

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

U.S. DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT,

Petitioner,

v.

DENISE MARTIN,

Respondent.

HUDOHA 14-JM-0071-PF-003

August 5, 2014

DEFAULT JUDGMENT AND ORDER

The above-entitled matter is before this Court on a *Motion for Default Judgment* (“Default Motion”) filed on June 16, 2014, by the U.S. Department of Housing and Urban Development (“HUD” or the “Government”). Respondent Denise Martin (“Respondent Martin”) did not file any answer to the Government’s *Complaint*, did not comply with the deadlines set in the *Notice of Hearing and Order*, did not respond to a preliminary letter from this Court, and has not replied to the *Default Motion*.¹ Accordingly, the *Default Motion* will be **GRANTED**.

On December 20, 2013, HUD filed a *Complaint* seeking civil penalties and an assessment against Respondents Carl Martin, Jr., and Denise Martin (“the Martins”), jointly and severally, pursuant to the Program Fraud Civil Remedies Act of 1986 (“PFCRA”), 31 U.S.C. §§ 3801-3812, and the applicable regulations at 24 C.F.R. Part 28. The *Complaint* charged that the Martins submitted or caused to be submitted a false, fictitious, or fraudulent claim in connection with a mortgage loan insured by the Federal Housing Administration (“FHA”). The *Complaint* sought a civil penalty in the amount of \$7,500 for the false claim, plus an assessment of \$300,000, for a total award of \$307,500. The Martins were notified of their right to appeal the imposition of the civil penalties and assessment by filing a written response within 30 days of receipt of the *Complaint*, and that failure to file a response may cause HUD to file a Motion for Default Judgment with regard to the allegations in the *Complaint*. This Court issued a letter to

¹ A Respondent is allowed ten days to respond to a motion for default judgment. 24 C.F.R. § 26.41(a). Allowing for three days’ mail time both ways, in accordance with 24 C.F.R. § 26.31(c), Respondent’s reply to the *Default Motion* should have been received on or before June 24, 2014. The Government reports having received no communication from Respondent, and the Court has received none.

the Martins on December 20, 2013, repeating the filing deadlines and again informing the Martins that failure to timely respond could lead to default.

Respondent Carl Martin, Jr., contacted Government Counsel regarding the *Complaint* and entered into a settlement agreement to resolve the matter. Pursuant to the terms of the settlement, Respondent Carl Martin, Jr., agreed to pay HUD the amount of \$57,500, and the Government agreed to dismiss the matter with prejudice with respect to him. On February 4th, 2014, Government Counsel and Carl Martin Jr., filed a *Joint Motion to Dismiss with Prejudice*. The *Joint Motion* did not include Denise Martin. The *Joint Motion* was granted on March 14, 2014. This proceeding therefore continued against Respondent Denise Martin.

Respondent Martin has not responded to the *Complaint*, despite being served with it on December 27, 2013.² Pursuant to 24 C.F.R. §26.30, Respondent Martin had 30 days from the service of the *Complaint* to file a written response. The written response was therefore due by January 26, 2014. Respondent Martin failed to respond in any manner to the *Complaint* by the due date. Following severance of Carl Martin, Jr., as a Respondent, the Court issued a second *Notice of Hearing and Order*, directed only to Denise Martin as Respondent. The result extended her time to respond until April 18, 2014. Respondent Martin did not respond by that deadline either.

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.

² The Government has provided evidence confirming that the Complaint was served on Respondent Denise Martin via United States Postal Service Next Day Air Saver.

FINDINGS OF FACT

Respondent Denise Martin served as the loan officer for an FHA-insured mortgage loan filed by Carl Martin Jr., her ex-husband. Carl Martin Jr., falsely stated that he intended to use the property located at 1112 Teal Court, Brentwood, CA 94513 as his primary residence. He also submitted false income tax returns to HUD. Respondent Martin was aware that the information submitted by Carl Martin Jr., was false, because she knew he purchased the property so she could live there with their two sons. However, she submitted the loan information to HUD and certified that the information was true and accurate. As a result, FHA insured the mortgage loan for the property, which was eventually foreclosed upon. The FHA therefore was obligated to pay a claim of \$749,381.43.

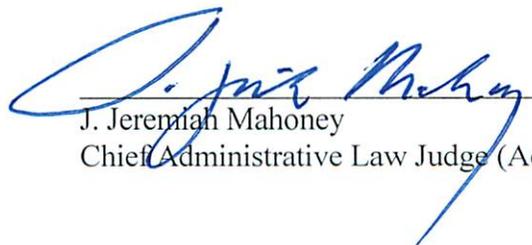
CONCLUSIONS OF LAW

By failing to respond to the *Complaint* in a timely manner, Respondent Martin has admitted each of the factual allegations in the *Complaint*. Accordingly, the Court finds that she submitted or caused to be submitted a false claim in connection with a mortgage loan insured by the FHA while knowing or having reason to know that the claim was false. The allegations in the *Complaint* are legally sufficient to establish that the false claim is actionable under 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28.10(a). The Government is therefore entitled to civil penalties and an assessment. Based upon the Government's analysis of the regulatory factors to be considered in determining an appropriate amount of civil penalties, set forth at 24 C.F.R. § 28.40(b), the Government is entitled to civil penalties in the amount of \$7,500 plus an assessment of \$300,000, less \$57,500 to be paid by Chris Martin, Jr., per his Settlement Agreement, for a total judgment in the amount of \$250,000.

ORDER

Accordingly, the *Default Motion* with respect to Respondent Denise Martin will be **GRANTED**. Respondent Denise Martin is liable to HUD for civil penalties and an assessment in the amount of \$250,000, which amount shall be due and payable immediately, without further proceedings. Judgment is hereby entered against Respondent Denise Martin and in favor of the Government in the amount of \$250,000.

So **ORDERED**.


J. Jeremiah Mahoney
Chief Administrative Law Judge (Acting)

Notice of Appeal Rights. This *Order* constitutes the final agency action. 24 C.F.R. § 26.41(b). Respondents may seek judicial review of this Order as provided in 31 U.S.C. § 3805.