

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

In the Matter of

JOHN KATSAFANAS

Respondent.

HUDALJ 03-001-CMP
HUDALJ 03-007-CMP
Decided: November 4, 2003

Mr. John Katsafanas,
pro se

Travis J. Farris, Esq.
For the Government

Before:
Thomas C. Heinz
Administrative Law Judge

INITIAL DECISION

STATEMENT OF THE CASE

This proceeding arises out of actions taken by the Assistant Secretary for Housing-Federal Housing Commissioner, U.S. Department of Housing and Urban Development (“the Department” or “HUD” or “the Government”) seeking to impose civil money penalties against John Katsafanas (“Respondent”) for violations of 12 U.S.C. §1735f-14 and 24 C.F.R. Part 30. On January 14, 2003, the Department filed a Complaint (“Complaint I”) against Respondent with the Office of Administrative Law Judges alleging that in connection with seven applications for HUD-insured loans, Respondent falsely certified: “To the best of my knowledge and belief, I and my firm and its principals: (1) are not presently debarred, suspended, [or] proposed for debarment” On March 3, 2003, the Department filed another Complaint (“Complaint II”) making the same type of allegations in connection with eight different applications for HUD-insured loans. These two Complaints were consolidated for adjudication by Order issued April 16, 2003.

The Complaints directed Respondent to file responses with HUD, but he did not comply. Because Respondent failed to file Answers to the Complaints, the Government

filed motions for default judgment. The motions were denied or rulings on the motions were held in abeyance because Respondent asserted that he had not responded to Complaint I because he had been in a halfway house, and that he had sent his Answer to Complaint II to the wrong address. On the strength of these assertions, Respondent was twice given opportunities—by Orders dated March 18, 2003, and April 16, 2003—to file Answers with the Chief Docket Clerk of the Office of Administrative Law Judges that comply with the rules of practice governing this proceeding (24 C.F.R. §26.28).

The Order of April 16, 2003, warned, “If Respondent fails to comply with this Order, those allegations in the Complaints that have not been either admitted or denied will be deemed admitted.” Respondent failed to file Answers to the Complaints with the Chief Docket Clerk, prompting the Government to move for sanctions in the form of summary judgment. That motion was granted in an Order dated May 29, 2003, which directed that “all allegations in the Government’s Complaints are deemed admitted.”

On June 3, 2003, a hearing was held in Washington, D.C., for the sole purpose of taking evidence regarding the appropriate penalty for Respondent’s violations. At the close of the hearing, the parties were ordered to file post-hearing briefs on or before July 14, 2003. The Government complied with this Order but Respondent did not. To date he has neither filed a post-hearing brief nor requested an extension of time in which to do so.¹

FINDINGS OF FACT

1. At all relevant times herein, Respondent was an individual who originated loans for insurance by the Federal Housing Administration (“FHA”) and an employee of U.S. Mortgage Finance Corporation, an FHA-approved mortgagee. (Complaint I, ¶ 2; Complaint II, ¶ 2)

2. At all relevant times herein, Respondent originated FHA-insured mortgages in and around Baltimore, Maryland. (Complaint I, ¶ 23; Complaint II, ¶ 24)

3. On June 28, 2001, Respondent was suspended and proposed for debarment by the Department. (Complaint I, ¶ 24; Complaint II, ¶ 25)

4. Respondent appealed his suspension and proposed debarment by letter dated July 26, 2001. (Complaint I, ¶ 25; Complaint II, ¶ 26)

¹Due to the press of other business, this Initial Decision and Order is being issued outside the period contemplated by the regulations.

5. On February 5, 2002, Respondent's proposed debarment was affirmed for a three-year period commencing on the date of the suspension. (Complaint I, ¶ 26; Complaint II, ¶ 27; GX. 1)²

6. On February 6, 2002, Respondent received notice that the debarment had been affirmed. (Complaint I, ¶ 27; Complaint II, ¶ 28)

7. Between September 19, 2001, and April 8, 2002, Respondent acted as the loan officer in 15 loans that were submitted for FHA insurance, and in connection with each of those loans he signed the "Addendum to Uniform Residential Loan Application." (HUD Form 92900 A) Part II of that form contains the following certification: "To the best of my knowledge and belief, I and my firm and its principals: (1) are not presently debarred, suspended, [or] proposed for debarment . . ." (Complaint I, ¶¶ 28, 29, 30, 31; Complaint II, ¶¶ 29, 30, 31, 32)

8. The certifications referred to in paragraph 7 above occurred on the dates and in connection with the loans identified below:

September 19, 2001	██████████ loan (Complaint I, ¶ 33)
September 27, 2001	██████████ loan (Complaint I, ¶ 36)
October 15, 2001	██████████ loan (Complaint I, ¶ 39)
October 30, 2001	██████████ loan (Complaint II, ¶ 43)
November 8, 2001	██████████ loan (Complaint I, ¶ 42)
November 13, 2001	██████████ loan (Complaint II, ¶ 37)
December 1, 2001	██████████ loan (Complaint I, ¶ 45)
December 10, 2001	██████████ loan (Complaint I, ¶ 48)
January 29, 2002	██████████ loan (Complaint II, ¶ 52)
February 7, 2002	██████████ loan (Complaint I, ¶ 51; Government's Motion of January 28, 2003, to Correct Typographical Error in Complaint I)
February 8, 2002	██████████ loan (Complaint II, ¶ 55)
February 19, 2002	██████████ loan (Complaint II, ¶ 46)
March 16, 2002	██████████ loan (Complaint II, ¶ 49)
March 16, 2002	██████████ loan (Complaint II, ¶ 34)
April 8, 2002	██████████ loan (Complaint II, ¶ 40)

²The following abbreviations are used in this decision: "TR." refers to the hearing transcript; and "GX." refers to the Government's exhibits.

9. Respondent knew or had reason to know that each of the certifications identified in paragraphs 8 and 9 above were false. (Complaint I, ¶¶ 34, 37, 40, 43, 46, 49, 52; Complaint II, ¶¶ 35, 38, 41, 44, 47, 50, 53, 56)

10. Making a false certification to the Department is a material violation of HUD requirements. (Complaint I, ¶¶ 35, 38, 41, 44, 47, 50, 53; Complaint II, ¶¶ 36, 39, 42, 45, 48, 51, 54, 57)

11. Respondent was debarred by HUD on February 6, 2002, because he had been convicted in the United States District Court for the District of Maryland of failing to file income tax returns for the years 1996 and 1997. (GX. 1)

12. Respondent's conviction was based on a plea agreement with the Government dated November 3, 2000, which included the following stipulation:

Katsafanas failed to file any tax returns for the years 1977 through 1991. In 1993, after his delinquency had come to the attention of the IRS, he engaged a CPA firm, Goldschmidt & Dewan, to help him clear up the delinquencies. They prepared returns for him for 1992 through 1994, and helped him to negotiate an offer in compromise to settle the back taxes from 1977 through 1991. The IRS accepted the offer in compromise, with the express proviso that, in addition to the compromise amount, he "pay all required taxes for five years from the date [of the agreement - August 14, 1995]." He filed his 1992 - 1994 returns, and sought extensions on his 1995 return, but in fact has not filed a return since the 1994 one prepared by Goldschmidt and Dewan. [GX. 1]

13. As of March 9, 2001, Respondent owed the Federal Government approximately \$110,864 in unpaid taxes for the years 1996 and 1997, and approximately \$300,000 to \$400,000 (plus interest) in penalties for failing to pay income taxes and file tax returns. (GX. 1; TR. 82-83)

14. Upon Respondent's conviction for failing to file Federal tax returns, the court sentenced him to pay restitution of \$110,864 to the Government and to incarceration in a halfway house in Baltimore, Maryland, from which he was released on February 27, 2002. (GX. 1)

15. Respondent is paying his debt to the Federal Government at the rate of \$3,000 per month. (Pleading dated March 24, 2003, sent to Government Counsel by Complainant)

16. The State of Maryland has made claims of \$100,000 to \$200,000 against Respondent for unpaid taxes and failing to file tax returns. (TR. 83-84)

17. Respondent earned \$283,622.61 in 2002, and \$113,773.35 for the first four months of 2003, for an average of \$24,837.25 per month over that 16-month period. (GX. 70)

18. Respondent received commissions in excess of \$26,000 in connection with the 15 loans that are the subject of this case. (GX. 70)

SUBSIDIARY FINDINGS, CONCLUSIONS OF LAW, AND DISCUSSION

Under 12 U.S.C. §1735f-14(b)(2)(A) and (B), the Secretary may impose a civil money penalty upon the employee of an FHA-approved mortgagee for the knowing and material “submission to the Secretary of information that was false, in connection with any mortgage insured under this [Act, or] . . . falsely certifying to the Secretary or submitting to the Secretary a false certification by another person or entity” For each violation of these provisions a penalty of up to \$5,500 may be imposed. (*See* 12 U.S.C. §1735f-14(a)(2); Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, 104 Stat. 890-92, October 5, 1990, as amended by The Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321-58, April 26, 1996.)

