

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

United States Department of Housing
and Urban Development,

Petitioner,

v.

RICHARD C. FAWCETT and
MATTHEW G. DAVIS,

Defendants.

HUDALJ 04-012-PF
OGC No. 03-3059-PF

DEFAULT JUDGMENT AND ORDER

On February 20, 2003, the Department of Housing and Urban Development (HUD or the Government) issued a Complaint against Richard C. Fawcett and Matthew G. Davis (Defendants) charging them with fraud in a HUD program and seeking civil money penalties of \$82,500 pursuant to the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 - 3812 (PFCRA) and HUD's regulations found at 24 CFR Part 28. In accordance with HUD's regulation codified at 24 CFR 28.30(a), the Defendants were required to file a written response to the Complaint 30 days after they received the Complaint; thus on or before August 28, 2003, but they failed to file their response to the Complaint. On November 13, 2003, the Government filed a Motion For Default Judgment against Matthew G. Davis pursuant to 24 CFR 28.30(b) for failure to file a written response to HUD's Complaint in this matter within the applicable time period.¹ Defendant Davis again failed to respond.

On November 26, 2003, I issued an Order To Show Cause to Defendant Davis which required him to file a response to the Complaint that would answer the

¹ The Government states that Defendant Richard C. Fawcett is in bankruptcy and its action against him is subject to the automatic stay provided by 11 U.S.C. § 362(a). Under the PFCRA a civil money penalty may be imposed jointly and severally. *See* 24 CFR 28.10(e). Because, under joint and several liability, each liable party is individually responsible for the entire obligation of liability, the Government may proceed and is proceeding against Defendant Davis for the full amount of the award sought in the Complaint.

Government's Allegations of Liability with particularity by December 10, 2003, and would show cause why he should not be found liable by default for not having responded within the required 30 days. The Order informed Defendant that failure to respond timely and adequately to the Order would constitute his consent to the entry of a default judgment in this matter. There has been no response to that Order.

The regulations provide that if a Defendant fails to file an Answer within 15 days of receiving a Complaint the Administrative Law Judge assigned to the case shall issue a Default Judgment. *See* 24 CFR 26.39(b). Such a default shall constitute an admission of all facts alleged in the Government's Complaint and a waiver of the Defendant's right to a hearing in the matter. 24 CFR 26.39. Moreover, a default judgment under these circumstances shall constitute the final agency action in the case. *Id.*

FINDINGS OF FACT

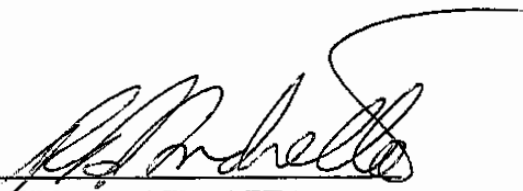
The allegations of the Government's Complaint (HUDALJ 04-012-PF), styled "U.S. Department of Housing and Urban Development, Petitioner v. Richard C. Fawcett and Matthew G. Davis, Defendants" and dated February 20, 2003, are incorporated herein and found to be true on the basis of Defendant's default and his consequent admission to these facts.

CONCLUSION OF LAW AND DECISION

The Government's Complaint demonstrates a knowing and material violation of HUD rules and regulations. A default judgment against Defendant Davis is not only warranted but also mandated because of Defendant's failure to file an Answer to the Complaint and a response to the Order To Show Cause. Accordingly, Defendant, Matthew G. Davis, shall pay to the Secretary of the United States Department of Housing and Urban Development a Civil Penalty of \$82,500 which is immediately due and payable without further proceedings.

This Order constitutes the final agency action in this matter pursuant to the regulation codified at 24 CFR 26.39.

So ORDERED.



ROBERT A. ANDRETTA
Administrative Law Judge

Dated: January 28, 2005