

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.

RODNEY RUDOLPH, and VIVIANA JOHNSON,

Respondents.

19-AF-0093-PF-005

February 26, 2020

Appearances:

Miniard Culpepper, Jr., Esq.

Joel Foreman, Esq.

United States Department of Housing and Urban Development

Before: Alexander FERNÁNDEZ, United States Administrative Law Judge

INITIAL DECISION AND ORDER

The United States Department of Housing and Urban Development (“HUD” or “Government”) filed a *Complaint* on March 29, 2019, against Rodney Rudolph and Viviana Johnson (collectively “Respondents”). The *Complaint* alleges Respondents violated the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28, by making, or causing to be made, twenty-five false, fictitious, or fraudulent claims to the United States Department of Housing and Urban Development (“HUD” or “Government”). The Government seeks civil penalties and assessments totaling \$134,742 for the allegedly false claims that were made in connection with Respondents’ participation in HUD’s Section 8 Housing Choice Voucher (HCV) program.

On September 16, 2019, the Court issued the *Order Granting Partial Summary Judgment*, wherein the Court found that undisputed material facts exist and support a finding that Respondents were liable for making twenty-five false claims.¹ However, the Court declined to

¹ The Court’s findings of fact and rulings on summary judgment are incorporated into this *Initial Decision*. A copy of the *Order Granting Partial Summary Judgment* is also attached.

impose a penalty or assessment on summary judgment, without affording the parties the opportunity to address the factors to be considered in imposing any penalty or assessment against Respondents. Instead, the Court ordered that the matter should proceed to a hearing so that the Court could compile a complete record for consideration of the penalties and assessments that would be imposed.

The hearing proceeded as scheduled on September 24, 2019, in Washington, D.C. However, Respondents did not appear at the hearing.² The Court received testimony from Rebecca Brady, Director of HUD's Housing Voucher Management and Operations Division; and Kylan Dunn, Special Agent with HUD's Office of Inspector General. Following the conclusion of the hearing, the Government filed a *Post-Hearing Brief* on November 29, 2019. Respondents did not file a post-hearing brief or respond to the Government's brief.

Factual Findings

The Housing Choice Voucher Program is HUD's largest rental housing assistance program. The Program receives \$20 billion in funding, which HUD awards directly to local housing agencies, who in turn use those funds to provide vouchers to low income families seeking housing in the private market. Because of limited funding, HUD does not have the resources to provide housing assistance to all needy families. Families who apply for the program with their local housing agency are put on a waiting list to receive assistance. Needy families who remain on the waiting list are often forced to live in either substandard conditions or be homeless until they can receive assistance. Therefore, it is important to ensure that the limited resources appropriated by Congress is only used to help families that are eligible for the Program.

The Housing Authority of Prince George's County has an especially extensive waitlist for the Housing Choice Voucher Program. In fact, the last time the waitlist was opened for new applicants was 2015. That year, approximately 4,000 people applied to be on the waitlist. However, only two applicants were randomly selected from that pool to be added to the waitlist. Before that, the wait list had remained closed for eight years. To date, approximately 25,000 people are currently on the waitlist to receive a voucher for housing assistance.

Legal Conclusions on Summary Judgment

On summary judgment, the Court found that Respondents are liable for twenty-five violations of the Program Fraud Civil Remedies Act for fraudulently claiming rental subsidies for which they were not eligible due the fact that Respondents were impermissibly living in the unit together despite their status as landlord and tenant. The false claims ranged between \$1,185 and \$1,215.

² Respondents also failed to file exhibits and a prehearing statement in advance of the hearing date. In fact, after Respondent Rodney Rudolph's requested a hearing in May of 2019, Respondent Rudolph did not otherwise participate in this litigation nor did he comply with the Court's order compelling discovery.

