

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 23-1812

THE SECRETARY, UNITED STATES DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT, ON BEHALF OF LAWRENCE J. CHRUM
AND HIS MINOR CHILDREN,

Petitioner

v.

FELDER PETER KING ESTATE OF WARD PROTECTEE, DANIEL J.
FELDER, ANDREA WILLIAMS, AND ERIC FELDER,

Respondents

THE SECRETARY'S MOTION FOR SUMMARY
ENFORCEMENT OF THE FINAL AGENCY ORDER

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure, the Secretary of the United States Department of Housing and Urban Development (HUD), moves this Court for summary enforcement of the final agency order entered on January 6, 2023. Felder's answer to the Secretary's application for enforcement of the final agency order is effectively a petition for this Court's review of that order that this Court should dismiss as untimely. Accordingly, the Court should summarily enforce the final agency order without the additional briefing it has ordered.

1. On January 6, 2023, HUD issued a final order in this case. The final order affirmed the Administrative Law Judge's (ALJ's) Initial Decision and Order (Initial Decision) finding that respondents Estate and Eric Felder violated Sections 804(a) and 804(c) of the Fair Housing Act (FHA or Act), 42 U.S.C. 3604(a) and 3604(c), by refusing to rent to complainant Lawrence Chrum because of his familial status, and by making discriminatory statements relating to respondent Estate's refusal to rent to Chrum based on his familial status. The final order also affirmed the ALJ's award of \$10,200 in damages to Chrum and his two minor children and assessment of \$5,500 in civil penalties to the government.

2. The FHA provides that "any party aggrieved by a final order for relief" may obtain judicial review of that order in the federal court of appeals by filing a petition for review that "shall be not later than 30 days after the order is entered." 42 U.S.C. 3612(i). Neither respondent Eric Felder nor any of the other respondents petitioned this Court for review of the HUD final order by the February 6, 2023, deadline. Respondents also failed to respond to HUD's March 21, 2023, Notice Requesting Payment or to pay the ordered damages and civil penalties.

3. On April 19, 2023, the Secretary submitted an application for enforcement of the final agency order. Because respondents did not petition this Court for review of the Secretary's final decision within 45 days of its issuance, the

HUD ALJ's findings of fact and the Secretary's final decision are conclusive in connection with this application. See 42 U.S.C. 3612(l); 24 C.F.R. 180.710(b).

4. On the same day the Secretary submitted the application for enforcement to this Court, the Court issued an appeal briefing schedule order. The order set the due date for respondents to file an answer to the Secretary's application at May 11, 2023, and the due date for HUD to file the record at May 30, 2023. The order also set the due date for respondents to file their opening brief at June 13, 2023, the due date for the Secretary to file a response brief at 30 days from the date the opening brief is docketed, and the due date for respondents to file a reply brief at 21 days from the date the response brief is docketed.

5. On May 10, 2023, respondent Eric Felder, proceeding pro se, filed a timely answer to the Secretary's application for enforcement. The answer stated that Felder "ha[s] objected to this case brought against me and my disabled brother's estate from its inception" and "disagree[s] completely with [the ALJ's] decision and a subsequent decision that denied my appeal to that Office." Felder Answer 1. The answer further stated that "[t]his is my formal appeal to have the case and evidence revisited." Felder Answer 1. To that end, the answer attached several exhibits, including text messages between Felder and Chrum, that Felder alleged contravened Chrum's claims of housing discrimination by respondents based on familial status.

6. The answer’s language and request for relief make clear that Felder is a “party aggrieved by a final order for relief,” 42 U.S.C. 3612(i)(1), who is seeking, in effect, to petition this Court for review of the HUD final order more than three months past the February 6, 2023, statutory deadline, see 42 U.S.C. 3612(i)(2).

The Supreme Court “has long held that the taking of an appeal within the prescribed time is mandatory and jurisdictional” and that an appeal that a party fails to pursue “within the time limited by the acts of Congress * * * must be dismissed for want of jurisdiction.” *Bowles v. Russell*, 551 U.S. 205, 209, 213 (2007) (internal quotation marks and citations omitted). However, a procedural requirement such as a statutory deadline is “jurisdictional only if Congress clearly states that it is,” as evinced by “traditional tools of statutory construction.”

Boechler, P.C. v. Commissioner of Internal Revenue, 142 S. Ct. 1493, 1497 (2022) (internal quotation marks and citations omitted).

