Board of Contract Appeals
U. S. Department of Housing and Urban Development
Washington, D.C. 20410-0001

In the Matter of:		
INDIGO MORTGAGE SERVICES, INC.,	HUDBCA No.	95-C-132-MR4
	Docket No.	95-027-MR
Respondents		

Respondent, Pro se:

Mr. Mark Brodell
President
Indigo Mortgage Services, Inc.
2333 N. Broadway, Suite 340
Santa Ana, California 92706

For the Government:

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Office of General Counsel
Department of Housing and
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Washington, D.C. 20410

DETERMINATION

May 12, 1995

By Administrative Judge Jean S. Cooper

Statement of the Case

By letter dated March 21, 1995, Indigo Mortgage Services, Inc. ("IMS") was notified that the Mortgagee Review Board of the U.S. Department of Housing and Urban Development ("HUD") had withdrawn the HUD-FHA mortgagee approval of IMS for a period of two years, pursuant to 24 C.F.R., Part 25. The withdrawal of approval was effective upon the receipt of the March 21, 1995, letter by IMS.

The withdrawal of approval was based upon IMS' failure to comply with the terms of an indemnification agreement dated July 8, 1993, between IMS and HUD. HUD charges that IMS refused to remit $ 49,724.95 demanded by HUD for a loss on FHA Case No. [redacted] (the Alvarado loan), in violation of the terms of the

indemnification agreement. HUD contends that failure to comply with the terms and conditions of the indemnification agreement is a ground for withdrawal of mortgagee approval, pursuant to 24 C.F.R. Sections 25.9(j), 25.9(p), and 25.9(w).

IMS made a timely request for an expedited hearing on the withdrawal of mortgagee approval. IMS claims that it was induced to enter into the indemnification agreement by duress and misrepresentation on the part of HUD. It further claims that HUD lacked the legal authority, generally, to require indemnification from a mortgagee for the errors of its underwriter, and specifically, that the mistake made by IMS in the Alvarado loan was not sufficiently serious to warrant indemnification. Finally, IMS contends that HUD breached the terms of the indemnification agreement.

A prehearing conference was held in this case on April 6, 1995, by telephone. The parties agreed that certain documents would be filed as joint exhibits in advance of the hearing. IMS admitted that the amount demanded by HUD pursuant to the indemnification agreement had not been paid. Because this was the basis on which the Mortgagee Review Board withdrew the mortgagee approval of IMS, the burden of proof was deemed to have shifted to IMS. Therefore, it was decided that IMS would proceed first at the hearing.

The parties agreed to proceed so that a bench decision could be issued pursuant to 24 C.F.R. Section 26.24(d). This Determination is issued as a bench decision.

FINDINGS OF FACT

1.) IMS is a direct endorsement ("DE") ,non-supervised mortgagee doing business in Santa Ana, California. IMS is owned and operated by Mark Brodell, its President and underwriter. Prior to forming IMS, Brodell had worked for other DE mortgagees for ten years, and had been the DE underwriter for Depot Mortgage for four years immediately prior to forming IMS. IMS was incorporated in 1989, and received DE approval from HUD in either late 1989 or early 1990. (Exh. G-1; testimony of Mark Brodell.)

2.) On August 10-13, 1992, the Monitoring Division of HUD's Office of Lender Approval and Land Sales Registration conducted an on-site monitoring review of IMS. The review was conducted by Daniel Berry, a HUD loan specialist with that office. An on-site monitoring review is different than a technical review normally performed by the HUD local office. IMS was the subject of an on-site monitoring review because it had originated a number of loans that had gone into default within thirteen months of closing. An on-site monitoring review is an unannounced review by a HUD loan specialist, who conducts an opening interview with management of the mortgagee, examines files of the mortgagee on-site, and conducts an exit conference with the mortgagee in which

the mortgagee is told what was found to that point. The reviewer would then prepare a report for the signature of J. Parker Deal, Director of the Monitoring Division. About 350 such reviews are performed by the Monitoring Division each year. (Exh. G-1; testimony of J. Parker Deal.)