PENALTIES AND ASSESSMENTS

The Government seeks twenty-five civil penalties of \$3,000 each, and assessments of twice the amount of each false claim paid to Respondent for a total award of \$134,742. Having concluded that Respondents' actions subject Respondents to penalties and assessments, the Court must consider whether the amounts requested by the Government are appropriate. HUD's regulation implementing the Program Fraud Civil Remedies Act, 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).

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

As found on summary judgment, Respondents are liable for making, and causing to be made, twenty-five false claims under the PFCRA. In addition, false statements were made to support those false claims. This warrants a severe penalty.

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

The false claims for which Respondents are liable under PFCRA were made from June 1, 2013 through June 1, 2015. This demonstrates that Respondents misconduct was not a fleeting lapse in judgement, but rather an extended fraud committed to impermissibly received subsidies paid with HUD funds. A severe penalty is warranted.

3. The degree of the respondent's culpability

Respondents are wholly culpable. Respondents intentionally misled the Housing Authority of Prince George's County into paying HCV program subsidies to Respondent Rudolph on behalf of Respondent Johnson. They accomplished this by falsely certifying that the persons residing in the Subject Property would only include PHA-approved. Respondents' degree of culpability warrants a severe penalty.

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

The twenty-five false claims paid to Respondent Rudolph from June 1, 2013 through June 1, 2015, totaled \$29,871.00. Although Respondents are only liable for the false claims made during this period due to the statute of limitations, there is evidence that Respondents' fraud began earlier than that, because Respondent Rudolph received subsidized rental payments for Respondent Johnson's tenancy as early as 2009. Therefore, this factor weighs strongly for a severe penalty.

5. The value of the Government's actual loss

There is little evidence in the record as to this factor. Agent Dunn testified that this case was with the Inspector General's office for roughly two years. However, the Court cannot speculate as to the amount of time or resources that were expended in the investigation or litigation of Respondents' violations. Accordingly, this factor neither aggravates nor mitigates the penalty to be imposed.

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

HUD requests a \$3,000 penalty for each false claim. The false claims paid to Respondent Rudolph ranged between \$1,185 and \$1,215. HUD does not seek the maximum penalty for the false claims and \$3,000 per false claim is reasonable.

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

Participation in the HCV program is limited due to the amount of funding HUD can provide. Agent Dunn testified at length about the backlog of HCV applicants currently waiting to enter the program but are unable to do so due to insufficient funding. Respondents' fraud meant that another family likely went without suitable housing while waiting on the waitlist.

Moreover, Respondents' fraud harms the public trust in such government-funded programs. A severe penalty is warranted.

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

There is no evidence in the record on this factor.

9. Whether the respondent attempted to conceal the misconduct

As noted *supra*, Respondents attempted to conceal their misconduct by submitting false certifications to HUD. Evidence in the record also suggest that Respondents were able to continue this fraud by taking steps to further hide the fact that Respondent Rudolph resided in the Subject Property. For instance, documents from the investigation suggest that Respondent Rudolph would stay at a hotel when HUD inspectors would inspect the Subject Property during an annual inspection. A severe penalty is warranted.

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

There is no evidence that Respondents 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

There is no evidence of this factor.

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

There is no evidence that Respondents cooperated or obstructed the investigation of the misconduct.

13. Whether the respondent assisted in identifying and prosecuting other wrongdoers

There is no evidence of other wrongdoers in this case.

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

There is no evidence relevant to this factor in the record.

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

Although Respondents pled guilty in a related criminal proceeding, there is no evidence that Respondents previously engaged in similar misconduct or dealt dishonestly with the federal or state government.

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

“Deterrence is a permissible and socially useful goal. Any penalty will theoretically provide deterrence.” In re Sundial Care Center, HUDALJ 08-055-CMP, 2009 HUD ALJ LEXIS 21 (HUDALJ Mar. 25, 2009).

The need to deter similar misconduct is great. The limited amount of funds for HCV program subsidies that can be provided to needy families is far exceeded by the demand. A severe sanction in this case, could help curtail the fraud in the program by deterring similar bad actors.

