

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

In the Matter of: :

TRACY Y. ISHINO, :

Respondent :

HUDALJ 07-043-CMP
OGC Case No. 07-008-CMF
Decided: November 7, 2007

Tracy Y. Ishino,
Pro se

Stanley E. Field, Esq.
For the Government

Before:

CONSTANCE T. O'BRYANT
Administrative Law Judge

DEFAULT DECISION ON CIVIL MONEY PENALTY

By Order issued on October 9, 2007, I granted the Government's Motion for Judgment against Respondent finding him liable for violations alleged in HUD's Complaint filed on June 21, 2007. Those violations included failing to hold and keep any and all tenant security deposit funds collected in a separate trust account, failing to timely furnish the Secretary of HUD with audited annual financial statements, failing to furnish the Secretary with Monthly Accounting Reports; failing to maintain the project; wrongfully paying out owner distributions; and, failing to provide management acceptable to HUD. These violations subject Respondent to up to \$500,000 in civil money penalties. Below, I have incorporated the pertinent findings from the Default Judgment and hereby find that a civil money penalty of \$500,000 is appropriate.

Findings on Liability:

On August 24, 2007, HUD filed a Motion for Judgment against Respondent based upon Respondent's failure to file a more definite Answer, i.e., to admit or deny the allegations of violations in HUD's Complaint, as I directed in my Order of July 24, 2007.

The regulations provide, at 24 CFR § 26.36(d) - Sanctions - that the judge may issue an initial decision against a respondent who fails to defend a pending action. Because Respondent failed to timely and adequately answer HUD's Complaint, I found that Respondent had waived his right to a hearing on the violations. Therefore, the allegations in the Government's Complaint were deemed admitted.

The Complaint alleged, and I previously found, that Respondent knowingly and materially violated 12 U.S.C. § 1735f-15(c)(1)(B)(x) by: failing to hold and keep any and all tenant security deposit funds collected in a separate trust account; failing to timely furnish the Secretary of HUD with audited annual financial statements; failing to furnish the Secretary with Monthly Accounting Reports; failing to maintain the project; wrongfully paying out owner distributions; and, failing to provide management acceptable to HUD. Specifically, I found that:

-- Respondent knowingly and materially failed, for the twenty-three months from February 2002 through December 2003, to hold any and all tenant security deposit funds collected in a separate trust account in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi).

This violation subjects Respondent to a civil penalty of up to \$30,000 per year, for a total of \$60,000.

--Respondent knowingly and materially failed, for Oak's 2003 fiscal year, to furnish the Secretary with a complete annual financial report in a timely and acceptable

manner in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$32,500.

-- Respondent knowingly and materially failed, for Oak's 2002 fiscal year, to furnish the Secretary with a complete audited annual financial report in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$30,000.

-- Respondent knowingly and materially failed, for the twenty-one months commencing April 2002 through December 2003, to furnish HUD with Monthly Accounting Reports to establish net income, disbursements, and accounts payable in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$2,500 per month, for a total of \$52,500.

-- Respondent abandoned Oak, as noted in HUD's letter to them, dated February 9, 2004, thereafter knowingly and materially refusing to maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto in good repair and condition, as well as maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the Secretary in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$32,500.

-- Respondent failed, for the thirty-two (32) months from February 2002 through November 2004, to hold any and all tenant security deposit funds collected in a separate trust account in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$30,000 per year for a total of \$90,000.

--Respondent wrongfully paid out owner distributions on: May 2, 2002, July 25, 2002, and September 25, 2002, which totaled \$40,000, when the project was not in a surplus cash position. These distributions were not made to pay for reasonable operating expenses or necessary repairs, were taken without obtaining the prior written approval of the Secretary in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$30,000 for each violation, for a total of up to \$90,000.

--Respondent failed, for Meadows' 2001 fiscal year, to furnish the Secretary with a complete audited annual financial report in a timely and acceptable manner, which warrants a penalty of \$15,000.

--Respondent failed, for Meadows' 2002 fiscal year, to furnish the Secretary with a complete audited annual financial report in a timely and acceptable manner in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$32,500.

--Respondent failed, for Meadows' 2003 fiscal year, to furnish the Secretary with a complete audited annual financial report in a timely and acceptable manner in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$32,500. And,

--Respondent failed to obtain HUD's approval for their identity of interest management company, Pacific Coast Management, L.P., to manage Meadows, prior to, and during, Pacific Coast's management of Meadows in violation of 12 U.S.C. § 1735f-15(c)(1)(B)(vi). This violation subjects Respondent to a civil penalty of up to \$32,500.

Findings on Appropriate Civil Money Penalty:

At the time of the Default Judgment, I reserved ruling on the appropriate amount of civil money penalties until after Respondent had been given further opportunity to defend against the \$500,000 civil money penalty requested by the Government.

