

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

Old San Juan #1 Limited
Dividend Associates, SE

San Jose 106 Limited
Dividend Partnership,

Defendants

HUDALJ 01-119-CMP

HUDALJ 01-146-CMP
Decided: October 23, 2001

Lillyanne T. Alexander, Esq.
For the Government

Before: ROBERT A. ANDRETTA,
Administrative Law Judge

DEFAULT DECISION AND ORDER

On March 20, 2000, the Secretary of the United States Department of Housing and Urban Development (Secretary, HUD) through the Departmental Enforcement Center (DEC), filed a Complaint seeking civil money penalties in the Old San Juan #1 Limited Dividend Associates SE case as follows: \$18,000 pursuant to 12 U.S.C. § 1735f - 15(c)(1)(B)(x) and 24 CFR 30.45(b), for Respondent's failure to submit the 1995 audited financial statements for Luna 207 Apartments on or before March 1, 1996, in violation of Paragraph 12(e) of the Regulatory Agreement; \$27,500, pursuant to the same statute and regulation, for Respondent's knowing and material failure to submit the 1996 audited financial statements on or before March 1, 1997; and \$18,000 for failure to submit the 1997 statements on or before March 1, 1998, for a total of \$63,500. The DEC also filed a Complaint seeking civil money penalties with regard to the San Jose 106 Limited Dividend Partnership case for the same three violations and in the amounts of \$25,000, \$27,500, and \$18,000, respectively, for a total of \$70,500.

The Complaints each notified Respondent of its right to appeal the imposition of the Civil Money Penalties by filing an Answer within 15 days of receipt of the Complaint, and that failure to file an Answer could result in a default judgment and imposition of the penalties sought. *See* 24 CFR §§ 26.39 and 30.90(b). Answers to these allegations were never filed.

On September 13, 2001, the Government filed a Motion For Default Judgment for Respondent's failure to respond to the Government's Motion to Amend The Pleadings, Motion For Summary Judgment, and Motion For Sanctions within the applicable time limit. Thus, on September 14, 2001, I issued an Order To Show Cause compelling Respondent to answer and respond to the three Motions. This order stated that failure to respond adequately and timely would constitute Respondent's consent to the entry of a default judgment in which all facts alleged by the Government would be deemed to be true and the amounts demanded for penalties would be granted. Nothing has been heard from Respondent.

Findings of Facts¹

1. The allegations of the Government's COMPLAINT FOR CIVIL MONEY PENALTIES (HUDALJ 01-119-CMP), styled "In the Matter of: Old San Juan #1 Limited Dividend Associates, SE", and dated March 20, 2000, are incorporated herein and found to be true on the basis of Respondent's default and its consequent consent to such a finding.

2. The allegations of the Government's COMPLAINT FOR CIVIL MONEY PENALTIES (HUDALJ 01-146-CMP), styled "In the Matter of: San Jose 106 Limited Dividend Partnership" and dated March 20, 2000, are incorporated herein and found to be true on the basis of Respondent's default and its consequent consent to such a finding.

Conclusion and Order

Respondents knowingly and materially committed violations of 12 U.S.C. § 1735f-15(c)(1)(B)(x) and 24 CFR 30.45(b) as documented in the Complaints by failing to timely submit the 1995, 1996, and 1997 audited financial reports that were due by March 1, 1997, 1998, and 1999, respectively, for the Luna 207 Apartments and the San Jose 106 Apartments. Respondent failed to answer the complaint and is therefore in default. Respondent also failed to respond to Motions submitted by the Government, including a Motion For Default dated September 13, 2001, and an Order to do so dated September 14, 2001, and is also for that reason in default.


¹ HUD regulations provide that a default shall constitute an admission of all facts alleged in HUD's Complaint as well as respondent's waiver of any right to a hearing on the allegations. 24 CFR 26.39(c).

Order

The Government's Motion For Default Judgment is **GRANTED**. Respondent shall pay to the Secretary of HUD the civil money penalties stated above and totaling \$134,000, which is immediately due and payable by Respondent without further proceedings.

This Order constitutes the final agency action pursuant to 24 CFR 26.39.

So **ORDERED**.



ROBERT A. ANDRETTA
Administrative Law Judge