

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

In the Matter of:

JSB MORTGAGE CORPORATION,

Respondent.

22-JM-0056-CM-002

February 10, 2022

ORDER OF DISMISSAL

On December 14, 2021, the U.S. Department of Housing and Urban Development (“HUD”) issued a *Complaint for Civil Money Penalties* (“Complaint”), which was simultaneously filed with this Court, seeking to impose \$25,134 in civil money penalties against JSB Mortgage Corporation (“Respondent”) pursuant to 12 U.S.C. § 1735f-14 as implemented by 24 C.F.R. part 30.

Respondent is a recipient of a mortgage underwritten through the Title I and Title II Single Family Mortgage Insurance Program, and is considered a “Non-Supervised Mortgagee” as defined by HUD Handbook 4000.1, Section I.A.2.b.i. The *Complaint* accuses Respondent of submitting false annual certifications and permitting the prohibited dual employment of Respondent’s “Officer in Charge.” See Handbook 4000.1, Section I.A.3.c.iv.B(2)(b). If true, Respondent is thereby subject to civil money penalties under 12 U.S.C. § 1735f-14(b) and (c)(1)(A) as implemented by 24 C.F.R. part 30.

HUD now asks the Court to dismiss this matter due to Respondent’s failure to timely file a hearing request. Respondent has not filed an opposition to the motion to dismiss.¹ After careful consideration, the Court will dismiss this matter for lack of jurisdiction, for the reasons discussed below.

I. APPLICABLE LAW

The Secretary of HUD (“the Secretary”) has statutory authority to insure eligible mortgages under Title II of the National Housing Act (“the NHA”), as amended, and to issue rules and regulations to carry out the provisions of the NHA. See generally 12 U.S.C. § 1707 *et seq.*; see also *id.* §§ 1709, 1715b. The Secretary designated the Mortgagee Review Board (“the Board”), as established within HUD pursuant to 12 U.S.C. § 1708, to seek civil money penalties against mortgagees for violations including, *inter alia*, (1) a mortgagee’s failure to comply with an agreement, certification, or condition of approval set forth on, or applicable to, the mortgagee’s application for approval by the Secretary, and (2) a mortgagee’s violation of any provision of Title

¹ On January 28, 2022, Respondent replied to the HUD email that served the *Motion* with a three-sentence statement indicating disagreement and a PDF copy of a letter dated January 2, 2022.

II of the NHA or any implementing regulations or subregulatory guidance issued under the NHA, both of which Respondent is accused of doing in this case. See 12 U.S.C. § 1735f-14(b)(1)(G)(i), (b)(1)(H), (c)(1)(A); 24 C.F.R. parts 25 and 30.

Before imposing such penalties, HUD must give the liable parties notice and an opportunity for a hearing on the record. Id. § 1735f-14(c). Congress directed the Secretary of HUD to establish standards and procedures governing the imposition of civil money penalties and providing the opportunity for a hearing on the record. Id. § 1735f-14(c)(1). The Secretary has duly promulgated such regulations in part 30 of title 24 of the Code of Federal Regulations. See 24 C.F.R. part 30.

HUD's regulations provide that, upon making a determination to seek a civil money penalty, HUD must issue a complaint notifying the respondent of HUD's determination and of the respondent's "right to submit a response in writing, within 15 days of receipt of the complaint, requesting a hearing on any material fact in the complaint, or on the appropriateness of the penalty sought." 24 C.F.R. § 30.85(b)(4). The regulations characterize the 15-day deadline to request a hearing as mandatory, stating that the deadline is "required by statute" and "cannot be extended." Id. Indeed, § 1735f-14 mandates:

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination.

12 U.S.C. § 1735f-14(c)(2). The hearing request must be submitted to this Court. 24 C.F.R. § 30.90(a). Service by electronic means is presumed complete upon electronic transmission. See id. § 26.30(b).

If a respondent has timely requested a hearing, "the respondent shall serve upon HUD and file with the Office of Administrative Law Judges a written answer to the complaint within 30 days of receipt of the complaint, unless such time is extended by the administrative law judge for good cause. The answer shall include the admission or denial of each allegation of liability made in the complaint; any defense on which the respondent intends to rely; any reasons why the civil money penalty should be less than the amount sought in the complaint, based on the factors listed at § 30.80; and the name, address, and telephone number of the person who will act as the respondent's representative, if any." 24 C.F.R. § 30.90(b).

A motion before this Court shall state the specific relief requested and the basis for the relief. See 24 C.F.R. § 26.40(a). A response to a motion may be filed within 10 days after service of the motion, and failing to timely respond may be deemed to have waived any objection to the granting of the motion. See id. § 26.40(b). When a motion to dismiss the proceeding is granted, the ALJ shall make and file a determination and order. See id. § 26.40(g).

II. PROCEDURAL HISTORY

On December 14, 2021, HUD served the *Complaint* in this matter on Respondent via email and simultaneously filed it with this Court.² A hard copy of the *Complaint* was also delivered to

² Respondent was served via email to the President of Respondent, Eugene K. Yoon.

Respondent by UPS on December 20, 2021.³ The *Complaint* notified Respondent of the right to request a hearing no later than 15 days following receipt of the *Complaint*, *i.e.*, by December 29, 2021, and to file an answer to the *Complaint* within 30 days, *i.e.*, by January 13, 2022, in accordance with 24 C.F.R. § 30.90. The *Complaint* also warned Respondent that failure to respond might result in imposition of the penalty in the amount sought by HUD. The 15 and 30-day deadlines elapsed without this Court receiving any hearing request, answer or other correspondence from Respondent.

