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

THE SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT Petitioner, v. KRIS SHANE CUMMINS, DAVID ALAN WHITE, KATHERINE A. SHADLE, AMERICAHOMEKEY, INC. Respondents	OGC No. 12-3879-PF HUDALJ 12-F-045-PF-22 August 23, 2012

DEFAULT JUDGMENT AND ORDER AGAINST AMERICA HOMEKEY, INC.

The above-captioned matter is before this Court on a *Motion for Default Order* ("Motion") filed on August 9, 2012, by the United States Department of Housing and Urban Development ("HUD" or "the Government") against Respondents America Homekey, Inc., and David Alan White ("Respondent White"). Respondent America Homekey, Inc. ("Respondent AHK") did not file an Answer to HUD's *Complaint*, nor did it respond to the present *Motion*. Accordingly, the Government's *Motion* with regard to Respondent AHK is **GRANTED**. The *Motion* with regard to Respondent White is **HELD IN ABEYANCE**.

PROCEDURAL HISTORY

On May 22, 2012, HUD filed a *Complaint* against four Respondents, including Respondent AHK. The *Complaint* alleged violations of the Program Fraud Civil Remedies Act of 1986 ("PFCRA"), 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28, and sought civil penalties of $15,000 against Respondent AHK. The *Complaint* contends that Respondent White, a Direct Endorsement underwriter employed by Respondent AHK, approved Respondent Kris Cummins' no-cash-out refinance loan despite White's knowledge that the loan was not eligible for HUD mortgage insurance. Specifically, the Government argues that Respondent White knew or should have known that the refinance transaction included a junior lien that was less than 12 months old, in violation of HUD Handbook 4155.1 REV-5. The *Complaint* asserts that Respondent AHK, as the employer of Respondent White, is equally liable for Respondent White's allegedly false statement certifying the accuracy of the loan.

HUD regulations provide that a respondent may file a written response to a complaint within 30 days of service of the complaint. 24 C.F.R. § 28.30(a); see also 31 U.S.C. § 3803(d)(2); 24 C.F.R. § 26.38. The complaint must be served via registered or certified mail, or "such other means by which delivery may be confirmed." 24 C.F.R. § 28.25(a). If a complaint is served via first-class mail or overnight delivery, service is complete when the complaint is sent, not when it is received. 24 C.F.R. § 26.30(b).

HUD sent copies of the *Complaint* to all four Respondents via Certified Mail on May 22, 2012. Service was therefore complete as of that date. Three copies of the *Complaint* were sent to Respondent AHK, at three separate physical addresses. *Notice of Service*, p. 2, filed July 6, 2012; *Motion for Default Order*, p. 2. The *Complaint* was successfully delivered to two of the three addresses. The third copy was returned "Unclaimed." Respondent AHK was therefore required to file an Answer no later than June 21, 2012. To date, Respondent AHK has neither filed an Answer nor responded to the *Complaint* in any way.[1]

The *Complaint* stated that failure to file a response may cause HUD to file a *Motion for Default Order* against Respondent AHK. A finding of default constitutes an admission by a respondent of all the facts alleged in a complaint and a waiver of the respondent's right to a hearing on the allegations. 24 C.F.R. § 26.41(c).

LEGAL FRAMEWORK

The PFCRA imposes liability on "[a]ny person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know — (A) is false, fictitious, or fraudulent; [or] (B) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent...." 31 U.S.C. § 3802(a)(1)(A)-(B).

The PFCRA defines a "claim" as "[a]ny request, demand, or submission — ... (B) made to a recipient of ... money from an authority or to a party to a contract with an authority — ... (ii) for the payment of money ... if the United States — (I) provided any portion of the money requested or demanded...." 31 U.S.C. § 3801(a)(3)(B). Under the PFCRA, "each ... individual request or demand for ... money constitutes a separate claim. 31 U.S.C. § 3801(b)(1). A person knows or has reason to know that a claim is false if the person: (a) has actual knowledge of the claim's falsity; (b) acts in "deliberate ignorance" as to the truth or falsity of the claim; or (c) acts in "reckless disregard" of the truth or falsity of the claim. 31 U.S.C. § 3801(a)(5). No specific intent to defraud is required. Id. A person found liable under the PFCRA may be subject to a civil penalty of not more than $7,500.00 for each claim. 31 C.F.R. § 3802(a)(1)-(2); 24 C.F.R. § 28.10.

