

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

In The Matter Of:

SPRAGUE REALTY
CORPORATION,

Respondent.

HUDALJ 01-045-CMP
Decided: April 23, 2001

R. Rene Dupuy, Esq.

For the Government

Before: WILLIAM C. CREGAR
Acting Chief Administrative Law Judge

DEFAULT DECISION AND ORDER

On January 29, 2001, 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 \$27,500 against Sprague Realty Corporation ("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 timely to submit an audited annual financial statement to HUD for fiscal year 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. Respondent received a copy of the Complaint on February 8, 2001, but failed to file an answer.

On March 27, 2001, HUD served a Motion for Default Judgment on Respondent. To this date, Respondent has failed to respond to the Motion. Accordingly, this Default Decision and Order is granted.

Findings of Fact¹

1. Respondent is the owner of Sprague Apartments, a multi-family housing project located in Lawrence, Massachusetts. The property was financed with a loan insured against default by HUD under Sections 207 and 223(f) of the National Housing Act, 12 U.S.C. §1713. In exchange for receiving the benefits of a loan insured by HUD, Respondent executed a Regulatory Agreement on January 10, 1997. Complaint, ¶¶ 7, 8.

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

3. The project's fiscal year ends on December 31, therefore, the audited financial statement is due March 1 of the following year. HUD extended this date to August 31, 1999, for submission of the FY98 statement. Consequently, the audited financial statement was due on August 31, 1999. Complaint, ¶ 10.

4. The audited financial statement for fiscal year 1998 was not submitted by Respondent on or before its due date. Complaint, ¶ 11.

5. Respondent's failure to provide the audited financial statements to HUD on time violates paragraph 9(e) of the Regulatory Agreement. Complaint, ¶ 12.

6. On October 2, 2000, 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 statement for fiscal year 1998. Complaint, ¶ 13.

7. The Notice offered Respondent an opportunity to reply in writing within thirty days of receipt. HUD has not received a written response to the Notice. Complaint, ¶¶ 14-15.

8. The Director of HUD's Departmental Enforcement Center, as the Designee of the Assistant Secretary for Housing-Federal Housing Commissioner reviewed the

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).

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 deterrence of future violations. After consideration of those factors, the Designee determined that a civil penalty in the amount of 27,500 was appropriate. Complaint, ¶¶ 16-18.

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 an audited financial report for fiscal year 1998. 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; 30.90(b). HUD filed a Motion for Default Judgment which was received by this Office on March 28, 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, in HUDALJ 01-045-CMP, were sent to the following parties on this 23rd day of April, 2001, in the manner indicated:

Chief Docket Clerk

REGULAR MAIL:

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