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

In the Matter of:	)	
	)	
Delia Guadalupe Cervantes,	)	**HUDALJ 08-039-PF**
	)	**OGC Case No. 08-3529-PF**
Respondent.	)	

SUMMARY JUDGMENT

I. Background and Procedural History

On April 14, 2008, the United States Department of Housing and Urban Development ("HUD") instituted this action by serving an Administrative Complaint on Delia Guadalupe Cervantes ("Respondent"), charging her with four violations of the Program Fraud Civil Remedies Act ("PFCRA") of 1986, 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28.[1]

On or about May 19, 2008, Respondent filed anAnswer to the Complaint, in which she admitted to nearly all of the allegations contained therein. As a result, on June 20, 2008, along with other documents, HUD filed a Motion for Summary Judgment and Memorandum in support ("Motion"), and a Statement of Undisputed Facts ("Statement").

To date, Respondent has filed no opposition to the Motion, and the time period in which she could have filed a timely an opposition has expired. Additionally, this Tribunal's Order of June 9, 2008 required Respondent to file a prehearing exchange on or before June 30, 2008 and she has failed to do so. Therefore, judgment may be entered herein against the Respondent not only on the basis of HUD's unopposed motion for summary judgment, but also on the basis of Respondent's failure to comply with an Order issued in this proceeding. *See*, 24 C.F.R. §26.36(d).

The allegations in the Complaint are related to the same actions which were the basis of Respondent's November 21, 2006 conviction on three counts of aiding and abetting wire fraud, in violation of 18 U.S.C. §§ 2 and 1343, as part of a scheme to defraud HUD and to induce HUD to insure mortgages for unqualified borrowers by causing fraudulent information to be submitted

[1] The U.S. Department of Justice authorized HUD to issue the Complaint on March 20, 2008. *See,* HUD's Motion for Summary Judgment at 2 and Exhibit 10 attached thereto.

to mortgage lenders in support of applications for mortgage loans insured by the Federal Housing Administration ("FHA"). *United States v. Delia Guadalupe Cervantes*, No. CR-05-00911, U.S. District Court for the Central District of California. Respondent pled guilty to the charges, admitted the truth of all the facts contained in the Information, and judgment was entered against her. *See*, Motion, Exhibit 1 (Complaint) at ¶ 29, Exhibit 2 (Answer), Exhibit 3 (plea agreement), Exhibit 5. Specifically, the Complaint alleges in four counts that between 1998 and 2001, Respondent as a real estate agent recruited borrowers for four properties sold by her co-schemers, that she knowingly caused fraudulent pay stubs and W-2 forms to be submitted to mortgage lenders to make it appear as though these purchasers were qualified for FHA-insured mortgages, that the borrowers defaulted on the four loans, that insurance claims were submitted to HUD as to all four loans; and that HUD paid the claim on one of the loans, regarding the property at 600 East 87th Street, in the amount of $235,177.86.[2]

Under the PFCRA, 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28.10(a), an assessment of up to twice the claim paid plus a civil penalty of up to $6,500 may be imposed upon a person who makes, submits or causes to be submitted a claim that the person knows or has reason to know is false, fictitious or fraudulent.[3] HUD recovered a total $265,646.86 through the resale of the 600 East 87th Street property, and restitution paid by Respondent as a result of her conviction. Although the amount of the original claim associated with the East 87th Street property pertaining to Count 4 was $235,177.86, in order to comply with the jurisdictional limitation of the PFCRA, 31 U.S.C. § 3803(c)(1), HUD reduced the amount of the claim for the purposes of the Complaint to $150,000. Twice the (reduced) claim paid - $300,000, less the proceeds received as a result of the sale of the property and restitution, is $34,353.14. Thus, the Complaint seeks an assessment of $34,353.14 plus civil penalties totaling $23,000, for a total award of $57,353.14.[4]

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[2] The four counts relate to the following four properties:

