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

In the Matter of:	)	
	)	
Hogar Mortgage and Financial Services, Inc., d/b/a Colamerica,	)	**HUDALJ 10-F-016-CMP-5**
	)	**OGC Case No. 10-004-CSF**
Respondent.	)	

DEFAULT JUDGMENT AND ORDER

I. Procedural Background

On December 23, 2009, 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 Hogar Mortgage and Financial Services, Inc., d/b/a Colamerica ("Respondent" or "Hogar"), alleging thirty-four (34) 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.* The Complaint requests that, for these violations, civil money penalties in the amount of $151,500 be imposed on Respondent, as authorized by 12 U.S.C. § 1735f-14 and 24 C.F.R. §§ 30.35(a) and (c). The regulations governing this administrative proceeding can be found at 24 C.F.R. Parts 26 and 30 ("Rules").

The Complaint informed Respondent, *inter alia,* that --

> **X. NOTICE OF HEARING RIGHTS AND PROCEDURES WITH RESPECT TO CIVIL MONEY PENALTIES, PURSUANT TO 24 C.F.R. § 30.85, et seq.**
>
> **Requesting a Hearing**
>
> 304. You [footnote omitted] have now been served with a Civil Money Penalties Complaint ("Complaint") by the U.S. Department of Housing and Urban Development.
>
> 305. 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.

306. 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

307. 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.

* * * [addresses and service instructions omitted]

Effect of Failure to Respond to this Complaint

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

Compl. pp. 45-47.

HUD's Office of Administrative Law Judges ("ALJs") notified Respondent, in a letter dated December 29, 2009 ("HUD Letter"), that it "must submit a request for a hearing no later than 15 days following [its] receipt of the Complaint." HUD Letter 1. The letter further warned Respondent: "If 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 January 25, 2010, Complainant submitted the Government's Motion for Default Judgment ("Motion" or "Mot."), pursuant to 24 C.F.R. §§ 26.38, 26.41, and 30.90(c), on the basis that Respondent failed to submit any response to the Complaint, and requested that a default decision be issued against Respondent imposing the relief requested in the Complaint.

On February 24, 2010, HUD ALJ Alexander Fernandez sent the parties a Notice of Disqualification, to which Complainant responded with a request that the case be reassigned. In a letter dated March 10, 2010, the Director of the HUD ALJs' Office reassigned the case to the United States Environmental Protection Agency's Office of ALJs.[1] The undersigned was

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[1] The Administrative Law Judges of the United States Environmental Protection Agency (continued...)

officially designated to preside over this case on March 11, 2010.

To date, Respondent has not filed a request for a hearing, an answer to the Complaint, or a response to Complainant's Motion.

II. Applicable Procedural Rules

The rules governing proceedings on complaints issued by HUD for civil monetary penalties are 30 C.F.R. Parts 26 and 30 ("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, 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.[2] 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

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[1](...continued)
are authorized to hear cases pending before HUD pursuant to an Interagency Agreement effective for a period beginning March 4, 2010.

[2] This Order is not issued in the 15-day time frame due to reassignment of this case to the Administrative Law Judges of the Environmental Protection Agency. Neither party is significantly prejudiced by the delay of this Order.

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 was served with the Complaint on December 23, 2009, via electronic transmission and certified mail, return receipt requested, and presents in support a Certificate of Service of the Complaint, two certified mail receipts, and two certified mail delivery receipts. Mot. Exhibits ("Exs.") A, B, C. HUD alleges that Respondent received the Complaint by certified mail on December 26, 2009, as evidenced by the certified mail delivery receipts. Mot. ¶ 3. The delivery receipts are addressed to Jorge Machado at two addresses: 52 Thistle Drive, Paramus, NJ 07652 and 8 Stonewall Road, Saddle River, NJ 07458. The delivery receipt to the former address is dated December 26, 2009, and is signed, but the signature is illegible. Mot. Ex. C. The delivery receipt to the Saddle River address is not dated, but appears to be signed by a person with the last name Rios. *Id.* The Certificate of Service indicates that that the Complaint was served by certified mail on Jorge Machado, President of Hogar, at the two addresses referenced above and at 20 Craig Road, Montvale, NJ 07645, and by electronic mail to JorgeMachado@colamerica.com. Mot. Ex. A.

