

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS**

UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT,

Petitioner,

v.

DARREN T. DEBERRY AND TECHNO
CONSTRUCTION CORP.,

Respondents.

HUDALJ No. 14-AF-0077-PF-005

June 24, 2014

DEFAULT JUDGMENT AND ORDER

The above-entitled matter is before this Court on a *Motion for Default* (“Default Motion”), filed on May 16, 2014, by the United States Department of Housing and Urban Development (“HUD” or “the Government”). Respondent Darren DeBerry and Techno Construction Corporation (“Respondents”) did not file an answer to the Government’s *Complaint* and did not respond to the present motion, despite being properly served with both documents. Accordingly, the *Default Motion* is **GRANTED**.

PROCEDURAL HISTORY

On March 31, 2014, HUD served upon Respondents a *Complaint* seeking civil penalties and assessments pursuant to the Program Fraud Civil Remedies Act of 1986 (“PFCRA”), 31 U.S.C. §§ 3801-3812, and the applicable regulations at 24 C.F.R. Part 28. The *Complaint* alleged that Respondents made or caused to be made 12 materially false statements to the Commission on Equal Opportunities of the City of New Haven (“CEO”), an agent of the Housing Authority of the City of New Haven (“HANH”). All 12 statements certified that Respondent Techno had paid the “full weekly wages earned” to its workers on the Eastwood Terrace construction project, and that the accompanying payroll reports were “correct and complete.” The *Complaint* alleged that Respondents knew that the statements were false because they had not paid the stated wages, or had paid substantially less than was reported. The *Complaint* therefore sought a civil penalty of \$7,500 for each false statement, for a total award of \$90,000.

The *Complaint* notified Respondents of their right to appeal the imposition of the civil penalties and assessments by filing a written response within 30 days of the receipt of the *Complaint*, and that failure to file a response may cause HUD to seek a default judgment against her.

HUD served the *Complaint* by U.S. Postal Service Certified Mail-Return Receipt Requested, addressed to Respondents at their residence and business addresses, respectively. Respondent DeBerry received the *Complaints* on behalf of himself and Respondent Techno on April 2, 2014.¹ A response was therefore due to HUD on or before May 2, 2014. This Court also sent a preliminary letter to Respondents, informing them of the Complaint and informing them that: “[i]f you do not submit a timely response, the Government may seek a default judgment, which would be immediately due and payable by you.” To date, neither HUD’s Counsel nor his Court has received any response to the *Complaints* or the preliminary letter.

The Government filed the *Default Motion* on May 16, 2014. A Respondent is allowed 10 days to respond to such a motion. 24 C.F.R. § 26.41(a). Allowing for three day’s mail time in either direction, Respondents’ reply to the *Default Motion*, if any, should have been received on or before June 2, 2014. Respondents have not replied.

LEGAL FRAMEWORK

Program Fraud Civil Remedies Act.

Respondent is charged with a violation of the PFCRA. The PFCRA imposes liability on “[a]ny person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know — (A) is false, fictitious, or fraudulent; [or] (B) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent....” 31 U.S.C. § 3802(a)(1)(A)-(B).

The PFCRA defines “claim” as “[a]ny request, demand, or submission — ... (B) made to a recipient of ... money from an authority or to a party to a contract with an authority — ... (ii) for the payment of money ... if the United States — (I) provided any portion of the money requested or demanded....” 31 U.S.C. § 3801(a)(3)(B). Under the PFCRA, “each ... individual request or demand for ... money constitutes a separate claim. 31 U.S.C. § 3801(b)(1) (2012). Under the PFCRA, a person knows or has reason to know that a claim is false if the person: (a) has actual knowledge of the claim’s falsity; (b) acts in “deliberate ignorance” as to the truth or falsity of the claim; or (c) acts in “reckless disregard” of the truth or falsity of the claim. 31 U.S.C. § 3801(a)(5) (2012). Furthermore, “no specific intent to defraud is required.” *Id.*

A person found liable under the PFCRA may be subject to a civil penalty of not more than \$7,500.00 for each claim. 31 C.F.R. § 3802(a)(1)-(2) (2012); 24 C.F.R. § 28.10 (2012). In addition to the civil penalties imposed, a person found liable for making a false claim may also be “subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim.” 31 U.S.C. § 3802(a)(1); 24 C.F.R. § 28.10(a)(6).

¹ Respondent DeBerry is owner and president of Respondent Techno and the registered agent for that company.

Default Judgment.

