

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.

JANELLE L. THOMPSON, and PEGGY L.
THOMPSON,

Respondents.

16-AF-0058-PF-015

April 11, 2017

Appearances

Debra K. Lumpkins, Attorney
United States Department of Housing and Urban Development, Washington, D.C.
For Petitioner
Pamela L. Ashby, Attorney
Jackson & Associates Law Firm, LLC, of Upper Marlboro, Maryland
For Respondent

INITIAL DECISION AND ORDER

BEFORE: Alexander FERNÁNDEZ, Administrative Law Judge

On August 11, 2016, the Court issued an *Order Granting Partial Summary Judgment (PSJ Order)* in favor of the Government. This Court found that, for purposes of the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 *et seq.* (PFCRA), Respondents made twenty-six false claims enumerated in Counts two through twenty-seven of the *Complaint*. The *PSJ Order* is incorporated herein by reference.

On November 8 and 9, 2016, the Court conducted a hearing on the issue of appropriate penalties and assessments for these false claims. The Court heard testimony from four witnesses including Respondents.

This matter is now ripe for adjudication.

Applicable Law

Program Fraud Civil Remedies Act. The Program Fraud Civil Remedies Act (“PFCRA”) places liability on a person for making, presenting, or submitting, or causing to be submitted, a claim *that the person knows is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent.* 31 U.S.C. § 3802(a)(1)(B)” (emphasis added). *PSJ Order* at 2. A claim is any request, demand, or submission made to a recipient of property, services, or money from an authority for the payment of money if the United States provided any portion of the money requested or demanded. 31 U.S.C. § 3801(a)(3)(B)(ii); 24 C.F.R. § 28.5(b).

Each housing assistance payment made on behalf of a tenant constitutes a separate claim. HUD v. McGee, HUDALJ 12-F-026-PF-13 (Jun. 27, 2012). Under the HUD implementing regulations, a person or persons found liable may be subject to a maximum civil penalty of \$7,500 per claim. 24 C.F.R. § 28.10(a)(1). Additional potential penalties include an assessment of twice the amount of the claims if HUD has made any payment on the claim. 37 U.S.C. § 3802(a)(1) and (3); 24 C.F.R. § 28.10(a)(6).

Burden of Proof. PFCRA hearings are to be conducted in accordance with HUD’s procedures governing hearings under the Administrative Procedure Act (i.e., Part 26). 24 C.F.R. § 28.40(a). Pursuant to the applicable regulation, the Government has the burden of proof on Respondent’s liability and any aggravating factors by a preponderance of the evidence. 24 C.F.R. § 26.45(e). Thereafter, Respondent must prove any affirmative defenses and mitigating factors, also by a preponderance of the evidence. *Id.*; see also, Grier v. United States HUD, 797 F.3d 1049, 1054-1055 (D.C. Cir. 2015).

Penalties and Assessments: HUD’s regulation implementing the PFCRA, at 24 C.F.R. § 28.40(b), list the factors to be considered in determining the amount of penalties and assessments. They are:

- (1) The number of false, fictitious, or fraudulent claims or statements;
- (2) The time period over which such claims or statements were made;
- (3) The degree of the respondent's culpability with respect to the misconduct;
- (4) The amount of money or the value of the property, services, or benefit falsely claimed;
- (5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of investigation;
- (6) The relationship of the civil penalties to the amount of the Government's loss;
- (7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;
- (8) Whether the respondent has engaged in a pattern of the same or similar misconduct;
- (9) Whether the respondent attempted to conceal the misconduct;
- (10) The degree to which the respondent has involved others in the misconduct or in concealing it;
- (11) If the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude the misconduct;
- (12) Whether the respondent cooperated in or obstructed an investigation of the

misconduct; (13) Whether the respondent assisted in identifying and prosecuting other wrongdoers; (14) The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions; (15) Whether the respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; (16) The need to deter the respondent and others from engaging in the same or similar misconduct; and [sic] (17) The respondent's ability to pay; and (18) Any other factors that in any given case may mitigate or aggravate the seriousness of the false claim or statement."

