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

In the Matter of:

ASSOCIATE TRUST
FINANCIAL SERVICES,

Respondent

HUDALJ 96-019-MR
HUDALJ 96-008-CMP

Decided: February 4, 1997

V. Peter Markuski, Jr., Esq.
For the Respondent

Scheryl C. Portee, Esq.
Felicia R. Lasley, Esq.
For the Government

Before: ALAN W. HEIFTEZ
Chief Administrative Law Judge

FINDINGS OF FACT ON PROPOSED WITHDRAWAL OF MORTGAGEE APPROVAL AND INITIAL DECISION ON PROPOSED IMPOSITION OF CIVIL MONEY PENALTY

Background

These proceedings arose as a result of two actions taken by the Mortgagee Review Board ("MRB" or "the Board") of the Department of Housing and Urban Development ("HUD" or "the Government") against Associate Trust Financial Services, Inc. ("ATFS" or "Respondent"). On November 2, 1995, the MRB notified Respondent that pursuant to 24 C.F.R. Part 25,[1] it proposed to withdraw Respondent's HUD-FHA mortgagee approval for a period of two years, effective upon receipt of the notice. The notice further advised

[1] *See also* 12 U.S.C. § 1708.

Respondent that the MRB had voted to seek a civil money penalty in the amount of $15,000 pursuant to 24 C.F.R. Part 30,[2] and that a Complaint regarding the civil money penalty would be issued in due course. The Board's withdrawal and civil money penalty actions were based upon: (1) alleged violations of HUD-FHA requirements, including the submission of false documents and information to HUD-FHA in connection with HUD-FHA insured mortgages; and (2) alleged failure to notify HUD-FHA of fraud discovered during an internal audit by Respondent's loan sponsor of HUD-FHA insured mortgages originated by Respondent.

By letter dated November 8, 1995, Respondent requested a hearing on the withdrawal of its mortgagee approval. The applicable statute and HUD regulation entitle Respondent to a hearing "on the record." *See* 12 U.S.C. § 1708(c)(4)(B); 24 C.F.R. § 25.8(a). Nevertheless, the HUD regulation does not provide that such a hearing is to be governed by the procedural requirements of the Administrative Procedure Act ("APA"). *See* 5 U.S.C. §§ 554-557.[3] Instead, the regulation entitles Respondent to a de novo hearing before a hearing "official," defined as any "official designated by the Board" to conduct such hearings. *See* 24 C.F.R. §§ 25.3, 25.8(b). Accordingly, on April 3, 1996, a hearing was held before William M. Heyman, HUD's Director of Lender Activities and Program Compliance, who served as the hearing "official." However, the regulations also permit the hearing "official" to refer "disputed issues of material fact" to an "independent official" or to a hearing "officer," defined, *inter alia*, as an Administrative Law Judge ("ALJ") for the issuance of "findings of fact or other appropriate findings." *See* 24 C.F.R. §§ 25.3, 25.8(d)(2). Accordingly, on May 30, 1996, Mr. Heyman referred the withdrawal action to me, as the hearing "officer," for preparation of "findings of fact" on four specific questions.

In a withdrawal action, the current version of the regulations authorizes the hearing official to request the hearing officer to prepare findings of fact without conducting a de novo examination of the proposed administrative action.[4] Instead, the "findings of fact" issued by the ALJ may be rejected, in whole or in part, by the hearing official, if the official determines them to be "arbitrary and capricious or clearly erroneous." *Compare* 24 C.F.R. § 25.8(d)(2) (1996) *to* 12 U.S.C. § 1708(c)(4); 24 C.F.R. §§ 25.8(c), 26.24(a), and (f) (1995). *See also* 60 Fed. Reg. 39236 (Aug. 1, 1995).

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[2]*See also* 12 U.S.C. § 1735f-14.

[3]Section 554(d) addresses agency "separation of functions"; sections 556 and 557 prescribe specific procedures in formal adjudications, including the appointment of an Administrative Law Judge to preside.

[4]*But see* 24 C.F.R. § 26.24(a) which, if it applies (*see* 24 C.F.R. 25.8(d)(2)(ii)), requires a de novo review by the hearing officer.

On June 5, 1996, I issued an Order governing the course of the withdrawal action and setting September 9, 1996, as the hearing date. Thereafter, on August 1, 1996, the MRB issued its Complaint in the civil money penalty action. In that action, unlike the withdrawal action, Respondent is entitled to a de novo hearing before an ALJ, conducted in accordance with the APA. Moreover, in a civil money penalty action, the ALJ issues an initial decision, which includes findings of fact, conclusions of law, and the amount of any penalties imposed. The decision is appealable to the Secretary. *See* 12 U.S.C. § 1735f-14(c); 24 C.F.R. §§ 30.800, 30.905.