3) The review of IMS conducted by the Monitoring Division disclosed a number of irregularities and violations of HUD program requirements. Berry told Brodell what he had found, preliminarily, at the exit conference. According to Brodell, Berry told him that IMS might have to indemnify HUD for a few of the loans, but that otherwise things "looked pretty good." Berry also told Brodell that any decision on indemnification would not be made by Berry. Brodell characterized the exit conversation with Berry as "casual." Berry did not act in an intimidating manner toward Brodell, and there is no evidence that Berry made either express or veiled threats to Brodell at any time during the on-site monitoring review. (Testimony of Brodell; testimony of Deal.)

4.) A letter dated December 16, 1992, from J. Parker Deal to Brodell, constituted the on-site monitoring review report. Although the report describes a number of violations of varying seriousness, two loan originations were considered by Deal to present violations of such seriousness that he demanded that IMS indemnify HUD for any claims that HUD would have to pay on those loans. The Alvarado loan was one of the two loans for which indemnification was demanded. Among other things, IMS was to provide the Monitoring Division with a full explanation for each of the findings of violation in the report and with an executed indemnification agreement within 30 days of receipt of the report. A copy of an indemnification agreement was enclosed with the report for Brodell to execute on behalf of IMS. (Exh. R-1.)

5.) The indemnification agreement sent to Brodell was a standard HUD form used in 95% of all indemnification cases by HUD. The evaluation conducted by the HUD Office of Lender Activities and Land Sales Registration, of which the Monitoring Division is a part, in deciding whether to seek indemnification, is guided by HUD Handbook 4000.4 REV-1, Section 5-8. That Handbook section provides that indemnification agreements may be sought in lieu of referral of a matter to the Mortgagee Review Board when the Monitoring Division finds violations of HUD's requirements which significantly increase HUD's risk, and those violations were caused by fraud or serious negligence on the part of the mortgagee. Handbook Section 5-8 further states that the purpose of indemnification agreements is to guarantee that HUD will not suffer a loss on the affected loans, and that the terms of such agreements will vary with the severity of the violation, and typically are effective for five years from the date of endorsement. Sections 5-3 and 5-4 of HUD Handbook 4000.4 REV-1 are not applicable to the evaluation of whether to demand

indemnification. They apply to consideration of sanctions by a local HUD office, and local offices may not enter into indemnification agreements. (Exh. G-16; testimony of Deal.)

6.) Deal looks only at the seriousness of violations when deciding whether to demand indemnification. He does not give consideration to the past performance of the mortgagee, the status of the loan at the time indemnification is demanded, or the financial ability of the mortgagee to indemnify. Deal did not think that IMS was guilty of fraud in the Alvarado loan, but he did think that IMS had been seriously negligent in underwriting and endorsing the loan. (Testimony of Deal.)

7.) The Alvarado loan was transferred to IMS from Mid-Valley Mortgage Corporation, with a notation regarding the prior prospective purchasers, [redacted] Enriquez. Mid-Valley made the notation that it did not approve a loan for the Enriquezs because they were unable to provide acceptable information concerning their income and ability to make a downpayment. The Alvarado transaction involved a purchase of the same property that the Enriquezs had unsuccessfully tried to purchase. The source of the downpayment and closing costs for the Alvarados, evidenced by a gift letter, was a gift from [redacted] Enriquez. (Exh. R-1.)

8.) Brodell was the underwriter on the Alvarado loan for IMS. He initially underwrote the loan without all of the material from Mid-Valley, but when that material was received, he merely checked that the purchasers rejected by Mid-Valley were not the Alvarados. Brodell did not note or investigate further why the donors of the downpayment and closing costs in the Alvarado transaction were the same borrowers who had been rejected by Mid-Valley for financial reasons. He characterized this as a mere mistake on his part. After the Alvarado loan went into default, HUD investigated the circumstances, and found that the Alvarados never lived in the property, Its occupants were [redacted] Enriquez. Brodell had relied on the certification of the Alvarados that they would occupy the property when he underwrote the loan for IMS, and did not see any reason at the time to require further information to show that the Alvarado loan was not a "strawbuyer" transaction. (Testimony of Brodell.)

