

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

In The Matter of: WHITEHALL FUNDING, INC.
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Respondent.

HUD ALJ 01-286-CMP
Decided: July 19, 2001

Travis J. Farris, Esq.
For the Government

Before: WILLIAM C. CREGAR
Acting Chief Administrative Law Judge

DEFAULT DECISION AND ORDER

On May 3, 2001, the Secretary of the United States Department of Housing and Urban Development (HUD) through the Departmental Enforcement Center, filed a Complaint seeking a civil money penalty of \$1,094,500 against Whitehall Funding, Inc. (Respondent), pursuant to The National Housing Act, 12 U.S.C. §1735f-14, and the applicable regulations under 24 C.F.R. Parts 25 and 30. The Complaint charges that Respondent knowingly and materially removed and misappropriated Reserve for Replacement Account funds from the account of Waterford Estates in ten separate transactions totaling \$188,670.47, in violation of 12 U.S.C. §1735f-14(b)(1)(C) (use of escrow funds for any purpose other than that for which they were received). The Complaint notified Respondent of its right to appeal the imposition of the civil money penalty by filing an answer within 15 days of receipt of the Complaint, and that failure to file an answer could result in a default judgment and imposition of the penalty sought. *See* 24 C.F.R. §§ 26.39, 30.90(b). Respondent received a copy of the Complaint on May 4, 2001, but failed to file an answer.

On May 25, 2001, HUD served a Motion for Default Judgment on Respondent. Respondent failed to answer or to otherwise respond to the Motion. Accordingly, this Default Decision and Order is issued.

Findings of Fact¹

1. Whitehall Funding, Inc. (WHF) is a Delaware Corporation doing business as a mortgagee. Until December 20, 2000, WHF was a participating FHA coinsurance lender and servicer. Complaint, ¶ 3.

2. The project, Waterford Estates (FHA Number 071-36627) (the project), is a HUD coinsured property insured pursuant to Section 221(d)(4) of the National Housing Act. 12 U.S.C. §§1707, et seq. The current owner of the project, Affordable Community Housing Trust Epsilon (the owner) assumed control of the project in 1992. Complaint ¶¶ 26, 31.

3. Waterford Estates' original mortgage loan was in the principal amount of \$20,766,700.00, and made on September 17, 1987. Complaint, ¶ 27.

4. In 1991, WHF acquired the corporate successor of the entity which made the original loan, and, on that basis, became the mortgagee of record for the coinsured loan. Complaint, ¶ 29.

5. The Reserve for Replacement Account (the account) is an escrow account established by a project owner's initial funding payment followed by monthly payments. As a participating coinsurance lender, WHF maintained the account. Complaint ¶¶ 23, 24, 30.

6. Regulations and HUD Handbooks provide that account funds may be used only for designated repairs and limited loan payments in specifically designated circumstances. Complaint, ¶¶ 20-22, 25.

7. The owner's monthly coinsured mortgage payment is \$182,658.84. Complaint, ¶ 32.

8. As part of the 1992 agreement that allowed the owner to assume control of the project, the owner entered into certain secondary financing arrangements with WHF that are not covered by HUD/FHA mortgage insurance (secondary financing). The secondary financing is not a part of and, therefore, not covered by or receiving the benefit of HUD/FHA mortgage insurance. Complaint, ¶¶ 33, 34.

9. On or about March 30, 2000, WHF withdrew, or caused to be withdrawn, the

¹ HUD regulations provide that a default shall constitute an admission of all facts alleged in HUD's Complaint, as well as Respondent's waiver of any right to a hearing on these allegations. 24 C.F.R. § 26.39(c).

amount of \$89,064.51 from the account, which amount WHF then applied to the secondary financing. At the time, the owner was not in default. Complaint, ¶¶ 36, 37, 47-49.

10. Neither HUD nor the owner requested or approved the withdrawal of \$89,064.51 from the account. Complaint, ¶¶ 50, 51.

11. On or about April 14, 2000, WHF withdrew, or caused to be withdrawn, the amount of \$11,370.96 from the account, which amount WHF then applied to the secondary financing. At the time, the owner was not in default. Complaint, ¶¶ 36, 38, 47-49.

12. Neither HUD nor the owner requested or approved the withdrawal of \$11,370.96 from the account. Complaint, ¶¶ 50, 51.

13. On or about May 22, 2000, WHF withdrew, or caused to be withdrawn, the amount of \$11,029.37 from the account, which amount WHF then applied to the secondary financing. At the time, the owner was not in default. Complaint, ¶¶ 36, 39, 47-49.

14. Neither HUD nor the owner requested or approved the withdrawal of \$11,029.37 from the account. Complaint, ¶¶ 50, 51, 47-49.

15. On or about June 16, 2000, WHF withdrew, or caused to be withdrawn, the amount of \$11,029.37 from the account, which amount WHF then applied to the secondary financing. At the time, the owner was not in default. Complaint, ¶¶ 36, 40, 47-49.

16. Neither HUD nor the owner requested or approved the withdrawal of \$11,029.37 from the account. Complaint, ¶¶ 50, 51, 47-49.

17. On or about July 19, 2000, WHF withdrew, or caused to be withdrawn, the amount of \$11,029.37 from the account, which amount WHF then applied to the secondary financing. At the time, the owner was not in default. Complaint, ¶¶ 36, 41, 47-49.

