

In the Matter of:

Respondents

OGC Case No. 08-3501-PF

³ The U.S. Department of Justice authorized HUD to issue the Complaint on November 13, 2007. *See* HUD's Motion for Default Judgment ¶1 and at Exhibit 1 attached thereto.

The allegations regarding to Cortes are contained in Count 1 of the four-count Complaint. Specifically, the Complaint alleges in Count 1 that Cortes was a mortgage agent who, along with Miguel A. Vega, willfully and knowingly submitted and/or caused the submission of, materially false documents, information and certifications to HUD as part of a mortgage insurance application for the purpose of obtaining a mortgage loan insured by the Federal Housing Administration (FHA). The Complaint alleges further that the false documents, information and certifications submitted to HUD in connection with the loan resulted in losses to HUD by and through its payment of a claim on the insurance in the amount of \$97,227.20. Under the PFCRA, 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28.10(a), an assessment of up to twice the claim paid plus a civil penalty of up to \$6,500 may be imposed upon a person who makes, submits or causes to be submitted a claim that the person knows or has reason to know is false, fictitious or fraudulent. The Complaint alleges that, with regard to Count 1, HUD is therefore entitled to an assessment of \$120,304 from Respondent Cortes and Miguel A. Vega, jointly and severally (twice the claim paid less the proceeds received as a result of the sale of the property), and that in addition, HUD is entitled to a civil penalty of \$6,500 from Cortes for causing the claim based on the false loan information.

Miguel Vega submitted an Answer to the Complaint on December 20, 2008. Subsequently, on May 20, 2008, Notices of Settlement and Request for Dismissal of Claims against Miguel A. Vega and Caroline Carouthers were filed by HUD, stating that HUD and Vega and Carouthers had entered into a settlement agreement. On May 23, a Notice of Settlement and Request for Dismissal of Claims against Maria Carmen Thomas was filed. The claims against Respondents Vega and Carouthers were dismissed by Orders dated May 22, 2008, and the claims against Maria Carmen Thomas were dismissed by Order dated May 29, 2008.

Respondent Elizabeth Cortes did not file an answer to the Complaint and did not make any appearance in this action. Having received no response to the Complaint from Cortes, on May 12, 2008, HUD filed a Motion for Default Judgment ("Motion") together with a copy of the Complaint, and other exhibits and attachments, in accordance with 24 C.F.R. §§ 26.39 and 28.30(b). The Motion requests that default judgment be entered against Respondent Cortes and that she be found liable for the \$126,804.40 assessment and penalty proposed.

To date, no response to the Complaint or to the Motion has been filed or received from Respondent Cortes.

II. Relevant Statutory and Regulatory Provisions

Section 3802(a)(1) of the Program Fraud Civil Remedies Act (PFCRA) provides in relevant part that -

Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know--

- (A) is false, fictitious, or fraudulent;
- (B) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;
- (C) includes or is supported by any written statement that--
 - (I) omits a material fact;
 - (ii) is false, fictitious, or fraudulent as a result of such omission; and
 - (iii) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact;

* * *

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,000 for each such claim. Except as provided in paragraph (3) of this subsection, such person shall also be subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim, or the portion of such claim, which is determined under this chapter [31 U.S.C. §§ 3801 *et seq.*] to be in violation of the preceding sentence.

31 U.S.C. § 3802(a)(1). Pursuant to the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, and Section 31001 of the Debt Collection Act, Pub. L. 104-134, the maximum civil penalty which may be imposed for such violations was increased from \$5,500 to \$6,500 for claims accruing or statements submitted after April 17, 2003. *See*, 24 C.F.R. § 30.60(c). *See also*, 68 Fed. Reg. 12786, 12788 (Mar. 17, 2003).

