

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

HUD
DEPT. ENFORCEMENT CIR
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In the Matter of:)	
)	HUDALJ 08-029-PF
Miguel A. Vega,)	HUDALJ 08-019-PF
Gary M. Stanco,)	OGC Case No. 08-3466-PF
Joseph N. Giuliano,)	OGC Case No. 08-3499-PF
Elizabeth Cortez,)	OGC Case No. 08-3500-PF
Caroline Carouthers)	OGC Case No. 08-3551-PF
Maria Carmen Thomas,)	
Respondents)	

DEFAULT JUDGMENT AND ORDER

I. Procedural History

On February 19, 2008, the United States Department of Housing and Urban Development (“HUD,” or “the Department”) instituted an action designated as HUDALJ 08-029-PF by issuing a Complaint to Joseph N. Giuliano (“Respondent,” or “Giuliano”) and two other individuals,¹ charging Respondent with 104 violations of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28.² Specifically, the Complaint alleges that, at all times relevant hereto, Respondent was an owner, officer, director, and/or manager of First Source Financial USA, Inc. (“FSF”), formerly a lender approved by the FHA [Federal Housing Administration] to participate in HUD/FHA’s “Single Family Mortgage Insurance Program.” Under such Program, to encourage the issuance of mortgage loans to low and moderate income borrowers, HUD/FHA can provide lenders with mortgage loan insurance

¹ The other respondents named in that Complaint are Miguel A. Vega and Gary M. Stanco. Messrs. Vega and Stanco filed answers to the Complaint and the administrative proceeding against them is currently pending. By Order dated May 1, 2008, the matter designated as HUDALJ 08-029-PF was consolidated with the matter designated as HUDALJ 08-019-PF, which is also pending against Miguel A. Vega as well as three other named respondents.

² The U.S. Department of Justice authorized HUD to issue the Complaint on February 14, 2008. See, HUD’s Motion for Default Judgment ¶¶1 and at Exhibit 1 thereto.

under Section 203(b) of the National Housing Act, 12 U.S.C. § 1709(b). The Complaint further asserts that between May 15, 2002 and April 29, 2004, in order to acquire HUD/FSA insurance for 104 different FSF-issued mortgage loans, Respondent submitted or caused to be submitted one or more false statements of material fact to HUD. Such false statements, contained in an "Addendum to Uniform Residential Loan Application" (HUD Form 92900-A FSF) submitted to HUD in connection with each loan by Respondent, certified that the information contained in the Uniform Residential Loan Application (URLA) was directly obtained from the borrower by an "employee or duly authorized agent" of the lender (FSF) and that the lender "has not paid any . . . consideration of any type, directly or indirectly, to any party in connection with this transaction except as permitted under HUD regulations and administrative instructions." HUD alleges that Respondent Giuliano knew or had reason to know that the statements were false because, *inter alia*, on FSF's behalf, he had previously executed an Independent Contractor Agreement with the person who directly obtained the information from the borrowers on the 104 loans, and such Agreement explicitly indicated that the person was not an FSF employee, and he also knew that person was being paid fees in connection with the loan transactions although he was not an authorized FHA loan origination entity. These false statements were material, HUD asserts, because it would not have insured the loans had it known that the loans were originated by an unapproved entity being paid impermissible fees.

The Complaint requests the imposition of a civil penalty in the amount of \$5,500 for each of the 68 alleged violations which occurred on or before April 17, 2003, and \$6,500 for the 36 alleged violations which occurred after that date,³ for a total penalty of \$608,000. Further, it requests that the penalty be imposed on Respondent Giuliano and the other two named individuals, jointly and severally.

Having received no response to the Complaint from Respondent Giuliano, on April 29, 2008, HUD filed a Motion for Default Judgment ("Motion") together with a copy of the Complaint, and other exhibits and attachments, in accordance with 24 C.F.R. §§ 26.39 and 28.30(b). The Motion requests that default judgment be entered against Respondent Giuliano and that he be found liable for the \$608,000 penalty proposed.

