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

In the Matter of:	)	
	)	
Bergin Financial, Inc.,	)	**HUDALJ 10-M-018-CMP/6**
a/k/a Perfect Mortgage,	)	
	)	
Respondent.	)	

DEFAULT JUDGMENT AND ORDER

I. Procedural History

On January 6, 2010, the Secretary of the United States Department of Housing and Urban Development ("HUD") instituted this action by filing the Government's Complaint for Civil Money Penalties ("Complaint" or "Compl.") against Bergin Financial, Inc., a/k/a Perfect Mortgage ("Respondent" or "Bergin"), alleging seven counts of failure to meet HUD/Federal Housing Administration ("FHA") requirements, in violation of the National Housing Act, as amended ("NHA"), 12 U.S.C. §§ 1701 *et seq.*[1] The Complaint includes a prayer for relief for civil money penalties in the aggregate amount of $17,000, as authorized by 12 U.S.C. § 1735f-14(b)(1) and Section 30.35(a), of the applicable procedural Regulations codified as 24 C.F.R. Parts 26 and 30 (hereinafter "the Rules").

The Complaint informed Respondent, *inter alia,* as follows:

> **X. NOTICE OF HEARING RIGHTS AND PROCEDURES WITH RESPECT TO CIVIL MONEY PENALTIES, PURSUANT TO 24 C.F.R. § 30.85, et seq.**

---

[1] Prior to issuance of the Complaint, in a letter dated September 24, 2008, constituting a Pre-Penalty Notice ("Notice") as required by 24 C.F.R. § 30.70, HUD's Mortgagee Review Board ("Board") notified Respondent that it is considering taking administrative action and imposing civil money penalties based on violations identified in the Notice. Respondent submitted a letter dated October 24, 2008 to the Board in response to the Notice. Compl. ¶ 11. In accordance with 24 C.F.R. § 30.85(a), the Board reviewed Respondent's Response and the factors listed in 24 C.F.R. § 30.80, and determined that it would seek civil money penalties against Respondent in the amount of $17,000. Compl. ¶¶ 13, 99.

Requesting a Hearing

100. You have now been served with a Civil Money Penalties Complaint ("Complaint") by the U.S. Department of Housing and Urban Development.

101. You have the opportunity for a hearing on the record on any material fact in the Complaint, or on the appropriateness of the penalty sought.

102. If you desire a hearing, which will be before an independent Administrative Law Judge, you must submit a request for a hearing to the Office of Administrative Law Judges and HUD no later than **fifteen (15) days** following receipt of this Complaint, as required by regulation. This fifteen day period for requesting a hearing is mandated by 24 C.F.R. § 30.90(a) and cannot be extended.

Filing a Response

103. In the event you request a hearing, you must also serve upon HUD, and file with the Office of Administrative Law Judges, a written answer (the "Response") to the Complaint within **thirty (30) days** of receipt of the Complaint, unless such time is extended by the Administrative Law Judge for good cause.

* * *

Effect of Failure to Respond to this Complaint

106. Failure to respond to this Complaint as identified above may result in the imposition of the penalty in the amount sought.

Compl. ¶¶ 100-103, 106.

Respondent did not filed either a request for hearing or a response to the Complaint. Consequently, on March 29, 2010, HUD filed a Government's Motion for Default Judgment ("Motion" or "Mot."), pursuant to 24 C.F.R. §§ 26.38, 26.41 and 30.90(c), requesting that a default decision be issued against Respondent and that relief be ordered in accordance with the prayer for relief set forth in the Complaint.

To date, Respondent has not filed a response to HUD's Motion.

II. Applicable Procedural Rules

The Rules at Part 30 provide in pertinent part that "[i]f the respondent desires a hearing before an administrative law judge, the respondent shall submit a request for hearing to HUD and the Office of Administrative Law Judges no later than 15 days following receipt of the complaint, as required by statute." 24 C.F.R. § 30.90(a). The Rules provide further that "[i]n any case in which respondent has requested a hearing, the respondent shall serve upon HUD and file with the Office of Administrative Law Judges a written answer to the complaint within 30 days of receipt of the complaint, unless such time is extended by the administrative law judge for good cause." 24 C.F.R. § 30.90(b). The Rules also provide that "[i]f no response is submitted, then HUD may file a motion for default judgment, together with a copy of the complaint, in accordance with [the Rules at Part 26]." 24 C.F.R. § 30.90(c). In turn, the Rules at Part 26 provides as follows:

> § 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.

