

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

In The Matter of:

PABON, LLC,

Respondent.

HUDALJ 02-019-CMP
Decided: January 21, 2003

Ann M. Johnson, Esquire
For the Government

Before: ARTHUR A. LIBERTY
Chief Administrative Law Judge

DEFAULT DECISION AND ORDER

On August 9, 2002, the Secretary of the United States Department of Housing and Urban Development (“Secretary of HUD”) through the Departmental Enforcement Center filed a Complaint seeking civil money penalties of \$55,000 against Pabon, LLC, (“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 1999, and 2000, 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 August 12, 2002, but failed to file an answer.

On November 27, 2002, HUD served a Motion for Default Judgment on Respondent. Respondent failed to respond to the Motion. Accordingly, this Default Decision and Order is granted.

Findings of Fact¹

¹HUD regulations provide that a default shall constitute an admission of all facts alleged in HUD’s

1. Respondent is the owner of the Project, a multi-family housing project located in Brickstown New Jersey. The Project was constructed and financed with a loan insured against default by HUD under Section 232 of the National Housing Act, 12 U.S.C. § 1701. In exchange for receiving the benefits of a loan insured by HUD, Respondent executed a Regulatory Agreement with HUD. Complaint, ¶ 7.

2. In the Regulatory Agreement, Respondent agreed to certain controls over the management and operation of the project. Section 9(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 December 31. The audited financial report for fiscal year 1999 was due on May 31, 2000. The fiscal year 2000 audited financial report was due on March 31, 2001. Complaint, ¶ 9.

4. The audited financial statements for fiscal years 1999 and 2000 were not submitted by Respondent on or before their due dates. Complaint, ¶ 10.

5. Respondent's failure to provide the audited financial statements to HUD on time violates section 9(e) of the Regulatory Agreement. Complaint, ¶ 11.

6. On February 15, 2002, 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 1999 and 2000. Complaint, ¶ 12.

7. The Notice offered Respondent an opportunity to reply in writing within thirty days of receipt. Respondent submitted a timely written response to the Notice. Complaint, ¶¶ 13-14.

8. The Director of HUD's Departmental Enforcement Center, as the designee of the Assistant Secretary for Housing-Federal Housing Commissioner, reviewed the allegations against Respondent and 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

Complaint, as well as Respondent's waiver to any right to a hearing on these allegations. 24 C.F.R. § 26.39(c).

deterrence of future violations. After consideration of those factors, it was determined that, pursuant to 12 U.S.C. § 1735f-15(c)(1)(B)(x) and 24 C.F.R. § 30.45(b), civil penalties totaling \$55,000 were appropriate: \$27,500 for Respondent's failure to timely submit the 1999 statement; and \$27,500 for Respondent's failure to timely submit the 2000 statements.
Complaint, ¶¶ 15-18.

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 1999 and 2000. 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 therefore is in default. *See* 24 C.F.R. §§ 26.37; 26.38; 30.90(b). HUD filed a Motion for Default Judgment, dated November 27, 2002. 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 \$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.

ARTHUR A. LIBERTY
Chief Administrative Law Judge

I hereby certify that copies of this DEFAULT DECISION AND ORDER, issued by ARTHUR A. LIBERTY, Chief Administrative Law Judge, HUDALJ 02-019-CMP, were sent to the following parties on this 21st day of January, 2003, in the manner indicated:

Chief Docket Clerk

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