

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

United States Department of Housing
and Urban Development,

Plaintiff,

v.

John W. Walker, Sr.,

Defendant.

HUDALJ 96-0035-PF
Dated: July 5, 1996

Walter E. Warren, Esquire
For the Plaintiff

John W. Walker, Sr.
For the Defendant, *pro se*

Before: Robert A. Andretta
Administrative Law Judge

INITIAL DECISION AND ORDER

The plaintiff, the U.S. Department of Housing and Urban Development ("the department," "the government," or "HUD"), seeks the imposition of civil penalties against the defendant, John W. Walker, Sr., pursuant to the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812 ("the Act"), and HUD's regulations that are codified at 24 CFR Part 28, by which jurisdiction is obtained. The government's Complaint was sent to the defendant on March 19, 1996, and served upon him at his residence by certified mail on March 23, 1996.

Enclosed with the Complaint, the government provided a copy of the applicable regulations which, *inter alia*, explain defendant's right to a hearing to contest the allegations contained in the Complaint. Further, the Complaint itself contains a section entitled "NOTICE OF PROCEDURES," which states the defendant's right to a hearing,

specifies what the defendant must do to have a hearing, and informs him of the regulatory requirement that he file an Answer to the Complaint within 30 days. Finally, this section of the Complaint informs the defendant that a failure to file an Answer within the specified 30 days will result in the imposition of the maximum amount of penalties and assessments without a right to appeal.

On May 9, 1996, the Associate General Counsel for Program Enforcement referred this case to this forum for action in accordance with 31 U.S.C. § 3803(d)(2)(B) and the regulation found at 24 CFR 28.19. The department requested in its cover memo that this forum declare a default against the defendant and issue an initial decision against him. On May 13, 1996, the Chief Judge assigned this case to me for action.

On June 10, 1996, I issued a Notice And Order To Show Cause in which I ordered the defendant to file an Answer by June 25, 1996, along with a showing by that date why a default judgement should not be entered against him. In this Order, I further informed the defendant that failure to respond adequately and timely to the Order (*i.e.*, by the date required and demonstrating that extraordinary circumstances prevented Defendant from filing an Answer within the required 30-day period) would constitute his consent to entry of a default judgment, pursuant to 24 CFR 28.19(c), and the imposition of the penalties and assessments requested by the department.

There has been no response to the Complaint or to the Order To Show Cause. Therefore, the government's request that this forum declare a default against the defendant is **GRANTED**, and the Initial Decision that follows is entered on the basis of the defendant's default.

Findings of Fact

1. Plaintiff, HUD, is a federal executive department of the United States Government, established pursuant to 42 U.S.C. § 3531 (1988). It seeks to realize the goal of a decent home and suitable living environment for every American family.

2. Defendant, John W. Walker, Sr., is an individual residing at [REDACTED]. Kathleen W. Gorney¹ is an individual who, at all times relevant, resided at [REDACTED].

¹ Gorney was originally a co-defendant in this case, but, at the request of the government, she was dismissed without prejudice on June 10, 1996, because the government had been unable to serve her with the Complaint in spite of two attempts to do so by certified mail.

3. Defendant Walker was at times relevant to the Complaint the purchaser of a certain parcel of residential real estate located at [REDACTED] ("the subject property"). Gorney was the seller of this property. The sale was closed on or about July 5, 1990, in Seattle.

4. With the knowledge of Gorney, Defendant Walker applied for, and HUD and its agency, the Federal Housing Administration (FHA), approved the mortgage insurance on the subject property.

5. The HUD program involved in this case is the One to Four Family Home Mortgage Insurance Program, by which HUD/FHA insures certain mortgages to encourage lenders to invest in the single family mortgage market, under Section 203 of the National Housing Act, 12 U.S.C. §§ 1709(b) and (i) (1988).

Falsification of Settlement Statement

6. On or about July 5, 1990, Defendant Walker signed the Settlement Statement (form HUD-1) as the purchaser of the subject property, and Kathleen Gorney signed the form as the seller of the property.

7. The Settlement Statement is a document required for the granting of mortgage insurance under the One to Four program, and the truthfulness of the information in it is material to HUD's decision to approve the insurance.

8. Above the purchaser's and seller's signatures on the form HUD-1 there is the following statement:

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement, of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

9. Between February 27, 1990, and June 25, 1990, 7 checks, in the total amount of approximately \$30,000, were deposited into Defendant Walker's account. These checks originated directly or indirectly from Kathleen Gorney.

10. The checks were related to the sale of the subject property by Gorney to Walker, and they represented receipts and disbursements in the transaction.

11. The receipts and disbursements represented by these checks were not reported in the Settlement Statement.

12. Also on July 5, 1990, as part of the closing of this transaction, Defendant Walker signed a document entitled "Certification of Buyer for FHA-insured Mortgage Transaction." This document is material to HUD/FHA's decision to approve mortgage insurance under the FHA program.

