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

In The Matter of:

SECURITY NATIONAL
SERVICE CORPORATION, HUDALJ 90-128-MR

Respondent.

Gary L. Sparks,
For the Respondent

Bruce S. Albright, Esquire
For the Government

Before: Robert A. Andretta
Administrative Law Judge

INITIAL DETERMINATION

Jurisdiction and Procedure

This is a review of the Mortgagee Review Board's (the Board) withdrawal of Security National Service Corporation's HUD-FHA mortgagee approval under the regulations codified at 24 CFR Part 25 (1988) to promote the purposes of Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d), and Sec. 211 of the National Housing Act of 1934, 12 U.S.C. 1715b (the Act), as amended. Proceedings were conducted, and this determination is issued, in accordance with the regulations of the Department of Housing and Urban Development (HUD) that are codified at 24 CFR Part 26 and under the jurisdiction that is conferred on this forum by the regulation found at 24 CFR 25.8.

Under Section 512 of the Act, the government is authorized

to deny participation in its programs, including by withdrawing mortgagee approval, for failure to comply with HUD's regulations. The rules that are codified at Part 25 provide the enforcement and regulatory procedures for accomplishing the Department's duty to enforce compliance by approved mortgagees with the Act's requirements and the Department's rules and procedures that are established thereunder.

On December 6, 1989, C. Austin Fitts, Chairman of the Mortgagee Review Board, sent written notice to Security National that its mortgagee approval was withdrawn, pursuant to 24 CFR 25.5(d)(4)(i), effective the date of receipt of the notice, for an indefinite period. The withdrawal of Security National's mortgagee approval was stated in the notice as being based upon information contained in an audit report by the Office of Inspector General (IG) which claims serious violations of HUD-FHA requirements by Security National. In its Audit Report 89-TS-221-1010, the IG states that Security National failed to timely remit One-Time Mortgage Insurance Premiums (OTMIPs or MIPs) collected from borrowers who applied for mortgages insured by FHA. According to the report, Security National also failed to remit interest charges when it made late OTMIP payments. The report further states that a number of the loans for which Security National failed to make timely MIP payments were sold to other investor mortgagees who placed these loans into Government National Mortgage Association (GNMA) mortgage-backed securities pools.

In its notice, the Board states that failure by Security National to properly remit OTMIPs represents a serious violation of the Department's regulations that are codified at 24 CFR 203.280, and is a breach by Security National of its fiduciary duty to the mortgagors, who believed that they enjoyed FHA insurance on their loans, and the investor mortgagees, who purchased the loans assuming that the MIPs had been paid. The Board further states that such actions by Security National do not conform to generally accepted practices of prudent lenders and demonstrate irresponsibility. According to the Board, these violations are grounds for withdrawal of Security National's mortgagee approval pursuant to the regulations that are codified at 24 CFR 25.9(g), (j), (p), and (w). Security National was further advised of its right to appeal and to this proceeding.

On December 7, 1989, Ruben A. Ramos, the chief executive officer of Security National, filed a request for a hearing within thirty days. A mortgagee is entitled to a hearing within thirty days, in a case where the Board has determined to take administrative action against it prior to a hearing. *See* 24 CFR 25.8(b). The letter requesting the hearing was misaddressed by the Respondent and was not received by the Docket Clerk until December 20, 1989. Thus, the Chief Administrative Law Judge ruled that the respondent was entitled to a hearing within 30 days of December 20. On January 8, 1990, the Chief Judge issued a Notice Of Hearing And Order which made the above-stated ruling, scheduled the hearing for January 18, 1990, in Los Angeles, and ordered the government to file its Complaint and the respondent to file its Answer by January 12 and 16, 1990, respectively. This case was assigned to me on January 11, 1990, and I issued an order for the parties to produce their lists of documents and witnesses intended for use in the hearing by January 16, 1990.

