

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

1ST RELIANT HOME LOANS, INC.

Respondent.

20-JM-0016-MR-001

May 7, 2020

ORDER OF DISMISSAL

This matter is before the Court upon a request for hearing filed by 1st Reliant Home Loans, Inc. (“Respondent”) pursuant to 12 U.S.C. § 1708(c)(4), as implemented by 24 C.F.R part 25, seeking to appeal a decision by the U.S. Department of Housing and Urban Development (“HUD”) to withdraw Respondent’s approval to participate in certain HUD programs.

On April 30, 2020, the Court held a conference call to discuss the status of this matter and whether the proceeding should be dismissed. The call was attended by the presiding Administrative Law Judge and by counsel for HUD. None of Respondent’s representatives attended the call, although a company representative acknowledged receipt of correspondence from the Court’s staff inviting their participation and describing the matters to be discussed.¹

HUD has now filed a *Motion to Dismiss or, in the Alternative, for an Order to Show Cause as to Why Respondent’s Appeal Should Not Be Dismissed for Failure to Defend* (“Motion to Dismiss”). For the reasons discussed below, the Court will grant HUD’s motion and will dismiss this matter.

BACKGROUND

On September 24, 2019, HUD’s Mortgagee Review Board (“MRB”) issued a Notice of Administrative Action withdrawing HUD’s approval for Respondent to participate in certain programs administered by the Federal Housing Administration (“FHA”). The MRB decided to take this action due to Respondent’s alleged failure to provide acceptable audited financial

¹ Respondent has been represented in this matter by two company representatives and an outside attorney, who was named in Respondent’s hearing request and has participated in settlement discussions with HUD counsel, but has not formally entered an appearance. The Court’s staff left a voicemail for the outside attorney and emailed both the attorney and the two company representatives inviting them to participate in the April 30 conference call. One of the company representatives responded with an email indicating that he was trying to determine whether their attorney was available. However, the Court received no further communication from any of the representatives prior to the conference call.

statements, in violation of FHA requirements. Respondent appealed the decision to this Court pursuant to 24 C.F.R. § 25.10.

On October 30, 2019, the Court issued a *Notice of Hearing and Order* scheduling a hearing and setting various deadlines, including a November 5, 2019 deadline for Respondent to specifically respond to each of the violations in the Notice of Administrative Action. (Pursuant to 24 C.F.R. § 25.10(a), Respondent's hearing request should have already provided such responses, but it did not.) However, Respondent did not submit such responses. Instead, on November 6, 2016, the parties requested that this matter be stayed. They represented to the Court that Respondent had agreed to provide certain financial information to HUD and that they hoped to settle the matter without the need for a hearing. Accordingly, the Court stayed the proceeding by order dated November 6, 2019.

HUD counsel now asserts that Respondent has never provided the promised financial information. HUD counsel further states that Respondent's representative ceased communicating with him in April 2020 after informing him that the company was "winding down" its operations and intended to "surrender" its FHA approval.

On April 27, 2020, HUD counsel requested a conference call with the Court to discuss whether the case is ripe for dismissal. After Respondent failed to attend the April 30, 2020 conference call, HUD filed the *Motion to Dismiss* that is currently before the Court. Subsequently, the Court received an email from Respondent's attorney stating that he did not realize he had missed the call. He further stated that his client has an earnest need to wind down its business at this time due to the current economic climate and that he is "not sure what else the client has to do to properly effectuate this result," but he is willing to help.

DISCUSSION AND ORDER

HUD argues that the Court should dismiss this matter pursuant to 24 C.F.R. § 26.34 as a sanction for Respondent's failure to defend the action. The cited procedural rule authorizes this Court to sanction a party "for failing to comply with an order, rule, or procedure governing the proceeding; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing." 24 C.F.R. § 26.34(a); see also id. § 25.10(c) (applying procedural rules in 24 C.F.R. part 26, subpart B, including the cited rule, to this proceeding). Any sanction imposed must "reasonably relate to the severity and nature of the failure or misconduct," but the Court is expressly permitted to dismiss an action or issue a decision against a party if the party fails to prosecute or defend the action. Id. § 26.34(b), (d).

In this case, HUD asserts that immediate dismissal is warranted because Respondent has displayed a failure to defend by failing to comply with the Court's *Notice of Hearing and Order*; failing to submit financial information to HUD after agreeing to do so, and eventually ceasing communications with HUD counsel; and failing to attend the April 30, 2020 conference call with the Court. The Court agrees. Respondent's hearing request consisted of a one-page letter that did not specifically respond to each violation listed in the MRB Notice of Administrative Action, which did not comport with HUD's regulatory requirements. See 24 C.F.R. § 25.10(a). The

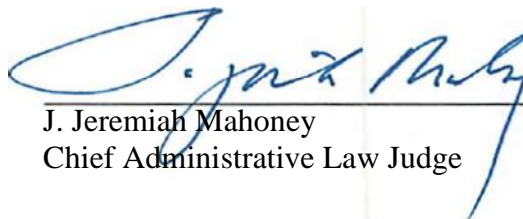
Court ordered Respondent to provide specific responses to the violations by November 5, 2019, but Respondent failed to do so.

Instead of finding Respondent to be in default at that time, the Court stayed this matter based on the parties' representations that they intended to negotiate a settlement. But the settlement discussions were unsuccessful, apparently because Respondent failed to produce promised financial information to HUD and eventually stopped communicating with HUD counsel entirely. Respondent then failed to appear at the status conference called by the Court, declining to take advantage of the opportunity to explain why dismissal of this matter would be inappropriate at this time.

Moreover, now that the Court has heard from Respondent's counsel, it appears that Respondent does not oppose immediate dismissal of this matter, which is warranted under the circumstances. As pointed out by HUD, because Respondent has indicated it no longer intends to challenge HUD's withdrawal of its FHA approval, the only issue remaining for consideration is when the withdrawal will take effect. The withdrawal cannot take effect until this proceeding is concluded. The MRB justified the withdrawal by citing Respondent's failure to abide by FHA requirements, which poses a financial risk to HUD. Delay of this proceeding could increase that risk by allowing Respondent to keep its FHA approval even while discontinuing its business operations and becoming defunct.

Accordingly, to avoid further delaying the conclusion of this proceeding or the implementation of the MRB's withdrawal action, which Respondent no longer opposes, HUD's *Motion to Dismiss* is hereby **GRANTED** and this matter is **DISMISSED** with prejudice.

So **ORDERED**,



J. Jeremiah Mahoney
Chief Administrative Law Judge