

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

UNITED STATES DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT,

Petitioner,

v.

SHIRLEY V. LEVY,

Respondent.

HUDALJ 11-M-055-PF-15

November 8, 2011

DEFAULT JUDGMENT AND ORDER

The above-entitled matter is before this Court on a Motion for Default Judgment against Respondent Shirley V. Levy (“Respondent”). The Motion was filed on October 14, 2011 by the United States Department of Housing and Urban Development (“HUD” or “the Government”). Respondent did not file an answer to the Government’s initial complaint.¹ Additionally, Respondent has not responded to the present motion.² Accordingly, the Motion for Default Judgment will be **GRANTED**.

On August 18, 2011, HUD, through its Office of General Counsel, filed a complaint (“Complaint”) against Respondent seeking a civil penalty and assessment totaling \$251,716.14 pursuant to the Program Fraud Civil Remedies Act of 1986 (“PFCRA”), 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28. The Complaint charges that Respondent made a claim to HUD that she knew or had reason to know was false and fraudulent, supported by a materially false and fraudulent statement. (Compl. 6.) As required by 24 C.F.R. § 28.25, the Complaint notified Respondent of her right to request a hearing to contest the imposition of the civil penalty and assessment by filing a written response within 30 days of receiving the Complaint. (*Id.* at 7.) The Complaint stated that the response “must include: (a) the admission or denial of each allegation of liability made in this Complaint; (b) any defense on which you intend to rely; (c) any reasons why the civil penalty and assessment should be less than the amount set forth in this Complaint.” (*Id.*) The Complaint also informed Respondent that if she did not submit a response within the 30-day

¹ Respondent submitted a handwritten letter to the Court, received September 12, 2011, indicating her house was purchased in 1950. She further stated that, on August 28, 2005, she left Mississippi for 309 Wallace Drive (her property in New Orleans, Louisiana). Respondent states she was there on August 29, 2011, when her house and car were submerged up to her knees in water, presumably because of the effects of hurricane Katrina. The Court treated the letter as a request for a hearing, but in the Notice of Hearing and Order directed Respondent to answer the allegations in the Complaint. When no answer was timely filed, a law clerk sent Respondent a letter on October 5, 2011, explaining that she needed to personally, or by representative, answer the allegations in the Complaint, and urging her to provide telephone contact information so HUD counsel could contact her or her representative to discuss the matter.

² A Respondent is allowed 10 days to respond to a default motion. 24 C.F.R. § 26.41(a). Allowing for 3 days mail time both ways, Respondent’s reply should have been received on or before October 31, 2011.

timeframe, “HUD may file a motion for default judgment,” which would constitute an admission of all facts alleged in the Complaint. (Id. at 8.)

A copy of the Complaint was served on Respondent via the U.S. Postal Service, Certified Mail, sent on August 18, 2011. Respondent received the Complaint on August 22, 2011. On September 12, 2011, Respondent submitted a letter to the Court (“Respondent’s Letter”) describing the course of events during and immediately after Hurricane Katrina’s landfall on August 29, 2005. (Resp’t’s Letter, filed Sept. 12, 2011.) The letter did not refer to the allegations of the complaint, but spoke of Respondent’s hardships and homelessness following Hurricane Katrina, and her age and family status, all of which evoke sympathy, but none of which mitigate the seriousness of her alleged false claims for government benefits to which she was not entitled. (Id.)

On August 25, 2011, this Office issued a letter to Respondent (the “August 25 Letter”) explaining the role of the Office of Administrative Law Judges. (Letter to Resp’t, dated Aug. 25, 2011.) The letter informed Respondent of the 30-day window to request a hearing, described the information that must be included in a sufficient Response, and stated that, “[I]f you do not submit a timely response, the Government may seek a default judgment, which would be immediately due and payable by you.” (Id.)

On September 16, 2011, this Court issued a Notice of Hearing and Order (“Notice”), in which Respondent was ordered to file a Response admitting or denying each allegation in the Complaint or setting forth any affirmative defenses or mitigating factors. (Notice of Hr’g and Order 2.) The Notice stated that the completed Response “must be received by the Docket Clerk on or before September 30, 2011.” (Id.) No Response was received by that date, and Respondent has yet to file such a Response.

On October 5, 2011, this Office issued a second letter to Respondent, and included as attachments copies of both the August 25 Letter and the Notice. (Letter to Resp’t, dated Oct. 5, 2011). This second letter reiterated that Respondent’s Letter of September 8, 2011 “is not a sufficient response because it does not specifically admit or deny each allegation made in the Complaint and does not offer any defenses or reasons why the penalties and assessments sought by HUD should not be imposed.” (Id.) Once again, Respondent was informed that, “If HUD does not receive a sufficient response from you, it may ask the judge for a default judgment against you, making you immediately liable for the full requested civil penalty and assessment of \$251,716.14.” (Id.)