17. The respondent’s ability to pay

There is no evidence in the record that Respondent’s ability to pay should temper the civil penalties to be imposed. Respondents have the burden to establish that they are not able to pay the amount of penalty sought. In re Premier Invs. I, Inc., HUDALJ 06-022-CMP, 2007 HUD ALJ LEXIS 61, *15 (HUDALJ Jun. 29, 2007). And, a claim of inability to pay must be supported by documentary evidence. Grier v. United States HUD, 418 U.S. App. D.C. 185, 191 (2015) (“An ability to pay is presumed unless a party raises it as an affirmative defense and provides documentary evidence.”)

Here, Respondents did not provide any evidence demonstrating that they are unable to pay the civil penalties sought by HUD. Moreover, evidence presented by HUD demonstrates that Respondent Rudolph owns multiple real estate properties and Respondent Johnson is employed and earning an income. Respondent’s ability to pay, therefore, does not mitigate the amount of civil penalties sought by HUD. See Orfanos v. Dep’t of Health and Human Services, 896 F. Supp. 23, (D.D.C. 1995) (The penalty shall not be “disproportionate when compared to the petitioner’s total, rather than liquid, assets.”).

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

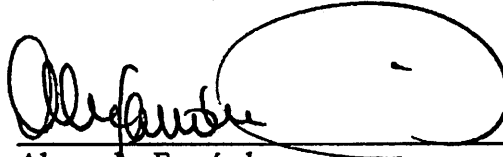
There are no other factors to consider.

Conclusion

Based on the foregoing, the Court finds that Respondents made twenty-five false claims enumerated in Counts one through twenty-five of the *Complaint*. Evidence in the record supports the imposition of civil penalties and assessments in the amount requested by HUD.

It is hereby **ORDERED** that Respondents, jointly and severally, shall pay in full \$134,742 in civil penalties and assessments to the HUD Secretary. These penalties and assessments are immediately due and payable by Respondents without further proceedings, except as described below.

So **ORDERED**,


Alexander Fernández
Administrative Law Judge

Attachments: *Order Granting Partial Summary Judgment*, issued September 16, 2019.

Notice of appeal rights. The appeal procedure is set forth in detail at 24 C.F.R. §§ 26.50, 26.52. This *Initial Decision and Order* may be appealed by any party to the HUD Secretary by petition for review. Any petition for review must be received by the Secretary within 30 days after the date of this *Initial Decision and Order*. An appeal petition shall be accompanied by a written brief, not to exceed 15 pages, specifically identifying the party's objections to the *Initial Decision and Order* and the party's supporting reasons for those objections. Any statement in opposition to a petition for review must be received by the Secretary within 20 days after service of the petition. The opposing party may submit a brief, not to exceed 15 pages, specifically stating the opposing party's reasons for supporting the ALJ's determination.

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

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.

Finality of decision. If not timely appealed, the *Initial Decision and Order* becomes the final agency decision as indicated in 24 C.F.R. § 26.50.

Judicial review of final decision. After exhausting all available administrative remedies, any party adversely affected by a final decision may seek judicial review of that decision in the appropriate United States Court of Appeals. A party must file a written petition in that court within 20 days of the issuance of the Secretary's final decision.

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19-AF-0093-PF-005

September 16, 2019

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

Currently before this Court are the *Government's Motion for Default Judgment* filed June 27, 2019, and the *Government's Motion for Summary Judgment or Sanctions* filed August 22, 2019.

Procedural Posture

This matter arises from a *Complaint* filed on March 29, 2019 and amended on April 30, 2019. The *Complaint* alleges Rodney Rudolph and Viviana Johnson (collectively "Respondents") violated the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28, by making or causing to be made twenty-five false, fictitious, or fraudulent claims to the United States Department of Housing and Urban Development ("HUD" or "Government"). The Government seeks civil penalties and assessments totaling \$134,742 for the allegedly false claims that were made in connection with Respondents' participation in HUD's Section 8 Housing Choice Voucher (HCV) program.

