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

| In the Matter of:<br><br>RALSTON GA LLC, and<br>PF HOLDINGS LLC,<br><br>Respondents. | 21-JM-0180-CM-007<br><br>October 25, 2021 |
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**ORDER OF DISMISSAL**

This matter is before the Court upon a *Complaint for Civil Money Penalties* ("Complaint") filed by the U.S. Department of Housing and Urban Development ("HUD") seeking to impose $586,815 in civil money penalties against Ralston GA LLC ("Ralston GA") and PF Holdings LLC ("PF Holdings") (collectively, "Respondents") pursuant to 42 U.S.C. § 1437z-1 as implemented by 24 C.F.R part 30.

Ralston GA is the owner of record of Ralston Towers, a multifamily property in Columbus, Georgia, that receives project-based assistance from HUD under Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, pursuant to a Housing Assistance Payments ("HAP") contract. PF Holdings is an identity-of-interest management agent for Ralston Towers. The *Complaint* accuses Respondents of violating Ralston GA's HAP contract by failing to provide decent, safe, and sanitary housing at the project property, thereby subjecting Respondents to civil money penalties under 42 U.S.C. § 1437z-1(b)(2)(A) (added to the United States Housing Act of 1937 via Pub. L. 105-65, § 562, 111 Stat. 1344, 1416 (Oct. 27, 1997), and referred to hereinafter as "Section 29").[1]

HUD now asks the Court to enter default judgment in this matter and order Respondents to pay the proposed civil money penalties due to Respondents' failure to timely file a hearing request and to strike PF Holdings' *Request for Hearing* and *Answer and Affirmative Defenses*, and opposes PF Holdings' *Motion to Dismiss*. Respondent PF Holdings, through counsel, now asks the Court to dismiss this matter for insufficient process and lack of personal jurisdiction,

[1] The statute and implementing regulations specify that HUD may impose civil money penalties against a property owner or identity-of-interest management agent receiving project-based Section 8 assistance who violates its HAP contract by failing to provide decent, safe, and sanitary housing in accordance with Section 8 and with HUD's Uniform Physical Conditions Standards, which are codified at 24 C.F.R. § 5.703. See 42 U.S.C. § 1437z-1(b)(2)(A); 24 C.F.R. § 30.68(b)(1). In this case, the *Complaint* alleges that, during an on-site review of the project property, Ralston Towers, in November 2019, HUD found significant violations of the Uniform Physical Conditions Standards in fifteen different subsidized housing units. If established, these violations would show that Respondents, as the property owner and identity-of-interest management agent, breached Ralston's HAP contracts with HUD by failing to maintain the project property in decent, safe, and sanitary condition. Id.

and opposes HUD's motion for default judgment and to strike. Respondent Ralston GA has not appeared in this matter.

After careful consideration of the parties' filings, the Court will dismiss this matter for lack of jurisdiction, for the reasons discussed below.

## I. APPLICABLE LAW

Section 29(b) of the United States Housing Act permits HUD to impose civil money penalties on any property owner and any identity-of-interest management agent receiving project-based Section 8 assistance who violates a HAP contract with HUD, which Respondents are accused of doing in this case. See 42 U.S.C. § 1437z-1(b). Before imposing such penalties, HUD must give the liable parties notice and an opportunity for a hearing on the record. Id. § 1437z-1(c)(1)(B). Congress directed the Secretary of HUD to establish standards and procedures governing the imposition of civil money penalties and providing the opportunity for a hearing on the record. Id. § 1437z-1(c)(1). The Secretary has duly promulgated such regulations in part 30 of title 24 of the Code of Federal Regulations. See 24 C.F.R. part 30.

HUD's regulations implementing Section 29 provide that, upon making a determination to seek a civil money penalty, HUD must issue a complaint notifying the respondents of HUD's determination and of the respondent's "right to submit a response in writing, within 15 days of receipt of the complaint, requesting a hearing on any material fact in the complaint, or on the appropriateness of the penalty sought." 24 C.F.R. § 30.85(b)(4). The hearing request must be submitted to this Court. Id. § 30.90(a). The regulations characterize the 15-day deadline to request a hearing as mandatory, stating that the deadline is "required by statute" and "cannot be extended." Id. Indeed, Section 29(c) of the United States Housing Act mandates:

> If a hearing is not requested before the expiration of the 15-day period beginning on the date on which the notice of opportunity for hearing is received, the imposition of a penalty under subsection (b) shall constitute a final and unappealable determination.