To date, Respondent has not submitted a response to the Complaint or the Motion.

II. Relevant Statutory and Regulatory Provisions

Section 3802(a)(2) of the Program Fraud Civil Remedies Act (PFCRA) provides in

³ Pursuant to the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, and Section 31001 of the Debt Collection Act, Pub. L. 104-134, the maximum civil penalty which may be imposed for such violations was increased from \$5,500 to \$6,500 for claims accruing or statements submitted after April 17, 2003. *See*, 24 C.F.R. § 30.60(c); *See also*, 68 Fed. Reg. 12788.

relevant part that -

Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that -

- (A) the person knows or has reason to know -
 - (i) asserts a material fact which is false, fictitious or fraudulent;

[and]

* * *

- (C) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject to . . . a civil penalty of not more than [\$5,500] for each such statement.

31 U.S.C. § 3802(a)(2); 24 C.F.R. § 28.10(b)(1)).

For the purposes of the PFCRA, the term "statement" means

“any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made-

* * *

- (B) with respect to (including relating to eligibility for)--

- (i) a contract with, or a bid or proposal for a contract with; or
 - (ii) a grant, loan, or benefit from,

an authority . . . if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such . . . party for any portion of the money or property under such contract or for such grant, loan, or benefit,

31 U.S.C. § 3801(a)(9); 24 C.F.R. § 28.5.

Under the PFCRA, each written representation, certification, or affirmation constitutes a separate statement, and a statement is considered made, presented, or submitted to the Department when such statement is actually made to an agent, fiscal intermediary, or other entity, . . . , acting for or on behalf of HUD. *See*, 31 U.S.C. § 3801(c); 24 C.F.R. § 28.10(b)(2)-(3).

The PFCRA is a strict liability statute, no proof of specific intent to defraud is required to establish liability, and the standard of proof is the “preponderance of the evidence.” *See*, 31 U.S.C. § 3803(f), 24 C.F.R. § 28.10(d).

HUD’s jurisdiction to administratively commence and conduct actions under PFCRA with hearings presided over by an Administrative Law Judge is provided by 31 U.S.C. §§

3802(b), 3803(b), 3801(a)(7), and 24 C.F.R. Parts 28 and 26 (subpart B).

The regulatory provisions implementing PFCRA, promulgated as 24 C.F.R. Parts 28 and 26 subpart B (“Rules”), provide that, upon obtaining approval from the Department of Justice, HUD may issue a complaint to a respondent for alleged violations of PFCRA. 24 C.F.R. § 28.25(a). If the respondent fails to file an answer within 30 days of receiving such complaint, upon motion, the Administrative Law Judge may find the respondent in “default.” *See*, 24 C.F.R. §§ 28.30(b) and 26.39(a). If a respondent is found in default, then the ALJ shall issue a decision on the motion within 15 days after the expiration of time for filing a response thereto, which is seven (7) days after service of the motion. 24 C.F.R. § 26.39(b). The Rules also provide that a default shall constitute an admission of all facts alleged in the complaint and a waiver of the respondent’s right to a hearing on the matter. 24 C.F.R. § 26.39(c). Further, the Rules provide that “[t]he penalty proposed in the complaint shall be set forth in the default order. . .” and that a default order shall constitute the “final agency action.” 24 C.F.R. § 26.39(b) and (c).

III. Motion for Default

On February 19, 2008, pursuant to 24 C.F.R. § 28.25(a), the Complaint was sent to Respondent at 43 Desert Highlands Drive, Henderson, NV 89052 by first class mail, certified receipt requested. *See*, Certificate of Service accompanying the Complaint; Declaration of Tammie Parshall attached as Exhibit 2 to the Motion. The return receipt on the mailing received back by HUD did not clearly evidence that Respondent personally accepted the envelope containing the Complaint, although it was mailed “restricted” delivery. *See*, “green card” attached as Attachment B and Declaration of Tammie Parshall attached as Exhibit 2 to Motion. Therefore, on March 5, 2008, HUD personally served Respondent with a copy of the Complaint. *See*, Declaration of HUD Special Agent Murray Stravers attached as Attachment C and Declaration of Tammie Parshall attached as Exhibit 2 to Motion. As required by 24 C.F.R. § 28.25, the Complaint advised Respondent that he may submit a written response to it within thirty (30) days and that if he did not, then -