9.) The Alvarado loan should not have been endorsed by IMS without first resolving the obvious discrepancies in the loan file. It is the duty of the underwriter to perform the task of analysis and evaluation of a completed loan application package, and in the case of a DE underwriter, HUD places almost total reliance on those functions being performed carefully, using prudent lending practices. I find that Brodell was seriously negligent in the way in which he performed his underwriting function on the Alvarado loan, and that this resulted in serious

violations of HUD program requirements that increased HUD's risk. (Testimony of Deal; testimony of Brodell; Exh. G-16.)

10.) Brodell prepared a response to the on-site monitoring review report, and executed the indemnification agreement on January 5, 1993. He wrote the response himself. In his response to the finding on the Alvarado loan, he wrote: "The question of 'straw buyer' is a valid point and I can offer no defense for the underwriter not raising this question...I have enclosed a (sic) executed Indemnification Agreement for this transaction." He did not reveal that he had been the underwriter on the case. (Exh. R-3; Testimony of Brodell.)

11.) Brodell did not seek legal advice, or ask any questions of HUD before executing the indemnification agreement. He claims that he read it carefully and "pondered it." He struck the reference to one of the two loans included by Deal in the text of the agreement, leaving only the Alvarado loan within its coverage. He did not call Deal or anyone else at HUD to discuss this unilateral amendment to the agreement before he signed it, but stated the reasons for it in his response to the findings in the report. The stated reason for agreeing to indemnify HUD on the Alvarado loan but not on the other loan concerned IMS's acceptance of responsibility for the violation in the Alvarado loan but not in the other transaction. Brodell mailed the response and the indemnification agreement himself, according to his testimony. (Exh. R-3; Testimony of Brodell.)

12.) HUD did not receive IMS's response or the indemnification agreement. Brodell assumed that HUD had received it because he heard nothing further from HUD for a period of months. By letter dated June 8, 1993, Deal wrote Brodell, asking for the response to the on-site monitoring review findings and for the indemnification agreement. On July 2, 1993, Brodell sent Deal another copy of the written response that he had sent in January, 1993, and re-executed and redated the indemnification agreement. His cover letter to Deal did not raise any questions as to the propriety of HUD's authority to require indemnification, nor did it refer to Brodell's striking of one of the two loans from the indemnification agreement. (Joint Exh. 1; Exh. R-5.)

13.) Deal executed the indemnification agreement on July 8, 1993. He was concerned that Brodell had stricken one of the two loans from the agreement, but decided to execute the amended agreement and to pursue a separate indemnification agreement for the other loan. (Joint Exh. 1; testimony of Deal.)

14.) The indemnification agreement executed by Brodell for IMS and by Deal for HUD provides, in pertinent part, as follows:

NOW, THEREFORE, HUD and Indigo Mortgage Services, Inc agree as follows:

1. Indigo Mortgage Services, Inc. (IMSI) agrees to indemnify HUD for losses which have been or maybe incurred in accordance with FHA Case Nos. [redacted] where these loans go into default within five years from the date of endorsement. Indemnification shall be made in accordance with the following terms:

* * * * *

(b) Where a HUD/FHA insurance claim is pending or has been paid in full and the property is owned by HUD, conveyance of the property will be accepted by IMSI and indemnification will be made to HUD for its investment. HUD's investment includes, but is not limited to: the full amount of the insurance claim; all taxes and assessments; all maintenance and operating expenses, including costs of rehabilitation and preservation; and all sales expenses, where applicable. In the event that HUD does not convey the property to IMSI, HUD's loss will be calculated in accordance with paragraph (c).