HUD regulation provides that, “[I]f the respondent fails to submit a response to the Docket Clerk, then the Government may file a motion for a default judgment in accordance with § 26.41.” 24 C.F.R. § 28.38 (2012). Section 26.41 provides:

24 C.F.R. § 26.41 Default.

- (a) General. The respondent may be found in default, upon motion, for failure to file a timely response to the Government’s complaint. The motion shall include a copy of the complaint and a proposed default order, and shall be served upon all parties. The respondent shall have 10 days from such service to respond to the motion.
- (b) Default order. The ALJ shall issue a decision on the motion within 15 days after the expiration of the time for filing a response to the default motion. If a default order is issued, it shall constitute the final agency action.
- (c) Effect of default. A default shall constitute an admission of all facts alleged in the Government’s complaint and a waiver of respondent’s right to a hearing on such allegations. The penalty proposed in the complaint shall be set forth in the default order and shall be immediately due and payable by respondent without further proceedings.

24 C.F.R. § 26.41.

FINDINGS OF FACT

1. The Housing Authority of the City of New Haven is a public housing agency that administers low-income housing programs in New Haven, Connecticut.
2. HANH is a participant in HUD’s Section 8/Move to Work Demonstration Program, which allows the housing authority to combine federal housing funds to improve efficiency.
3. The Davis-Bacon Act, 40 U.S.C. §§ 3141-3148, mandates that any federally funded contract in excess of \$2,000 must contain a provision requiring contractors and subcontractors to pay their laborers and mechanics at a rate not less than the prevailing wage for laborers and mechanics employed on similar projects in the same geographical area.
4. Contractors and subcontractors must submit a weekly payroll to the agency or owner, stating, among other things, each worker’s hours worked, hourly rates, and actual wages paid during each pay period.

5. Each payroll must be accompanied by a Statement of Compliance, signed by the contractor or the subcontractor, or his or her agent.
6. On November 9, 2007, HANH signed an agreement naming Riverview Realty and Development Corporation (“R2D Corp.”) as the construction manager/general contractor for the redevelopment of the Eastview Terrace project.
7. The Commission on Equal Opportunities of the City of New Haven (“CEO”) was HANH’s agent for purposes of collecting and reviewing the weekly payrolls.
8. R2D Corp. hired Barret, Inc., as a subcontractor in or about March 2008.
9. Barret, Inc., hired Respondent Techno as a “lower-tier” subcontractor that same month.
10. On March 5, 2008, Respondent DeBerry signed a Contractors Wage Certification Form promising to pay its workers as mandated by the Davis-Bacon Act.
11. The prevailing wage rate in New Haven, Conn., in 2008 was \$41.60 per hour for roofers and \$12.29 per hour for unskilled laborers.
12. Respondents submitted payrolls and certificates of compliance from March 2008 until July 2008.
13. Each Certificate of Compliance was signed by Respondent DeBerry.
14. The payrolls for weeks 2, 5, 6, 7, 8, 12, 13, 14, 15, 16, 17, and 18 all included statements that certain workers had been paid specific wages in exchange for specific hours worked.
15. In fact, the workers had not been paid their full wages, or were not paid at all.
16. Respondents received the *Complaint* on April 2, 2014.
17. A response to the *Complaint* was due from Respondents on or before May 2, 2014, but Respondents failed to file a response.
18. The *Default Motion* was sent to Respondent on May 16, 2014.
19. A response to the *Default Motion* was due on or before June 2, 2014, but Respondents failed to file a response.
20. Respondents have failed to defend this action.
21. Due to Respondents’ failure to respond to the *Complaint*, all facts alleged in the *Complaint* are deemed admitted.

22. Respondent DeBerry knew or had reason to know the 12 payrolls were materially false because, as owner of Respondent Techno, he knew the full wages had not been paid.

CONCLUSIONS OF LAW


By reason of the facts admitted by Respondents in the *Complaint*, Respondents made or caused to be made 12 claims to CEO, and thus to HANH, that they knew to be false. Respondents therefore committed 12 violations of 31 U.S.C. § 3802(a)(2) and 24 C.F.R. § 28.10(b). The allegations in the *Complaint* are legally sufficient to establish that Respondents are liable to HUD under the PFCRA and 24 C.F.R. Part 28. By regulation, in the event of a default “[t]he penalty proposed in the complaint shall be set forth in the default order and shall be immediately due and payable by respondent without further proceedings.” 24 C.F.R. § 26.41(c). HUD is therefore entitled to 12 civil penalties of \$7,500 each, totaling \$90,000 pursuant to the PFCRA and 24 C.F.R. Part 28.

ORDER

Accordingly, the Government’s *Default Motion* is **GRANTED**;

Respondents shall pay civil penalties and assessments in the total amount of \$90,000 to HUD, which amount is due and payable immediately, without further proceedings.

So **ORDERED**,



Alexander Fernández
Administrative Law Judge



Notice of Appeal Rights. This *Order* constitutes the final Agency action. 24 C.F.R. § 26.41(b).