Because the withdrawal and civil money penalty actions arose out of the same factual context, they were consolidated for hearing by Order dated August 13, 1996. Respondent filed its Answer in the civil money penalty action on August 16, 1996. A hearing was held on October 29 and 30, 1996, in Washington, D.C. The Government filed its post-hearing brief on November 22, 1996, and Respondent filed its brief on December 18, 1996.[5]

Findings of Fact

1. Respondent is a loan correspondent with its office located in Camp Springs, Maryland. It was approved by the Department as a HUD-FHA mortgagee in 1992. Complaint and Answer, ¶¶ 2, 3.[6] *See also* Tr. 77-78, 307, 333. As a loan correspondent, Respondent originates HUD-FHA insured mortgages for sale to a loan sponsor. Tr. 43, 74, 81. Respondent gathers information in support of the loan application and compiles the package for loan underwriting and endorsement that is forwarded to the loan sponsor. One of the documents included in that package is a Residential Mortgage Credit Report ("RMCR" or "credit report"). Once the sponsor has performed its underwriting function, the sponsor submits the loan to HUD for insurance. Tr. 62, 74, 81, 92-93, 110, 339, 384. *See also* G.Ex. 3 (HUD Handbook 4155.1 REV-4, ¶ 3-3(B)).

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[5] Respondent filed a Motion to Extend Time to File Brief Nunc Pro Tunc on December 11, 1996. The Government filed its Opposition to that Motion on December 17, 1996. Although the reasons proffered by Respondent for needing an extension of time are not persuasive, in the interest of providing a full hearing of the issues presented, the Motion is granted.

[6] "Complaint" refers to the Government's Complaint issued in the civil money penalty action. "Answer" refers to Respondent's Answer to the Complaint. "Tr." refers to the transcript of the hearing held on October 29-30, 1996. "G.Ex." refers to a Government Exhibit admitted into evidence at the hearing. "R.Ex." refers to a Respondent's Exhibit admitted into evidence at the hearing.

2. Robert L. Martin. Jr. is the president and owner of ATFS. He has held those positions since the company's inception in 1989. Tr. 307-08.[7] He is licensed as a mortgage broker/lender in the State of Maryland. Tr. 308. As president and owner of Respondent, Martin oversees the operation of the company and, when necessary, takes loan applications. Tr. 309.

3. Mortgage Credit Reports, Inc., ("MCR") is a credit reporting agency located in Baltimore, Maryland. In the early 1990s, MCR began to prepare credit reports requested by ATFS for loans that it had originated. Tr. 255-56, 309-10.

4. National Mortgage Company ("NMC"), located in Memphis, Tennessee, was a loan sponsor for Respondent. Beginning in 1993, it underwrote HUD-FHA insured loans originated by Respondent. Tr. 74, 78, 122-23, 328-29. NMC is currently known as Boatmen's National Mortgage, Inc. Tr. 78, 328.

5. Respondent was the loan correspondent, NMC was the sponsor, and MCR prepared the credit report included in the endorsement package for loans to [redacted] Ingram and [redacted] Chase for the purchase of homes.[8] HUD insured both loans. G.Exs. 4 and 8; Tr. 90-94, 105-11, 122-24, 292-93, 392-93.[9]

6. In late February or early March 1994, Ms. Ingram expressed her interest in a home to a real estate agent who told her that Martin would contact her in connection with the purchase. Four or five days later, Ms. Ingram met with Martin at his office, completed a loan application, and paid for a credit report. Tr. 293-97, 314-16, 318-19. Later, Ms. Ingram met with Martin to review the report, which showed several excessively late payments, accurately reflecting Ms. Ingram's credit history at the time. Martin questioned Ms. Ingram about the late payments and explained to her that her bills

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[7] *Sua sponte* the transcript is hereby corrected to state that Martin is Respondent's owner. The reference to his being "the director" is stricken. The correction is consistent with my notes taken at the hearing. Tr. 308. *See also* Respondent's Brief at 2.

[8] In the civil money penalty Complaint and the withdrawal action, HUD originally alleged that false statements were also contained in a loan package for Ann Whalen. HUD declined to insure that loan. At the hearing, the Government presented no evidence regarding the Whalen loan. On brief, it reiterated that it was withdrawing the allegations.

[9] Respondent asserts that the Government failed to demonstrate that G.Exs. 4 and 8 were the credit reports that Respondent sent to NMC. *See* Respondent's Brief at 9. However, based on (1) evidence of Respondent's and NMC's usual and customary business practices; (2) testimony that those exhibits were contained in the endorsement packages; and (3) the absence of evidence that Respondent sent any other credit reports to NMC, I find that G.Exs. 4 and 8 were the credit reports that were forwarded to NMC by Respondent, and, in turn, were sent to HUD. *See, e.g.*, Tr. 81, 90, 92-94, 105, 110, 122-23, 309-10, 318, 327-29, 339, 346-47, and 374.

needed to be paid on time. He requested that she prepare a letter explaining the circumstances surrounding the late payments. After Ms. Ingram gave the letter to Martin, her loan application was processed and nothing more was said to her concerning the credit report. Ms. Ingram eventually purchased the home. Tr. 293, 297-300, 303.

