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

HUD
DEPT ENFORCEMENT CTR
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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,	)	
Petitioner,	)	
v.	)	HUDALJ 08-022-PF
	)	OGC Case No. 08-3460-PF
BILLY RANDOLPH EDWARDS,	)	
Respondent.	)	

DEFAULT JUDGMENT AND ORDER

I. Procedural History

On November 14, 2007, the United States Department of Housing and Urban Development ("HUD" or "the Department") instituted this action by issuing a Complaint to Billy Randolph Edwards ("Respondent" or "Edwards") and four other individuals,[1] charging Respondent with seven violations of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28. Specifically, Count 3 of the Complaint alleges that Respondent purchased a property from HUD through its property disposition program; that near the time of purchase his company, LSB, Inc., signed loan documents for the purchase of the property for business purposes; and that in the Contract Occupancy Statement he represented and certified or affirmed falsely, fictitiously or fraudulently that he would occupy the property as his primary residence for 12 months. Counts 4 through 6 each allege that a certain individual purchased a property from HUD through its property disposition program; that at or near that time partners of LSB, Inc. signed loan documents for the purchase of the property for business purposes and the individual conveyed the property to LSB, Inc.; and that Respondent submitted or caused to be submitted to HUD a false statement on the Sales Contract Addendum that the purchaser would occupy the property as his primary residence for 12 months. Counts 7 through 9 each allege that a certain individual purchased a property from HUD through its property disposition program; that at or near that time Respondent signed loan documents for the

[1] The other four respondents named in the Complaint are: William Thomas Broglan, Larry Howard Gray, Sandra Simmons Gray and Steven Brian Swindall. Counts 1 and 2 apply to respondents other than Edwards.

purchase of the property for business purposes and the individual conveyed the property to Respondent; and that Respondent submitted or caused to be submitted to HUD a false statement on the Sales Contract Addendum that the purchaser would occupy the property as his primary residence for 12 months. The Complaint requests the imposition of a penalty of $5500 against Respondent individually for each of Counts 3 and 9, and imposition of penalties jointly and severally against Respondent and other respondents named in the Complaint for Counts 4 through 8, as authorized by the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28.

Having received no response to the Complaint from Respondent, on February 11, 2008, HUD filed a Motion for Default ("Motion") together with a copy of the Complaint, pursuant to 24 C.F.R. §§ 26.39 and 28.30(b). The Motion requests that default judgment be entered and that Respondent be found liable for civil penalties of $5,500 for each violation alleged in Counts 3 through 8 of the Complaint, or an aggregated penalty of $33,000.[2]

To date, Respondent has not submitted a response to the Complaint or the Motion.

II. Relevant Statutory and Regulatory Provisions

Section 3802(a)(2) of the Program Fraud Civil Remedies Act (PFCRA) provides in relevant part that -

> Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that –
>
> (A) the person knows or has reason to know –
>
> (i) asserts a material fact which is false, fictitious or fraudulent; [and]
>
> * * *
>
> (C) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,
>
> shall be subject to . . . a civil penalty of not more than [$5,500] for each such

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[2] The Default Motion states that HUD is withdrawing Count 9 of the Complaint against Respondent on the basis of the expiration of the statute of limitations in regard thereto. The applicable statute of limitations provides that -

> A *hearing* under section 3803(d)(2) of this title with respect to a claim or statement shall be commenced *within 6 years* after the date on which such claim or statement is made, presented, or submitted.

31 U.S.C. § 3808(a)(emphasis added). Count 9 alleges the submission of a false statement on or about December 31, 2001, more than six years ago. *See,* Motion at 2; Complaint ¶¶ 82-89, 138-142.

statement.

31 U.S.C. § 3802(a)(2); 24 C.F.R. § 28.10(b)(1)).[3]

For the purposes of the PFCRA, the term "statement" means

any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made–

* * *

(B) with respect to (including relating to eligibility for)--
(i) a contract with, or a bid or proposal for a contract with;

* * *

an authority . . . if the United States Government provides any portion of the money or property under such contract . . . .

