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

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, Petitioner, v. ERIDANIA VEGA CABREJA, Respondent.	HUDALJ 11-M-006-PF-2 July 28, 2011

Appearances

Philip A. Kesaris, Attorney
United States Department of Housing and Urban Development, Washington, D.C.
For Petitioner

Robert J. Consentino, Attorney
Providence, Rhode Island
For Respondent

INITIAL DECISION and ORDER

BEFORE: J. Jeremiah MAHONEY, Administrative Law Judge

On November 26, 2010, the Secretary of the United States Department of Housing and Urban Development ("Government") filed a Complaint against Eridania Vega Cabreja ("Respondent" or "Eridania Vega" or "Eridania Cabreja") alleging that Respondent should be held liable under the Program Fraud Civil Remedies Act of 1986 ("PFCRA"), 31 U.S.C. §§ 3801-3812, and its implementing regulations found at 24 C.F.R. Part 28, for submitting or causing to be submitted false statements to qualify for benefits and receive payments under HUD's Housing Choice Voucher Program, 42 U.S.C. § 1437(f). The Government asserts that Respondent submitted two false statements to facilitate a claim for rent subsidization under the Section 8 Tenant-Based Housing Choice Voucher Program ("Section 8 Program"), and that Respondent knew these statements were false. The Government seeks civil penalties in the amount of $6,500 for each of the false statements.

On December 20, 2010, Respondent filed a Request for Hearing in this matter. On March 22, 2011, the hearing for this matter was held in Providence, Rhode Island. The hearing was conducted in accordance with 24 C.F.R. Part 26, Subpart B. The following witnesses testified at the hearing: Donna De La Rosa, Director of the Department of Leased Housing for the Providence (Rhode Island) Housing Authority (PHA); Yvonne M. Longo, Senior Program Representative of the Department of Leased Housing for the PHA; Alexander Rosania, Criminal Investigator (Special Agent) with the HUD Office of Inspector General; Eridania Vega Cabreja, Respondent; and Orlanda Oliveira-Teo, Program Representative of the Department of Leased Housing for the PHA. In accord with an oral order supplemented by written instructions, post-hearing briefs were submitted by the parties on April 29, 2011. On May 13, 2011, reply briefs were filed by the parties, making this case ripe for decision.

For the reasons stated below, this Court finds Respondent liable for the false statements as charged, and adjudges a fine in the amount of $13,000.

Applicable Law

Program Fraud Civil Remedies Act. The Act places liability on a person for making, presenting, or submitting a written statement that "(A) the person knows or has reason to know—(i) asserts a material fact which is false, fictitious, or fraudulent . . . and (C) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement." 31 U.S.C. § 3802(a)(2). A "statement" includes "any representation, certification, affirmation, document, [or] record" made with respect to a claim or to obtain the approval or payment of a claim, including relating to eligibility to make a claim. 31 U.S.C. § 3801(a)(9). A statement may also be defined as:

> [A]ny representation, certification, affirmation, document, record, or accounting or bookkeeping entry made —
>
> (B) with respect to (including relating to eligibility for) —
>
> (ii) a grant, loan, or benefit from,
>
> an authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property . . . for such grant, loan, or benefit . . . .

Id. Additionally, "knows or has reason to know" refers to whether the person had "actual knowledge that the claim or statement is false, fictitious, or fraudulent." 31 U.S.C. § 3801(a)(5). "Each written representation, certification, or affirmation constitutes a separate statement." 31 U.S.C. § 3801(c)(1). Persons found liable for making false statements may be

subject to civil penalties of up to $6,500 per statement.[1] 31 U.S.C. § 3802(a)(2); 24 C.F.R. § 28.10(b).

A person alleged to have made one or more false statements may request a hearing to contest his liability. 31 U.S.C. § 3802(d)(2). The hearing must commence within six years of the date on which the allegedly false statement is made, presented, or submitted. 31 U.S.C. § 3808(a). For purposes of HUD programs, statements are considered to have been made to HUD at the time the claim or statement is made to HUD or to a State or political subdivision of a State acting for or on behalf of HUD. 24 C.F.R. § 28.10(a)(3) and (b)(3). If the person is found liable for one or more false statements, the amount of penalties imposed shall be based on consideration of evidence in support of one or more specific factors listed in 24 C.F.R. § 28.40(b), and discussed below.

Housing Choice Voucher Program. The Section 8 Program is a rental subsidy program established by HUD pursuant to Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437(f), to help low-income families afford decent, safe, and sanitary housing. 24 C.F.R. §§ 982.1(a)(1), 982.2, and 982.201(a)-(b). Generally, State or local public housing agencies administer the program using program funds provided by HUD. 24 C.F.R. §§ 982.1(a)(1), 982.4(b) (defining "public housing agency") and 982.151(a). Authorized public housing agencies use these funds to make housing assistance payments to the owners of housing units occupied by families admitted to the program. 24 C.F.R. §§ 982.1(a)(1), 982.4(b) (defining "housing assistance payment" and "owner"), 982.51, and 982.157(b)(1)(i).

To be eligible for assistance, a Housing Choice Voucher program applicant must be a "family." 24 C.F.R. § 982.201(a). HUD regulations define family as a single person or group of persons approved by the public housing agency to reside in a housing unit with assistance under the program. 24 C.F.R. §§ 982.4(b) and 982.201(c). Among other configurations, a family may consist of two or more elderly or disabled persons living together, or one or more elderly or disabled persons living with one or more live-in aides. *See* 24 C.F.R. § 982.201(c)(3). A family must not own or have any interest in the housing unit it occupies with program assistance. 24 C.F.R. § 982.551(j).

Each authorized public housing agency determines which applicants may enter the program it administers, but may only provide assistance to families who meet criteria established by HUD. 24 C.F.R. §§ 982.54(b) and (d), 982.201 and 982.202(a) and (d). A family admitted to the Housing Choice Voucher program selects and rents the housing unit it desires to occupy. 24 C.F.R. § 982.1(a)(2). Under HUD regulations, "[t]he family must not own or have any interest in the unit." 24 C.F.R. § 982.551(j). If the public housing agency approves the family's desired unit for tenancy, the public housing agency enters into a contract with the unit's owner to make rent subsidy payments, called Housing Assistance

[1] The offenses alleged here occurred before HUD adjusted the penalty to $7,500 (effective March 8, 2007), as authorized by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101-410, § 4, 104 Stat. 890) as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701. *See* Inflation Adjustment of Civil Money Penalty Amounts, 72 Fed. Reg. 5,586 (February 6, 2007); *see also* 28 U.S.C. § 2461 note.