... HUD will file this Complaint along with a motion for default judgment, in accordance with 24 C.F.R. §§ 26.39 and 28.30(b). If a default order is issued, it shall constitute an admission of all facts alleged in this Complaint and a waiver of the Respondent’s right to a hearing on such allegations. The civil penalties and assessments proposed in this Complaint shall be set forth in the default order and shall be immediately due and payable by Respondent(s) without further proceedings. *See*, 24 C.F.R. § 26.39(c).

See, Complaint at 17-18. The Complaint states that copies of 24 C.F.R. Part 28 and Part 26, Subpart B, were included with the Complaint.

HUD represents in its Motion for Default that it has not received any response to the

Complaint or other pleadings from Respondent, and in support, presents a Declaration made by Tammie Parshall, its Custodian of Records, dated April 29, 2008. *See*, Motion, Exhibit 2. The file reflects that HUD served a copy of its Motion for Default, along with a copy of the original Complaint, upon Respondent by first-class mail at 43 Desert Highlands Drive, Henderson, NV 89052 on April 29, 2008. *See*, Certificate of Service attached to Motion.

To date, the Office of Administrative Law Judges has not received from Respondent any response to the Complaint or to the Motion for Default. The time periods provided for Respondent to respond to the Complaint and/or Motion for Default have expired.⁴ Therefore, pursuant to 24 C.F.R. § 26.39, Complainant's Motion is hereby **GRANTED**, and Respondent is hereby found in **DEFAULT**. In accordance with that regulation, default constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such allegations.⁵

The following Findings of Fact and Conclusions of Law are based upon the documents submitted into the record in this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner is the U.S. Department of Housing and Urban Development (HUD), established pursuant to 42 U.S.C. § 3532, and an executive department of the United States Government within the definition of 31 U.S.C. § 3801(a)(1).
2. HUD, through the Federal Housing Administration (FHA), operates and maintains a mortgage insurance program for single family homes under Section 203(b) of the

⁴ Respondent had seven days from service to respond to the Default Motion. 24 C.F.R. § 26.39(a). HUD's regulations further provide that if a respondent is found in default, then a decision on the motion for default "shall issue" within 15 days after the expiration of the time for filing a response thereto. 24 C.F.R. § 26.39(b).

⁵ On May 14, 2007, Complainant submitted a Motion to Compel the Deposition of Respondent Giuliano or, in the Alternative, to Grant the Government's Motion for Default Judgment. In the Motion HUD represented that it served the Subpoena for the deposition of Respondent, duly issued by the undersigned, upon the Respondent on May 8, 2008 noting his deposition for May 14, 2008. On May 12, 2008, HUD was advised by someone representing himself to be Respondent's newly retained counsel, that Respondent would not appear at the deposition. To date, no counsel for Respondent has entered an appearance in this case, Respondent has not moved to quash the Subpoena for deposition (and such time for doing so has expired *see*, 24 C.F.R. 26.42(e)), nor has he filed any response to the Motion to Compel. This Order granting Complainant's previously filed Motion for Default Judgment moots the Motion to Compel and/or grants the alternative relief requested therein for entry of default.

National Housing Act, 12 U.S.C. § 1709(b). The purpose of the mortgage insurance program is to assist low to moderate income borrowers to purchase homes by encouraging lenders to grant mortgages to such borrowers by providing the lenders with insurance on the mortgages which will cover their losses in the event of the borrowers default thereon. *See*, 12 U.S.C. § 1709(b).