On May 21, 2019, Counsel for the Government forwarded a response submitted to him by Respondent Rudolph to the Court. The *Response* did not entirely satisfy the requirements of 24 C.F.R. § 28.30, which requires that each allegation of liability be admitted or denied, and that affirmative defenses and mitigating factors be raised. However, recognizing that Respondent Rudolph was proceeding *pro se* and having no objection from HUD, the Court accepted Respondent Rudolph's *Response* into the record and scheduled this matter for a hearing to commence on September 24, 2019.

The Court issued a *Notice of Hearing and Order* that established certain prehearing deadlines including the requirement that the parties exchange witness lists and exhibits by June 12, 2019, and then file the same with the Court by September 10, 2019.

On July 10, 2019, the Government filed a *Motion to Compel Discovery* requesting that the Court order Respondent Rudolph to respond to the Government's First Set of Interrogatories and Request for Production of Documents that were issued to Respondent Rudolph on June 5, 2019. Finding the Government's discovery requests to be reasonable and necessary for the expeditious, fair, and reasonable consideration of the issues, the Court granted the Government's *Motion to Compel Discovery* and required Respondent Rudolph to respond by August 21, 2019. Respondent Rudolph did not submit a response.

The Government now moves for summary judgment or for sanctions against Respondent Rudolph for failing to defend this action and failing to comply with the Court's *Order Granting the Government's Motion to Compel Discovery*. Neither Respondent has responded to the Government's *Motion for Summary Judgment or Sanctions*.

Applicable Law

Housing Choice Voucher Program. The Section 8 Program is a rental subsidy program established by HUD pursuant to Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437(f), to help low-income families afford decent, safe, and sanitary housing. 24 C.F.R. §§ 982.1(a)(1), 982.2, and 982.201(a)-(b). Generally, State or local public housing agencies administer the program using program funds provided by HUD. *Id.* at §§ 982.1(a)(1), 982.4(b) (defining "public housing agency") and 982.151(a). Authorized public housing agencies use these funds to make housing assistance payments to the owners of housing units occupied by families admitted to the program. *Id.* at §§ 982.1(a)(1), 982.4(b) (defining "housing assistance payment" and "owner"), 982.51, and 982.157(b)(1)(i).

Each authorized public housing agency determines which applicants may enter the program it administers, but may only provide assistance to families who meet criteria established by HUD. *Id.* at §§ 982.54(b) and (d), 982.201 and 982.202(a) and (d). To be eligible for assistance, a Voucher Program applicant must be a "family." *Id.* at § 982.201(a). HUD regulations define family as a single person or group of persons approved by the public housing agency to reside in a housing unit with assistance under the program. *Id.* at §§ 982.4(b) and 982.201(c). Eligible families admitted to the Voucher Program select and rent the housing unit they desire to occupy. *Id.* at § 982.1(a)(2). However, under HUD regulations, "[t]he family must not own or have any interest in the unit." *Id.* at § 982.551(j).

If the public housing agency approves the family's desired unit for tenancy, the public housing agency enters into a contract with the unit's owner to make rent subsidy payments, called Housing Assistance Payments ("HAPs"), on behalf of the family. *Id.* at §§ 982.1(a)(2), 982.4(b), and 982.162(a)(2). HUD regulations define a Voucher Program "tenant" as "[t]he person or persons (other than a live-in aide) who executed the lease and lessee of the dwelling unit." *Id.* at § 982.4. The public housing agency must receive from the owner an executed copy of HUD's HAP contract and tenancy addendum in the form required by HUD prior to paying out

housing assistance payments to the owner. Id. at §§ 982.52, 982.162, and 982.305(c)(2). The HAP contract sets forth the amount of the monthly housing assistance payments to be paid by the public housing agency to the owner on behalf of the family. Id. at § 982.305(e). The HAP contract also identifies the members of the household who are authorized by the PHA to reside in the contract unit and “if any new family member is added, family income must include any income of the additional family member.” Id.

