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

In the Matter of:	)	
Strategic Mortgage Corporation,	)	**HUDALJ 10-E-123-CMP-18**
Respondent.	)	

DEFAULT JUDGMENT AND ORDER

I. Procedural History

On May 5, 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 Strategic Mortgage Corporation[1] ("Respondent"), alleging three hundred and five (305) 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 includes a prayer for relief for civil money penalties in the aggregate amount of $71,000, as authorized by 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). The regulations governing this administrative proceeding are 24 C.F.R. Parts 26 and 30 ("Rules").

Prior to issuance of the Complaint, in a letter dated June 12, 2009, 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 of HUD/FHA requirements by [Respondent] that were disclosed during a review of [Respondent's] HUD/FHA loan origination activities during the week of August 18-22, 2008," and listing the alleged violations. Notice at 1. The letter further advised that Respondent had "30 days from receipt of [the] letter to provide the Board with a written response to the . . . Pre-Penalty Notice in accordance with 24 C.F.R. § 30.75." *Id.* at 2.

On July 30, 2009, Respondent submitted a Response to the Notice. Compl. ¶ 15. In

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[1] Respondent is a dissolved Oklahoma corporation as of March 3, 2010. However, Oklahoma law provides that "all [dissolved] corporations . . . shall be continued, for the term of three (3) years from such expiration or dissolution . . . bodies corporate for the purpose of prosecuting and defending suits, whether civil, criminal or administrative . . . ." 18 Okl. St. § 1099.

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 $71,000. *Id.* at ¶ 16.

Subsequently, HUD issued the Complaint, which informed Respondents, *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.**
>
> **Requesting a Hearing**
>
> 206. You [footnote omitted] have now been served with a Civil Money Penalties Complaint ("Complaint") by the U.S. Department of Housing and Urban Development.
>
> 207. 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.
>
> 208. 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**
>
> 209. 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**
>
> 213. Failure to respond to this Complaint as identified above may result in the imposition of the penalty in the amount sought.

Compl. ¶¶ 206-209, 213.

No request for hearing or response to the Complaint has been filed to date. Consequently, on June 21, 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 governing proceedings on complaints issued by HUD for civil money 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. 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 and Respondent's counsel received the Complaint on May 19, 2010, and May 6, 2010, respectively, via certified mail, return receipt requested. HUD presents in support thereof a Certificate of Service of the Complaint, two certified mail receipts, and two signed certified mail delivery receipts, one addressed to addressed to Philip L. Schulman, Esq., and the other addressed to Keith Vineyard, president, Strategic Mortgage Corporation, 5909 NW Expressway, Suite A210, Oklahoma City, OK 73132. Mot. Ex. 3. The latter delivery receipt, or "green card," shows a signature with the initials K and V, which may be a signature of Keith Vineyard, although it does not include a printed name. In addition, HUD presents U.S. Postal Service "Track and Confirm" delivery confirmations, with receipt numbers matching those on the certified mail receipts and "green cards," showing delivery of the parcel addressed to Respondent on May 19, 2010, and to Respondent's counsel on May 6, 2010. Mot. Ex. 3. Also attached to the Motion is the Declaration of Tammie Parshall ("Parshall Declaration"), dated June 21, 2010, in which Ms. Parshall states that the Complaint was issued to Respondent at the "last known addresses for Respondent and Respondent's Counsel" and that she has "not received a request for a hearing from Respondent." Mot. Ex. 2. On May 17, 2010, Respondent's former counsel emailed HUD and the undersigned's office stating that he would not be representing Respondent in this matter. Mot. Ex. 4.

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). Certified mail, return receipt requested, was the method employed by the Government to serve Respondent with the Complaint. The Rules at Part 30 do not require proof of service of a complaint. However, Rule 26.30, one of the procedural rules for Part 30 hearings, provides that "Documents 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. § 26.30(b). The signed return receipt and the Track and Confirm delivery confirmation show that Respondent was properly served with the Complaint in accordance with the Rules. Mot. Ex. 3. 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 Secretary of the Department of Housing and Urban Development ("HUD") has authority under the National Housing Act ("NHA" or "Act"), 12 U.S.C. § 1735f-14(b)(1), to impose a civil money penalty on any mortgagee with a mortgage insured by HUD pursuant to the NHA, who knowingly and materially violates any provision of Title II of the NHA or any implementing regulation, handbook, or Mortgagee Letter that is issued under the Act. Compl. ¶ 4; 12 U.S.C. § 1735f-14(b)(1).