31 U.S.C. § 3801(a)(9); 24 C.F.R. § 28.5. The PFCRA is a strict liability statute, no proof of specific intent to defraud is required to establish liability, and the standard of proof is the "preponderance of the evidence." *See*, 24 C.F.R. § 28.10(d); 31 U.S.C. § 3803(f).

HUD's jurisdiction to administratively commence and conduct actions under PFCRA with hearings presided over by an Administrative Law Judge is provided by 31 U.S.C. §§ 3802(b), 3803(b), 3801(a)(7), and 24 C.F.R. Parts 28 and 26 (subpart B).

The regulatory provisions implementing PFCRA, promulgated as 24 C.F.R. Parts 28 and 26 (subpart B), provide that, upon obtaining approval from the Department of Justice, HUD may issue a complaint to a respondent for alleged violations of PFCRA. 24 C.F.R. § 28.25(a). If the respondent fails to file an answer within 30 days of receiving such complaint, upon motion, the Administrative Law Judge may find the respondent in "default." *See,* 24 C.F.R. §§ 28.30(b) and 26.39(a). If a respondent is found in default, then a decision on the motion for default shall issue within 15 days after the expiration of the time for filing a response thereto, which is within seven (7) days of service of the motion. 24 C.F.R. § 26.39(b). The Rules also provide that a default shall constitute an admission of all facts alleged in the complaint and a waiver of the respondent's right to a hearing on the matter. 24 C.F.R. § 26.39(c). Further, the Rules provide that "[t]he penalty proposed in the complaint shall be set forth in the default order. . ." and that a default order shall constitute the "final agency action." 24 C.F.R. § 26.39(b) and (c).

III. Motion for Default

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[3] Pursuant to the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, and Section 31001 of the Debt Collection Act, Pub. L. 104-134, the civil penalty for such violations was increased as of September 29, 1999 from $5,000 to $5,500. *See*, 28 C.F.R. § 85.3(a)(10); 64 Fed. Reg. 47099 (August 30, 1999).

In accordance with 24 C.F.R §28.25(a), on November 14, 2008, the Complaint was served upon Respondent by first class mail, certified receipt requested, by mailing a copy of the same to him at 2010 Triana Boulevard SW, Huntsville, AL 35805. *See*, Certificate of Service accompanying the Complaint; Declaration of Tammie Parshall attached as Exhibit 2 to the Motion.[4] The return receipt on the certified mailing or "green card" returned to the Department by the U.S. Post Office reflects that the mailing thus sent was forwarded by the Post Office to Respondent at his "new address" at "3420 North Broad Place, SW, Huntsville, AL 35805" and that Respondent signed for it on or about November 29, 2007. *See*, "green card" attached as Exhibit 3 and Declaration of Tammie Parshall attached as Exhibit 2 to Motion. As required by 24 C.F.R. § 28.25, the Complaint advised Respondent that he may submit a written response to it within thirty days and that if he did not, then -

> HUD will file this Complaint along with a motion for default judgment, in accordance with 24 C.F.R. §§ 26.39 and 28.30(b). If a default is issued, it shall constitute an admission of all facts alleged in this Complaint and a waiver of Respondents' rights to a hearing on such allegations. The civil penalties and assessment proposed in this Complaint shall be set forth in the default order and shall be immediately due and payable by Respondents without further proceedings. See, 24 C.F.R. § 26.39(c).

See, Complaint at 19-20. The Complaint states that copies of 24 C.F.R. Part 28 and Part 26, Subpart B, were included with the Complaint.