As set out in the Findings of Fact above, Respondent, in his capacity as an employee of an FHA-approved mortgagee, knowingly submitted or caused to be submitted false certifications to the Secretary in connection with FHA-insured mortgages. This conduct constituted material violations of the Act. Accordingly, the Secretary is authorized to impose civil money penalties upon Respondent.

To determine the appropriate amount of civil money penalties, 12 U.S.C. §1735f-14(c)(3) and 24 C.F.R. §30.80 require consideration of the following factors.

1. The Gravity of the Offense

It is the policy of the Federal Government to conduct business with responsible persons only. HUD’s debarment and suspension procedures are designed to implement that policy by keeping irresponsible persons out of HUD programs. *See* 24 C.F.R. §24.115. Respondent was suspended and debarred based on substantial evidence that he was not a responsible person—namely, a conviction for failing to file income tax returns

in 1996 and 1997, when he earned, respectively, \$350,000, and \$235,000.³ Conviction of a criminal offense such as failing to file income tax returns is cause for suspension and debarment. 24 C.F.R. §24.305(a)

When Respondent falsely certified that he had not been suspended, debarred, or proposed for debarment in connection with 15 loan applications for FHA insurance, he undermined the integrity of HUD's mortgage insurance program. None of those loans would have been eligible for insurance if Respondent had revealed the truth of his status. HUD relied on the certifications that Respondent had falsified because the agency has no real alternative. For loans originated by private lenders, such as Respondent's employer, HUD is obligated to issue insurance without exercising significant oversight of the lenders' operations. Furthermore, the agency does not have sufficient resources to monitor every mortgage insurance transaction to ensure that irresponsible persons are not involved. (TR. 41)

If irresponsible people are allowed to participate in a HUD program, there is a substantial risk of harm to the program and ultimately to the public. As stated in *In the Matter of Flagship Mortgage Services, Inc.*, HUD ALJ 90-154-MR, p. 7:

When . . . a mortgagee knowingly submits false information to HUD/FHA, it unquestionably commits a serious breach of its fiduciary duty to the Government. The Federal Housing Administration cannot operate properly if it cannot trust and rely upon mortgagees to supply true, accurate and complete information.

The certification system was designed to protect the public from injuries that may be caused by irresponsible persons. When Respondent falsified certifications, members of the public became vulnerable to injury. Respondent's violations are sufficiently grave to merit imposition of substantial civil money penalties.

2. Any History of Prior Offenses

The record contains no evidence that Respondent has a history of prior violations of the Act.

³Respondent was indicted for failing to file income tax returns for 1995, 1996, and 1997. As part of a plea agreement, the Government agreed to drop the charges regarding 1995, during which he earned \$195,000.

3. The Ability to Pay the Penalty

In 2002 Respondent's employer paid him \$ [REDACTED], and for the first four months of 2003 Respondent earned \$ [REDACTED], for an average monthly income of nearly \$ [REDACTED] over that 16-month period. (GX. 70) His income during that period was consistent with his income in 1995, 1996, and 1997—the years during which he paid no taxes—when he earned approximately \$ [REDACTED] per month. Out of Respondent's current income, \$ [REDACTED] per month goes to the Internal Revenue Service to pay back-taxes, penalties, and interest. According to Respondent, he takes home approximately \$ [REDACTED] per month after paying taxes and making restitution to the IRS.

Evidence submitted into the record by Respondent shows that he spends a substantial portion of his income for luxuries and for the expenses of adult children for whom he is not legally responsible. During a six-month period, he purchased a new luxury automobile costing nearly \$35,000, and spent at least \$2,174 to take his sixteen-year-old daughter to Myrtle Beach, South Carolina, for a spring vacation, after taking her to New York City for another vacation a few months earlier. He paid monthly cable television bills ranging from \$99.19 to \$344.75 during the same period. In December 2002 he sent \$2,000 to his ex-wife to pay for a car for his daughter's sixteenth birthday. Respondent has either purchased or heavily subsidized the purchase of automobiles for all of his children. The records also show that he has paid to maintain these vehicles, including the cost of gasoline, insurance, and repairs. Two adult daughters are living at home at his expense, and he is heavily subsidizing the expenses of an adult son who is in graduate school. Nevertheless, Respondent has had disposable income sufficient to loan significant sums to various friends over the last two years.

This evidence refutes Respondent's claim that he is unable to pay a civil penalty. With a gross income of approximately \$ [REDACTED] and disposable income of at least \$ [REDACTED] per year, Respondent has the ability to pay a significant penalty, notwithstanding his claims to the contrary.

