

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

United States Department of Housing
and Urban Development,

vs.

Marq J. Warner,

Defendant.

HUDALJ 93-2001-PF
Decided: June 22, 1993

David A. Senseney, Esq.
For the Defendant

Dane M. Narode, Esq.
For the Department

Before: WILLIAM C. CREGAR
Administrative Law Judge

INITIAL DECISION

Statement of the Case

Plaintiff, the U.S. Department of Housing and Urban Development ("the Department" or "HUD") issued a Complaint seeking an assessment of \$200,000 and a civil penalty of \$10,000 against Defendant Marq J. Warner pursuant to the Program Frauds Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812 ("the Act"), and HUD's implementing regulations, 24 C.F.R. Part 28. The undated Complaint was sent by certified mail, and received by Defendant's attorney on March 29, 1993. The Complaint notified Defendant of his right to request a hearing by filing an answer, and that failure to answer the Complaint within 30 days would result in imposition of the maximum civil penalty without right to appeal. 24 C.F.R. § 28.13(b)(4). Defendant never filed an answer.¹ On May 12, 1993, this tribunal notified Defendant of its intent to issue an

¹The Associate General Counsel for Program Enforcement's letter referring the matter to this office states that Defendant's attorney requested a one-week extension to file an answer, and that he subsequently stated that he was seeking to have this matter resolved in Bankruptcy Court.

Initial Decision on or after June 2, 1993. The notice informed Defendant that the Decision would assume the facts as alleged in the Department's Complaint as true, and that if such facts established liability, the Decision would impose the maximum amount of penalties allowed under the Act. *See* 24 C.F.R. § 28.19(b) and (c). Defendant has yet to answer or to demonstrate that any extraordinary circumstances have prevented him from filing an answer. *See* 24 C.F.R. § 28.19(d) and (e). Accordingly, this matter is ripe for decision.

Findings of Fact

1. Defendant Marq J. Warner is an individual, residing at [REDACTED], Englewood, Colorado. The Federal Housing Administration (FHA) is a component of HUD. FHA administers the single Family Mortgage Insurance Program pursuant to 12 U.S.C. §§ 1702-1715z-11. FHA insures private mortgage lenders against any loss if a borrower defaults on an FHA-insured loan.

2. At all times relevant to this Complaint, the issuance of FHA mortgage insurance was governed by FHA regulations set forth in 24 C.F.R. Parts 203 and 221. These regulations provide that, among other things, in order to qualify for FHA mortgage insurance under the Single Family Mortgage Insurance Program, the borrower is required to make a minimum investment in the property, equal to at least three percent of the acquisition cost of the property.

FHA regulations also require that:

- a) The amount of the minimum investment is significantly larger, if the borrower does not intend to reside at the property and purchases it as investment property; and
- b) The funds used for the minimum investment cannot be borrowed.

3. The FHA Single Family Mortgage Insurance Program requires that a mortgage company which processes an FHA insured mortgage application provide HUD with complete and truthful information about the borrower's income, employment history, credit history, assets and liabilities, in order for HUD to determine whether the borrower is qualified to obtain FHA mortgage insurance.

4. FHA regulations also require that a prospective purchaser must complete and sign a Form HUD-92900, to be submitted by the lender to HUD for consideration in determining whether to insure such a loan. The form HUD 92900 submitted for the purpose of obtaining financing for the property contains a certification by the borrower which states:

The borrower certifies that all information in this application is given for the purpose of obtaining a loan to be insured under the National Housing Act, ... and is true and complete to the best of his or her knowledge and belief.

5. A Form HUD-1 Settlement Statement must be completed at every closing where the purchaser wishes to obtain financing through an FHA-insured mortgage. The Form HUD-1 is also required by the Real Estate Settlement Procedures Act of 1975 (RESPA), as amended, 12 U.S.C. § 2601, *et seq.* The Form HUD-1 must conspicuously and clearly set forth the contract sales price, all charges imposed upon the borrower, and all charges imposed upon the seller in connection with the settlement.

