

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

In The Matter of:

EMERALD COVE
PARTNERSHIP, L.P.

Respondent.

HUDALJ 01-123-CMP
Decided: January 12, 2001

Travis J. Farris, Esquire
For the Government

Before: ALAN W. HEIFETZ
Chief Administrative Law Judge

DEFAULT DECISION AND ORDER

On October 30, 2000, the Secretary of the United States Department of Housing and Urban Development ("Secretary of HUD") through the Departmental Enforcement Center filed a Complaint seeking a civil money penalty of \$55,000 against Emerald Cove Partnership, L.P. ("Respondent"), pursuant to section 537(c) of the National Housing Act, 12 U.S.C. § 1735f-15(c), and the applicable regulations under 24 C.F.R. Part 30. The Complaint charges that Respondent knowingly and materially failed to submit audited annual financial statements to HUD for fiscal years 1997 and 1998, as required by its Regulatory Agreement with HUD. The Complaint notified Respondent of its right to appeal the imposition of the civil money penalty 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 penalty sought. *See* 24 C.F.R. §§ 30.90(b); 26.39. Respondent received a copy of the Complaint on October 31, 2000, but failed to file an answer.

On December 20, 2000, HUD served a Motion for Default Judgment on Respondent. Respondent failed to respond to the Motion. Accordingly, this Default Decision and Order is issued.

Findings of Fact¹

1. Respondent is the owner of Emerald Cove Apartments, a multi-family housing project. The property was financed with a loan insured against default by HUD under Section 221(d)(4) of the National Housing Act, 12 U.S.C. § 1713. In exchange for receiving the benefits of a loan insured by HUD, the general partners of the Respondent, or their predecessors in interest, executed a Regulatory Agreement with HUD dated December 6, 1989. Complaint, ¶ 7.

2. In the Regulatory Agreement, Respondent agreed to certain controls over the management and operation of the project. Paragraph 16(a) of the Regulatory Agreement requires Respondent to provide HUD with an audited financial statement, prepared in accordance with the requirements of HUD, within 60 days after the completion of the fiscal year. Complaint, ¶ 8.

3. Respondent failed to submit the statements for fiscal years 1997 and 1998. Complaint, ¶ 10.

4. Respondent's failure to provide the statements violates paragraph 16(a) of the Regulatory Agreement. Complaint, ¶ 11.

5. On November 3, 1999, HUD provided Respondent with a written notice ("Notice") that it intended to seek civil money penalties against Respondent because of its failure to file the required audited financial statements. Complaint, ¶ 12.

6. Respondent received the Notice on November 9, 1999, but did not respond. Complaint, ¶¶13-14.

7. HUD's Assistant Secretary for Housing-Federal Housing Commissioner, William C. Apgar ("Assistant Secretary"), reviewed the allegations against Respondent and considered the factors set forth in 24 C.F.R. § 30.80, such as the gravity of Respondent's offense, any history of prior offenses, Respondent's ability to pay a penalty, injury to the public, benefits received by Respondent, and deterrence of future violations. After consideration of those factors, the Assistant Secretary determined that a civil penalty of \$55,000, or \$27,500 for each failure to submit a financial statement should be imposed on Respondent, pursuant to 12 U.S.C. § 1735f-15(c)(1)(B)(x) and

¹HUD 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 these allegations. 24 C.F.R. § 26.39(c).

24 C.F.R. § 30.45(b). Complaint, ¶¶ 16-18.

Conclusion and Order

Respondent knowingly and materially violated 12 U.S.C. § 1735f-15(c) and its Regulatory Agreement with HUD by failing to furnish HUD with audited financial reports for fiscal years 1997 and 1998. After consideration of appropriate factors, HUD issued the Notice, and later, the Complaint seeking an order imposing civil money penalties of \$55,000. *See* 24 C.F.R. §§ 30.80; 30.85. Respondent failed to answer the Complaint, and therefore, is in default. *See* 24 C.F.R. §§ 26.37, 26.38, 26.39, and 30.90(b). HUD filed a Motion for Default Judgment, which was received by this Office on December 21, 2000. Respondent has failed to file a response to the Motion for Default. Pursuant to 24 C.F.R. §§ 30.90, 26.37 and 26.39, it is

ORDERED, that

1. the Motion for Default Judgment is *granted*;
2. Respondent shall pay to the Secretary of HUD a civil money penalty of \$55,000, which is immediately due and payable by Respondent without further proceedings; and
3. This Order shall constitute the final agency action, pursuant to 24 C.F.R. § 26.39.

ALAN W. HEIFETZ
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this DEFAULT DECISION AND ORDER, issued by ALAN W. HEIFETZ, Chief Administrative Law Judge, HUDALJ 01-123-CMP, were sent to the following parties on this 12th day of January 2001, in the manner indicated:

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