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

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HUD OFFICE OF HEARINGS AND APPEALS

In the Matter of:	)	
Best Home Loan, Inc.,	)	**HUDALJ 10-M-060-MR/33**
Respondent.	)	

INITIAL DECISION AND ORDER

I. Procedural History

The Mortgagee Review Board ("Board") of the United States Department of Housing and Urban Development ("HUD") filed a Notice of Administrative Action ("Notice") dated January 27, 2010, withdrawing Respondent's HUD/FHA approval for one year. The Notice was addressed to "Attilla Makranczy, President" of Best Home Loan, Inc. (FHA ID: 14828-0000-8 (Title 2)). As the foundation for the Board's withdrawal, the Notice cited Respondent's failure to submit an executed Title II Yearly Verification Report ("V-Form") within ninety days after the close of its 2008 fiscal year, as required by 24 C.F.R. § 202.5(m), HUD Handbook 4700.2 REV-2, Chapter 7 ("Handbook 4700.2 REV-2"), and HUD Handbook 4060.1 REV-2, Chapter 4 ("Handbook 4060.1 REV-2").[1]

On March 1, 2010, Respondent filed a letter ("Response") stating that it "look[s] forward to the opportunity to challenge" the Board's imposed withdrawal, and setting forth several arguments. Response at 4.

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[1] In the Notice of Administrative Action, HUD cites to Handbook "4700.2 REV-2," a copy of which is neither a part of the record, nor available on HUD's website for Housing Handbooks at http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/. While Handbook 4700.2 ***REV-1*** is available online, it is not clear this is the Handbook HUD intended to cite in its Notice of Administrative Action. First, the REV-1 Handbook is entitled ***Title I*** Lender Approval Handbook. In the Notice of Administrative Action, HUD charges Respondent with failure to follow "Title II" requirements as a "Title 2" participant. Furthermore, HUD did not cite to or provide a copy of Handbook 4700.2 REV-2 in the Government's Pre-Hearing Statement or Post-Hearing Brief, nor did HUD counsel introduce a copy as evidence at the hearing or question any witness about its contents. Instead, HUD focused primarily on the requirements of Handbook 4060.1 REV-2, entitled FHA ***Title II*** Mortgagee Approval Handbook, throughout its prehearing submissions and the hearing itself. Therefore, there is no basis for the undersigned to determine in this proceeding whether Respondent violated Handbook 4700.2 REV-2.

HUD Administrative Law Judge J. Jeremiah Mahoney issued a Notice of Hearing and Order dated March 9, 2010, scheduling the hearing to commence on April 15, 2010. The hearing was held as scheduled in Washington, D.C., before Judge Mahoney.[2] Counsel for HUD, Christopher Reimer and Terri Román, presented the agency's case and the testimony of two fact witnesses, Ivery W. Himes, Director of HUD's Lender Approval and Recertification Division, and Darryl Lesesne, Branch Chief for HUD's Lender Recertification Division. Respondent did not appear at the hearing; no counsel or representative for Respondent attended the hearing. In addition to the witnesses' testimony, HUD introduced four documents into the record as Government's Exhibit 2 (Notice of Administrative Action), Exhibit 4 (Handbook 4060.1 REV 2), Exhibit 5 (Notice of Violation dated October 27, 2009 ("NOV")), and Exhibit 6 (USPS Tracking Receipt for delivery of the NOV) (all Exhibits herein cited as: "GX __").

At the conclusion of the hearing, HUD moved for summary judgment on the following basis: "Respondent has not attended the hearing and has not submitted any evidence to the contrary to the facts laid out by the Government; that the respondent had a duty to submit [a] yearly verification form; he failed to submit that, and that failure was a serious breach of HUD regulations." Tr. 54 at 9-18. Judge Mahoney declined to rule on HUD's oral motion, stating that he intended instead to consider HUD's evidence and testimony as presented at the hearing "as well as what the respondent has provided." Tr. 54-55. Weighing against a summary judgment ruling, Judge Mahoney stated, was the fact that Respondent had submitted documents to the court without serving them on HUD, and so after the hearing, HUD would have the opportunity to review those documents and respond. Tr. 55-56.