The government filed its Complaint And Statement Of Charges on January 12, 1990, and Respondent answered it orally at the hearing. The hearing was conducted in Los Angeles on January 18, 1990. At its conclusion, the government's request for leave to submit a post-hearing brief after receipt of the hearing transcript was granted. The government was given 15 days after such receipt to file its brief, and the respondent was given 15 days after receipt of the government's post-hearing brief to file its own. Unrefuted testimony and evidence in the hearing had shown that irreparable damage, probably going out of business, would accrue to Security National by continuance of its status of being without mortgagee approval for any period (Transcript at page 248, 295, 297; hereafter, *e.g.*, T 295). There was also unrefuted testimony that Respondent was doing all in its power to correct the situation it had created (T 18-20; 241-245) and had instituted new procedures to prevent a reoccurrence (T 245). Therefore, the government was asked its views on a stay being ordered until a determination could be written (T 285). The government could not articulate a reasonable expectation of harm to itself or the public should Respondent be permitted to resume business pending a determination of the case (T 285, 286). In fact, the government had never checked to determine whether Security National had made timely payments for the eight months preceding

withdrawal of its mortgagee approval (T 287-289). Accordingly, the withdrawal of mortgagee approval was stayed pending the issuance of a determination, and the government voiced no objection (T 302).

A Notice was issued on January 23, 1990, which reduced to writing the orders made at the end of the hearing that stayed the withdrawal and specified time limits for submission of post-hearing briefs. On January 24, 1990, the government moved for clarification of the Notice, asking "whether the stay is a final determination of the Court, or whether the stay is an interlocutory ruling pending final determination of this matter." The government requested a ruling by January 26, 1990, notwithstanding Respondent's right to answer a motion within seven days. On January 28, 1990, the government filed a Motion Requesting Certification Of Ruling For Review By The Secretary, and on January 30, 1990, it filed a Petition For Review with the Secretary. In both documents, the government argued that the stay was beyond the powers of this forum. In the first, it asked for certification of the question for a decision by the Secretary, and in the second, it asked that the stay be overturned. On February 5, 1990, the government filed a Motion To Reopen Hearing Record for the purpose of filing newly discovered evidence.

Respondent did not answer any of the motions. By Order dated February 9, 1990, the Motion Requesting Certification was denied. Although the stay order involves important issues of law and policy, certification would not have advanced the ultimate termination of the litigation, as required by 24 CFR 26.26(a)(2), and in fact it could have delayed it. The Motion To Reopen was granted. The government filed its post-hearing brief on February 13, 1990. Respondent did not file a post-hearing brief within the allotted time, *i.e.*, by February 20, 1990. Accordingly, this case became ripe for determination on this last-named date.

Findings of Fact

Respondent is and, at all times relevant to this proceeding, was a mortgage lending company with its main office at 2001 East 1st Street, Santa Ana, California. It was approved as an HUD-FHA nonsupervised mortgagee in March, 1984. Security

National's business is to originate FHA-insured loans and sell them to other FHA-approved mortgagees for servicing. Thus, it earns a fee for originating each loan and also makes a profit on the sale of each loan.

To insure a mortgage with HUD's Mutual Mortgage Insurance Fund, HUD charges a premium in lump sum that is referred to as the OTMIP or MIP as indicated earlier in this determination. The process practiced is that the MIP is paid by the mortgagor to the originating mortgagee who, in turn, remits it to HUD. The mortgagor may pay the MIP in cash at closing or, as is done in many cases, he may add the MIP to the amount mortgaged. Upon payment of the MIP to HUD the mortgage is endorsed for insurance, and a mortgage insurance certificate (MIC) is issued to the mortgage lender. When a loan is sold by the originating lender to another mortgagee the MIC goes with it.

In 1988, Altus Mortgage of Mobile, Alabama, a servicing mortgagee, made inquiries of HUD to determine if FHA mortgage loans which it had purchased from Security National had been insured. It was discovered that at least 72 of the loans had not had their OTMIP paid and that, therefore, no MIC had been issued; *i.e.*, the loans were not insured. Another mortgagee, Lomas Mortgage USA, also complained to HUD that loans it had bought from Respondent had not been insured.

