

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In The Matter of:

CHARLES McMULLEN

Respondent.

HUDALJ 01-206-CMP

Decided: July 31, 2001

Ann M. Johnson, Esq.  
For the Government

Before: WILLIAM C. CREGAR  
Acting Chief Administrative Law Judge

**DEFAULT DECISION AND ORDER**

On May 22, 2001, the Secretary of the United States Department of Housing and Urban Development (Secretary, HUD), through the Departmental Enforcement Center, filed a Complaint seeking civil money penalties of totaling \$55,000 against Charles McMullen (Respondent), pursuant to The National Housing Act, 12 U.S.C. §1735f-15(c)(1)(B)(x), and the applicable regulations under 24 C.F.R. Part 30. The Complaint (Complaint) charges that Respondent knowingly and materially failed to submit, in a timely manner, the audited financial reports for the Brittany Arms Project (the project) for fiscal years 1998 and 1999, in violation of 12 U.S.C. §1735f-15(c)(1)(B)(x) (failure to furnish the Secretary with a complete annual financial report). The Complaint notified Respondent of its right to appeal the imposition of the civil money penalty by filing an answer within 15 days of receipt of the Complaint, and that failure to file an answer could result in a default judgment and imposition of the penalty sought. *See* 24 C.F.R. §§ 26.39, 30.90(b). Respondent received a copy of the Complaint on May 23, 2001, but failed to file an answer.

On July 11, 2001, HUD served a Motion for Default Judgment on the Complaint on Respondent. Respondent received the Motion on July 17, 2001. Respondent failed to answer or to otherwise respond to the Motion. Accordingly, this Default Decision and Order is issued.

**Findings of Fact<sup>1</sup>**

1. Charles McMullen (Respondent) is the owner of the Brittany Arms Project, a multi-family housing project located in Sacramento, California. Complaint, ¶¶ 0<sup>2</sup>, 2.

2. The project was built and financed with the proceeds of a loan insured by HUD pursuant to the National Housing Act. 12 U.S.C. §§1707, et seq . Complaint, ¶ 2.

3. In exchange for receiving the benefits of a loan insured by HUD, Charles McMullen executed a Regulatory Agreement with HUD on March 1, 1984, agreeing to abide by certain controls over the management and operation of the project. Complaint, ¶¶ 7, 8.

4. Section 12(e) of the Regulatory Agreement requires in part that, within 60 days following the end of each fiscal year, the Secretary shall be furnished with a complete annual financial report based upon the books and records of the mortgagor and prepared and certified to by an independent public accountant and the mortgagor. Failure to do so constitutes a violation under 12 U.S.C. §1735f-15(c)(1)(B)(x). Complaint, ¶ 8.

5. The fiscal year for the project ends on December 31 of each year. The annual financial reports are therefore due to HUD on March 1 of the subsequent year. Complaint, ¶ 9.

6. The Secretary is permitted to grant written extensions of the annual deadline. In 1999, HUD granted such an extension to the Respondent for filing the fiscal year 1998 report. Consequently, the 1998 fiscal year annual financial report was due on August 31, 1999, 120 days after the usual deadline. Complaint, ¶ 8, 9.

7. The 1999 annual financial report was due on March 1, 2000. Complaint, ¶ 9.

8. Respondent failed to timely submit audited annual financial reports for fiscal years 1998 and 1999. Complaint, ¶ 10.

9. Respondent's failure to provide the project's audited annual financial reports to HUD for fiscal years 1998 and 1999 violated §12(e) of the Regulatory Agreement and constitutes a violation under 12 U.S.C. § 1735f-15(c)(1)(B)(x). Complaint, ¶ 11.

10. On March 13, 2001, HUD provided written notice to Respondent that it intended to seek civil money penalties against Respondent for its failure to submit the required audited annual financial reports for fiscal years 1998 and 1999. The notice offered Respondent the opportunity to reply in writing before HUD took further action. Respondent received the notice on March 15, 2001, but did not respond to it within 30 days. Complaint, ¶¶ 12-14.

11. After considering the allegations, the Director of HUD's Departmental Enforcement Center, pursuant to 24 C.F.R. § 30.85, determined to seek civil money penalties against Respondent in the amount of \$27,500 per violation, or \$55,000 total. *See* 12 U.S.C. § 1735f-15(c)(2); *see also* 24 C.F.R. § 30.45(b); *see also* the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321-358 *et seq.*, (enacted April 26, 1996); *see also* 61 Fed. Reg. 50208 (1996) (codified at 24 C.F.R. Part 30) (regulations setting amount of civil money penalty per violation). In determining the amount of the civil money penalty, HUD considered the following factors: the gravity of Respondent's offense, history of prior offenses, Respondent's ability to pay a penalty, injury to the public, benefits received by Respondent, extent of benefit to other persons, deterrence of future violations, degree of Respondent's culpability, and any injury to tenants or to lot owners. *See* 24 C.F.R. §§ 30.80 and 30.85. Complaint, ¶¶ 15-18.

### **Conclusion and Order**

Respondent knowingly and materially committed a violation under 12 U.S.C. § 1735f-15(c)(1)(B)(x) by failing to submit, in a timely manner, the audited annual financial reports for the Brittany Arms Project for fiscal years 1998 and 1999. Respondent failed to answer the Complaint, and therefore, is in default. *See* 24 C.F.R. §§ 26.37, 26.38, 26.39, and 30.90(b). HUD filed a Motion for Default Judgment, which was received by this Office on July 13, 2001 and by Respondent on July 17, 2001. Respondent has failed to file a response to the Motion for Default Judgment. Pursuant to 24 C.F.R. §§ 30.90, 26.37, and 26.39,

it is **ORDERED**, that

1. The Motion for Default Judgment is *granted*;
2. Respondent shall pay to the Secretary of HUD a civil money penalty of \$55,000, which is immediately due and payable by Respondent without further proceedings; and

3. This Order shall constitute the final agency action, pursuant to 24 C.F.R.  
§ 26.39.

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WILLIAM C. CREGAR  
Acting Chief Administrative Law Judge