42 U.S.C. § 1437z-1(c)(2)(A).

## II. PROCEDURAL HISTORY

On June 24, 2021, HUD served the *Complaint* in this matter on Respondents via email and simultaneously filed it with this Court.[2] Hard copies of the *Complaint* were also delivered to Respondents by UPS on June 25, 2021.[3] The *Complaint* notified Respondents of their right to request a hearing no later than 15 days following receipt of the *Complaint*, *i.e.*, by July 9, 2021, and to file an answer to the *Complaint* within 30 days, *i.e.*, by July 26, 2021, in accordance with

[2] Respondents were served via email to then-current counsel for both Respondents, Orlando Cabrera; an email address for PF Holdings; and an email address for Ralston GA.

[3] Respondents were served via UPS to the registered address for service of process upon PF Holdings; the identical address for Ralston GA's principal place of business; and the registered agent for PF Holdings.

24 C.F.R. § 30.90.[4] The *Complaint* also warned Respondents that failure to respond would result in HUD moving for default judgment under the applicable procedural regulations.

On July 21, 2021, PF Holdings, through counsel, filed a late *Request for a Hearing* and *Answer*. PF Holdings denied that it had ever been an owner, general partner, or identity-of-interest agent in the Ralston Towers project; denied that it was in privity with HUD under the HAP contracts; and denied that it was subject to HUD authority because of a lack of personal and subject matter jurisdiction.

On July 30, 2021, HUD filed a *Motion to Strike* and *Motion for Default Judgment*, requesting the Court to strike PF Holdings' *Request* and *Answer*, and to impose default judgment against Respondents. HUD argued that PF Holdings' *Request* was untimely and after the statutorily required deadline, and as such the *Answer* was moot. HUD also argued that PF Holdings' *Answer* should be struck and default judgment should be entered against both Respondents due to Respondents' failures to request a hearing within 15 days of receipt of the *Complaint*, as required under 42 U.S.C. § 1437z-1(c)(2)(A). HUD also noted that PF Holdings did not contest the dates or adequacy of service of the *Complaint*; PF Holdings did not offer any fact or argument justifying the failure to timely file the *Request*; and PF Holdings did not otherwise suggest that the *Request* and *Answer* were timely.

On August 11, 2021, PF Holdings filed an *Opposition to Motion to Strike and for Default* as well as a *Motion to Dismiss*. PF Holdings raised various defenses, maintaining that it was not a party to any agreement with HUD, that it was not a proper party to name in this administrative action, and that this Court does not have jurisdiction over it; argued for the first time that it was denied due process by the statutorily-required 15-day period to request a hearing; claimed that the applicable regulations for service of process violated due process; alleged one copy of the *Complaint* that was delivered by UPS was not personally received by the addressee until July 17, 2021; and asserted that HUD had miscalculated the period of time for PF Holdings to request a hearing because that copy of the *Complaint* was received at a later date.

On August 16, 2021, HUD requested leave to reply to PF Holdings' *Opposition* and *Motion to Dismiss*, and filed a *Motion to Stay* and a *Motion to Extend* the deadline to respond to the *Motion to Dismiss* until disposition of the *Motion to Strike* and *Motion for Default*.

On August 18, 2021, PF Holdings filed an *Opposition to Motion to Stay*, and opposed HUD's request for leave to reply.

On August 23, 2021, the Court granted HUD's request for leave to file a reply and *Motion to Extend*, and denied HUD's *Motion to Stay*.

On September 13, 2021, HUD filed a *Reply to Opposition to Motion to Strike and For Default* and *Opposition to Motion to Dismiss*. HUD argued that PF Holdings is inexorably intertwined with Ralston GA in managing the Ralston Towers project; maintained that PF Holdings is the identity-of-interest management agent for Ralston GA; noted that the managing

[4] 30 days after June 24, 2021, *i.e.*, July 24, 2021, would have fallen on a Saturday; the next business day was July 26, 2021. See 24 C.F.R. § 26.11.

member of Ralston GA, Chaim Puretz, is also the registered agent for service of process for PF Holdings; indicated that Puretz signed the 2014 HAP contract assignment on behalf of Ralston GA; pointed out that Puretz submitted a PF Holdings email address for the contact information for Ralston GA; and stated that PF Holdings' registered address is identical to Ralston GA's street address. HUD also asserted that PF Holdings' legal objection to service of process was waived by failing to raise it earlier, that PF Holdings' claim of delayed service was irrelevant as service was completed by other means on June 24, 2021, and that HUD regulations governing this matter comport with due process, but even if they did not, this Court does not have jurisdiction to decide that constitutional question.