3. Applying for a HUD/FHA-insured mortgage requires the lender to complete, sign, and submit to HUD a "Uniform Residential Loan Application" ("URLA") and an "Addendum to URLA" (HUD Form 92900-A) which, *inter alia*, contains express certifications as to the accuracy of the information and statements contained in the URLA and the Addendum and an acknowledgment that the certifications are being made to induce HUD to issue mortgage insurance in connection therewith.
4. Respondent Joseph N. Giuliano is a person within the definition of 31 U.S.C. § 3801(a)(6), who, at all times pertinent to this Order, was President and Chief Executive Officer and an owner of First Source Financial USA, Inc. ("FSF"), formerly an FHA-approved lender.
5. Respondent operated and/or managed FSF at all times pertinent to this Order (*i.e.*, May 2002 through April 2004).
6. At all times pertinent to this Order, Respondent had check writing privileges for FSF.
7. Respondent on behalf of FSF entered into an Independent Contractor Agreement ("ICA") with an individual on or about March 1, 2002. The ICA, between FSF (as "Broker") and the individual (as "Mortgage Originator"), states that the Mortgage Originator is an Independent Contractor who is not a servant, employee, joint venture, or partner of FSF.
8. Between May 15, 2002 and April 29, 2004, Respondent, on behalf of FSF as the "lender," submitted or caused to be submitted to HUD an Addendum to URLA (HUD Form 92900-A) in connection with each of 104 separate mortgage loans made by FSA. Such loans are more specifically identified in Paragraph 21 of the Complaint and such identification is incorporated herein by reference.
9. Each of the Addendum to URLA forms signed and submitted or caused to be submitted by Respondent to HUD in regard to the 104 mortgages identified in the Complaint contained the following two Lender's Certifications:
 - A. The information contained in the URLA and the Addendum was obtained directly from the borrower by an employee or duly authorized agent of the lender and is true to the best of the lender's knowledge, information and belief; and

B. That it has not paid any kickbacks, fee or consideration of any type, directly or indirectly, to any party in connection with the transaction, except as permitted by HUD regulations and administrative instructions.

10. Each of the 104 mortgages referenced herein was originated by, at the direction and/or at the control of, the Mortgage Originator under the terms of the ICA.
11. The Mortgage Originator who obtained the information contained in the URLAs and Addendums directly from the borrowers was at the time neither an "employee" nor a "duly authorized agent" of FSF as defined by HUDs Rules.⁶
12. The Mortgage Originator, directly or indirectly (*i.e.* through the Mortgage Originator's company), received from the lender a kickback, fee or consideration in connection with the mortgage transactions reflected in the URLA and Addendums to URLAs, which was not permitted by HUD regulations and administrative instructions.
13. Both of the aforementioned Lender's Certifications in the Addendum forms submitted or caused to be submitted to HUD by Respondent in connection with each of the 104 loans identified in the Complaint, were false.
14. Respondent knew or had reason to know that the certifications were false because he knew that FSF, the lender identified on each mortgage loan, was not the entity that originated the mortgage, that neither an employee of FSF nor a duly authorized agent of FSF directly obtained the information from the borrowers, and that the mortgage originator was paid monies in connection with the origination of the 104 mortgage loans referenced herein and such was not permitted by HUD regulations and administrative instructions.
15. Additionally, Respondent knew or had reason to know that the certifications were false because he met with other individuals to discuss the pipeline of mortgages being submitted to FSF by loan officers originating loans via FSF.
16. At all times pertinent to this Order, Respondent knew that FSF contracted with non-FHA approved entities for the origination of FHA-insured mortgages using FSF's FHA identification number.
17. The certifications as contained in the Addendums to URLAs (HUD Form 92900-A) and submitted or cause to be submitted by Respondent on behalf of FSF as the lender were done in order to induce HUD to insure the 104 mortgages FSF was issuing in regard thereto which is what occurred.

⁶ At all times pertinent to this Order, HUD's Mortgagee Approval Handbook 4060.1 ¶ 2-14 prohibited separate entities from acting as branch offices of an approved mortgagee.