13. In the Certification of Buyer for FHA-insured Mortgage Transaction, Walker certified that he would not be paid or reimbursed for any closing costs or cash down payments, and that he had no knowledge of any additional loans related to financing the transaction with Gorney. This is contrary to the fact that he received more than \$30,000 from the seller.

14. Also on July 5, 1990, as part of the closing of this transaction, Kathleen Gorney signed the document entitled "Certification of Seller for FHA-insured Mortgage Transaction." This document is also material to HUD/FHA's decision to approve mortgage insurance under the FHA program.

15. In the Certification of Seller for FHA-insured Mortgage Transaction, Gorney certified that she would not pay or reimburse the buyer for any closing costs or cash down payments, and that she had no knowledge of any additional loans related to financing the transaction. This was contrary to the fact that she paid more than \$30,000 to Walker, which amount Walker accepted.

16. The omission of the receipts and disbursements represented by the checks, from the form HUD-1 Settlement Statement, from the Certification of Buyer for FHA-insured Mortgage Transaction, and from the Certification of Seller for FHA-insured Mortgage Transaction is a false statement within the meaning of 31 U.S.C. § 3802(a)(2).

False Statement of Occupancy

17. On or about July 5, 1990, Defendant Walker signed a "Certificate of Commitment," on the second page of a form HUD-92900.4, thereby certifying his intent to occupy the subject property. This document is material to HUD/FHA's decision to approve mortgage insurance under the FHA program.

18. Also on or about July 5, 1990, Defendant Walker signed a document entitled "Occupancy Certificate & Warranty." This document is also material to HUD/FHA's decision to approve mortgage insurance under the FHA program.

19. In the Occupancy Certificate & Warranty, Defendant Walker "warrant[s] and represent[s]" that the property transferred will be his "year-round primary residence" and that he "will occupy the property within 30 days after funding of this loan."

20. Defendant Walker never occupied the subject property.

21. Thus, the certified statement of Walker's intent to occupy the property, which appears on page 2 of the Certificate of Commitment, and his statement in the Occupancy Certificate & Warranty that he would occupy the property within 30 days, also are false statements under 31 U.S.C. § 3802(a)(2).

Remedies

The Act authorizes the imposition of an assessment of up to twice the amount of any false claim paid by the government, as well as the imposition of civil penalties. These are for the purposes of providing a remedy to reimburse the government for its losses and to deter the making, presenting and submitting of false claims to the government by others as well as the defendant in the instant case. Pub. L. 99-509, Section 6102(b); 31 U.S.C. § 3802(a)(1). In considering the False Claims Act, the Supreme Court has stated, "the Government is entitled to rough remedial justice, that is, it may demand compensation according to somewhat imprecise formulas, such as reasonable liquidated damages or a fixed sum plus double damages" *U.S. v. Halper*, 490 U.S. 435, 446 (1989).

The government has not asserted the assessment of any amounts of money to reimburse it for losses suffered in this case due to payments on false claims. However, it has demanded a civil penalty in the amount of \$5,000 against Defendant Walker based upon his false statement on the form HUD-1 Settlement Statement. HUD also demands a civil penalty in the amount of \$5,000 based upon Walker's false statements on the Certificate of Commitment and in the Occupancy Certificate.

Since these amounts are reasonable and in accord with the Act, since Defendant Walker failed to make arguments against their full imposition, and since Walker's failure to respond to the Order To Show Cause constitutes his consent to the "imposition of the penalties and assessments requested by the Department," the amounts demanded will be Ordered in the next section of this Initial Decision and Order.

Order

Having concluded that Defendant, John W. Walker, Sr., falsified property sale closing forms on which HUD/FHA depend to decide whether to approve mortgage insurance under the FHA program, and having further found that this conduct falls within the purview of the Program Fraud Civil Remedies Act, it is hereby

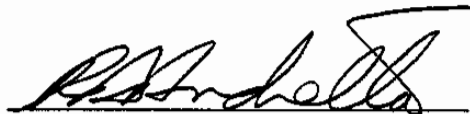
ORDERED that

On the date that this decision becomes final, the defendant shall be liable to the United States for civil penalties in the total amount of \$10,000.

Defendant has the right:

- a. to file a motion for reconsideration with this forum, within twenty days of the receipt of this Decision, in accordance with 24 CFR 28.75; or
- b. to file a notice of appeal, pursuant to 31 U.S.C. § 3803(i), to the secretary of HUD, within thirty days of the issuance of this Decision or a decision responding to a motion for reconsideration, in accordance with 24 CFR 28.77.

Unless this decision is timely appealed to the secretary of HUD in accordance with paragraph (b) of this Order, or a motion for reconsideration is filed in accordance with paragraph (a) of this Order, this Decision will become the final decision of the secretary and be final and binding upon the parties thirty days after its issuance. *See* 24 CFR 28.73(d).


ROBERT A. ANDRETTA
Administrative Law Judge

Dated: July 5, 1996