Default Judgment. HUD regulation provides that, "[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." 24 C.F.R. § 28.38. Section 26.41 provides:

[1] Respondent Cummins and Respondent Katherine Shadle filed their responses on June 26, 2012. Respondent White filed a response on August 6, 2012.

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.

FINDINGS OF FACT

1. HUD sent Respondent AHK a copy of the *Complaint* via Certified Mail to three separate physical addresses on May 22, 2012.

2. A copy of the *Complaint* was successfully delivered on May 29, 2012. Another copy was successfully delivered on June 20, 2012.

3. Pursuant to HUD regulations, Respondent AHK was required to file a written Answer no later than June 21, 2012.

4. Respondent AHK has not filed an Answer to the *Complaint.*

5. HUD filed the *Motion for Default Order* on August 9, 2012.

6. Pursuant to HUD regulations, any response to the *Motion* was due no later than August 20, 2012.

7. Respondent AHK has not filed any response to the *Motion for Default Order.*

8. Respondent AHK has failed to defend this action.

9. Due to Respondent AHK's failure to respond to the *Complaint*, all facts alleged in the *Complaint* are deemed admitted by the Respondent.[2]

10. On April 3, 2009, Respondent AHK approved a $275,742 no-cash-out refinance mortgage for Respondent Cummins' home

11. On or about April 6, 2009, Respondent Cummins completed a Uniform Residential Loan Application ("URLA").

12. The URLA listed a $132,242 mortgage loan with Wells Fargo Home Mortgage and a $95,395 mortgage loan with First National Bank & Trust Co. ("First National").

13. The URLA did not identify any other mortgage loans.

14. On or about April 6, 2009, Respondent Cummins executed a second mortgage loan with First National, for $45,080.

15. First National issued a payoff statement to Respondent AHK listing both the $93,576l.40 loan and the $45,154.11 loan, for a total loan balance of $138,730.51.

16. The combined balance of the loans identified on the URLA was $227,637.

17. The proposed mortgage amount listed on the URLA was $275,742.

18. The proposed mortgage amount listed on the URLA included the Wells Fargo loan and the combined First National loans, but did not specifically identify the second First National loan.

19. HUD Handbook 4155.1 REV-5 states that the value of a HUD-insured no-cash-out refinance loan cannot exceed the sum of: the home's first mortgage, any purchase money second mortgage, any junior liens older than 12 months, other transactional costs.

20. The second First National loan, being a junior lien less than 12 months old, was not eligible for inclusion in the proposed mortgage amount.

21. Respondent AHK knew or should have known that the URLA was incorrect because it had received the payoff statement from First National identifying the third loan and knew the URLA only identified two loans.

22. Respondent AHK's failure to contest these charges requires that the penalties proposed in the *Complaint* be imposed.

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[2] These findings are admitted only by Respondent AHK. The findings do not constitute *res judicata* for any other Respondent and cannot be used for collateral estoppel against any other Respondent.

CONCLUSIONS OF LAW

By reason of the facts admitted by Respondent AHK in Counts 2 and 3 of the *Complaint*, Respondent AHK made and/or caused to be made two written statements in connection with a HUD-insured mortgage transaction that it knew or had reason to know asserted a material fact that is false, fictitious, or fraudulent. Respondent AHK is therefore liable for two civil penalties of $7,500 each, for a total of $15,000, pursuant to 31 U.S.C. § 3802(a)(2) and 24 C.F.R. § 28.10(b).

This *Order* constitutes final Agency action.

SO ORDERED.

Alexander Fernández
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **DEFAULT JUDGMENT AND ORDER**, issued by Alexander Fernández, Administrative Law Judge, HUDALJ No. 12-F-045-PF-22, were sent to the following parties on this 23rd day of August, 2012, in the manner indicated:

Becky Black, Docket Clerk

CERTIFIED MAIL:

Kris Cummins
[redacted]

David White
[redacted]

Katherine Shadle
[redacted]

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