

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

In the Matter of:

GUINN NURSING HOMES, INC.,

Respondent.

HUDALJ 96-007-CMP

Decided: September 25, 1996

James L. Anderson, Esquire
For the Government

Before: ALAN W. HEIFETZ
Chief Administrative Law Judge

DEFAULT JUDGMENT AND INITIAL DECISION

On July 19, 1996, the Housing Civil Penalty Panel ("the Panel") of the U.S. Department of Housing and Urban Development ("the Department" or "HUD") filed a Complaint seeking a civil money penalty of \$5,000 against Guinn Nursing Homes, Inc. ("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 annual financial statements in a form acceptable to HUD for the years 1993 and 1994, 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, and that failure to file an Answer within 15 days of receipt of the Complaint would result in the issuance of a Default Judgment. 24 C.F.R. §§ 30.500, 505 and 900. Respondent received a copy of the Complaint on July 23, 1996, but did not file an Answer. On September 12, 1996, the Department filed a Motion for Default Judgment. No further pleadings have been filed.

The regulations provide that if the Respondent fails to file an Answer, the administrative law judge shall issue a Default Judgment. The judge shall assume the facts alleged in the Complaint to be true, and if such facts establish liability under 24 C.F.R. Part 30, Subpart D (Violations), shall issue a decision imposing the amount of penalty stated in the Complaint. 24 C.F.R. § 30.900(a), (b).

Findings of Fact

1. Respondent is the owner of Guinn Nursing Home ("the Project"), a nursing home facility located in Jay, Oklahoma. The Project was financed with the proceeds of a loan which was insured against default by HUD under Section 232 of the National Housing Act, 12 U.S.C. § 1715w. Complaint, ¶ 2.

2. In exchange for receiving the benefits of a loan insured by HUD, Respondent executed a Regulatory Agreement with HUD in which it agreed to certain controls over its management and operation of the Project. Paragraph 9(e) of the Regulatory Agreement requires Respondent to provide HUD with an annual financial report, prepared in accordance with HUD requirements, within 60 days after the end of each fiscal year. Complaint, ¶¶ 3, 6.

3. Contrary to its obligation under the Regulatory Agreement, Respondent has not filed the required annual financial statement with HUD for 1993 and 1994. No waiver of this requirement was approved by HUD. Complaint, ¶ 7.

4. On September 28, 1995, HUD provided written notice to Respondent that it intended to request a civil money penalty against Respondent because of Respondent's failure to submit the required financial statements. Respondent responded in writing to the pre-penalty notice. Complaint, ¶¶ 8, 9.

5. On December 12, 1995, the Panel met pursuant to 24 C.F.R. Part 30, Subpart C (Civil Money Penalty Panels), to discuss the case involving Respondent. Pursuant to 12 U.S.C. § 1735f-15(d)(3) and 24 C.F.R. § 30.215(b), the panel considered such factors as the gravity of Respondent's offense, any history of prior offenses, Respondent's ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and other factors that the Secretary of HUD has deemed appropriate in the regulations to determining the amount of penalty to impose on Respondent. Complaint, ¶ 10.

6. After considering all of the facts, the information and argument submitted by Respondent, and the factors described above, the Panel determined that a civil money penalty should be imposed on Respondent. The Panel proposed a penalty in the amount of \$5,000, or \$2,500 for each of the two years that the financial statement was not submitted. Complaint, ¶ 11.

Conclusions and Order

Under specified circumstances, the Secretary of HUD is authorized to impose a civil money penalty against a multifamily mortgagor that has knowingly and materially violated its Regulatory Agreement. 12 U.S.C. § 1735f-15(c); 24 C.F.R. § 30.325. Among those circumstances is the failure by the mortgagor, absent receipt of a filing extension from the Secretary, to furnish HUD with the requisite annual financial report within 60 days after the end of each fiscal year. 12 U.S.C. § 1735f-15(c)(1)(J); 24 C.F.R. § 30.325(b)(10). The maximum amount of penalty for such a violation is \$25,000. 12 U.S.C. §1735f-15(c)(2); 24 C.F.R. § 30.220(f).

By virtue of its failure to file annual financial statements with HUD for 1993 and 1994, Respondent violated § 12 U.S.C. § 1735f-15(c) and 24 C.F.R. § 30.325. The Panel considered the appropriate factors in determining the amount of penalty proposed. Accordingly, it is

ORDERED, that on the date that this Initial Decision becomes final, Respondent shall be liable to the United States for a civil money penalty of \$5,000.

Except as is provided in 24 C.F.R. § 30.900, this Initial Decision shall become final 90 days after its issuance.

ALAN W. HEIFETZ
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this DEFAULT JUDGMENT AND INITIAL DECISION, issued by ALAN W. HEIFETZ, Chief Administrative Law Judge, in HUDALJ 96-007-CMP, were sent to the following parties on this 25th day of September, 1996, in the manner indicated:

Chief Docket Clerk

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