

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

UNITED STATES DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT,

Petitioner,

v.

DELAINE WILLIAMS,

Respondent.

15-AF-0045-PF-006

August 24, 2015

DEFAULT JUDGMENT AND ORDER

This case arises from the *Complaint* filed by the United States Department of Housing and Urban Development (“HUD” or “the Government”) against Delaine Williams (“Respondent”) and Midtown Mortgage, Inc. seeking the imposition of a civil penalty and assessment totaling \$77,531.16, jointly and severally, pursuant to the Program Fraud Civil Remedies Act of 1986 (“PFCRA”), 31 U.S.C. §§ 3801-3812, and 24 C.F.R. Part 28.¹

The *Complaint* charges that Respondent made a materially false statement on a loan application that was supported by fraudulent documentation. This false statement caused a claim to be made to HUD for single family mortgage insurance benefits.

Legal Framework

The PFCRA. Under the PFCRA, liability may be imposed on a person who makes, presents, submits, or causes to be made, presented or submitted, a claim to the Department that the person knows or has reason to know is for payment for the provision of property or services which the person has not provided as claimed. See 31 U.S.C. § 3802(a)(1)(D). A claim includes any request, demand, or submission made to an authority for “money” including money that represents “insurance.” 31 U.S.C. § 3801(a)(3); see 24 C.F.R. § 28.5(b).

Under the PFCRA, the maximum civil penalty for false, fictitious, or fraudulent claims made on or after March 8, 2007, is \$7,500 per claim. 24 C.F.R. § 28.10(a). In addition to a civil penalty, an assessment of twice the amount of the claim(s) may be imposed on a person if the HUD has made any payment or transferred property on the claim. 31 U.S.C. § 3802(a)(1) and (3); 24 C.F.R. § 28.10(a)(6).

¹ On May 12, 2015, the Government moved to dismiss the *Complaint* against Midtown Mortgage, Inc. as the parties had reached a settlement agreement resolving the issues in the matter as they relate to Midtown Mortgage, Inc. Accordingly, the Court dismissed the *Complaint* against Midtown Mortgage, Inc. on May 13, 2015.

Default Judgment. Applicable HUD regulations provide that a respondent “may file a written response to the complaint in accordance with § 26.30 of this title, within 30 days of service of the complaint,” and that “[t]he response shall be deemed to be a request for a hearing.” 24 C.F.R. § 28.30(a); see also 31 U.S.C. § 3803(d)(2) (30-day statutory requirement for requesting a hearing); 24 C.F.R. § 26.38 (“The respondent’s response to the complaint shall be timely filed with the Docket Clerk and served upon the Government in accordance with the procedures set forth in the complaint.”).

Pursuant to 24 C.F.R. § 26.38, “[i]f the respondent fails to submit a response to the Docket Clerk, then the Government may file a motion for a default judgment in accordance with § 26.41.” That regulation provides as follows:

24 C.F.R. § 26.41 Default.

(a) General. The respondent may be found in default, upon motion, for failure to file a timely response to the Government’s complaint. The motion shall include a copy of the complaint and a proposed default order, and shall be served upon all parties. The respondent shall have 10 days from such service to respond to the motion.

(b) Default order. The ALJ shall issue a decision on the motion within 15 days after the expiration of the time for filing a response to the default motion. If a default order is issued, it shall constitute the final agency action.

(c) Effect of default. A default shall constitute an admission of all facts alleged in the Government’s complaint and a waiver of respondent’s right to a hearing on such allegations. 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. § 26.41.

Program Background

HUD administers the Single Family Mortgage Insurance Program under Title II of the National Housing Act, 12 U.S.C. § 1709, as implemented by 24 C.F.R. Part 203. Under this program, the Federal Housing Administration (“FHA”), an entity within HUD, insures mortgage loans originated and underwritten by commercial lenders to finance home purchases by qualified borrowers. The program is intended to assist low and moderate income persons in becoming homeowners by lowering the costs associated with mortgages and providing protection to lenders in the event of a default by the borrower. Lenders are encouraged to make loans to borrowers who might not satisfy conventional underwriting standards but are otherwise creditworthy.