Payments ("HAPs"), on behalf of the family. 24 C.F.R. §§ 982.1(a)(2), 982.4(b), and 982.162(a)(2). HUD regulations define a Housing Choice Voucher program "tenant" as "[t]he person or persons (other than a live-in aide) who executed the lease and lessee of the dwelling unit." 24 C.F.R. § 982.4. The public housing agency must receive from the owner an executed copy of HUD's HAP contract and tenancy addendum in the form required by HUD prior to paying out housing assistance payments to the owner. 24 C.F.R. §§ 982.52, 982.162, and 982.305(c)(2). The HAP contract sets forth the amount of the monthly housing assistance payments to be paid by the public housing agency to the owner on behalf of the family. 24 C.F.R. § 982.305(e). In order to determine the amount of the monthly housing assistance payments to be paid to the owner, the public housing agency must determine the annual income of the participating family. 24 C.F.R. §§ 5.601(a), 5.609, 5.628, 982.451, 982.505. "Family income must include income of all family members, including family members not related by blood or marriage." 24 C.F.R. § 982.516(e). The HAP contract also identifies the members of the household who are authorized by the PHA to reside in the contract unit and "if any new family member is added, family income must include any income of the additional family member." *Id.*

A family becomes a participant on the effective date of the first HAP contract executed by the public housing agency for the family. *See* 24 C.F.R. § 982.4(b) (defining "participant"). Subsequently, the public housing agency must periodically reexamine the family's composition, assets, income, and expenses for the purpose of making appropriate adjustments to the housing assistance payment. 24 C.F.R. § 982.516(a)(1)-(2). Such reexamination must be done annually under HUD regulations. 24 C.F.R. § 982.516(a). Each participant family must supply any information that the public housing agency or HUD determines is necessary in the administration of the Housing Choice Voucher program. 24 C.F.R. § 982.551(b). Such information may include "any requested certification." *Id.*

Findings of Fact

The Court has considered all matters presented by the parties, including the Complaint, the Answer to the Complaint, the exhibits, the testimony at hearing, and the post-hearing submissions by the parties. The Court finds the following facts to be established on the record by a preponderance of the evidence.

1. At all relevant times, the PHA administered the Section 8 Program within the City of Providence, Rhode Island, on behalf of HUD and, in connection therewith, received Section 8 funding from HUD pursuant to annual contributions contracts with HUD, and the PHA disbursed such funds to owners of private rental housing on behalf of participating tenants and their families. (Complaint ¶ 13; Answer ¶ 13.)

2. At all relevant times, the Department of Leased Housing was the component of the PHA that administered the Section 8 Program. (Hearing Transcript ("Hr'g Tr.") 17.)

3. Respondent, Eridania Vega Cabreja, testified she is or has been also known as Eridania Vega and she is or has been also known as Eridania Cabreja. (Hr'g Tr. 239.)

4. For unknown reasons (Hr'g Tr. 261), Respondent has been issued two social security numbers: [redacted] (Government Exhibit ("Gov't") 3); and [redacted] (Gov't 21.)

5. To verify a Section 8 Family's income, HUD uses an Enterprise Income Verification System ("EIV") that cross-matches a Section 8 family's information with the state wage board, the Social Security Administration, and other agencies. (Hr'g Tr. 48.)

6. Sometime during 1998 and 1999, Respondent attended Johnson & Wales University. (Hr'g Tr. 194.)

7. Respondent's school ID from Johnson & Wales University included a picture of Respondent, and bore her Social Security Number beginning with [redacted]. (Hr'g Tr. 194-95.)

8. Respondent has been employed with the law firm of Edwards, Angell, Palmer & Dodge ("Edwards & Angell") since March 15, 1999. (Hr'g Tr. 189.)

9. Rita Luna is Respondent's great aunt (the sister of her grandmother). (Hr'g Tr. 205.)

10. On August 3, 1998, Rita Luna submitted an Application for Section 8 Rental Assistance to the PHA. (Gov't 1; Hr'g Tr. 26-27.)

11. In the application, Rita Luna listed EridaniaVega (falsely identified as her daughter), using her Social Security Number beginning with [redacted], as one of the family members who was to reside in the unit. (Gov't 1; Hr'g Tr. 27.)

12. Sometime in 1998, Respondent accompanied Rita Luna to PHA for the initial Section 8 interview. (Hr'g Tr. 90, 196-97.)

13. Respondent's birth certificate (Gov't 2) and Social Security card with the number [redacted] (Gov't 3) were provided to the PHA at that interview. (Hr'g Tr. 28, 80-81, 191.)

14. In 1998, after the PHA determined that Rita Luna and her family members listed on the Application for Section 8 Rental Assistance were income-eligible to participate in the Section 8 Program, Rita Luna and her family began residing at [redacted] (Hr'g Tr. 28-29, 205.)

15. In 1999, Respondent moved out of the [redacted] property, while Rita Luna continued to reside there. (Hr'g Tr. 29-30, 233.)

16. On July 3, 2003, Respondent married Leon Cabreja, and shortly thereafter changed her name to "Eridania Cabreja" (Hr'g Tr. 113, 170, 197, 201, 234, 239-42, 250-51, 255; Gov't

22, at 15-16) on all forms of identification and documentation, including her Social Security card bearing the number [redacted] (Joint Exhibit ("JNT") 7), Rhode Island driver's license (JNT 6), and her employer's Personal Information Change Form (Gov't 22.)

17. In June of 2003, Respondent moved back in with Rita Luna who, in January of 2002, had moved to a unit at [redacted]. (Gov't 231; Gov't 22; Gov't 26; JNT 6.)

18. On July 25, 2003, Respondent was issued a Rhode Island drivers license with the name Eridania Cabreja showing her address as [redacted]. (JNT 6.)

