

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY**

In the Matter of:

A1 MORTGAGE GROUP, LLC

Respondent.

HUDOHA 19-AF-0168-MR-004

September 18, 2020

ORDER ON SECRETARIAL REVIEW

On July 31, 2020, A1 Mortgage Group, LLC (“Respondent”) filed an Appeal for Secretarial Review (“Appeal”) of the Initial Decision and Order (“Decision”) issued by Administrative Law Judge Alexander Fernández (“ALJ”). The Decision, issued on June 4, 2020, found that Respondent violated Federal Housing Administration (“FHA”) lender requirements by failing to maintain the minimum adjusted net worth requirement during fiscal year 2017 and by submitting a false certification to the United States Department of Housing and Urban Development (“HUD”) certifying that Respondent was in compliance with all HUD requirements necessary to maintain its FHA lender approval, including the minimum adjusted net worth requirement.

Upon review of the record of this proceeding, including the briefs filed with the ALJ and the Secretary, Respondent’s Appeal is **DENIED** and the ALJ’s Decision is **AFFIRMED** for the reasons set forth below.

PROCEDURAL HISTORY

On July 5, 2019, the Mortgagee Review Board (“Board”) of HUD issued a *Notice of Withdrawal* withdrawing approval of Respondent as an FHA mortgagee for one year. On July 31, 2019, Respondent requested a hearing to challenge HUD’s decision to withdraw Respondent from the FHA program. The hearing was held on September 17, 2019, in Washington, D.C. Respondent filed a Post Hearing Brief on November 30, 2019. The Government filed its Post Hearing Brief on December 3, 2019, and Respondent replied on January 31, 2020. The ALJ’s Decision was issued on June 4, 2020, finding Respondent violated FHA lender requirements by failing to maintain the minimum adjusted net worth requirement during fiscal year 2017 and by submitting a false certification to HUD certifying Respondent was in compliance with all HUD requirements necessary to maintain its FHA lender approval, including the minimum adjusted net worth requirement.

On July 2, 2020, Respondent filed a request with the Secretary for a 30-day extension to appeal the ALJ's Decision, due to workplace disruptions resulting from a positive case of COVID-19 that required office evacuations, testing, and cleaning. On July 13, 2020, Respondent's request for a 30-day extension was granted and its appeal was due no later than August 3, 2020.

On July 31, 2020, Respondent timely filed its Appeal of the ALJ's Decision. In its Appeal, Respondent does not dispute the ALJ's Decision. Rather, Respondent contends that the minimum adjusted net worth requirement should be waived by the Secretary, or his designee, due to extenuating circumstances, and further contends, for the first time, that the charge that Respondent submitted a false certification should be stricken from the record because Respondent did not intentionally falsify the certification and was following the guidance of an accounting firm.

On August 20, 2020, HUD timely filed its Opposition. In its Opposition, HUD asserts Respondent's appeal is without merit and the ALJ's Decision should be affirmed because Respondent failed to demonstrate any extenuating circumstances warranting a waiver of the minimum adjusted net worth requirement, a requirement Respondent conceded it violated. In addition, HUD contended Respondent failed to assert any grounds warranting the falsification charge to be stricken as, *inter alia*, Respondent was aware when it submitted the certification that it contained false information regarding its compliance with the minimum adjusted net worth requirement, a fact HUD contends is clearly supported by the evidence in the record.

DISCUSSION

I. Respondent failed to maintain the required minimum adjusted net worth.

The National Housing Act, 12 U.S.C. § 1701, et seq. (the "Act") created the FHA, which 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 "[have, 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 single-family mortgages. 24 C.F.R. Part 202. A violation of these requirements may result in the withdrawal of the approval of a mortgagee to participate in the single family mortgage insurance program. 12 U.S.C. § 1708(c)(1).

In order for program participants to be approved for participation in the FHA single family mortgage insurance program, and to maintain such approval, participants must have "a net worth of not less than \$1 million, plus an additional net worth of one percent of the total volume in excess of \$25 million of FHA single family insured mortgages originated, underwritten, purchased, or serviced during the prior fiscal year, up to a maximum required net worth of \$2.5 million." 24 C.F.R. § 202.5(n)(3)(i); *see* 24 C.F.R. § 202.7(b)(1) (non-supervised mortgagees must meet net worth requirement in § 202.5(n)); Single-Family Housing Policy, HUD Handbook 4000.1 at § I.A.3.c.vii (Dec. 30, 2016).