18. The identity of the loan officer and mortgagee originating the mortgages at issue, the accuracy of the information contained within the URLAs and addendums to the URLAs, and the fact that each of the loans at issue was originated by an entity not-approved by HUD, are facts material to HUDs decision to insure the loan.
19. HUD would not have insured the 104 loans had it known that the mortgages were originated by a loan officer who was not an employee or duly authorized agent of the lender.
20. HUD would not have insured the 104 mortgage loans had it known that the lender was paying a kickback, fee or consideration of any type, directly or indirectly, to the Mortgage Originator in connection with the transaction, which was not permitted by HUD regulations and administrative instructions.
21. For each of the 104 mortgage loans identified herein, HUD would not have insured the mortgage loan had it known that the URLAs and Addendums to URLAs submitted, or caused to be submitted to the Department by the Respondent in connection with such mortgages, contained false information.
22. In regard to each of the 104 mortgage loans identified in the Complaint, Respondent submitted or caused to be submitted to HUD a written statement containing or accompanied by an express certification or affirmation of truthfulness falsely asserting material facts, which he knew or had reason to know were false, in connection with obtaining mortgage insurance thereon.
23. In regard to the mortgage loans identified in the Complaint, Respondent is hereby found to have committed 104 violations of 31 U.S.C. § 3802(a)(2).
24. Pursuant to 31 U.S.C. § 3802(a)(2) and 24 C.F.R. § 28.10(b), HUD is entitled to a civil penalty of \$5,500 for each of the false statements submitted by Respondent on or before April 17, 2003; and \$6,500 for each of the false statements submitted by Respondent after April 17, 2003.

DETERMINATION OF CIVIL PENALTY AMOUNT

1. Section 26.39(c) of the applicable Rules provides in pertinent part that upon default:

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. § 26.39(c).

2. Section 3802 of PFCRA, 31 U.S.C. §3801(a)(2) (as adjusted by the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990) and 24 C.F.R. § 28.10(b) authorize the assessment of a civil penalty of up to \$5,500 for each violation of 31 U.S.C. § 3802(a)(2) that accrued prior to April 17, 2003 and \$6,500 for any violations after that date.
3. Section 28.40(b) of the applicable Rules provides with regard to the factors to consider in determining amount of penalties as follows:

In determining an appropriate amount of civil penalties and assessments, the administrative law judge (ALJ) and, upon appeal, the Secretary shall consider and state in their opinions any mitigating or aggravating circumstances. *Because of the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need for deterrence, ordinarily double damages and a significant civil penalty should be imposed.* The ALJ and the Secretary shall consider the following factors in determining the amount of penalties and assessments to be imposed:

- (1) The number of false, fictitious, or fraudulent claims or statements;
- (2) The time period over which such claims or statements were made;
- (3) The degree of the respondent's culpability with respect to the misconduct;
- (4) The amount of money or the value of the property, services, or benefit falsely claimed;
- (5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of investigation;
- (6) The relationship of the civil penalties to the amount of the Government's loss;
- (7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;
- (8) Whether the respondent has engaged in a pattern of the same or similar misconduct;
- (9) Whether the respondent attempted to conceal the misconduct;
- (10) The degree to which the respondent has involved others in the misconduct or in concealing it;

(11) If the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude the misconduct;

(12) Whether the respondent cooperated in or obstructed an investigation of the misconduct;

(13) Whether the respondent assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions;

(15) Whether the respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly;

(16) The need to deter the respondent and others from engaging in the same or similar misconduct; and

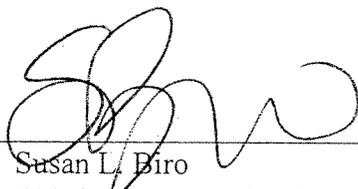
(17) Any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