7. Ms. Chase was introduced to Martin by a mutual business acquaintance. Tr. 394-95. Later, in early 1994, Ms. Chase contacted him to assist her in purchasing a home. Tr. 395-96. Ms. Chase met Martin at his office, filled out a loan application, and paid for a credit report. Tr. 396-97. When Ms. Chase subsequently met with Martin at his office to discuss the credit report, he did not show her the actual report. Tr. 398. They discussed two reported delinquencies, an account with Lane Bryant that had an outstanding balance and an unpaid collection claim that Ms. Chase had disputed. They also discussed how a car accident had affected her ability to pay her bills. Martin told Ms. Chase that she would have to pay the two delinquencies before her loan could be approved. Later, she provided him with copies of a receipt for the Lane Bryant account and a check for the unpaid collection, demonstrating that the two outstanding debts had been paid. Tr. 397-401, 406-08.[10] Once Ms. Chase provided those materials, her loan application was processed, the loan closed, and she purchased the home. Tr. 392-93, 408.

8. Prior to the Ingram and Chase loan applications, Martin had entered into an oral agreement with Stephanie Pryor, an employee of MCR, requiring her to make alterations to credit reports in exchange for money.[11] Tr. 185-86, 189-90, 194. As a trainee under the supervision of another MCR employee, Ms. Pryor had been verifying mortgage information and, to a lesser extent, had been making credit investigations. Tr. 185-86, 278-82, 286-87. Following several routine telephone conversations, Martin took Ms. Pryor to lunch and outlined a scheme in which he would provide her with applicant names and report numbers for loan applicants with problem credit histories, tell her what changes to make to their credit reports, and pay her $100 for each report that she changed. Tr. 187, 189-90, 201.[12] She agreed to his offer, and that same day, Martin

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[10]The MCR credit report noted that the unpaid collection claim had been disputed by Ms. Chase, but was paid on the same date as the Lane Bryant account. It was a debt owed to an-out-of town company, and was not given a numerical credit rating. Ms. Chase's testimonial description of the debt was consistent with that on the MCR credit report.

[11]As detailed *infra*, I credit Ms. Pryor's depiction of the arrangement to alter credit reports; I do not credit Martin's denial of the existence of that arrangement.

[12]Ms. Pryor testified that she received only one $100 payment from Martin despite having changed numerous reports. Martin told her that until the loans settled, he could not pay her for the other reports she had changed. Tr. 201-02.

telephoned his instructions for the first report to be changed. Tr. 190-91. He also gave Ms. Pryor his office, car phone, pager, and 800 numbers to reach him at any time with questions. Tr. 190. She also visited his office on approximately 10 occasions to discuss reports that had been changed and any additional changes that needed to be made to those reports, and to receive instructions regarding any other reports that needed alteration. Tr. 191.

9. To make alterations to credit reports for Martin, Ms. Pryor would first obtain the particular file from the MCR employee in charge of the files and then request a printout of the credit report from another employee. Tr. 192. She would then make handwritten changes on the printout, including changes to payment codes and late payment histories. She would also add notes to substantiate certain changes, including creditors' telephone numbers and their representatives' names. Tr. 192-93, 195-204, 216-24, 252. Ms. Pryor would then show them to a busy supervisor who gave them a cursory review and initialed the changes. Ms. Pryor would clip the printout to the file and give them to a typist to insert the changes. Tr. 193, 250-53.

10. Ms. Pryor altered the Ingram credit report by upgrading an Annie Sez account from a "9" payment code rating (bad debt, placed for collection, suit judgment, skip) to a "1" rating (pays or paid within 30 days of billing; pays account as agreed) and by deleting notations that stated "charged off account" and "applicant states account paid." For three other accounts -- Hecht Company, American Express, and Charming Shops/Fashion Bug -- Ms. Pryor changed "5" ratings (at least 120 days overdue, but not yet a "9") to "1" ratings and deleted notations stating, respectively, "applicant states still unpaid," "paid collection," and "paid collection account." She also deleted notations of late payments and references to past ratings lower than "1," reduced or deleted balances owed, and added telephone numbers and names of sources for the altered information. G.Ex. 10; Tr. 194-204, 216.

11. Ms. Pryor altered the Chase credit report by upgrading, from a "9" to a "1," ratings given a Security Baltimore and a Lane Bryant account. For the Security Baltimore account, Ms. Pryor also changed the notation "paid charge off" to "no charge off. . .paid in full. . . ." For the Lane Bryant account, she changed the notation "balance charged to loss" to "current no charge off - paid. . . ." For an Andrews Federal Credit Union Account that had been rated "1," she deleted a notation of late payments. She also added telephone numbers and names of sources for the altered information. Finally, she changed the results of a public records check showing a $65.00 unpaid collection claim filed in November 1993 to show that the claim had been filed in July 1991 in Tuscaloosa, Alabama, paid in full as of November 30, 1993, and disputed by Ms. Chase. G.Ex. 11; Tr. 194, 216-24.

12. Neither Ms. Ingram nor Ms. Chase were aware of the arrangement Ms. Pryor had with Martin or the changes that she made to their credit reports. Tr. 300-04, 401-05, 407-08.

