

**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.

ALVIN SHORT AND CHARITA SHORT,

Respondents.

HUDALJ 12-M-036-PF/18

July 9, 2012

DEFAULT JUDGMENT AND ORDER

The above-entitled matter is before this Court on a MOTION FOR DEFAULT JUDGMENT filed on June 6, 2012, by the United States Department of Housing and Urban Development (“HUD” or “the Government”). Alvin Short and Charita Short (“Respondents”) did not file an answer to the Government’s Complaint and have not responded to the present motion. Accordingly, the MOTION FOR DEFAULT JUDGMENT will be **GRANTED**.¹

On April 10, 2012, HUD filed a Complaint seeking a civil penalty and assessment against Respondents pursuant to the Program Fraud Civil Remedies Act of 1986 (“PFCRA”), 31 U.S.C. §§ 3801-3812, and the applicable regulations at 24 C.F.R. Part 28. The Complaint alleged that Respondents accepted a claim for a HUD Community Development Block Grant-funded Road Home Homeowner Assistance Program grant in violation of that program’s requirements. The Complaint further alleged that Respondents represented that they occupied the Hurricane Katrina-damaged property as their principal residence on the date of the storm. The Government contends that Respondents knew or should have known that this representation was materially false because local authorities had seized and repossessed the property at issue prior to Hurricane Katrina’s landfall.

¹ A Respondent is allowed 10 days to respond to a default motion. 24 C.F.R. § 26.41(a). Allowing for 3 day’s mail time both ways, Respondents’ reply should have been received on or before June 23, 2012.

The Government now seeks a civil penalty and assessment totaling \$260,520.² The Complaint notified Respondents of their right to appeal the imposition of the penalty and assessment by filing a written response within 30 days of receipt of the Complaint, and that failure to file a response may cause HUD to file a Motion for Default Judgment with regard to the allegations in the Complaint.

Applicable HUD regulations provide that a respondent “may file a written response to the complaint, in accordance with § 26.30 of this title, within 30 days of service of the complaint,” and that “[t]he response shall be deemed to be a request for a hearing.” 24 C.F.R. § 28.30(a); *see also* 31 U.S.C. § 3803(d)(2) (30-day statutory requirement for requesting a hearing); 24 C.F.R. § 26.38 (“The respondent’s response to the complaint shall be timely filed with the Docket Clerk and served upon the Government in accordance with the procedures set forth in the complaint.”).

HUD filed the Complaint on April 10, 2012. Records show that Respondents received the Complaint on April 11, 2012. The records further show that Respondent Charita Short telephoned Government Counsel to discuss the Complaint on April 13, 2012, and Respondent Alvin Short telephoned Government Counsel to discuss the Complaint on April 20, 2012. As a result of the service on April 11, 2012, a response was due to HUD by May 11, 2012. This Court has received no response to the Complaint.

Pursuant to 24 C.F.R. § 26.38, “[i]f the respondent fails to submit a response to the Docket Clerk, then the Government may file a motion for a default judgment in accordance with § 26.41.” That regulation provides as follows:

24 C.F.R. § 26.41 Default.

- (a) General. The respondent may be found in default, upon motion, for failure to file a timely response to the Government’s complaint. The motion shall include a copy of the complaint and a proposed default order, and shall be served upon all parties. The respondent shall have 10 days from such service to respond to the motion.
- (b) Default order. The ALJ shall issue a decision on the motion within 15 days after the expiration of the time for filing a response to the default motion. If a default order is issued, it shall constitute the final agency action.
- (c) Effect of default. A default shall constitute an admission of all facts alleged in the Government’s complaint and a waiver of respondent’s right to a hearing on such allegations. The penalty proposed in the complaint shall be set forth in the default order and shall be immediately due and payable by respondent without further proceedings.

24 C.F.R. § 26.41.

² HUD seeks imposition of a civil penalty in the amount of \$7,500, plus an assessment of twice the amount of the false claim ($\$126,510 \times 2 = \$253,020$).

FINDINGS OF FACT

1. The property at issue was purchased by Respondent Charita Short on October 7, 2004;
2. As a result of Respondent Charita Short's default on the property's mortgage, the property was seized and repossessed by the Sheriff of St. Tammany Parish, Louisiana on July 25, 2005;
3. Hurricane Katrina made landfall on August 29, 2005;
4. Respondents applied for a HUD Community Development Block Grant-funded Road Home Homeowner Assistance Program grant on March 20, 2007;
5. Respondents closed on their claim for the Road Home Program grant on September 21, 2007;
6. In closing on their claim, Respondents executed The Road Home Grant Recipient Affidavit certifying that they were the owners of the subject property on the date of Hurricane Katrina;
7. Respondents knew or had reason to know that this claim was false and/or supported by false or fraudulent information because they knew the subject property had been seized and repossessed prior to the existence of Hurricane Katrina;
8. Respondents were ineligible for the Road Home Program grant when they received it, and would not have received the grant absent their false statements;
9. Respondents have failed to defend this action;
10. All facts alleged in HUD's Complaint, filed on April 10, 2012, are hereby found to have been admitted by Respondents;

DISCUSSION AND CONCLUSIONS OF LAW

By reason of the facts admitted by Respondents in the Complaint, Respondents submitted a claim to HUD for a HUD Community Development Block Grant-funded Road Home Homeowner Assistance grant. Respondents knew or had reason to know the claim was false, and Respondents knew or had reason to know the claim was supported by their materially false statements representing that they occupied the Hurricane-Katrina damaged property at issue as their principal residence on the date of the storm, when in fact the property had been seized and possessed by the Sheriff after Respondents' own default on the property's mortgage.

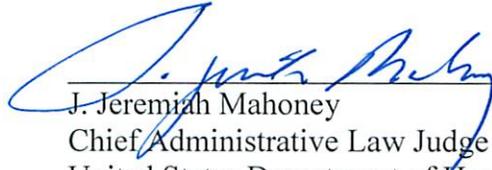
The allegations in the Complaint are legally sufficient to establish that Respondents are liable to HUD under the PFCRA and 24 C.F.R. Part 28. The claim violated 31 U.S.C. § 3802(a),

and 24 C.F.R. § 28.10. HUD is therefore entitled to a civil penalty and assessment, totaling \$260,520. By Regulation, in the event of a default “[t]he penalty proposed in the complaint shall be set forth in the default order and shall be immediately due and payable by respondent without further proceedings.” 24 C.F.R. § 26.41(c)

ORDER

Accordingly, the Government’s Motion for Default Judgment is **GRANTED**. Respondents shall pay HUD a civil penalty and assessment in the amount of \$260,520, which is due and payable immediately, without further proceedings.

So **ORDERED**.



J. Jeremiah Mahoney
Chief Administrative Law Judge (Acting)
United States Department of Housing
and Urban Development

Notice of Appeal Rights. This Order constitutes the final agency action. 24 C.F.R. § 26.41(b).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing DEFAULT JUDGMENT AND ORDER, issued by J. Jeremiah Mahoney, Chief Administrative Law Judge (Acting), HUDALJ No. 12-M-036-PF/18, were sent to the following parties on this 9th day of July, 2012, in the manner indicated:


Becky Black, Docket Clerk

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