III. Motion for Default

In its Motion for Default, HUD states that Respondent's official mailing address is 29200 Northwestern Hwy, Ste 350, Southfield, MI 48034. Mot. Ex. B (a printout from HUD's Neighborhood Watch system). HUD noted that Respondent's corporation was still listed as active with the State of Michigan as of the date of its Motion. HUD presents in support a printout from the website of Michigan's Department of Energy, Labor & Economic Growth that shows Respondent's status and registered office address. Mot. Ex. C. The address listed on the website in the same address in HUD's records. HUD states that it mailed a copy of the Complaint to Respondent at its last known address as well as to its registered agent at the same

address via United Parcel Service ("UPS") Overnight Mail on January 5, 2010. UPS noted the "receiver has moved" and was therefore unsuccessful in its attempt to deliver the Complaint. *See* Mot. Ex. D (UPS Tracking Information printout). In response to the notification from UPS that it failed to deliver the Complaint, HUD states that on January 7, 2010 it mailed a copy of the Complaint, by U.S. Certified Mail, to the same address so that the package could be forwarded to the appropriate address by the U.S. Postal Service. The U.S. Postal Service forwarded the mailing to Respondent at its "new address," a postal box in Boca Raton, Florida. Mot. Ex. F (copy of envelope addressed to Respondent and U.S. Postal Service Track & Confirm printout). On February 12, 2010, the U.S. Postal Service returned the mailing to HUD as unclaimed. *Id.* On January 7, 2010, HUD mailed, via First Class Mail, copies of the Complaint to addresses for its President, as well as its Registered Agent, located through a public records search, which it believes to be their respective home addresses. Mot. Ex. G (copy of envelopes addressed to Matthew Bergin, President, Bergin Financial, Inc." and "Nicola Begin, Registered Agent, Bergin Financial, Inc."). The First Class mailings were not returned. *See* Mot. Ex. H (Declaration of Nilda Gallegos).

Pursuant to Rule 30.85(d) of the Rules, a complaint "shall be served on the respondent by first class mail, personal delivery, or other means." 24 C.F.R. § 30.85(d). The Rules at Part 30 do not require proof of service of a complaint. However, Rule 26.35, one of the procedural rules for Part 30 hearings, provides that "[d]ocuments shall be served upon a party's address of residence or principal place of business. . . . Service is complete when handed to the person or delivered to the person's office or residence and deposited in a conspicuous place," and "[i]f service is by first-class mail, overnight delivery, facsimile transmission, or electronic means, service is complete *upon deposit in the mail or upon electronic transmission.*" 24 C.F.R. § 26.35(b). Copies of the envelopes containing the Complaint and addressed to Respondent together with the Declaration of Nilda Gallegos show that Respondent was properly served. Mot. Exs. G and H. To date, neither this Tribunal nor HUD has received any response to the Complaint or Motion from Respondent.

The undersigned has discretion to decide whether to grant or deny a request for default judgment, as the Rules state that a respondent who fails to file a timely response "*may* be found in default" (24 C.F.R. § 26.41(a) (emphasis added)), and it has been held that default judgment is disfavored by law, and that all doubts should be resolved in favor of determination on the merits. *Sec'y o/b/o Davis v. Ucci*, HUDALJ 02-94-0016-8 (March 17, 1995). However, in the present case, given the evidence of service and Respondent's complete failure to respond to the Complaint and the Motion, a finding of default is deemed warranted.

It is concluded that Respondent is in default for failure to file a response to the Complaint within the time limits set out in 24 C.F.R. § 30.90. Respondent's default constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing on such allegations. 24 C.F.R. § 26.41.

Accordingly, the Motion for Default is **GRANTED**, based upon the entire record and the following Findings of Fact and Conclusions of Law.

IV. Findings of Fact and Conclusions of Law as to Liability

1. The United States Department of Housing and Urban Development ("HUD") is a Federal Executive Department of the United States Government established pursuant to 42 U.S.C. § 3531, *et seq.* The Secretary of HUD has authority under the National Housing Act ("NHA" or "Act"), 12 U.S.C. § 1735f-14(b)(1), to impose a civil money penalties on any HUD approved mortgagee or lender, who knowingly and materially violates any provision of Title II of the Act or any implementing regulation, handbook or mortgagee letter that is issued under the Act (collectively referred to herein as "HUD requirements"). Compl. ¶ 3; 12 U.S.C. § 1735f-14(b)(1)(H).