A family becomes a participant on the effective date of the first HAP contract executed by the public housing agency for the family. See Id. at § 982.4(b) (defining “participant”). Subsequently, the public housing agency must periodically reexamine the family’s composition, assets, income, and expenses for the purpose of making appropriate adjustments to the housing assistance payment. Id. at § 982.516(a)(1)-(2). Such reexamination must be done annually under HUD regulations. Id. at § 982.516(a). Each participant family must supply any information that the public housing agency or HUD determines is necessary in the administration of the Voucher Program. Id. at § 982.551(b). For instance, tenants must identify, annually, all individuals who will be living in the assisted unit household and all household income and assets. 24 C.F.R. Part 5; 24 C.F.R. § 982.201 and 24 C.F.R. § 982.308(f)(ii).

Program Fraud Civil Remedies Act. The Act 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. Id. at § 3801(a)(3)(B)(ii). A liable person may be subject to a maximum civil penalty of \$7,500 per claim for claims occurring after March 8, 2007, and \$8,500 for claims occurring after February 19, 2013. 72 Fed. Reg. 5586 (Feb. 6, 2007); 78 Fed. Reg. 4057 (Jan. 18, 2013). 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. 31 U.S.C. § 3802(a)(1) and (3); 24 C.F.R. § 28.10(a)(6).

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. Id. at § 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)).

Result of Respondents' Failure to Defend this Action

The Government requests default judgment against Respondent Johnson for failing to request a hearing or otherwise respond to the *Complaint*. In addition, the Government requests summary judgment in its favor or for sanctions against Respondent Rudolph for failing to defend this action or comply with the Court's *Order Granting the Government's Motion to Compel Discovery* ("Discovery Order").

I. Default Judgment is not appropriate against Respondent Johnson.

The Government moved for default judgment against Respondent Johnson on the premise that the *Response* was submitted by Respondent Rudolph only. HUD claims that as of the date of the *Motion for Default Judgment against Viviana Johnson* ("Motion for Default Judgment"), Respondent Johnson had not responded to the *Complaint* or requested a hearing in this matter. Having received no timely response to the *Motion for Default Judgment*, the Court ordered Respondent Johnson to show cause as to why the Government's request should not be granted.

A respondent may be found in default for failing to file a timely response to the Government's complaint. 24 C.F.R. § 26.41(a). A respondent must respond to a default motion within 10 days of service. Id. A party failing to file a timely response is deemed to have waived any objection to the granting of the motion. Id. at § 26.40(b). A default constitutes an admission of all facts alleged in the Government's complaint and a waiver of respondent's right to a hearing on such allegations. Id. at § 26.41(c). In addition, the penalty proposed in the complaint shall be set forth in the default order and shall be immediately due and payable by a respondent without further proceedings. Id.

The Government sent separate copies of the *Complaint* to Respondents at the Subject Property. At the time, the Government believed Respondent Johnson was residing with Respondent Rudolph at the Subject Property, because that was the address she used as a Housing Choice Voucher tenant and she is married to Respondent Rudolph, whose property tax records list the Subject Property as his principal residence. The Government submitted evidence that the copy of the *Complaint* addressed to Respondent Johnson was left at the front door.

The Court is reluctant to grant default judgment against Respondent Johnson. The Government produced adequate evidence demonstrating that Respondent Johnson was properly served. See 24 C.F.R. § 26.30 ("Service is complete when handed to the person or delivered to the person's office or residence and deposited in a conspicuous place. If service is by first-class

mail, [or] overnight delivery, . . . service is complete upon deposit in the mail. . .”). However, it is not clear that Respondent Johnson failed to respond to the *Complaint*. As claimed by the Government in the *Complaint* and admitted by Respondent Rudolph in the *Response*, Respondents are married. There was no indication in the *Response* that Respondent Rudolph intended his filing to apply to the allegations against him only. Therefore, it is certainly possible that the *Response* was prepared by Respondent Rudolph on behalf of both Respondents. Accordingly, and in an abundance of caution, the Court declines to grant default judgment against Respondent Johnson. The Government’s *Motion for Default Judgment* is **DENIED**.

