

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.

JAMES WILSON,

Respondent.

18-AF-0062-PF-002

November 27, 2018

INITIAL DECISION AND CONSENT JUDGMENT

This matter is before the Court upon a *Complaint* filed by the United States Department of Housing and Urban Development (“HUD”) against James Wilson (“Respondent”) under the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812 (“PFCRA”), as implemented by 24 C.F.R. part 28.¹ The *Complaint* alleges that Respondent is liable to HUD in the amount of \$923,007.38 for false claims and statements that he made or caused to be made to the Alexander County Housing Authority (“ACHA”), a recipient of grant funds from HUD under the Public Housing Operating Fund Program. See 24 C.F.R. part 990.

On August 31, 2018, the parties filed a joint motion seeking entry of an order of consent judgment. The parties represent that they have entered into a settlement agreement whereby Respondent agrees to admit liability to HUD in the amount of \$500,000 for making or causing to be made 125 false claims. The parties state that their agreement is conditioned upon the Court’s entry of a consent judgment against Respondent.

Pursuant to PFCRA, this proceeding is subject to the provisions of the Administrative Procedure Act (“APA,” 5 U.S.C. §§ 551-559). 31 U.S.C. § 3803(g)(1)(A). Although PFCRA does not expressly mention consent judgments, the parties assert that this Court is authorized to enter a consent judgment pursuant to 5 U.S.C. § 554(c), which provides a general right of settlement in APA proceedings, and 24 C.F.R. § 26.32(o), a HUD rule which permits the Court to “[e]xercise such other authority as is necessary to carry out the responsibilities of the ALJ [Administrative Law Judge]” in APA proceedings. See also 5 U.S.C. § 556(c)(11) (permitting presiding officer in APA proceeding to take any action authorized by agency rule consistent with APA); *HUD v. Cuccia*, No. 13-AF-0066-PF (Dec. 28, 2012) (entering consent judgment in PFCRA proceeding). Accordingly, the Court enters the following judgment in this matter.

¹ The *Complaint* was filed against Respondent and Martha Franklin. On August 31, 2018, the Court dismissed the *Complaint* as against Franklin because she had reached a settlement with HUD.

I. LIABILITY

Respondent admits that he is liable under PFCRA for making or causing the making of the false claims described below:

1. Counts 1-62 of the *Complaint* allege that Respondent made or caused to be made 62 payments for travel expenses from federal funds between February 2012 and May 2014 that materially violated HUD's Public Housing Operating Fund Program requirements.
2. Counts 65-71 of the *Complaint* allege that Respondent made or caused to be made 7 payments for personal expenses from federal funds between January and November 2012 that materially violated HUD's Public Housing Operating Fund Program requirements.
3. Counts 72-116 of the *Complaint* allege that Respondent made or caused to be made 45 payments for resident councils from federal funds between December 2011 and March 2013 that materially violated HUD's Public Housing Operating Fund Program requirements.
4. Counts 188-198 of the *Complaint* allege that Respondent made or caused to be made 11 payments for contracts, prohibited by a conflict of interest, from federal funds between April 2013 and May 2014 that materially violated HUD's Public Housing Operating Fund Program requirements.
5. The *Complaint* alleges that Respondent knew or should have known that all of the above-described payments were ineligible uses of federal funds.

In consideration of Respondent's admissions, the Court finds that Respondent is liable under PFCRA for making or causing the making of the 125 false claims described above.

II. PENALTIES AND ASSESSMENTS

A person found to be liable under PFCRA is subject to a civil penalty of not more than \$7,500 for each false, fraudulent, or fictitious claim made before February 19, 2013 and not more than \$8,500 for each such claim made on or after that date. See 31 U.S.C. § 3802(a)(1); 24 C.F.R. § 28.10(a)(1) (2012 & 2013); 78 Fed. Reg. 4057 (Jan. 18, 2013); 72 Fed. Reg. 5586 (Feb. 6, 2007). In addition, if the government actually paid the claim, the person is subject to an assessment of up to twice its amount. See 31 U.S.C. § 3802(a)(1), (3); 24 C.F.R. § 28.10(a)(6). HUD's regulations mandate that the "amount of penalties and assessments imposed shall be based on the ALJ's and the Secretary's or designee's consideration of evidence in support of one or more of" eighteen enumerated factors. 24 C.F.R. § 28.40(b).

In this case, the parties state that they have evaluated the factors set forth in the regulations and believe that the appropriate total assessment for the false claims is \$188,007.38. They further believe that "the appropriate civil penalties are \$2,495.95 per claim, which totals

\$311,992.62.”² Thus, they agree that Respondent is liable for a total of \$500,000 in penalties and assessments, and ask the Court to issue a consent judgment against Respondent in this amount.

