

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

In the Matter of:

STELLAR MORTGAGE
COMPANY, INC.,

Respondent.

HUDALJ 04-161-MR
Dated: August 20, 2004

Frank Mezmar, President
for Respondent

Todd Maiberger, Esq.
For the Government

Before: CONSTANCE T. O'BRYANT
Administrative Law Judge

DEFAULT DECISION AND ORDER

The matter is before me on the Government's Renewed Motion for Default Judgment. This is the third such motion by the Government based upon Respondent's failure to file an Answer to the Complaint which meets the requirements of HUD regulations and to respond to reasonable Government discovery requests, including request for admissions, for responses to interrogatories, and for production of documents. Respondent has not responded to the Motion for Default Judgment, and thus has not challenged the Government's assertions. For the reasons stated below, the Government's Renewed Motion for Default Judgment is *Granted*.

BACKGROUND

On March 25, 2004, the Mortgage Review Board ("MRB") of the U.S.

Department of Housing and Urban Development ("Government," "Department" or "HUD") issued a 58-count Complaint seeking a civil money penalty of \$173,500 against Respondent, Stellar Mortgage Company ("SMC"), a HUD/FHA approved mortgagee, pursuant to the National Housing Act, as amended, 12 U.S.C. § 1708 (c) (1) & 1735f-14, and HUD regulations that are found at 24 CFR Part 30, Subpart C (2000). The Complaint charges that Respondent submitted loan applications to HUD containing false information (Counts 1 to 27), engaged in a scheme to circumvent HUD requirements and submitted false HUD-1 Settlement Statements to HUD (Counts 28-56), failed to implement and maintain an adequate quality control plan (Count 57), and shared office space with employees (other than receptionists) of another entity (Count 58) in violation of HUD regulatory requirements. It also alleges that Respondent knew or had reason to know that the conduct in question constituted a violation, and that each violation was a knowing and material violation of 12 U.S.C. § 1735f-14(b)(1)(D)(E) and (H).

The Complaint notified Respondent of its right to appeal the imposition of the civil money penalty by filing an Answer to the Complaint within 15 days of its receipt and that failure to file an Answer would result in a motion by HUD for default judgement *See* 24 CFR 30.90. A copy of the Complaint was issued to Respondent on March 25, 2004, through its President, Frank Mezmar. Respondent filed an "Answer" to the Complaint which was received by HUD on April 12, 2004.

On April 29, 2004, the Government filed a Motion for a More Definitive Answer. The undersigned granted that Motion on May 21, 2004 and required Respondent to file such an answer no later than May 28, 2004. Respondent was advised that the undersigned would entertain a Motion for Default Judgment by the Government if it failed to comply with the Order. On June 4, 2004, the Government filed a Motion for Default Judgment. It alleged that Respondent had failed both to file a more definitive answer, as ordered on May 21, 2004, and to comply with the Government's subsequent discovery requests, including Request for Admissions and response to interrogatories. A telephone conference call was held on June 7, 2004, to discuss the Government's motion.

Based on representations from Mr. Mezmar, the Motion for Default Judgment was denied. However, Respondent was ordered to 1) file an Answer to the Complaint that met the requirements of an Answer in HUD's regulations by June 11, 2004; 2) respond to Government's Requests for Admissions by June 11, 2004, and 3) answer Government's other outstanding discovery requests by June 18, 2004. Both during the conference call and by subsequent written Order, the Court warned Respondent that should it not comply with its orders, the Court would consider granting any renewed motion for sanctions requested by the Government.

On July 6, 2004, the Government filed a Renewed Motion for Default Judgment or

in the Alternative to Compel and Extend Discovery and Continue Trial. It asserted that Respondent had failed to comply with the Court's Order of June 7, 2004. Respondent did not reply to the motion. However, noting that Respondent is a small company with a total of two employees, including its President, Frank Mezmar (*see* Respondent's pleading "Response to the Government's Request for Admissions"), and that Mr. Mezmar was acting *pro se*, the undersigned declined to grant the Motion for Default Judgment. By Order dated July 9, 2004, the Court gave Respondent one last opportunity, until August 9, 2004, to respond to past due discovery requests and to provide a more definitive Answer to the Complaint. In that Order, Respondent was warned that "*(a)bsent compelling circumstances, Respondent's failure to substantially comply with today's Order will result in a default judgement against it if requested by the Government. No further continuances will be granted for the purpose of facilitating discovery.*" The Government asserts that Respondent has not submitted any documents or responded to its discovery requests, or otherwise been in contact with the Government since the issuance of the August 9, 2004 Order.

Respondent has now had repeated opportunities to comply with the Government's discovery requests or to otherwise object to them. It has done neither. Respondent has been adequately warned that if it failed to comply with the Court's Orders, a judgment against it would be entered, *absent compelling circumstances*. No compelling circumstances have been alleged.

REGULATORY FRAMEWORK

HUD's regulations provide that, if a respondent fails to file an Answer within 15 days of receiving the Complaint, the Administrative Law Judge ("ALJ") assigned to the case may issue a Default Judgment. 24 CFR 26.39(b). Such a default constitutes an admission of all the facts alleged in the Complaint and a waiver of a respondent's right to a hearing in the matter. 24 CFR 26.39. A Default Judgment shall constitute final agency action. *Id.* Although Respondent filed an "Answer" in the case, the Government asserts that it does not meet the requirements of the regulations. Respondent has not challenged this assertion, thus, a default judgment is warranted.