HUD represents in its Motion for Default that it has not received any response to the Complaint or other pleading from Respondent, and in support, presents a Declaration made by Tammie Parshall, its Custodian of Records, dated February 11, 2008. *See*, Motion, Exhibit 2. The file reflects that HUD served a copy of its Motion for Default upon Respondent by mailing a copy of the same to him by first-class mail at 3420 North Broad Place, S.W., Huntsville, AL 35805 on February 11, 2008. *See*, Certificate of Service attached to Motion.

To date, the Office of Administrative Law Judges has not received from Respondent any response to the Complaint or to the Motion for Default. In that the time periods provided for Respondent to respond to the Complaint and/or Motion for Default have expired, Complainant's Motion is hereby GRANTED, and Respondent is hereby found in DEFAULT pursuant to 24 C.F.R. § 26.39.[5] In accordance with that regulation, default constitutes an admission of all facts

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[4] HUD represents in its Motion that it received from the Department of Justice the approval required by 24 C.F.R. §§ 28.20 and 28.25 to file this Complaint in a Memorandum dated November 5, 2007.

[5] It is recognized that HUD's regulations (24 C.F.R. § 26.39(b)) provide that if a respondent is found in default, then a decision on the motion for default "shall issue" within 15

(continued...)

alleged in the Complaint and a waiver of Respondent's right to a hearing on such allegations.

The following Findings of Fact and Conclusions of Law are based upon the documents submitted into the record in this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner is the U.S. Department of Housing and Urban Development (HUD), an executive department of the United States Government within the definition of 31 U.S.C. § 3801(a)(1).

2. HUD operates a property disposition program whereby it sells one-to-four-family properties it has acquired title to through foreclosure of an insured or Secretary-held mortgage or loan under the National Housing Act, or under section 312 of the Housing Act of 1964. *See*, 24 C.F.R. § 291.1 *et seq*.

3. Under such program, purchasers who would be "owner-occupants" of the property, that is persons who will use the property after purchase as their primary residence, are given a "priority purchase period," during which only such persons may bid on the property. 24 C.F.R. § 291.5, 291.205.

4. Prospective purchasers may represent themselves to HUD as owner-occupants by signing a Sales Contract Addendum which contains a written certification known as the "Contract Occupancy Statement" stating that their offer is being submitted with the representation that they will to occupy the property as their primary residence for at least 12 months after purchase and that they have not purchased any other HUD-owned property within the past 24 months as an owner-occupant.

5. If no owner-occupants bid on the property within the priority purchase period, investors *i.e.* purchasers who do not intend to use the property as their primary residence, may then bid on it.

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[5](...continued)
days after the expiration of the time for filing a response thereto, which is within seven (7) days of service of the motion, and that this Decision is not being issued in such time frame. As explanation therefor, it is noted that this matter is being heard by the Administrative Law Judges of the United States Environmental Protection Agency pursuant to an Interagency Agreement which first became effective on March 12, 2008. Such Agreement was necessary because of the retirement as of the end of the last calender year of all of the Administrative Law Judges at HUD. Neither party is significantly prejudiced by the delay in issuance of this Decision.

6. Respondent Billy Randolph Edwards is an individual who formed the company known as "LSB LLC" or "LSB, Inc." with Larry Howard Gray and Sandra Simmons Gray.

7. Respondent Billy Randolph Edwards pled guilty and was sentenced for Conspiracy to Commit Fraud in connection with an indictment filed May 2, 2005 in the Northeastern District of Alabama, case no. 5:05-CR-00176-VEH-HGD, alleging that Respondent and the other respondents named in the instant Complaint entered into a conspiracy to submit materially false statements to HUD concerning the nine properties referenced herein purchased from HUD's property disposition program, in violation of 18 U.S.C. § 1010..

Count 3 - 4333 Baywood Drive, Huntsville, Alabama

8. On or about July 10, 2002, Respondent Billy Randolph Edwards signed a Sales Contract in which he bid for the property located at 4333 Baywood Drive, Huntsville, Alabama ("Baywood property") available for sale through HUD's property disposition program.