Under the PFCRA, a “claim” means “any request, demand, or submission . . . made to an authority [HUD] for property, services, or money (including money representing grants, loans, insurance, or benefits)” or “made to an authority [HUD] which has the effect of decreasing an obligation to pay or account for property, services, or money.” 31 U.S.C. §§ 3801(a)(3)(A), 3801(a)(3)(C); 24 C.F.R. § 28.5. Each representation, certification, or affirmation constitutes a separate statement, and a statement is considered made, presented, or submitted to HUD when such statement is actually made to an agent or other entity acting for or on behalf of HUD. *See*, 31 U.S.C. § 3801(c); 24 C.F.R. § 28.10(b)(2)-(3).⁴

The PFCRA is a strict liability statute, no proof of specific intent to defraud is required to establish liability, and the standard of proof is the “preponderance of the evidence.” *See*, 31 U.S.C. § 3803(f), 24 C.F.R. § 28.10(d).

⁴*See also*, 31 U.S.C. § 3802(a)(2) and 24 C.F.R. § 28.10 (b)(1) which also allow a civil penalty when dealing with false statements. For the purposes of this ruling, the alleged actions of the Respondent allegedly lead to a false claim, and therefore it is under 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28.10(a) that any civil penalty will be imposed.

HUD's jurisdiction to administratively commence and conduct actions under PFCRA with hearings presided over by an Administrative Law Judge is provided by 31 U.S.C. §§ 3802(b), 3803(b), 3801(a)(7), and 24 C.F.R. Parts 28 and 26 (subpart B).

The regulatory provisions implementing PFCRA, promulgated as 24 C.F.R. Parts 28 and 26 subpart B ("Rules"), provide that, upon obtaining approval from the Department of Justice, HUD may issue a complaint to a respondent for alleged violations of PFCRA. 24 C.F.R. § 28.25(a). If the respondent fails to file an answer within 30 days of receiving such complaint, upon motion, the Administrative Law Judge ("ALJ") may find the respondent in "default." *See*, 24 C.F.R. §§ 28.30(b) and 26.39(a). If a respondent is found in default, then the ALJ shall issue a decision on the motion within 15 days after the expiration of time for filing a response thereto, which is seven (7) days after service of the motion. 24 C.F.R. § 26.39(b). The Rules also provide that a default shall constitute an admission of all facts alleged in the complaint and a waiver of the respondent's right to a hearing on the matter. 24 C.F.R. § 26.39(c). Further, the Rules provide that "[t]he penalty proposed in the complaint shall be set forth in the default order. . ." and that a default order shall constitute the "final agency action." 24 C.F.R. § 26.39(b) and (c).

III. Motion for Default

On November 30, 2007, pursuant to 24 C.F.R. § 28.25(a), the Complaint was sent to Respondent Cortes' last known address at [REDACTED] by certified mail, certified receipt requested. *See*, Certificate of Service accompanying the Complaint; Declaration of Tammie Parshall attached as Exhibit 2 to the Motion. The return receipt suggested that another household member signed for the package. *See*, Declaration of Tammie Parshall (Motion, Exhibit 2 and Attachment B thereto). Another copy of the Complaint was therefore sent to Respondent Cortes by certified mail, return receipt requested, on December 6, 2007, but again the receipt showed that another household member signed for the package. *See*, Declaration of Tammie Parshall (Motion, Exhibit 2 and Attachment C thereto). On January 29, 2008, HUD personally served Respondent Cortes with a copy of the Complaint. *See*, Declaration of Tammie Parshall (Motion, Exhibit 2) and Declaration of HUD Special Agent Murray Stravers (Motion, Exhibit 2, attachment E). As required by 24 C.F.R. § 28.25, the Complaint advised Respondent that she may submit a written response to the Complaint within thirty (30) days and that if she did not, then -

... HUD will file this Complaint along with a motion for default judgment, in accordance with 24 C.F.R. §§ 26.39 and 28.30(b). If a default order is issued, it shall constitute an admission of all facts alleged in this Complaint and a waiver of the Respondent's right to a hearing on such allegations. The civil penalties and assessments proposed in this Complaint shall be set forth in the default order and shall be immediately due and payable by Respondent(s) without further proceedings. *See*, 24 C.F.R. § 26.39(c).