HUD was provided with the documents after the hearing, and filed the Government's Post-Hearing Brief on April 27, 2010 ("Brief"). Respondent did not file a Post-Hearing Brief.

On October 15, 2010, Judge Mahoney issued a Notice of Disqualification, informing the parties of grounds for his disqualification from the proceeding and providing HUD ten days to waive any apparent bias and agree to have Judge Mahoney issue a decision in the case. On October 19, 2010, HUD counsel requested that the case be reassigned. An Order of Designation was served on the parties on October 22, 2010, designating the undersigned to preside over this matter. Respondent has not filed any document with, nor made contact with, the office of the undersigned.

II. Applicable Procedural Rules

The rules governing this proceeding are published in 24 C.F.R. Part 25 and Part 26, Subpart B ("Rules"). The Rules at Part 25 provide in pertinent part that "[t]he hearing shall be conducted in accordance with the applicable provisions of 24 CFR part 26 . . . ." 24 C.F.R. §

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[2] The transcript of the hearing was filed May 4, 2010. Citations to the transcript page and line numbers will be in the following format: "Tr. __ at __."

25.10(c). Part 26 provides:

> § 26.34 Sanctions.
> * * *
>
> (d) If a party fails to prosecute or defend an action brought under subpart B of this part, the ALJ may dismiss the action or may issue a decision against the non-prosecuting or defending party. Such decision of the ALJ shall constitute final agency action and shall not be appealable to the Secretary . . . .

24 C.F.R. § 26.34(d).

Under the Rules, an initial decision must be "based only on the record [and] shall contain findings of fact, conclusions of law, and the relief granted." 24 C.F.R. § 26.50(a). "The transcript of testimony, exhibits, and other evidence admitted at the hearing and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ . . . ." 24 C.F.R. § 26.49.

III. Arguments of the Parties and Discussion

Given Respondent's absence from the hearing and failure to offer any exhibits into evidence, the only documents in the record on behalf of Respondent are its four-page Response letter and attachments thereto. HUD, not having been served by Respondent with the attachments to the Response, was provided with them after the hearing, and was allowed the opportunity to respond to them in its Post-Hearing Brief. The attachments are part of the record for decision under 24 C.F.R. § 26.49.

Respondent's position is that "every single requested item was sent to you [HUD] by U.S. mail, with a follow-up fax, whenever possible." Response at 1. Respondent presents as an attachment to the Response a phone log with notations "phone line" and "fax line," showing phone calls on June 29, 2009 and in November 2009; and faxes sent on November 3, 2009. In its Response, Respondent argues that "it is obvious that HUD pays no attention to any type of communication, written or faxed or verbal," apparently in reaction to Mr. Makranczy's attempts to communicate with HUD about compliance issues. *Id.* at 3. Respondent claims it is being penalized for HUD's "sloppiness and confusion." *Id.* Second, Respondent submits that it complied with the Federal Housing Administration ("FHA") recertification fee requirement by attaching a printout from FHA Connection, HUD's online data entry port, which shows "Confirmation of Payment" made on August 21, 2009. *Id.* at 1. Respondent appears to proffer this argument in response to HUD's claim in a July 27, 2009 Deficiency Notice mailed to Respondent, a copy of which is attached to the Response, that in addition to not filing the V-