During 1988-1989, HUD's Office of Inspector General (OIG) undertook a nationwide audit to see if FHA-approved mortgagees were remitting MIPs in a timely manner. Respondent was selected for audit because of the concerns raised by Altus and Lomas. The IG assigned to HUD's Los Angeles office began its audit of Security National on April 1, 1989 for the audit period of April 1, 1987 through March 31, 1989. The audit disclosed that of 280 OTMIPs made by Respondent for mortgage loans which were closed from November 1, 1986 through March 31, 1989, there were 218, valued at $624,249, that had been paid late. Late charges of $24,970 had been paid, but interest in the amount of $35,673 for these late-paid MIPs remained unpaid. Some of the MIPs and late penalties had been paid by investing mortgagees rather than Respondent. The MIP payments averaged 322 days late and ranged from 17 to 693 days late. Further, as of March 31, 1989, Respondent had 105 additional MIPs outstanding, of which 75 had been placed into GNMA pools by investing mortgagees. By June 26, 1989, 95 of these MIPs had been paid without interest.

Respondent's officers told the HUD auditors that late payments were due to a lack of adequate staffing and a cash-flow problem. They admitted that newly-collected MIPs were routinely used to pay old MIPs to HUD. The audit revealed that Altus, through its parent, Altus Bank, had advanced the funds to pay 48 unpaid MIPs. Respondent and Altus Bank entered into an agreement for Respondent to reimburse Altus for the funds advanced to pay the MIPs. Lomas advanced the funds to pay 11 MIPs for loans it had purchased from Security National. By the time of the hearing, Lomas had demanded payment, but it had not been made. Finally, up to the time of the hearing, Respondent had continued to fail to pay any interest, by then totally over $50,000. Company officers said they were waiting to be billed by HUD for the interest.

At the hearing, the respondent's representative admitted all that was contained in the auditors' report (T 18). He in fact stipulated to the facts as outlined above (T 26). Respondent's contentions in the hearing were that no regulations require payment on time, only that a late penalty and interest are required for a late payment. More importantly, no regulation states that a mortgagee's approval can or will be withdrawn for making late payments. Respondent argued that upon determining that many payments had been made late or not at all, herculean efforts, including involvement of its officers' personal funds and property, were expended in an attempt to correct the situation, and that withdrawal action is unwarranted and had not been taken against other firms in similar circumstances. The representative argued that Security National has implemented a new system, employing an escrow agency, to ensure that payments are made directly and immediately to HUD. Finally, he argued that Security National began taking steps, on its own, to correct the MIP payment situation four to six months prior to the commencement of the HUD audit (T 19-23). Respondent suggested that, in view of its good-faith efforts, etc., a probation with a requirement to pay all that is due would be a more appropriate sanction than withdrawal of its approval (T 22).

Applicable Law

The Mortgagee Review Board was established by codification

of the regulations found at 24 CFR Part 25 for the purposes of determining acceptability of mortgagees and ensuring their compliance with the applicable regulations. Its power relating to administrative actions against mortgagees is found at 24 CFR 25.2. The grounds for the Board's application of sanctions against mortgagees are listed at 24 CFR 25.9 and include the following subsections, which were applied in this case:

> (g) Failure to comply with any agreement, certification, undertaking, or condition of approval listed on either a mortgagees's application for approval or on an approved mortgagee's Branch Office notification;
>
> (j) Violation of the requirements of any contract with the Department, or violation of the requirements set forth in any statute, regulation, handbook, mortgagee letter, or other written rule or instruction;
>
> (p) Business practices which do not conform to generally accepted practices of prudent lenders or which demonstrate irresponsibility;
>
> (w) Any other reasons the Board, Secretary or Hearing Officer, as appropriate, determine to be so serious as to justify an administrative action.

The regulation providing for one-time payments of mortgage insurance premiums is found at 24 CFR 203.259. It provides for payment of the MIPs to the Commissioner of FHA. The responsibility for and timing of the payments are provided for in the regulation codified at 24 CFR 203.280:

> For mortgages for which a one-time MIP is to be charged in accordance with (sec.)203.259a, the mortgagee shall, within

> fifteen days of closing and as a condition to the endorsement of the mortgage for insurance, pay to the Commissioner for the account of the mortgagor, in a manner prescribed by the Commissioner, a premium representing the total obligation for the insuring of the mortgage by the Commissioner.