As noted, HUD’s regulations require the penalties and assessments to be “based on the ALJ’s ... consideration of evidence in support of” the eighteen factors set forth in 24 C.F.R. § 28.40(b). Given this regulatory mandate, and given the Court’s desire to avoid placing its imprimatur upon a judgment that is not in the public interest, the Court has independently considered the regulatory factors, below, to ensure that the parties’ proposed judgment comports with general notions of fairness and justice and is consistent with the public interest.

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

Respondent has admitted liability for 125 false or fraudulent claims.

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

The claims in question were made between December 2011 and May 2014.

(3) The degree of Respondent’s culpability with respect to the misconduct.

As stated above, Respondent has admitted liability for the 125 false or fraudulent claims alleged in Counts 1-62, 65-116, and 188-198 of the *Complaint*.

The *Complaint* and the admissions in Respondent’s March 6, 2018 *Answer* reveal that Respondent served as Executive Director of the Alexander County Housing Authority (“ACHA”), a public housing authority formed under the state laws of Illinois, from 1989 to April 1, 2013. During this time period, ACHA received funds from HUD under Section 9 of the United States Housing Act of 1937, 42 U.S.C. § 1437g, to administer a program providing public housing to low-income persons. In order to receive this subsidy from HUD, ACHA was required to execute a contract with HUD and comply with the terms of the contract and with HUD’s Section 9 program regulations, including the rules promulgated by the federal Office of Management and Budget (“OMB”) for grant recipients.

Counts 1-62 of the *Complaint* allege that Respondent attended numerous trainings during which he used ACHA funds to pay for various travel-related expenses, including for the purchase of alcohol, and that he approved these expenditures in his capacity as Executive Director of ACHA. Under OMB rules and ACHA’s contract with HUD, travel expenses must be reasonable and necessary for the operation of the housing project if they are to be paid out of the housing authority’s operating fund. In addition, OMB expressly prohibits the use of program funds to buy alcohol. The *Complaint* alleges that many of the travel expenses charged and approved by Respondent violated these provisions. Initially, through his *Answer*, Respondent

² 125 claims × \$2,495.95 per claim = \$311,993.75. Thus, the parties’ math is off by \$1.13. The Court finds the discrepancy to be negligible and assumes that the parties intentionally reduced the penalties by \$1.13 in order to obtain a round number for the total liability figure.

denied charging unreasonable travel expenses, although he admitted that ACHA funds had been used to purchase alcohol on rare occasions. He has now accepted liability for Counts 1-62.

Counts 65-71 of the *Complaint* allege that Respondent used ACHA funds to purchase gifts and meals for himself and ACHA staff, even though federal funds may not be used for personal expenses. Respondent denied these Counts in his *Answer*, arguing, among other things, that some of the alleged gifts and meals were purchased for a workplace holiday party. However, Respondent has now accepted liability for these Counts.

Counts 72-116 of the *Complaint* allege that ACHA paid and Respondent approved subsidies to two Resident's Councils and a stipend to the president of one Residents' Council, who was also the chairwoman of the ACHA Board of Commissioners, without properly accounting for the use of these funds. Although HUD's regulations permit a housing authority to pay a portion of its operating funds to a Resident's Council to support tenant participation activities, the Council's spending must comply with HUD regulations and must be in accordance with enacted bylaws and a budget. Although Respondent initially denied liability for violating these rules, he has now accepted liability for Counts 72-116.

Counts 188-198 of the *Complaint* allege that Respondent entered into an eighteen-month contract to provide consulting services to ACHA, even though ACHA's agreement with HUD prohibited it from being party to any contract in which an ACHA member or officer held an interest. Respondent initially admitted entering into the contract while denying any conflict of interest. However, he has now accepted liability for Counts 188-198.

Based on Respondent's admission of many of the underlying facts and eventual acceptance of liability, it appears that he is fully culpable for the false and fraudulent claims alleged in Counts 1-62, 65-116, and 188-198 of the *Complaint*.

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

The *Complaint* alleges that, by making or causing to be made the 125 claims at issue, Respondent falsely or fraudulently claimed a total of \$94,003.69 in government funds. In support of this allegation, the *Complaint* includes charts describing each of the 125 false or fraudulent claims and listing their dates and amounts.

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

The *Complaint* indicates an actual loss of \$94,003.69. Undoubtedly, HUD also incurred costs investigating and litigating this matter, but these costs have not been quantified.

(6) The relationship of the civil penalties to the amount of the government's loss.

The proposed penalties total \$311,992.62. This is more than three times the amount of the actual loss suggested by the *Complaint*.

(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.