24 C.F.R. § 28.40(b).

The penalty shall not be "disproportionate when compared to the petitioner's total, rather than liquid, assets." Orfanos v. Dep't of Health and Human Services, 896 F. Supp. 23, (D.D.C. 1995)

Findings of Fact

1. Respondent, Janelle Thompson, is the owner of a three-bedroom condominium at [REDACTED] [REDACTED] ("Badger Circle Property").
2. Beginning on August 23, 2005, Janelle Thompson, as landlord, and Peggy Thompson as tenant, sought and received HUD-funded Housing Vouchers under the Section 8 Housing Choice Voucher program ("Housing Vouchers") through the Housing Authority of the City of San Buenaventura, California (the "Housing Authority") for the Peggy Thompson and Mrs. Washington's tenancy in the Badger Circle Property.
3. Mrs. Washington made no statements or representations to HUD or to the Housing Authority.
4. Peggy Thompson signed and submitted forms in August 2005, July 2009, July 2010 and August 2011, which contained false statements and were, in part, the bases for her Housing Voucher claims.
5. In addition, in September and October 2005, Janelle Thompson signed and submitted forms declaring that she and Peggy Thompson did not have a close familial relationship.
6. On or about December 28, 2011, in response to inquiries from the Housing Authority, Peggy Thompson wrote and signed a certification to the Housing Authority that "I have no relationship to Janelle Thompson owner of [REDACTED] [REDACTED]."
7. Peggy Thompson has been record owner of the property on Holly since at least 1991, although it is held in trust for Mrs. Washington for as long as Mrs. Washington can live in the house.

8. From the beginning of the subsidized tenancy in 2005, and at least in 2009, 2010 and the final recertification in 2011, Mrs. Washington, who is Peggy Thompson's mother and Janelle Thompson's grandmother, has been listed as a member of the tenant family.
9. Donald Vinson, a third party, has close personal ties to the Thompson/Washington families. Commencing as early as 2008 and continuing to the present, Peggy Thompson allowed Donald Vinson to store personal property at the rental property, as well as use the address for his voter registration, driver's license, and life insurance applications.
10. None of the documents signed by Respondents and submitted to the Housing Authority name Donald Vinson as a tenant.
11. There is a property at [REDACTED] owned in trust by Peggy Thompson for Mrs. Washington is in Santa Barbara County.
12. Although Peggy Thompson intended for Mrs. Washington to live in the subsidized unit with her, Mrs. Washington refused to move from her home at [REDACTED].
13. Janelle Thompson filed for chapter 13 bankruptcy on April 1, 2011, declaring that her average monthly income was \$[REDACTED], which included \$[REDACTED] in overtime.
14. The bankruptcy documents do not include income received from the Housing Authority as Housing Vouchers, which was \$[REDACTED] for 2010, and \$[REDACTED] per month in 2011.
15. Donald Vinson owns, makes the payments, and pays the insurance for the 2014 Toyota Avalon that Peggy Thompson drives. He has provided Peggy Thompson with a car for five years.
16. Donald Vinson keeps his deceased brother's car in the garage of the Badger Circle Property.
17. Donald Vinson has loaned Janelle Thompson \$110,000 by verbal agreement. No repayment terms have been discussed.
18. Janelle Thompson was indicted and by guilty plea, was convicted of four counts of defrauding HUD in violation of 18 U.S.C. § 1012, which is a Class A Misdemeanor.
19. Peggy Thompson was indicted and by guilty plea, was convicted of one count of making a false statement to HUD in violation of 18 U.S.C. § 1012, which is a Class A Misdemeanor.
20. The presentence investigation reports filed in the criminal case indicate the probation officer had no information indicating either Respondent impeded or obstructed justice.
21. The presentence investigation reports filed in the criminal case report that both Respondents were interviewed by the probation officer and with counsel present, accepted responsibility for their conduct.
22. Respondents have no prior or pending criminal charges or convictions.

23. The total loss claimed by the Housing Authority was \$69,427.50.
24. In addition to a period of probation, Ms. and Mrs. Thompson were ordered to pay, jointly and severally, restitution of \$69,427.50.
25. The entire amount of restitution was paid as of August, 2016. One condition of her criminal conviction is that Janelle Thompson is not allowed to work in law enforcement in this country for a period of ten years.
26. The Plea Agreements also required both Janelle and Peggy Thompson to be permanently barred from participating in federally subsidized housing programs.
27. Prior to the conviction, Janelle Thompson was a deputy sheriff with the Los Angeles County Sheriff's Department from 2002 to 2015, when her employment was terminated.
28. For the period from June 1, 2010 through July 1, 2012, Respondents received monthly housing payments totaling \$21,648.00.
29. The mortgages for Janelle Thompson's primary residence and her rental property are currently in default and under foreclosure proceedings.
30. Currently, Janelle Thompson has no stable income, has recently earned income working as a Lyft driver and providing security services, and has borrowed and accepted gifts from family members and friends to pay her necessary expenses.
31. Janelle Thompson has a bachelor's degree, and two master's degrees.
32. Janelle Thompson has an Individual Retirement Account (IRA) with Northwestern Mutual which was valued at [REDACTED] as of July 31, 2016. Any withdrawal from the IRA would result in a 10% penalty, and federal and state taxes would apply to such distribution.
33. Janelle Thompson anticipates receiving a pension from the Los Angeles County Sheriff's Department of approximately \$[REDACTED] per month when she turns 50—in approximately 5 years.
34. Janelle Thompson has a life insurance policy on her own life which had a cash value of approximately [REDACTED] in July 2016.
35. Janelle Thompson has a First City savings account. The balance was [REDACTED] on August 25, 2016.
36. Janelle Thompson has POPA Federal Credit Union account. The balance was [REDACTED] on July 31, 2016.
37. Janelle Thompson has an Oppenheimer retirement account. The balance was [REDACTED] as of June 30, 2016.

