

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

In The Matter of:

EQUITY HOUSING FUND XIV

Respondent.

HUDALJ 01-263-CMP

Decided: July 31, 2001

R. René Dupuy, Esq.
For the Government

Before: WILLIAM C. CREGAR
Acting Chief Administrative Law Judge

DEFAULT DECISION AND ORDER

On June 5 and 25, 2001, the Secretary of the United States Department of Housing and Urban Development (Secretary, HUD), through the Departmental Enforcement Center, filed Complaints seeking civil money penalties of \$55,000 and \$27,500 respectively, for a total of \$82,500, against Equity Housing Fund XIV (Respondent), pursuant to The National Housing Act, 12 U.S.C. §1735f-15(c)(1)(B)(x), and the applicable regulations under 24 C.F.R. Part 30. The first Complaint (Complaint I) charges that Respondent knowingly and materially failed to submit, in a timely manner, the audited financial reports for the Streamside Place Apartments for fiscal years 1998 and 1999, in violation of 12 U.S.C. §1735f-15(c)(1)(B)(x) (failure to furnish the Secretary with a complete annual financial report). The second Complaint (Complaint II) charges that Respondent knowingly and materially failed to submit, in a timely manner, the audited financial report for the Streamside Place Apartments for fiscal year 2000 also, in violation of 12 U.S.C. §1735f-15(c)(1)(B)(x). The Complaints each 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. §§ 26.39, 30.90(b). Respondent received a copy of the Complaints on June 6 and 26, 2001, but failed to file an answer to either. I have consolidated the two Complaints (Complaints).

On July 13, 2001, HUD served a Motion for Default Judgment for both Complaints on Respondent. Respondent received the Motion on July 16, 2001. Respondent failed to answer or to otherwise respond to the Motion.

Findings of Fact¹

1. Equity Housing Fund XIV (Equity) is a California Limited Partnership that owns Streamside Place Apartments (the project), a multi-family housing project located in Houston, Texas. Complaints, ¶¶ 0², 7.

2. The project was financed with the proceeds of a loan insured by HUD pursuant to the National Housing Act. 12 U.S.C. §§1707, et seq. Complaints, ¶ 7.

3. In exchange for receiving the benefits of a loan insured by HUD, Charley R. Birkes, Raymond G. Tiedje, and Linda M. Swensen executed a Regulatory Agreement with HUD on behalf of Respondent on March 18, 1997, agreeing to abide by certain controls over the management and operation of the project. Complaints, ¶¶ 8, 9.

4. Section 9(e) of the Regulatory Agreement requires that, within 60 days following the end of each fiscal year, the Secretary shall be furnished with a complete annual financial report based upon the books and records of the mortgagor and prepared and certified to by an independent public accountant and the mortgagor. Failure to do so constitutes a violation under 12 U.S.C. §1735f-15(c)(1)(B)(x). Complaints, ¶¶ 4, 9.

5. The fiscal year for the project ends on December 31 of each year. The annual financial reports are therefore due to HUD on March 1 of the subsequent year. Complaint I, ¶ 10.

6. The Secretary is permitted to grant written extensions of the annual deadline. In 1999, HUD granted such an extension to the Respondent for filing the fiscal year 1998 report. Consequently, the 1998 fiscal year annual financial report was due on August 31, 1999, 120 days after the usual deadline. Complaint I, ¶ 10.

7. The 1999 annual financial report was due on March 1, 2000. Complaint I, ¶ 10.

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

² Paragraph 0 refers to the unnumbered introductory paragraph in the Complaints.

8. Beginning with fiscal year 2000 audited reports, however, the due date for providing the reports to HUD was changed from 60 days to 90 days. *See* 24 C.F.R. §5.801(c)(2). Complaint II, ¶ 10.

9. Therefore, the 2000 annual financial report was due on April 1, 2001. Complaint II, ¶10.

10. Respondent failed to timely submit audited annual financial reports for fiscal years 1998, 1999, and 2000. Complaints, ¶ 11.

11. Respondent's failure to provide the project's audited annual financial reports to HUD for fiscal years 1998, 1999, and 2000 violated § 9(e) of the Regulatory Agreement and constitutes a violation under 12 U.S.C. § 1735f-15(c)(1)(B)(x). Complaints, ¶ 12.

12. On March 13, 2001, HUD provided written notice to Respondent that it intended to seek civil money penalties against Respondent for its failure to submit the required audited annual financial reports for fiscal years 1998 and 1999. On April 26, 2001, HUD provided written notice of the same to Respondent for its failure to submit the required audited annual financial reports for fiscal year 2000. The notices offered Respondent the opportunity to reply in writing to each notice. Respondent responded on April 18, 2001 to the first notice, but did not respond to the second notice. Complaints, ¶¶ 13-15.

13. After considering the allegations and the response in one case and the lack of response in the other, the Director of HUD's Departmental Enforcement Center, pursuant to 24 C.F.R. § 30.85, determined to seek civil money penalties against Respondent in the amount of \$27,500 per violation, or \$82,000 total. *See* 12 U.S.C. § 1735f-15(c)(2); *see also* 24 C.F.R. § 30.45(b); *see also* the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321-358 *et seq.*, (enacted April 26, 1996); *see also* 61 Fed. Reg. 50208 (1996) (codified at 24 C.F.R. Part 30) (regulations setting amount of civil money penalty per violation). In determining the amount of the civil money penalty, HUD considered the following factors: the gravity of Respondent's offense, history of prior offenses, Respondent's ability to pay a penalty, injury to the public, benefits received by Respondent, deterrence of future violations, degree of Respondent's culpability, and any injury to lot owners. *See* 24 C.F.R. §§ 30.80 and 30.85. Complaints, ¶¶ 16-18.

Conclusion and Order

Respondent knowingly and materially committed a violation under 12 U.S.C. § 1735f-15(c)(1)(B)(x) by failing to submit, in a timely manner, the audited annual financial reports for the Streamside Place Apartments for fiscal years 1998, 1999, and 2000. Respondent failed to answer the Complaints, 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 July 13, 2001 and by Respondent on July 16, 2001. Respondent has failed to file a response to the Motion for Default Judgment. 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 \$82,000, 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.

WILLIAM C. CREGAR
Acting Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this DEFAULT DECISION AND ORDER, issued by WILLIAM C. CREGAR, Acting Chief Administrative Law Judge, HUDALJ 01-263-CMP, were sent to the following parties on this 1st day of August, 2001, in the manner indicated:

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