4. The Injury to the Public

The record does not indicate that the public suffered any actual injury as a result of Respondent's violations. However, Respondent's falsifications undermined the integrity of FHA's insurance program. Whenever an irresponsible person, such as Respondent, participates in the program, the risk of injury to the public increases.

5. Any Benefits Received by the Violator

Respondent received commissions in excess of \$[REDACTED] in connection with the 15 loans that are the subject of this case.

6. The Extent of Potential Benefit to Other Persons

As a result of Respondent's loan originations, other parties received payments in varying amounts as compensation for services provided in connection with those loans such as flood certifications, credit reports, appraisals, and inspections.

7. Deterrence of Future Violations

Although Respondent had been debarred from participating in FHA's insurance program, that disciplinary action did not deter him from violating the terms of the debarment and continuing his participation in the program. Imposing a significant monetary penalty upon Respondent should impress him and other persons in the mortgage industry that HUD takes violations of the regulations seriously and that one cannot submit false certifications to the Government with impunity.

The size of a civil penalty must be greater than the benefits reaped as a result of the violations; otherwise the penalty will have no deterrent value.

8. The Degree of Respondent's Culpability

Respondent claims that he did not knowingly sign false certifications because when he signed the certifications he did not know that he had been suspended. (TR. 58) No credit can be given to that claim for both legal and factual reasons.

Respondent concedes that he discussed HUD's letter of June 28, 2001, with his daughter and that he knew that HUD was proposing debarment. (TR. 58) Despite this knowledge, Respondent thereafter certified on 15 occasions that "To the best of my knowledge and belief, I and my firm and its principals: (1) are not presently debarred, suspended, [or] **proposed for debarment . . .**" (GX.5; emphasis supplied) Respondent therefore signed certifications with knowledge that they were false whether or not he was ignorant of his suspension as he claims.

In any event, Respondent's contention that he did not knowingly falsify certifications cannot be entertained as a matter of law. As discussed on page 2. *supra*,

Respondent's failure to comply with Orders issued by this court prompted issuance of an Order finding that Respondent has admitted the allegations charged in the Complaints, including allegations that he knew or had reason to know that he submitted false certifications to HUD.

Furthermore, Respondent testified that his attorney received HUD's letter of June 28, 2001, that suspended Respondent and proposed his debarment. (TR. 58) Therefore, no claim can be heard that Respondent did not receive notice that HUD had suspended him because notice to Respondent's attorney constitutes notice to Respondent as a matter of law.

Finally, Respondent's claim on this point cannot be credited on factual grounds. On December 20, 2001, HUD gave Respondent the hearing that had been requested to appeal his suspension and proposed debarment. Although Respondent appeared personally at that hearing, he absurdly suggests that suspension was not mentioned during the course of it. Seven of the false certifications were signed after the December 20, 2001, hearing held for the purpose of discussing his suspension and proposed debarment.

On February 5, 2002, HUD debarred Respondent for three years beginning on the date of his suspension, June 28, 2001. Respondent signed six of the false certifications after he had been debarred and three after he was released from the halfway house on February 27, 2002, to return home. Notice of debarment was sent to his attorney of record and to Respondent's home less than three weeks before Respondent returned to it from the halfway house. Respondent's argument that he moved to a different home is irrelevant because he did not move until June 2002.

The evidence refutes Respondent's contention that HUD did not inform his attorney of the debarment. (GX. 1) Furthermore, I do not believe Respondent's suggestion that his attorney did not inform him of the debarment. Respondent was not a wholly credible witness, and I decline to find that his attorney failed to fulfill his professional obligations to his client on the strength of Respondent's self-serving, uncorroborated argument.

In sum, Respondent knowingly submitted false certifications to the Government. Nothing in the record mitigates his culpability for those offenses. That Respondent is supporting an irresponsible, drug-addicted adult daughter does not excuse, justify, or mitigate his own irresponsible conduct.

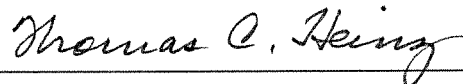
Conclusions Regarding an Appropriate Penalty

For the reasons discussed above, Respondent will be ordered to pay a civil money penalty of \$60,000, consisting of \$4,000 for each of the 15 false certifications he submitted or caused to be submitted to the Department.

ORDER

1. Within 10 days of the date on which this Initial Decision and Order become final, Respondent John Katsafanas shall pay a civil money penalty of \$60,000 to the Secretary of the U.S. Department of Housing and Urban Development; and

2. This Initial Decision and Order shall become final within 30 days of issuance unless appealed to the Secretary within that time pursuant to 24 C.F.R. §26.50.



THOMAS C. HEINZ
Administrative Law Judge