19. On or about September 9, 2004, Rita Luna informed the PHA that Eridania Vega was going to rejoin her household and requested that Eridania Vega be added to the lease for the property located at [redacted]. (Hr'g Tr. 30-31, 82, 102-03.)

20. In December of 2004 the PHA determined Eridania Vega received no income based upon her notarized "Declaration of No Income" dated December 13, 2004. (Gov't 25.) The declaration was notarized as signed by Respondent using the name Eridania Vega. (Hr'g Tr. 34; 85-86.)

21. On September 21, 2005, Respondent and Leon Cabreja purchased the subject property located at [redacted]. (Hr'g Tr. 202, 234.)

22. Thereafter, at all relevant times the Respondent and her husband, Leon Cabreja, owned the property located at [redacted]. (Stipulated Facts ("SF") 1.)

23. Since September 2005, Respondent has lived on the second floor of the property located at [redacted] (Hr'g Tr. 232.)

24. Sometime in October of 2005, Rita Luna informed the PHA that she intended to move from the unit at [redacted] to a first floor unit at [redacted] Providence, Rhode Island. (Hr'g Tr. 35; Gov't 4.)

25. On October 12, 2005, Leon Cabreja signed a Request for Tenancy Approval Housing Choice Voucher Program, HUD form 52517 (2 pages). (SF 2; Gov't 4.)

26. On October 12, 2005, the PHA received a notarized Declaration of No Income bearing the signature "Eridania Vega." (JNT 1.)

27. The October 12, 2005 Declaration of No Income was notarized by Andres Almonte, bearing a date of October 14, 2005. (JNT 1.)

28. On November 28, 2005, Respondent signed a letter giving her husband (as joint owner) permission to lease the first floor unit at [redacted] to a Section 8 tenant. (Hr'g Tr. 37-38, 206-07; JNT 2.)

29. Respondent was aware that the first floor unit of the property would be rented to Rita Luna. (Hr'g Tr. 208-209.)

30. The Lease Agreement for the Housing Choice Voucher Program ("Section 8 Lease") dated November 29, 2005, is signed by Rita Luna and Leon Cabreja. (SF 3; JNT 3; Hr'g Tr. 41.)

31. The Section 8 Lease identified Rita Luna and Eridania Vega as persons authorized to reside in the unit. (JNT 3; Tr. 40.)

32. The Housing Assistance Payments Contract (HAP Contract) Section 8 Tenant - Based Housing Choice Voucher Program, form HUD-52641 ("HAP Contract"), dated November 29, 2005, is signed by Donna De La Rosa (PHA) and Leon Cabreja, as landlord. (SF 4; JNT 4; Hr'g Tr. 42.)

33. The HAP Contract also identified Rita Luna and Eridania Vega as the only persons authorized to reside in the unit. (JNT 4; Hr'g Tr. 42.)

34. The annual reexamination of tenants' income is conducted one year from the date of the lease. (Hr'g Tr. 23.)

35. Four months before the lease term is due to end, the PHA sends a letter to the tenant advising the tenant to come into the PHA's office with all family members to provide, among other things, income information and as much verification as possible, such as check stubs and Social Security award letters. (Hr'g Tr. 23.)

36. Rita Luna was informed by letter dated July 12, 2006 that she was to go to the PHA on August 3, 2006 and bring with her various documents in order to update her income and family composition as a part of her annual Section 8 recertification. (Gov't 7; Hr'g Tr. 47.)

37. On July 24, 2006 an EIV printout for Rita Luna and Eridania Vega was obtained by the PHA. (Hr'g Tr. 49; Gov't 8.)

38. The EIV printout indicated that Eridania Vega was employed by and received income from Edwards & Angell since at least the first quarter of 2004. (Gov't 8; Hr'g Tr. 49.)

39. On August 3, 2006, Rita Luna and Respondent met with Orlanda Oliveira-Teo, a program representative, at the PHA office. (Hr'g Tr. 268.).

40. At the meeting, Respondent provided her school ID from Johnson & Wales, which identified her as Eridania Vega, to Ms. Oliveira-Teo. (Hr'g Tr. 272; Gov't 10.)

41. The Providence Housing Authority Leased Housing Department Recertification Information form ("PHA Recertification Form"), dated August 3, 2006 is signed by Rita Luna and Ms. Oliveira-Teo. (SF 5.)

42. Orlanda Oliveira-Teo wrote on the PHA Recertification Form, "Bring No Income form signed by Ms. Vega" in the comments section and Respondent initialed next to these remarks. (Hr'g Tr. 270-71, 275; Gov't 9.)

43. Before Respondent departed the PHA on August 3, 2006, Ms. Oliveira-Teo gave her a blank Declaration of No Income and told her to have it notarized and return it to the PHA. (Hr'g Tr. 274.)

44. On August 7, 2006, a notarized Declaration of No Income dated August 3, 2006 and signed by Respondent using the name Eridania Vega was returned to the PHA. (Gov't 12.)

45. On October 13, 2006, Ms. Oliveira-Teo sent an employment verification form to Edwards & Angell requesting income verification for Eridania Vega. (Hr'g Tr. 276; Gov't 13.)

46. On October 17, 2006, the employment verification form was completed by a human resources representative at Edwards & Angell, who crossed out the last name "Vega" and wrote "Cabreja" after the name "Eridania Vega," which was pre-printed on the form. (Hr'g Tr. 277-78; Gov't 14.)

47. By letter dated November 2, 2006, PHA notified Rita Luna that, as of November 30, 2006, her rental assistance was being terminated for a violation of 24 C.F.R. § 982.551, i.e., misrepresentation of family composition, supplying incomplete documentation, having an interest in the unit, renting to an immediate family member, and misrepresentation of income. (Gov't 16.)

48. The same letter informed Rita Luna that she could request an informal hearing if she disagreed with the termination of her rental assistance. (Gov't 16.)

49. On November 16, 2006, Rita Luna went to the PHA for an informal hearing conducted by Yvonne Longo, Senior Program Representative. (Hr'g Tr. 129; Gov't 18.)

50. During the informal hearing, Rita Luna admitted that Eridania Vega and Eridania Cabreja are the same person. (Hr'g Tr. 132.)