Count 1: 6606 Brynhurst Ave., Los Angeles, CA (FHA # 197-1702348)
Count 2: 4615 Avalon Blvd., Los Angeles, CA (FHA # 197-1765042)
Count 3: 1022 Magnolia Ave., Long Beach, CA (FHA # 197-1075066)
Count 4: 600 East 87th Street, Los Angeles, CA (FHA # 197-1765433)

[3] Under the PFCRA, a false, fictitious, or fraudulent claim made prior to April 16, 2003 is subject to a maximum civil penalty of $5,500. A similar claim made on or after this date is subject to a maximum civil penalty of $6,500. *See, infra* for relevant statutory provisions. The claim pertaining to Count 1 took place after April 16, 2003, while the remaining three took place prior to that date.

[4] HUD seeks $5,500 less than the amount the Department of Justice approved because the Statute of Limitations expired on one false claim between the request for approval and the service of the Complaint.

II. Relevant Statutory and Regulatory Provisions

Section 3802(a)(1) of the Program Fraud Civil Remedies Act (PFCRA) provides in relevant part that -

> Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know--
>
> (A) is false, fictitious, or fraudulent;
> (B) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;
> (C) includes or is supported by any written statement that--
> (i) omits a material fact;
> (ii) is false, fictitious, or fraudulent as a result of such omission; and
> (iii) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact;
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> * * *
>
> shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such claim. Except as provided in paragraph (3) of this subsection, such person shall also be subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim, or the portion of such claim, which is determined under this chapter [31 U.S.C. §§ 3801 *et seq.*] to be in violation of the preceding sentence.

31 U.S.C. § 3802(a)(1). Pursuant to the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, and Section 31001 of the Debt Collection Act, Pub. L. 104-134, the maximum civil penalty which may be imposed for such violations was increased from $5,500 to $6,500 for claims accruing or statements submitted after April 17, 2003. *See*, 24 C.F.R. § 30.60(c). *See also,* 68 Fed. Reg. 12786, 12788 (Mar. 17, 2003).

Under the PFCRA, a "claim" means "any request, demand, or submission . . . made to an authority [HUD] for property, services, or money (including money representing grants, loans, insurance, or benefits)" or "made to an authority [HUD] which has the effect of decreasing an obligation to pay or account for property, services, or money." 31 U.S.C. §§ 3801(a)(3)(A), 3801(a)(3)(C); 24 C.F.R. § 28.5. Each representation, certification, or affirmation constitutes a separate statement, and a statement is considered made, presented, or submitted to HUD when such statement is actually made to an agent or other entity acting for or on behalf of HUD. *See,* 31 U.S.C. § 3801(c); 24 C.F.R. § 28.10(b)(2)-(3).[5]

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[5] *See also,* 31 U.S.C. § 3802(a)(2) and 24 C.F.R. § 28.10 (b)(1) which also allow a civil penalty when dealing with false statements. For the purposes of this ruling, the alleged actions of (continued...)

The PFCRA is a strict liability statute, no proof of specific intent to defraud is required to establish liability, and the standard of proof is the "preponderance of the evidence." *See*, 31 U.S.C. § 3803(f), 24 C.F.R. § 28.10(d).

HUD's jurisdiction to administratively commence and conduct actions under PFCRA with hearings presided over by an Administrative Law Judge is provided by 31 U.S.C. §§ 3802(b), 3803(b), 3801(a)(7), and 24 C.F.R. Parts 28 and 26 (subpart B).

HUD's regulations provide that an Administrative Law Judge is authorized, "[u]pon motion of a party, [to] decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact." 24 C.F.R. § 26.29(l). For guidance as to the standard for summary judgment, this Tribunal may look to the Federal Rules of Civil Procedure and case law of the federal courts. Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *see also, Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986)(discussing the standard for summary judgment).