Even assuming a default judgment is not warranted because the Respondent attempted to file an Answer which met the requirements of the regulations, severe sanctions against it are still warranted. Section 26.36(c) of the regulations provide that the ALJ may sanction any party for failing to comply with an order governing the proceedings, including an order compelling discovery and/or for engaging in other conduct that interferes with the speedy, orderly, or fair conduct of the hearing. Any sanction, however, shall reasonably relate to the severity and nature of the misconduct.

An ALJ may: 1) draw an inference in favor of the requesting party with regard to the information sought; 2) regard each matter about which an admission is requested, to be admitted; (3) prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and (4) strike any part of the pleadings or other submissions of the party failing to comply with the order. Finally, section 26.26(d) allows the ALJ to issue an initial decision against a respondent for failing to defend an action. In this case, Respondent's conduct has been egregious. It has repeatedly failed to comply with reasonable discovery requests from the Government, and more significantly, repeatedly failed to comply with Orders of the Court, even after being warned that severe sanctions might be imposed against it if it did not comply. It has engaged in conduct that has totally undermined the possibility of a speedy, orderly and fair hearing in the case. Accordingly, I strike the pleadings and other submissions of Respondent and draw inferences in favor of the Government with regard to the discovery sought.

Moreover, this adverse decision is warranted because Respondent, by failing to respond to the Government's motions, has failed to defend the action brought against it. *See* 24 C. F. R. § 26.26(d).

FINDINGS OF FACT

The entry of this default judgment constitutes an admission of all the facts alleged in the Government's Complaint against Stellar Mortgage Company. The Complaint alleges that at all relevant times, SMC was a HUD/FHA-approved mortgagee, as the term is defined in 24 C.F.R. § 25.3. HUD approved Respondent as a HUD Non-Supervised Loan Correspondent on or about December 1, 1998.

Pursuant to 12 U. S.C. § 1735f-14(b)(1), the Secretary of HUD may impose a civil money penalty for any knowing and material violation by a mortgagee for:

(D) Submission to the Secretary of information that was false, in connection with any mortgage insured under this chapter. . . ,

(E) Failure to comply with an agreement, certification, or condition of approval set forth on, or applicable to -

(i) the application of a mortgage or lender for approval by the Secretary, and

(H) Violation of any provisions of . . . any implementing regulation or handbook . . .

In originating HUD/FHA insured mortgages, mortgagees contractually agree to follow

requirements contained in HUD Handbooks and Mortgagee Letters. In this case, SMC agreed to comply with all HUD Handbooks and Mortgagee Letters when it executed its Application for Approval. The pertinent HUD Handbooks and Mortgagee Letters in this matter are: HUD Handbooks 4000.2 REV-2, 4000.4 REV-1, 4060.1 REV-1, 4155.1 REV-4 CHG-1; and Mortgagee Letters 94-56 and 96-52.

Counts 1 through 27 of the Complaint assert as fact that SMC submitted loan applications containing false information to HUD in that it submitted information supplied by mortgagor, Affordable Home Ownership Corporation (“AHOC”), which it knew or should have known was false or inaccurate. The false information involved the failure to list the mortgage debts or other properties owned by AHOC. Respondent had knowledge of the ownership of other properties by AHOC as it was the loan correspondent. Counts 28 through 56 allege as fact that SMC engaged in a scheme to circumvent HUD requirements and submit false HUD-1 Settlement Statements to HUD. The scheme involved the payment from SMC to AHOC of 2.5% of the loan value from the settlement proceeds. The HUD-1 falsely states that the 2.5% payment was a loan discount fee paid to Respondent when in fact the payment was to AHOC. These acts caused the loans to be over-insured because the AHOC was able to circumvent the minimum required investment. *See* 24 C.F.R. 203.19, and HUD Handbook sections 4000.2 REV-2 ¶ 1-9, and 4155.1 REV CHG 1 ¶2-10 (c). The over-insured amount ranged between \$1,115.00 and \$3,294.00 per loan. Count 57 alleges that SMC failed to maintain and implement a Quality Control Plan in compliance with FHA requirements (HUD Handbook 4060.1 REV-1, Chapter. 6), and count 58, alleges that SMC shared office space with employees, other than receptionists, of another entity (HUD Handbook 4060.1 REV-1, ¶2-16 A3). The Complaint also alleges that Respondent knew or had reason to know that the conduct in question in each instance constituted a violation of a material HUD requirement.

Based upon Respondent’s failure to cooperate with discovery, comply with Orders of the Court, and to defend against this Complaint, adverse inferences are drawn against it as to all information sought from it in discovery, and the above alleged facts are accepted as established.

CONCLUSION OF LAW AND ORDER

The facts in the Complaint reveal a knowing and material violation of HUD rules and regulations by Respondent. A judgment against Respondent is warranted. Further, I conclude that, in seeking civil money penalties against SMC in the amount of \$173,500, HUD’s Mortgage Review Board considered all required factors as described in 12 U. S.C.

§ 1735f-14 (c) (3) and 24 C.F.R. § 30.80. Accordingly, it is ORDERED that

Respondent, Stella Mortgage Company, shall pay to the Secretary of the United States Department of Housing and Urban Development a Civil Money Penalty of \$173,500 without delay and not later than 45 days from the date of this Decision and Order. This Default Decision and Order constitutes final agency action.

So ORDERED this ^{20th} day of August, 2004.

CONSTANCE T. O'BRYANT
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this DEFAULT DECISION AND ORDER, issued by CONSTANCE T. O'BRYANT, Administrative Law Judge, HUDALJ 04-161-MR, were sent to the following parties on this 20th day of August, 2004, in the manner indicated:

Acting Chief Docket
Clerk

REGULAR MAIL:

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