9. The Respondent Edwards' bid for the Baywood property was accompanied by a Sales Contract Addendum which contained a Contract Occupancy Statement indicating his intent to occupy the property as his primary residence for at least 12 months. The Occupancy Statement contained an express certification of the truthfulness and accuracy of its contents.

10. Respondent submitted the Sales Contract with the Sales Contract Addendum containing the Contract Occupancy Statement to HUD and HUD accepted Respondent's bid for the Baywood property on August 14, 2002.

11. Less than a month later, on September 10, 2002, the "partners" of Respondent's company LSB, Inc. executed loan documents with North Alabama Bank in connection with the purchase of the Baywood property indicating that the property would be used for "business purposes."

12. Respondent purchased the Baywood property from HUD three days later, on September 13, 2002.

13. The statement in the Sales Contract Addendum submitted by Respondent Edwards to HUD in connection with the Baywood property representing that he intended to occupy the premises as his primary residence for at least 12 months was a material fact that was false, fictitious or fraudulent.

14. Respondent Edwards knew or had reason to know that that material fact was false, fictitious or fraudulent.

15. Therefore, Respondent Edwards' submission to HUD of a written statement with this material fact that was false, fictitious or fraudulent in connection with the purchased of the Baywood property constitutes a violation of 31 U.S.C. § 3802(a)(2).

Count 4 - 1018 Crestline Circle, Huntsville, Alabama

16. On or about December 17, 2002, Robert Chapman signed a Sales Contract in which he bid for the property located at 1018 Crestline Circle, Huntsville, Alabama ("Crestline property") available for sale through HUD's property disposition program.

17. Mr. Chapman's bid for the Crestline property was accompanied by a Sales Contract Addendum which contained a Contract Occupancy Statement indicating his intent to occupy the property as his primary residence for at least 12 months. The Occupancy Statement contained an express certification of the truthfulness and accuracy of its contents.

18. Respondent Edwards submitted or caused to be submitted Mr. Chapman's Sales Contract with the Sales Contract Addendum containing the Contract Occupancy Statement to HUD and HUD accepted Mr. Chapman's bid for the Crestline property on December 27, 2002.

19. About a month later, on January 29, 2003, the "partners" of Respondent's company LSB, Inc. executed loan documents with North Alabama Bank in connection with *their* purchase of the Crestline property indicating that the property would be used for "business purposes."

20. On January 29, 2003, Mr. Chapman purchased the Crestline property from HUD and immediately conveyed it to LSB, LLC in a deed which stated "THIS PROPERTY DOES NOT CONSTITUTE THE HOMESTEAD OF THE GRANTOR."

21. The statement in the Sales Contract Addendum submitted or caused to be submitted by Respondent Edwards to HUD in connection with the Crestline property stating Mr. Chapman intended to occupy the premises as his primary residence for at least 12 months was a material fact that was false, fictitious or fraudulent.

22. Respondent Edwards knew or had reason to know that this material fact was false, fictitious or fraudulent.

23. Therefore, Respondent Edwards' submission or causing submission to HUD of a written statement with this material fact that was false, fictitious or fraudulent in connection with the purchased of the Crestline property constitutes a violation of 31 U.S.C. § 3802(a)(2).

Count 5 - 3315 Lockwood Court, Huntsville, Alabama

24. On or about December 17, 2002, David Broglan signed a Sales Contract in which he bid for the property located at 3315 Lockwood Court, Huntsville, Alabama ("Lockwood property") available for sale through HUD's property disposition program.

25. Mr. Broglan's bid for the Lockwood property was accompanied by a Sales Contract Addendum which contained a Contract Occupancy Statement indicating his intent to occupy the property as his primary residence for at least 12 months. The Occupancy Statement contained an express certification of the truthfulness and accuracy of its contents.