51. Rita Luna left the informal hearing and returned the same day with Respondent. (Hr'g Tr. 132-33, 149.)

52. Respondent provided Ms. Longo with a copy of her Rhode Island driver's license identifying Respondent as Eridania Cabreja, residing at [redacted]. (Hr'g Tr. 134, 152; JNT 6.)

53. Respondent also provided Ms. Longo with a Social Security card bearing the name Eridania A. Vega and bearing her Social Security Number beginning with [redacted]. (Hr'g Tr. 66, 134, 138; Gov't 21.)

54. When confronted by Ms. Longo and Donna De La Rosa, Ms. Longo's supervisor, Respondent admitted that she signed the Declarations of No Income because she was trying to help Rita Luna obtain a larger unit. (Hr'g Tr. 64, 123, 134.)

55. After the informal hearing was concluded, Respondent returned to the PHA and hand-delivered to Ms. Longo a typewritten letter, dated November 16, 2006. (Hr'g Tr. 66-67, 91, 139, 141, 154, 158; JNT 5.)

56. The letter was an admission of an unspecified debt owed to the PHA and an apology for "any misrepresentations, confusions and/or other inconveniences." (JNT 5.)

57. The letter was signed by Rita Luna and the names "Rita Luna" and "Eridania Vega" were typed below Rita Luna's signature. (JNT 5.)

58. On February 7, 2008, Alexander Rosania and Jamie Mazzone, special agents employed by the HUD Inspector General's Office, met with Respondent at her home on the second floor at [redacted]. (Hr'g Tr. 161-65, 173.)

59. During her interview with Agents Rosania and Mazzone, Respondent stated that she resided with Rita Luna at the [redacted] property between June 2003 and September 2005. (Hr'g Tr. 170; Gov't 23.)

60. When being questioned by Agent Rosania about the Declarations of No Income, Respondent initially denied signing the documents but then stated that she "didn't want to get anyone in trouble" and told Agent Rosania that "if I have to say that I signed it, then I signed it." (Hr'g Tr. 229.)

61. The Providence Housing Authority issued 12 checks for Section 8 Housing Assistance Payments, payable to the order of Leon Cabreja, dated 12/01/05, 1/01/06, 2/01/06, 3/01/06, 4/01/06, 5/01/06, 6/01/06, 7/01/06, 8/01/06, 9/01/06, 10/01/06, and 11/01/06. (SF 6; Gov't 24.) Each check was in the amount of $689.00, for a total of $8,268.

62. Respondent had power of attorney from Leon Cabreja. (Hr'g Tr. 221.)

63. Respondent and Leon Cabreja do not have a joint bank account at Citizens Bank. (Hr'g Tr. 201.)

64. Respondent deposited the HAP checks she signed and endorsed on behalf of Leon Cabreja into her personal account with Citizens Bank. (Hr'g Tr. 222; Gov't 24.)

Discussion

This case involves alleged false statements made by Respondent and presented to PHA. The statements were presented for the purpose of obtaining Section 8 assistance from HUD to which the Respondent and her husband would not have been entitled if the true facts were known. The use of false statements to wrongfully obtain money is one of the definitions of fraud.

HUD funds the Housing Choice Voucher program administered by the PHA. 31 U.S.C. § 3801(a)(1) and (3); 42 U.S.C. § 3532; and 24 C.F.R. §§ 982.1(a)(1), 982.4(b), and 982.151(a). The PFRCA Act provides that penalties may be imposed upon any person who makes, presents, or submits a written statement that the person knows or has reason to know asserts a material fact that is false, fictitious, or fraudulent, and that contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement. 31 U.S.C. § 3802(a)(2). The statements that the Government alleges Respondent made were two Declarations of No Income, which state, in pertinent part, "I, Eridania Vega, certify that I do not have any type of income at this present time. . . . I also understand that as soon as I begin to receive any type of income, I will notify the Providence Housing Authority immediately."[2] (JNT 1; Gov't 12.)

It is uncontested that Respondent had been employed by Edwards & Angell and earning a salary since March 15, 1999. (Hr'g Tr. 189.) Further, since "[n]o proof of specific intent to defraud is required to establish liability," the only facts at issue are whether Respondent knowingly made and submitted or caused to be submitted the two false Declarations of No Income dated October 12, 2005 (JNT 1) and August 3, 2006 (Gov't 12). 24 C.F.R. § 28.10(d).

Under the procedural rules for hearings before this Court, the Government has the burden to prove "[R]espondent's liability and any aggravating factors by a preponderance of the evidence." 24 C.F.R. § 26.45(e) At the hearing, the Government entered copies of the two Declarations of No Income into evidence that were purported to be signed by Respondent and notarized. (JNT 1; Gov't 12.) During the hearing the Government also produced the original Declaration of No Income dated October 12, 2005. As testified to by a witness, the document was notarized with a raised stamp. (Hr'g Tr. 34-35.) However, instead of producing the original Declaration of No Income dated October 3, 2006, the Government produced an original Declaration of No Income dated December 13, 2004[3] that it alleges was also signed

[2] No evidence was presented that the Respondent ever notified PHA that she began to receive any income.

[3] The December 13, 2004, Declaration of No Income is not alleged in the Complaint as a "statement" for which civil penalties are sought, as it occurred more than six years prior to commencement of the hearing.

by Respondent and notarized by Anthony Joseph Solomon, a commissioned notary public whose "distinctive two-lettered signature on the Declaration of No Income dated December 13, 2004, is virtually identical to the distinctive two-lettered notary's signature on the Declaration of No Income dated August 3, 2006." (Hr'g Tr. 32; Gov't 25; Gov't Reply Br. 2.)

In addition to the two charged Declarations of No Income that were entered into evidence, the Government produced three witnesses who testified that Respondent admitted to them that she signed the two Declarations of No Income. The first witness, Donna De La Rosa, testified that upon confronting Respondent at the November 16, 2006 meeting, Respondent admitted to being Eridania Vega Cabreja, admitted to being on the lease while also owning the property, and admitted to signing the two Declarations of No Income despite the fact that she was employed with Edwards & Angell. (Hr'g Tr. 64.)