Form for 2008, Respondent also failed to pay the required recertification fee.[3] Third, Respondent claims that HUD employee Erikka Davis informed Mr. Makranczy that the V-Form for 2008 was no longer available, and via facsimile on December 17, 2009, instructed him to cross out "2009" on the newer form and substitute "2008," which Respondent claims to have done and then initialed. *Id.* at 3; *see* Response, attachment (Fax Transmittal dated 12/17/09). This completed V-Form, signed by Mr. Makranczy and dated December 17, 2009, is another attachment to the Response. Respondent also argues that the FHA Connection system rejected Respondent's new address, and presents as attachments to the Response a printout of the FHA Connection website with an address of Respondent accompanied by the computer response "Address cannot be located," and documents mailed to Respondent at the same new address. Also attached to the Response is a letter from a Certified Public Accountant, dated February 16, 2010, requesting HUD to reevaluate its decision to rescind Respondent's authority to initiate HUD mortgage loans, asserting that the CPA's firm assisted Respondent in preparing financial statements through the LASS system and that since the system gave no indication of error, the firm had no reason to believe that the submission was not received by HUD.

HUD argues in its Brief that: (1) Respondent was required by FHA regulations to submit a V-Form to HUD by March 31, 2009, (2) Respondent did not do so, and (3) Respondent's failure to submit a V-Form as required is a serious violation of FHA rules that warrants an immediate, one-year withdrawal. Tr. 54; Brief at 3-5. Also, HUD claims that because Respondent was a "longtime FHA participant," it knew of its responsibility to submit a V-Form, and how to do so in accordance with the FHA regulations. Brief at 1. In response to Respondent's allegation that it did submit a V-Form for fiscal year 2008 on December 17, 2009, HUD argues that even if that were true, the submission would still be nine months late, and a one-year withdrawal would remain the appropriate sanction. Brief at 7-8. Further, pointing to the limited communication between HUD and Respondent ("one insignificant telephonic communication"[4]), and alleging that it is unclear if Respondent is still in business, HUD argues that the proceeding may be dismissed pursuant to 24 C.F.R. § 26.34(d) for "fail[ing] to prosecute or defend an action." Brief at 2.

In Respondent's Response, there is no assertion or documentation showing that the V-Form was filed on or before March 31, 2009. The copy of the Yearly Verification Report submitted with Respondent's Response is dated December 17, 2009. Upon review of the

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[3] The allegations listed in the Notice of Administrative Action supercede those in the Deficiency Notice. In this proceeding, HUD alleges Respondent was deficient only in its recertification because of a failure to submit the V-Form.

[4] In its Pre-Hearing Statement filed April 13, 2010, HUD counsel alleges that she called Respondent's office on March 30, March 31, April 5, and April 6, 2010, leaving a total of six voicemail messages, and that on April 6, 2010, HUD counsel "spoke briefly with Respondent who disconnected the call after shouting into the phone." Government's Pre-Hearing Statement at 1.

transcript, exhibits, and other documents of record, I make the following Findings of Fact and Conclusions of Law.

IV. Findings of Fact and Conclusions of Law

1. The National Housing Act ("the Act"), Pub. L. No. 84-345, 48 Stat. 1246 (1934), 12 U.S.C. §§ 1701 *et seq.*, created the Federal Housing Administration and the Mortgagee Review Board, provided for the insurance of mortgages by the federal government, and established the Mutual Mortgage Insurance Fund, with which the government could guarantee qualifying mortgages. To be eligible for FHA insurance, the Act requires that all qualifying mortgages shall "[h]ave, or be held by, a mortgagee approved by the Administrator as responsible and able to service the mortgage properly." 12 U.S.C. § 1709(b)(1). Pursuant to the Act, the FHA established requirements that mortgagees must satisfy to obtain and to annually renew approval to originate FHA-insured loans. These are set forth at 24 C.F.R. Part 202 ("the Rules") and the FHA Title II Mortgagee Approval Handbook 4060.1, REV-2 (2006).

2. Respondent was approved by HUD under the Title II program on December 2, 1999. Response, attachments (FHA Connection print out entitled "Institutional Profile," and a "Title II Yearly Verification Report" dated December 17, 2009); HUD's Exhibit 3 ("Institution Master File").[5] Respondent's last known business address is 8535 Baymeadows Road, Suite 6B, Jacksonville, Florida, 32256-7494. Tr. 36; GX 6; *see also,* Response.