2. Respondent, Strategic Mortgage Corporation, Mortgagee ID No. 1921-00000-3, was, at all times relevant to the Complaint, a corporation registered to do business in Oklahoma, and a HUD/FHA-approved Loan Correspondent, as defined in 24 C.F.R. § 202.8. Respondent's last known business address is 5909 NW Expressway, Suite A210, Oklahoma City, OK 73132-5154. Compl. ¶ 2.

3. On September 26, 2002, HUD approved the Respondent as a Non-Supervised Loan Correspondent, pursuant to 24 C.F.R. § 203.3. When Respondent executed its Application for Approval with HUD, it agreed to comply with HUD regulations and other requirements. Comp. ¶¶ 40, 41.

4. HUD has established requirements for origination of FHA-insured loans in 24 C.F.R. Parts 202 and 203, and in HUD Handbooks 4000.4 REV-1, 4000.2 REV-3, 4060.1 REV-1, 4060.1 REV-2, and 4155.1 REV-5. Compl. ¶¶ 21, 42.

5. During the week of August 18-22, 2008, HUD reviewed Respondent's HUD/FHA-insured mortgage loan origination activities and determined that Respondent had violated HUD/FHA requirements. Compl. ¶ 12; Notice at 1.

6. On June 12, 2009, 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/FHA requirement violations identified

in the Notice. The Notice informed Respondent of its opportunity to respond to the findings in the Notice. Compl. ¶¶ 13, 14.

7. Respondent responded to the Notice in a letter dated July 30, 2009. Compl. ¶ 15.

Counts 1-288

8. Respondent failed to comply with employee and staffing requirements for HUD approved mortgagees in violation of HUD Handbook 4060.1 REV-2, Paragraph 2-9. Compl. ¶¶ 44, 69. Specifically, Respondent hired and compensated thirteen loan officers as independent contractors who originated and closed 288 loans, referenced on pages 12-19 of the Complaint, between March 2007 and August 2008. Compl. ¶ 70, 74. Respondent reported compensation paid to employees on a Form 1099 rather than the Form W-2 required by HUD Handbook 4060.1, REV-2, Paragraph 2-9.A and Mortgagee Letter ("ML") 06-30. Compl. ¶ 72, 77.

9. Respondent did not have exclusive control over its loan officers. Compl. ¶¶ 74-77. Respondent knew of the requirements in HUD Handbook 4060.1 REV-2, Paragraph 2-9. to exclusively employ loan officers and to report all compensation paid to employees on a W-2. Compl. ¶¶ 71-73, 78.

10. Respondent's failure to exclusively employ its thirteen loan officers and to compensate them by Form W-2 were knowing and material violations of HUD Handbook 4060.1, REV-2, Paragraph 2-9 and Mortgagee Letter 06-30, with regard to the 288 loans referenced on pages 12-19 of the Complaint, as alleged in Counts 1-288 of the Complaint. 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. ¶¶ 78-81.

Counts 289-297

11. Respondent charged borrowers a broker fee in addition to an approximately 1% origination fee for nine loans it originated, listed in page 82 of the Complaint. Compl. ¶¶ 84, 91, 96, 101, 106, 111, 116, 121, 126, 131. Respondent was not employed by the borrowers as an independent non-approved broker with respect to these loans. Compl. ¶¶ 92, 97, 102, 107, 112, 117, 122, 127, 132.

12. By charging both the broker and origination fee, Respondent charged each of the borrowers impermissible, duplicative and unreasonable fees for loan origination functions for the nine loans, in violation of 24 C.F.R. § 203.27(e), HUD Handbook 4155.1 REV-5, Paragraph 1-9.I and ML 06-04, as alleged in Counts 289-297 of the Complaint. Compl. ¶¶ 93-95, 98-100, 103-105, 108-110, 113-115, 118-120, 123-125, 128-130, 133-135.

13. Respondent knew of the prohibition from charging an origination fee greater than 1% on

forward mortgages, and that it was not permitted to charge a broker fee in excess of the 1% origination fee unless the mortgagor engaged and paid an independent non-approved broker who did not represent the mortgagee, by notice of 24 C.F.R. § 203.27(e), HUD Handbook 4155.1 REV-5, Paragraph 1-9.I and ML 06-04. Compl. ¶¶ 86, 88, 90, 136.