The second witness, Yvonne Longo, testified that when asked why she would say that she was living with Rita Luna and that she was Rita Luna's daughter, Respondent explained that "she thought she was helping Rita Luna so that [Rita Luna] could obtain a two bedroom apartment." (Hr'g Tr. 134.) Yvonne Longo also testified that Respondent returned to the PHA shortly after their meeting to deliver a letter in the names of Rita Luna and Respondent (but signed only by Rita Luna) apologizing for "any misrepresentations, confusions and/or inconveniences." (Hr'g Tr. 139; JNT 5.) As discussed below, the Respondent denies having returned to the PHA that day with the letter.

The third witness, Special Agent Alexander Rosania, testified that during an interview he and Special Agent Jamie Mazzone conducted with Respondent on February 6, 2008, Respondent initially denied seeing and signing the two Declarations of No Intent but eventually admitted to signing them after explaining that she didn't want to "get anybody in trouble." (Hr'g Tr. 171-72.) The Government's last witness, Orlanda Oliveira-Teo, testified that on August 3, 2006, Respondent and Rita Luna visited the PHA for their annual appointment to update the tenants' information. (Hr'g Tr. 266-67.) Ms. Oliveira-Teo also testified that during the appointment, she gave Respondent a blank Declaration of No Income and told Respondent to have it notarized and returned to the PHA. (Hr'g Tr. 273-74.) Because Ms. Oliveira-Teo had suspicions that Respondent was in fact employed, Ms. Oliveira-Teo had Respondent initial a form acknowledging that Respondent was aware that she was to return the Declaration of No Income. (Hr'g Tr. 75.)

Respondent argues that the Government cannot meet its burden to prove that Respondent signed and submitted either Declaration of No Income to the PHA. (Resp't Post-Hr'g Br. 5, 7.) Specifically, Respondent claims that the Government "**can not** [sic] **produce one single person** who can attest to **being present and witnessing** the Respondent signing (or submitting)" either Declaration of No Income. (Resp't Post-Hr'g Br. 5, 6.) (internal quotations marks omitted). Respondent adds that, "if you compare the signatures on JNT 1 and GOV 12 to the Respondent's actual signature on JNT 2, it is apparent the signatures on JNT 1 and GOV 12 were forged, probably by Rita Luna...." (Hr'g Tr. 10.)

However, at the hearing, Respondent produced no evidence, aside from her own testimony, to establish that she did not sign the Declarations of No Income. Her own testimony, like her statements to the agents, was in many respects, equivocal. The Government met its burden to prove that Respondent signed the two declarations. They were duly notarized, and the notarization carries with it a presumption of regularity. At that point, the burden of proving that the declarations were forgeries fell upon the party making the allegation of forgery, namely the Respondent.[4]

Each of the two Declarations of No Income appears to bear the signature and seal of a notary public commissioned in the state of Rhode Island. Under Rhode Island law, persons seeking appointment as notaries must have "sufficient knowledge of the powers and duties pertaining to that office." R.I. GEN. LAWS § 42-30-5 (1998). One of the obligations of a notary is to ascertain the signer's identity. *Vandelmortele v. Universal C.I.T. Credit Co.*, No. C.A. 77-1092, 1981 WL 390917, at *4 (R.I. Super. 1981); *see also Business Services*, OFF. SECRETARY ST.: A. RALPH MOLLIS, http://sos.ri.gov/business/notary/ (last visited July 18, 2011) (stating that a notary public's purpose is to "protect against fraud and forgery by acting as an official, unbiased witness to the identity of the person who signs a document").[5]

The Government has produced a preponderance of evidence demonstrating that the two Declarations of No Income were acknowledged by Andres Almonte and Anthony J. Solomon, both of whom are registered as notaries public in the State of Rhode Island. (JNT 1; Gov't 12; Gov't Post-Hr'g Br. ¶¶ 18-19; Gov't Reply Br. 2, n.5.) Respondent, on the other hand, produced no evidence to rebut the Government's evidence that the two Declarations of No Income were acknowledged before the commissioned notaries. Even if this Court

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[4] *Wooddell v. Hollywood Homes, Inc.*, 105 R.I. 280, 286, 252 A.2d 28, 31 (R.I. 1969). Rhode Island law is silent on the standard of proof a person must meet when challenging the authenticity of signatures on a document that appears to be duly notarized. However, the burden of proof is on the party claiming his signature is a forgery. As for the standard of proof, a majority of jurisdictions find that the evidence must at least be "clear and convincing." *See Henslee v. Henslee*, 263 Ala. 287, 289, 82 So. 2d 222, 225 (1955) ("The certificate of a notary is presumptively correct, and the evidence necessary to impeach it must be clear and convincing." (citing *Lukes v. Alabama Power Co.*, 257 Ala. 590, 593, 60 So. 2d 349, 352 (1952)); *Smith v. McEwen*, 119 Fla. 588, 605-06, 161 So. 68, 75 (1935); *Van Orman v. McGregor*, 23 Iowa 300 (1867) (finding a certificate of acknowledgement is "very strong evidence" that the signatures on the deed were genuine); *Spilky v. Bernard H. La Lone Jr., P.C.*, 227 A.D.2d 741, 743, 641 N.Y.S.2d 916, 917-18 (App. Div. 1996) ("Thus, the deed on its face is properly subscribed and acknowledged, thereby giving rise to a presumption of due execution, which may rebutted only upon a showing of clear and convincing evidence to the contrary." (citing *Son Fong Lum, v. Antonelli*, 102 A.D.2d 258, 260-261, 476 N.Y.S.2d 921, 923 (App. Div. 1984), *aff'd*, 64 N.Y.2d 1158, 480 N.E.2d 347 (1985))); *Bell v. Sharif-Munir-Davidson Dev. Corp.*, 738 S.W.2d. 326, 330 (Tex. App. 1987) (citing *Stout v. Oliveira*, 153 S.W.2d 590 (Tex. App. 1941) (finding that a certificate of acknowledgement is prima facie evidence that the plaintiff appeared and executed the instrument before a notary and that clear and unmistakable proof that either the grantor did not appear before the notary or that the notary practiced some fraud or imposition upon the signor is necessary to overcome the validity of a certificate of acknowledgment).

