

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

In the Matter of:

Anthony T. Zapien,  
  
Respondent.

HUDALJ No. 06-027-PF  
OGC Case No. 06-3341-PF

Heather Walters, Esq.  
For the Government

Before: Robert A. Andretta  
U.S. Administrative Law Judge

**DEFAULT JUDGMENT AND ORDER**

**Procedural History**

On February 16, 2006, the U.S. Department of Housing and Urban Development (“HUD” or “the Department” or “the Government”) served a Complaint against Anthony Zapien and Fair Housing Center, d.b.a. RE/Max All Stars Realty (“Respondents”) seeking penalties under the Program Fraud Civil remedies Act of 1986 (“PFCRA”), 31 U.S.C. §§ 3901 - 3812, as implemented by HUD’s regulations found at 24 CFR Part 28. The Department seeks penalties of \$11,000 and assessments in the amount of \$302,070, for a total of \$313,070, jointly and severally, against the Respondents.

The Complaint charges that Zapien, as a real estate agent, knowingly caused false claims to be submitted to HUD in connection with the sale of at least three residential properties insured by HUD/FHA to buyers who could not legitimately qualify for HUD/FHA-insured loans. Based upon Zapien’s knowingly having

participated in the fraudulent schemes, HUD paid out large sums of money upon the borrowers' defaults. Also, Zapien entered into a plea agreement with the United States District Court for the Central District of California on or about October 3, 2002, in which he plead guilty to one count of wire fraud, in violation of 18 U.S.C. § 1343, and one count of aiding and abetting, in violation of 18 U.S.C. § 2(b), based upon his conduct in carrying out these schemes.

The Complaint notified Zapien of his right to appeal the imposition of the civil penalties and assessments by filing an Answer within 30 days of receipt of the Complaint, and that failure to file an Answer would result in a Department's Motion for Default Judgment in accordance with the regulation codified at 24 CFR 30.90. Zapien received a copy of the Complaint on February 17, 2006.

On March 8, 2006, Respondent phoned the Government's Counsel to inquire about the Complaint. Counsel explained the Complaint and informed him that the deadline for him to file an Answer was March 21, 2006.<sup>1</sup> Zapien did not file an Answer and he did not request an extension of time. On March 21, 2006, Government Counsel telephoned Zapien to inquire whether he had filed an Answer to the Complaint. Respondent stated that he had not filed an Answer but that he intended to do so. He stated that he had been very ill and had not been able to retain counsel. Government Counsel explained that she was forced by the regulations to file a Motion For Default Judgment against him in spite of his mitigating circumstances.

On March 22, 2006, the Department filed a Motion For Default Judgment against Anthony Zapien. HUD's regulation 24 CFR 26.39(b) provides that if a Respondent fails to file an Answer within 30 days of receiving a Complaint, the Administrative Law Judge ("ALJ") shall issue a default judgment. Such default by the Respondent constitutes an admission of all facts alleged in the Government's Complaint and a waiver of Respondent's right to a hearing in the matter. Further, such default judgment constitutes final agency action. *See* 24 CFR 26.39.

Notwithstanding the above regulatory requirement, and in view of

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<sup>1</sup>The 30-day deadline for Zapien to respond to the Government's Complaint was actually March 20, 2006, which was 30 days after his receipt of the Complaint on February 17, 2006. This provision of an extra day within which Respondent was to file his Answer is inconsequential.

Respondent's mitigating circumstances, on April 18, 2006, this ALJ conducted a conference call with Respondent Zapien and Government Counsel for the purpose of preserving Respondent's opportunity to litigate the complaint against him as well as the penalties and assessments pending against him. As a result of agreements reached in the conference call, I issued an Order on April 19, 2002, rescheduling all pre-hearing requirements and the hearing itself. The Order included a requirement that Respondent file his Answer by May 18, 2006.

On April 25, 2006, Respondent left a telephone message for Government Counsel informing her that he was unable to find an attorney to represent him. Government Counsel returned the call and reminded Respondent that he was required to respond to the Complaint by May 18, 2006. Respondent stated that he understood that the Court had ordered him to file an Answer to the Complaint by May 18, 2006. To date, Respondent has continued his failure to file an Answer.

On May 22, 2006, the Government renewed its Motion For Default Judgment with a request that a default judgment be issued against Anthony Zapien pursuant to 24 CFR 26.39.(b).

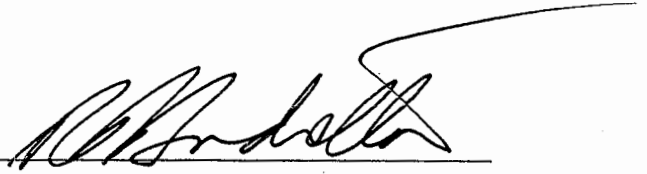
### **Findings of fact**

All facts alleged in the Department's Complaint, dated February 16, 2006, and all facts stated in The Declaration Of Heather Walters, dated March 22, 2006, and The Declaration Of Heather Walters, dated May 22, 2006, are found to be true and are hereby admitted into the record.

### **Conclusions and Order**

The Complaint demonstrates that respondent Anthony Zapien, through his company, RE/Max All Stars Realty, caused false claims to be submitted to HUD in connection with two properties insured by HUD/FHA. I also conclude that a judgment by default is warranted. Accordingly, Respondent, Anthony Zapien, shall pay to the Secretary of the United States Department of Housing and Urban Development, an Assessment of \$302,070 and Civil Penalties of \$11,000, both to be paid within fifteen days or in accordance with other provisions authorized by the Secretary.

So ORDERED.

A handwritten signature in black ink, appearing to read 'R. Andretta', is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping flourish extending to the right.

ROBERT A. ANDRETTA  
Administrative Law Judge

Dated: July 27, 2006