The program is implemented through a process known as “Direct Endorsements.” Under this process, the lender (“DE mortgagee”) underwrites and closes the mortgage in accordance with FHA requirements, but without FHA’s prior review or approval. The DE mortgagee may underwrite a mortgage that has been originated by a third-party entity known as a “loan correspondent” mortgagee (i.e., a mortgage broker). The DE mortgagee acts as a sponsor of the loan correspondent. Under this arrangement, the loan correspondent’s staff interviews the loan applicant, assist the applicant in completing the loan application, gathers all the supporting documentation needed to establish that the applicant is sufficiently creditworthy (i.e., that he/she can make the minimum down payment and subsequent monthly mortgage payments), and submits the loan package to its sponsoring DE mortgagee for an underwriting decision. The supporting documentation needed to establish the creditworthiness of the applicant includes, *inter alia*, verifications of employment, pay stubs, bank statements, rent histories, gift letters, tax forms, residential leases, and similar documents. The truthfulness and accuracy of the information on the loan application and all of this supporting documentation is relied upon by the underwriting DE mortgagee in approving the mortgage. The truthfulness and accuracy of the information on the loan application and all of this supporting documentation is also relied upon by FHA in endorsing the mortgage for insurance coverage under the National Housing Act. In particular, FHA relies on the honesty and due professional care of all persons involved in the process of obtaining documentation supporting applications for FHA-insured mortgages, in order to protect the FHA insurance fund from fraud and preventable losses caused by borrowers who lack the financial capacity to repay the loan.

Once a mortgage is endorsed for insurance coverage, FHA becomes contractually liable to the holder of the mortgage in the event that the borrower ever defaults by failing to make the required monthly payments. In the event of a default, the holder may acquire title to the property through a foreclosure or deed-in-lieu of foreclosure proceeding, and it may then submit a claim to FHA for mortgage insurance benefits—i.e., the costs of the outstanding principal balance on the defaulted mortgage and other related costs. FHA pays the claim and the holder may convey the property to FHA. FHA may thereafter sell the property in order to recoup some or all of the claim losses it has sustained. FHA may also be able to avoid claim losses by negotiating an indemnification agreement with the DE mortgagee.

Findings of Fact

1. At all relevant times, Midtown Mortgage was an FHA-approved loan correspondent mortgagee. Midtown Mortgage originated mortgages for sale or transfer to its sponsoring DE mortgagee, Mortgage America, Inc. (“the underwriting DE mortgagee”), which underwrote and approved the mortgages for FHA insurance coverage.
2. At all relevant times, Respondent was employed by Midtown Mortgage as a loan processor. Respondent’s duties as a loan processor included gathering all the supporting documentation needed to establish the creditworthiness of the applicant. For each successful loan closing, Respondent received a fixed payment of approximately \$400.00 for processing the loan.

3. In or about November 2007-January 2008, [REDACTED] Rader and [REDACTED] Harmon applied to Midtown Mortgage for an FHA-insured mortgage to finance their purchase of a residential property located at [REDACTED] [REDACTED] (FHA Case No. [REDACTED]).
4. Respondent acted as the loan processor on behalf of Midtown Mortgage with respect to the processing of Rader's and Harmon's application for an FHA-insured mortgage.
5. In this capacity, Respondent knowingly made a materially false statement to the underwriting DE mortgagee by stating and representing in the loan application that Rader and Harmon received a monetary gift in the amount of \$5,000.00 by submitting a document purporting to be a Gift Letter dated January 4, 2008, from Cindy L. Malone to Rader stating that Malone had given her brother, Rader, \$5,000.00 toward the purchase of the property, knowing that such documents, statements, and representations were false when made. By submitting the loan application for Rader and Harmon containing the fraudulent Gift Letter, Respondent induced the underwriting DE mortgagee to approve the FHA-insured mortgage in the amount of \$195,433.00.
6. The above-described fraudulent conduct was undertaken by Respondent within the scope of her employment with Midtown Mortgage, and also financially benefitted Midtown Mortgage.
7. The closing on the FHA-insured mortgage occurred on January 30, 2008, and FHA endorsed the mortgage for insurance coverage under the National Housing Act on February 14, 2008.
8. Rader and Harmon subsequently defaulted on the mortgage and a foreclosure action ensued. On December 15, 2009, as supplemented on February 19, 2010, FHA received a claim for mortgage insurance benefits totaling \$214,406.46. FHA paid this claim to the holder of the mortgage.
9. As to the conveyed property, FHA paid taxes of \$1,156.98, maintenance and operation costs of \$7,267.40, and sales expenses of \$4,938.00. FHA recouped \$76,505.00 upon sale of the conveyed property. Thus, the net adjusted loss to FHA was \$151,263.84. Ultimately, however, FHA avoided any damages because it was able to negotiate an indemnification agreement with the DE mortgagee pursuant to which the net adjusted loss amount was paid to FHA.
10. Had FHA known that the mortgage was unwritten and approved based upon a materially false statement made by Respondent as to the financial qualifications of Rader and Harmon for the FHA-insured mortgage, it would not have endorsed the mortgage for insurance coverage and would not have been called upon to pay the claim.

