

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

In the Matter of:

DENNIS NOONER, JR., and ARTHUR WEBSTER,

Respondents.

18-AF-0202-CM-001
HUDOGC No. 18-004-CMF

April 10, 2019

DEFAULT JUDGMENT AND ORDER

The above-captioned matter is before this Court on a *Motion for Default Judgment* filed on December 10, 2018 by the U.S. Department of Housing and Urban Development (“HUD” or “the government”) against Respondents Dennis Nooner, Jr. and Arthur Webster. To date, neither of the Respondents has requested a hearing, submitted any filings, or otherwise communicated with the Court in any way in this matter. Accordingly, HUD’s *Motion for Default Judgment* will be **GRANTED**, as discussed below.

BACKGROUND AND PROCEDURAL HISTORY

The *Complaint for Civil Money Penalties* (“Complaint”) in this matter was received on June 20, 2018, and alleges that Dennis Nooner, Jr., and Arthur Webster (collectively, “Respondents”) are liable for civil money penalties based on their material violations and knowing failures concerning statutory, regulatory, and contractual obligations owed to HUD in exchange for receiving HUD-based multifamily project insurance. Specifically, the *Complaint* alleges violations of 12 U.S.C. § 1735f-15(c)(1)(B), as implemented by 24 C.F.R. § 30.45, arising from Respondents’ ownership and management of the Saltillo Assisted Living Facility in Saltillo, Mississippi, a HUD-insured multifamily project (“the Insured Project”), between June 20, 2013 and March 30, 2016. The Insured Project ultimately went into default and foreclosure and cost HUD approximately \$2.3 million in insurance claims, according to the *Complaint*.

HUD’s *Complaint* sought liability of \$127,500 in civil money penalties from Respondents Nooner and Webster jointly and severally for their collective failure both to furnish required annual financial statements to HUD for two fiscal years and to maintain books and records in reasonable condition for proper audit and/or in accordance with the requirements of the Secretary; \$45,000 in civil money penalties from Respondent Nooner individually for paying out or causing to be paid out five disbursements that were not reasonable operating expenses or necessary repairs for the Insured Project while the Insured Project was in default on its mortgage loan insured by HUD; and \$745,500 in civil money penalties from Respondent Webster individually for paying out or causing to be paid out 22 disbursements that were not reasonable

operating expenses or necessary repairs for the Insured Project while the Insured Project was in default on its mortgage loan insured by HUD.

The *Complaint* notified Respondents of their rights to respond to HUD's allegations and to request a hearing before this Court. The *Complaint* also notified Respondents that their response, if any, must include an admission or denial of each allegation against them; that a failure to respond could result in HUD seeking a default judgment, which could result in a finding that they had admitted all the allegations against them; and that the penalties set forth in the *Complaint* would be immediately due and payable without further proceedings in the event of the issuance of a default judgment.

As detailed in HUD's *Motion for Default Judgment* and supporting documentation,¹ Respondent Webster received the *Complaint* by September 13, 2018, at the latest, and Respondent Nooner received the *Complaint* on September 21, 2018. However, to date, neither Respondent has filed an answer to the *Complaint*.

HUD filed its *Motion for Default Judgment* on December 10, 2018. On December 12, 2018, the Court issued an *Order to Show Cause* directing Respondents to show cause on or before January 11, 2019 as to why the motion for default should not be granted against them. Due to a partial federal government shutdown and resultant closure of this Court that lasted from December 22, 2018 to January 28, 2019, the Court issued a revised show cause order on January 31, 2019 giving Respondents an extension of time until February 28, 2019 to show cause why the *Motion for Default Judgment* should not be granted. However, to date, Respondents have not filed any response to the *Motion for Default Judgment* or to the Court's orders to show cause.

LEGAL FRAMEWORK

Mortgage Insurance for Assisted Living Facilities. Section 232 of the National Housing Act authorizes HUD, through the Federal Housing Administration ("FHA"), to provide mortgage insurance to certain residential care facilities that meet HUD's requirements, including assisted living facilities. 12 U.S.C. § 1715w; see 24 C.F.R. part 232. In addition, section 223(f) permits HUD to insure a mortgage executed in connection with the purchase or refinance of an existing assisted living facility. 12 U.S.C. § 1715n(f). Respondents obtained insurance for the Insured Project under sections 232 and 223(f), and as such, Respondents and the Insured Project were subject to the laws and regulations governing HUD-insured multifamily projects.