Respondent does not dispute it was required to maintain a minimum adjusted net worth of \$1,069,668 for fiscal year 2017, to comply with FHA requirements. *See Appeal*; *see also Decision* at 6. Rather, Respondent claims it was a mistake to have listed itself as a borrower of the original loan with Byline Bank. *See Transcript* at 79: 4-16; *see also Decision* at 6. While Respondent restructured its SBA-guaranteed loan with Byline Bank to remove itself from being a “borrower,” the company still remained an unconditional “guarantor” of the outstanding loan balance of approximately \$3.4 million. *See Gov’t Ex.* 10, 11, 12, 13; *see also Decision* at 5-6. Despite the restructuring, Respondent concedes it remains liable for the loan balance of approximately \$3.4 million as the unconditional guarantor of the debt, and that its assets are still pledged as collateral for the loan. *See Appeal*; *see also Respondent’s Post Hearing Brief*. This arrangement resulted in Respondent’s adjusted net worth for fiscal year 2017 to be \$3,583,069 below regulatory requirements. *See Transcript* at 28: 14-22, 29: 1-2; *Gov’t Ex.* 4, 13; *see also Decision* at 5-6.

In its Appeal, Respondent contends the technicality of a company being listed as a borrower to buy itself is an extenuating circumstance that does not “violate the ‘spirit’ of the net worth requirement.” *See Appeal*. Therefore, Respondent requests a waiver of the minimum adjusted net worth requirement. *See id.*

The extenuating circumstance cited by Respondent is not legally sufficient to warrant a waiver. Compliance with the net worth requirement is important to FHA because it ensures that mortgagees are sufficiently capitalized for their financial transactions and enhanced risks present in today’s economy. *See In re Vinson Mortg. Servs, Inc.*, HUDOHA 16-JM-0076-MR-008, at 2 (HUDOHA Aug. 14, 2017). As an FHA approval standard, the minimum adjusted net worth requirement is non-waivable. *R&G Mortg. Corp.*, HUDALJ 07-052-MR, at 11 (citing 57 Fed. Reg. 31048 (July 13, 1992)). Further, if the violation involves a non-waivable lender approval requirement, which is the case here, implementing a withdrawal action is nondiscretionary. *Id.* Therefore, Respondent’s contention that an extenuating circumstance exists excusing its non-compliance is without merit. Respondent does not have a legal basis for seeking a waiver.

The restructuring of the loan with Byline Bank in 2018 did not correct Respondent’s net worth deficiency. HUD requires mortgagees to maintain at least the minimum required adjusted net worth at all times. 24 C.F.R. §§ 202.5(n) and 202.7(b)(1); HANDBOOK 4000.1, at § I.A.3.c.vii. The applicable minimum net worth requirement is \$1 million plus an additional net worth of one percent of the total volume in excess of \$25 million of FHA single family insured mortgages originated, underwritten, purchased, or serviced during the prior fiscal year, up to a maximum required net worth of \$2.5 million. 24 C.F.R. § 202.5(n)(3)(i). Respondent was required to maintain a minimum adjusted net worth of \$1,069,668 for the 2017 fiscal year to comply with FHA requirements, an amount Respondent does not contest. *Transcript* at 78:17-21. The loan restructuring resulted in Respondent’s adjusted net worth for the 2017 fiscal year to be \$3,583,069 below regulatory requirements. *See Gov’t Ex.* 4,13; *see also Transcript* at 28: 14-22, 29: 1-2. Furthermore, under the restructuring, Respondent remained an unconditional “guarantor” of the outstanding loan balance of approximately \$3.4 million, and as such, continued to be liable for the entire balance of the loan in the event of default, and the company’s assets were pledged as collateral for the loan. *Gov’t Ex.* 4, 13; *Transcript* at 40: 4-11, 41: 22, 42, 67-70; *see also Decision* at 6. Thus, Respondent continued to operate in violation of FHA’s

minimum adjusted net worth requirement. *Id.* Therefore, the ALJ's determination that Respondent violated FHA requirements by failing to meet the minimum adjusted net worth requirement during fiscal year 2017 is affirmed.