38. Janelle Thompson is a co-owner of two timeshares and sole owner of one timeshare.
- Studio - [REDACTED] in Mexico, joint right to use owner with Donald Vinson and Jeanine Ambriz.
 - Studio - [REDACTED], Mexico - Sole right to use owner.
 - One-Bedroom - [REDACTED] AZ - right to use owner jointly with Dave Thompson, her father.
39. The 2016 market value for the condominium Janelle Thompson owns and in which she resides, in Fullerton, California, Orange County is \$548,000. The mortgage company has initiated the foreclosure process. The interest bearing Principal balance on the mortgage as of August 18, 2016 was approximately \$416,000.
40. The 2014 market value for the property on [REDACTED] was \$269,000. Janelle Thompson purchased this property in 2005 for \$455,000. The equity in the Badger Circle property was approximately \$25,000.
41. Since 1990, Peggy Thompson has received Social Security Disability payments based on a primary diagnosis of [REDACTED] ([REDACTED]). In 1993, Peggy Thompson also was diagnosed with [REDACTED] and history of [REDACTED] and neurosurgery.
42. Peggy Thompson earned a bachelor's degree, two associate degrees and holds numerous certifications, but has had difficulty obtaining employment because of back issues.
43. The 2015-2016 market value for the property co-owned by Peggy Thompson and her mother, Mrs. Washington, in Carpinteria, California was \$47,926. There is no mortgage on the property.
44. Peggy Thompson has an AAA life insurance policy of [REDACTED] covering Janelle Thompson, with a monthly premium of [REDACTED]. The beneficiaries are Peggy Thompson ([REDACTED]%) and Donald Vinson ([REDACTED]%). The cash, loan or surrender values are unknown.
45. Peggy Thompson has Primerica life insurance policy of [REDACTED] covering Janelle Thompson, with a monthly premium of [REDACTED]. This policy does not have a cash value and unknown loan or surrender values.
46. Peggy Thompson has a life insurance policy of [REDACTED] on the life of Donald Vinson, with unknown cash, loan, or surrender values.
47. Janelle Thompson has made multiple attempts and continues her search to obtain full time employment, but has thus far been unable to secure a regular, part time or full time job.

Penalty and Assessment Factors

The Government seeks twenty-six civil penalties of \$7,500 each and assessments of twice the amount of each false claim submitted by Respondents for a total award to the Government in the amount of \$193,340.¹ *PSJ Order*, at 5. The Government “requests that judgment be entered, jointly and severally, against Janelle Thompson and Peggy Thompson as follows: a penalty of \$7,500 for each of the twenty-six counts for which liability has already been determined, totaling \$195,000 in penalties, and an assessment of \$21,648.00, which represents the maximum assessment after credit is given for the restitution already paid on those claims, for a total judgment amount of \$216,648.” *Government's Post-Hearing Brief* at 17.

As noted above, the Government has the burden to prove Respondent's liability and any aggravating factors and Respondent must prove any affirmative defenses and mitigating factors. 24 C.F.R. § 26.45(e). The amount of penalties and assessments imposed shall be based on consideration of evidence in support of one or more of the eighteen factors listed in 24 C.F.R. § 28.40(b). Each of the factors, as applicable under the facts in this case, is discussed in turn.

