

**THE UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARING AND APPEALS**

In the Matter of:

**First Residential Mortgage Services
Corp.**

Respondent.

15-AF-0075-CM-003

OGC Case No. 13-1339-MR

August 24, 2015

DEFAULT JUDGMENT AND ORDER

This case arises from a *Complaint* filed by the U.S. Department of Housing and Urban Development (“HUD” or “the Government”) against Respondent First Residential Mortgage Service Corporation (“Respondent”) wherein HUD seeks civil money penalties pursuant to 24 C.F.R. Part 30.

On February 13, 2013, pursuant to 24 C.F.R. Parts 25 and 30, HUD’s Mortgagee Review Board (“Board”) issued a written Notice of Violation (“Notice”) to Respondent stating that the Board was considering imposing civil money penalties against Respondent. The penalties related to Respondent’s submission of false information to HUD in violation of HUD/FHA requirements, failure to adequately document the source and/or adequacy of funds used for closing, failure to comply with TOTAL Scorecard Requirements, and failure to question and resolve conflicting information. The Notice, citing 24 C.F.R. §§ 25.7(b) and 30.75, stated that Respondent’s reply was due within 30 days of its receipt of the Notice. Respondent initially expressed an intention to contest the Notice. However, on December 5, 2013, Respondent’s Chief Operating Officer, Betty Gonzalez, informed the Board that Respondent was going out of business and would not seek a hearing.

On June 3, 2015, HUD filed a *Complaint* seeking civil money penalties against Respondent. Respondent was served with the *Complaint* on June 5, 2015. Respondent’s written hearing request was therefore due no later than June 20, 2015, and a written response to the *Complaint* was due no later than July 3, 2015. Respondent did not file a hearing request or a response prior to the respective due dates. On August 13, 2015, HUD filed its *Motion for Default Judgment*.

Program Background

HUD administers the Single Family Mortgage Insurance Program pursuant to the National Housing Act, 12 U.S.C. § 1701, et seq. Under this program, the Federal Housing

Administration (“FHA”), an entity within HUD, insures mortgages originated by mortgagees to finance or refinance home purchases by qualified borrowers.

Pursuant to 12 U.S.C. § 1707, only mortgagees approved by the Secretary may participate in the mortgage insurance program. See 24 C.F.R. § 202.3. As part of the approval process, mortgagees submit to HUD an application for approval wherein the mortgagee agrees that it will comply with all relevant HUD regulations and requirements. Approval is signified by, among other things, consent by the lender or mortgagee to comply at all times with the general approval requirements of 24 C.F.R. § 202.5, and with additional requirements governing the particular class of lender or mortgagee for which it was approved. 24 C.F.R. §202.3(a)(1)(ii).

FHA-approved lenders or mortgagees must follow all applicable statutes, regulations, and HUD-written instructions, including program handbooks and mortgagee letters on loan originations. HUD Handbook 4060.1 REV-2, paragraph 2-18.

HUD Requirements Concerning False Information in the FHA Program (Counts 1-3)

The Secretary may impose a civil money penalty for any knowing and material violation by a principal, officer, or employee of a mortgagee or lender, or other participants for the submission to the Secretary of information that was false, in connection with any mortgage insured under 12 U.S.C. Chapter 13. 12 U.S.C. § 1735f-14(b)(2)(A).

HUD Requirements Concerning Originating and Underwriting FHA-Insured Loans (Counts 4-14)

FHA-approved mortgagees must adequately document the source and/or adequacy of the funds used by the borrower for closing. HUD Handbook 4155.1 5.B.2.c and d. The lender must obtain an explanation and documentation from the borrower for recent large deposits in excess of 2% of the sales price. HUD Handbook 4155.1 5.B.2.b. Likewise, if the borrower’s Earnest Money Deposit exceeds 2% of the sales prices, or appears excessive based on the borrower’s history of accumulating savings, the mortgagee must document and verify the deposit amount and the source of the funds. HUD Handbook 4155.1 5.B.2.a. Additionally, if a borrower will be using a gift to fund any portion of the purchase, the lender is responsible for verifying and documenting the acceptability, source, and transfer of the gift, in accordance with HUD requirements. HUD Handbook 4155.1 5.B.4. If the borrower’s consumer debt or other expenses are paid off by someone other than the borrower or the borrower’s family member, the funds must be treated as an inducement to purchase, and there must be a dollar-for-dollar reduction to the sales price when calculating the maximum insurable mortgage. HUD Handbook 4155.1 5.B.4.g.

HUD’s TOTAL Scorecard Requirements (Counts 15-17)

Under certain circumstances, mortgagees underwrite FHA-insured loans through an automated underwriting system (“AUS”) that employs “TOTAL” (Technology Open To Approved Lenders), a scorecard developed for FHA that evaluates the overall creditworthiness of the borrower based on a number of credit variables. HUD Handbook 4155.1 6.A.1.

