

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

In The Matter of:

Gardner Ridge Associates, a North
Carolina General Partnership, S. Alan
Albright, and William Thomas
Blackman, Jr.,

Respondents.

HUDALJ 07-001-CMP
Decided: October 25, 2006

Stanley Field, Esq.
For the Government

S. Alan Albright, General Partner
For the Respondents

Before: Constance T. O'Bryant
Administrative Law Judge

DEFAULT DECISION AND ORDER

On March 2, 2006, the Secretary of the United States Department of Housing and Urban Development ("the Secretary" or "HUD") issued a Complaint seeking civil money penalties of \$62,500 against Gardner Ridge Associates, S. Alan Albright and William Thomas Blackman, Jr., ("Respondents") pursuant to Section 536 of the National Housing Act, (12 U.S.C. §1735f-15) and 24 C.F.R. Part 30. The Complaint charges that Respondents failed to file audited annual financial reports for Gardner Ridge Associates, the owner of a HUD/FHA insured multifamily property, for its fiscal years 2003 and 2004. The Complaint notified Respondents of their 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 and 30.90(b). Respondents failed to file an Answer to the Complaint.

Prior to HUD's filing of a Motion for Default Judgment, Respondents and HUD entered executed a Settlement Agreement, dated July 11, 2006. Paragraph #3 of the Settlement Agreement states that the parties agreed that HUD's action for civil money

penalties was stayed pending HUD's receipt of the first payment due under the Settlement Agreement. It also states that the Settlement Agreement is voidable by HUD as of July 1, 2006, if HUD has not received Respondents' first payment and that the Settlement Agreement would become void upon the filing, by HUD, of a Motion for Default Judgment. HUD has now filed a Motion for Default Judgment contending that Respondents have failed to make its first payment under the Settlement Agreement by the required date. Respondents have not contested the facts alleged in the Motion for Default Judgment.

Sections 26.39(a), (b) & (c) of 24 C.F.R. provide that if a respondent fails to file an Answer to the Complaint, the Government, upon proper motion to an administrative law judge, is entitled to a default judgment. The default shall constitute an admission of all facts alleged in the Government's Complaint and a waiver of the respondent's right to a hearing in the matter. The default judgment, when issued, shall constitute final agency action in the matter.

Respondents have not filed an Answer to the Complaint filed on March 2, 2006. On October 5, 2006, the Government filed a Motion for Default Judgment. By failing to Answer the Complaint, and again by failing to respond to the motion for default judgment, Respondents have admitted the allegations of the Complaint and waived their right to a hearing. *See* 24 C.F.R. §26.39(c). Accordingly, HUD's Motion for Default Judgment will be granted.

FINDINGS OF FACT

Conclusions

By virtue of the above findings of fact, Respondents have , for which civil penalties may be imposed.

ORDER

Pursuant to 24 C.F.R. §§26.37, 26.39, and 30.90, It is hereby **ORDERED** that:

1. The Motion for Default Judgment is granted;
2. Respondents shall, jointly or individually, pay to the Secretary of HUD a civil money penalty of \$62,500, which penalty is due and payable immediately without further proceedings; and
3. This Order shall constitute the final agency action.

CONSTANCE T. O'BRYANT
Administrative Law Judge

Dated: October 25, 2006