

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.

MATTHEW PERSONDEK, and ANGELINA EMMI,

Respondents.

18-JM-0065-PF-003

April 17, 2018

**ORDER GRANTING THE GOVERNMENT'S MOTION  
FOR SUMMARY JUDGMENT AS TO RESPONDENT PERSONDEK**

Before the Court is the *Government's Motion for Summary Judgment as to Respondent Persondek* ("Motion") filed March 22, 2018. In the *Motion*, the United States Department of Housing and Urban Development ("Government" or "HUD") requests that the Court find Matthew Persondek ("Respondent Persondek") liable for the submission of false claims to HUD in violation of the Program Fraud Civil Remedies Act ("PFCRA"), 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28.

**Procedural History**

On November 28, 2017, the Government filed the *Complaint* in this matter alleging that Respondent Persondek and Angelina Emmi ("Respondent Emmi") submitted seventeen (17) false claims through the Housing Choice Voucher program. Because of these alleged false claims that were paid to Respondents, the Government sought a total of \$55,428 in penalties and assessments.

Respondent Persondek responded to the *Complaint* by letter on January 4, 2018. This response was a general denial of all charges stated in the *Complaint* and included a request for a hearing. The Court granted Respondent Persondek's request for a hearing and issued a *Notice of Hearing and Order* on January 4, 2018. The *Notice* effectively commenced the hearing as of the date of its issuance. See 31 U.S.C.A. § 3803(d)(2)(B); 24 C.F.R. § 26.45(d).

After previous attempts had failed, the Government certified that it successfully served Respondent Emmi with the *Complaint* on March 5, 2018. As of the date of this *Order*,

Respondent Emmi has yet to file a response to the *Complaint*. Therefore, the Government's *Motion for Summary Judgment* pertains to Respondent Persondek only.

The Government's *Motion for Summary Judgment* also notes that because the first claim contained in the *Complaint* was made on January 1, 2012, it falls outside the statute of limitations for this case. The Government, therefore, adjusted the award sought to \$52,266, which is calculated based upon the February 1, 2012 claim being the first claim that the Government can seek a penalty and assessment.

Respondent Persondek did not file a timely response to the *Motion*. Accordingly, he is deemed to have waived any objection to the granting of the *Motion*. See 24 C.F.R. § 26.40(b).

### Standard of Review

Pursuant to 24 C.F.R. § 26.32(l), this Court is authorized to “decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact.” The Court may exercise its discretion in application of Rule 56 of the Federal Rules of Civil Procedure. 24 C.F.R. § 26.40(f)(2). Summary judgment is proper where no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Fed. R. Civ. P. 56(a). A “genuine” issue exists when “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson, 477 U.S. at 249. Additionally, a fact is not “material” unless it affects the outcome of the suit. Id.

Summary judgment is a “drastic device” because, when exercised, it diminishes a party's ability to present its case. Selva & Sons, Inc. v. Nina Footwear, Inc., 705 F.2d 1316, 1323 (Fed. Cir. 1983). Accordingly, the moving party bears the burden of demonstrating the absence of any material issues of fact. See Anderson, 477 U.S. at 256. Rule 56 provides that when a party asserts that a fact cannot be genuinely disputed, that party must: (i) cite to materials in the record; or (ii) show the cited materials do not establish the presence of a genuine dispute. Fed. R. Civ. P. 56(c). In reviewing a motion for summary judgment, the Court's function is not to resolve any questions of material fact, but to ascertain whether any such questions exist. In re Beta Dev. Co., HUDBCA No. 01-D-100-D1, at \*12 (February 21, 2002). Therefore, when the moving party has carried its burden under Rule 56(c), the nonmoving party may not rest upon mere allegations or denials, but must come forward with “specific facts showing that there is a *genuine* issue for trial.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986) (emphasis added) (citing Fed. R. Civ. P. 56(e)).

### Discussion

The Government seeks summary judgment against Respondent Persondek for sixteen allegedly false claims made to the Michigan State Housing Development Authority (MSHDA) and paid by HUD funds. Each claim relates to a separate housing subsidy paid to Respondent Persondek using HUD funds. The subsidies at issue were paid monthly between February 1, 2012 and May 1, 2013. At the time the claims were first submitted, the subsidies were in the amount of \$527 per month but had increased to \$596 by the time they ceased.