(c) Where a HUD/FHA insurance claim had been paid in full and the property has been sold by HUD to a third party, the amount of indemnification is HUD's investment as defined in paragraph (b), minus the sales price of the property.

* * * * *

2. Any material breach of the terms and conditions of this Agreement shall constitute independent grounds for imposition of administrative sanctions by the Mortgagee Review Board against IMSI pursuant to 24 CFR Part 25. (Joint Exh. 1.)

15.) The Alvarado loan was already in foreclosure as of July 23, 1992. The Alvarados had made the last payment on the loan in September, 1991, only months after the loan had closed. The loan was assigned to HUD on December 9, 1992, and HUD filed its deed to the property on January 4, 1993. HUD had a sales contract for the property dated May 19, 1993, to sell the property for $93,730. The closing on the sale took place on or shortly after July 20, 1993. HUD computed its computation on its investment in the Alvarado loan, subtracting the sale price received for the property, in accordance with paragraph (c) of the indemnification agreement. (Exhs. R-2 and R-6; Joint Exhs. 1,2, and 3.)

16.) By notice dated September 29, 1993, HUD demanded $49, 724.95 from IMS for its losses on the Alvarado loan, pursuant to the indemnification agreement. Payment was to be made within 30 days from receipt of the notice. (Exh. R-6.)

17.) By letter dated October 30, 1993, Brodell wrote to HUD that, " [I]t is not possible for Indigo Mortgage to pay this claim in one payment. I feel the amount should be reduced because Indigo Mortgage was not given the option (sic) take over the property and the liquidation of the property was not handled to my satisfaction." IMS did not remit any money in response to the demand notice. (Exh. R-7.)

18.) Over the next four months, HUD and IMS continued to exchange correspondence about IMS's failure to indemnify HUD on the Alvarado loan, with periodic threats made by both parties. By letter dated February 14, 1994, Brodell wrote to Deal on a number of outstanding issues, including indemnification of the Alvarado loan. For the first time, he challenged HUD's legal authority to demand indemnification for what Brodell characterized as "Level Two Deficiencies." Brodell made reference to having consulted an attorney on the matter, and cited Deal to HUD Handbook 4000.4 REV-1, Section 5-3, demanding an explanation of HUD's authority to demand indemnification from a mortgagee for underwriting errors. Brodell also raised for the first time the point the IMS would not be able to maintain the minimum required net worth to continue as a HUD-approved mortgagee if it had to pay almost $50,000 to HUD for the Alvarado loan. (Exhs. R-8 through R-11.)

19.) On April 5, 1994, Deal and Brodell had a telephone conversation about IMS's continuing failure to indemnify HUD for its losses on the Alvarado loan. After that conversation, which was the first, and perhaps only, conversation between Deal and Brodell, Deal investigated some of the concerns raised by Brodell. He wrote to Brodell on May 26, 1994, stating that he had been advised that HUD had made every effort to obtain the highest sale price for the property possible. Deal offered to settle the dispute over indemnification of the Alvarado loan by accepting "in lieu of full indemnification, a settlement offer in the amount of the average HUD/FHA loss for properties it has sold in the Santa Ana area during the past 12 months. That average loss has been computed at $26,581." Deal further wrote that if payment of such a settlement would present an economic hardship to IMS, that HUD would consider a payment plan not to exceed three years, with interest accruing, but that economic hardship would have to be established by submitting a recent financial statement with a request for a payment plan. (Exh. R-12.)

20.) By letter dated June 26, 1994, Brodell responded to Deal's offer, stating that he would not discuss the issue of

payment or "proceed with payment negotiations" until HUD provided him with copied of a HUD manual giving HUD the authority "to request indemnification from a Mortgagee for underwriting errors." Deal wrote Brodell back on July 29, 1994, referring Brodell to HUD Handbook 4000.4 REV-1, Paragraph 5-4b, for the Monitoring Division's authority to request indemnification, and stated that indemnification was a form of "settlement" in lieu of possible administrative sanctions. Deal's letter ended with the admonition to respond to the settlement offer within 30 days, or he would have no alternative but to refer the matter to the Mortgagee Review Board. (Exhs. R-13 and R-14.)

