

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

The Secretary, United States Department of Housing
and Urban Development, on behalf of:

BEVERLY DITTMAR and her minor children;

Charging Parties,

v.

ELITE PROPERTIES OF IOWA, LLC. and
ROBERT K. MIELL,

Respondents.

HUDALJ 09-M-113-FH-40

December 21, 2009

RULING GRANTING MOTION FOR DEFAULT JUDGMENT

On November 19, 2009, the Secretary of Housing and Urban Development (the “Secretary”), through his Counsel, filed a Motion for Default (the “Secretary’s Motion”) against Respondents Elite Properties of Iowa, LLC (“Elite Properties”) and Robert K. Miell. For the reasons stated below, the Secretary’s Motion for Default is **GRANTED**.¹

LEGAL FRAMEWORK

The Respondents stand charged with unlawful discrimination in violation of Section 810(g)(2) of the Fair Housing Act. That section makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by Sections 803, 804, 805, or 806 of the Act.

Under 24 C.F.R. § 180.420(b), failure by Respondent[s] to file an answer within the 30-day period following service of the charge or notice of proposed adverse action shall be deemed an admission of all matters of fact recited therein and may result in the entry of a default decision against Respondent[s].

¹ As a consequence, the hearing ordered by this Court’s Notice of Hearing and Order, dated October 23, 2009, shall be limited to the introduction of evidence as evidence establishing damages and the appropriate civil penalty.

PROCEDURAL HISTORY

This matter was initiated on September 28, 2009, by the Secretary on behalf of Beverly Dittmar and her minor children [collectively “Complainants”], by the filing of a Charge of Discrimination against named Respondents, Elite Properties and Robert K. Miell. The Charge of Discrimination (the “Charge”) was brought pursuant to 42 U.S.C. § 3610(g)(2) of the Fair Housing Act as amended in 1988 (the “Act”). The Charge alleges, among other things, that Respondents violated Section 3617 of the Act based on retaliation by attempting to terminate Complainant’s tenancy after she exercised her right to file a fair housing complaint.

Pursuant to 24 C.F.R. § 180.400, service of filed documents on parties may be made by first-class mail or overnight delivery at the last known address. The Charge and Important Notice were served on Respondents Elite Properties and Robert K. Miell via the United States Postal Service (“USPS”) Certified Mail, return receipt requested, and by Federal Express at the following addresses:

1. Elite Properties of Iowa, LLC
c/o Robert K. Miell, Registered Agent
1855 1st Ave SE
Cedar Rapids, IA 52402
2. Elite Properties of Iowa, LLC
c/o Renee K . Hanrahan, Bankruptcy Trustee
1956 1st Ave NE, Suite C
Cedar Rapids, IA 52402
3. Robert K. Miell
1956 1st Ave NE, Suite C
Cedar Rapids, IA 52402
4. Robert K. Miell
c/o Linn County Correctional Center
53 3rd Avenue Bridge
Cedar Rapids, 52402

The above listed addresses were obtained by HUD employees during the course of their investigation. The first address is the address listed on the Iowa Secretary of State’s website for Respondent Elite Properties’ Registered Agent, Respondent Miell. (*Id.* at Ex. 5.) The second and third addresses refer to the office space currently used by Respondent Elite Properties. The fourth address is where Respondent Miell is currently incarcerated.² (*Id.* at Ex. 7.)

The USPS delivery tracking system confirmed delivery of the packages containing the Charge and Important Notice addressed to Respondents at the four above addresses. (Charging Party’s Motion for Default, dated November 18, 2009, Ex. 4.) Federal Express confirmed delivery of the packages containing the Charge and Important Notice addressed to Respondents

² Mr. Miell was at that time incarcerated awaiting sentencing on federal convictions including mail fraud, tax fraud, and perjury.

at the four above addresses on the morning of September 29, 2009. (*Id.* at Ex. 3a-d.) Additionally, the Linn County Correctional Facility confirmed that Respondent Miell received the delivery from HUD on September 30, 2009. (*Id.* at Ex. 8.)

Respondents were required to file their answer(s) within 30 days after service of the Charge. Failure to file an answer within the 30-day period following service of the charge or notice of proposed adverse action shall be deemed an admission of all matters of fact recited therein and may result in the entry of a default decision. Respondents' Answer was due on or before November 1, 2009. Respondents failed to provide any answer to the Charge. Thus, the Secretary's Motion for Default is ripe for ruling.³

ORDER

Accordingly, it is **ORDERED** that:

(1) the Government's MOTION FOR DEFAULT JUDGMENT is **GRANTED**. The Respondents are deemed to have admitted the matters of fact recited in the Charge of Discrimination;

(2) evidence on damages and the civil penalty, shall be taken in an administrative hearing pursuant to 42 U.S.C. § 3612(b) and the regulations at 24 C.F.R. Part 180.

/S/

J. Jeremiah Mahoney
Administrative Law Judge

³ Respondent Miell's incarceration was considered and rejected by this Court as adequate cause to extend the period to respond. Respondents were advised in the Notice of Hearing and Order that pursuant to 24 C.F.R. § 180.420(b), failure to file an answer within the 30-day period following service of the charge or notice of proposed adverse action shall be deemed an admission of all matters of fact recited therein and may result in the entry of a default decision against Respondent[s] (note1). The Linn County Correctional Facility confirmed delivery of the Charge and "Important Notice" to Respondent Miell on September 30, 2009. Respondent's Answer was due on or before November 1, 2009, but Respondents made no such answer, even though the Court provided in its October 23, 2009 Notice of Hearing and Order for reasonable alternatives to an in-person hearing (note 2).