II. Sanctions will be imposed for Respondents’ failure to defend this action.

The Government claims Respondent Rudolph has failed to defend this action and to comply with the Court’s orders. As such, the Government moves for summary judgment, or in the alternative, for sanctions against Respondents.

The Court may sanction a person for failing to comply with an order, rule, or procedure governing the proceeding; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing. 24 C.F.R. § 26.34. Such sanctions may include deeming any matter about which an admission is requested to be admitted, or issuing a decision against a non-prosecuting or non-defending party. *Id.*

With the exception of the *Response*, Respondents have not participated in this matter. They did not comply with the Court’s *Order* that compelled them to respond to the Government’s discovery requests and they did not submit exhibits and witness lists to the Court as required by paragraph 8 of the Court’s *Notice of Hearing and Order*. Respondent Johnson also failed to respond to the Government’s *Motion for Default Judgment*, and the Court’s *Order to Show Cause*. The most recent *Order* issued by this Court on August 9, 2019, specifically advised the parties that the failure to comply with the Court’s *Order* may result in sanctions.

Respondents are aware of the Court’s orders and the consequences of ignoring them. Respondents’ failure to respond to reasonable discovery requests have prejudiced the Government, because the Government has lost the opportunity to investigate and prepare responses to the assertions raised in the *Response*. Moreover, Respondents’ failure to comply with the Court’s orders impedes the speedy, orderly, and fair conduct of this proceeding. Accordingly, the Court finds that sanctions are appropriate in this case. The Court, therefore, deems the facts alleged in the *Complaint* to be admitted.

Findings of Fact

Respondent Rodney Rudolph is an individual who owns a property located at 9539 Fort Foote Road, Fort Washington, Maryland (“Subject Property”). On August 12, 2009, Respondent Rudolph entered into a HAP contract to rent the Subject Property to Respondent Johnson, who had been approved for rental assistance through the HCV program administered by the Housing Authority of Prince George’s County (“HAPGC”).

Per the terms of the HAP contract, Respondent Rudolph would rent the Subject Property to Respondent Johnson beginning on July 30, 2009, and at a monthly rate of \$1,362. Pursuant to the HAP contract and HUD requirements, HAPGC agreed to subsidize Respondent Johnson's rent by providing \$1,084 per month directly to Respondent Rudolph.

The HAP contract stated, "Unless the owner has complied with all provisions of the HAP contract, the owner does not have the right to receive housing assistance payments under the HAP contract." The HAP contract also required that "Except for the rent to the owner, the owner has not received and will not receive any payments or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit during the HAP contract term." The HAP contract required that "The composition of the household must be approved by the PHA . . . Other persons may not be added to the household without prior written approval of the owner and the PHA" and "[t]he contract unit may only be used for residence by the PHA-approved household members."

Prior to HAPGC allowing Respondent Johnson to move into the Subject Property, Respondent Rudolph signed a Section 8 Landlord Certification on June 27, 2009. The Section 8 Landlord Certification that Respondent Rudolph signed said, *inter alia*, that he understood he was not permitted to live in the unit while receiving payments under the HCV program. And, in March 2012, April 2013, March 2014, and March 2015, Respondent Johnson submitted certifications to the HAPGC that purported to list all adult household members.