Respondent has since been provided ample opportunity to defend against that amount and the matter is now ready for adjudication of an appropriate amount of civil money penalty.

Any determination of an appropriate civil money penalty must take into consideration the factors required by the HUD's regulations: (1) the gravity of Respondent's offenses; (2) Respondent's history of prior offenses; (3) Respondent's ability to pay the penalty; (4) the injury to the public; (5) the benefits received by Respondent; (6) the extent of potential benefit to other persons; (7) the deterrence of future violations; (8) the degree of Respondent's culpability; (9) any injury to tenants; and, (10) such other matters as justice may require.

In his response to the initial Complaint, Respondent specifically challenged HUD's determination that he had the ability to pay a penalty of \$500,000. In fact, he denied having the ability to pay any civil money penalty.

HUD's Complaint relies upon information and evidence of Respondent's financial condition as of November 2000 to support its determination that Respondent has the ability to pay the \$500,000 civil money penalty requested. In May 2007 Respondent asserted that his financial condition was dire and that he was unable to pay any civil money penalty. He stated:

As far as ability to pay, I have zero assets, savings, checking or other financial accounts. All of my real estate holdings in Texas have been foreclosed upon or the lender took over possession of the properties. The Texas real estate market has completely destroyed my

financial and mental condition and has caused personal and business financial hardship and I am contemplating Bankruptcy.

I also owe other investors well over \$3,000,000 in cash that I borrowed or guaranteed their monetary investment.

The balance sheet with over \$20,375,000 in assets shows that I owned minority interests in properties not the full value. I own no Texas real estate.

I did not benefit any monies but actually in the end lent Highland Meadows and High Oak Terrace over \$100,000 in my own cash before the properties were taken over by HUD.

I don't have \$505,000 and cannot commit to any repayment due to my dire financial conditions. I have no money or assets. You can run all the reports needed and you will see that to be a true and accurate statement.

I would kindly ask for you to close your case so that I don't have to incur any further expenses that I cannot afford. *R's Answer filed May 7, 2007.*

However, since the filing of this action on June 21, 2007, Respondent has failed to defend his alleged ability to pay the \$500,000 in any way. He has failed to respond to all pleadings filed with the Court and to all Orders issued by the Court. His failure to respond to the Government's Motion for Default Judgment has already led to the granting of the motion for default judgment as to liability. By Order dated October 9, 2007, I gave Respondent an additional opportunity to defend against the imposition of the amount of civil money penalty requested by HUD. My Order stated that:

Respondent shall, on or before *October 24, 2007*, notify this forum as to whether he intends to defend against the amount of civil money penalty sought by HUD in the Complaint. He may present a defense at a hearing upon his request or by written submission, including the submission of documentary evidence of his inability to pay for my consideration.

Respondent's failure to respond to this ORDER shall be deemed evidence that he does not intend to defend against the \$500,000 civil money penalty sought in the Complaint and to constitute his consent to the entry of a judgment requiring him to pay the maximum amount.

It is now nearly two weeks after the October 24, 2007 deadline, and no word has come from Respondent. I conclude, therefore, that Respondent has chosen not to defend

against HUD's request for \$500,000 in civil money penalty. Accordingly, I make the following findings:

1. Under 12 U. S. C. § 1735f-15(c)(1)(B), a civil money penalty may be imposed upon any liable party that knowingly and materially violates provisions found therein.
2. By Order Granting, in part, and Denying, in part, Government's Motion for Default Judgment, I found that Respondent was liable for violations of 12 U. S. C. § 1735f-15(c)(1)(B), for which violations Respondent was subject to the imposition of \$500,000 in civil money penalties.
3. HUD seeks \$500,000 in civil money penalties for the violations. In determining the appropriate amount of civil money penalties, HUD considered all of the required factors set forth in the regulations. *See* 24 C.F.R. § 30.90(b).
4. Respondent has failed to defend against the amount of civil money penalty sought by HUD for these violations, i.e., \$500,000, even after being informed by this Court that his failure to do so would "constitute his consent to the entry of a judgment requiring him to pay the maximum amount." Accordingly, Respondent has not shown that HUD improperly considered any of these factors or that its conclusion was not supported as to any of the factors.

CONCLUSION & ORDER

Having found that Respondent knowingly and materially committed the above-enumerated violations of 12 U.S.C § 1735f-15(c)(1)(B), based upon Respondent's failure to defend against the amount of civil money penalty sought by the Government, I find that the amount of civil money penalties requested by the Government is appropriate.

IT HIS HEREBY ORDERED, that the Government's Motion for Default Judgment on the amount of civil money penalty be, and it hereby is, *GRANTED*. Respondent shall pay to the Secretary of HUD the total civil money penalty of \$500,000, which is immediately due and payable by Respondent without further proceedings.

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

So ORDERED, this 7th day of November, 2007.


CONSTANCE T. O'BRYANT
Administrative Law Judge