In determining whether summary judgment should be issued, the facts and inferences from those facts are viewed in the light most favorable to the respondent and the burden is placed on the movant to establish both the absence of a genuine issue of material fact and that such party is entitled to judgment as a matter of law. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 585-588 (1986); *In re Salvador Alvarez*, HUDALJ No. 04-025-PF (June 23, 2005)(applying summary judgment in an administrative proceeding). Once this burden is met, the respondent may not depend on the allegations in the pleadings, but must, by affidavit or other evidence, show specific facts showing that a genuine issue of material fact exists. *Matsushita,* 475 U.S. at 586-587; *see also,* Fed. R. Civ. P. 56(c) (providing for use of affidavits). Summary judgment is an "integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy, and inexpensive determination of every action." *Celotex* , 477 U.S. at 327. In cases where there are no disputes over material facts, or facts that might affect the outcome of a suit, summary judgment is appropriate. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

III. Discussion

In its Motion, HUD asserts that there are no material facts in dispute in this proceeding, based on Respondent's admissions in her Answer and the doctrine of collateral estoppel, under which Respondent cannot deny the facts established in the course of her criminal conviction for wire fraud. Motion at 7, 8. It further asserts that Respondent's admissions in her Answer and in her guilty plea are sufficient to meet its burden of proof that Respondent caused the submission

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[5](...continued)
the Respondent allegedly lead to a false *claim*, and therefore it is under 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28.10(a) that any civil penalty is be imposed.

of a claim that she knew or had reason to know was supported by a written statement that asserts a material fact that is false, fictitious or fraudulent. 31 U.S.C. § 3802(a)(1).

HUD additionally asserts that the facts justify the assessment and penalty that it requests. Motion at 9. It also notes that even though Respondent denied certain assertions in the Complaint, those objections were due to a mere difference in terminology between the Complaint in this civil proceeding and the Information in the criminal case, and therefore are immaterial. *Id.* at 10. HUD analyzes Respondent's actions with respect to the seventeen factors specified in 24 C.F.R. § 28.40, which are used to determine whether the requested penalty and assessment is appropriate. Offering a detailed application of the facts and citing a variety of authorities, HUD concludes that the requested amount is appropriate when weighed against the seventeen factors. *Id.* at 11-17.

In this instance, facts established in the course of Respondent's criminal conviction of wire fraud cannot be relitigated. *See e.g., Parklane Hosiery Co., Inc., v. Shore,* 439 U.S. 322, 332, 333 (1979)(applying the collateral estoppel doctrine); *In re Salvador Alvarez*, HUDALJ No. 04-025-PF (June 23, 2005)(applying collateral estoppel in an administrative proceeding). Respondent had a "full and fair" opportunity to litigate her case in the criminal matter, and therefore she is prevented from re-litigating any previously decided issue. *Id.* In addition, the admissions in Respondent's Answer are binding judicial admissions. *Mah Toi v. Brownell*, 219 F.2d 642, 643 (9th Cir. 1955)(stating that "[n]either proof nor finding is required in support of an allegation admitted in the pleadings").

The facts in the Complaint, establishing all of the elements of liability for each of the four counts in the Complaint, were admitted by Respondent. Accordingly, HUD's Motion for Summary Judgment is hereby **GRANTED**, pursuant to 24 C.F.R. § 26.29(l). Respondent is found liable on each of the four counts for violating 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28.10(a), and is furthermore subject to appropriate penalties and assessments associated with those violations.

The following Findings of Fact and Conclusions of Law are based upon the documents submitted into the record in this case.

IV. Findings of Fact and Conclusions of Law

1. Plaintiff is the U.S. Department of Housing and Urban Development (HUD), established pursuant to 42 U.S.C. § 3532, and an executive department of the United States Government within the definition of 31 U.S.C. § 3801(a)(1).