[5] Notaries public in the State of Rhode Island are authorized to take acknowledgments of instruments. R.I. GEN. LAWS § 42-30-8 (1998). They are appointed to four-year terms but can be removed within the four-year period "for cause." R.I. GEN. LAWS §§ 42-30-3, 42-30-4, 42-30-10 (1998). In addition, "[a] notary public, who in the exercise of the powers, or in the performance of the duties of such office, shall practice any fraud or deceit, the punishment for which is not otherwise provided for by law, shall be guilty of a misdemeanor and fined not more than one thousand dollars ($1,000), or imprisoned not more than one year, or both." R.I. GEN. LAWS § 42-30-16 (1998).

determined that the standard of proof was only a "preponderance of the evidence" to rebut the presumption raised by the notarizations on the two Declarations of No Income, Respondent's uncorroborated testimony was insufficient to establish by a preponderance of evidence that she did not sign the Declarations of No Income when they appear to be duly notarized. [6]

The Rhode Island Supreme Court has found no error in a trial court's decision to reject the complainant's testimony that her signature was a forgery because of her unexplained failure to call a material witness. *Wooddell v. Hollywood Homes, Inc.* 105 R.I. 280, 286, 252 A.2d 28, 31 (1969). In the case at hand, Respondent did not call any witnesses or produce any evidence to corroborate her testimony that she did not sign the Declarations of No Income. With the evidence in this posture, this Court finds that Respondent's testimony is insufficient to rebut the Government's evidence that the two Declarations of No Income were properly signed by the Respondent in the presence of a notary public who confirmed her identity.[7]

While on the stand, Respondent testified, in pertinent part, that she: (1) did not appear before a notary and sign the two Declarations of No Income (Hr'g Tr. 219); (2) had never seen the Declarations of No Income prior to her meeting with Special Agent Rosania (Hr'g Tr. 219-20); (3) did not go to the PHA and meet with Orlanda Oliveira-Teo on August 3, 2006 (Hr'g Tr. 213, 218); (4) did not admit or deny signing the Declarations of No Income when meeting with PHA employees on November 16, 2006 (Hr'g Tr. 223); and (5) did not write or deliver to the PHA the letter entered into evidence as Joint Exhibit 5 (Hr'g Tr. 227-28).

Respondent's testimony in this regard directly conflicts with the testimony of the Government's four witnesses. Of course, the number of witnesses in support of an issue is

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[6] Many jurisdictions have held that self-serving testimony, without corroborating evidence, is insufficient to rebut the presumption that a notarized signature is genuine. *See Kyllo v. Office of Pers. Mgmt.*, No. 99-3010, 1999 WL 55167, at *1 (Fed. Cir. Feb. 8, 1999) (affirming a final decision of the Merit Systems Protection Board (MSPB) in which the MSPB held that the petitioner's self-serving statement was insufficient to overcome the presumption that her notarized signature on a Spousal Consent to Survivor's Election was genuine); *Goodrich v. Thompson*, No. 06-0428, 2007 WL 2004734, at *3 (Iowa Ct. App. July 12, 2007) (finding that the district court did not err in deciding to exclude the testimony of a lay witness concerning the genuineness of a decedent's handwriting because the witness was not an expert and her testimony was "potentially self-serving as her father is a plaintiff"); *Fifth Third Bank v. Jones-Williams*, No. 04AP-935, 2005 WL 1870772, at *7 (Ohio Ct. App. Aug. 9, 2005) (finding that appellant's self-serving affidavit in support of their argument that their signatures on the note and mortgage were forged was insufficient to create a genuine issue of fact as to the validity of their signatures without additional evidence – i.e. affidavits from lay witnesses who were familiar with appellants' handwriting or an expert witness who could attest to the authenticity of their signatures); *First Indem. of Am. Ins. Co. v. Shinas*, No. 03 Civ. 6634 KMW KNF, slip op. at 6 (S.D.N.Y. Sept. 30, 2009) (finding that the unsupported testimony of interested witnesses is insufficient to rebut the presumption of due execution arising from an acknowledgement by a notary public and that such presumption can only be rebutted with clear and convincing evidence – i.e. an affidavit from a forensic document examiner).

[7] The Court acknowledges that the October 12, 2005 Declaration of No Income "reflects an execution date of October 12, 2005 and a Notary date of October 14, 2005." (Resp't Post-Hr'g Br. 4.) However, this Court does not find that this fact necessarily means that Respondent did not execute the Declaration of No Income in the presence of a notary or that the document was improperly notarized two days after it was executed. Nor does this Court find that the discrepancy between the dates was material. *See Duffy v. Dwyer*, 847 A.2d 266, 270 (R.I. 2004) (finding that it is the substance of the acknowledgement and not the form that is important.)

not as important as the force, effect, and convincing character of the testimony given. So, as is oft said, it is quite possible for the testimony of many witnesses to be outweighed by the testimony of one.[8] There was conflicting testimony between Respondent and the Government's witnesses concerning material facts so, as fact finder, the Court must determine the truth. In this case, having seen and heard the witnesses, observing their demeanor, the Court found the Government witnesses to be more credible than Respondent.

At the hearing, Respondent testified that she lied to the special agents interviewing her on February 6, 2007:

> COURT: ... [Special Agent Rosania] said that during that interview you admitted to signing the statements of no income.
>
> RESPONDENT: No, I denied signing those statements and then afterwards, when he kept asking me, I stayed quiet and I was hesitant and I told him that I didn't want to get anyone in trouble, and he said that—he said obviously someone is in trouble, so then that's when I told him, I said well if I have to say that I signed it, then I signed it. That's exactly what I said. That's not even me admitting.
>
> COURT: So, in other words, you are saying that, to the extent he understood that's what you were saying, you were stating it falsely?
>
> RESPONDENT: Hmm-hmm.
>
> COURT: And why would you do that?
>
> RESPONDENT: I don't know. I was afraid for her to get in trouble.

(Hr'g Tr. 229-30.)