Part 28 of Title 24 of the Code of Federal Regulations outlines the appropriate procedures for imposing civil penalties and assessments against those who violate the Program Fraud Civil Remedies Act of 1986. Section 28.30 states that a Respondent “may file a written response to the complaint, in accordance with § 26.30 of this title, within 30 days of service of the complaint,” and that the response “shall be deemed to be a request for a hearing.” 24 C.F.R. § 28.30(a) (2010); see also 31 U.S.C. § 3803(d) (2006); 24 C.F.R. § 26.38 (2010) (“The respondent’s response to the complaint shall be timely filed with the Docket Clerk and served upon the Government in accordance with the procedures set forth in the complaint.”).

In addition, the regulations state: “*Failure to respond.* If no response is submitted, HUD may file a motion for default judgment in accordance with § 26.41 of this title.” 24 C.F.R. § 28.30(b) (2010). Section 26.41 provides:

24 C.F.R. § 26.41 Default.

(a) General. The respondent may be found in default, upon motion, for failure to file a timely response to the Government's complaint. The motion shall include a copy of the complaint and a proposed default order, and shall be served upon all parties. The respondent shall have 10 days from such service to respond to the motion.

(b) Default order. The ALJ shall issue a decision on the motion within 15 days after the expiration of the time for filing a response to the default motion. If a default order is issued, it shall constitute the final agency action.

(c) Effect of default. A default shall constitute an admission of all facts alleged in the Government's complaint and a waiver of respondent's right to a hearing on such allegations. The penalty proposed in the complaint shall be set forth in the default order and shall be immediately due and payable by respondent without further proceedings.

24 C.F.R. § 26.41 (2010); see also 24 C.F.R. § 26.38 (2010) ("If the respondent fails to submit a response to the Docket Clerk, then the Government may file a motion for a default judgment in accordance with § 26.41.").

In the case at hand, Respondent filed a timely response which, in an abundance of caution, the Court treated as a request for a hearing. However, the response did not answer the complaint, and despite being afforded a further opportunity to answer the complaint, and being urged to discuss it with HUD counsel, Respondent failed to do so.

FINDINGS OF FACT

1. Respondent received the Government's Complaint on August 22, 2011.
2. Respondent was required to answer the Complaint in this matter on or before September 30, 2011, but did not answer the Complaint, nor respond to the subsequent Motion for Default Judgment.
3. Respondent is in default, as a result of which she is deemed to have admitted all facts alleged in the Government's Complaint.
4. As alleged in the Complaint, Respondent made a claim on December 27, 2007, when she executed closing documents giving title to her property at 309 Wallace Drive, in exchange for a grant of \$129,108.07.
5. As alleged in the Complaint, the claim was fraudulent because Respondent's assertion that she occupied the 309 Wallace Drive property as her primary residence as of August 29, 2005 was false, and thus she was not entitled to those grant funds.
6. Respondent's response detailed her hardships suffered during hurricane Katrina, but has offered no affirmative defenses or mitigating factors relevant to the allegations.

7. Based upon the allegations admitted by default and the absence of an affirmative defense or mitigating factors, the penalty proposed in the Complaint must be imposed.

CONCLUSIONS OF LAW

By reason of the facts admitted by Respondent, Respondent has committed a knowing and material violation of 31 U.S.C. § 3802(a)(1)(A)-(B) and 24 C.F.R. § 28.10(a)(1)(i)-(ii), for which a civil penalty and an assessment may be imposed.

Respondent is liable for a civil penalty of \$6,500.00 for the false claim.

Respondent is also liable for an assessment of \$258,216.14 (twice the amount claimed), less the \$13,000.00 recouped by HUD upon resale of the ineligible property, for a total assessment of \$245,216.14.

ORDER

Accordingly, the Government's Motion for Default Judgment is GRANTED;

Respondent Shirley Levy shall pay a civil penalty of \$6,500.00, and an assessment of \$245,216.14 to HUD, for a total amount of \$251,716.14, which penalty and assessment are due and payable immediately, without further proceedings.

So **ORDERED**,

J. Jeremiah Mahoney
Administrative Law Judge

Notice of Appeal Rights. This Order constitutes the final agency action. 24 C.F.R. § 26.41(b). Respondent Levy may seek judicial review of this Order as provided in 31 U.S.C. § 3805.