2. Respondent, Bergin Financial, Inc., a/k/a Perfect Mortgage was, at all times relevant to the Complaint, a Michigan corporation, and a HUD/FHA-approved mortgagee, as defined in 24 C.F.R. § 202.2. Respondent's last known business address is 29200 Northwestern Hwy, Ste 350, Southfield, MI 48034. Compl. ¶ 1.

3. On or about March 18, 2002, Respondent became a HUD/FHA-approved Direct Endorsement mortgagee.

4. HUD has established requirements dealing with the Real Estate Settlements and Procedures Act, 12 U.S.C. § 2607, through regulations at 24 C.F.R. Part 3500, formal Statements of Policy, and by HUD Handbook 4060.1 REV-2 (collectively referred to herein as "HUD requirements").

5. When Respondent executed its Application for Approval with HUD, it agreed to comply with the HUD requirements. Comp. ¶¶ 26, 27.

6. During the week of January 3, 2008, HUD reviewed Respondent's HUD/FHA-insured mortgage loan origination activities and determined that Respondent had violated HUD requirements. Compl. ¶ 8.

7. On September 24, 2008, the Board issued Respondent a Pre-Penalty Notice, pursuant to 24 C.F.R. Part 30, informing Respondent that the Board was considering assessing civil money penalties against Respondent for the HUD requirement violations identified in the Notice. The Notice informed Respondent of its opportunity to respond to the findings in the Notice. Compl. ¶¶ 9, 10.

8. Respondent responded to the Notice in a letter dated October 24, 2008. Compl. ¶ 11.

Counts 1-3

9. HUD requirements provide that only an FHA-approved mortgagee can take an FHA loan application and prohibit mortgagees from contracting out loan origination functions including the taking of a loan application. Compl. ¶¶ 28, 29, 58. Further, HUD requirements provide that any payment of fees to non-FHA-approved mortgage brokers for services that HUD requires an FHA-approved mortgagee to perform is *per se* excessive. Compl. ¶ 60.

10. Respondent had notice of this requirement through HUD regulations implementing Real Estate Settlement and Procedures Act ("RESPA") at 24 C.F.R. Part 3500, HUD RESPA Statements of Policy 1999-1 and 2001-1, as well as through HUD Handbook 4060.1 REV-2, paragraph 2-22. Compl. ¶ 61.

11. Respondent paid, or permitted excessive payments to be made to, non-FHA-approved mortgage brokers in connection with each of the mortgage loans identified in Counts 1-3 of the Complaint. Compl. ¶ 62. Specifically, Respondent collected fees for origination services including taking loan applications, obtaining credit reports, and requesting employment documents, that were actually performed by non-approved brokers. Compl. ¶ 64.

12. As such, Respondent violated the HUD requirements and Respondent's violations of this requirement were knowing, material, and per se excessive. Compl. ¶¶ 65-67. Such violations constitute grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). Compl. ¶ 67.

Counts 4-5

13. HUD requirements provide that an approved Direct Endorsement mortgagee is required to make sure a borrower meet the credit qualifications requirements, exercising the same level of care that it would exercise in obtaining and verifying a loan in which the mortgagee would be entirely dependent on the property to protect its investment. Compl. ¶¶ 71-72; 24 C.F.R. 203.5(c).

14. Respondent had notice of this requirement through HUD Handbook 4155.1 REV-5, paragraph 2-3, *Analyzing the Borrower's Credit* and 24 C.F.R. § 203.5(c). Compl. ¶ 73.

15. Respondent failed to exercise such due care and ensure that the borrowers met the credit qualification requirements for the two loans identified in Counts 4 and 5, in violation of HUD Handbook 4155.1 REV-5, paragraph 2-3 and 24 C.F.R. § 203.5(c). Compl. ¶¶ 74, 75.

16. As such, Respondent violated HUD requirements and Respondent's violations of this requirement were knowing and material. Compl. ¶¶ 65, 66. Such violations constitute grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). Compl. ¶ 67.

Count 6

17. HUD requirements provide that if a borrower uses child support payments to qualify for a mortgage, HUD regulations require the mortgagee to document the source and adequacy of the child support income for a minimum period of one full year. Compl. ¶ 81.