In addition, Respondent testified that during her November 16, 2006, hearing with PHA employees, she recognized the severity of the situation and that fraud had been committed (Hr'g Tr. 223:19-21, 224:13-19, 225:5-9), and despite all this, Respondent testified

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[8] In *Weiler v. United States*, 323 U.S. 606, 608 (1945), the Supreme Court observed that

> truth is not to be determined merely by the number of witnesses on each side of a controversy. In gauging the truth of conflicting evidence . . . . [t]he touchstone is always credibility; the ultimate measure of testimonial worth is quality and not quantity. Triers of fact . . . are, with rare exceptions, free in exercise of their honest judgment, to prefer the testimony of a single witness to that of many.

that, "I may have led [PHA employees] to believe [that I signed the Declarations of No Income] . . . . Because I didn't—I didn't say like, I guess I didn't sign or whatever, but I didn't admit to it either." (Hr'g Tr. 242-43.)

Respondent's own evasion and vacillation in recounting the facts—depending upon who may have had the most to lose in the particular circumstances—undermines her credibility as a witness. Thus, this Court finds that Respondent's testimony regarding her own culpability was less credible than that of the Government's witnesses.[9]

Conclusion on Liability

Accordingly, after considering the testimony of the witnesses and the exhibits received into evidence, this Court finds that the Government has met its burden to prove, by a preponderance of the evidence, that Respondent knowingly signed and submitted, or caused to be submitted, as alleged, the two false Declarations of No Income.[10]

Once the Government has proven Respondent's liability by a preponderance of the evidence, Respondent may thereafter attempt to prove "any affirmative defenses and any mitigating factors by a preponderance of the evidence." 24 C.F.R. § 26.45(e). In this case, Respondent did not raise any affirmative defenses or mitigating factors affecting liability.

Penalty Factors

Having determined that the Respondent is liable for two civil penalties of $6,500 each, the Court must consider the penalty factors established by regulation in assessing the actual amount to be awarded. The amount of penalties imposed shall be based on consideration of evidence in support of one or more of the factors as listed in 24 C.F.R. § 28.40(b). Each of the factors, as it applies in the facts of this case, is discussed below.

(1) The number of false, fictitious, or fraudulent claims or statements.

Respondent made, presented, or submitted two written statements which asserted a material fact that was false, fictitious, or fraudulent. Specifically, Respondent submitted two false Declarations of No Income, dated October 12, 2005, and August 3, 2006.

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[9] In *Walling v. General Industries Co.*, 330 U.S. 545, 550 (1947), the Supreme Court held that since the District Court heard the testimony of the witnesses, it was the proper judge of their credibility and its findings should be left "undisturbed."

[10] Although HUD produced three witnesses who all testified that Respondent orally admitted to signing the two Declarations of No Income, the sole written admission of guilt produced by HUD was a letter that was signed only by Rita Luna. The Court decides facts based upon the evidence of record, including that presented at trial. HUD could have offered authentication of the signatures of the two notaries under R.I. GEN. LAWS § 42-30-15, but it did not. The HUD investigators could have taken a written statement from Respondent, thus closing the door for equivocation at trial, but they did not. The Respondent could have called the two Notaries Public to establish that she was not the person who signed before them the false statements of No Income, but she did not.

(2) The time period over which such claims or statements were made.

Respondent made, submitted, or presented a written statement that she knew or had reason to know asserted a material fact that was false, fictitious, or fraudulent on October 12, 2005 and August 3, 2006. Respondent's false, fictitious, or fraudulent statements resulted in PHA paying Housing Assistance Payments in excess of the amount to which the landlord was entitled, many of which were deposited into Respondent's personal bank account.

(3) The degree of Respondent's culpability with respect to the misconduct.

Respondent was fully culpable for making, submitting, or presenting statements that she knew asserted material facts that were false, fictitious, or fraudulent. The fact that Respondent did not sign the lease or any other PHA documents aside from the Declarations of No Income does not mitigate her culpability for signing the two Declarations of No Income that were essential to the successful perpetration of the Section 8 fraud committed by Respondent and others. The false Declaration of No Income was falsely used to justify the claim of Section 8 payment for two occupants of the property at 148 Prudence Avenue, when in fact Respondent was not occupying the unit rented by Rita Luna.

(4) The amount of money or the value of the property, services, or benefit falsely claimed.

The record shows that Respondent deposited 12 fraudulently obtained rental assistance checks, totaling $8,268, into her personal bank account.

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of investigation.

As described above, PHA wrongfully paid $8,268 in Housing Assistance Payments, which were deposited into Respondent's personal bank account. However, although the Government alleges that "PHA would not have made any of these subsidy payments had it known the true income of Eridania Cabreja during 2005 and 2006" (Hr'g Tr. 69-70), another of the Government's witnesses testified that "regardless whether or not [Respondent] would have put herself on the lease, [Rita Luna] would have still been eligible for a one bedroom. What would have changed is [Respondent], as the landlord, she would have received less money in rent." (Hr'g Tr. 134.)

The Government also alleges that the maximum awardable civil penalty amount of $13,000 is less than the total amount of the Government's loss when the costs of investigating and prosecuting this case are considered. (Gov't Post-Hr'g Br. 21.) The costs associated with investigating, litigating, and conducting the hearing for this matter are attributed to Respondent and, although the exact estimate of investigation, attorney, and judicial expenditures on this matter is unavailable, it is not unreasonable to estimate that such costs

exceeded $13,000.[11]

(6) The relationship of the civil penalties to the amount of the Government's loss.

As noted above, the $8,268 in Housing Assistance Payments made payable to Leon Cabreja and deposited by Respondent to her bank account are directly attributable to Respondent's false, fictitious, and fraudulent statements. The costs associated with the investigation and subsequent hearing are also attributable to Respondent. The Government has asked for the maximum penalty with respect to the false statements submitted by Respondent, which amounts to a penalty of $13,000.

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs.

Respondent's receipt of HAP benefits for which Respondent, Leon Cabreja, and Rita Luna did not qualify prevented the Government from extending such assistance to benefit a family that did qualify. Such fraud or other wrongful behavior on the part of any recipient of governmental assistance undermines the public's confidence in that program.

(8) Whether Respondent has engaged in a pattern of the same or similar misconduct.

The Government alleges that Respondent engaged in a pattern of the same misconduct by submitting or causing to be submitted a false Declaration of No Income dated December 13, 2004. (Gov't 25.) Even though the statute of limitations precludes imposition of a penalty for that false statement to the PHA, 31 U.S.C. § 3808(a), the Court holds that the previous false statement may be considered as an aggravating incident of the same misconduct in assessing the imposition of civil penalties.