On January 27, 2022, HUD served the *Motion to Dismiss for Lack of Jurisdiction* (“Motion”) on Respondent by email and attempted to simultaneously file it with this Court, perfecting filing on January 28, 2022.⁴ HUD argued that because of the expiration of the time period to request a hearing this Court no longer has jurisdiction over this matter. On January 28, 2022, Respondent replied to the email used to serve the *Motion*, stating:

I do not agree to your motion. My counsel did respond to your letter dated December 14, 2021 requesting hearing [sic] a hearing and or settlement. Please find the attached letter which was mailed to your office as instructed on your letter dated December 14, 2021.

Respondent attached a PDF copy of a letter (“the Letter”), which included a header date of January 2, 2022, and a header address indicating it had been sent by “regular mail” to this Court. No certificate of service was included with this Letter, nor has Respondent alleged that it was mailed on that date (which was a Sunday). Moreover, no copy of the Letter has yet been received by this Court by regular mail, and the attorney who signed the Letter has not entered an appearance in this matter.⁵ Respondent has not filed any formal opposition to the *Motion*.

III. DISCUSSION

Pursuant to the NHA and HUD’s implementing regulations, the deadline for Respondent to request a hearing in this matter was December 29, 2021, fifteen days after receiving the *Complaint* providing notice of opportunity for a hearing.⁶ See 12 U.S.C. § 1735f-14(c)(2); see also 24 C.F.R. § 30.90(a). However, Respondent did not submit a request for a hearing, or otherwise communicate with or appear before the Court, until January 28, 2022, 30 days past the 15-day deadline to request a hearing, when it submitted the belated Letter.⁷

³ Respondent was served via UPS to the registered address for service of process upon the Respondent, which is the same address for Respondent’s sole officer and director, Eugene K. Yoon.

⁴ The *Motion* was initially sent to an email address not maintained by, but similar to this Court’s.

⁵ The Court notes that the United States Postal Service, while presumptively diligent, occasionally makes mistakes: <https://www.usatoday.com/story/news/nation/2022/01/07/wwii-letter-delivered-76-later/9128096002/>. The court provided respondent two mail addresses and one email address to request a hearing. Respondent chose to use only one.

⁶ Respondent has not disputed that service by email was actually accomplished on December 14, 2021.

⁷ Even if this Court accepts Respondent’s assertion that the Letter dated January 2, 2022, was in fact sent to this Court at that time, it was untimely by 4 days and beyond the statutory period for this Court to consider.

This Court no longer has jurisdiction over this matter at all under the NHA, given that Respondent failed to request a hearing before the expiration of the 15-day statutory deadline. See 12 U.S.C. § 1735f-14(c)(2). If the respondent misses the deadline, the validity and basis of the penalty are not in dispute before the ALJ, whose only role is to dismiss any commenced action. This is consistent with the applicable regulation, subsection (a) of § 30.90:

If the respondent desires a hearing before an administrative law judge, the respondent shall submit a request for a hearing to HUD and the Office of Administrative Law Judges no later than 15 days following receipt of the complaint, as required by statute. **This mandated period cannot be extended.**

24 C.F.R. § 30.90(a) (emphasis added).

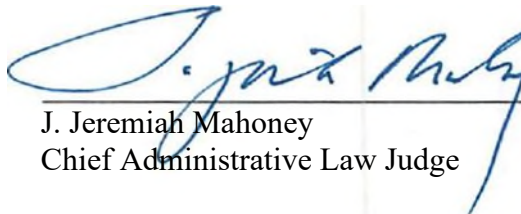
The appropriate course of action when a respondent misses the 15-day deadline in a civil money penalty case is to dismiss any proceedings before the ALJ because the penalty proposed in the complaint has already become final under 12 U.S.C. § 1735f-14(c)(2) and the Court lacks authority to adjudicate the matter. See *In re PF Sunset Plaza LLC*, No. 21-AF-0131-CM-006 (HUDALJ October 7, 2021) (dismissing proceeding for lack of jurisdiction after similar 15-day statutory deadline was missed under 42 U.S.C. § 1437z-1(c)(2)(A)); see also *In re Ralston GA and PF Holdings*, 21-JM-0180-CM-007 (HUDALJ October 25, 2021) (same). Respondent was presented with notice of the opportunity for a hearing but failed to comply with the statutory deadline to request a hearing. As such, the penalty proposed in the *Complaint* became final under § 1735f-14(c)(2).

This Court also notes that Respondent did not contest the dates or adequacy of service of the *Complaint*; Respondent did not offer any fact or argument justifying the failure to timely file a request for a hearing; and Respondent did not otherwise suggest that the Letter was timely as a request for a hearing.

CONCLUSION AND ORDER

For the foregoing reasons, the Court concludes that the penalty proposed in the *Complaint* has already become final under 12 U.S.C. § 1735f-14(c)(2) and that the Court lacks authority to adjudicate this matter.⁸ Accordingly, this proceeding is hereby **DISMISSED**.

So **ORDERED**,


J. Jeremiah Mahoney
Chief Administrative Law Judge

⁸ As the penalty proposed in the *Complaint* has been declared the final agency action, this matter may be appealed within 20 days to the appropriate court of appeals of the United States in accordance with 12 U.S.C. § 1735f-14(d).