Civil Money Penalties. Under 12 U.S.C. § 1735f-15(c), as implemented by 24 C.F.R. § 30.45, civil money penalties may be imposed against a HUD-insured multifamily project mortgagor or any member of such a mortgagor for, *inter alia*:

¹ The motion was supported by a memorandum, a proposed default order, and exhibits that included a September 18, 2018 letter memorializing Respondent Webster's acceptance of service and prior receipt of the *Complaint*; a certified mail receipt dated August 6, 2018, signed by Webster indicating his receipt of the *Complaint*; and a declaration from Respondent Nooner's probation officer stating that the probation officer personally served the *Complaint* on Nooner on September 21, 2018.

- Failing to furnish HUD, within 90 days of the mortgagor’s fiscal year end, with a complete annual financial report in accordance with the requirements prescribed by the Secretary, 12 U.S.C. § 1735f-15(c)(1)(B)(x);
- Failing to “maintain at any time the ... books, contracts, records, documents, and other related papers (including failure to keep copies of all written contracts or other instruments which affect the mortgaged property) in reasonable condition for proper audit and for examination and inspection at any reasonable time by the Secretary or any duly authorized agents of the Secretary,” 12 U.S.C. § 1735f-15(c)(1)(B)(viii);
- Failing to maintain the books and accounts of the operations of the mortgaged property and the project in accordance with the requirements prescribed by the Secretary, 12 U.S.C. § 1735f-15(c)(1)(B)(ix); or
- Transferring, disposing of, or disbursing any assets of the mortgaged property, except for reasonable operating expenses and necessary repairs, without HUD’s prior written approval, 12 U.S.C. § 1735f-15(c)(1)(B)(ii).

HUD may impose a civil money penalty in an amount not to exceed \$42,500 for each violation of 12 U.S.C. § 1735f-15(c)(1)(B) that occurred after February 19, 2013 and before August 16, 2016. 30 C.F.R. § 30.45(g); 78 Fed. Reg. 4057, 4059 (Jan. 18, 2013); 81 Fed. Reg. 38934 (June 15, 2016). Before imposing such a penalty, HUD must file a complaint that gives the respondent an opportunity to request a hearing on the record. 12 U.S.C. § 1735f-15(d)(1); 24 C.F.R. § 30.85. Hearings are conducted before an Administrative Law Judge in accordance with the Administrative Procedure Act and HUD’s implementing regulations found in 24 C.F.R. part 26. 24 C.F.R. § 30.95.

Default. HUD’s regulations provide that if a respondent fails to file a timely response to a complaint, the Administrative Law Judge may, upon motion, issue a default judgment against the non-responding party. 24 C.F.R. § 26.41(a); see also 24 C.F.R. § 30.90(c). Moreover, failure to file a timely response, as defined by HUD regulations, constitutes an admission of all facts alleged in the complaint and a waiver of the respondent’s right to a hearing and entitles the government to a judgment in the amount alleged in the complaint. 24 C.F.R. § 26.41(c).

FINDINGS OF FACT

1. HUD filed its *Complaint* with this Court on June 20, 2018.
2. HUD effected personal service of the *Complaint* on Respondent Nooner on September 21, 2018, when Nooner’s probation officer gave him a copy of the *Complaint*.
3. HUD served the *Complaint* on Respondent Webster by mail on or around August 6, 2018, as indicated by Respondent Webster’s signature on a certified mail receipt that was returned to HUD.
4. Respondent Webster affirmed his receipt of the *Complaint* during a telephonic conversation with HUD counsel on September 13, 2018.
5. HUD memorialized Respondent Webster’s affirmation of service through a letter dated September 18, 2018.
6. Respondent Webster signed a certified mail receipt indicating that he had received this letter on September 20, 2018.

