

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

In the Matter of:

ASSURETY MORTGAGE GROUP, INC.,

Respondent.

CORRECTED COPY

HUDALJ 00-1066-MR
Decided: April 11, 2001

Elissa O’Leary, Esq.,
For the Government

Sampson Oliver, Esq.,
For the Respondent

Before: ROBERT A. ANDRETTA
Administrative Law Judge

DEFAULT DECISION AND ORDER

On December 29, 2000, the US Department of Housing and Urban Development (HUD) issued a Complaint against Respondent Assurety [sic.] Mortgage Group, Inc., (AMG), seeking civil money penalties in the amount of \$195,000. On November 17, 2000, I conducted a telephone conference with counsel for the Government and Respondent in which I ordered the Government to file a Complaint by December 29, 2000, and the Respondent to file an Answer to the Complaint by 30 days after the receipt of the Complaint. Both pleadings were timely filed on December 29, 2000, and January 29, 2001, respectively, with the Respondent styling his pleading as a “Response.” Respondent’s Answer included a Motion To Dismiss The Complaint With Prejudice.

On February 8, 2001, the Government filed a Motion For Default Judgment/ Motion For More Definitive Statement in which it asserted that Respondent’s Answer failed to meet the requirements for an Answer to a Complaint as described in the regulation that is codified at 24 CFR 30.90. I concurred with that assessment and issued an Order dated February 14, 2001, in which I ordered Respondent to file an Answer that

complies with the regulation by February 28, 2001, and I denied Respondent's Motion To Dismiss The Complaint because I found it to have been filed without a supporting basis.

On February 21, 2001, Respondent filed his Amended Answer And Response To The Government's Additional Complaint Against Assurety Mortgage Group, Inc. In response, the Government followed up with a Second Motion For Default Judgment, which it filed on March 14, 2001. The Government therein complains that Respondent's latest submission does not conform with the requirements of the above-cited regulation governing Answers to Complaints. The regulation requires an Answer to contain an admission or denial of each allegation of liability made in the Complaint, the defense for each on which the Respondent intends to rely, and any other reasons why the civil money penalty is not warranted or should be less than the amount sought in the Complaint.

I concur with the Government and find that Respondent's second submission does not comply with the regulation. Specifically, the Amended Answer of February 21, 2001, does not address the following allegations that are set forth in the Government's Complaint:

1. AMG failed to report violations of law or regulation, false statements, or program abuse to HUD or the Office of Inspector General;
2. AMG used altered documents in two loans submitted for loan approval;
3. AMG failed to document the source of funds and misrepresented the Title II program requirements to the borrowers;
4. AMG allowed the borrower to hand carry the verifications of employment and deposit;
5. AMG failed to document income used for loan approval;
6. AMG failed to document the contributory value of labor;
7. AMG allowed debts to be omitted from the calculation of the debt to income ratio;
8. AMG approved loans that exceeded acceptable ratios without compensating factors;
9. AMG charged borrowers unallowable fees;
10. AMG failed to maintain complete origination files; and
11. AMG failed to obtain documentation to verify income.

AMG has had two opportunities to respond correctly to the allegations of the Complaint, offer any defenses upon which it intended to rely, and to proffer any reasons why the civil money penalty requested by the Government is not warranted. In spite of

being instructed to do so in my Order of February 14, 2001, along with a citation to the guiding regulation, AMG's second submission is as non-responsive as its first. Accordingly, I find that Respondent has defaulted on its obligation to defend itself and the Motion For A Default Judgment is **GRANTED**. An appropriate Order will be entered below.

Findings of Fact

1. At all times pertinent to the allegations of the Complaint AMG was an HUD/FHA-approved mortgagee, as that term is defined in the regulation found at 24 CFR 25.3. AMG executed an Application for Approval to become an FHA-approved mortgagee in which it agreed to comply with the provisions of HUD's regulations and the requirements of the Secretary of HUD. Complaint, ¶ 3.

2. AMG's main office is in Decatur, Georgia. AMG was approved by HUD as an HUD/FHA mortgagee in July 1996, and the Board proposed the withdrawal of that approval that is the subject of this Initial Decision on February 15, 2000, and again on October 24, 2000. Complaint, ¶ 3.