Late payment of the MIP is provided for by the regulation codified at 24 CFR 203.282, as follows:

> (a) Payment of one-time MIP is late if it is not received by HUD by the fifteenth day after closing. Late payment shall include a late charge of four percent of the amount of the MIP.
> (b) If payment of the MIP is not received by HUD within 30 days after closing, the mortgagee will be charged additional late fees until payment is received at an interest rate set in conformity with the Treasury Fiscal Requirements Manual.

HUD provides a form, Transmittal for Payment of One Time Mortgage Insurance Premium (OTMIP), designated HUD-27001(11-87), which is to accompany MIP payments to the Department. It provides for Mortgagee Information in Part 1. and for Mortgage Data in Part 2. Part 3. of the form provides for OTMIP Data. Lines a. through c. of Part 3. are to be filled in with the amount of a new mortgage OTMIP, any refund credit from a previous mortgage, and the net of the two, respectively. Instructions for filling out each line are to the right of the blanks to be filled in, much in the same manner as on a federal tax form. Line d. asks for Late Charge Due (4% of 3.c.). Line e. asks for Interest Due. The instructions for these two lines are:

> 3.d. A 4% late charge shall be paid if the OTMIP payment is not expected to reach HUD within 15 days of the closing date in Item 2.b. Enter 4% of Net OTMIP from Item c.
>
> 3.e. In addition to the late charge, daily

> interest shall be paid on the Net OTMIP (Item c.) from the closing date if the OTMIP payment is not expected to reach HUD within 30 days of the closing date. Use the current value of federal funds rate (published quarterly in the Federal Register) to compute the interest due.

HUD also uses a computer-produced print-out entitled One-Time Mortgage Insurance Premium (OTMIP) Statement Of Account. This is sent to mortgagees for each mortgage for which an MIP has been paid. It contains the pertinent information regarding the mortgage, the date of its printing, and so on. The print-out also says, in pertinent part:

> This confirms receipt of the OTMIP remittance(s) listed below. "Endorsement of the mortgage is not authorized." Late charges/interest are due. Upon receipt HUD will authorize the local HUD office to endorse a mortgage up to: ($ amount).
>
> Late charge is due when the OTMIP does not reach HUD within 15 days of the closing date and interest is due when the OTMIP does not reach HUD within 30 days of the closing date. PLease remit the monies due HUD with a form HUD 27001, Transmittal For OTMIP. Amounts due HUD are:
>
> | | |
> |---|---|
> | Late charge (amount) | $ |
> | Interest Charge | $.00 |
> | Total Amount Due HUD | $ (amount) |

The FHA also issues periodic instructions to mortgagees in a memo format called a Mortgagee Letter. On August 2, 1983, the Commissioner issued Mortgagee Letter 83-21, entitled One-Time Mortgage Insurance Premium. This instruction implemented the one-time payment plan in place of the previous plan of multiple payments. It gives a detailed description of the program and instructions for mortgagees. It states, with regard to when the MIP should be made, "Immediately after closing, send the payment

of the MIP to HUD, Post Office Box ..." As to late payment of the MIP, the Letter says:

> You must pay a late charge equal to 4 percent of the total MIP due if payment reaches HUD's Atlanta depository more than 15 days after the closing date. You should include the 4 percent late charge in the total remittance whenever you expect the payment to be late.
>
> If the MIP payment reaches HUD's depository more than 30 days after the closing date, you must pay interest at a percentage rate set in conformity with Treasury Fiscal Requirements Manual, and announced quarterly in the *Federal Register*. The interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. While the interest charge on unpaid MIP is calculated on a daily basis beginning on the date of closing, interest will be assessed only on MIP payments received more than 30 days after closing.