13. Except for the changes made to the Lane Bryant account and the unpaid collection claim on the Chase credit report, the changes made on the Ingram and Chase credit reports were unauthorized by the creditors and made solely pursuant to Ms. Pryor's arrangement with Martin. Tr. 224, 249-50, 253.[13]

14. By letter dated August 10, 1994, NMC advised Respondent that "[d]uring a routine audit by an outside agency, it was discovered that there were several variances between the RMCR ordered by [Respondent] and follow-up credit reports ordered by the auditors on two loans purchased from [Respondent]." Attached to the letter were copies of the original reports and follow-up reports ordered by NMC's Quality Control Department. NMC stated that it would need explanations for the discrepancies from Respondent and MCR, and that due to the seriousness of the discrepancies, it would need the response by August, 19, 1994. G.Ex. 6. *See also* G.Exs. 4, 5, 8 and 9; Tr. 63, 124-26, 146.[14]

15. For the Ingram loan, the MCR credit report that had been provided to NMC by Respondent was dated March 7, 1994. It listed account activity for the preceding 90 days for nine accounts. All of the accounts were given a payment code of "1." The report also showed no history of late payments on the accounts. G.Ex. 4; Tr. 89-94, 142-46.

16. The follow-up Ingram report that had been ordered by NMC from Memphis Consumer Credit Association, Inc., was dated July 12, 1994. It listed account activity for the previous 90 days for 8 of the 9 accounts listed on the MCR report. The American

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[13]Although Ms. Pryor gave testimony indicating that the change made to the unpaid collection claim on the Chase credit report had not been authorized by the creditor (*see* Tr. 222-24), a preponderance of the evidence shows otherwise. Ms. Chase provided Martin with documentation showing that she had paid both the Lane Bryant account balance and the unpaid collection claim. *See supra* Finding No. 7 & n.10. Moreover, Ms. Pryor was asked specifically to recall the change made to the Lane Bryant account and not whether other authorized changes had been made to any other specific account. *See* Tr. 249-50, 253.

[14]The August 10, 1994, letter was introduced into evidence without its enclosures, the original reports and the copies of the follow-up reports ordered by NMC. G.Ex. 6. Nevertheless, I have already concluded that G.Exs. 4 and 8 were the original reports referred to in NMC's letter. *See supra* n.9. I also find that a preponderance of the evidence demonstrates that G.Exs. 5 and 9 were the follow-up reports referred to in NMC's letter. They are dated only one month prior to the August 10, 1994, letter that refers to follow-up reports, and no other follow-up reports have been shown to exist.

Express account was rated "5" and had been 90 days past due once, with a last past-due date of March 1990. The Annie Sez account was rated "9" and had been 60 days past due once and 90 days past due 8 times, with a last past-due date of March 1993. The Fashion Bug account was also rated "5" and had been 60 days past due once and 90 days past due 3 times, with a last past due date of September 1990. The Jewelers Financial Services account (listed as "Gordons" on the Memphis Consumer report) was rated "1" but had been 30 days past due once, 60 days past due once, and 90 days past due twice.[15] The Hecht Company account was rated "1" but had been 60 days past due once and 90 days past due 22 times, with a last past-due date of February 1994. The Kay Jeweler account was rated "1," but had been 60 days past due 5 times and 90 days past due 14 times, with a last past-due date of August 1991. One of two Nissan accounts was rated "2," (pays (or paid) in more than 30 days, but not more than 60 days, or not more than one payment past due) and had been 30 days past due 11 times, with a last past-due date of January 1994. The American Express, Annie Sez, Fashion Bug, Hecht Company, Kay Jeweler and one of two Nissan Accounts also showed past ratings lower than "1," reflecting a history of delinquent payments. G.Ex. 5; Tr. 131-32, 137-42, 144, 146, 150.

17. For the Chase loan, the MCR credit report that had been provided to NMC by Respondent contained two sets of account information for the preceding 90 days, as well as two sets of results of a public records check for the preceding seven years. The first set of account information and public records check covered data through November 24, 1993. The second set covered information for November 25, 1993, to December 2, 1993.

a. Seven accounts were listed in the earlier set. The accounts with Ford Motor Credit Corporation, Lerners, Peebles and Brittany Place Apartments were rated "1," and showed no history of late payments. The Andrews Federal Credit Union account was also rated "1," but it showed a history of one payment 90 days past due. The accounts with Lane Bryant and Security Baltimore were rated "9," but the report did not reflect any payment history for those two accounts. The earlier public records check showed an outstanding $65.00 unpaid collection, dated July 1991, that was disputed by Ms. Chase.

b. The second report of account activity listed only the Lane Bryant, Andrews Federal Credit Union, and Security Baltimore accounts. All three accounts were rated "1" and showed no history of late payments. The Lane Bryant account was current, had not been charged off, had been paid as of November 30, 1993, and provided a name and telephone number for the source of that information. The Security Baltimore account had not been charged off, had been paid in full on November 25, 1993, and provided a name and telephone number for the source of that information. The second public records

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[15] No last past-due date was provided for this account. G.Ex. 5.

check revealed that the $65.00 unpaid collection that had been disputed by Ms. Chase was paid on November 30, 1993; it listed a telephone number as the source of the information. G.Ex. 8; Tr. 105-11, 113-15, 149-52.