11. Based upon the above-described fraudulent conduct, an Information was filed against Respondent in the United States District Court for the Southern District of Alabama on May 29, 2013, in the case entitled United States of America v. Delaine Williams, No. 13-CR-00106-001-KD (S.D. Ala.).
12. Count 1 of the Information, which charged Respondent with making a false statement on a loan application in violation of 18 U.S.C. § 1014, was based upon the false statement described in paragraph 5, *supra*.
13. On May 29, 2014, a Plea Agreement was filed, the terms of which included an admission by Respondent as to allegations in count 1 of the Information
14. On June 24, 2013, Respondent's plea of guilty to count 1 of the Information was accepted by the district court, and Respondent was found guilty as charged.
15. On December 10, 2013, Respondent was sentenced to a five-year term of probation and was ordered to pay restitution in the amount of \$45,707.66 to FHA.
16. A Judgment of Conviction as to count 1 of the Information was entered against Respondent on December 11, 2013.
17. As of the date of the *Complaint*, Respondent has paid \$2,200.00 in restitution to FHA.
18. The *Complaint* was filed on February 24, 2015.
19. The *Complaint* was hand-served upon Respondent on April 10, 2015.
20. A response was, therefore, due to HUD by May 11, 2015. No such response has been received by HUD, or this Court.
21. On May 18, 2015, the Government filed a *Motion for Default Judgment* ("Motion").
22. On May 19, 2015, the Court issued an *Order to Show Cause* ("Order") requiring Respondent to demonstrate, by June 17, 2015, why the Government's *Motion* should not be granted.
23. As of the date of this *Default Judgment and Order*, Respondent has yet to respond to the *Order*, the *Motion*, or the *Complaint*.

Conclusion

By reason of the facts admitted by Respondent as alleged in the *Complaint*, Respondent caused a claim to be made to HUD for single family mortgage insurance benefits, knowing or having reason to know that it was false, and/or knowing or having reason to know that it was supported by a materially false statement Respondent made about the financial qualifications of

the borrowers to obtain the HUD-insured mortgage. While employed as a loan processor for Midtown Mortgage, Inc. during November 2007-January 2008, Respondent processed the application of [REDACTED] Rader and [REDACTED] Harmon for a HUD-insured mortgage to finance their purchase of a residential property located at [REDACTED]. Respondent knowingly made a materially false statement in connection with this transaction by submitting a fraudulent Gift Letter to the underwriting mortgagee in order to create the appearance that the borrowers were eligible for the HUD-insured mortgage, when in fact they did not qualify for such mortgage. The underwriting mortgagee and HUD relied upon the truthfulness and accuracy of the statement and would not have approved and endorsed the mortgage for insurance coverage had it known that such statement was materially false. The borrowers subsequently defaulted on the mortgage and HUD was called upon to pay a claim for mortgage insurance benefits. But for the materially false statement about the financial qualifications of the borrowers that Respondent made to the underwriting mortgagee and HUD, the mortgage would not have been endorsed for insurance coverage.

Penalty

The allegations in the *Complaint* are legally sufficient to establish that Respondent is liable to HUD under the PFCRA and 24 C.F.R. Part 28. By causing the false claim at issue, Respondent violated 31 U.S.C. § 3802(a)(1) and 24 C.F.R. §28.10(a).

HUD seeks imposition of a civil penalty of \$7,500.00 plus an assessment of \$70,031.16, for a total award of \$77,531.16. Based upon HUD's analysis of regulatory factors to be considered in determining an appropriate amount of civil penalty and assessment, as listed in 24 C.F.R. § 28.40(b), HUD has sought the maximum civil penalty amount of \$7,500.00, and an assessment amount of \$70,031.16, which is substantially less than twice the amount of the false claim.² As Respondent is found to be in default, the penalty proposed in the *Complaint* is accepted.


² HUD proffers that the assessment sought was calculated by subtracting the amount HUD recouped upon the sale of the conveyed property in this case (\$76,505.00), the indemnification payment it received from the underwriting mortgagee (\$151,263.84), and the criminal restitution received from Respondent (\$2,200.00), from the original assessment of twice the amount of the reduced claim (\$300,000.00).

Order

Accordingly, the Government's Motion for Default is **GRANTED**;

Respondent Delaine Williams shall pay a civil penalty and assessment in the amount of \$77,531.16 to HUD, which amount is due and payable immediately, without further proceedings.³

So **ORDERED**,



Alexander Fernández
Administrative Law Judge

³ This Order constitutes the **FINAL AGENCY ACTION**. 24 C.F.R. § 26.41(b). Judicial review may be available in accord with applicable statutory procedures and the procedures of the appropriate federal court. 24 C.F.R. § 26.54; 31 U.S.C. § 3805.