Pursuant to the Rules, HUD asserts, Respondent had until January 11, 2010, to respond to the Complaint with a request for a hearing, and did not do so. Attached to the Motion is the Declaration of Nilda M. Gallegos ("Declaration"), Enforcement Technician in HUD's Office of General Counsel. Mot. Ex. D. In her Declaration, Ms. Gallegos states that she served Respondent with the Complaint by the methods described in the Certificate of Service, and that she has not received a copy of a response or any other pleading from Respondent. *Id.*

Pursuant to Section 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). Certified mail with return receipt requested, and electronic transmission, the methods employed by Complainant in order to serve Respondent with the Complaint, qualify as "other means." *Id.*; Mot. Exs. A, D; Mot. ¶ 2. The Rules at Part 30 do not include requirements as to proof of service of the complaint. The procedural rules for hearings under Part 30 are those set forth in Part 26. 24 C.F.R. §§ 30.1, 30.95. Rule 26.30 provides that "[s]ervice may be made delivery, first-class mail . . . or electronic means," and that "[d]ocuments shall be served upon a party's address of residence or principal place of business." 24 C.F.R. § 26.30(b). The Rule provides further that "[s]ervice 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 . . . or electronic means, service is complete upon deposit in the mail or upon electronic transmission." *Id.*

The documents of record show that Respondent was properly served with the Complaint in accordance with the Rules. The Motion was served on Respondent in the same way as the Complaint was served, according to the Motion's Certificate of Service, and therefore was also properly served on Respondent under the Rules.

The Rules provide the ALJ with discretion as to whether to grant or deny the request for default judgment; 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 (HUD ALJ, March 17, 1995). However, in the present case, given Respondent's complete failure to respond to the Complaint, a finding of default is warranted.

It is concluded that Respondent is in default for its 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 its 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

1. The Secretary of HUD has authority under Section 536(a) of NHA, 12 U.S.C. § 1735f-14(a), to impose civil money penalties on any mortgagee who knowingly and materially violates any provisions of Title II of the NHA, or any implementing regulation or handbook issued under NHA authority. The Secretary delegated this authority to the Mortgagee Review Board ("Board"). Compl. ¶¶ 1, 4, 5.

2. Respondent was, at all times relevant to the Complaint, a corporation registered to do business in New Jersey, and a HUD/FHA-approved mortgagee, as defined in 24 C.F.R. § 202.2. Respondent's last known business address is 20 Craig Road, Montvale, New Jersey. Compl. ¶ 2.

3. On October 14, 1998, Respondent obtained Direct Endorsement approval from HUD pursuant to 24 C.F.R. §§ 203.3 and 203.5. When Respondent executed its Application for Approval with HUD, it agreed to comply with HUD regulations and other requirements. Compl. ¶¶ 2, 55, 56.

4. HUD has established requirements that Direct Endorsement mortgagees must follow in originating and underwriting HUD/FHA-insured mortgages in 24 C.F.R. Parts 202 and 203, and in HUD Handbooks 4155.1 REV-5, 4000.2 REV-3, 4000.4 REV-1, and 4060.1,

REV-2. Compl. ¶¶ 18, 21, 57.

5. During the week of January 22, 2008, HUD reviewed Respondent's HUD/FHA-insured mortgage loan origination activities and determined that Respondent had violated HUD/FHA requirements. Compl. ¶ 11.

6. The Board notified Respondent in a letter dated September 5, 2008 ("Notice"), that it was considering assessing civil money penalties against Respondent based on violations of HUD/FHA requirements, which were listed in the Notice. The Notice informed Respondent of its opportunity to respond to the findings in the Notice. Compl. ¶¶ 12, 13.