18. The follow-up Chase report that had been ordered by NMC from Trans Union was dated July 11, 1994. Supplemental information bore a reissuance date of July 12, 1994. It listed account activity for only 4 of the 7 accounts listed on the MCR report, but it also listed a different Andrews Federal Credit Union account, a Baltimore Gas account, and a National Mortgage account. It did not list the Lerners or the Security Baltimore account. The supplemental information showed two Andrews Federal Credit Union accounts, the Lane Bryant account, and the Baltimore Gas account, all four rated "9."[16] It also showed that the public records search revealed an $807 unpaid civil judgment.[17] G.Ex. 9; Tr. 152-57.

19. Martin received but did not respond to the August 10th letter from NMC. By letter dated August 19, 1994, NMC advised ATFS that it had not received a response to its August 10th letter, and requested a response by August 30, 1994. G.Ex. 7; Tr. 348-49, 357, 362-63. *See also* Tr. 126-27. Although Martin received the August 19th letter, neither he nor anyone from ATFS responded to that letter. Tr. 127, 363-64.[18]

20. By letter dated August 30, 1994, NMC advised MCR of the discrepancies that had been discovered during the routine audit, provided copies of both the original and follow-up credit reports, and requested explanations for the discrepancies by September 12, 1994. The letter stated that if NMC did not receive appropriate responses, it intended to inform state and federal authorities of its findings. G.Ex. 13.

21. After receiving the August 30 letter from NMC, Laura Anderson, MCR Vice President of Operations, compared the MCR credit files with the letter and its attachments. She immediately saw a problem and obtained authorization from the

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[16]Neither the original nor the supplemental report contained complete information for last past-due dates. The supplemental report did not contain complete histories of payment delinquencies. G.Ex. 9.

[17]Nothing in the record indicates that the $807 unpaid civil judgment shown on the follow-up report has any relationship to the information reported on the original MCR report.

[18]Martin testified that he handed the entire matter over to an unidentified, former counsel and that he does not know whether that former counsel ever responded to NMC's letters. Tr. 364-65. The record is devoid of evidence of any response.

president of MCR to contact NMC and follow-up on the problem.[19] Ms. Anderson notified Judy Sternberger, the Manager of NMC's Quality Control Department, that incorrect and unauthorized changes may have been made to the credit reports, that an investigation would be undertaken, and that it would take several days for MCR to prepare its response. G.Ex. 13; Tr. 255, 257-62.

22. Following an investigation, Ms. Anderson determined that incorrect and unauthorized alterations had been made to the credit files by an MCR employee. She contacted the principals of MCR, Ms. Sternberger of NMC, and the FBI to report her initial findings. Upon further investigation, Ms. Anderson determined that Ms. Pryor was the culprit.[20] Ms. Pryor had distinctive handwriting that was easily recognized on the credit report printouts and also could be compared to her handwriting on credit reports she utilized in training at MCR. G.Exs. 4 and 10; Tr. 268-71, 274-86.

23. By letter dated September 20, 1994, Ms. Anderson responded to NMC's August 30th letter, stating that MCR's own investigation and contact with creditors revealed that the files at issue had been altered, that the company was "shocked and horrified," and that MCR had immediately contacted the FBI. The letter also noted that company policy and procedures had not been followed and that MCR believed that there had been a "conspiracy between an employee of the mortgage company and a MCR employee no longer in [its] employ." The letter enclosed copies of the unaltered, original credit reports. G.Ex. 14; Tr. 262-64.

24. Sometime between August 30, 1994, and September 20, 1994, MCR closed its account with Respondent and ceased supplying it credit reports. Martin telephoned Ms. Anderson to determine why MCR was no longer supplying Respondent with credit reports. She reminded him of the investigation into the changes to credit reports, and he replied that he did not understand how that affected the business relationship between the two entities. Tr. 284.

25. NMC reported the discrepancies it had detected in the credit reports to the Baltimore Office of HUD. Tr. 62-63, 78, 99, 159-60. The Baltimore Office referred the matter to the Quality Assurance Division of the Office of Program Compliance in

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[19]Contrary to Respondent's contention, Ms. Anderson's concern that the contents of the Ingram file were out of order does not contradict Ms. Pryor's testimony that she did not touch the inside of the files. The files could have been out of order for any number of reasons unrelated to the changes made by Pryor. Ms. Anderson's greater concern was the unusually large number of changes made to the original credit report. *See, e.g.*, Tr. 268-69.

[20]By this time, Ms. Pryor no longer worked at MCR. She had been laid off for reasons unrelated to the matters at issue in these proceedings. Tr. 278.

Washington, D.C. Tr. 36, 60-61, 78-79. That division conducts on-site reviews of approved HUD-FHA lenders to determine if they are in compliance with HUD requirements. Tr. 73.