14. Respondent's violations of 24 C.F.R. § 203.27(e), HUD Handbook 4155.1 REV-5, Paragraph 1-9.I and ML 06-04, were knowing and material and 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. ¶¶ 136-139

Count 298

15. Respondent executed Form 92900-A certifying to HUD that it reviewed mortgage documents, applications for insurance endorsement and accompanying documents, and that loan application FHA No. 421-4278480 was true and correct. Compl. ¶ 143, 147. Respondent signed the certification on March 28, 2007 and improperly forwarded it to the settlement agent before closing, and thus failed to review the loan application and documents on the closing date, March 30, 2007. Compl. ¶ 149. On March 30, 2007, the settlement agent collected an Addendum to purchase, executed March 27, 2007, which required a reduction in the sales price and recalculation of the maximum mortgage amount, and this Addendum was included in the file Respondent certified, but Respondent failed to alert its Sponsor to recalculate the maximum insured mortgage amount. Respondent submitted a false certification to HUD that the loan application was reviewed and was true and correct despite inaccuracy of the loan amount, in violation of HUD Handbook 4155.1 REV-5, paragraph 3-1, as alleged in Count 298 of the Complaint. Compl. ¶¶ 143, 147, 153.

16. Respondent knew of the requirement for the lender's certificate in HUD Handbook 4155.1 REV-5, paragraph 3-1. Compl. ¶ 146, 153.

17. Respondent's violation of HUD Handbook 4155.1 REV-5, paragraph 3-1 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. ¶ 154-156.

Counts 299-303

18. Respondent failed to disclose the broker fees Respondent charged to the borrowers on the Good Faith Estimates of five loans listed on page 33 of the Complaint, as required by 24 C.F.R. § 3500.7. Compl. ¶ 47, 159, 162, 164-166, 168-170, 172-174, 176-178, 180-182.

19. By failing to disclose the anticipated broker fee on the Good Faith Estimate and then charging the borrower a broker fee at closing, Respondent violated 24 C.F.R. § 3500.7, as

alleged in Counts 299-303 of the Complaint.

20. Respondent knew of the requirement to disclose the broker fee on the Good Faith Estimate. Compl. ¶¶ 163, 184.

21. Respondent's violation of 24 C.F.R. § 3500.7 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. ¶¶ 185-187.

Counts 304 and 305

22. With regard to the two loans referenced on page 37 of the Complaint, Respondent charged a commitment fee but failed to include in the a written agreement with the borrower the specific fees charged for such commitment, as required by HUD Handbook 4000.2 REV-3, paragraphs 1-9 and 5-2. Compl. ¶ 190, 191, 194-195, 197-198.

23. By charging a commitment fee and executing the agreements without the essential term of the amount for the commitment fee, Respondent violated HUD Handbook 4000.2 REV-3, paragraphs 1-9 and 5-2, as alleged in Counts 304 and 305 of the Complaint.

24. Respondent knew of the requirement to have a written agreement specifying the amount of the commitment fee, by notice of HUD Handbook 4000.2 REV-3, paragraphs 1-9 and 5-2. Compl. ¶ 191-193, 200.

25. Respondent's violations of HUD Handbook 4000.2 REV-3, paragraphs 1-9 and 5-2 were knowing and material and 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. ¶¶ 200-203

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. ¶ 17. 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. ¶¶ 7, 8. Each violation shall constitute a separate violation as to each mortgage or loan application. 24 C.F.R. § 30.35(c).

Paragraphs 49-67 of the Complaint discuss the factors for determining penalties as applied to this case. In the Complaint, HUD recommended a penalty of $1,000 for Counts 1

through 288, $6,500 for Counts 289 and 290, $7,500 for Counts 291 through 297, $7,500 for Count 298, $1,000 for Counts 299 through 303, and $3,500 for Counts 304 through 305. 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 $71,000 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 $71,000 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 **Seventy One Thousand Dollars ($71,000)** are hereby assessed against Respondent, Strategic Mortgage Corporation, Mortgagee ID No. 1921-00000-3, for the three hundred and five (305) 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: July 12, 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).

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[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.

In the HUD Matter of *Strategic Mortgage Corporation*, Respondent.
Docket No. HUDALJ-10-E-123-CMP-18

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Default Judgment and Order,** dated July 12, 2010, was sent this day in the following manner to the addressees listed below.

Mary Angeles
Legal Staff Assistant

Original By Hand Delivery to:

HUD Chief Docket Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-2001

Copy by Regular Mail to:

Kimberly J. Lenoci, Esq.
Amy L. Brown, Esq.
Office of General Counsel
U.S. Dept. of Housing and Urban Development
1250 Maryland Ave., SW, Suite 200
Washington, DC 20024

Copy by Certified and Regular Mail to:
(CRR No. 7005 0390 0002 5028 8597)

Mr. Keith Vineyard
President
Strategic Mortgage Corporation
5909 NW Expressway
Suite A210
Oklahoma City, OK 73132

Copy by Certified and Regular Mail to:
(CRR No. 7005 0390 0002 5028 8603)

Phillip L. Schulman
K&L Gates, LLP
1601 K Street, NW
Washington, DC 20006-1600

Dated: July 12, 2010
Washington, DC