7. Respondent responded to the Notice in a letter dated September 30, 2008. Compl. ¶ 14.

8. Respondent knowingly submitted sixteen (16) loans to HUD for FHA-insurance endorsement while there were discrepancies and inconsistencies that were not adequately resolved with respect to the documentation used to verify the borrower's employment or income documentation, the borrower's credit history, or the borrower's ability to go to closing, in violation of 24 C.F.R. §§ 203.5(c) and (d), and 203.34, and HUD Handbooks 4000.2 REV-3, Chapter 3; 4000.4 REV-1 CHG 2, Chapter 3; and 4155.1 REV-5, Chapters 1-3. Compl. ¶ 59. The facts in paragraphs 87 through 168 of the Complaint (regarding Counts 1 through 16) more fully describing these violations are incorporated herein.

9. Respondent's knowing and material violations for failing to resolve adequately the discrepancies and provide explanatory statements and supplementary documentation constitute grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35. Compl. ¶ 169.

10. Respondent knowingly submitted seventeen (17) loans to HUD for FHA-insurance endorsement even though those loans did not have adequate documentation to verify the source and the adequacy of the borrower's funds for the downpayment, closing costs, and/or cash reserves, in violation of 24 C.F.R. §§ 203.5(c) and (d), and HUD Handbooks 4000.2 REV-3, Chapter 3; 4000.4 REV-1 CHG 2, Chapter 3; and 4155.1 REV-5, Chapters 1-3. Compl. ¶ 60. The facts in paragraphs 173 through 287 of the Complaint (regarding Counts 17 through 33) more fully describing these violations are incorporated herein.

11. Respondent's knowing and material violations for failing to obtain the required documentation of the borrowers' cash reserves or assets to meet the statutorily required minimum investment constitute grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35. Compl. ¶ 288.

12. Respondent did not maintain and implement a Quality Control Plan that met HUD

requirements, in violation of 24 C.F.R. § 202.5(h) and HUD Handbook 4060.1 REV-2, Chapter 7, and failed to perform quality control reviews of loans that had gone into default within the first six months. Compl. ¶ 61. The facts in paragraphs 291-300 of the Complaint (regarding Count 34) more fully describing this violation are incorporated herein.

13. Respondent's knowing and material violations of Quality Control requirements constitute grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35. Compl. ¶ 301.

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. ¶ 16. 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. Compl. ¶¶ 6, 7. Each violation shall constitute a separate violation as to each mortgage or loan application. 24 C.F.R. § 30.35(c).

Paragraphs 62-85 of the Complaint and Exhibit E to the Motion discuss the factors for determining penalties as applied to this case. In the Complaint, HUD recommended a penalty of $7,500 for Counts 2 and 12, $3,000 for each of the violations alleged in Counts 17 through 33, and $6,500 for Counts 1, 3 through 11, 13 through 16 and 34. However, HUD notes that the aggregate civil money penalties it had recommended for the loans would have exceeded the maximum penalty per loan. Compl. n.1. Therefore, HUD proposed a total penalty of $151,500 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 $151,500 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. For failing to respond to the Complaint in a timely manner as indicated above, and upon motion filed, Respondent is deemed to have admitted all the allegations in the Complaint, and waived its right to a hearing on those allegations, and is hereby found in **DEFAULT**.

2. Pursuant to 12 U.S.C. § 1735f-14(b) and 24 C.F.R. § 30.35(a), Respondent is found to have knowingly and materially violated provisions of the National Housing Act, 12 U.S.C. §§ 1701 *et seq.*, and its implementing rules and regulations, as alleged in the Complaint.

3. For these violations, Respondent shall pay to the Secretary of HUD a Civil Money Penalty in the amount of **One Hundred Fifty One Thousand Five Hundred Dollars ($151,500)**, such amount due and payable immediately without further proceedings. 24 C.F.R. § 26.41(c).

4. This Order shall constitute a 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

Dated: April 13, 2010
Washington, D.C.

Pursuant to 24 C.F.R. § 26.41(b), this Default Order constitutes "the final agency action." In accordance with 12 U.S.C. § 1735f-14(d), review of this Order may be had by filing within 20 days of entry of this Order a petition with the appropriate United States Court of Appeals.