26. At no time did Respondent report the discrepancies in the credit reports to the Department. Tr. 44.

27. After reviewing the documentation that had been forwarded by the Baltimore Office, and noting the discrepancies between the MCR credit reports in the endorsement package and the follow-up reports that had been ordered by NMC, the Quality Assurance Division determined that HUD may have insured two loans based on Respondent's submission of false, inaccurate, and misleading information, and that Respondent had failed to notify HUD of fraud discovered during an internal audit. Concluding that Respondent had violated HUD-FHA requirements and prudent lending practices in the origination of the Chase, Ingram and Whalen[21] loans, the Quality Assurance Division referred the matter to the Mortgagee Review Board. G.Exs. 4, 5, 8 and 9; Notice (Mar. 14, 1995), Attachment A; Tr. 79, 82-83, 87-111, 105-113, 115-16, 118.[22]

28. By letter dated March 14, 1995, the Board notified Respondent that it was considering administrative action against Respondent and that it intended to seek a civil money penalty based on the same violations found by the Quality Assurance Division. The Board advised Respondent that it had 30 days from receipt of the letter to provide the Board with a written response to the Division's findings. Respondent failed to reply to the Board's letter. Complaint and Answer, ¶ 20; Tr. 41.[23] The Board met in June 1995 and deferred action on the matter. Tr. 41. At its October 1995 meeting, the Board determined to propose withdrawal of Respondent's HUD-FHA mortgagee approval and imposition of a $15,000 civil money penalty. Tr. 40-41.

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[21]The Whalen loan is no longer at issue in this case. *See supra* n.8.

[22]Respondent correctly points out that Matilde Mestre, the employee in HUD's Quality Assurance Division who reviewed the documentation, was unable to identify G.Ex. 5 as the report she compared to the MCR report included in the endorsement package for the Ingram loan. *See* Respondent's Brief at 9-10. Moreover, Ms. Mestre was not asked whether G.Ex. 9 was the report she compared to the MCR report included in the endorsement package for the Chase loan. She did, however, testify that she compared the MCR reports with the credit reports that had been obtained by NMC and that the documents she reviewed included NMC's August 10, 1994, letter, to which G.Exs. 5 and 9 were attached. A preponderance of the evidence demonstrates that G.Exs. 5 and 9 were the reports upon which HUD relied. *See supra* n.14; Tr. 78-79, 83, 87-106, 110-11.

[23]Martin testified that he gave the letter to his unnamed former counsel who, he assumed, had responded to the Board. Tr. 366-67, 369-70, 377.

29. Ms. Pryor was subpoenaed to give a deposition on August 18, 1995, in *Boatmen's Nat'l Mortgage, Inc. v. Associate Trust Financial Services, Inc.*,[24] a civil action filed in the U.S. District Court for the Southern District of Maryland. G.Ex. 12; Tr. 226, 236. During a telephone conversation with Martin, he instructed her to lie by saying that she did not know him and that all the changes she had made to the credit reports had been authorized and proper. Martin assured her that if she lied, there would be no adverse consequences. Tr. 226-27. In her deposition, Ms. Pryor followed Martin's instructions. G.Ex. 12 at 24; Tr. 227-28, 242-44, 248-49. After the deposition, she refused to waive signature and requested that she be allowed to read the deposition before signing it. Ultimately she decided not to sign the deposition because, having lied, she feared the legal consequences of swearing that her testimony was truthful. Tr. 228, 237-38.

30. After Ms. Pryor gave her deposition, Martin warned her that the FBI was involved and intended to speak to her. Tr. 228-29, 241-42. He again advised her to lie by telling the FBI the same thing she had said at the deposition. He told her "that there was nothing they could do to [her]" and that "we could get over on whitey." Tr. 229.

31. During her first meeting with the FBI agent, Ms. Pryor maintained that the changes to the credit reports were legitimate. Tr. 229-30. At the end of that meeting, the agent warned her of the consequences of perjuring herself, and he gave her time to think about the statements she had made. Two or three days later, Ms. Pryor telephoned the agent to set up another appointment. At that second meeting, she recanted her earlier statements and admitted that she had made the changes to the credit reports pursuant to her arrangement with Martin. Tr. 230-31.

32. Respondent is no longer a loan correspondent for NMC and no longer has a business relationship with MCR. Tr. 122-23, 256-57, 284, 310-11, 327-28.

33. HUD-FHA credit requirements are not as stringent as those for conventional lending programs. Borrowers with less than perfect credit are given the opportunity to explain problems with their credit histories. A "9" rating does not preclude HUD from insuring a loan. Tr. 114, 120, 381.

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[24] In that action, Respondent was the defendant/third-party plaintiff, and MCR was the third-party defendant. G.Ex. 12.

Ultimate Findings in Withdrawal Action

Because the "hearing official" in the withdrawal action requested that I make only "findings of fact" on four specific questions, it is beyond my circumscribed jurisdiction to issue a recommended decision based on those findings. Accordingly, the four questions and their answers are as follows:

Question 1. Whether for the following three loans, the credit reports requested by Respondent, and prepared by Mortgage Credit Reports, Inc., were altered by deleting or revising delinquent debts of the borrowers that the borrowers still owed, or by deleting or revising late payment or judgment information related to such debts.