**I. There is no genuine dispute as to the material facts.**

The Government claims summary judgment is appropriate, because Respondent Persondek cannot credibly dispute the material facts in this case. In support of this position, the Government cites to various documents purporting to prove the veracity of the material facts alleged. Among these documents was a copy of a hand-written statement made by Respondent Persondek, wherein Respondent admitted to living at [REDACTED] [REDACTED] [REDACTED] (the "Subject Property") while receiving MSHDA benefits. In addition, the Government also cited to court documents related to Respondents' criminal convictions in the 47th Judicial Circuit for the State of Michigan. Those court documents demonstrate that on August 25, 2015, Respondents each pled guilty to one count of using false pretenses to obtain HUD-funded, MSHDA benefits. The charge to which Respondent Persondek pled guilty specifically states that Respondent Persondek:

did, with intent to defraud, designedly by the false pretense of claiming to be the landlord and reporting a false address while living in the home with the beneficiary of the assistance program in violation of the program rules in order to, obtain money, the value of which was \$1,000.00 or more but less than \$20,000.00

Respondent Emmi pled guilty to the same felony. The charge to which Respondent Emmi pled guilty stated that Respondent Emmi:

did, with intent to defraud, designed by the false pretense of repeatedly reporting only her income and that only herself and her and daughter lived in the house when the owner o of the home [sic], Matthew Persondek also lived there and earned a substantial income...

The Government also cited to certain documents that Respondents submitted to the MSHDA in order to obtain HUD-funded benefits. These documents included forms requiring Respondents to certify that Respondent Persondek, as the landlord, would not be occupying the Subject Property. After reviewing the Government's *Motion for Summary Judgment* and the documents offered in support thereof, the Court concludes that the Government has met its initial burden to show there is no genuine dispute as to the material facts. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (Noting that the party seeking summary judgment bears the initial responsibility for identifying pleadings, depositions, answers to interrogatories, and admissions on file that demonstrate the absence of a genuine issue of material fact).

Moreover, in order to survive summary judgment, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." Id. citing Fed. R. Civ. P. 56(e). Respondent Persondek has not met this burden. Although Respondent Persondek generally denied the allegations contained in the *Complaint* in his response, Respondent Persondek has yet to answer the *Motion for Summary Judgment*. Considering the evidence presented by the Government, the Court concludes that Respondent

Persondek's blanket denial of the allegations, alone, are insufficient to raise a dispute as to any material fact in this case. Accordingly, the Court makes the following findings of material fact.

## II. Findings of Material Fact

Respondent Persondek is the owner of a property located at [REDACTED] (the "Subject Property"). On December 10, 2009, Respondent Emmi, as tenant, and Respondent Persondek, as owner, signed and submitted a Rental Unit Information form to MSHDA for approval of Respondent Emmi's tenancy at the Subject Property. By signing the Rental Unit Information form, Respondents explicitly certified that (1) the owner/landlord would not occupy the Subject Property; and (2) the owner/landlord was not related to, as parent, child, grandparent, grandchild, sister or brother, any member of the participant household. Respondent Persondek, as the landlord, signed and entered into a Housing Assistance Payment (HAP) contract with MSHDA, pursuant to which MSHDA would pay rental subsidies to Respondent Persondek on behalf of tenants Respondent Emmi and Aloni Emmi. MSHDA relied on the truthfulness of Respondents' assertions that they would comply with the terms of the program in order to receive housing subsidies and paid the subsidies to Respondent Persondek from a period beginning March 2, 2010 and lasting through May 1, 2013. The subsidies paid totaled \$21,002.

Respondent Persondek resided at the Subject Property with Respondent Emmi and her daughter, while MSHDA was paying subsidies to him. This was a violation of the terms of the HAP contract and the Housing Choice Voucher program, because Respondents did not obtain a waiver for Respondent Persondek to reside at the Subject Property with his tenants. Respondent Persondek knew that the subsidy payments paid to him were obtained fraudulently, because he specifically certified to the MSHDA that he, as the landlord, would not reside at the Subject Property, and that only Respondent Emmi and her daughter Aloni Emmi would reside there. Further, had MSHDA known that Respondent Persondek was residing at the Subject Property with Respondent Emmi and her daughter, it would not have approved the initial tenancy, nor would it have continued making subsidy payments to Respondent.