1. The number of false, fictitious, or fraudulent claims or statements

Each housing assistance payment made on behalf of a tenant constitutes a separate claim. *HUD v. McGee*, HUDALJ 12-F-026-PF-13 (Jun. 27, 2012).” *PSJ Order*, at 5. The Court found that “the statute of limitations limits Respondents’ liability to Counts two through twenty-seven.” *Id.* These claims were based on Respondents’ false statements to the Housing Authority consisting of several certifications declaring that Respondents had no familial relationship with each other. *Id.* Specifically, in 2005, 2009, 2010 and 2011, Peggy Thompson signed and submitted forms acknowledging that rent subsidies were not permitted if the tenant was a parent or grandparent of the landlord. In addition, in September and October 2005, Janelle Thompson signed and submitted forms declaring that she and Peggy Thompson did not have a close familial relationship. The Court concludes that in addition to the twenty-six false claims, Respondents have made numerous false statements related to their scheme to improperly benefit from the Housing Vouchers.

2. The time period over which such claims or statements were made

From approximately October 1, 2005 to July 31, 2012, Janelle Thompson received payments for housing totaling approximately \$69,427.50. The claims were made in reliance on false statements made in 2005, 2009, 2010, and 2011. For purposes of this case, over a period of over twenty-six months, Respondents made or caused to be made, twenty-six false claims totaling \$21,648.00.

¹ Although the Government requested a \$7,500 penalty for each false claim plus an assessment of \$44,956 in the *Complaint*, the Government now asks for the assessments they seek to include a credit for “those amounts once the restitution payments are all made.”

3. The degree of Respondent's culpability with respect to the misconduct

Respondent, Janelle Thompson, was indicted and by guilty plea, was convicted of four counts of defrauding HUD. Respondent, Peggy Thompson, was indicted and by guilty plea, was convicted of one count of making a false statement to HUD. Janelle Thompson's false statements did not concern more than the nature of the relationship between her and her tenant. She clearly knew at the time of her statements that they were false. Likewise, Peggy Thompson's submission of multiple false certifications or statements made over a course of years were made knowingly. The Court concludes that Respondents' full culpability has been established.

4. The amount of money or the value of the property, services, or benefit falsely claimed

For the period between 2005 and 2012, the total loss claimed by the Housing Authority was \$69,427.50. Ms. and Mrs. Thompson were ordered to pay, jointly and severally, restitution of \$69,427.50. The entire amount of restitution was paid as of August, 2016. For the time period at issue in this case, June 1, 2010 through July 1, 2012, the record shows that Respondent made or caused to be made a total of \$21,648.00 in false claims which were included in the restitution payment.

5. The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of investigation

HUD did not present evidence of additional actual loss beyond the specific payments made to Respondents and the amount of restitution. As noted above, from about October 1, 2005 to July 31, 2012, Janelle Thompson received housing payments totaling approximately \$69,427.50, and of that amount, \$21,648.00 in false claims are at issue here. Beyond the total amount, the Court finds no evidence of additional losses.

6. The relationship of the civil penalties to the amount of the Government's loss

HUD has requested twenty-six civil penalties in the amount of \$7,500 each or \$195,000 total, for the twenty-six false claims Respondents made or caused to be made. In addition, HUD seeks an assessment of twice the amount of the claims because payments on the claims were made. *See* 37 U.S.C. § 3802(a)(1) and (3); and 24 C.F.R. § 28.10(a)(6). Because restitution has already been made, HUD is seeking \$21,648.00 in additional damages for the claims at issue here. However, the Government's total loss for the period from 2005 to 2012 was \$69,427.50. Therefore, the Court concludes that the total additional civil penalty sought, \$216,648 is approximately three times the total amount of HUD's loss or just over a 300% penalty.

7. The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs

As noted previously, from about October 1, 2005 to July 31, 2012, Janelle Thompson received housing payments totaling approximately \$69,427.50, and of that amount, \$21,648.00 in false claims are at issue. These funds could have been granted to one or more intended

beneficiaries during this time but for Respondents' misconduct. As noted below, however, Respondents have made restitution and these funds are once again available to be used for the intended beneficiaries of this program, albeit they were unavailable at the time. The Court concludes that while there was impact on the intended beneficiaries, this is not a highly significant factor.

8. Whether Respondent has engaged in a pattern of the same or similar misconduct

As relevant here, Respondent engaged in a pattern of the same misconduct by making or causing to be made, each of the twenty-six false claims over a period of more than two years. The record shows that additional false claims were made prior to June 1, 2010, but recovery was barred by the 6-year statute of limitations under the PFCRA. *PSJ Order*, p. 5. Specifically, for the period from approximately 2005 to 2010, monthly claims and payments were made totaling \$47,779.50. As also noted, Respondents made or caused to be made numerous false statements in 2005, 2009, 2010 and 2011. Thus, the Court concludes that Respondents were engaged in a pattern of the same or similar misconduct for approximately 7 years.