26. Respondent Edwards submitted or caused to be submitted Mr. Broglan's Sales Contract with the Sales Contract Addendum containing the Contract Occupancy Statement to HUD and HUD accepted Mr. Broglan's bid for the Lockwood property on December 27, 2002.

27. About a month later, on February 5, 2003, the "partners" of Respondent's company LSB, Inc. executed loan documents with North Alabama Bank in connection with *their* purchase of the Lockwood property indicating that the property would be used for "business purposes."

28. On February 5, 2003, Mr. Broglan purchased the Lockwood property from HUD and immediately conveyed the same to LSB, LLC in a deed which stated "THIS PROPERTY DOES NOT CONSTITUTE THE HOMESTEAD OF THE GRANTOR."

29. The statement in the Sales Contract Addendum submitted or caused to be submitted by Respondent Edwards to HUD in connection with the Lockwood property stating that Mr. Broglan intended to occupy the premises as his primary residence for at least 12 months was a material fact that was false, fictitious or fraudulent.

30. Respondent Edwards knew or had reason to know that this material fact was false, fictitious or fraudulent.

31. Therefore, Respondent Edwards' submission or causing submission to HUD of a written statement with this material fact that was false, fictitious or fraudulent in connection with the purchased of the Lockwood property constitutes a violation of 31 U.S.C. § 3802(a)(2).

Count 6 - 3509 Bluegrass Road, Huntsville, Alabama

32. On or about December 17, 2002, Travis J. Foster signed a Sales Contract in which he bid for the property located at 3509 Bluegrass Road, Huntsville, Alabama ("Bluegrass property") available for sale through HUD's property disposition program.

33. Mr. Foster's bid for the Bluegrass property was accompanied by a Sales Contract Addendum which contained a Contract Occupancy Statement indicating his intent to occupy the property as his primary residence for at least 12 months. The Occupancy Statement contained an express certification of the truthfulness and accuracy of its contents.

34. Respondent Edwards signed a letter from his company LSB, Inc. stating that funds were available for Mr. Foster to purchase the Bluegrass property.

35. Respondent Edwards submitted or caused to be submitted Mr. Foster's Sales Contract with the Sales Contract Addendum containing the Contract Occupancy Statement to HUD and HUD accepted Mr. Foster's bid for the Bluegrass property on January 7, 2003.

36. About two month later, on March 21, 2003, the "partners" of Respondent's company LSB, Inc. executed loan documents with North Alabama Bank in connection with *their* purchase of the Bluegrass property indicating that the property would be used for "business purposes."

37. On that same day, March 21, 2003, Mr. Foster purchased the Bluegrass property from HUD and immediately conveyed the same to LSB, Inc. in a deed which stated "THIS PROPERTY DOES NOT CONSTITUTE THE HOMESTEAD OF THE GRANTOR."

38. The statement in the Sales Contract Addendum submitted or caused to be submitted by Respondent to HUD in connection with the Bluegrass property stating that Mr. Foster intended to occupy the premises as his primary residence for at least 12 months was a material fact that was false, fictitious or fraudulent.

39. Respondent Edwards knew or had reason to know that this material fact was false, fictitious or fraudulent.

40. Therefore, Respondent Edwards' submission or causing submission to HUD of a written statement with this material fact that was false, fictitious or fraudulent in connection with the purchased of the Bluegrass property constitutes a violation of 31 U.S.C. § 3802(a)(2).

Count 7 - 3125 Nassau Drive, Huntsville, Alabama

41. On or about February 7, 2003, Ronnie Dabbs signed a Sales Contract in which he bid for the property located at 3125 Nassau Drive, Huntsville, Alabama ("Nassau property") available for sale through HUD's property disposition program.

42. Mr. Dabbs' bid for the Nassau property was accompanied by a Sales Contract Addendum

which contained a Contract Occupancy Statement indicating his intent to occupy the property as his primary residence for at least 12 months. The Occupancy Statement contained an express certification of the truthfulness and accuracy of its contents.