Near the end of the hearing, after much questioning by the presiding officer concerning what regulations put a mortgagee on notice that certain conduct could lead to withdrawal of its mortgagee approval, it was also revealed that 24 CFR 203.2 states (T 272):

> To be approved for participation in the HUD-FHA mortgage insurance programs, *and to maintain approval*, a mortgagee must meet the following general requirements of sec. 203.3 through sec. 203.7, as appropriate [emphasis added].
>
> * * * * * * *
>
> (d) It shall not use escrow funds for any purpose other than that for which they were received.

After the hearing, as a result of the presiding officer's own review of the regulation, the following subsection of section 203.2 was found:

> (f) It shall comply with the servicing responsibilities contained in Subpart C of this part, with all other applicable regulations contained in this title and with such additional conditions and requirements as the Commissioner may impose.

Section 203.2 of the regulations, however, is not sent to mortgagees along with the rest of the applicable regulations, mortgagee letters, and procedures when they are sent to a mortgagee (T 273).

Discussion

Respondent has never denied that it was delinquent in paying MIPs, late fees, and interest, or that, at the time of the hearing, all of the interest was still owed (T 18, 66, 71). Its contentions are that the Department's regulations and procedures do not actually require payment of the MIPs within fifteen days, only that fees and interest should be paid if the MIPs are paid beyond that period; that the regulations do not warn mortgagees that their approval can be withdrawn, or even suspended, because of late payment or nonpayment; that the government persisted in billing it for zero interest owed, but that it is and always has been ready to cooperate with the government in determining the amount of interest owed and paying it; and that, because the officers of Respondent have been making tremendous efforts, including using personal assets, to correct the situation, and because other firms have not been suspended or debarred for like problems, the sanction applied by HUD is unwarranted and should be reduced to a probation (T 19-23).

While the regulations make clear that the fifteenth day from closing is the due date for the MIP, they provide for late

payments with, seemingly, no limits (T 230). The forms used by the Department, and quoted in pertinent part above, appear to invite late payment. Moreover, neither the regulations, procedures, nor forms require any sort of escrow or escrow-like handling of the mortgagor's MIP; only that the mortgagee must pay the amount due (T 33-35, 124-130, 151, 231, 277). Further, the procedures are devoid of anything that would ensure payment; *i.e.*, if the MIP is not paid, nothing tells the mortgagor or HUD or the prime lender, or anyone else, that it has not been paid (T 52-54). There is no tracking of, or continuing accountability for, the mortgagor's payment for his MIP (T 86).

Before a lender gets HUD's mortgagee approval, HUD provides training, handbooks, mortgagee letters, and other guidance, but the only assurance it has that the mortgagee will follow HUD requirements is that "...during their approval process, they have stated to us that they're going to adhere to all our requirements (T 58)." There is no document signed by a mortgagee promising to adhere to requirements, and there is no contract between a mortgagee and HUD that includes any circumstances under which approval will be withdrawn (T 76-77, T 276-277). According to one government witness,"...there is nothing to say or to force the lender to pay that MIP as far as a police authority (T 87)." In fact, throughout the period that HUD officials were communicating with Respondent's officers about the nonpayments, and getting them paid, nothing was said to them to indicate that their company could lose its approval as a consequence of its delinquencies (T 79).

However, even though much is done simply on the basis of "a handshake" (T 88), it is clear that, because of the nature of the business, the Department must rely upon the integrity of the lenders (T 98). The Department, not unreasonably, views the borrower's MIP funds as analogous to escrow funds (T 99), and considers the mortgagee to have a fiduciary responsibility to the borrower to use them to purchase the borrower's mortgage insurance from HUD (T 100). If the mortgagee fails to send the money and the form to HUD, there is no insurance, and everyone knows that, including the mortgagee.

Nonetheless, not much seems to happen when the payments are made late. Testimony in the hearing revealed that even where payments are made six months late, along with late fees and interest, there are no sanctions applied by the regional office,

and whether or not it refers the situation to the home office for review by the Board is "a matter of judgement" that is not tied to the amount paid late or even how late it was (T 104-106). Not only are the regulations devoid of sanctions, other than the monetary penalty and interest, for late payment or nonpayment of MIPs, but there is no history of sanctions being applied to any mortgagee until 1988 (T 232).

