal years ending December 31, 2007, to April 30, 2008. Compl. ¶ 14.
10. Respondent failed to submit the audited financial report for fiscal year 2007. Compl. ¶ 15.
11. HUD again extended the annual audited financial report deadline for all HUD-assisted multifamily projects with fiscal years ending December 31, 2008, to April 30, 2009. Compl. ¶ 16.
12. Five Star failed to submit the audited financial report for fiscal year 2008. Compl. ¶ 17.
13. On June 19, 2009, HUD issued a Pre-Penalty Notice, as required by 24 C.F.R. § 30.70, that it was considering seeking a civil money penalty against Five Star for its failure to file the required annual audited financial reports for fiscal years 2007 and 2008. The notice was sent to Surujnauth Bharrat, President of Five Star. Compl. ¶ 19.
14. Pursuant to 24 C.F.R. § 30.70(a)(4), the Pre-Penalty Notice stated that Respondent had an opportunity to reply in writing within 30 days after receipt of the notice. Compl. ¶ 20.
15. According to the United States Postal Service, the notice was unclaimed by Five Star. Compl. ¶ 21.
16. HUD sent a copy of the Pre-Penalty Notice a second time on July 15, 2009. According to the United States Postal Service, the notice was successfully delivered on July 21, 2009. Compl. ¶ 22.
17. HUD did not receive a response to the Pre-Penalty Notice within the 30-day period specified in 24 C.F.R. § 30.70(a)(4). Compl. ¶ 23.
18. To date, none of the delinquent annual financial reports have been submitted. Compl. ¶ 24.
19. After expiration of the 30-day response period, the Acting Director for HUD's Departmental Enforcement Center ("Director"), the Department's designee to review civil money penalty matters concerning annual audited financial reports, reviewed the allegations against Respondent and considered the factors set forth in 24 C.F.R. § 30.80. Compl. ¶ 25.

V. Conclusions of Law

1. Respondent's failures to furnish HUD with AFRs for fiscal years 2007 and 2008 are violations of Respondent's HAP Contract with HUD.
2. Respondent, as the owner of a property receiving project-based assistance under Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, may be subject to a civil money penalty under 42 U.S.C. § 1437z-1(b)(1)(A) and C.F.R. § 30.68(b) for any knowing and material breach of a housing assistance payments contract.
3. Respondent's failure to furnish HUD with a complete audited AFR for the Project's fiscal year ending on December 31, 2007, is a violation of his HAP Contract, for which a penalty may be imposed pursuant to 42 U.S.C. § 1437z-1(b)(2).

4. Respondent's failure to furnish HUD with a complete audited AFR for the Project's fiscal year ending on December 31, 2008, is a violation of his HAP Contract, for which a penalty may be imposed pursuant to 42 U.S.C. § 1437z-1(b)(2).

5. Because HUD gave Respondent specific notice of the AFR filing requirement via the HAP Assignment Agreement, Respondent's violations of the HAP Contract were "knowing." 42 U.S.C. § 1437z-1(h)(2), 24 C.F.R. § 30.10.

6. Because HUD made timely annual financial reporting an express requirement of Respondent's HAP Assignment Agreement, as a necessary element of HUD's assessment for decision-making and resource allocation for its assisted housing, Respondent's failures to file these reports were "material" violations. 24 C.F.R. § 30.10.

7. Respondent's knowing and material failures to submit audited AFRs, as mandated by the HAP Assignment Agreement, are grounds for the imposition of civil money penalties against Respondent pursuant to 24 C.F.R. § 30.68(b) and 42 U.S.C. § 1437z-1(b)(2), which provides that "[a] penalty may be imposed under this section for a knowing and material breach of a housing assistance payments contract."

VI. The Penalty

In determining the amount of a penalty, consideration should be given to such factors as the gravity of the offense, any history of prior offenses, ability to pay the penalty, injury to the tenants, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate. 42 U.S.C. § 1437z-1(c)(3); 24 C.F.R. § 30.80. The maximum penalty for each violation is \$25,000 under 42 U.S.C. § 1437z-1(b)(3) and 24 C.F.R. § 30.68(c). In the Complaint at pages 6-7, HUD included an analysis of these factors as applied to the facts of this case, and proposed a penalty of \$25,000 each for Counts 1 and 2 regarding failure to file the AFRs for fiscal year 2007 and 2008, for a total penalty of \$50,000.

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 \$50,000 penalty proposed in HUD's Complaint is hereby imposed on Respondent.

ORDER

1. For failing to respond to the Complaint in a timely manner as indicated above, and upon motion filed, Respondent is deemed to have admitted all the allegations in the Complaint, waived his right to a hearing on those allegations, and is hereby found in **DEFAULT**.
2. Pursuant to 42 U.S.C. § 1437z-1 and 24 C.F.R. § 30.68, Respondent is found to have knowingly and materially violated provisions of the United States Housing Act of 1937, 42 U.S.C. § 1437 *et seq.*, and its implementing rules and regulations.

3. Respondent shall pay to HUD a civil money penalty in the amount of \$50,000, such amount due and payable immediately without further proceedings. 24 C.F.R. § 26.41(c).
4. In accordance with 42 U.S.C. § 1437z-1(c)(2)(A) and 24 C.F.R. § 26.41(b), this Order constitutes a final agency action.



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

Dated: November 24, 2010
Washington, D.C.

Pursuant to 42 U.S.C. § 1437z-1(c)(2)(A) and 24 C.F.R. § 26.41(b) this Default Order constitutes “the final agency action.” In accordance with 42 U.S.C. § 1437z-1(d), any judicial review of this Order shall be carried out in accordance with 12 U.S.C. § 1735f-15(e), which provides for review by filing within 20 days of entry of this Order a petition with the appropriate United States Court of Appeals.