9. Whether Respondent attempted to conceal the misconduct

Respondents engaged in fraudulent conduct for almost seven years. Throughout that period numerous false statements and certifications that concealed the nature of their relationship as mother and daughter. As late as December, 2011, Peggy Thompson hand wrote a certification, under penalty of perjury, that stated, "I have no relationship to Janelle Thompson owner of [REDACTED]." This statement allowed Peggy Thompson and Janelle Thompson to continue to receive subsidies through July, 2012. The court concludes that Respondents sought to, and did, conceal their misconduct.

10. The degree to which Respondent has involved others in the misconduct or in concealing it

Although Mrs. Washington, who is Peggy Thompson's mother and Janelle Thompson's grandmother, never made any false statements herself, from the beginning of the subsidized tenancy in 2005, and at least in 2009, 2010 and the final recertification in 2011, Respondents listed her as a member of the tenant family. While Peggy Thompson intended for Mrs. Washington to live at the Badger Circle property with her, Mrs. Washington refused to move from her home at [REDACTED].

In addition, Donald Vinson, has had a close relationship with Peggy Thompson and the Thompson/Washington family and has used the Badger Circle address for his voter registration, driver's license, and life insurance applications. Mr. Vinson also keeps personal property at the residence and has allowed Peggy Thompson to use his car for approximately five years. Based on this, the Court concludes that Respondents have indirectly involved Ms. Washington and Mr. Vinson in their misconduct.

11. If the misconduct of employees or agents is imputed to Respondent, the extent to which Respondent's practices fostered or attempted to preclude the misconduct

The allegations in the *Complaint* rely on Respondents' own conduct and not on imputed liability.

12. Whether Respondent cooperated in or obstructed an investigation of the misconduct

The presentence investigation reports filed in the criminal case indicate the probation officer had no information indicating either Respondent impeded or obstructed justice. The presentence investigation reports filed in the criminal case report that both Respondents were interviewed by the probation officer and with counsel present, accepted responsibility for their conduct. Thus, the Court concludes that Respondents did not obstruct the investigation.

13. Whether Respondent assisted in identifying and prosecuting other wrongdoers

There is no evidence in the record of this proceeding, or in the criminal court documents submitted to the Court on this factor.

14. The complexity of the program or transaction, and the degree of Respondent's sophistication with respect to it, including the extent of Respondent's prior participation in the program or in similar transactions

The Housing Voucher program required numerous certifications, but the specific ones at issue here were neither complex nor required expertise or sophistication. Respondents claimed and received payments based on statements and certifications that they knew to be false. The simple question at issue here was whether Peggy and Janelle Thompson were related to each other. The Court concludes that there was no significant complexity regarding this aspect of the Housing Voucher program.

15. Whether Respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly

As noted above, Respondent, Janelle Thompson, was indicted and by guilty plea, was convicted of four counts of defrauding HUD. Respondent, Peggy Thompson, was indicted and by guilty plea, was convicted of one count of making a false statement to HUD. Beyond this, there is no evidence of any other proceeding in which Respondents were found to have engaged in similar misconduct related to housing. Respondents have no prior or pending criminal charges or convictions.

However, Janelle Thompson filed for chapter 13 bankruptcy on April 1, 2011, declaring that her average monthly income was \$[REDACTED], but the bankruptcy documents do not include income received from the Housing Vouchers, which was \$[REDACTED] for 2010, and \$[REDACTED] per month in 2011. Therefore, the Court concludes that Respondent, Janelle Thompson, has engaged in dishonesty with another governmental agency.

16. The need to deter Respondent and others from engaging in the same or similar misconduct

In separate criminal proceedings, Respondents have been barred for life from participating in HUD's subsidized housing programs. Thus, there is no need to further deter Respondents from similar misconduct in relation to this program.

The Government did not present evidence on the extent to which others needed to be, or could be, deterred by the penalties imposed in this action. Absent any additional evidence, Court concludes that further deterrence is not a significant factor in this case.

17. Respondent's ability to pay

The regulations implementing PFCRA prescribe that Respondent's "ability to pay" is to be "determined based on an assessment of the respondent's resources available both presently and prospectively from which the Department could ultimately recover the total award, which may be predicted based on historical evidence."

Janelle Thompson has no stable income and has borrowed and accepted gifts from family members and friends to pay her necessary expenses. Janelle Thompson has a bachelor's degree, and two master's degrees.