The Statement of Account forms always list the interest due as zero where it says "Amounts due HUD are," and, nonetheless, the Department expects mortgagees to calculate and pay any interest that is due. The Department says it does not bill mortgagees for interest in spite of the fact the Statement reads like a bill (T 161). Even in this case, where the complaint against Respondent is nonpayment, the Department persists in depending upon Respondent to calculate the interest it owes (T 143-145).

The Statement of Account reads like a bill. It even includes the words "Amounts due HUD are (T 164)". Even the Departmental employees who deal with it believe it is like a bill while they insist that it is not meant to be one (T 169), and that if they were "customers" instead of employees, they would take the meaning of HUD forms to be "that I could get away with being late if I made the late payment" (T 173, 230). On these statements that look and sound like bills, the interest owed is always stated to be zero, even when it is known to be much more (T 170-172). When the MIP is paid late, and no interest is paid with it, the Department will issue the MIC and still send out a Statement of Account showing zero interest due (T 171). In this case, HUD accepted 218 late-paid MIPs, sent out the MICs without question, and then sent out Statements of Account that listed zero "interest due," where interest indeed was due for 17 to 693 days (T 254).

Even though FHA loans were instituted in 1934, the Board was created in 1975, and the one-time payment system was applied in 1983 (T 221), only five mortgagees have had their approval withdrawn (T 187) and two more have been placed on probation (T 189). All of these have been since 1988 (T 223-4). No other sanctions were applied to any other companies because of late payment or non-payment of MIPs (T 226). Only one other withdrawal of approval has been upheld. In that case, the withdrawal was for three years and was based in part on evidence

of foul intent as opposed to error (T 226). Thus, while there may or may not have been other mortgagees that have not paid their MIPs or have paid them late, and it is inconceivable that there were not many others in all those years, a "conscious decision on the part of the Department as a whole to tighten up procedures" (T 228) has caught Security National off guard.

Security National started paying its unpaid MIPs in November of 1988, which is approximately half a year before HUD started its investigation and conducted its audit (T 244). At that time, calls to an unnamed contact at HUD who is listed in one of HUD's handbooks told Respondent's officers that all they had to do was pay interest (T 242, 250), and that there were no specific regulations covering large numbers of unpaid MIPs (T 244). They told the HUD officials at that time that they accepted responsibility and would work out how to pay all that was owed (T 244).

Respondent's only witness was its Vice President in charge of real estate operations (T 258). He stated that during the time that these many loans were made but their MIPs were unpaid, another 80 to 100 were made with the MIPs paid, and that many VA loans were also properly made (T 258). The reasons he gave for the nonpayment of MIPs were threefold: that Security National did not have proper
accounting procedures to determine when and if a payment had been made, that a secondary office in Salt Lake City was staffed with incompetent employees, and that he and the other officers of the company were negligent in that they "were not paying any attention to it" (T 259-260). He claimed that he and his partners could have shut down the business without trying to repay the MIPs but that their attempts to correct the situation show that they had and have no foul intent with regard to the MIP money (T 263).

The witness admitted that the regulations make clear that the MIPs are to be paid, and claimed that he and the other officers thought that they were being paid (T 265). He could not explain how they could have thought the MIPs were being paid in light of the fact that the company must have had a lot of extra money at its disposal; probably about $700,000 (T 262, 265). He admitted also that the MIP money was being used for other purposes (T 266) and that it must have occurred to the other officers who were involved with the FHA loans that they

were not paying the MIPs (T 267). The witness testified that the other officers of the company are more than just competent, and that it would not surprise him if at least one of them knew that the MIPs were not being paid (T 269). He admitted that Respondent's conduct was "irresponsible" and not "the actions of a prudent lender" (T 277).

