

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS**

In the Matter of:

UNION NURSING HOME, INC.
AND
STACEY WERNER,

Respondents.

17-JM-0173-CM-003

October 23, 2017

RULING GRANTING DEFAULT JUDGMENT

The above-captioned matter is before this Court on a *Motion for Default Judgment* (“Motion”), filed on September 29, 2017, by the Secretary of the U.S. Department of Housing and Urban Development (the “Secretary” or “HUD”) against Respondent Union Nursing Home, Inc. (“Respondent Union Nursing”) and Stacey Werner (“Respondent Stacey Werner”) (collectively, “Respondents”). Respondents did not submit a written response to the Secretary’s *Complaint*, nor did Respondents respond to the present *Motion*. Accordingly, the Secretary’s *Motion* will be **GRANTED**.

FACTUAL AND LEGAL BACKGROUND

On November 1, 2012, Pleasantview Nursing Home (a.k.a. South Mountain Healthcare and Rehabilitation Center), a 195-bed nursing-home facility located in Union, New Jersey, was refinanced with the proceeds of a loan insured by the Secretary under Section 232 pursuant to Section 223(f) of the National Housing Act, 12 U.S.C. § 1701 et seq.¹ In exchange for receiving the benefits of a loan insured by the Secretary, Respondent Union Nursing also executed a Regulatory Agreement for Multifamily Housing Projects (the “Regulatory Agreement”) with the Secretary on November 1, 2012. Respondent Stacey Werner executed the Regulatory Agreement on behalf of Respondent Union Nursing in her capacity as President of Respondent Union Nursing.

Paragraph 9e of the Regulatory Agreement requires that within 60 days of the end of each fiscal year, the Secretary shall be furnished with a complete annual financial report based upon an examination of the books and records of mortgagor (Respondent Union Nursing).

¹ Section 232 loans help finance nursing homes, assisted living facilities, and board and care facilities. https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/fha_insurance (Accessed October 17, 2017).

Respondent Union Nursing’s fiscal year ends on December 31.² Respondent Union Nursing did not file an annual financial report for fiscal years 2012, 2013, 2014, or 2015.

Respondent Union Nursing received a Notice of Violation (NOV) on March 17, 2016, for failure to electronically file Pleasantview Nursing Home’s audited financial reports for fiscal years 2012, 2013, and 2014. A HUD Enforcement Analyst spoke to Respondent Stacey Werner on March 17, 2016, and Respondent Stacey Werner confirmed that Respondents had received the NOV. Respondent Stacey Werner asked for an extension to provide the requested information until June 30, 2016. HUD did not receive any of the outstanding financial reports from Respondent Stacey Werner by June 30, 2016.

On October 17, 2016, HUD issued Respondents a pre-penalty notice (PPN) informing Respondents that HUD was considering seeking a civil monetary penalty against Respondents for Respondent Union Nursing’s failure to file Pleasantview Nursing Home’s annual financial reports for fiscal years 2012, 2013, 2014, and 2015.³ Respondents received the PPN on October 24, 2016. Respondents provided a written response to the PPN on December 16, 2016, stating that they would prepare a more detailed response to the PPN on or before December 21, 2016. HUD did not receive anything further from Respondents on or before December 21, 2016. On January 13, 2017, HUD made another request for information related to Pleasantview Nursing Home’s annual financial reports for fiscal years 2012, 2013, 2014, and 2015. On January 17, 2017, Respondents submitted a letter to HUD, but the letter did not indicate when the outstanding financial reports would be submitted, nor did it include an offer of settlement.⁴

On August 22, 2017, HUD served copies of the *Complaint* on Respondents through e-mail, Certified Mail, and U.S. Regular Mail. The *Complaint* sought \$165,000.00 in civil money penalties against Respondents, pursuant to 12 U.S.C. § 1735f-15(c)(1)(B)(x) and 24 C.F.R. § 30.45, for violations of the Section 232 Regulatory Agreement between the Secretary and Respondent Union Nursing. Respondents’ response was due no later than September 6, 2017, pursuant to 24 C.F.R. § 30.85(b)(4) and 12 U.S.C. § 1735f-15(d)(2). To date, Respondents have failed to request a hearing or respond to the *Complaint*.

Pursuant to 24 C.F.R. § 26.41(c), the failure to file a timely response constitutes an admission of all facts alleged in the complaint, a waiver of a respondent’s right to a hearing, and entitles the Secretary of HUD to a judgment in the amount proposed in the *Complaint*.⁵

² The period to file the annual financial report was later increased to 90 days following the end of each fiscal year, pursuant to 24 C.F.R. § 5.801.

³ The Notice correctly indicated the maximum penalties for each failure to be:

2012	\$37,500.00	24 C.F.R. § 30.45(g) (2012)
2013	\$42,500.00	24 C.F.R. § 30.45(g) (2013)
2014	\$42,500.00	24 C.F.R. § 30.45(g) (2014)
2015	\$42,500.00	24 C.F.R. § 30.45(g) (2015)

For a total of \$165,000.00.

⁴ Respondents have failed to avail themselves of the opportunity for potential relief by responding to the pre-penalty notice, pursuant to 24 C.F.R. § 30.75 (2016) or by filing an answer to the complaint, pursuant to 24 C.F.R. § 30.90 (2016).

⁵ Pursuant to the language in 24 C.F.R. § 26.41(c), “[t]he penalty set forth in the default order shall be set forth in the default order and shall be immediately due and payable by respondent without further proceedings.”

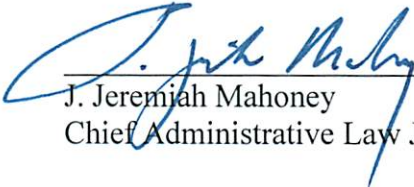
CONCLUSION

By reason of the facts in the *Complaint* deemed admitted by Respondents' default, Respondents failed to file the required annual financial reports for Pleasantview Nursing Home (a.k.a. South Mountain Healthcare and Rehabilitation Center) for fiscal years 2012, 2013, 2014, and 2015. Therefore, pursuant to 12 U.S.C. § 1735f-15 and 24 C.F.R. Part 30, Respondents are liable for civil penalties in the amount of \$165,000.00.

ORDER

Accordingly, Respondents, jointly and severally, are liable for, and shall pay to the HUD Secretary, civil monetary penalties in the amount of \$165,000.00, which is due and payable immediately, without further proceeding. 24 C.F.R. § 26.41(c).

So **ORDERED**,



J. Jeremiah Mahoney
Chief Administrative Law Judge

Notice of Appeal Right. The foregoing is Order the final agency action. 24 C.F.R. § 26.41(b). Judicial review may be sought pursuant to 12 U.S.C. § 1735-15(e).