## III. The Government is entitled to judgement as a matter of law.

The 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). A claim includes 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). And, when the claims alleged are housing assistance payments, 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).

A liable person may be subject to a maximum civil penalty of \$7,500 per claim for claims made on or after March 8, 2007, but before February 19, 2013. 72 Fed. Reg. 5586 (Feb. 6, 2007); 78 Fed. Reg. 4057 (Jan. 18, 2013). The maximum civil penalty for claims made on or after February 19, 2013, but before August 16, 2013, is \$8,500 per claim. 81 Fed. Reg. 38931

(June 15, 2016); 82 Fed Reg 24521 (June 29, 2017). In addition, a liable person may be subject to 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).

As noted, *supra*, Respondent Persondek was paid housing assistance payments by MSDHA, using HUD funds, and on behalf of Respondent Emmi and her daughter. Each of these payments constitutes a separate claim made on HUD funds to MSDHA. MSDHA made these payments to Respondent Persondek because he and Respondent Emmi certified that they were in compliance with the terms of the program and would report any changes under the HAP contract. As part of their agreement with MSDHA, Respondents explicitly certified that Respondent Persondek would not reside at the Subject Property with Respondent Emmi and her daughter. However, Respondents knowingly violated the terms of their agreement because Respondent Persondek resided at the Subject Property while MSDHA was making subsidy payments to him. Had MSDHA known that Respondents' certifications that Respondent Persondek would not reside at the Subject Property were false, MSDHA would not have made the subsidy payments to him. Therefore, these certifications asserted a fact that was false, and they were material to MSDHA's decision to pay housing assistance payments to Respondent Persondek. Accordingly, the Court finds that the sixteen housing assistance payments identified in the *Complaint* and the *Motion for Summary Judgment* constitute false claims made by Respondent Persondek.

#### IV. Penalties and Assessments.

The Government seeks a judgment of \$43,555 in civil penalties for the sixteen false claims made between February 1, 2012 and May 1, 2013. In addition, the Government seeks an assessment of \$8,711.

Pursuant to the PFCRA, Respondent Persondek is also liable for a penalty of up to \$7,500 for each of the false claims he made before February 19, 2013, and \$8,500 per false claim he made thereafter. 24 C.F.R. § 28.10(b)(1); 72 Fed. Reg. 5586 (Feb. 6, 2007); 78 Fed. Reg. 4057 (Jan. 18, 2013); 81 Fed. Reg. 38931 (June 15, 2016). In addition, Respondent Persondek may also be liable for an assessment of twice the amount of each false claim, because HUD made payment on those claims. 31 U.S.C. § 3802(a)(1) and (3); 24 C.F.R. § 28.10(a)(6).

The regulation implementing the PFCRA suggests that "Because of the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need for deterrence, ordinarily twice the amount of the claim as alleged by the government, and a significant civil penalty, should be imposed." 24 C.F.R. § 28.40(b). However, the Court should base the amount of penalties and assessments on its consideration of evidence in support of one or more of the following factors:

- (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 (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). Any mitigating or aggravating circumstances must be considered and stated in the opinion. *Id.*

As noted, *supra*, Respondent Persondek is liable for 16 false claims made on HUD-funds to the MSDHA. These false claims covered a period of 15 months. However, the Government has presented evidence that Respondent Persondek's fraud actually consisted of over 30 payments made by MSHDA and covered a period of over 3 years (from March of 2010 through May of 2013). But, due to the statute of limitations, the Government is limited to the claims beginning February 1, 2012. Similarly, the Government notes that although only \$8,711 of HUD's funds were used to pay the 16 housing assistance payments to Respondent Persondek, if the claims made outside the statute of limitations are taken into consideration, the actual amount paid on said claims was \$21,002.

The Court cannot impose liability for false claims falling outside the statute of limitations. However, the Court considers the extended period over which Respondent

Persondek perpetrated this fraud, the total number of the false claims made, and the total value of the false claims actually paid to Respondent to be aggravating factors.

