

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

In the Matter of:

Georgia Morris Apartments, Ltd.
Respondent.

HUDALJ 01-438-CMP

Michelle A. Richman, Esq., and
Dane M. Narode, Esq.,
For the Government

Paul M. Booth, Managing Agent, *pro se*,
For the Respondent

Before: Robert A. Andretta
Administrative Law Judge

DEFAULT DECISION AND ORDER

Procedural Background

On October 24, 2002, the U.S. Department of Housing and Urban Development (HUD) filed a Complaint against Georgia Morris Apartments (Respondent) seeking civil money penalties in the amount of \$73,920 for Respondent's failure to submit audited financial reports pursuant to 24 CFR 30.45(b) and 12 U.S.C. § 1735f-15(c) within 60 days of the end of fiscal years 1998, 1999, 2000, and 2001. The controlling authority in this case is codified at 12 U.S.C. § 1735f and the applicable regulations are found in 24 CFR Parts 26 and 30. Jurisdiction over the civil money penalty action contained in the Complaint is conferred upon this forum by the statute that is codified at 12 U.S.C. § 1735f-14 and the HUD regulation that is found at 24 CFR 25.8(d)(2).

On December 4, 2002, Respondent's Managing Agent (the Agent) wrote a letter to HUD's counsel in response to the Complaint. He provided some history of the purpose of the apartments and the partners. He concluded with a request that the penalties be waived, stating that there was no funding source to pay them. He added that the CPA is unwilling to perform the audits until paid.

On January 6, 2002, HUD counsel filed a Motion For Default Judgment pursuant to the

regulation found at 24 CFR 30.90(b) and based upon Respondent's failure to submit a response to HUD's Complaint within the time specified by the regulations, that is by November 13, 2002.

On January 28, 2003, Respondent's Agent addressed a second letter to the Government's counsel stating that he believed his December 4, 2002, letter was a sufficient response to the Complaint and asking to be told what areas of the Complaint were not adequately addressed.

On March 3, 2003, I issued an Order To Show Cause which ordered Respondent to file a Response which complies with the regulations of HUD by March 21, 2003, or to show cause why the Government's Motion For Default Judgment should not be granted. In this Order, respondent was warned that failure to adequately and timely respond to the Order To Show Cause would constitute Respondent's consent to the entry of a default judgment and the granting of the Government's prayer for relief in the form of civil money penalties.

On April 15, 2003, the Government filed its Renewed Motion For Default Judgment based upon Respondent's continued failure to respond to the Complaint. This failure to respond continues to date.

Findings of Fact¹

Respondent owns the Georgia Morris Apartments, a multi-family housing development in Cincinnati, Ohio. The project was built and financed with the proceeds of a loan insured by HUD under Section 236 of the National Housing Act, 12 U.S.C. § 1715(1). In exchange for receiving the benefits of a loan insured by HUD, Respondent executed a Regulatory Agreement with the Department on February 28, 1974. In the Regulatory Agreement, Respondent agreed to certain controls over the management and operation of the project, including Section 9(c) of the Agreement, which states that "within 60 days following the end of each fiscal year the Commissioner shall be furnished with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared in accordance with the requirements of the Commissioner and certified to by an officer or responsible Owner and, when required by the Commissioner, prepared and certified to by a Certified Public Accountant, or other person acceptable to the Commissioner." HUD Handbook 4370.2 Rev-1 ¶ 3-3(D) states that the report shall be audited by an Independent Public Accountant who is a Certified Public Accountant or a licensed or registered public accountant having no business relationship with the mortgagor except for the performance of audits, systems work and tax preparation.

¹ HUD regulations provide that a default shall constitute an admission of all facts alleged in HUD's Complaint as well as Respondent's waiver of any right to a hearing on the allegations. 24 CFR 26.39(c).

The project's fiscal year ends each year on December 31. Therefore, the audited financial report for the project is due on or about March or April of the following year. Consequently, the audited financial report for fiscal year 1998 was due on March 31, 1999; the audited financial report for fiscal year 1999 was due on March 30, 2000; the audited financial report for fiscal year 2000 was due on March 31, 2001, and the audited financial report for fiscal year 2001 was due on April 30, 2002.² Thus, I find that Respondent failed to timely submit a complete audited financial reports for fiscal years 1998, 1999, 2000, and 2001 in violation of section 9(e) of the Regulatory Agreement.

Conclusion

Respondent knowingly and materially committed violations of 12 U.S.C. § 1735f - 15(c) and Section 9(e) of the Regulatory Agreement as documented in the Complaint by failing to timely submit the 1998, 1999, 2000, and 2001 audited financial reports that were due by March 1 of each following year or as extended by the Secretary. Respondent failed to answer the Complaint and is therefore in default. Respondent also failed to respond to a Motion For Default Judgment submitted by the Government and an Order To Show Cause issued by this Administrative Law Judge, and is also in default for those reasons.

Order

The Government's Motion For Default Judgment is **GRANTED**. Respondent shall pay to the Secretary of HUD the civil money penalties stated above and totaling \$73,920, which is immediately due and payable by Respondent without further proceedings.

This Order constitutes the final agency action in this case in accordance with the regulation that is found at 24 CFR 26.39.

So **ORDERED**.

ROBERT A. ANDRETTA
Administrative Law Judge

Dated: May 20, 2003

² The Government does not explain why these reports were not due within the 60 days of the end of each fiscal year that is required by the regulations, however I do not find any fault with the apparent extensions of time within which to file them.