

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

U. S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT,

Plaintiff,

v.

V. L. CURNETTE COMPANY HOME
MAINTENANCE,

Defendant.

HUDALJ 04-223-PF

OGC No. 04-3174-PF

Amy L. Brown, Esquire
for the Government

Before: ARTHUR A. LIBERTY
Chief Administrative Law Judge

DEFAULT ORDER

The above entitled matter has been referred to me pursuant to the Program Fraud Civil Remedies Act of 1986, Title 31 U.S.C. Section 3801 et seq. (the "PFCRA"), and the regulations codified at 24 C.F.R. Parts 26 and 28. The Department of Housing and Urban Development ("Department" or "HUD") has issued to the Defendant a complaint alleging submission of false claims on two separate occasions giving rise to liability under the PFCRA and seeking the award of civil money penalties and an assessment totaling \$18,368. The record shows that the Complaint, along with a Notice of Procedures and a copy of the regulations governing this action (24 C.F.R. Part 28), was served upon the Defendant on June 8, 2004. HUD filed a Motion for Default Judgment on July 12, 2004. I

The Order to Show Cause specifically advised the Defendant that *“Failure timely to comply with this Order shall be deemed an admission by Defendant of the allegations in the Complaint, consent by Defendant to the entry of a determination by default based on the Complaint and the award of a civil money penalty in the amount of \$18,368.”*

24 C.F.R. § 28.30 (a) provides that a defendant may file a written response (“answer”) within 30 days of service of the complaint. Section 28.30 (b) allows HUD to file a motion for default if no response is submitted. Finally, § 26.39 directs the administrative law judge (“ALJ”) to issue an initial decision establishing the default. The effect of the default is an admission by the defendant of all facts alleged in the Government complaint, a waiver of the right to a hearing on those allegations, and imposition of the penalties sought in the complaint. 24 C.F.R. § 26.39 (b) and (c).

FINDINGS OF FACT

Pursuant to § 26.39 (c) and in view of Defendant's failure to answer the Complaint, I hereby find that Defendant has admitted all facts alleged in the Complaint.

ANALYSIS

24 C.F.R. § 28.10 (a) provides that a person shall be subject to a civil penalty of not more than \$5,500 for each statement, except as provided in paragraph (c) of that section, when that person makes a written statement that the person knows or has reason to know asserts a material fact which is false, fictitious, or fraudulent. Section 28.5 defines “a person” as any individual, partnership, corporation, association, private organization, or entity.

The evidence establishes that the Defendant, V. L. Curnette Company Home Maintenance, is a rehabilitation contractor contracted to perform rehabilitation of homes under a state of Ohio program funded by HUD. Defendant, through its owner, V. L. Curnette, made written statements that it knew or had reason to know asserted a material fact which was false, fictitious or fraudulent. Mr. Curnette certified to the completion of rehabilitation work required under two contracts in compliance with all applicable “federal, state and local laws, regulations, codes and legal standards.” These certifications were false when made, and known by Defendant to be false when they were made. Moreover, it is clear that Defendant knew that the false statement provided information material to the release of funds under the HUD-funded programs and provision of

payment to Defendant. Accordingly, the statements amount to false statements as provided in the PFCRA, 32 U.S.C. §§ 3801(a)(3), 3302(a)(1) and in 24 C.F.R. § 28.10 (a), and the Defendant is therefore liable under 24 C.F.R. § 28.10 (a).

As noted previously, Defendant was informed in the Order to Show Cause that failure to respond would be deemed an admission of the allegations in the Complaint and consent to entry of the default judgment and imposition of the civil penalties and assessments sought. I find, therefore, that Defendant has admitted the allegations and consented to entry of this order and assessment of the penalties. 24 C.F.R. § 26.39.

PENALTY

Sections 26.39 provides that if a defendant does not file an answer within the time prescribed, the administrative law judge ("ALJ") shall issue a decision on the motion for default in which the ALJ shall set forth the penalty amount proposed in the complaint.

In the instant case HUD seeks imposition of civil penalties and assessments in the total amount of \$18,368. This includes \$11,000 in civil penalties or \$5,500 for each of the two false claims, and an assessment of \$7,368 or twice the amount of the false claims.


I find that the amount of civil penalties and assessments sought by HUD is allowed under the statute. Accordingly, I impose upon Defendant a total civil penalty of \$11,000 and assessment of \$7,368.

CONCLUSION AND ORDER

Having found that Defendant made statements which violated 32 U.S.C. §§ 3801(a)(3) and 3302(a)(1) and 24 C.F.R. §28.10, and having imposed civil penalties totaling \$11,000 and an assessment of \$7,368, I hereby issue the following **ORDER**:

1. Defendant V. L. Curnette Company Home Maintenance shall immediately pay to the United States Department of Housing and Urban Development civil penalties in the amount of \$11,000; and
2. Defendant V. L. Curnette Company Home Maintenance shall immediately pay to the United States Department of Housing and Urban Development the assessed amount of \$7,368.

This decision is the final agency action pursuant to 24 C.F.R. §26.39 (b).

A handwritten signature in black ink, appearing to read 'A. Liberty', written over a horizontal line.

ARTHUR A. LIBERTY
Chief Administrative Law Judge

Dated: August 19, 2004