21.) Brodell and Deal continued to make their separate demands through letters through November, 1994. Deal attempted to satisfy Brodell's demands for proof of HUD's authority to demand indemnification from a mortgagee for the mistakes of an underwriter, but Brodell kept raising Section 5-3 of HUD Handbook 4000.4 REV-1, believing that it applied to activities of the Monitoring Division as well as the HUD local offices. Brodell also stated in writing that payment of $26,581 would ruin IMS and cause it to go out of business. He accused HUD of fraud for demanding indemnification for "mistakes." (Exhs. R-15 through R-18.)

22.) By letter dated December 22, 1994, the Mortgagee Review Board advised Brodell that it was considering an administrative action against IMS, and that the letter would also constitute a 30 day notice as required by 12 U.S.C. 1708. The stated basis for the Board's action was IMS' failure to comply with the terms and conditions of the indemnification agreement between IMS and HUD, in that IMS's had failed to indemnify HUD for its losses on the Alvarado loan. The letter stated that failure to comply with the terms of the indemnification agreement is grounds for an administrative sanction pursuant to 24 CFR Sections 25.9(j), 25.9(p), and 25.9(w). Brodell was directed to provide the Board with a written response. (Exh. R-19.)

23.) By letter dated January 17, 1995, Brodell responded to the Mortgagee Review Board's December 22, 1994 letter. He states in his response that IMS has failed to comply with the indemnification agreement for several reasons. He states that he signed the agreement "... under duress and without proper disclosure from...HUD. I was led to believe that the loan in question was in default and agreed to indemnification assuming I would be given the option of taking over the property as detailed in the indemnification agreement. In fact the property had already been foreclosed upon and HUD had entered into a agreement to sell the property at a ridiculous loss." He claimed that HUD had a legal obligation to advise him of his pending loss at the time the indemnification was requested. He also stated that he had received no satisfactory explanation of whether a DE lender is financially responsible for the error of its underwriter, and

did not agree to pay indemnification until he received satisfactory proof of that requirement. (Exh. R-20.)

24.) By letter dated January 27, 1995, William Heyman, Director of the Office of Lender Activities and Land Sales Registration at HUD, wrote Brodell in response to Brodell's letter of January 17, 1995. Heyman responded generally to Brodell's points, and stated that HUD was revoking its offer to accept less than full indemnification for its losses on the Alvarado loan, demanding full payment of $49,724.95 within five days, or the matter would be considered by the Mortgagee Review Board at its next meeting. (Exh. R-23.)

25.) IMS did not remit any payment to HUD. By letter dated March 21, 1995, The Mortgagee Review Board withdrew IMS's mortgagee approval for two years, effective upon receipt of the letter of withdrawal, for failure to remit to HUD $49,724.95 due under the indemnification agreement for losses HUD incurred on the Alvarado loan. (Exh. G-150.)

DISCUSSION

The purpose of withdrawing HUD-FHA approval from a mortgagee is to protect the public and HUD from doing business with a mortgagee that fails to adhere to the statutory and program requirements of the mortgage insurance program, and more generally, fails to adhere to prudent lending practices. 24 C.F.R. Section 25.9. A direct endorsement lender such as IMS must originate HUD-insured loans with at least as much care and prudence as it would with conventional loans because HUD places its reliance on the mortgagee to only approve quality loan applications for publicly funded mortgage insurance. The DE lender is the eyes and ears of HUD.

Failure to adhere to HUD program requirements and prudent lending practices jeopardizes the HUD-FHA mortgage insurance program, and it threatens the public treasury that funds it. It is immaterial whether a mortgagee deliberately avoids its obligations, or if it fails to satisfy them through carelessness, lack of knowledge, or misunderstanding of the full scope of its duties. In either case, the public interest in a sound mortgage insurance program needs protection. Horizon Savings Association, HUDBCA No. 91-5946-M12 (September 1, 1992).