(9) Whether Respondent attempted to conceal the misconduct.

Respondent repeatedly denied signing the two Declarations of No Income. In addition, based on the fact that Respondent presented her student ID and Social Security card bearing the name Eridania Vega, this Court finds that Respondent attempted to conceal the fact that Eridania Cabreja and Eridania Vega were one and the same person.

[11] The Respondent's husband, Leon Cabreja, and her great aunt, Rita Luna, are not joined in this action, even though they may share joint liability with the Respondent. On the other hand, the Court notes that if they were determined to be liable, that liability would likely be joint and several. Further, whether the Government's expenses and losses in this matter exceed the imposable penalties is simply a factor to be considered; it is not a limitation upon the amount the Court may award.

(10) The degree to which Respondent has involved others in the misconduct or in concealing it.

Although the Government alleges that Respondent involved Rita Luna and Leon Cabreja in her misconduct and/or in concealing it (Gov't Post-Hr'g Br. 21), this Court finds the evidence insufficient to demonstrate the degree of Respondent's culpability in the origination or concealing of the Section 8 program fraud.

(11) If the misconduct of employees or agents is imputed to Respondent, the extent to which Respondent's practices fostered or attempted to preclude the misconduct.

This factor is not relevant to the facts of this case.

(12) Whether Respondent cooperated in or obstructed an investigation of the misconduct.

This factor is not significant: Respondent's cooperation or obstruction of the investigation would not have had much of an impact. Although Respondent initially denied signing the Declarations of No Income when she first met with HUD's special agents, her initial denial did not obstruct the investigation, and she subsequently admitted, in the same interview, that she signed the two Declarations of No Income. (Hr'g Tr. 171-72.)

(13) Whether Respondent assisted in identifying and prosecuting other wrongdoers.

Although Respondent suggests that Rita Luna may have forged the Declarations of No Income (Resp't Post-Hr'g Br. 10), there is no evidence suggesting that Respondent has assisted in identifying or prosecuting other wrongdoers.

(14) The complexity of the program or transaction, and the degree of Respondent's sophistication with respect to it, including the extent of Respondent's prior participation in the program or in similar transactions.

Nothing in the record suggests the extent of Respondent's knowledge of the Section 8 program. However, the Declaration of No Income forms contained simple language and a clear warning of the potential consequence for submitting false information. This Court holds that Respondent was sufficiently sophisticated to understand the implication of what she was "declaring."

(15) Whether Respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly.

This factor is not relevant to the facts of this case.

(16) The need to deter Respondent and others from engaging in the same or similar misconduct.

At trial, the Government's witness, Donna De La Rosa, testified that the PHA currently administers about 2,100 Section 8 vouchers. (Hr'g Tr. 20.) The waiting list to obtain vouchers is very long and has not been opened since October 2, 1998, when 4,500 people applied. (Hr'g Tr. 20-21.) Due to the size of the program and the long waiting list of families, disabled persons, and elderly persons in need of rental assistance, the need to deter applicants and current participants from fraudulently obtaining benefits is evident.

(17) Respondent's ability to pay.

The regulations implementing PFCRA define "ability to pay" as including "Respondent's resources available both presently and prospectively." The evidence in the record shows that Respondent is employed with the Edwards & Angell law firm and currently earns approximately $42,000 per year. (Hr'g Tr. 189-90.) Nothing in the record suggests that her employment will end in the foreseeable future. In addition, Respondent co-owns the property located at [redacted] (Hr'g Tr. 202.) Therefore, the Court concludes that Respondent has the ability to pay the $13,000 in penalties sought by the Government.

(18) Any other factors that in any given case may mitigate or aggravate the seriousness of the false claim or statement.

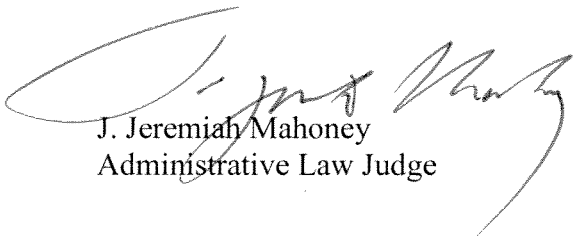
In addition to submitting two false, fictitious, or fraudulent statements to the PHA, Respondent also violated HUD regulations at 24 C.F.R. § 982.55(j) by owning the Section 8 unit at [redacted] that she knew was being rented to her great aunt. Respondent also violated 24 C.F.R. § 982.551(b)(4) by supplying false information to the PHA, namely submitting multiple Social Security numbers and an old identification in order to deceive the PHA into believing that Eridania Vega and Eridania Cabreja were two different people.

CONCLUSIONS

The evidence establishes that Respondent is liable for making and submitting two statements that she knew were false and would be fraudulently used to obtain Section 8 benefits. Respondent has the means to pay the authorized civil penalties sought by the Government, which this Court holds to be an appropriate amount to deter Respondent—and others similarly situated—from submitting false representations for the purposes of obtaining government assistance for which they are ineligible.

Accordingly, Respondent shall pay to the Secretary of HUD civil penalties of $13,000, which are immediately due and payable without further proceedings.

So **ORDERED,**



J. Jeremiah Mahoney
Administrative Law Judge

Notice of appeal rights. The appeal procedure is set forth in detail in 24 C.F.R. § 26.52 (2009). This order may be appealed to the Secretary of HUD by either party within 30 days after the date of this decision. The Secretary (or designee) may extend this 30-day period for good cause. If the Secretary (or designee) does not act upon the appeal within 90 days of its service (30 days for cases brought under the Program Fraud Civil Remedies Act), this decision becomes final.

Service of appeal documents. Any petition for review or statement in opposition must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development
Attention: Secretarial Review Clerk
1250 Maryland Ave, S.W., Portals Bldg., Suite 200
Washington, DC 20024

Facsimile: (202) 708-3498

Scanned electronic document: secretarialreview@hud.gov

Copies of appeal documents. Copies of any Petition for Review or statement in opposition shall also be served on the opposing party(s), and on the HUD Office of Administrative Law Judges.

Judicial review of final decision. Judicial review of the final agency decision in this matter is available as set forth in 31 U.S.C. § 3805.