7. HUD sent Respondent Webster a second letter on October 15, 2018, stating that HUD had not received an answer or reply to its *Complaint* and that HUD planned to move for default against him if HUD did not receive a reply by November 1, 2018.
8. Respondent Webster signed a certified mail receipt stating that he received a copy of this letter on October 25, 2018.
9. Respondent Webster has not filed any response to HUD's *Complaint*.
10. Respondent Nooner has not filed any response to HUD's *Complaint*.

CONCLUSIONS OF LAW

The *Complaint* was served upon each Respondent through means that satisfied 24 C.F.R. § 30.85(d). Pursuant to HUD regulations and providing all benefit to Respondents, any response to HUD's *Complaint* from Respondent Webster would have been due no later than October 13, 2018, which is over 30 days after he, admittedly, personally accepted service of the *Complaint*. Similarly, any response to HUD's *Complaint* from Respondent Nooner was due no later than October 21, 2018, which is over 30 days after he was personally served with the *Complaint* by his probation officer. Both Respondents have failed to defend this action. Due to their failure to respond to the *Complaint*, all facts alleged in the *Complaint* are deemed admitted by Respondents.

Respondents Nooner and Webster were members of the Insured Project mortgagor during all times relevant to HUD's *Complaint*. See 24 C.F.R. § 30.45(a), (c); *Complaint* ¶¶ 54-55. In seeking and receiving FHA insurance for the Insured Project, Respondents were bound by 24 C.F.R. § 30.45 and 12 U.S.C. § 1735f-15(c). Additionally, Respondents agreed to comply with the Regulatory Agreement, a contractual agreement between HUD and Respondents concerning the Insured Project. *Complaint* ¶¶ 43-45.

The statute at 12 U.S.C. § 1735f-15(c) and the Regulatory Agreement that bound Respondents in exchange for HUD insurance required Respondents to furnish a complete audited financial report to HUD within 90 days following the end of each fiscal year. The statute and Regulatory Agreement also required Respondents to maintain the books and records of the project in accordance with the Secretary's requirements and in condition for audit and inspection at any reasonable time by HUD. The statute and Regulatory Agreement also required Respondents to pay out project funds only for reasonable operating expenses or necessary repairs. *Complaint* ¶¶ 5, 28-38.

By reason of the facts in the *Complaint* deemed admitted, Respondents Nooner and Webster failed to furnish required audited financial statements to HUD for two fiscal years for a HUD-insured multifamily project, *Complaint* ¶¶ 74-79, and failed to maintain books and records of this project in proper condition for audit and inspection by HUD, *Complaint* ¶¶ 80-91. Respondent Nooner paid out or caused to be paid out payments for expenses other than reasonable operating expenses or necessary repairs on five occasions, *Complaint* ¶¶ 92-98, and Respondent Webster paid out or caused to be paid out payments for expenses other than reasonable operating expenses or necessary repairs on 22 occasions, *Complaint* ¶¶ 99-107. Pursuant to 12 U.S.C. § 1735f-15 and 24 C.F.R. § 30.45, Respondents Nooner and Webster are therefore jointly and severally liable for penalties totaling \$127,500. In addition, Respondent

Nooner is separately liable for penalties totaling \$45,000, payable solely by Respondent Nooner, and Respondent Webster is separately liable for penalties totaling \$745,500, payable solely by Respondent Webster.

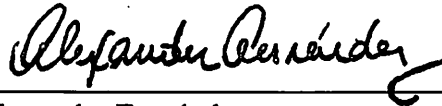
ORDER

It is hereby **ORDERED** that:

1. Respondents Nooner and Webster shall pay to HUD and the Secretary civil money penalties in the amount of \$127,500;
2. Respondent Nooner shall pay to HUD and the Secretary civil money penalties in the amount of \$45,000; and
3. Respondent Webster shall pay to HUD and the Secretary civil money penalties in the amount of \$745,500.

Such penalties are due and payable immediately without further proceeding. 24 C.F.R. § 26.41(c). Pursuant to 24 C.F.R. § 26.41(b), this order constitutes a final agency action.

So **ORDERED**,



Alexander Fernández
Administrative Law Judge