In this case, HUD had evidence that IMS had not exercised the degree of care to be expected from a DE lender in underwriting and endorsing the Alvarado loan. Mark Brodell, the President of IMS, was the underwriter. While there is no evidence that Brodell knew that false information was contained in the loan package, or that he was part of an illegal "strawbuyer" scheme, he utterly failed to even notice clear

evidence that needed further investigation; evidence that would lead a prudent lender to determine why rejected borrowers were the source of the entire downpayment and closing costs for purchase of the very same property by other buyers, the Alvarados. This simple fact, observable from a comparison of names in the two transactions, and all of which was available to Brodell before the loan was closed, should have caused Brodell to stop in his underwriter's tracks. Instead, he only made a cursory examination of the documents that would have revealed this problem, did not take the time or steps that a prudent lender should take in such a situation, and approved the loan. He had the last chance to stop the fraud created by the Alvarados and Enriquezs before the public fisc would be at risk for payment of losses. He did not do so.

I agree with J. Parker Deal that the handling of the Alvarado loan by IMS constituted serious negligence, and I find that Deal properly exercised his authority in demanding indemnification from IMS for the underwriting negligence of Brodell on the Alvarado loan. I find as a matter of fact and law that Section 5-8 of HUD Handbook 4000.4 REV-1 controls the authority and scope of the HUD Monitoring Division to demand and to enter into indemnification agreements. An indemnification demand is wholly appropriate for violations caused by serious negligence as well as fraud. Section 5-3 of HUD Handbook 4000.4 REV-1 is not applicable under such circumstances, and that is the section the makes the distinctions between levels of violations for guidance to local HUD offices in imposing a variety of sanctions. A local office may not even enter into an indemnification agreement on behalf of HUD. That is why there is a completely different section of the Handbook entitled "Indemnification Agreements," Section 5-8.

I find as a matter of fact and law that Section 5-8 of the Handbook at issue fully empowers HUD to request indemnification from the mortgagee for violations of HUD's requirements on the part of the mortgagee that significantly increase HUD's risk. If an underwriter employed by a DE lender does not follow prudent lending practices, and does not resolve discrepancies in the loan file before endorsing it, it should be the lender who is answerable to HUD for any losses that flow from that transaction. A mortgagee is the sum of its employees, and HUD has a right to expect that the mortgagee will accept responsibility for the actions of its employees of which the mortgagee knew or had reason to know of. In this case, despite all of Brodell's attempts to cover up his personal involvement in the Alvarado loan by referring at all times to the IMS underwriter in the third person when writing to HUD, the employee performing negligently and the owner and operator of the mortgagee were one and the same person.

This is not the first time that a mortgagee has tried to disavow its obligations to indemnify HUD or has refused to perform obligations that it agreed in writing to perform. I observe from the facts in this case that Brodell did not act as a man under duress or even a man who was unclear about the obligations that he had agreed to in the indemnification agreement until he was shocked by HUD's quantified demand for payment under the agreement. Brodell made a lot of unfounded assumptions about what would happen; but he made absolutely no inquiries to determine the status of the Alvarado loan at any point before he initially signed the indemnification in January, 1993, or when he re-executed it in July, 1993. He also did not seek legal advise as to the obligations that he was assuming on behalf of IMS when he entered into the indemnification agreement. He did not ask HUD, formally or informally, about the scope of the agreement or how it would be administered. This error of judgment was a serious error, and it is one for which Brodell bears the responsibility. He has been unwilling to accept personal responsibility for his continuing carelessness, indeed recklessness, which increased as time went on.