43. Respondent Edwards submitted or caused to be submitted Mr. Dabbs' Sales Contract with the Sales Contract Addendum containing the Contract Occupancy Statement to HUD and HUD accepted Mr. Dabbs' bid for the Nassau property on February 27, 2003.

44. On March 17, 2003, Mr. Dabbs purchased the Nassau property from HUD and Respondent Edwards signed loan documents with the Bank of Lincoln County for the purchase of the Nassau property.

45. By deed dated March 14, 2003, Mr. Dabbs conveyed the Nassau property to Respondent Edwards and another (Respondent Swindall) and such deed stated "THIS PROPERTY DOES NOT CONSTITUTE THE HOMESTEAD OF THE GRANTOR."

46. The statement in the Sales Contract Addendum submitted or caused to be submitted by Respondent to HUD in connection with the Nassau property stating that Mr. Dabbs intended to occupy the premises as his primary residence for at least 12 months was a material fact that was false, fictitious or fraudulent.

47. Respondent Edwards knew or had reason to know that this material fact was false, fictitious or fraudulent.

48. Therefore, Respondent Edwards' submission or causing submission to HUD of a written statement with this material fact that was false, fictitious or fraudulent in connection with the purchased of the Nassau property constitutes a violation of 31 U.S.C. § 3802(a)(2).

Count 8 - 3908 Hawthorne Avenue, SW, Huntsville, Alabama

49. On or about March 25, 2003, James D. Edwards signed a Sales Contract in which he bid for the property located at 3908 Hawthorne Avenue, Huntsville, Alabama ("Hawthorne property") available for sale through HUD's property disposition program.

50. Mr. James D. Edwards' bid for the Hawthorne property was accompanied by a Sales Contract Addendum which contained a Contract Occupancy Statement indicating his intent to occupy the property as his primary residence for at least 12 months. The Occupancy Statement contained an express certification of the truthfulness and accuracy of its contents.

51. Respondent Edwards submitted or caused to be submitted Mr. James D. Edwards' Sales Contract with the Sales Contract Addendum containing the Contract Occupancy

Statement to HUD and HUD accepted Mr. Edwards' bid for the Hawthorne property on April 2, 2003.

52. On or about April 22, 2003, Respondent Edwards signed loan documents with the Bank of Lincoln County for the purchase of the Hawthorne property.

53. On April 23, 2003, Mr. James D. Edwards purchased the Hawthorne property from HUD and immediately conveyed the same to Respondent Edwards and another (Respondent Swindall) in a deed which stated "THIS PROPERTY DOES NOT CONSTITUTE THE HOMESTEAD OF THE GRANTOR."

54. The statement in the Sales Contract Addendum submitted or caused to be submitted by Respondent to HUD in connection with the Hawthorne property stating that Mr. James D. Edwards intended to occupy the premises as his primary residence for at least 12 months was a material fact that was false, fictitious or fraudulent.

55. Respondent Billy Randolph Edwards knew or had reason to know that this material fact was false, fictitious or fraudulent.

56. Therefore, Respondent Edwards' submission or causing submission to HUD of a written statement with this material fact that was false, fictitious or fraudulent in connection with the purchased of the Hawthorne property constitutes a violation of 31 U.S.C. § 3802(a)(2).

DETERMINATION OF CIVIL PENALTY AMOUNT

57. Section 26.39 of the applicable Rules provides in pertinent part that upon default:

> 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.§ 26.39(c).

58. Section 3802 of PFCRA, 31 U.S.C. §3801(a)(2) (as adjusted by the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990) and 24 C.F.R. 28.10(b) authorize the assessment of a civil penalty of up to $5,500 for each violation of 31 U.S.C. § 3802(a)(2).

