

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

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT,

Complainant,

v.

SEBASTIAN J. RICCO,

Respondent.

HUDALJ 08-025-LBP/CMP
OGC Case No. 2008-01-LBP/CMP

November 3, 2008

INITIAL DECISION ON MOTION FOR SANCTIONS

This matter is before the Court pursuant to the Lead Hazard Reduction Act, 42 U.S.C. § 4851 *et seq.*, (the “Act”). The Act’s implementing regulations are found at 24 C.F.R. Part 35.

The Complainant served on the Respondent a complaint (dated December 14, 2007) seeking civil money penalties in the amount of \$990,000.00, for violation of Section 1018 of the Lead Hazard Reduction Act, 42 U.S.C. § 4852d, and 24 C.F.R. Part 35, Subpart A.

The Respondent replied by letter (dated December 27, 2007) denying liability, maintaining that he believed he was in compliance with the Lead Disclosure Rule, and asserting numerous mitigating factors possibly bearing upon penalty determination.

Because the reply amounted to a request for a hearing, on February 21, 2008, the matter was referred to the Office of Administrative Law Judges for adjudication. A predecessor Administrative Law Judge sought to schedule a pre-hearing conference, but efforts to contact the Respondent were unsuccessful. The Judge issued a Notice of Hearing on August 13, 2008, with requirements for pre-hearing exchange, but the Respondent did not respond. On August 20, 2008, the Complainant moved for a continuance to conduct discovery and communicate with the Complainant. The Respondent’s copy of that motion was returned by the Post Office as unclaimed and undeliverable.

On September 30, 2008, Plaintiff moved for sanctions based upon Respondent’s failure to defend the action, as authorized by 24 C.F.R. § 26.36(d), pointing out that Respondent has been repeatedly warned that failure to respond and comply with the predecessor Judge’s Notice of Hearing and Order Regarding Prehearing Procedures.

On October 6, 2008, the Court issued an Order to Show Cause to the Respondent noting his apparent failure to respond to communications after his initial reply letter to the Complainant. That Order pointed out the potential consequences of failure to respond, including immediately issuing a default order resolving the facts against the Respondent, and entering a judgment against him for up to \$990,000. However, due to the serious consequences to you of such an order and judgment, the Court afforded the Respondent one last chance to comply with the August 13, 2008, Order Regarding Prehearing Procedures.

The Court advised the Respondent that he might also address the facts in the complaint, the amount of penalties sought, his ability to pay the penalties and any other matters he believe important for the Court to consider in its decision. The Respondent was afforded until October 23, 2008, to respond to the Court's Show Cause Order. The Respondent has not responded to the Order Regarding Prehearing Procedures Complaint, the Motion for Sanction, nor the Court's Show Cause Order.

Accordingly, the Court finds the Respondent in default. Notwithstanding the Respondent's initial denial of liability or his belief that he was in compliance with the Lead Disclosure Rule, his repeated failure to respond have waived his opportunity for a hearing to contest Plaintiff's or present his own on the issue of liability, or to present evidence to establish his initial assertion of mitigating factors bearing upon the penalty determination.

The counts set forth in the complaint, based upon the asserted and uncontested facts are, on their face, sufficient to establish the allegations. Pursuant to the Respondent's default, the Court finds the Respondent in violation of the Lead Hazard Reduction Act, 42 U.S.C. § 4852d, by his failure to comply with 24 C.F.R. § 35.92(b)(1) (Counts 1-18 of the Complaint); 24 C.F.R. § 35.92(b)(2) (Counts 19-36 of the Complaint); 24 C.F.R. § 35.92(b)(3) (Counts 37-54 of the Complaint); 24 C.F.R. § 35.92(b)(4) (Counts 55-72 of the Complaint); and 24 C.F.R. § 35.92(b)(6) (Counts 73-90 of the Complaint). Absent any evidence to corroborate the mitigating factors asserted by Respondent, the Court imposes the maximum penalty of \$990,000.00.

So ORDERED, this 3rd Day of November, 2008.

[signed]

J. Jeremiah Mahoney
Administrative Law Judge