HUD did not breach the terms of the indemnification agreement; IMS did. Paragraph 1(b) of the agreement does not mandate that HUD convey the property to IMS in the event of foreclosure. It gives HUD two options: to convey or to sell. Those options are not limited by the language of the indemnification agreement. HUD has a choice of whether or not to convey; the mortgagee had no choice of whether to accept conveyance. The agreement requires the mortgagee to accept conveyance if HUD decides to convey instead of sell. The contract interpretation relied upon by Brodell for IMS is not reasonable, in that Brodell insists that HUD had an obligation to convey the property if it had not already been sold. This is incorrect as a matter of contract interpretation. Therefore, it would have been immaterial to HUD whether HUD had told Brodell that the loan had already been foreclosed upon, and that the property was contracted to be sold as of May, 1993. Those facts may have led Brodell to take a different course, but they did not affect HUD's contractual rights. Brodell could have ascertained those facts, but he did not even make an attempt to do so.

There is absolutely no evidence of duress in this case that would relieve IMS from its obligations under the indemnification agreement. Under the general law of contract, three elements must be proven to establish duress at law. Those are: 1) that one side involuntarily accepted the terms of another, 2) that circumstances permitted no other alternative, and 3) that the circumstances were the result of coercive acts of the opposite party. WILLISTON ON CONTRACTS, Section 1603, at 665. I find that none of these elements has been proven. IMS voluntarily accepted responsibility for only the Alvarado loan and rejected

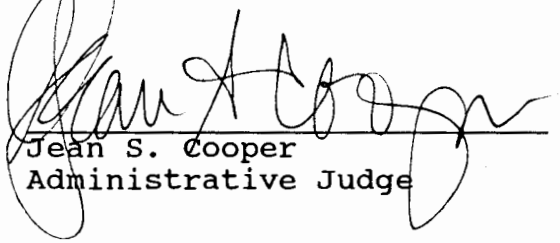
any obligation for the other loan for which HUD sought indemnification. I find this evidence not only of the voluntary nature of its acceptance, but also a rejection of any contention that IMS had no other alternative. It not only had other alternatives, it exercised its right to refuse indemnification responsibility for the other loan. Finally, HUD personnel committed no coercive acts. In fact, I was impressed with the civility with which HUD personnel continued to treat Brodell, even as he elevated his threats and became more inflexible. There was no duress in this case.

HUD cites cases that are analogous to either the facts or issues raised in this case. In Heritage Mortgage Company, HUDBCA No. 92-C-7603-MR11 (Sept. 2, 1993), a mortgagee breached the terms of a Settlement Agreement to make payments to HUD, and it was found that HUD had not breached the agreement so as to warrant the mortgagee's breach. In Heritage Mortgage Company, supra, it was held that a refusal to pay in accordance with an enforceable contract or agreement warrants withdrawal of mortgagee approval. In the case of G&R Financial Group,Inc.,HUDALJ 95-114-MR (March 1, 1995), the mortgagee claimed that HUD had fraudulently mislead it by presenting to it an indemnification agreement for HUD's losses. At the time that the mortgagee signed the agreement, it had not yet received a quantified demand for payment from HUD. The lender in that case, as in this case before me, could have discovered, by asking, whatever information HUD had not volunteered. The ALJ in that case found that, having failed to make timely inquiries, the mortgagee signed the indemnification agreement at its peril. The ALJ held that the mortgagee had failed to adhere to the terms of the indemnification agreement, and that such conduct constitutes grounds for withdrawal of mortgagee approval under the same regulatory sections as HUD relies upon in this case.

In summary, I find that IMS breached the indemnification agreement that it had entered into without duress, that HUD did not breach the agreement, and that HUD had the authority to demand indemnification from IMS for the seriously negligent underwriting it did on the Alvarado loan. I further find that the failure of IMS to comply with the terms and conditions of the indemnification agreement are grounds for withdrawal of its mortgagee approval for a period of two years. 24 C.F.R. Sections 25.9(j), 25.9(p), and 25.9(w).

CONCLUSION

For the foregoing reasons, I find that the withdrawal of mortgagee approval of INDIGO MORTGAGE SERVICES, INC. is supported by a preponderance of the evidence and is correct as a matter of law.



Jean S. Cooper
Administrative Judge