59. Section 28.40(b) of the applicable Rules provides with regard to the factors to consider in determining amount of penalties as follows:

In determining an appropriate amount of civil penalties and assessments, the administrative law judge (ALJ) and, upon appeal, the Secretary shall consider and state in their opinions any mitigating or aggravating circumstances. *Because of the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need for deterrence, ordinarily double damages and a significant civil penalty should be imposed.* The ALJ and the Secretary shall consider the following factors in determining the amount of penalties and assessments to be imposed:

(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) Any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

24 C.F.R. § 28.40 (emphasis added).

60. Neither the Complaint nor the Motion indicates that HUD took these factors into consideration in determining the penalty proposed in the Complaint which is the maximum allowed by law per violation.

61. Nevertheless, having found that Respondent Edwards violated the PFCRA in six instances, I have determined that the $5,500 penalty per violation (for a total of $33,000) proposed in the Complaint as amended by the Motion, is the appropriate civil penalty to be assessed against Respondent.

62. In doing so, I have taken into account the seventeen (17) factors identified in 24 C.F.R. § 28.40 and in particular I note that the record evidences that Respondent, directly and/or through his company and his "partners" therein, within a period of less than a year, was involved in six transactions involving properties purchased out of HUD's property disposition program wherein the purchaser falsely represented he or she intended to be the owner-occupier of the premises. The transactions reflect that Respondent involved and conspired with several other individuals to make and submit these false and fraudulent statements to HUD. While there is no evidence of the Government's loss resulting from these transactions, such fraudulent transactions clearly undermined the

purposes of HUD's property disposition program which gives priority to owner occupiers in order "to dispose of properties in a manner that expands homeownership opportunities, strengthens neighborhoods, and communities, and ensures a maximum return to the mortgage insurance funds." 24 C.F.R. §291.1(a)(2). Moreover, it is certainly possible that HUD may have received less of a return from the sale of these properties to the falsely purported owner-occupiers than it would have received had the properties been put out for competitive bid by all investors. In addition, Respondent's violative actions may have well prevented other persons who were honestly willing to be owner-occupiers of these properties from purchasing them. Finally, it is noted that although given an opportunity to do so, Respondent has proffered no evidence in support of the mitigation of the proposed penalty.

ORDER

1. For failing to respond to the Complaint in a timely manner as indicated above, and upon motion filed, Respondent is hereby found in **DEFAULT.**

2. Pursuant to 31 U.S.C. § 3803, Respondent is found to have violated the Program Fraud Civil Remedies Act, 31 U.S.C. § 3802(a)(2), in six instances as enumerated above and for each such violation is assessed a civil penalty in the amount of $5,500, for a total penalty of $33,000.

3. The civil penalty amount assessed here of $33,000 is due and payable immediately without further proceedings. 24 C.F.R. § 26.39(c).

4. This Order shall constitute the final agency action. 24 C.F.R. § 26.39 (b).

5. In the event other persons identified in the Complaint are also found to be liable for penalties in Counts 4, 5, 6, 7 and/or 8, of the Complaint, the penalties owed by Respondent Edwards shall be considered to be debts for which Respondent Edwards and the other liable parties are jointly and severally liable. See, 24 C.F.R. § 28.10(e).

Susan L. Biro
Chief Administrative Law Judge
United States Environmental Protection Agency[6]

Dated: March 24, 2008
Washington, D.C.

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[6] The Administrative Law Judges of the United States Environmental Protection Agency are authorized to hear cases pending before the United States Department of Housing and Urban Development, pursuant to an Interagency Agreement effective for a period beginning March 12, 2008.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **Default Order and Judgment** issued by Susan L. Biro, Chief Administrative Law Judge, in HUDALJ 08-022-PF and OGC Case No. 08-3460-PF were sent to the following parties on this 24th day of March, 2008, in the manner indicated:

Maria Whiting-Beale

Maria Whiting-Beale
Acting Docket Clerk

REGULAR MAIL:

Billy Randolph Edwards
[redacted]

Joel Foreman, Esquire
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