3. To maintain Title II mortgagee approval, mortgagees must "meet and continue to meet" the requirements of Section 202.5(a) through (n) of the Rules. 24 C.F.R. § 202.5. Section 202.5(m) requires each mortgagee to submit "a yearly verification report," or "V-Form," within ninety days after the close of the mortgagee's fiscal year. Handbook 4060.1 at 4-2; *see* GX 4; Tr. 20, 26 at 19-22. The V-Form "affords the lender an opportunity to apprise FHA of any oversight entities' sanctions that may have been taken against the lender or any administrative actions." Tr. 22 at 15-20. For fiscal year 2008, the V-Form was to be downloaded and printed from the FHA Connection, an online "data entry port" for HUD mortgagees, filled out manually, signed, and the paper copy

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[5] The transcript shows that HUD witness Mr. Lesesne testified that Respondent was approved under Title II on "December 2, ***1995***," and that it had therefore been approved approximately "ten years," which are inconsistent conclusions. Tr. 46 at 4-7 (emphasis added). It appears that either the court reporter erred in her transcription or Mr. Lesesne was in error.

submitted to HUD. Tr. 48 at 9-15, 49 at 4-6; Response, attachments (Deficiency Notices dated June 2, 2008 and July 27, 2009).[6]

4. Respondent's 2008 fiscal year ended on December 31, 2008; therefore, Respondent was required to submit a V-Form on or before March 31, 2009. Tr. 26 at 18-22; Response, attachments (Title II Yearly Verification Report, FHA Connection Institution Profile).

5. Respondent did not submit a V-Form to HUD for the 2008 fiscal year on or before March 31, 2009. Tr. 38 at 8-18, 52 at 5-8. HUD had not received a V-Form from Respondent for the 2008 fiscal year as of the date of the hearing on April 15, 2010. Tr. 38 at 16-18, 52 at 5-8.

6. Pursuant to Section 202 of the Act, the Board may take administrative action against any approved mortgagee "found to be engaging in activities in violation of [FHA] requirements . . . ." 12 U.S.C. § 1708(c)(1). An administrative action imposed under Section 1708(c) shall be based upon a violation or violations listed in Part 25, which includes violating HUD Handbook provisions. 24 C.F.R. § 25.6(j).

7. Respondent did not follow the requirements of Handbook 4060.1 REV-2, Chapter 4, Section 4-2. 24 C.F.R. § 25.6(j). Pursuant to 12 U.S.C. § 1708(c)(1), the Board has authority to take administrative action against Respondent.

V. Relief

Because the hearing in this matter was conducted de novo in accordance with 24 C.F.R. § 25.10(b), "the Hearing Officer is not bound by the decision of the Board." *Accuracy Nat'l Mortgage, Inc.*, Docket No. 78-2-MR, 1978 HUD BCA LEXIS 51, at *10 (Decision of Hearing Officer ("HO"), May 19, 1978); *see also, Mechanics Nat'l Bank v. U.S. Dep't of Housing and Urban Dev.*, 522 F. Supp. 25, at *30 (D.D.C. 1981)(noting there is no "requirement of uniform sanctions for similar offenses"). In prior withdrawal cases, the Board's determinations have been affirmed, modified, or reversed. *See Flagship Mortgage Services, Inc.*, HUDALJ 90-154-MR, 1991 WL 11668525 (ALJ, Jan. 16, 1991)(affirming the Board's one year withdrawal of FHA-insured loan originator's approval); *Puller Mortgage Assoc., Inc.*, HUDALJ 89-112-MR (ALJ, Oct. 17, 1990)(affirming the Board's indefinite withdrawal); *PFG Mortgage Inc. & Potter*, HUDBCA Nos. 92-G-7577-MR6, 92-G-7598-D58, 1992 WL 308270 (Decision of Administrative Judge ("AJ"), Oct. 9, 1992)(withdrawing the mortgagee's approval for approximately three years, where the Board had imposed a six year withdrawal); *Zarrilli & Mark Twain Bank*, HUDBCA Nos. 89-4509-D47, 90-5242-M5, 1990 HUD BCA LEXIS 11 (AJ, Nov. 28, 1990)(terminating the Board's indefinite withdrawal, and restoring mortgagee's approval);