3. Jurisdiction over the civil money penalty action contained in the Complaint is conferred upon this forum by the statute that is codified at 12 U.S.C. § 1735f-14 and the regulation that is found at 24 CFR 25.8(d)(2). Since the civil money penalty action requires an initial decision and since there are no facts in dispute regarding withdrawal of the mortgagee approval, the findings on the latter are incorporated in the decision on the former.

4. During the week of November 2, 1998, the Quality Assurance Division (QAD) of HUD's Single Family Home Ownership Center in Atlanta conducted a review of Respondent's HUD/FHA insured mortgage loan origination activities. Complaint, ¶ 5.

5. As a result of the review and pursuant to HUD's regulations found at 24 CFR Parts 25 and 30, the Board notified Respondent by letter, titled "Notice" and dated September 28, 1999, that it was considering an administrative action and civil money penalties against Respondent based upon serious violations of HUD requirements which were discovered during the review by the QAD and are identified in the Board's Notice. The Notice informed AMG of its opportunity to respond to the Notice, and AMG responded to the Notice in a letter styled "Response" and dated October 13, 1999. After review of the Response, during early February, 2000, the Board decided to withdraw AMG's HUD/FHA approval for three years and to seek civil money penalties from AMG in the amount of \$45,000. Complaint, ¶¶ 6 - 9.

6. To determine the amount of the civil penalty to be sought, the Board considered the factors required by 12 U.S.C. § 1735F-14(c)(3) and the regulation found at 24 CFR 30.80. These factors are the gravity of the offenses, any history of prior offenses, the respondent's ability to pay a penalty, the injury done to the public, the benefits received by the respondent, the extent of potential benefit to individual persons, the deterrence of future violations, the degree of the respondent's culpability, and such other matters as justice may require. The Board's findings on these elements are stated on pages 3 - 5 of the Complaint, and they are adopted herein on the basis of the default. Complaint, ¶¶ 10 - 11.

7. On February 15, 2000, the Board notified AMG of its decision to withdraw AMG's HUD/FHA approval for three years and to seek a money penalty in the amount of \$45,000. The letter informed AMG of its opportunity to request a hearing pursuant to the regulation codified at 24 CFR 25.8 with respect to the withdrawal action as well as the manner and time within which to request such a hearing. By letter dated February 29, 2000, AMG requested a hearing with respect to the withdrawal action. Complaint, ¶¶ 12 - 14.

8. Subsequent to the withdrawal of HUD/FHA approval, HUD uncovered apparent continuing activity by AMG. Thus, and pursuant to 24 CFR Parts 25 and 30, the Board notified AMG on July 25, 2000, that it was considering an additional administrative action and additional civil money penalty against AMG based upon serious violations of HUD requirements identified in the Notice. This second Notice informed AMG of its opportunity to respond to the findings that were described in the second Notice, and AMG did so in a letter dated August 9, 2000. Complaint, ¶¶ 15 - 17.

9. Later in August, 2000, the Board applied the same elements of review as described in paragraph 6, above, and decided to withdraw AMG's HUD/FHA approval for an additional five years and to seek additional civil money penalties against AMG in the amount of \$150,000. Complaint, ¶ 19.

10. On pages 6 through 29 of the Complaint, the Government states the regulations violated by AMG in 29 counts described in 106 paragraphs ending with a warning that failure to submit a response to the Complaint might result in the imposition of civil money penalties in the amount sought. Complaint, ¶¶ 22 - 128; 132.

Conclusion and Order

AMG was found to be in default and thus is deemed to have admitted the allegations of fact and law made by the Board. *See* 24 CFR 30.90. Therefore, I find that Respondent AMG knowingly and materially violated the applicable statutes and

regulations listed in the Complaint and referenced in paragraph 10, above, of this Default Decision And Order in the manner described in the 29 counts of the Complaint. I further find that the withdrawal of HUD/FHA approval is justified and that the civil money penalties in the amounts of \$45,000 and \$150,000, for a total of \$195,000, are appropriate.

Respondent Assurety Mortgage Group, Inc. shall forbear any HUD/FHA mortgage activity and pay the last-named amount to the Secretary of HUD without further proceedings and without delay. In accordance with the regulation that is codified at 24 CFR 26.39, this Order constitutes the final agency action on this matter.

So ORDERED.

ROBERT A. ANDRETTA
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this DEFAULT DECISION AND ORDER (CORRECTED COPY) issued by ROBERT A. ANDRETTA, Administrative Law Judge, in HUDALJ 00-1066-MR, were sent to the following parties on this 13th day of April, 2001, in the manner indicated:

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