4. Exhibit 3 attached to Complainant's Motion sets forth in detail HUD's analysis of the seventeen factors as they apply to Respondent's actions.
5. Having reviewed the Department's penalty determination, I concur with its detailed analysis of the severity of the offenses and its reasoning behind the penalty amount assessed. Over approximately a two year period, Respondent knowingly "franchised out" his FHA approval number to a non-FHA approved entity and/or person (the Mortgage Originator) and profited richly from the 104 FHA insured mortgage loans (totaling in excess of \$11.6 million dollars) wrongly issued as a result. In doing so Respondent undermined FHA's efforts to insure the financial and business integrity of the entities it approves and with whom it does business. By his actions, Respondent also gave the unapproved mortgage originator access to personal identifying information on a multitude of loan applicants putting them at risk of loss and undermining the integrity of HUD's proprietary program maintaining the confidentiality of such data. Respondent involved others in making, submitting and concealing these false and fraudulent statements to and from HUD. The actions lead to unnecessary expense on the part of the Government to investigate his unlawful conduct and undermined a government scheme to provide affordable mortgage loans to low and moderate income buyers. Respondent's actions are clearly egregious enough to warrant the maximum allowable civil penalty. Finally, it is noted that although given an opportunity to do so, Respondent has proffered no evidence to support any mitigation of the proposed penalty.

6. HUD submits that the violations warrant a maximum aggregated penalty of \$608,000 against Respondent Giuliano, irrespective of joint and several liability of other individuals.
7. In this instance, however, considering the continued participation of other parties to this proceeding, the assessment of the penalty to be issued against Respondent Giuliano will be stayed until resolution of liability and/or settlement of the other respondents in this proceeding.

ORDER

1. For failing to respond to the Complaint in a timely manner as indicated above, and upon motion filed, Respondent is hereby found in **DEFAULT**.
2. Pursuant to 31 U.S.C. § 3803, Respondent is found to have violated the Program Fraud Civil Remedies Act, 31 U.S.C. § 3802(a)(2), in 104 instances as enumerated above and is subject to assessment of a civil penalty in the amount of \$5,500 for each such violation occurring prior to April 17, 2003, and a civil penalty in the amount of \$6,500 for each violation occurring after that date. Respondent is subject to assessment of the total aggregate proposed penalty of \$608,000.
3. The imposition of said penalty against Respondent Giuliano is **STAYED** until resolution of liability and/or settlement of this matter with respect to the other Respondents in this proceeding.



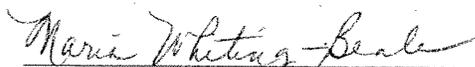
Susan L. Biro
Chief Administrative Law Judge
United States Environmental Protection Agency⁷

Dated: May 15, 2008
Washington, D.C.

⁷ The Administrative Law Judges of the United States Environmental Protection Agency are authorized to hear cases pending before the United States Department of Housing and Urban Development, pursuant to an Interagency Agreement effective for a period beginning March 12, 2008.

CERTIFICATE OF SERVICE

I hereby certify that copies of **Default Judgment And Order** issued by Susan L. Biro, Chief Administrative Law Judge, in HUDALJ 08-019-PF; HUDALJ 08-029-PF; OGC Case No. 08-3466-PF, OGC Case No. 08-3499-PF and OGC Case No. 08-3500-PF and OGC No. 08-3501-PF were sent to the following parties on this 15th day of May, 2008, in the manner indicated:



Maria Whiting-Beale
Acting Docket Clerk

REGULAR MAIL TO:

Gary M. Stanco



REGULAR MAIL AND FACSIMILE TO:

R. Christopher Reade, Esquire
Jonathan W. Carlson, Esquire
Reade & Associates
4560 South Decatur Boulevard, Suite 201
Las Vegas, NV 89103

Shawn Christopher, Esquire
Christopher Legal Group
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Melissa B. Silverman, Esquire
Michael J. Milner, Esquire
Office of Program Enforcement
U.S. Department of Housing & Urban Development
Portals Building, Suite 200
1250 Maryland Avenue, SW
Washington, DC 20024

Tammie Parshall, Docket Clerk
Departmental Enforcement Center
U.S. Department of Housing &
Urban Development
Portals Building, Room 200
1250 Maryland Avenue, SW
Washington, DC 20024

CERTIFIED MAIL RETURN RECEIPT TO:

Joseph N. Giuliano