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[6] For fiscal year 2009, the V-Form was to be filled out and submitted electronically to HUD through the FHA Connection. Tr. 39 at 2-10, 47 at 6-14.

see also Accuracy, at *12 (withdrawing mortgagee's approval *not* for a specified period of time, but "until it is found to be in compliance").

In determining the appropriate outcome, "the hearing officer is required to consider the same regulatory requirements which the Board was bound to consider in the first instance," and "shall issue an initial decision based only on the record." *Puller Mortgage*, HUDALJ 89-112-MR, slip op. at 8; *R&G Mortgage*, HUDALJ 07-052-MR, slip op. at 13; *Stratford*, 1994 HUD BCA LEXIS 5, at *38; 24 C.F.R. § 26.50(a). When "a basis for an administrative action against a mortgagee exists, the Board shall take one of the following administrative actions" – issuing a letter of reprimand, imposing probation or suspension, or withdrawing a mortgagee's FHA approval. 12 U.S.C. § 1708(c)(3). The Board may only withdrawal approval, however, "if the Board has made a determination of a *serious violation* or repeated violations by the mortgagee." 12 U.S.C. § 1708(c)(3)(D) (emphasis added). Secondly, with regard to determining the appropriate penalty for a violation in any case, the applicable regulation provides that "the Board will consider, among other factors, the seriousness and extent of the violations, the degree of mortgagee responsibility for the occurrences, and any other mitigating or aggravating facts." 24 C.F.R. § 25.8.

The sanctions available to the Board under Part 25 "are prospective sanctions designed to protect the Department and the public from potential misconduct." *Heritage Mortgage Co.*, Docket No. 92-284-MR, 1993 HUD BCA LEXIS 15, at *33 (Sept. 2, 1993). The purpose of withdrawing a mortgagee's HUD-FHA approval is to protect both the public and the federal agency from doing business with a lender that fails to adhere to prudent lending practices. *Horizon*, 1992 HUD BCA LEXIS 8, at *35. The mortgagee originating federally-insured loans acts as the "eyes and ears of HUD." *Id.* at *36. "Failure to adhere to HUD program requirements and prudent lending practices jeopardizes the HUD-FHA mortgage insurance program and the public fisc that funds it." *Id.* "Without the conscientious and responsible conduct of its program participants, particularly of those involved in the preparation of financial documents . . . HUD is exposed to serious financial risk." *Heritage*, 1993 HUD BCA LEXIS 15, at *30.

Failure to submit the V-Form to HUD in the manner required by FHA regulation is a serious violation of the mortgagee renewal requirements, as explained by the testimony of HUD's witnesses. Ms. Himes, Director of the Lender Approval and Recertification Division, explained generally that "today, to be a HUD-approved lender is very significant, in that FHA's role within the mortgage industry has increased substantially due to the housing market prices and state of the economy, " and as a result, "FHA is at greater risk." Tr. 17-18. One reason why HUD requires lenders to file the V-Form, Ms. Himes testified, "is because it really just doesn't have the resources to investigate annually all FHA-approved lenders to ensure that they are responsible, prudent and operationally sound." Tr. 23 at 5-10. Submitting an accurate V-Form is important because the "FHA's mortgage insurance funds and FHA borrowers could potentially be at risk if there are FHA-approved mortgagees who are not operationally sound or have been sanctioned for some inappropriate business practices" (information that is required to be listed on

the V-Form). Tr. 23 at 11-18; 24 at 8-12. Also, FHA's mortgage insurance funds are at risk because "if a borrower defaults, FHA must then pay an insurance claim to the mortgage company." Tr. 24 at 13-16. In brief, "the Department views . . . a mortgagee's failure to submit a V-Form as serious." Tr. 24 at 5-6. Accordingly, Respondent's violation was serious and warrants the sanction of withdrawal.

