

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

In The Matter of:

Gardner Ridge Associates, a North
Carolina General Partnership, S. Alan
Albright, and William Thomas
Blackman, Jr.,

Respondents.

HUDALJ 07-001-CMP
Decided: November 30, 2006

Stanley Field, Esq.
For the Government

S. Alan Albright, General Partner
For the Respondents

Before: Constance T. O'Bryant
Administrative Law Judge

DEFAULT DECISION AND ORDER

On March 2, 2006, the Secretary of the United States Department of Housing and Urban Development ("the Secretary" or "HUD") issued a Complaint seeking civil money penalties of \$62,500 against Gardner Ridge Associates, S. Alan Albright and William Thomas Blackman, Jr., ("Respondents") pursuant to Section 536 of the National Housing Act, (12 U.S.C. §1735f-15) and 24 C.F.R. Part 30. The Complaint charges that Respondents failed to file audited annual financial reports for Gardner Ridge Associates, the owner of a HUD/FHA insured multifamily property, for its fiscal years 2003 and 2004. The Complaint notified Respondents of their 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 and 30.90(b). Respondents failed to file an Answer to the Complaint.

Prior to HUD's filing of a Motion for Default Judgment, Respondents and HUD executed a Settlement Agreement, dated July 11, 2006. Paragraph #3 of the Settlement Agreement states that the parties agreed that HUD's action for civil money penalties was

stayed pending HUD's receipt of the first payment due under the Settlement Agreement. It also states that the Settlement Agreement is voidable by HUD as of July 1, 2006, if HUD has not received Respondents' first payment and that the Settlement Agreement would become void upon the filing, by HUD, of a Motion for Default Judgment. HUD has now filed a Motion for Default Judgment contending that Respondents have failed to make its first payment under the Settlement Agreement by the required date. Respondents have not contested the facts alleged in the Motion for Default Judgment.

Sections 26.39(a), (b) & (c) of 24 C.F.R. provide that if a respondent fails to file an Answer to the Complaint, the Government, upon proper motion to an administrative law judge, is entitled to a default judgment. The default shall constitute an admission of all facts alleged in the Government's Complaint and a waiver of the respondent's right to a hearing in the matter. The default judgment, when issued, shall constitute final agency action in the matter.

Respondents have not filed an Answer to the Complaint filed on March 2, 2006. On October 5, 2006, the Government filed a Motion for Default Judgment. By failing to Answer the Complaint, and again by failing to respond to the motion for default judgment, Respondents have admitted the allegations of the Complaint and waived their right to a hearing. *See* 24 C.F.R. §26.39(c). Accordingly, HUD's Motion for Default Judgment will be granted.

FINDINGS OF FACT

Respondents Gardner Ridge Associates was a North Carolina General Partnership, which, during all material times for this action, owned and operated Gardner Ridge Apartments, a multifamily property located in Gastonia, North Carolina ("the property"), purchased by GRA with the proceeds of a loan insured by the Secretary under Section 221(d)(4) of the National Housing Act ("NHA"), 12 U.S.C. § 1701 et seq.

Respondent S. Alan Albright, during all material times for this action, was a General Partner of GRA owning a ½ interest in the GRA partnership.

Respondent William Thomas Blackman, Jr., during all material times for this action, was a General Partner of GRA owning a ½ interest in the GRA partnership.

In exchange for receiving the benefits of a loan insured by the Secretary, GRA executed a Regulatory Agreement (the "Regulatory Agreement") with the Secretary on August 30, 1988.

In the Regulatory Agreement, GRA agreed to certain controls over the management and operation of the Property. Paragraph 9(e) of the Regulatory Agreement required that within 60 days following the end of each fiscal year, the Secretary shall be furnished with:

A complete annual financial report based upon an examination of the books and records of mortgagor prepared in accordance with the requirements of the Secretary, prepared and certified to by an officer or responsible Owner and, when required by the Secretary, prepared and certified by a Certified Public Accountant, or other person acceptable to the Secretary.

The Project's fiscal year ended on December 31 each year; therefore, according to the Regulatory Agreement, the annual financial statement for the Project was due on or before February 29th or March 1st of each following year.

By regulation, HUD increased the period to file annual financial reports to 90 days following the end of each fiscal year for owners of multifamily projects whose loans are insured against default pursuant to Section 221(d)(4) of the National Housing Act. 24 C.F.R. § 5.801.

Therefore, GRA's annual financial reports for fiscal years 2003 and 2004 were due by March 31st of the following year, to wit: March 31, 2004 and March 31, 2005.

Each annual financial report for this property was required to be filed electronically. *See* 24 C.F.R. § 5.801(b)(2). GRA did not file audited annual financial reports for its fiscal years 2003 and 2004.

In letters dated October 5, 2005, HUD provided written notice, as required by 24 C.F.R. § 30.70, that it was considering seeking civil money penalties against Respondents GRA, and William Thomas Blackman, Jr. and S. Alan Albright, as General Partners of GRA, for GRA's failure to properly file the required annual financial reports for its fiscal years 2003 and 2004. The Respondents were given opportunity to reply in writing within thirty days after receipt of the notices on or about October 17, 2005. Respondents did not respond to the notices.

On March 2, 2006, HUD served a Complaint seeking civil money penalties of \$62,500 against Respondents. The Complaint charged that Respondents failed to file audited financial reports for Gardner Ridge Associates, the owner of a HUD/FHA insured multifamily property, for its fiscal years 2003 and 2004. Respondents failed to file an Answer to the Complaint.


CONCLUSION

By virtue of the above findings of fact, Respondents have admitted the allegations in the Complaint which establish violations of Section 536 of the National Housing Act, (12 U.S.C. §1735f-15) and 24 C.F.R. Part 30 for which civil penalties may be imposed. *See* 24 C.F.R. §26.39(c).

ORDER

Pursuant to 24 C.F.R. §§26.37, 26.39, and 30.90, It is hereby **ORDERED** that:

1. The Motion for Default Judgment is granted;
2. Respondents shall, jointly or individually, pay to the Secretary of HUD a civil money penalty of \$62,500, which penalty is due and payable immediately without further proceedings; and
3. This Default Decision and Order, when issued, shall constitute final agency action in the matter.


CONSTANCE T. O'BRYANT
Administrative Law Judge