## III. DISCUSSION

Pursuant to Section 29 of the United States Housing Act and HUD's implementing regulations, the deadline for Respondents to request a hearing in this matter was July 9, 2021, fifteen days after receiving the *Complaint* providing notice of opportunity for a hearing.[5] See 42 U.S.C. § 1437z-1(c)(2)(A); 24 C.F.R. § 30.90(a). However, PF Holdings did not request a hearing, or otherwise communicate with or appear before the Court, until July 21, 2021, 12 days past the 15-day deadline to request a hearing, when it filed a late *Request for Hearing* and *Answer*.

The parties now dispute whether HUD is entitled to default judgment, whether PF Holdings should have an opportunity to be heard on the merits, and whether the *Complaint* should be dismissed. But their arguments, particularly HUD's argument that PF Holdings' *Answer* is "moot" due to PF Holdings' failure to request a hearing by July 9, 2021, raise a more fundamental question: whether the Court has jurisdiction over this matter at all under Section 29, given that PF Holdings failed to request a hearing before the expiration of the 15-day statutory deadline set forth in Section 29(c). See 42 U.S.C. § 1437z-1(c)(2)(A).

Heretofore all parties involved in this matter, including the undersigned judge, have proceeded as if this Court had jurisdiction despite PF Holdings' failure to timely request a hearing. Upon issuing the *Complaint* to the Respondents, HUD simultaneously filed the *Complaint* with this Court.[6] As discussed above, Section 29(c) permits imposition of a penalty "only after the liable party has received notice and the opportunity for a hearing on the record." Id. § 1437z-1(c)(1)(B). But if the liable party does not request a hearing within 15 days of receiving such notice, "the imposition of a penalty under subsection (b) shall constitute a final and unappealable determination." Id. § 1437z-1(c)(2)(A). The plain language of this provision signals that, absent a timely hearing request, HUD's proposed penalty is imposed automatically — the "imposition" of the penalty becomes "final and unappealable" — upon the expiration of the 15-day deadline. Id. Thus, the statute seems to contemplate that the penalty becomes a *fait*

[5] PF Holdings has not disputed that service by email or by the other UPS deliveries was actually accomplished on June 24, 2021 and June 25, 2021, respectively.

[6] HUD's civil money penalty regulations required HUD counsel to file the *Complaint* with this Court before waiting to see whether the Respondents requested a hearing and indicated counsel should move for default judgment when no response was received. See 24 C.F.R. § 30.85(b) (stating that the complaint, which serves as the notice of opportunity for hearing, "shall be served upon respondent and simultaneously filed with the Office of Administrative Law Judges").

*accompli* once the 15-day deadline has elapsed, meaning that the hearing official's jurisdiction never attaches because there is no issue to be decided. If so, all the parties' filings in the instant case — not just PF Holdings' *Answer* — would be moot due to PF Holdings' failure to timely request a hearing by July 9, 2021.

As noted above, the statute speaks directly to the procedural posture before the court — namely, that a respondent did not file a request for hearing prior to the deadline. Section 29(c) indicates there is no issue for the Administrative Law Judge ("ALJ") to review in the absence of a timely hearing request because the penalty becomes final and unappealable as soon as the respondent misses the 15-day deadline. See 42 U.S.C. § 1437z-1(c)(2)(A). If the respondent misses the deadline, the validity and basis of the penalty are not in dispute before the ALJ, whose only role is to dismiss any commenced action. This is consistent with the applicable regulation, subsection (a) of § 30.90:

> If 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. **This mandated period cannot be extended.**

24 C.F.R. § 30.90(a) (emphasis added). By contrast, subsection (b) states that the 30-day deadline for the respondent to file an answer to the complaint may be "extended by the administrative law judge for good cause." Id. § 30.90(b). The omission of any similar language in subsection (a) supplying criteria under which the ALJ may extend the 15-day deadline reinforces the idea that the ALJ is not empowered to do so under any circumstances. Thus, subsections (a) and (b) of § 30.90 make clear that passage of the 15-day deadline terminates the ALJ's jurisdiction in the matter.