2. HUD, through the Federal Housing Administration (FHA), operates and maintains a mortgage insurance program for single family homes under Section 203(b) of the National Housing Act, 12 U.S.C. § 1709(b). The purpose of the mortgage insurance

program is to assist low to moderate income borrowers to purchase homes by encouraging lenders to grant mortgages to such borrowers by providing the lenders with insurance on the mortgages which will cover their losses in the event of the borrowers default thereon. *See,* 12 U.S.C. § 1709(b).

3. Applying for a HUD/FHA-insured mortgage requires the lender to complete, sign, and submit to HUD a "Uniform Residential Loan Application" ("URLA") and an "Addendum to URLA" (HUD Form 92900-A) which, *inter alia*, requires the applicant to identify current employer(s), document employment history, and indicate current monthly income and periodic expenses.

4. Respondent Delia Guadalupe Cervantes is an individual who is a "person" within the definition of 31 U.S.C. § 3801(a)(6).

5. In the case of *United States v. Delia Guadalupe Cervantes* in the U.S. District Court for the Central District of California, case number CR 05-00911, an Information was filed charging Respondent with three counts of wire fraud.

6. Respondent entered into a plea agreement in which she agreed to plead guilty to the three counts of wire fraud set forth in such Information.

7. By pleading guilty, Respondent admitted the facts stated in the Information and plea agreement.

8. Respondent admitted that she knowingly caused fraudulent W-2 forms and pay stubs to be submitted to the lenders in support of FHA-insured mortgage loan applications.

9. Respondent admitted that by her conduct, she caused non-qualifying borrowers to falsely appear to meet FHA criteria for loan approval.

10. Respondent admitted that she knew that the loans would not have been approved had HUD known that the documents were fraudulent.

11. Respondent knowingly caused fraudulent income documents to be submitted to the FHA in support of loan applications for the four properties specified in the Complaint, to wit: 6606 Brynhurst Ave., Los Angeles, CA (FHA # 197-1702348); 4615 Avalon Blvd., Los Angeles, CA (FHA # 197-1765042); 1022 Magnolia Ave., Long Beach, CA (FHA # 197-1075066); and 600 East 87th Street, Los Angeles, CA (FHA # 197-1765433). *See,* Complaint ¶ 36; Statement at 3.

12. Respondent admitted that her actions caused fraudulent FHA-insured loans to be submitted to HUD in the names of non-qualifying borrowers for the four properties.

13. Respondent caused an application for an FHA-mortgage to be submitted to HUD, along with fraudulent W-2 forms and pay stubs, in connection with each of the four specified properties.

14. The resulting Uniform Residential Loan Applications were therefore materially false and were supported by materially false documentation.

15. HUD relied upon the false information thus submitted in its decision to issue FHA-insured mortgages on the four specified properties.

16. A judgment and conviction was entered against Respondent on or about November 21, 2006 in the U.S. District Court for the Central District of California, case number CR 05-00911.

17. The borrowers defaulted on the mortgage loans associated with the four properties and claims were submitted to HUD for insurance benefits on the following dates: May 9, 2003 (6606 Brynhurst Avenue), December 24, 2002 (4615 Avalon Boulevard), October 23, 2002 (1022 Magnolia Avenue), and February 14, 2003 (600 East 87th Street).

18. On February 14, 2003, HUD paid a claim totaling $235,177.86 and took possession of the property located at 600 East 87th Street, Los Angeles (the property associated with Count 4 of the Complaint) following the borrower's default. In addition to the claim, HUD incurred $2,277 in taxes, $15,215.16 in maintenance and operation expenses, and $12,155.26 in sales expenses, in connection with the assumption and re-sale of the property.

19. HUD re-sold the 600 East 87th Street property for $205,469.

20. As a result of her criminal conviction, Respondent was ordered to pay restitution in the amount of $60,177.86 in connection with the 600 East 87th Street property.