FHA CASE NUMBER	PROPERTY ADDRESS	MORTGAGOR
[redacted]	[redacted]	[redacted] Ingram
[redacted]	[redacted]	[redacted] Whalen
[redacted]	[redacted]	[redacted] Chase

Answer 1. The credit reports requested by Respondent, and prepared by Mortgage Credit Reports, Inc., for [redacted] Ingram and [redacted] Chase were altered by deleting or revising delinquent debts of the borrowers that the borrowers still owed, or by deleting or revising late payment or judgment information related to such debts.[25] *See* Finding Nos. 8, 9, 10, 11, 13, 15, and 17.

Question 2. If the answer to question 1 is in the affirmative, whether Respondent, through its employees, instructed and/or assisted in the preparation of the altered credit reports regarding the above transactions.

Answer 2. Respondent, through its employees, instructed and assisted in the preparation of the altered credit reports regarding the Ingram and Chase loan transactions. *See* Finding Nos. 8, 9, 10, and 11.

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[25] There is no evidence upon which a finding may be made on the Whalen credit report. *See supra* n.8.

Question 3. If the answer to question 1 is in the affirmative, whether Respondent, through its employees, either knew or should have known that the credit reports were altered by deleting or revising delinquent debts of the borrowers that the borrowers still owed, or by deleting or revising late payment or judgment information related to such debts.

Answer 3. Respondent, through its employees, knew that the credit reports were altered by deleting or revising delinquent debts of the borrowers that the borrowers still owed, or by deleting or revising late payment or judgment information related to such debts. *See* Finding Nos. 8, 9, 10, and 11.

Question 4. If the answer to question 1 is in the affirmative, whether Respondent, through its employees, caused the altered credit reports to be submitted to Respondent's sponsor mortgagee, National Mortgage Company (now known as Boatmen's National Mortgage, Inc.) with the intent of obtaining HUD/FHA insured mortgages for the above three transactions.

Answer 4. Respondent, through its employees, caused the altered credit reports to be submitted to Respondent's sponsor mortgagee, National Mortgage Company (now known as Boatmen's National Mortgage, Inc.) with the intent of obtaining HUD/FHA insured mortgages for the Ingram and Chase loan transactions. *See* Finding Nos. 5, 6, 7, 8, 10, 11, 13, 15, and 17.[26]

Discussion and Order in Civil Money Penalty Action

The Secretary may impose a civil money penalty on a mortgagee whenever the mortgagee knowingly submits materially false information to the Secretary in connection with a mortgage insured by HUD-FHA or knowingly and materially violates an implementing handbook.[27] 12 U.S.C. §§ 1735f-14(a)(1), (b)(1)(D) and (H); 24 C.F.R. §§ 30.320(e), (u). The penalty is in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions. 12 U.S.C. § 1735f-14(a)(1); 24 C.F.R. § 30.15. The

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[26]The answer to this question does not relate to any issue of the *materiality* of any change made in the credit reports.

[27]The term "knowingly" is defined by statute as "having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section." 12 U.S.C. § 1735f-14(g). *See also* 24 C.F.R. § 30.10. "Material" or "materially" is defined by regulation as "in some significant respect or to some significant degree." *Id.*

amount of the penalty may not exceed $5,000 for each violation.[28] 12 U.S.C. § 1735f-14(a)(2); 24 C.F.R. § 30.220(d). In determining the amount of the penalty, the statute directs that consideration be given to such factors as "the gravity of the offense, any history of prior offenses. . ., ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate." *Id.* at § 1735f-14(c)(3). In addition to the statutory factors, the regulations also list as factors to be considered the degree of the violator's culpability and such other matters as justice may require. 24 C.F.R. § 30.215(b).

The following basic facts in this case are incontrovertible: (1) the credit reports, upon which HUD relied in its decision to insure the Ingram and Chase loans, were altered to delete or minimize unfavorable information about the borrowers' credit histories; (2) those alterations were effectuated in the offices of MCR by Ms. Pryor; and (3) the borrowers took no action whatsoever to present false or fraudulent evidence of their credit histories to anyone.[29] At bottom the case rests on the answers to two questions: (1) why Ms. Pryor altered the credit reports, and (2) what consequences flowed from those alterations.

In finding that Ms. Pryor agreed to participate in a scheme concocted by Martin to pay her $100 for each credit report she altered to improve the apparent creditworthiness of a mortgage loan applicant, I have credited her testimony and not his. There is certainly no evidence, and no reason to believe, that she had any incentive other than money to effectuate unauthorized changes in Residential Mortgage Credit Reports. Although she has a prior criminal record and she admittedly lied in a deposition and to an FBI agent, her testimony at the hearing was forthright, internally consistent, and credible. It was also consistent with the documentary evidence of record and the testimony of Ms. Anderson. Ms. Anderson candidly and convincingly described her shock upon learning that the credit reports had been altered, and how she compared Ms. Pryor's distinctive handwriting to that on internal MCR documents specifying the changes to be

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[28]The maximum penalty for all violations by any particular mortgagee during any 1-year period shall not exceed $1,000,000. *See* 12 U.S.C. § 1735f-14(a)(2); 24 C.F.R. § 30.220(d).