Moreover, Ms. Himes testified that HUD sends out three emails to all FHA-approved mortgagees at 90, 60 and 15 days prior to their annual submission due date, reminding them that the due date is approaching. Tr. 27 at 1-6. Then, four months after the submission due date passes, she sends out a Notice of Deficiency, warning the mortgagee that it has not completed the recertification process. Tr. 27 at 7-12. The record shows that Respondent received a Deficiency Notice dated July 27, 2009, stating that Respondent had not submitted its annual fee and V-Form. Response, attachment. HUD received Respondent's annual fee, which was due March 31, 2009, in August 2009. Tr. 28 at 9-12; Response, attachment (FHA Connection printout, "Lender Approval Confirmation of Payment").

The record shows that in December 2009, HUD employee Erikka Davis instructed Mr. Makranczy to correct the fiscal year date on the FYE 2009 Form and initial the changes, and that in February 2010, Mr. Makranczy was involved in email correspondence with HUD employees regarding how to submit a V-Form. Response, attachments (email correspondence and Fax Transmittal page, dated 12/17/09). However, there is no confirmation in the record that this form was submitted to HUD; instead, Mr. Lesesne testified that HUD "did not see any indication that [Respondent's 2008 V-Form] was received" as of the hearing date. Tr. 38 at 8-18. Even though Mr. Makranczy claims to have sent "every single requested item . . . by U.S. mail, with a follow-up fax," there is no proof in the record of mailing, delivery, or receipt. Response at 1.

Furthermore, Mr. Makranczy attests to his familiarity of FHA requirements ("this writer has been originating HUD loans for over 30 years"). Response at 3; *see*, Handbook 4060.1 REV-2, 4-2; Tr. 22 at 15-20; 39 at 2-10. The evidence does not demonstrate that Respondent made a good faith and sincere attempt to timely submit its V-Form, or correct its deficiency. Brief correspondence about the problem and the correct filing procedures, months after the V-Form was required to be filed, cannot mitigate Respondent's violation. *See, Heritage Mortgage Co.*, 1993 HUD BCA LEXIS 15, at *30 ("the explanations and excuses set forth in [the respondent's] letters, no matter how well-meaning, [are] not exculpatory"); *Samuel T. Isaac & Assoc., Inc. and Isaac*, HUDBCA Nos. 80-452-M2, 80-485-D29, 1983 HUD BCA LEXIS 10, at *63-64 (HO, Nov. 10, 1983)(when mortgagee "did not correct most of the deficiencies until five to nine months after" it was notified of its deficiency, it was not entitled to a mitigated sanction).

CONCLUSION AND ORDER

The Government has demonstrated by a preponderance of the evidence that Respondent Best Home Loan, Inc., committed a serious violation of FHA requirements warranting the Mortgagee Review Board's one-year withdrawal of its FHA Title II Mortgagee approval. The seriousness of the violation, for which Respondent is solely responsible, is not mitigated by any evidence in the record.

It is hereby **ORDERED** that the FHA Title II Mortgagee approval of Best Home Loan, Inc., FHA ID No. 14828-0000-8 (Title II), is withdrawn for a period of one (1) year from January 27, 2010, the date of the Notice of Administrative Action, as set forth therein.

Susan L. Biro
Chief Administrative Law Judge
United States Environmental Protection Agency[7]

Dated: January 18, 2011
Washington, D.C.

[7] 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.