

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.

ROGERS RANDLE AND CARRIE RANDLE,

Respondents.

15-AF-0096-PF-012

December 28, 2015

DEFAULT JUDGMENT AND ORDER

The case arises from a *Complaint* filed by the United States Department of Housing and Urban Development (HUD or Department) against Rogers Randle and Carrie Randle (Respondents), whereby HUD sought two civil penalties under the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28.

The *Complaint* alleges Respondents, in violation of requirements of the Home Equity Conversion Mortgage (HECM) Program, submitted two false statements to HUD.

Legal Framework

Under the PFCRA, liability may be imposed on any person who “makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that the person knows or has reason to know asserts a material fact which is false, fictitious, or fraudulent; or omits a material fact; and is false, fictitious, or fraudulent as a result of such omission and which the person making, presenting, or submitting such statement has a duty to include such a material fact; and 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); see also 24 C.F.R. § 28.10(b).

Under the PFCRA, the maximum civil penalty for false, fictitious, or fraudulent statements made on or after March 8, 2007, is \$7,500 per statement. 72 Fed. Reg. 5586 (Feb. 6, 2007). Liability under the PFCRA is joint and several. 24 C.F.R. § 28.10(e).

Program Background

The program involved in this case was the HECM Program, which HUD administers pursuant to section 255 of the National Housing Act, 12 U.S.C. § 1715z-20, and implementing regulations at 24 C.F.R. Part 206. Through this program HUD insures HECMs, which are commonly known as reverse mortgages. The program is designed to meet the needs of elderly homeowners by enabling them to convert accumulated equity in their homes into monthly streams of income and/or lines of credit. 12 U.S.C. § 1715z-20(a)(1).

Repayment of the loan proceeds by the mortgagor is secured by first and second mortgages on the property, which allow the mortgagee and HUD to recover losses up to the value of the property when the mortgagor dies, no longer maintains the property as a principal residence, or violates the mortgage covenants.

Process

Pursuant to 24 C.F.R. § 28.30(b), a respondent must submit a written response to a PFCRA complaint, which shall be deemed to be a request for a hearing, to HUD and the Office of Hearings and Appeals no later than thirty days following service of the complaint.

If a respondent does not timely file a request for hearing in response to the Department's *Complaint*, the Department is authorized to file a motion for default judgment, attaching to it a copy of the *Complaint*, as set forth at 24 C.F.R. §§ 28.30(b) and 26.41(a).

HUD filed a *Complaint* in this matter on July 21, 2015. Respondents received the *Complaint* on or about July 28, 2015. Respondents filed a letter dated August 10, 2015. The Court issued a *Notice of Hearing and Order* on September 16, 2015, directing Respondents to file a response by October 16, 2015.

A respondent may be found in default, upon motion, for failure to file a timely response to the Government's complaint. 24 C.F.R. § 26.41(a). A default shall constitute an admission of all facts alleged in the *Complaint* and a waiver of Respondents' right to a hearing on such allegations. 24 C.F.R. § 28.41(c).

On October 19, 2015, the Government moved for default judgment on the basis that Respondents failed to file a response to the *Complaint*. By *Order for Response*, issued October 21, 2015, Respondents were required to file a response to the Government's *Motion* by November 2, 2015. To date, Respondents have not filed an answer to the *Complaint* or responded to the Government's *Motion*.

Findings of Fact

1. The factual findings stated in the “Process” section, *supra*, are incorporated herein by reference.
2. In March 2006 and June 2008, Respondents applied for and obtained two separated HECMs, which were secured by two different properties in Wisconsin and Mississippi.
3. On the loan applications and in subsequent certifications for each of the HECMs, Respondents falsely certified that both homes were their principal residence.
4. On March 3, 2006, Respondents signed an application for the HECM loan on the Wisconsin Property.¹
5. On or about April 17, 2008, April 26, 2012, and July 12, 2013, Respondents signed annual occupancy certifications verifying that the Wisconsin Property continued to be their principal residence.
6. On July 24, 2008, Respondents signed an Application for the HECM loan for the Mississippi Property.²
7. On or about June 4, 2009, and August 2, 2010, Respondents signed annual occupancy certifications verifying that the Mississippi Property continued to be their principal residence.
8. Respondents’ annual occupancy certifications for the Wisconsin Property were false because the Wisconsin Property was not Respondents’ principal residence when they signed the certifications.
9. By signing the certifications for the Wisconsin Property, Respondents signed certifications that they knew contained false statements because a person may have only one principal residence at one time and Respondents’ principal residence was the Mississippi Property.
10. Respondents’ false statements on the annual occupancy certifications concerning their principal residence are material because HUD Handbook 4330.1, Rev-5, ¶ 13-22 provides that, “Under the mortgage, the mortgagor is not required to repay the outstanding balance (of the HECM) as long as the following conditions are met by at least one original mortgagor: A) The mortgagor maintains the property as a principal residence.”
11. “The mortgagee must verify this fact (annually) as long as the deb on the mortgage is outstanding.” *Id.*

¹ FHA Case Number: [REDACTED]

² FHA Case Number: [REDACTED]

12. Had Respondents informed the mortgagee that the Wisconsin Property was not their principal residence, they would have been required to repay the outstanding balance of that HECM loan.

Penalty

Respondents' knowing and material submission of false statements to HUD in connection with the HECM Program justifies HUD's request for a determination finding Respondents jointly and severally liable for two civil penalties totaling \$15,000, pursuant to the PFCRA, 31 U.S.C. § 3802(a), and 24 C.F.R. § 28.10.

Order

Accordingly, it is hereby **ORDERED**:

1. Pursuant to the foregoing, the Department's *Motion for Default Judgment* is **GRANTED**, and Respondents are hereby found in **DEFAULT**.
2. Based upon the foregoing Findings of Fact, Respondents are jointly and severally liable for two false statements made in connection with the Wisconsin Property. 24 C.F.R. § 28.10(e).
3. Respondents shall pay to HUD civil penalties of \$15,000. Such amount due and payable immediately without further proceedings. 24 C.F.R. § 26.41(c).
4. This Order constitutes the **FINAL AGENCY ACTION**. 24 C.F.R. § 26.41(b).



Alexander Fernández
Administrative Law Judge



NOTICE OF APPELLATE RIGHTS. This Order constitutes the **FINAL AGENCY ACTION**. 24 C.F.R. § 26.41(b). Judicial review may be available in accord with applicable statutory procedures and the procedures of the appropriate federal court. 24 C.F.R. § 26.54; 31 U.S.C. § 3805.