

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

In the Matter of:

DAVID M. LOHMEYER,

Respondent.

24-AF-0152-CM-007

May 6, 2024

ORDER OF DISMISSAL

On February 21, 2024, the United States Department of Housing and Urban Development (“HUD”) issued a *Complaint for Civil Money Penalties* (“Complaint”) seeking to impose civil money penalties totaling \$23,728.00 against Respondent pursuant to 12 U.S.C. § 1735f-14 as implemented by 24 C.F.R. part 30 due to Respondent’s alleged material violations of program rules and regulations pursuant to the National Housing Act, 12 U.S.C. §§ 1701 *et seq.*

HUD attempted to serve the *Complaint* upon Respondent via electronic mail on February 21, 2024, while simultaneously transmitting a copy to this Tribunal as required under 24 C.F.R. § 30.85(b). HUD’s email to Respondent did not go through. Accordingly, HUD served the *Complaint* upon Respondent via Federal Express (“FedEx”). FedEx delivered the *Complaint* to Respondent’s home address on February 27, 2024.

The *Complaint* advised Respondent that, to contest HUD’s allegations, he was required to submit a written request for a hearing before an Administrative Law Judge within fifteen days of his receipt of the *Complaint*. The *Complaint* further warned that this mandatory deadline could not be extended, and that if Respondent failed to timely submit a hearing request, the proposed penalty would constitute a final and unappealable determination.

On March 26, 2024, HUD filed a *Motion to Dismiss for Lack of Jurisdiction* asking the Tribunal to dismiss this matter based on Respondent’s failure to request a hearing within fifteen days. Respondent has not responded to this motion.

On March 29, 2024, the Tribunal received from Respondent a filing titled *Respondent’s Special Appearance and Affirmative Response to: Complaint for Civil Money Penalties* stating Respondent’s intent to make a special appearance for the sole purpose of contesting this Tribunal’s personal jurisdiction over him. In his filing, Respondent also argued that the *Complaint* should be dismissed for failure to state a claim upon which relief can be granted. Respondent’s filing was notarized and mailed to HUD and to this Tribunal on March 14, 2024.

Under the governing statutes and implementing regulations, the deadline for Respondent to request a hearing in this matter was Wednesday, March 13, 2024, fifteen days after receiving the *Complaint* providing notice of opportunity for a hearing. See 12 U.S.C. § 1735f-14(c)(2) (“If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination.”); 24 C.F.R. § 30.90(a). Respondent’s *Special Appearance and Affirmative Response to: Complaint for Civil Money Penalties* does not request a hearing and was not filed until after the March 13 deadline to make such a request. The appropriate course of action when a respondent misses the fifteen-day deadline in a civil money penalty case is to dismiss any proceedings before the Administrative Law Judge because the penalty proposed in the complaint has already become final by operation of the governing statute and the Tribunal lacks authority to adjudicate the matter. See PF Sunset Plaza, LLC v. U.S. Dep’t of Hous. & Urban Dev., 60 F.4th 692 (D.C. Cir. 2023) (affirming *In re Ralston GA LLC*, No. 21-JM-0180-CM-007 (HUDALJ Oct. 25, 2021), and *In re PF Sunset Plaza LLC*, No. 21-AF-0131-CM-006 (HUDALJ Oct. 7, 2021)).

Because Respondent was placed on notice of the opportunity for a hearing, but failed to submit a hearing request by the statutory deadline, the penalty proposed in the *Complaint* has become final as against Respondent by operation of 12 U.S.C. § 1735f-14(c)(2). Accordingly, HUD’s *Motion to Dismiss for Lack of Jurisdiction* is **GRANTED**.¹

So **ORDERED**,

ALEXANDER
FERNANDEZ-PONS

Digitally signed by: ALEXANDER FERNANDEZ-
PONS
DN: CN = ALEXANDER FERNANDEZ-PONS C = US
O = U.S. Government OU = Department of Housing
and Urban Development, Office of the Secretary
Date: 2024.05.06 11:58:36 -0400

Alexander Fernández-Pons
Administrative Law Judge

¹ 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-14(d).