

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

In The Matter of:

CHARLESTOWN AT CAVALIER
MUTUAL HOMES, INC.

Respondent

HUDALJ 97-001-CMP
Decided: April 2, 1998

James A. McAleer, Esq.
For the Government

Before: Alan W. Heifetz
Chief Administrative Law Judge

DEFAULT JUDGMENT AND INITIAL DECISION

On September 17, 1997, the Housing Civil Penalties Panel (“the Panel”) of the United States Department of Housing and Urban Development (“the Department” or “HUD”) filed a Complaint seeking a civil money penalty of \$5,000 against Charlestown at Cavalier Mutual Homes, Inc. (“Respondent”), pursuant to Section 537(c) of the National Housing Act, 12 U.S.C. § 1735f-15(c), and the applicable regulations at 24 C.F.R. Part 30 (1996).¹ The Complaint charges that Respondent knowingly and materially failed to submit annual financial statements to HUD for fiscal years 1993 and 1994, as required by its Regulatory Agreement with HUD. The Complaint notified Respondent of its 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 would result in the issuance of a Default Judgment. 24 C.F.R. §§ 30.500, .505, .900. Respondent received a copy of the Complaint on September 19, 1997, but did not file an Answer.

¹Although these regulations were revised effective October 24, 1996, *see* Final Rule Streamlining Hearing Procedures, 61 Fed. Reg. 50,208 (1996), HUD proceeded under the previous regulations, pursuant to which the penalty notice was issued. Any reference to regulations in this Decision is to the prior edition.

On March 5, 1998, the Department filed a Motion for Default Judgment. The regulations provide that if Respondent fails to file an Answer, the administrative law judge shall issue a Default Judgment; assume the facts alleged in the Complaint to be true; and, if such facts establish liability under 24 C.F.R. Part 30, Subpart D (Violations), issue a decision imposing the amount of penalty stated in the Complaint. 24 C.F.R. §§ 30.900(a), (b).

Findings of Fact

1. Respondent is the owner of Charlestown Section II (“the project”), a multifamily housing project located in Portsmouth, Virginia. The project was financed with the proceeds of a loan insured against default by HUD under Section 236(j)(1) of the National Housing Act, 12 U.S.C. § 1715z-1. Complaint ¶ 2.

2. In exchange for receiving the benefits of a loan insured by HUD, Respondent executed a Regulatory Agreement with HUD in which it agreed to certain controls over its management and operation of the project. Paragraph 9(c) of the Regulatory Agreement requires Respondent to provide HUD with an annual financial report, prepared in accordance with HUD requirements, within 60 days after the end of each fiscal year. Complaint ¶¶ 3, 6.

3. Contrary to its obligation under the Regulatory Agreement, Respondent has not filed the required annual financial statement with HUD for 1993 and 1994. No waiver of this requirement was approved by HUD. Complaint ¶ 7.

4. On February 21, 1996, HUD provided Respondent written notice that it intended to request a civil money penalty against Respondent because of Respondent’s failure to submit the required financial statements. Respondent received, but did not respond, to the letter. Complaint ¶¶ 8, 9.

5. On May 15, 1996, the Panel met pursuant to 24 C.F.R. Part 30, Subpart C, to discuss the case involving Respondent. Pursuant to 12 U.S.C. § 1735f-15(d)(3) and 24 C.F.R. § 30.215(b), the Panel considered such factors as the gravity of the offense, any history of prior offenses, ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and other factors that the Secretary of HUD has deemed appropriate in the regulations to determine the amount of penalty to impose on Respondent. Complaint ¶ 10.

6. After consideration of the facts in this case and the factors described above, the Panel determined that a civil penalty should be imposed on Respondent. The Panel proposed a penalty in the amount of \$5,000, or \$2,500 for each of the two years that Respondent failed to submit the required financial statement. Complaint ¶ 11.

Conclusions and Order

Under specified circumstances, the Secretary of HUD is authorized to impose a civil money penalty against a multifamily mortgagor that has knowingly and materially violated its Regulatory Agreement. 12 U.S.C. § 1735f-15(c); 24 C.F.R. § 30.325. Among those circumstances is the failure by the mortgagor to furnish HUD with the requisite annual financial report within 60 days after the end of each fiscal year. 12 U.S.C. § 1735f-15(c)(1)(J); 24 C.F.R. § 30.325(b)(10). By virtue of its failure to file annual financial statements with HUD for 1993 and 1994, Respondent violated 12 U.S.C. § 1735f-15(c) and 24 C.F.R. § 30.325 and is liable to pay a civil money penalty. Accordingly, it is

ORDERED, that on the date that this Initial Decision becomes final, Respondent shall pay to the Secretary of the United States Department of Housing and Urban Development a civil money penalty of \$5,000.

Except as provided in 24 C.F.R. § 30.900, this Initial Decision shall become final 90 days after its issuance.

ALAN W. HEIFETZ
Chief Administrative Law Judge