This only witness of Respondent's also acted as Respondent's representative in the hearing. He was a surprise to all concerned since he was not one of the Security National officers who had been dealing with HUD's officials for these many months. Near the beginning of the hearing, he misled the presiding officer concerning his ability to conduct Respondent's case when, in answer to the question, "Mr. Sparks, are you an attorney?" he answered, "No, sir" (T 38). Late evidence, admitted into the record in accordance with the Order Reopening Hearing Record of February 16, 1990, reveals that this witness is a disbarred attorney who was removed in September, 1988, from the practice of law in California for misusing client trust funds.

Conclusion and Order

It cannot be gainsaid that HUD's regulations, directives, procedures, and forms could use a great deal of clarification and general tightening up. I have some sympathy for Respondent's witness who pleaded during the hearing (T 245):

> ... there is no set of circumstances governing any escrow with these monies [paid for insurance by the mortgagor]. None. You can have that money directed to Timbuktu if you want. There is no requirement that you do anything with this money except pay OTMIPs and it doesn't say with that money. You could pay OTMIP with anything. There is no government regulation whatsoever in this whole area, nothing with this. There is no escrow accounts (sic) required. There is no accounting required. There is no interim processing required. There is no trust account analysis required. There is nothing except "you will pay the OTMIP and if you don't

> pay them within 15 days, you'll pay four percent late charge, and if you don't pay them in 30 days, you'll pay interest," and that is it. There is not one other government regulation covering OTMIPs any place. It doesn't exist.

To this I would add that, with the possible exception of subsection 203.2(f), there is nothing in the regulations specifically stating that late payment or nonpayment of MIPs will, or even could, result in withdrawal of mortgagee approval rather than only the imposition of a monetary penalty and interest.

Nonetheless, Respondent cannot be excused on the basis of these failings of the regulations. Even if there were no regulations at all, people who are in the mortgage sales business can and should be expected to know, as a basic premise, that the MIP money they receive from mortgagors must be paid to HUD for the mortgagors' insurance and that failure to do so is a breach of ordinary duty. The officers of Security National are not naive beginners, unsophisticated in the ways of finance. They are in the thick of it; they are very experienced and knowledgeable. They had to have known exactly what they were doing, as, indeed, one of their number on the stand suggested; **i.e.**, that they were improperly diverting funds to their own and/or their company's use, taking advantage of what had always been very loose enforcement, at best, with in mind that if they were caught they could simply pay up, and if they were not caught, perhaps they were home free with a great deal of extra cash. As to the plea that they had started corrective action before HUD's intervention, this was only after Altus and Lomas complained. It is a fact of little significance.

Notwithstanding its poorly written regulations and forms, the government has a right to restrict its dealings with mortgagees to those which it can trust, to those which show responsibility in their dealings with the government and their customers, and to those who do in fact conduct their affairs in the manner of ordinary prudent lenders. Security National is not such an organization. Its most recent demonstration of irresponsible behavior was at the hearing itself where its representative, who is much practiced at misusing customer

funds, mislead the presiding officer and all others involved in this case concerning his legal background.

Respondent's sole witness's unsubstantiated testimony of Respondent's innocent errors, good intentions, and unsolicited efforts to make good the payments owed is without credit. Moreover, misuse of client trust funds is a type of breach of fiduciary duty so similar in nature to the failings that Respondent is charged with here that one cannot but conclude that perpetration of the former served as practice for the latter.

In *New Century Mortgage Co.*, HUDALJ 89-109-MR (1989), a mortgagee which had failed to timely send MIPs to HUD, and who's motivation for so failing was in serious question, had upheld on review the withdrawal of its mortgagee approval for a period of three years from the date of its notice of withdrawal. Accordingly, I conclude that a three-year withdrawal of Respondent's HUD-FHA approval is appropriate and necessary in this case to ensure that the seriousness with which HUD views its conduct will not be misconstrued by its owners and officers, or by any other persons doing like or similar business with FHA, and that the public interest will thereby be protected. Respondent has already been without its mortgagee approval for one month. Thus, good cause having been shown for the withdrawal of Security National Service Corporation's mortgagee approval for a period of thirty-five months from the date of this determination, it is

So ORDERED.

/s/

Robert A. Andretta
Administrative Law Judge

Dated: March 19, 1990.