See, Complaint at 21-22. The Complaint states that copies of 24 C.F.R. Part 26, Subpart B, Part 28, and PFCRA, 31 U.S.C. §§ 3801-3812 were included with the Complaint.

HUD represents in its Motion for Default that it has not received any response to the Complaint or other pleadings from Respondent, and in support, presents a Declaration made by Tammie Parshall, its Custodian of Records, dated May 9, 2008. *See*, Motion, Exhibit 2. The file reflects that HUD served a copy of its Motion for Default, along with a copy of the original Complaint, upon Respondent by United Parcel Service Next Day Mail at [REDACTED] on May 12, 2008. *See*, Certificate of Service attached to Motion.

To date, the Chief Docket Clerk, Office of Administrative Law Judges, has not received from Respondent any response to the Complaint or to the Motion for Default. The time periods provided for Respondent to respond to the Complaint and/or Motion for Default have expired.⁵ Therefore, pursuant to 24 C.F.R. § 26.39, Complainant's Motion is hereby **GRANTED**, and Respondent is hereby found in **DEFAULT**. In accordance with that regulation, default constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such allegations.

The following Findings of Fact and Conclusions of Law are based upon the documents submitted into the record in this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Plaintiff is the U.S. Department of Housing and Urban Development (HUD), established pursuant to 42 U.S.C. § 3532, and an executive department of the United States Government within the definition of 31 U.S.C. § 3801(a)(1).
2. HUD, through the Federal Housing Administration (FHA), operates and maintains a mortgage insurance program for single family homes under Section 203(b) of the National Housing Act, 12 U.S.C. § 1709(b). The purpose of the mortgage insurance program is to assist low to moderate income borrowers to purchase homes by encouraging lenders to grant mortgages to such borrowers by providing the lenders with insurance on the mortgages which will cover their losses in the event of the borrowers default thereon. *See*, 12 U.S.C. § 1709(b).
3. Applying for a HUD/FHA-insured mortgage requires the lender to complete, sign, and submit to HUD a "Uniform Residential Loan Application" ("URLA") and an "Addendum

⁵ Respondent had seven days from service to respond to the Default Motion. 24 C.F.R. § 26.39(a). HUD's regulations further provide that if a respondent is found in default, then a decision on the motion for default "shall issue" within 15 days after the expiration of the time for filing a response thereto. 24 C.F.R. § 26.39(b).

to URLA" (HUD Form 92900-A) which, *inter alia*, contains express certifications as to the truth and accuracy of the information and statements contained in the URLA and the Addendum, that the information contained in the URLA was obtained directly from the borrower by a full-time employee of the lender, and an acknowledgment that the certifications are being made to induce HUD to issue mortgage insurance in connection therewith.

4. Respondent Elizabeth Cortes is a resident of [REDACTED] and a "person" within the definition of 31 U.S.C. § 3801(a)(6), who, at the times pertinent to this Order, originated mortgage loans including HUD-insured mortgages.
5. On or about March 2002, an individual, [REDACTED] Magana, provided personal information to a real estate agent for assistance with the purchase of a property located at [REDACTED] Farmouth Circle, in North Las Vegas, Nevada. On March 15, 2002, Magana gave the real estate agent funds for a down payment for the Farmouth Circle Property, but ultimately did not purchase it. Magana sought no additional services from the agent.
6. Cortes, along with Respondent Vega, originated a FHA-insured mortgage loan purportedly extended to [REDACTED] Magana for the purchase of a property located at [REDACTED] Jeffreys Street [REDACTED], Las Vegas, Nevada 89119 (the "Jeffreys Street Property").
7. The referenced loan was assigned the FHA reference number [REDACTED].
8. Magana did not apply for the referenced loan and was unaware that the Jeffreys Street Property had been purchased in her name.
9. On or about June 2002, a URLA was prepared for Magana's purchase of the Jeffreys Street Property.
10. The URLA and supporting documents that made up the application for an FHA-insured loan for the purchase of the Jeffreys Street Property contained false and fraudulent information and documents relating to Magana's employment, income, marital status, intention to reside at the property, tax return information, and credit history. The verification of employment included as part of the loan misrepresents Magana's income, position with her employer and address and phone number of the employer. The false employment information was supported by false and fraudulent pay stubs, IRS Form W-2s and tax returns. The three "alternative credit" letters included in the application contained false and fraudulent information.
11. Respondent Vega, the loan officer that originated the Magana loan, caused Respondent Cortes to sign the Lender's Certification on behalf of First Source Financial, Inc. ("FSF").
12. The Lender's Certification stated that the information contained in the URLA was