18. Neither HUD nor the owner requested or approved the withdrawal of \$11,029.37 from the account. Complaint, ¶¶ 50, 51, 47-49.

19. On or about August 16, 2000, WHF withdrew, or caused to be withdrawn, the amount of \$11,029.37 from the account, which amount WHF then applied to the

secondary financing. At the time, the owner was not in default. Complaint, ¶¶ 36, 42, 47-49.

20. Neither HUD nor the owner requested or approved the withdrawal of \$11,029.37 from the account. Complaint, ¶¶ 50, 51, 47-49.

21. On or about September 22, 2000, WHF withdrew, or caused to be withdrawn, the amount of \$11,029.37 from the account, which amount WHF then applied to the secondary financing. At the time, the owner was not in default. Complaint, ¶¶ 36, 43, 47-49.

22. Neither HUD nor the owner requested or approved the withdrawal of \$11,029.37 from the account. Complaint, ¶¶ 50, 51, 47-49.

23. On or about October 13, 2000, WHF withdrew, or caused to be withdrawn, the amount of \$11,029.37 from the account, which amount WHF then applied to the secondary financing. At the time, the owner was not in default. Complaint, ¶¶ 36, 44, 47-49.

24. Neither HUD nor the owner requested or approved the withdrawal of \$11,029.37 from the account. Complaint, ¶¶ 50, 51, 47-49.

25. On or about November 14, 2000, WHF withdrew, or caused to be withdrawn, the amount of \$11,029.37 from the account, which amount WHF then applied to the secondary financing. At the time, the owner was not in default. Complaint, ¶¶ 36, 45, 47-49.

26. Neither HUD nor the owner requested or approved the withdrawal of \$11,029.37 from the account. Complaint, ¶¶ 50, 51, 47-49.

27. On or about December 15, 2000, WHF withdrew, or caused to be withdrawn, the amount of \$11,029.37 from the account, which amount WHF then applied to the secondary financing. At the time, the owner was not in default. Complaint, ¶¶ 36, 46-49.

28. Neither HUD nor the owner requested or approved the withdrawal of \$11,029.37 from the account. Complaint, ¶¶ 50, 51, 47-49.

29. WHF's withdrawals of amounts totaling \$188,670.47 from the account and application of the withdrawn funds to the secondary financing violated HUD regulations governing the withdrawal of sums from the account insofar as the loan was not in default

and the withdrawal was neither requested nor authorized by HUD or the owner. Complaint, ¶¶ 53, 54.

30. On February 26, 2001, HUD's Mortgagee Review Board (MRB) sent Respondent a written notice (Notice) that it intended to seek civil money penalties against Respondent and informing Respondent of its right to respond to the allegations in writing. Respondent did not respond in writing to the Notice. Complaint, ¶¶ 6-10.

31. On April 19, 2001, after considering the allegations and the lack of response, the MRB determined to seek a civil penalty in the amount of \$1,094,500. In determining the amount of the civil money penalty, the MRB considered the factors set forth in 12 U.S.C. § 1735f-14(c)(3) and 24 C.F.R. §30.80, such as the gravity of Respondent's offense, history of prior offenses, Respondent's ability to pay a penalty, injury to the public, benefits received by Respondent, and deterrence of future violations. Complaint, ¶¶ 11, 12.

Conclusion and Order

Respondent knowingly and materially violated 12 U.S.C. § 1735f-14(b)(1)(C) by misappropriating Reserve for Replacement Account funds in separate transaction amounts totaling \$188,670.47 and applying these funds to the secondary financing. *See* 24 C.F.R. §§ 30.80, 30.85. Respondent failed to answer the Complaint, and therefore, is in default. *See* 24 C.F.R. §§ 26.37, 26.38, 26.39, and 30.90(b). HUD filed a Motion for Default Judgment, which was received by this Office on May 31, 2001. Respondent has failed to file a response to the Motion for Default Judgment. Pursuant to 24 C.F.R. §§ 30.90, 26.37, and 26.39,

it is **ORDERED**, that

1. The Motion for Default Judgment is *granted*;
2. Respondent shall pay to the Secretary of HUD a civil money penalty of \$1,094,500, which is immediately due and payable by Respondent without further proceedings; and
3. This Order shall constitute the final agency action, pursuant to 24 C.F.R. § 26.39.

WILLIAM C. CREGAR
Acting Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this DEFAULT DECISION AND ORDER, issued by WILLIAM C. CREGAR, Acting Chief Administrative Law Judge, HUDALJ 01-286-CMP, were sent to the following parties on this 20th day of July, 2001, in the manner indicated:

Chief Docket Clerk

REGULAR MAIL:

Thomas R. Jager, President
Whitehall Funding, Inc.
218 North Harrison Street
Davenport, IA 52801-1903

David A. Barsky, Esq.
Krooth & Altman, LLP
1850 M Street, N.W., Suite 400
Washington, DC 20036-5803

INTEROFFICE MESSENGER:

Travis Farris, Esq.
Departmental Enforcement Center
U.S. Department of Housing and Urban Development
1250 Maryland Avenue, S.W., Room 200
Portals Bldg.
Washington, DC 20024

Tammie M. Parshall, Docket Clerk
Departmental Enforcement Center
U.S. Department of Housing and Urban Development
1250 Maryland Avenue, S.W., Room 200
Portals Bldg.
Washington, DC 20024