V. Determination of Civil Penalty

1. With regard to the factors to consider in determining amount of penalties Section 28.40(b) of the applicable Rules provides as follows:

   In determining an appropriate amount of civil penalties and assessments, the administrative law judge (ALJ) and, upon appeal, the Secretary shall consider and state in their opinions any mitigating or aggravating circumstances. *Because of the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need for deterrence, ordinarily double damages and a significant civil penalty should be imposed.* The ALJ and the Secretary shall consider the following

factors in determining the amount of penalties and assessments to be imposed (emphasis added):

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the respondent's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of investigation;

(6) The relationship of the civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the respondent has engaged in a pattern of the same or similar misconduct;

(9) Whether the respondent attempted to conceal the misconduct;

(10) The degree to which the respondent has involved others in the misconduct or in concealing it;

(11) If the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude the misconduct;

(12) Whether the respondent cooperated in or obstructed an investigation of the misconduct;

(13) Whether the respondent assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions;

(15) Whether the respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly;

(16) The need to deter the respondent and others from engaging in the same or similar misconduct; and

(17) Any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

2. HUD's Memorandum sets forth in detail its analysis of the seventeen factors as they apply to Respondent's actions. Having reviewed HUD's penalty determination, I concur with its detailed analysis of the severity of the offenses and its reasoning behind the assessment and penalty. Respondent knowingly recruited unqualified buyers and straw purchasers in order to take advantage of the FHA-insurance program. The loan applications involved false and fraudulent documents and statements, all of which were knowingly submitted to HUD. Respondent profited from her malfeasance and these actions led to unnecessary expense on the part of the HUD to investigate her unlawful conduct, caused it to spend considerable monies associated with the mortgage claims, and undermined a laudable government program designed to provide affordable mortgage loans to low and moderate income buyers. Respondent's actions are clearly egregious and extreme enough to warrant the maximum allowable civil penalty. Finally, it is noted that although given an opportunity to do so, Respondent has proffered no pleadings or evidence to support any mitigation of the proposed penalty.

3. After having reduced the claim amount to $150,000 to comply with statutory requirements and having taken into account Respondent's mandated restitution, HUD is entitled to a net assessment against Respondent for $34,353.14 due to the false claim Respondent caused to be submitted to HUD in connection with the mortgage on the property located at 600 East 87th Street.

4. Respondent shall be assessed a penalty of $6,500 in connection with the false claim she caused to be made in connection with the 6606 Brynhurst Avenue property.

5. Respondent shall be assessed a penalty of $5,500 in connection with the false claim she caused to be made in connection with the 4615 Avalon Boulevard property.

6. Respondent shall be assessed a penalty of $5,500 in connection with the false claim she caused to be made in connection with the 1022 Magnolia Avenue property.

7. Respondent shall be assessed a penalty of $5,500 in connection with the false claim she caused to be made in connection with the 600 East 87th Street property.

8. HUD is entitled to total penalties of $23,000 in connection with the four false claims Respondent caused to be submitted to HUD.

9. Thus, Respondent is liable for assessment and penalties totaling $57,353.14.

ORDER

1. HUD's Motion for Summary Judgment is hereby **GRANTED**.

2. Pursuant to 31 U.S.C. § 3803, Respondent Delia Guadalupe Cervantes is found to have violated the Program Fraud Civil Remedies Act, 31 U.S.C. § 3802(a)(1), in regard to each of the four properties identified in the four Counts of the Complaint, as enumerated above.

3. Respondent Delia Guadalupe Cervantes shall pay an assessment of $34,353.14 and a civil penalty of $23,000, for a total of **$57,353.14**, which is due and payable immediately without further proceedings. *See,* 24 C.F.R. § 26.39(c).

4. This Order shall constitute final agency action pursuant to 24 C.F.R. § 26.39(b).

Susan L. Biro
Chief Administrative Law Judge
United States Environmental Protection Agency[6]

Dated: July 15, 2008
Washington, D.C.

[6] 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 12, 2008.