

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

In The Matter of:

JEROME TERRACE
ASSOCIATES,

Respondent.

HUDALJ 01-115-CMP
Decided: March 12, 2001

Elissa O’Leary, Esquire
For the Government

Before: WILLIAM C. CREGAR
Acting Chief Administrative Law Judge

DEFAULT DECISION AND ORDER

On December 15, 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 \$27,500 against Jerome Terrace Associates (“Respondent”), pursuant to 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 an audited annual financial statement to HUD for fiscal year 1996, 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 December 18, 2000, but failed to file an answer.

On January 17, 2001, 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 Jerome Terrace Apartments, a multi-family apartment complex. The property was financed with a loan insured against default by HUD under Section 221(d)(4) of the National Housing Act. In exchange for receiving the benefits of a loan insured by HUD, Respondent executed a Regulatory Agreement with HUD dated April 3, 1981. Complaint, ¶¶ 7 and 8.

2. In the Regulatory Agreement, Respondent agreed to certain controls over the management and operation of the apartment complex. Paragraph 12(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, ¶ 9.

3. Respondent failed to submit the statement for fiscal year 1996. Complaint, ¶ 11.

4. Respondent's failure to provide the statement violates paragraph 12(e) of the Regulatory Agreement. Complaint, ¶ 12.

5. On October 31, 1997, 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 statement. Complaint, ¶ 13.

6. HUD did not receive a response to the Notice. Complaint, ¶ 15.

7. HUD's officials of the Enforcement Center reviewed the allegations against Respondent. The Acting Director of the Enforcement Center 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, it was determined that a civil penalty of \$27,500 for failure to submit a financial statement for fiscal year 1996 should be imposed on Respondent, pursuant to 12 U.S.C. § 1735f-15(c)(1)(B)(x) and 24 C.F.R. § 30.45(b). Complaint, ¶¶ 16-18.

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).

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 an audited financial report for fiscal year 1996. After consideration of appropriate factors, HUD issued the Notice, and later, the Complaint seeking an order imposing a civil money penalty of \$27,500. *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 January 17, 2001. 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 \$27,500, 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 01-115-CMP, were sent to the following parties on this 12th day of March 2001, in the manner indicated:

Chief Docket Clerk

REGULAR MAIL:

Mr. Mitchell Feldman
Jerome Terrace Associates
114 Old Country Road
Suite LL96
Mineola, New York 11501

INTEROFFICE MESSENGER:

Elissa O'Leary, Esq.
Departmental Enforcement Center
U.S. Department of Housing and
Urban Development
1250 Maryland Avenue, S.W.
Suite 200 - Portals Building
Washington, DC 20024

Tammie M. Parshall, Docket Clerk
Departmental Enforcement Center
U.S. Department of Housing and
Urban Development
1250 Maryland Avenue, S.W.
Suite 200 - Portals Building
Washington, DC 20024