7. The FHA’s requirement that the filing of a petition for review from a HUD final order “shall be not later than 30 days after the order is entered,” 42 U.S.C. 3612(i)(2), “clearly states” that its statutory deadline is mandatory and therefore jurisdictional. See *Maine Cmty. Health Options v. United States*, 140 S. Ct. 1308, 1320 (2020) (“Unlike the word ‘may,’ which implies discretion, the word ‘shall’ usually connotes a requirement.”) (citation omitted). This conclusion finds further support in this Court’s interpretation of the Hobbs Act, 28 U.S.C. 2341 *et*

seq., which provides the general framework for judicial review of administrative final orders, including HUD final orders. See 42 U.S.C. 3612(i)(1) (“Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought may obtain a review of such order under chapter 158 of Title 28.”); 28 U.S.C. 2342(6) (noting that the court of appeals “has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of * * * all final orders under section 812 of the Fair Housing Act”).

The Hobbs Act’s general statutory deadline provides that an aggrieved party “may, within 60 days after [the] entry” of an administrative final order, petition the court of appeals for review of that order. 28 U.S.C. 2344. This Court has held that the 60-day filing period is jurisdictional despite the statute’s use of the discretionary word “may.” See, *e.g.*, *Brown v. Nuclear Regul. Comm’n*, 644 F.3d 726, 727 (8th Cir. 2011) (per curiam). It follows that the more stringent FHA-specific statutory deadline should be interpreted as jurisdictional as well.¹

¹ In addressing petitions for review from administrative final orders in other contexts, this Court has found statutory language similar to Section 3612(i)(2) to be jurisdictional. See, *e.g.*, *Skurtu v. Mukasey*, 552 F.3d 651, 658 (8th Cir. 2008) (dismissing alien’s untimely petition for review for want of jurisdiction where petition for review must be filed not “later than 30 days after the date of the final order of removal”); *Simon v. Simmons Foods, Inc.*, 49 F.3d 386, 389 n.2 (8th Cir. 1995) (concluding that it lacked jurisdiction over untimely petition for review that must be filed “within sixty days of the Secretary’s final order”).

8. Felder's pro se status does not excuse him from complying with the Act's statutory deadline. Cf. *Bennett v. Dr Pepper/Seven Up, Inc.*, 295 F.3d 805, 808 (8th Cir. 2002) (concluding that plaintiff's "pro se status did not entitle him to disregard the Federal Rules of Civil Procedure, even without affirmative notice of the application of the rules to his case") (internal quotation marks and citation omitted). Indeed, Felder received notice of the deadline. The ALJ's Initial Decision, mailed to all respondents, notified them that "[a]ny party adversely affected by a final decision" may petition the court of appeals for review of the decision, and that "[t]he petition must be filed within 30 days after the date of issuance of the final decision." Initial Decision 14. Accordingly, this Court should dismiss Felder's "answer" for want of jurisdiction and summarily enforce the final agency order.

9. Even if this Court does not construe Felder's answer as an untimely petition for review warranting dismissal, summary enforcement of the final agency order is still appropriate. The HUD ALJ's factual findings and Secretary's final decision are conclusive in connection with the Secretary's application for enforcement because respondents failed to petition this Court for review of the Secretary's final decision within 45 days of its issuance. See 42 U.S.C. 3612(l); 24 C.F.R. 180.710(b). This rule precludes Felder from making any argument in his answer or subsequent briefs challenging the ALJ's finding of FHA liability and its

award of damages and assessment of civil penalties, affirmed by the Secretary.

Because additional briefing in this case serves no useful purpose, this Court should rescind its appeal briefing schedule order and enforce the final agency order.

CONCLUSION

For the foregoing reasons, this Court should summarily enforce the January 6, 2023, final agency order.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing THE SECRETARY'S MOTION FOR SUMMARY ENFORCEMENT OF THE FINAL AGENCY ORDER:

(1) complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f), the motion contains 1,434 words; and

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in Times New Roman, 14-point font.

s/ Christopher C. Wang
CHRISTOPHER C. WANG
Attorney

Date: May 17, 2023

CERTIFICATE OF SERVICE

I certify that on May 17, 2023, I electronically filed the foregoing THE SECRETARY'S MOTION FOR SUMMARY ENFORCEMENT OF THE FINAL AGENCY ORDER with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit using the appellate CM/ECF system.

I further certify that Eric Felder is a registered CM/ECF user, and service on him will be accomplished by the appellate CM/ECF system. The following individuals will be served with the foregoing motion by Federal Express overnight mail:

Daniel J. Felder, Co-Guardian and Conservator
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s/ Christopher C. Wang
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