[29]These findings are made without reliance on the "follow-up" credit reports ordered by NMC and, therefore, are not dependent upon the finding, made *supra* n.22, that follow-up credit reports were in fact forwarded to HUD. G.Exs. 10 and 11 are Ms. Pryor's handwritten changes to the credit reports. They were identified as such by Ms. Pryor and by Ms. Anderson. Those changes were, in fact, incorporated in the credit reports that were prepared by MCR.

made to the credit reports.[30] Martin's testimony, on the other hand, was cold, mechanical, and, especially in the absence of any evidence that Ms. Pryor would have had an incentive to act alone or in concert with anyone other than Martin, unconvincing.

The consequences of Martin's deliberate actions are unresolved on this record. The statute, 12 U.S.C. § 1735f-14, provides that a civil money penalty may be imposed on a mortgagee that "knowingly and materially" violates a listed provision in the statute. Although it is clear that Respondent, through Martin, knew that the credit information submitted to HUD was false, there is no evidence upon which one might conclude that the false information was material, *i.e.*, that it had any influence or effect on the decision HUD made to insure the loans at issue. Except for Martin himself, no witness was even asked whether, but for the altered credit information, HUD would have insured the loans. Indeed, it was Martin's unrebutted speculation that HUD would have insured the loans even had the information not been altered. *See* Tr. 358-60, 386-87. His testimony is not at odds with the evidence that an account rating of "9" (bad debt, placed for collection, suit judgment, skip) does not preclude HUD from insuring a loan, and that HUD-FHA credit requirements are more lenient than those for conventional loans.

Except for testimony that an "unpaid collection" must be paid prior to closing if HUD is to insure a loan,[31] there is no evidence of any standard by which HUD judges the creditworthiness of a loan applicant when it decides to insure a loan. *See* Tr. 115. Moreover, there was an absence of, or conflicting testimony on the very meaning of the terminology used in the credit reports that were introduced, making it impossible to make specific findings whether, and under what circumstances, a creditor had been paid. *See, e.g.*, Tr. 152, 200, 202, 221-22 ("'paid' collection" means company never got paid; "'paid' collection" means company paid someone to collect it or the company collects it; "'unpaid' collection" not defined; "'paid' charge off" means company could not collect; "'unpaid' charge off" not distinguished). Under these circumstances, the Government has not met its burden of proof to show that any alteration to the credit reports was material; that is, that but for any alteration, or any combination of alterations, the loans would not have met HUD guidelines and would not have been insured by HUD, or that any

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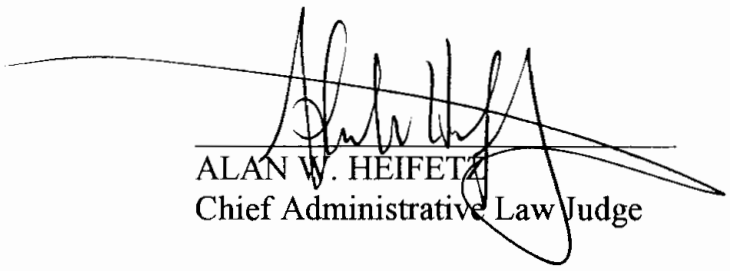
[30] Any difference between Ms. Pryor's testimony and Ms. Anderson's regarding either the amount of time Ms. Pryor spent doing credit investigations or the requirement of a supervisor's initials on changes to credit reports was de minimis.

[31] The only "unpaid collection" was on the MCR Chase credit report. *See* G.Ex. 8. Ms. Chase paid it off prior to closing. *See supra* Finding No. 7.

alteration or combination of alterations had any other significant effect.[32] All that the Government has shown in this case is that Martin caused false statements to be made in documents that were sent to HUD; not that any of those false statements made any difference in HUD's decisions to insure the loans, that it relied to its detriment on those statements, or that the statements had any other significance. While Martin's conduct may be reprehensible, a demonstration of such conduct alone does not satisfy the statutory requirement of materiality. Accordingly, Respondent is not liable for any civil money penalties, and the Complaint must be dismissed.

Except as is provided in 24 C.F.R. § 30.905, pursuant to which, inter alia, Respondent has the right to file a notice of appeal with the Secretary as described in 24 C.F.R. § 30.910, this Initial Decision shall become final 90 days after its issuance.



ALAN W. HEIFETZ
Chief Administrative Law Judge

[32]The same standard of proof applies to allegations that Respondent knowingly and materially violated HUD handbooks. Mere proof that Respondent has violated any particular Handbook provision does not establish liability for a civil money penalty. Handbook provisions cannot be read to eliminate the materiality requirement of the statute.