

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

UNITED STATES DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT,

Petitioner,

v.

LOUIS J. ABATE, JR.,

Respondent.

15-JM-0047-PF-007

August 11, 2015

DEFAULT JUDGMENT AND ORDER

This case arises from the *Complaint* filed by the United States Department of Housing and Urban Development (“HUD” or “Department”) against Louis J. Abate, Jr. (“Respondent”), whereby HUD sought 25 penalties and an assessment under 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* alleges the Respondent, in violation of requirements of the Housing Choice Voucher Program (“Voucher Program”), submitted 25 false claims totaling \$122,250.

Legal Framework

Under the PFCRA, liability may be imposed on a person who makes, presents, submits, or causes to be made, presented or submitted, a claim to the Department that the person knows or has reason to know is for payment for the provision of property or services which the person has not provided as claimed. See 31 U.S.C. § 3802(a)(1)(D). A claim includes any request, demand, or submission made to a recipient of property, services, or money from an authority or to a party to a contract with an authority for property or services if the United States provided any portion of the funds for the purchase of such property or services. See 31 U.S.C. § 3801(a)(3)(B)(i)(II),

Under the PFCRA, the maximum civil penalty for false, fictitious, or fraudulent claims made on or after March 8, 2007, is \$7,500 per claim. 24 C.F.R. § 28.10(a). In addition to a civil penalty, an assessment of twice the amount of the claim(s) may be

imposed on a person if the Department has made any payment or transferred property on the claim. 31 U.S.C. § 3802(a)(1) and (3); 24 C.F.R. § 28.10(a)(6),

Program Background

The program involved in this case is the Voucher Program, through which HUD pays subsidies to public housing agencies (“PHAs”), which in turn pay subsidies to rental housing owners/landlords so that eligible tenants can afford decent, safe and sanitary housing. 24 C.F.R. § 982.1(a),

Process

HUD filed the *Complaint* in this matter on March 2, 2015. No answer was received from Respondent by May 20, 2015, when the Government moved for default judgment. On that date this Court denied the *Government’s Motion for Default Judgment* citing concerns regarding adequacy of proof of service of process of the *Complaint*.

On June 12, 2015, the Government personally served Respondent with the *Complaint* at his residence in North Massapequa, NY. Respondent did not file an answer.

On July 22, 2015, the Government filed the *Government’s Second Motion for Default Judgment*. To date, Respondent has not filed an answer to the *Complaint*, or a timely response to either *Motion for Default Judgment*.

Pursuant to 24 C.F.R. § 28.30(b), the respondent must submit a written response to a PFCRA complaint, which shall be deemed to be a request for a hearing, to HUD and the Office of Hearings and Appeals no later than thirty days following service of a complaint.

If a respondent does not timely file a request for hearing in response to the Department’s complaint, the Department is authorized to file a motion for default judgment, attaching to it a copy of the complaint, as set forth at 24 C.F.R. §§ 28.30(b) and 26.41(a).

Respondent may be found in default for failure to file a timely response to the Government’s *Complaint*. 24 C.F.R. § 26.41(a).

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. 24 C.F.R. § 26.41(c).

Findings of Fact

1. The factual findings stated in the preceding “Process” section are incorporated herein by reference. In the absence of an answer by Respondent, the facts alleged in the *Complaint* are deemed admitted.

2. Respondent was formerly the Program Coordinator and Fiscal manager for the Nassau County Office of Housing and Community Development (“Nassau County Housing”) in the State of New York.

3. Between May 2009 and August 2011, Nassau County Housing administered the Voucher Program in Nassau County.

4. While some townships in Nassau County operate their own PHAs, Nassau County Housing is solely responsible for administering Voucher Program funding to participants who reside in the Village of Island Park.

5. In order to accomplish this, Nassau County Housing created and oversaw the operations of the Island Park PHA.

6. Between May 2009 and August 2011, HUD directly funded the Voucher Program at the Island Park PHA with federal funds.

7. Respondent and others were tasked with overseeing the day-to-day operation of the Voucher Program at the Island Park PHA.