“obtained directly from the borrower by a full-time employee of the undersigned lender or its duly authorized agent and is true to the best of the lender’s knowledge and belief.”

The Lender’s Certification was false because the information was not obtained directly from Magana, and because Cortes, who signed the Certification as a “loan officer,” was neither a full-time employee nor a loan officer at FSF.

13. The Lender’s Certification certified that the verification of employment was requested and received by the lender without passing through the hands of any third persons. The Lender’s Certification was false because verification of employment was not requested and received by the lender without passing through hands of any third persons and was not completed by the employer, and Magana’s employment was not verified by the lender.
14. The Lender’s Certification certified that the URLA and the Addendum were signed by the borrower and all sections were completed. The Lender’s Certification was false because Magana did not sign a URLA for the purchase of the Jeffrey’s Street property and had no knowledge that a URLA for a loan to purchase the property had been completed in her name.
15. Cortes knew or had reason to know that she did not receive the information in the URLA directly from Magana, that she was not a full-time employee of FSF, that the verification of employment was not completed by the employer, that Magana’s employment was not verified by the lender, and that Magana did not sign a URLA for the purchase of the Jeffreys Street property.
16. In June 2002, the loan documents were signed in the name of the “Las Vegas Group.” The loan closed at an undisclosed location on or about June 20, 2002, and did not close at the office of the title company that purportedly closed the loan.
17. Cortes willfully and knowingly caused materially false documents, information and certifications to be submitted to HUD for the purpose of obtaining a HUD/FHA-insured mortgage loan.
18. When insuring the referenced mortgage loan, HUD relied upon the false documents, information and certifications that Respondent Cortes submitted and/or caused to be submitted to HUD as part of the application for mortgage insurance for the referenced mortgage loan. Had HUD been aware of the false documents and information submitted on the loan, HUD would not have approved it for FHA insurance.
19. Respondent Cortes received a commission for originating the referenced loan. Additionally, on June 28, 2002, eight (8) days after the closing, Respondent Cortes used the Jeffreys Street Property address as her personal address. Respondent Cortes was, at the time, facing foreclosure on her own residence because of an early-payment default on

her FHA-insured mortgage loan.

20. No payments were made on the Magana Loan.
21. On June 23, 2003 and July 24, 2003, claims were submitted to HUD for losses relating to the referenced loan.
22. HUD paid claims in the amount of \$97,227.20 for losses relating to the Jeffreys Street Property.
23. The false documents, information, and certifications that Cortes submitted and/or caused to be submitted, directly or indirectly, to HUD in connection with the referenced mortgage loan resulted in losses to HUD by and through HUD's payment of claims.
24. Respondent Cortes is liable for violating 31 U.S.C. § 3802(a)(1).

DETERMINATION OF CIVIL PENALTY AMOUNT

1. Section 26.39(c) of the applicable Rules provides in pertinent part that upon default:

The penalty proposed in the complaint shall be set forth in the default order and shall be immediately due and payable by respondent without further proceedings.