Respondent has admitted liability for fraudulent conduct. “Fraud erodes public confidence in the government’s ability to efficiently and effectively manage its programs.” HUD v. Greene, No. 14-AF-0042-PF-002, 2014 HUD ALJ LEXIS 3, *29 (HUDALJ Dec. 5, 2014) (quoting United States ex rel. Rosales v. San Francisco Hous. Auth., 173 F. Supp. 2d 987, 1019 (N.D. Cal. 2001)). HUD relies on public housing authorities such as ACHA to administer the Section 9 housing program and expects them to faithfully execute the statute in accordance with the program regulations and to ensure that taxpayer funds are applied to appropriate ends. The program cannot operate as intended when the officers of such public housing authorities misuse program funds, as Respondent has essentially admitted doing; this harms the intended beneficiaries of the program and diminishes public confidence in its management.

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

The admissions suggest a pattern of misconduct, as Respondent has conceded liability for 125 claims made over a period of more than three years.

(9) Whether Respondent attempted to conceal the misconduct.

The Court has no information on this factor.

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

The Counts for which Respondent has admitted liability involve allegations implicating at least two other members of ACHA’s governing body, one of whom was a co-defendant in this proceeding, the other the chair of a Resident Council. Also, in his *Answer* to the *Complaint*, Respondent admitted to contracting with ACHA to serve as a consultant, which forms the basis for Counts 188-198. These admitted facts suggest that Respondent may have involved other members of ACHA’s governing body in his misconduct. At the very least, he may have placed others in the uncomfortable position of deciding whether to confront his misconduct, join in it, or look the other way.

- (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.**

This factor is inapplicable here.

- (12) Whether Respondent cooperated in or obstructed an investigation of the misconduct.**

The Court has no information on this factor.

- (13) Whether Respondent assisted in identifying and prosecuting other wrongdoers.**

The Court has no information 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 Section 9 program is relatively complex, as it implicates various differing and overlapping statutory, regulatory, and contractual requirements. Respondent was a sophisticated program participant who had served as Executive Director of a public housing authority for more than twenty years and wielded power to approve expenditures of public funds.

- (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.**

The record does not suggest that Respondent has been found guilty of similar misconduct in any other proceedings.

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

Deterrence is one of the central purposes of PFCRA. *See* Pub. L. No. 99-509, § 6102(b)(1), 100 Stat. 1874, 1934 (1986). Thus, it is appropriate to weight this factor heavily when imposing penalties and assessments for a PFCRA violation. *See, e.g., Greene*, 2014 HUD ALJ LEXIS 3, at *34 (citing "great need" for deterrence when assessing penalties upon executive director of housing authority who violated PFCRA by causing false certifications to be made to HUD).

As discussed above, HUD relies on public housing authorities to administer the Section 9 program effectively by following all pertinent rules and regulations and applying public funds in

a way that advances the program's agenda. Respondent has admitted to misusing public funds in his capacity as Executive Director of a public housing authority. A significant penalty and assessment are appropriate not only to deter Respondent from misusing public funds in the future, but also to demonstrate to other similarly situated people that such misconduct will not be tolerated.

(17) Respondent's ability to pay.

Presumably, Respondent is capable of paying the proposed penalties and assessments, as he has agreed to them. Otherwise, the Court has no information relating to his ability to pay.

(18) Any other factors that may mitigate or aggravate the seriousness of the false claim or statement.

The record does not reveal any other mitigating or aggravating factors.

Conclusion

Respondent has accepted liability for \$500,000 in civil penalties and assessments. Based on the allegations in the *Complaint* and Respondent's admissions, he appears fully culpable for causing ACHA to make numerous false or fraudulent claims for public funds. Respondent has admitted liability for 125 distinct claims made over a period of several years. The scale of this misconduct supports the imposition of substantial penalties and assessments in the amount of \$500,000. Respondent's relative degree of sophistication in the Section 9 program and the fact that he abused a position of trust and authority also support the proposed amount. He has essentially admitted to engaging in fraud, which negatively impacts the public, the intended beneficiaries of the Section 9 program, and the government, as discussed above. Thus, significant penalties and assessments are warranted to provide recompense for his wrongdoing and to deter future misconduct by others similarly situated.

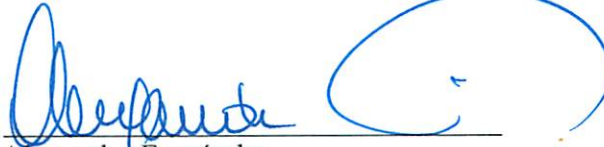
For the foregoing reasons, the proposed penalties and assessments appear appropriate and in service of the public interest. After careful review of the record, the Court sees no reason to disturb the parties' agreement that Respondent is liable to HUD in the amount of \$500,000 for the 125 false or fraudulent claims discussed above.

ORDER

The parties' joint motion for entry of an order of consent judgment is **GRANTED**.

Pursuant to that judgment, Respondent is hereby **ORDERED** to pay to HUD civil penalties and assessments in the amount of \$500,000.00.

So **ORDERED**,

A handwritten signature in blue ink, appearing to read "Alexander Fernández", is written over a horizontal line. To the right of the signature is a large, circular blue scribble or stamp.

Alexander Fernández
Administrative Law Judge