Respondent Rudolph resided at the Subject Property while receiving payments for his participation in the HCV program from August 2009 to June 2015. Property tax records for Prince George's County reflected that the Subject Property was Respondent Rudolph's principal residence while he was collecting subsidy payments from HAPGC. Respondent Rudolph endorsed and presented twenty-five housing assistance payment checks that were dated between June 1, 2013 and June 1, 2015, and that totaled \$29,871. Respondent Johnson omitted Respondent Rudolph from her list of adult household members in her annual certifications to the HAPGC.

In September 2015, Respondent Rudolph was indicted on one charge of theft in violation of Maryland's criminal code CR-07-104 and one charge of public assistance fraud in violation of CR-08-503B in Maryland's Circuit Court for Prince George's County. Respondent Rudolph pled guilty to one count of theft on or about March 14, 2016. Respondents married in Nevada on November 10, 2016.

Discussion

In the *Motion*, the Government seeks a finding that Respondents are liable for the submission of false claims to HUD as identified in Counts one through twenty-five pursuant to PFCRA. Each of the Counts relate to one allegedly false claim that was paid monthly to Respondent Rudolph by the HAPGC between the period of June 1, 2013 and June 1, 2015. The *Complaint* details the amount of each of the twenty-five claims, which range between \$1,185 and \$1,215.

A person is liable for making, presenting, or submitting 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 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). 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).

As noted in the *Complaint* and deemed admitted by Respondents, Respondent Johnson knowingly made false statements to the HAPGC, by omitting Respondent Rudolph from her list of household members. Those false statements, coupled with Respondent Rudolph's certification that he understood he was not permitted to live in the unit while receiving payments under the HCV program, were material to the HAPGC's decision to make rental subsidies to Respondent Rudolph. Respondent Rudolph falsely claimed those subsidies, because he was impermissibly residing at the Subject Property with Respondent Johnson. Accordingly, the Court finds that these material facts are not in dispute and that the Government is entitled to summary judgment on the issue of liability.

In addition to summary judgment on the issue of liability, the Government also requests that the Court impose penalties and assessments against Respondents. The Government seeks twenty-five civil penalties of \$3,000 each, and assessments of twice the amount of each false claim made by Respondent Rudolph, and caused to have been made by Respondent Johnson, for a total award in the amount of \$134,742.

The amount of penalties and assessments imposed must be based on a consideration of one or more of the factors listed at 24 C.F.R. § 28.40(b). Such factors include, for instance, a respondent's ability to pay. *Id.* at § 28.40(b)(17). The ability to pay "is 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 predicated based on historical evidence." *Id.* at § 28.5(c). The burden rests with Respondents to show that they cannot pay the requested amount. *See Campbell v. U.S.*, 365 U.S. 85, 96 (1961) ("[T]he ordinary rule, based on considerations of fairness, does not place the burden upon a litigant of establishing facts peculiarly within the knowledge of his adversary.").

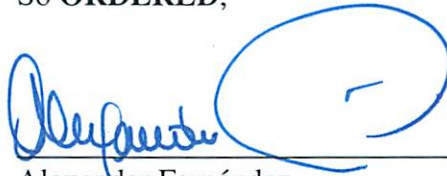
Although the *Response* solely addresses the issue of liability, the Court finds it necessary to afford the parties the opportunity to address the factors to be considered in imposing any penalty or assessment against Respondents. As record as to these issues needs to be developed, the Court finds that summary judgment must be denied on the issue of the amount of penalty and assessments to be imposed.

Conclusion

Based on the foregoing, the Court finds that Respondents made twenty-five false claims enumerated in Counts one through twenty-five of the *Complaint*. The amount of penalties and assessments to be imposed will be determined following a hearing on the issue.

Accordingly, it is **ORDERED** that the hearing will proceed as scheduled on September 24, 2019 in Washington, DC at the U.S. Courtroom in the HUD Office of Hearings and Appeals, 409 3rd Street, SW, Suite 201. However, the Court will only accept evidence and testimony related to the issue of the amount of penalties and assessments to be imposed.

So **ORDERED**,



Alexander Fernández
Administrative Law Judge