24 C.F.R. § 26.39(c).

2. Section 3802 of PFCRA, 31 U.S.C. §3801(a)(1) (as adjusted by the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990) and 24 C.F.R. § 28.10(b) authorize the assessment of a civil penalty of up to \$6,500 for violations charged after April 2003.
3. Section 28.40(b) of the applicable Rules provides with regard to the factors to consider in determining amount of penalties as follows:

In determining an appropriate amount of civil penalties and assessments, the administrative law judge (ALJ) and, upon appeal, the Secretary shall consider and state in their opinions any mitigating or aggravating circumstances. *Because of the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need for deterrence, ordinarily double damages and a significant civil penalty should be imposed.* The ALJ and the Secretary shall consider the following factors in determining the amount of penalties and assessments to be imposed (emphasis added):


- (1) The number of false, fictitious, or fraudulent claims or statements;
- (2) The time period over which such claims or statements were made;
- (3) The degree of the respondent's culpability with respect to the misconduct;
- (4) The amount of money or the value of the property, services, or benefit falsely claimed;
- (5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of investigation;
- (6) The relationship of the civil penalties to the amount of the Government's loss;
- (7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;
- (8) Whether the respondent has engaged in a pattern of the same or similar misconduct;
- (9) Whether the respondent attempted to conceal the misconduct;
- (10) The degree to which the respondent has involved others in the misconduct or in concealing it;
- (11) If the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude the misconduct;
- (12) Whether the respondent cooperated in or obstructed an investigation of the misconduct;
- (13) Whether the respondent assisted in identifying and prosecuting other wrongdoers;
- (14) The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions;
- (15) Whether the respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly;
- (16) The need to deter the respondent and others from engaging in the same or similar misconduct; and

(17) Any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

4. Exhibit 3 attached to the Motion sets forth in detail HUD's analysis of the seventeen factors as they apply to Respondent Cortes' actions.
5. Having reviewed HUD's penalty determination, I concur with its detailed analysis of the severity of the offenses and its reasoning behind the penalty amount assessed. Respondent Cortes shared a commission for originating an FHA-insured loan to a borrower who was entirely unaware of the loan at issue. The loan application involved false and fraudulent documents and statements, all of which were knowingly submitted to HUD. Respondent Cortes profited from her malfeasance and took advantage of an innocent borrower in whose name the application was submitted. Respondent Cortes went so far as to temporarily reside at the property without making a single mortgage payment, resulting in a sizeable claim to HUD. These actions led to unnecessary expense on the part of the Government to investigate her unlawful conduct, caused the Government to spend monies associated with the mortgage claim, and undermined a laudable government program to provide affordable mortgage loans to low and moderate income buyers. Respondent's actions are clearly egregious and extreme enough to warrant the maximum allowable civil penalty. Finally, it is noted that although given an opportunity to do so, Respondent has proffered no evidence to support any mitigation of the proposed penalty.
6. HUD is entitled to an assessment of \$120,304.40 from Cortes in connection with the referenced mortgage loan. The assessment is calculated as twice the claim of \$97,227.20 paid by HUD on the property (*i.e.* \$194,454.40), minus the proceeds from the sale of the property, which were \$74,150.00.
7. HUD is also entitled to a civil penalty of \$6,500 from Cortes for causing the claim, which was the result of the false information in the Magana loan.
8. HUD is therefore entitled to an aggregated assessment and civil penalty of \$126,804.40 from Cortes.

ORDER

1. The Motion for Default Judgement is hereby **GRANTED**. For failing to respond to the Complaint in a timely manner as indicated above, Respondent Elizabeth Cortes is hereby found in **DEFAULT**.
2. Pursuant to 31 U.S.C. § 3803, Respondent Elizabeth Cortes is found to have violated the Program Fraud Civil Remedies Act, 31 U.S.C. § 3802(a)(1), as enumerated above.
3. Respondent Elizabeth Cortes shall pay an assessment of \$120,304.40 and a civil penalty of \$6,500, for a total of \$126,804.40, which is due and payable immediately without further proceedings. *See*, 24 C.F.R. § 26.39(c).
4. This Order shall constitute final agency action pursuant to 24 C.F.R. § 26.39(b).



Susan L. Biro
Chief Administrative Law Judge
United States Environmental Protection Agency⁶

Dated: June 3, 2008
Washington, D.C.

⁶ The Administrative Law Judges of the United States Environmental Protection Agency are authorized to hear cases pending before the United States Department of Housing and Urban Development, pursuant to an Interagency Agreement effective for a period beginning March 12, 2008.