8. The oversight included receiving Voucher Program applications from potential tenants and landlords, processing the applications, and disbursing Voucher Program funds to landlords pursuant to the Housing Assistance Payments (“HAP”) contracts.

9. Nassau County Housing officials established an account with Chase Bank in order to accept Voucher Program funds from HUD, and to disburse those funds to landlords of Voucher Program tenants.

10. Nassau County Housing officials retained Automatic Data Processing (“ADP”), a payroll administration company, to automatically issue the Island Park PHA’s Voucher Program payments to landlords each month upon the telephonic confirmation of Nassau County Housing.

11. From 2004 through 2011, Respondent was a Program Coordinator and the Fiscal Manager for Nassau County Housing.

12. In his role as Program Coordinator and Fiscal Manager, Respondent was responsible for overseeing the enrollment of participants in the PHA’s Voucher Program and the disbursement of funds to landlords of program participants.

13. As part of the funds disbursement function, Respondent telephonically contacted a representative at ADP to report, monthly, any changes in the Voucher Program disbursements to the PHA’s landlords.

14. Significantly, Respondent controlled ADP's release of Voucher Program funds from the PHA to the landlords.

15. Following Respondent's monthly verbal confirmation of payments due, ADP prepared paper checks payable to the landlords and mailed those checks to the PHA.

16. The PHA mailed the checks to the landlords.

17. In November 2011, PHA officials alerted HUD to the fact that checks were being issued to a landlord, J.M. Watson, who could not be matched with a Voucher Program tenant.

18. When questioned, Respondent denied knowing J.M. Watson.

19. In fact, J.M. Watson is Respondent's spouse and Voucher Program checks issued by ADP for the PHA were deposited monthly into a bank account owned jointly by Respondent and his spouse.

20. Neither Respondent nor his spouse was a landlord renting a housing unit to a Voucher Program participant.

21. Respondent was terminated from his employment with the PHA in 2012.

22. Between May 2009 and August 2011, Respondent submitted 25 false claim for HUD Voucher Program funds totaling \$122,250, as described in the Presentence Investigation Report.

23. Respondent plead guilty in federal district court and did not dispute any of the facts included in the Presentence Investigation Report.

24. Respondent was sentenced to 18 months in prison, followed by supervised release and community service, and was ordered to pay restitution in the amount of \$122,250.

Penalty

Respondent's knowing and material submission of false statements in support of false claims to HUD in connection with the Voucher Program warrant HUD's proposed penalty finding Respondent liable for 25 civil penalties totaling \$187,500, plus an assessment of twice the amount of the falsely claimed amounts ($\$122,250 \times 2 = \$244,500$), less the \$122,250 in restitution ordered, for a total award of \$309,750 pursuant to the PFCRA, 31 U.S.C. § 3802(a), and 24 C.F.R. § 28.10.

Order

1. Pursuant to the foregoing, Respondent is hereby found in **DEFAULT**, and the Department's *Second Motion for Default Judgment* will be **GRANTED**.

2. Based upon the foregoing findings of fact, Respondent is liable for twenty-five false claims made between May 2009 and August 2011. 24 C.F.R. § 28.10(e).

3. As this order results from a default, the penalty proposed in the *Complaint* must be set forth in the default order. Respondent shall pay to HUD civil penalties and assessments totaling \$309,750. Such amount is due and payable immediately without further proceedings. 24 C.F.R. § 26.41(c).¹

So **ORDERED**,



J. Jeremiah Mahoney
Chief Administrative Law Judge (Acting)

¹ This Order constitutes the **FINAL AGENCY ACTION**. 24 C.F.R. § 26.41(b). Judicial review may be available in accord with applicable statutory procedures and the procedures of the appropriate federal court. 24 C.F.R. § 26.54; 31 U.S.C. § 3805.