Janelle Thompson's assets and income are as follows:

1. Infrequent employment including as a Lyft driver and as a security guard;
2. An Individual Retirement Account (IRA) with Northwestern Mutual which was valued at [REDACTED] as of July 31, 2016. Any withdrawal from the IRA would result in a 10% penalty, and federal and state taxes would apply to such distribution;
3. A pension approximately \$[REDACTED] per month when she turns 50—in approximately 5 years;
4. A life insurance policy on her own life which had a cash value of approximately [REDACTED] in July 2016;
5. A savings account with a balance of [REDACTED] on August 25, 2016;
6. A POPA Federal Credit Union account with a balance of [REDACTED] on July 31, 2016;
7. An Oppenheimer retirement account with a balance of [REDACTED] as of June 30, 2016;
8. A co-owner of two timeshares and sole owner of one timeshare;
9. Her primary residence, a condominium, in Fullerton, California, Orange County valued at \$548,000 with a principal balance on the mortgage as of August 18, 2016 of \$416,000 and for which the mortgage company has initiated the foreclosure process; and
10. Badger Circle Property in Ventura, California valued at \$269,000 with approximately \$25,000 in equity, a 2005 purchase price of \$455,000, and currently under foreclosure.

Peggy Thompson earned a bachelor's degree, two associate degrees and holds numerous certifications. Peggy Thompson's assets and income are limited to the home in Carpinteria, California valued at \$47,926 and held in trust for her mother who is 89 years old and Social Security Disability payments. She holds a [REDACTED] % interest in AAA life insurance policy of [REDACTED] on the life of Janelle Thompson with an unknown cash, loan, or surrender values; a life insurance policy of [REDACTED] on the life of Janelle Thompson, with no cash value and unknown loan or surrender values; and unknown loan or surrender value; and, a [REDACTED] life insurance policy on the life of Donald Vinson with unknown cash, loan, or surrender values.

The Government's brief invites this Court, without citing any law or legal precedent, to view Mr. Vinson's close relationship with the Thompson/Washington family as justification for including his potential financial support in the calculations of Respondents' ability to pay. The Court declines the Government's invitation and concludes that HUD has not met its burden on this point. Nothing in the record suggests that Mr. Vinson was directly involved in the misconduct and, unlike Respondents, he has neither been charged, nor has he pled guilty to, and been convicted of, fraud in this matter. Therefore, the Court concludes that Respondents' ability to pay is limited based on the assets and potential earnings described above.

18. Any other factors that in any given case may mitigate or aggravate the seriousness of the false claim or statement

Prior to her conviction, Janelle Thompson was a deputy sheriff with the Los Angeles County Sheriff's Department from 2002 to 2015. This is Respondents' first offense and they have cooperated with the resolution of the criminal charges brought against them. The resulting penalties, a permanent bar from participating in HUD's program and the 10-year ban from work in law enforcement are significant. However, the Court is mindful that as an officer of the law, Janelle Thompson's misconduct is especially egregious.

Conclusion

The Government seeks the maximum penalty of \$216,648.00, and the numerous factors discussed above weigh in favor of a significant penalty in this case. However, this must be tempered by Respondents' acceptance of responsibility, inability to pay and the fact that significant penalties have already been imposed including full restitution. On balance, the Court concludes that the appropriate amount of penalties and assessments is \$108,324.00 or one-half the maximum penalty.

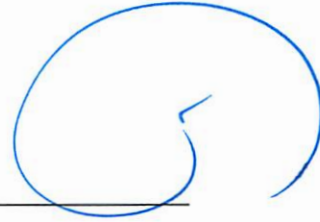
As noted above, there is little doubt of Respondents' culpability and pattern of dishonesty, and that they indirectly involved others in their misconduct. However, Respondents' resources and potential income are limited, a fact compounded by the impact of the criminal penalties. Likewise, Respondents have accepted responsibility and made restitution and there is no need for further deterrence or indication that the maximum penalty is needed to serve that purpose when it imposes significant financial hardships.

Accordingly, for the reasons set out above, and consistent with 24 C.F.R. §28.40, the Court determines that the appropriate amount of penalties and assessments is \$108,324.00 or one-half the maximum penalty, joint and severally.

So **ORDERED**,

A handwritten signature in blue ink, appearing to read "Alexander Fernández", written over a horizontal line.

Alexander Fernández
Administrative Law Judge

A large, stylized handwritten mark or flourish in blue ink, consisting of a large loop with a small hook at the end.