II. Respondent failed to demonstrate the charge of submitting a false mortgagee certification should be stricken from the record.

In order to be approved for participation in the FHA single family mortgage insurance program, and to maintain such approval, a mortgagee "must submit an annual certification on a form prescribed by the Secretary." 24 C.F.R. § 202.5(m). This certification includes a confirmation by a corporate officer of the mortgagee that the mortgagee has complied with all HUD regulations and requirements necessary to maintain the mortgagee's FHA approval during the applicable fiscal year, including the minimum adjusted net worth requirement. Single-Family Housing Policy, HUD Handbook 4000.1 at § I.A.8.b (Dec. 30, 2016). Respondent submitted an annual mortgagee certification that was determined to be false by the ALJ. At the time Respondent submitted its certification, certifying that it was in compliance with all FHA regulations and requirements, it had already been made aware by the accounting firm it hired that Respondent did not meet the FHA's minimum adjusted net worth requirements for fiscal year 2017. *Decision* at 6. In its Appeal, Respondent requests that the charge of submitting a false statement be stricken from the record because it did not intentionally provide a false statement, but instead was following the advice of Baker Tilly, an accounting firm. *See Appeal*.

In its Opposition, HUD contends Respondent "failed to demonstrate any grounds for striking the finding that it submitted a false annual mortgagee certification to HUD." *Opposition* at 4. Specifically, HUD contends Respondent's certification was false because it represented that it complied with all FHA requirements necessary to maintain its approval during the fiscal year, when it in fact did not. *Id.* Additionally, HUD contends Respondent did not present any evidence at the hearing to indicate that it was following the guidance of an accounting firm or that it did not intentionally falsify the certification. *Id.*

Respondent's contention it did not intentionally provide a false statement, but rather was following the guidance of an accounting firm is without merit. The day before Respondent submitted its certification, Respondent was made aware by accounting firm, RubinBrown LLP¹, that it did not meet the FHA minimum net worth requirement during fiscal year 2017. *See Gov't Ex. 4; Transcript* at 28: 14-22, 29: 1-2, 78: 17-21; *see also Decision* at 6. The day after becoming aware of its non-compliance with the FHA minimum net worth requirement, Respondent's certification was submitted to HUD, certifying it was compliant with all FHA requirements necessary to maintain its approval during the fiscal year. *See Gov't Ex. 5; see also Opposition* at 4; *Decision* at 6. This certification was false because Respondent did not comply with the minimum adjusted net worth requirement. *See* 24 C.F.R. § 202.5(n)(3)(i); FHA Single Family Housing Policy Handbook 4000.1 at § I.A.3.c.vii. Additionally, Respondent did not present any evidence at the hearing nor did it address in its post-hearing brief that it did not intentionally provide a false statement. The ALJ's finding that Respondent submitted a false

¹ Respondent refers to the accounting firm Baker Tilly in its Appeal. Baker Tilly is the parent company of RubinBrown LLP.

annual mortgagee certification to HUD is supported by the evidence in the record. Therefore, Respondent has failed to demonstrate a basis for striking the charge.

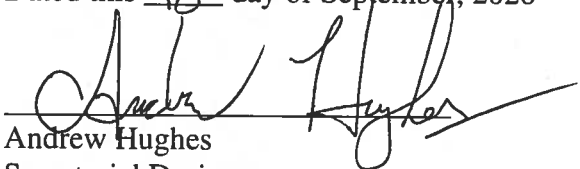
CONCLUSION

For the foregoing reasons, Respondent is in violation of FHA's minimum net worth requirement and was correctly charged with submitting a false certification. Respondent has not provided sufficient legal or factual support to overturn the one-year withdrawal of its FHA approval or for striking the finding that it submitted a false annual mortgagee certification. After reviewing the record, I **AFFIRM** the ALJ's Decision and adopt the findings and legal decisions therein. Therefore, Respondent's Appeal is hereby **DENIED**.

Judicial review of this determination shall be available in accordance with applicable statutory procedures and the procedures of the appropriate federal court. 24 C.F.R. § 26.54.

IT IS SO ORDERED.

Dated this 18 day of September, 2020



Andrew Hughes
Secretarial Designee