Respondent Persondek did not act alone. He and Respondent Emmi worked together to defraud the voucher program for years, and the fraud alleged in this case could not have occurred without both Respondents' cooperation. Therefore, Respondents are equally culpable. In addition, the Court recognizes that Respondent Persondek has admitted to his misconduct as evidenced by his hand-written confession and guilty plea. Moreover, Respondent Persondek has paid restitution, as ordered by the Michigan criminal court, for the 16 claims addressed in this decision. The Court considers these to be mitigating factors.

For each of the sixteen false claims made, the Government proposes a false penalty of 5 times the amount MSHDA paid on each claim. The proposed penalties fall well below the maximum amount of each penalty the Court is authorized to impose. And, although the Government has not proffered the amount of foreseeable, consequential damages or the cost of the investigation, penalties totaling \$43,555 would not be an unreasonable in light of the value of the Government's actual loss as a result of Respondent Persondek's misconduct.

As to the remaining factors, the Court finds that there is not sufficient evidence to consider them either in aggravation or mitigation. For instance, although it is the Government's position that "Respondent Persondek's same pattern of fraudulent conduct continued unabated for years," there is no evidence that Respondent Persondek has engaged in similar behavior or even previously participated in the program prior to his involvement in this matter. Moreover, the Court has already considered the length of time the misconduct took place as an aggravating factor under 24 C.F.R. § 28.40(b)(2). Also, no evidence has been presented regarding the potential or actual impact of Respondent Persondek's fraud on the Voucher program. Even if it can be assumed resources were diverted from eligible beneficiaries due to Respondent Persondek's fraud, the extent of that impact has not sufficiently been proven to support this aggravating factor. Last, it is generally a respondent's burden to demonstrate an inability to pay the proposed civil penalties and assessments as a mitigating factor. Respondent has not responded to the *Motion for Summary Judgment* or otherwise presented evidence in support of this or other mitigating factors.

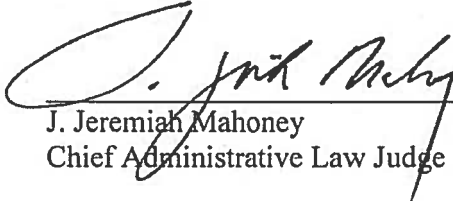
### **Conclusion**

The Court finds as undisputed facts that Respondent Persondek, as the owner, knowingly, and falsely certified to the MSDHA that he would not reside at the Subject Property with Respondent Emmi, as the tenant, in order to receive housing assistance payments from MSDHA. Had MSDHA known that the certifications were false, it would not have paid the subsidies to Respondent Persondek on behalf of Respondent Emmi. Accordingly, Respondent Persondek is liable for sixteen counts of making false claims under the PFCRA. Based on the Court's consideration of the aggravating and mitigating factors set forth at 24 C.F.R. § 28.40, the Court finds civil penalties totaling \$43,555 and an assessment of \$8,711 to be appropriate.

Accordingly, Respondent Persondek shall pay to the Government civil penalties and assessments totaling \$52,266, which are immediately due and payable.

In addition, as this order constitutes an initial decision on the allegations against Respondent Persondek, and because Respondent Emmi has yet to answer the *Complaint*, the hearing date and remaining prehearing deadlines set forth in the Court's *Notice of Hearing and Order* dated January 4, 2018, are **VACATED**.

So **ORDERED**,



J. Jeremiah Mahoney  
Chief Administrative Law Judge

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**Notice of appeal rights.** The appeal procedure is set forth in detail in 24 C.F.R. § 26.52. This order may be appealed to the Secretary of HUD by either party within 30 days after the date of this decision. The Secretary (or designee) may extend this 30-day period for good cause. If the Secretary (or designee) does not act upon the appeal within 30 days, this decision becomes final.

**Service of appeal documents.** Any petition for review or statement in opposition must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development  
Attention: Secretarial Review Clerk  
451 7th Street, S.W., Room 2130  
Washington, DC 20410

Facsimile: (202) 708-0019

Scanned electronic document: [secretarialreview@hud.gov](mailto:secretarialreview@hud.gov)

**Copies of appeal documents.** Copies of any Petition for Review or statement in opposition shall also be served on the opposing party(s), and on the HUD Office of Administrative Law Judges.

**Judicial review of final decision.** Judicial review of the final agency decision in this matter is available as set forth in 31 U.S.C. § 3805.