18. Respondent had notice of this requirement through HUD Handbook 4155.1 REV-5, paragraph 2-7(F). Compl. ¶ 81.

19. Respondent failed to adequately document a full year of child support income and the source of the income for the loan identified in Count 6. Compl. ¶¶ 83-84.

20. As such, Respondent violated the HUD requirements and Respondent's violation of this requirement was knowing and material and constitutes grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). Compl. ¶¶ 84-87.

Count 7

21. HUD requirements provide that mortgagee are permitted to used faxed documents in connection with certain employment verification requirements only if the documents "clearly identify their sources" and the lender has determined that the documents were not handled by or transmitted from or through interested parties. Compl. ¶¶ 90-91.

22. Respondent had notice of this requirement through HUD Handbook 4155.1 REV-5, paragraph 3-1. Compl. ¶ 92.

23. Respondent accepted faxed employment verification documents from sources that were not clearly identified and without determining whether interested persons had handled or transmitted the faxes, for the loan identified in Count 7. Compl. ¶¶ 91, 93, 94.

24. As such, Respondent violated the HUD requirements and Respondent's violation of this requirement was knowing and material and constitutes grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). Compl. ¶¶ 94-97.

V. The Penalty

In determining the amount of penalty, the following factors must generally be considered: the gravity of the offense, any history of prior offenses, the ability to pay the penalty, injury to the public, any benefits received by the violator, extent of potential benefit to other persons, deterrence of future violations, the degree of the violator's culpability, and such other factors as justice may require. 12 U.S.C. § 1735f-14(c)(3); 24 C.F.R. § 30.80; Compl. ¶ 13. The maximum penalty is $7,500 for each violation occurring on or after March 8, 2007, and $6,500 for violations occurring before that time but on or after April 16, 2003. *See* 24 C.F.R. § 30.35(C) (2007) *et seq.* Each violation shall constitute a separate violation as to each mortgage or loan application. 24 C.F.R. § 30.35(c).

Paragraphs 37-56 of the Complaint discuss the factors for determining penalties as applied to this case. In the Complaint, HUD recommended a penalty of $2,000 for Counts 1 through 3, $3,500 for Counts 4 and 5, $3,500 for Count 6, and $3,000 for Count 7. However, HUD notes that the aggregate civil money penalties Respondent is liable for would have exceeded the maximum penalty per loan. Compl. n.1. In consideration of Respondent's net worth, HUD reduced the amount of sought civil money penalties. Therefore, HUD proposed a total penalty of $17,000 for the violations alleged in the Complaint.

The Rules provide that upon a finding of default, "[t]he 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. Accordingly, the $17,000 penalty proposed by HUD in the Complaint is imposed herein on Respondent, pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35.

ORDER

1. HUD's Motion for Default Judgment is hereby **GRANTED**, and Respondent is hereby found in **DEFAULT**, and is deemed to have admitted all the allegations in the Complaint and waived its right to a hearing thereon.

2. Civil money penalties in the aggregate amount of **Seventeen Thousand Dollars ($17,000)** are hereby assessed against Respondent, Bergin Financial, Inc., a/k/a Perfect Mortgage for the seven violations of the National Housing Act for which Respondent was found liable herein. **Such amount is due and payable immediately without further proceedings**. 24 C.F.R. § 26.41(c).

3. This Order shall constitute the **final agency action** in accordance with 24 C.F.R. § 26.41(b).

Susan L. Biro
Chief Administrative Law Judge
United States Environmental Protection Agency[2]

Dated: December 17, 2010
Washington, D.C.

In accordance with 12 U.S.C. § 1735f-14(c)(2), "imposition of the penalty shall constitute a final and unappealable determination," except that review of the imposition of penalties may be had by filing, within twenty (20) days after entry of this Order, a petition with the appropriate United States Court of Appeals. 12 U.S.C. § 1735f-14(d). Further, if Respondent fails to comply with this Order, the Secretary may request the Attorney General of the United States to bring an action against it in an appropriate United States district court to obtain a monetary judgment. The monetary judgment may, in the court's discretion, include the attorneys fees and other expenses incurred by the United States in connection with the action. 12 U.S.C. § 1735f-14(e).

---

[2] The Administrative Law Judges of the United States Environmental Protection Agency are authorized to hear cases pending before the United States Department of Housing and Urban Development pursuant to an Interagency Agreement effective for a period beginning March 4, 2010.