

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

In The Matter of: BLUE RIDGE DEVELOPERS, Respondent.	
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HUDALJ 98-005-CMP
Decided: May 15, 1998

James P. McAleer, Esq.
For the Government

Before: ALAN W. HEIFETZ
Chief Administrative Law Judge

DEFAULT DECISION AND ORDER

On October 15, 1997, the Assistant Secretary for Housing-Federal Housing Commissioner (“Assistant Secretary”), U.S. Department of Housing and Urban Development (“HUD”) filed a Complaint seeking a civil money penalty of \$8,000 against Blue Ridge Developers (“Respondent”), pursuant to section 537(c) of the National Housing Act, 12 U.S.C. § 1735f-15(c), and the applicable regulations under 24 C.F.R. Part 30. The Complaint charges that Respondent knowingly and materially violated its Regulatory Agreement with HUD by failing timely to file its required annual financial statement for 1994.¹ The Complaint notified Respondent of its right to appeal the imposition of the civil money penalty by filing an answer, and that failure to file an Answer within 15 days of receipt of the Complaint could result in imposition of the penalty sought. *See* 24 C.F.R. §§ 30.85(b)(6); 30.90(b); 26.39. Respondent received a copy of the Complaint on November 10, 1997, but failed to file an answer.

On April 3, 1998, the Department served a Motion for Default Judgment on

¹The prepenalty notice notifying Respondent that the Department was considering imposition of a civil money penalty states that Respondent did not timely file the required financial statement for fiscal year 1995. *See* Exhibit B to Complaint. The letter notifying Respondent that the Assistant Secretary had determined to impose a civil penalty states that Respondent had not timely filed the statement for 1995. *See* October 15, 1997, letter from Nicholas P. Retsinas to Burness C. Clemmer.

Respondent. Respondent failed to respond to the Motion. The Complaint and Motion for Default Judgment were filed with this office on May 13, 1998.

Findings of Fact²

1. Respondent is the owner of Blue Ridge Apartments (“the project”), a multifamily housing project located in Verona, Virginia.³ The project was built and financed with the proceeds of a loan which was insured against default by HUD under section 207 of the National Housing Act, 12 U.S.C. § 1713. 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. Complaint, ¶ 3. Paragraph 9(e) of the Regulatory Agreement requires Respondent to provide HUD with an annual financial report within 60 days after the end of each fiscal year. Complaint, ¶ 6 and Exhibit A thereto at 3, ¶ 9(e).

3. Contrary to its obligation under the Regulatory Agreement, Respondent did not provide HUD with the required annual financial statement for 1994. Complaint, ¶ 7.

4. On June 13, 1997, the Department provided Respondent with a written prepenalty notice that it intended to seek a civil money penalty against Respondent because of its failure to file the required financial statement. On June 24, 1997, Respondent responded to the prepenalty notice. Complaint, ¶¶ 8, 9 and Exhibit B thereto.

5. On October 15, 1997, the Assistant Secretary reviewed the allegations against Respondent and considered the factors set forth in 24 C.F.R. § 30.80, such as the gravity of Respondent’s offense, any history of prior offenses, Respondent’s ability to pay a penalty, injury to the public, benefits received by Respondent, and deterrence of future violations. After consideration of those factors, the Assistant Secretary determined that a

²HUD regulations provide that a default shall constitute an admission of all facts alleged in the Department’s Complaint, as well as Respondent’s waiver of any right to a hearing on these allegations. 24 C.F.R. § 26.39(c).

³The owner of the project is identified in the Regulatory Agreement as Blue Ridge Developers, a partnership comprised of Raymond L. Shull, Burness C. Clemmer and Jerry L. May. See Exhibit A to Complaint at 5, ¶ 17.

civil penalty of \$8,000 should be imposed on Respondent. Complaint, ¶ 10.

Conclusion and Order

Respondent knowingly and materially violated 12 U.S.C. § 1735f-15(c) and its Regulatory Agreement with HUD by failing to furnish HUD with an annual financial report for 1994. The maximum penalty that can be imposed is \$27,500. 24 C.F.R. § 30.45(b). The Assistant Secretary, after consideration of appropriate factors, issued the Complaint seeking an order imposing a civil money penalty of \$8,000. *See* 24 C.F.R. §§ 30.80; 30.85. Respondent failed to answer the Complaint, and therefore, is in default. *See* 24 C.F.R. §§ 26.37; 26.38; 30.90(b). Accordingly, it is

ORDERED, that Respondent shall pay to the United States of America a civil money penalty of \$8,000. This penalty is immediately due and payable by Respondent without further proceedings, and this Order shall constitute the final agency action, pursuant to 24 C.F.R. § 26.39.

ALAN W. HEIFETZ
Chief Administrative Law Judge