This termination makes the entry of default judgment inapposite in the absence of a timely request for hearing. A default judgment requires the exercise of some judicial discretion, as the ALJ still must review the complaint and issue a decision affirming the legal sufficiency of its allegations. See 24 C.F.R. § 26.41(b) (requiring issuance of decision on default); e.g., Surtain v. Hamlin Terrace Found., 789 F.3d 1239, 1245 (11th Cir. 2015) ("Entry of default judgment is only warranted when there is 'a sufficient basis in the pleadings for the judgment entered.'") (quoting Nishimatsu Constr. Co. v. Houston Nat'l Bank, 515 F.2d 1200, 1206 (5th Cir.1975)).

Even if a default judgment could be imposed in this procedural posture, however, prohibiting a respondent from contesting a request for default judgment seems unfair – especially where a respondent has asserted that it has no connection to the case, as PF Holdings has asserted. Nonetheless, the Court does not reach these issues due to lack of authority to rule on the *Motion for Default* and *Motion to Strike*.

It is noted that HUD ALJs have rendered default judgments in past civil money penalty cases where HUD moved for default after a respondent failed to submit any filings. The outcome of such cases was harmless because, unlike in the instant case, the respondent did not mount any defenses. However, in each such case, the ALJ's review of the complaint and issuance of a default judgment provided a layer of process that was unnecessary under Section

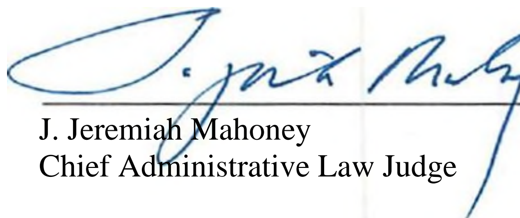
29(c) because the penalty proposed in the complaint had already become final and unappealable upon expiration of the 15-day deadline without a hearing request.[7]

The appropriate course of action when a respondent misses the 15-day deadline in a civil money penalty case is to dismiss any proceedings before the ALJ because the penalty proposed in the complaint has already become final under 42 U.S.C. § 1437z-1(c)(2)(A) and the Court lacks authority to adjudicate the matter. See *In re* PF Sunset Plaza LLC, No. 21-AF-0131-CM-006 (HUDALJ October 7, 2021) (order). PF Holdings was presented with notice of the opportunity for a hearing but failed to comply with the statutory deadline to request a hearing. As such, the penalty proposed in the *Complaint* became final under § 1437z-1(c)(2)(A) as to both Ralston GA and PF Holdings, and the Court lacks authority to rule on the motions by HUD and PF Holdings.[8]

## CONCLUSION AND ORDER

For the foregoing reasons, the Court concludes that the penalty proposed in the *Complaint* has already become final under 42 U.S.C. § 1437z-1(c)(2)(A) and that the Court lacks authority to adjudicate this matter.[9] Accordingly, this proceeding is hereby **DISMISSED**.

So **ORDERED**,



J. Jeremiah Mahoney
Chief Administrative Law Judge

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[7] Respondent PF Holdings' untimely claim that it has no connection to the case could have been resolved by the ALJ had a timely request for hearing been filed. However, because this Respondent failed to timely request a hearing, it has forfeited the opportunity to contest its status in this matter before an ALJ who, by statute, exercises limited jurisdiction.

[8] This outcome — PF Holdings cannot plead its case on the merits before the undersigned and the proposed penalty of over half a million dollars has become final — may seem strict, but PF Holdings was on notice of the deadline, and the outcome was avoidable if PF Holdings had chosen to comply with the statutory requirements. The statutory deadline requirement in this matter is also comparable to other statutory deadlines in HUD matters, like the 20-day deadline for any party to elect a hearing before a District Court (instead of a hearing before the ALJ) on a Fair Housing Act complaint. See 24 C.F.R. § 180.410(b) (implementing 42 U.S.C. § 3612(a)). Nor is this unique among federal agencies. See, e.g., Kronholm v. Federal Deposit Ins. Corp., 915 F.2d 1171, 1174 (8th Cir. 1990) (Order of Federal Deposit Insurance Corporation assessing civil money penalty was final and nonappealable by virtue of failure to request an administrative hearing within 20 days, as required by 12 U.S.C. § 1818(i)(2)(E)(ii)).

[9] As the penalty proposed in the *Complaint* has been declared the final agency action, this matter may be appealed within 20 days to the appropriate court of appeals of the United States in accordance with 12 U.S.C. § 1735f-15(e) as applied by 42 U.S.C. § 1437z-1(d).