Notwithstanding a mortgagee's use of an automated underwriting system, the mortgagee still remains accountable for compliance with FHA's eligibility requirements, as well as for any credit, capacity, and documentation requirements not covered in the FHA TOTAL Mortgage Scorecard User Guide. HUD Handbook 4155.1 6.A.1.b. When TOTAL returns a risk assessment of "Accept/Approve," the loan is eligible for FHA insurance provided that the recommended level of underwriting and documentation is met. HUD Handbook 4155.1 6.A.1.a and c.

HUD Requirements Concerning Conflicting Information (Counts 18-19)

FHA-approved mortgagees must also question and resolve material discrepancies, irregularities and/or inconsistencies that were apparent on the face of the documents. HUD Handbooks 4000.4, REV-1 CHG-2, Chapters 2 and 3; 4155.1, REV-5, Chapter 2; and 4155.1 Chapter 5.

Legal Framework

Pursuant to 12 U.S.C. § 1735f-14(b)(1), the HUD Secretary may impose a civil money penalty against a mortgagee who knowingly and materially violates any provisions of Title II [12 U.S.C. § 1701] of the National Housing Act or any implementing regulation or handbook that is issued under it.

The Secretary has delegated to the Board his authority pursuant to Section 536 of the National Housing Act, 12 U.S.C. § 1735-14, to impose civil money penalties on mortgagees as set forth in 24 C.F.R. Part 30.

Pursuant to 24 C.F.R. § 30.35(c), the Board may impose a civil money penalty in the amount of \$7,500, for violations of 12 U.S.C. § 1735f-14(b), occurring on or after March 8, 2007. See 72 Fed. Reg. 5586 (2007); see also The Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321-358 *et seq.*, (enacted on April 26, 1996) (providing for inflation adjustments of penalty amounts).

The term "knowingly" is defined by 12 U.S.C. § 1735f-14(g) as "having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section."

The term "material" is defined by 24 C.F.R. § 30.10 as "[h]aving the natural tendency or potential to influence, or when considering the totality of the circumstances, in some significant respect or to some significant degree."

Findings of Fact

- 1) The factual findings stated above are incorporated herein by reference.
- 2) At all relevant times, Respondent was a HUD/FHA-approved non-supervised Direct Endorsement Mortgagee, as the term is defined in 24 C.F.R. § 202.7.

3) Respondent submitted the following loans to HUD for FHA-insurance:

Count	FHA Case No.
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	

- 4) HUD issued a *Complaint* to Respondent on June 3, 2015.
- 5) The *Complaint* was properly served upon the Respondent's registered agent, Marlio Chau, at his registered agent address on June 5, 2015.
- 6) Respondent has failed to respond to HUD's *Complaint*.
- 7) Pursuant to HUD regulations, any response to HUD's *Default Motion* was due no later than June 20, 2015.
- 8) Due to Respondent's failure to respond to HUD's *Complaint*, all facts alleged in the *Complaint* are deemed admitted by Respondent. 24 C.F.R. § 26.41(c).

CONCLUSIONS OF LAW

By reason of the facts admitted by Respondent in Counts 1, 2, and 3 of the *Complaint*, Respondent made three violations of 12 U.S.C. § 1735f-14(b)(2)(A) for knowing and material submissions of false information in connection with FHA-insured loans. By reason of the facts admitted by Respondent in Counts 4-14, Respondent made eleven violations of HUD requirements by failing to verify or document the source and/or adequacy of funds used for the earnest money deposit, down payment, and/or closing costs or to pay outstanding liabilities,

collections, and/or judgments. Finally, by reason of the facts admitted by Respondent in Counts 15-19, Respondent made five knowing and material violations of HUD's requirements to comply with TOTAL Scorecard Requirements.

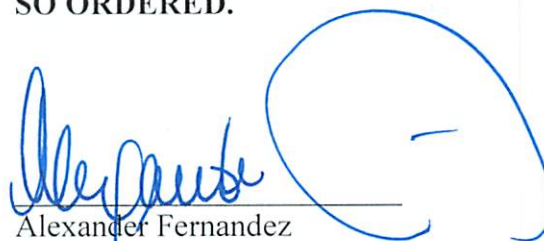
Respondent is therefore liable for nineteen civil penalties of \$3,500 each for a total liability of \$66,500 pursuant to 12 U.S.C. § 1735f-14 and 24 C.F.R. § 30.35(a).

ORDER

Accordingly, it is hereby **ORDERED**:

1. Pursuant to the foregoing, HUD's *Motion For Default Judgment* is **GRANTED**, and the Respondent is hereby found in **DEFAULT**.
2. Pursuant to 24 C.F.R. § 26.41(c), Respondent is found to have admitted the facts stated in the Government's *Complaint* and discussed above.
3. Respondent shall pay to HUD civil money penalties of \$66,500 with such amount due and payable immediately without further proceedings. 24 C.F.R. § 26.41 (c).
4. This *Order* constitutes the **FINAL AGENCY ACTION**. 24 C.F.R. § 26.41(b).

SO ORDERED.



Alexander Fernandez
Administrative Law Judge