

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

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT,

Petitioner,

v.

ELGIN REAL ESTATE HOLDING, LLC,

Respondent.

HUDOHA 19-JM-0006-CM-004
OGC 18-008-CMF

April 17, 2019

DEFAULT JUDGMENT AND ORDER

The above-captioned matter is before this Court on a *Motion for Default Judgment* (“Motion”), filed on February 14, 2019, by the U.S. Department of Housing and Urban Development (“HUD” or the “Government”) against Elgin Real Estate Holding, LLC (“Respondent”). Respondent did not file an Answer to HUD’s *Complaint*, nor did it respond to the present *Motion*. Accordingly, the Government’s *Motion* is **GRANTED**.

On October 5, 2018, the Government filed a *Complaint* against Respondent alleging facts in support of an action for civil money penalties pursuant to 12 U.S.C. § 1735f-15(c) and 24 C.F.R. Part 30.45. The *Complaint* contained three counts against Respondent, the sole member of Elgin Real Estate, L.L.C. (“Owner LLC”). The first count of the *Complaint* sought liability against Respondent for a penalty of \$42,500 for the failure to submit to HUD a complete annual financial report for Owner LLC’s fiscal year end of 2015. The second count sought liability against Respondent for a penalty of \$47,340 for the failure to submit to HUD a complete annual financial report for Owner LLC’s fiscal year end of 2016. The third count sought liability against Respondent for a penalty of \$48,114 for the failure to submit to HUD a complete annual financial report for Owner LLC’s fiscal year end of 2017. The Government’s *Complaint* sought a total of \$137,954 in civil money penalties against Respondent for the failure to submit to HUD a complete annual financial report for each fiscal year end of 2015, 2016, and 2017.¹

The *Complaint* alleged that Respondent, as the sole member of Owner LLC since December 2013, is liable for Owner LLC’s violation of its Regulatory Agreement and LEAN Rider, 12 U.S.C. § 1735f-15(c)(1)(B)(x), and 24 C.F.R § 30.45(c), through its failure to submit a

¹ For violations that took place between February 19, 2013 and August 15, 2016, HUD may impose a civil money penalty of up to \$42,500 per violation. For violations that took place between August 16, 2016 and June 28, 2017, HUD may impose a civil money penalty of up to \$47,340 per violation. For violations occurring on or after June 29, 2017, HUD may impose a civil money penalty of up to \$48,114. See 78 Fed. Reg. 4057, 4059 (Jan. 18, 2013); 81 FR 38931, 38935 (June 15, 2016); 82 Fed. Reg. 24521, 24524 (May 30, 2017) (adjusting penalty amounts for inflation).

complete annual financial report for each fiscal year end of 2015, 2016, and 2017.² Pursuant to paragraph 9(e) of the Regulatory Agreement and paragraph (D) of its LEAN Rider, 24 C.F.R. § 5.801, and HUD Handbook 4232.1 REV-1, Section III, Chapter 4, Owner LLC was required to submit complete annual financial reports to HUD within ninety days following the end of each fiscal year. For the fiscal year end of 2015, 2016, and 2017, Owner LLC failed to submit annual financial reports to HUD, which failure continues to the present. As the sole member of Owner LLC since December 2013, Respondent is therefore liable for Owner LLC's failure to submit a complete annual financial report for each fiscal year end of 2015, 2016, and 2017. See 12 U.S.C. §1735f-15(c)(1)(A)(v); 24 C.F.R. §30.45(c)(5).

The *Complaint* was served on Respondent October 5, 2018 and October 31, 2018, and notified Respondent of its right to respond to HUD's allegations and request a hearing.³ It also notified Respondent that any response must include the admission or denial of all the allegations against it, that a failure to respond could result in HUD seeking a default judgment that could result in a finding that it had admitted all the allegations against it, and that the penalties set forth in the *Complaint* would be immediately due and payable without further proceedings in the event of an issuance of a default order.

HUD's regulations provide that if a respondent fails timely to file a response to a complaint against it, the Administrative Law Judge may, upon motion, issue a default judgment against that party. 24 C.F.R. § 26.41. Moreover, failure to file a timely response, as defined by HUD regulations, constitutes an admission of all facts alleged in the complaint, a waiver of a respondent's right to a hearing, and entitles the petitioner to a judgment in the amount proposed in its complaint. 24 C.F.R. § 26.41(c).

FINDINGS OF FACT

1. HUD filed a *Complaint* against Respondent on October 5, 2018.
2. Respondent was properly served and re-served the *Complaint* on October 5, 2018 and October 31, 2018.
3. The *Complaint* asserted liability against Respondent for civil penalties totaling \$137,954.
4. Respondent has not responded to HUD's *Complaint*.
5. Pursuant to HUD regulations, Respondent's response to HUD's *Motion for Default Judgment* was due no later than February 25, 2019.
6. Respondent has not filed any response to HUD's *Motion for Default Judgment*.
7. Respondent has failed to defend this action.
8. Due to Respondent's failure to respond to HUD's *Complaint*, all facts alleged in the *Complaint* are deemed admitted by Respondent.

² Regulatory Agreement and Lean Rider shall refer to the Regulatory Agreement for Multifamily Housing Projects ("Regulatory Agreement") and the LEAN Rider to Regulatory Agreement for Multifamily Housing Projects ("LEAN Rider") entered into between Owner LLC and HUD.

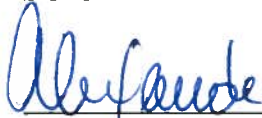
³ HUD served counsel for Respondent on October 5, 2018, and out of an abundance of caution, HUD re-served Respondent through its registered agent on October 31, 2018.

CONCLUSIONS OF LAW

By reason of the facts set forth in the *Complaint*, which are deemed admitted by Respondent, Respondent is liable for the violation of 12 U.S.C. § 1735f-15(c)(1)(B)(x) and 24 C.F.R § 30.45(c), through its failure to submit a complete annual financial report for each fiscal year end of 2015, 2016, and 2017. Respondent is liable for civil money penalties totaling \$137,954. This Court therefore finds Respondent Elgin Real Estate Holding, LLC liable for civil penalties in the amount of \$137,954 pursuant to 12 U.S.C. § 1735f-15(c)(1), and 24 C.F.R § 30.45.

This Order constitutes final Agency action.

SO ORDERED.

A handwritten signature in blue ink, appearing to read "Alexander Fernandez", written over a horizontal line.

Alexander Fernández
Administrative Law Judge