

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

In the Matter of

Hillside Apartments Inc.,
Respondent

HUDALJ 03-001-CMP
Decided: August 28, 2003

Todd P. Mailberger, Esquire
For the Government

Before: WILLIAM C. CREGAR
Administrative Law Judge

DEFAULT DECISION AND ORDER

On June 30, 2003, the Secretary of the United States Department of Housing and Urban Development (“HUD”) through the Departmental Enforcement Center filed a Complaint seeking civil money penalties of \$55,000 against Hillside Apartments, 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 timely 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. Copies of the Complaint were sent to the Respondent’s President, Treasurer, Statutory Agent, Board Vice President and the Vice President. Respondent failed to file an answer. On July 14, 2003, I issued an Order to Show Cause why Respondent failed to timely file an answer to the complaint. The Order to Show Cause states: *Failure timely to comply with this Order shall be deemed consent by Respondent to the entry of a determination by default and the award of a civil money penalty in the amount of \$55,000.* To date, Respondent has neither filed an answer to the complaint, nor responded to the Order to Show Cause.

Accordingly, I issue this determination by default and award a civil money penalty in the amount of \$55,000.

Findings of Fact¹

1. Respondent is a nonprofit corporation and owner of Hillside Apartments with a registered office in Cincinnati, Ohio. Respondent owns the Project, a multi-family housing project financed with a loan insured against default by HUD under Section 221(d) of the National Housing Act, 12 U.S.C. § 1713. In exchange for receiving the benefits of a loan insured by HUD, C. Scott Clark, President of Hillside Apartments, Inc. executed a Regulatory Agreement with the Department on March 2, 1972. Complaint, ¶¶ 2, 7.

2. In the Regulatory Agreement, Respondent agreed to certain controls over the management and operation of the Project. Paragraph 10(e) 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. The Project's fiscal year ends on April 30, therefore, the audited financial statement is due June 29th of the same year. Consequently, the audited financial statement for fiscal year 1997 was due on June 29, 1997. The audited financial statement for fiscal year 1998 was due on June 29, 1998, but pursuant to a HUD-approved six month extension, the due date was December 29, 1998. Complaint, ¶ 9.

4. The audited financial statements for fiscal years 1997 and 1998 were never submitted by Respondent. Complaint, ¶ 10.

5. Respondent's failure to provide the audited financial statements to HUD for fiscal years 1997 and 1998 violates paragraph 10(e) of the Regulatory Agreement. Complaint, ¶ 11.

6. On October 13, 1999, HUD provided Respondent with a written notice ("Notice") that it intended to seek civil money penalties against Respondent because of its failure to submit, in a timely manner, the required audited financial statements for fiscal years 1997 and 1998. Complaint, ¶ 12.

¹HUD regulations provide that a default shall constitute an admission of all facts alleged in HUD's Complaint, as well as Respondent's waiver to any right to a hearing on these allegations. 24 C.F.R. § 26.39(c).

7. The Notice offered Respondent an opportunity to reply in writing within thirty days of receipt. The Notice was sent by Federal Express to Althea Rogers. The Federal Express tracking sheet indicates that the Notice was received on October 29. Complaint, ¶ 13.

8. After the expiration of Respondent's 30 days to respond, HUD's Assistant Secretary for Housing-Federal Housing Commissioner, William C. Apgar ("Assistant Secretary"), reviewed the allegations against Respondent and considered the following factors set forth in 24 C.F.R. § 30.80, in determining whether to seek a civil money penalty: 1) the gravity of Respondent's offense; 2) Respondent's history of prior offenses; 3) Respondent's ability to pay the penalty; 4) the injury to the public; 5) the benefits received by Respondent; 6) the extent of potential benefit to other persons; 7) the deterrence of future violations; 8) the degree of Respondent's culpability; 9) any injury to tenants; and 10) any injury to lot owners. Complaint ¶ 15.

9. After considering the factors above, the Assistant Secretary determined that it was appropriate to seek civil money penalties against Respondent for failure to submit the audited financial statements within 60 days of the end of the fiscal years 1997 and 1998. Complaint ¶ 16.

10. The Assistant Secretary determined that a civil money penalty should be imposed pursuant to 12 U.S.C. § 1735f-15(c)(1)(B)(x) and 24 C.F.R. § 30.45(b), and that civil penalties totaling \$55,000 were appropriate: \$27,500 each for Respondent's failure to timely submit both 1997 and 1998 statements in violation of Paragraph 10(e) of the Regulatory Agreement. Complaint, ¶¶ 17-18.

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 in a timely manner, 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 respond to the Order to Show Cause, and therefore is

in default. *See* 24 C.F.R. §§ 26.37; 26.38; 30.90(b). Pursuant to 24 C.F.R. §§ 30.90 and Paragraph 2 of the July 14, 2003, Order to Show Cause it is

ORDERED, that

(1) 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.

WILLIAM C. CREGAR
Administrative Law Judge

Dated: August 28, 2003

CERTIFICATE OF SERVICE

I hereby certify that copies of this DEFAULT DECISION AND ORDER, issued by WILLIAM C. CREGAR, Administrative Law Judge, in HUDALJ case No. 03-001-CMP, were sent to the following parties on this 28TH day of August, 2003, in the manner indicated:

Chief Docket Clerk

REGULAR MAIL:

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Hillside Apartments
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2003 Auburn Avenue
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Terri T. Pate, Statutory Agent
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