6. The FHA Single Family Mortgage Insurance Program provides that when a borrower defaults on a loan and the mortgage company forecloses on the property, FHA is required to pay off the balance of the mortgage and other costs, and assume ownership of the property.

7. In or about April 1985, Defendant applied to refinance the debt for two properties located at [REDACTED] W. Davies, and [REDACTED] W. Davies, Littleton, Colorado. Each property was refinanced with an FHA insured loan in the amount of \$61,000. The property located at [REDACTED] W. Davies was refinanced by a loan insured by FHA under the Single Family Home Mortgage Insurance Program under FHA Case Number [REDACTED]. The property located at [REDACTED] W. Davies was refinanced by a loan insured by FHA under the Single Family Home Mortgage Insurance Program under FHA Case Number [REDACTED]. Defendant purchased these properties from [REDACTED] Dutrow for nominal consideration prior to refinancing the properties. Defendant falsely certified on both the Form HUD-92900 and the Verification of Employment that he was employed by David Senseney as an attorney. The HUD-1 Settlement Statement for each loan did not disclose first liens in the amount of approximately \$69,500 for each property. Defendant reconveyed the properties back to the Dutrows and kept \$2,500 for each property that was refinanced. The properties went into default and, as a result, HUD paid mortgage insurance claims in the amount of \$100,000.

Discussion

Section 3802 (a)(1) of the Act provides that any person who makes a written statement to the Government that the person knows or has reason to know is false or fraudulent, and who causes a claim to be made, presented or submitted that includes or is supported by the false or fraudulent written statement is subject to an assessment in an amount of not more than twice the amount of the claim. Section 3802(a)(1) of the Act also provides for a civil penalty of not more than \$5,000 for each such claim. The false statements relating to the properties located at [REDACTED] W. Davies, and [REDACTED] W. Davies, Littleton, Colorado resulted in two claims in the total amount of \$100,000 being made to and paid by HUD.

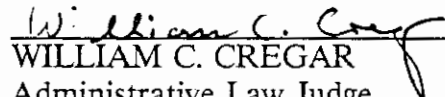
In addition, Section 3802(a)(2) of the Act provides that any person who makes a written statement to the Government that the person knows or has reason to know is false or fraudulent shall be subject to a civil penalty of not more than \$5,000 for each statement. 31 U.S.C. § 3802(a)(2); *see also* 24 C.F.R. § 28.5(b). Each written representation and certification constitutes a separate statement. 24 C.F.R. § 28.5(b)(2). The certifications made by Defendant in each of the transactions described above are written statements within the meaning of § 3802(a)(2) of the Act. 24 C.F.R. § 28.5(b)(2).

Because the record establishes that Defendant submitted at least two written statements, known by him to be false or fraudulent, which caused two claims to be made in the total amount of \$100,000, Defendant is liable for an assessment of \$200,000 and a civil penalty in the amount of \$10,000.²

²Although certain factors may be considered in determining the amount of penalties, *see* 24 C.F.R. § 28.61, Defendant's failure to file an answer requires imposition of the maximum amount allowable under the Act, *see* 24 C.F.R. § 28.19.

DETERMINATION

Defendant's false statements on the Forms HUD-92900, Verifications of Employment, and HUD-1 Settlement Statements, violate 31 U.S.C. § 3602 (a)(1) and (2) and 24 C.F.R. § 28.5 (a) and (b). Accordingly, Defendant Marq. J. Warner is liable for an assessment of \$200,000 and a civil penalty of \$10,000.


WILLIAM C. CREGAR
Administrative Law Judge

Dated: June 22, 1993.

NOTICE

Defendant has the right:

- (1) within thirty (30) days of the issuance of this Initial Decision, to file with this tribunal a motion to reopen on the grounds that extraordinary circumstances prevented timely filing of an answer to the Department's Complaint; and
- (2) to file a notice of appeal with the Secretary or Deputy Secretary of HUD within fifteen (15) days after this tribunal denies any motion to reopen.