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

In The Matter of:

ALLIED FINANCIAL SERVICES, INC.,

Respondent.

HUDALJ 00-1344-MR
HUDALJ 00-320-CMP
Decided: March 5, 2002

Lillyanne T. Alexander, Esq.,
For the Government

Michael J. Romeo, Esq.,
For the Respondent

Before: ROBERT A. ANDRETTA
Administrative Law Judge

DEFAULT DECISION AND ORDER

Procedural Background

On June 22, 2001, the U.S. Department of Housing and Urban Development (HUD) filed a Complaint against Respondent Allied Financial Services, Inc. (AFS), seeking civil money penalties in the amount of $45,000. On June 12, 2001, Respondent timely filed its Answer To The Government's Complaint. The controlling authority in this case is codified at 12 U.S.C. § 1735f and the applicable regulations are found in 24 CFR Parts 25 and 26. In addition, HUD Handbooks and Mortgagee Letters contain the requirements that mortgagees must follow in originating HUD/FHA-insured mortgages. The pertinent HUD Handbooks in this case are 4000.2 Rev- 2 ¶¶ 5 - 10, 4060.1 Rev-1 ¶¶ 2-14 through 2-25, 4155.1 ¶ 3-13G and the pertinent Mortgagee Letters are 95-03 and 94-39. Jurisdiction over the civil money penalty action contained in the Complaint is conferred upon this forum by the statute that is codified at 12 U.S.C. § 1735f-14 and the HUD regulation that is found at 24 CFR 25.8 (d)(2).

In an Order dated July 13, 2001, I stayed the proceedings in this case at the request

of Respondent and stated that a conference call would be conducted during the week of

July 30, 2001, for the purpose of re-scheduling the hearing. Because of difficulties reaching Respondent or its attorney at that time and during multiple attempts, the conference call was not conducted until September 6, 2001. During this conference, Respondent's president, John Kelly, himself stated that he desired to retain a new attorney and requested time within which to do so. I granted the request for a one-week period.

On September 13 and 14, 2001, a clerk in this office attempted to reach Respondent by telephone for the purpose of scheduling a conference call to re-schedule the hearing. A message on Respondent's answering machine stated that it was full and the machine would not accept another message. Therefore, on September 14, my assistant sent a letter to Respondent stating that it was imperative that he contact this office and provide a phone number at which he may be reached. Nothing was heard from Respondent.

On October 16, 2001, I issued an Order To Show Cause which instructed Respondent to contact this office and file his response to the Order To Show Cause by October 30, 2001, showing cause why I should not issue a default judgment in the two matters named above in which all facts alleged would be found to be true and the amount demanded in penalties by the Government would be granted. Respondent was further informed that failure to respond adequately and timely to the Order To Show Cause would constitute Respondent's consent to the entry of such a default judgement. Respondent's failure to respond continues to date.

Accordingly, I find that Respondent has defaulted on its obligation to defend itself and this Decision is issued as a Default Judgment. An appropriate Order will be entered below. Since the civil money penalty action requires an initial decision and since there are no facts in dispute regarding withdrawal of Respondent's mortgage approval, the findings of the latter, as stated below, are incorporated in the decision on the former.

Findings of Fact

1. From HUD's approval on October 24, 1996, and at all times pertinent to the allegations contained in the Complaint, AFS was an HUD/FHA-approved loan correspondent as that term is defined in the regulation found at 24 CFR 25.3. Its main office is in Birmingham, Alabama. Complaint, ¶ 3.

2. During the period of October 4 - 8, 1999, the Department's Quality Assurance

Division conducted a review of the Respondent's HUD/FHA-insured mortgage loan origination activities. As a result of the review and pursuant to 24 CFR Part 30, the

Mortgagee Review Board (MRB or "Board") notified Respondent in a letter (the "Notice") dated July 18, 2000, that it intended to seek a civil money penalty against the Respondent based upon serious violations of HUD requirements which were discovered during the review. The Notice invited the Respondent to respond to the Quality Assurance Division's findings as identified in the MRB's Notice. Complaint, ¶¶ 5 - 7.

3. The Respondent replied to the Notice in a letter ("Response") dated August 31, 2000. On November 6, 2000, the MRB considered the allegations in the Notice and the Respondent's Response and voted to impose a civil money penalty against the Respondent in the amount of $45,000. In determining the amount of the civil money penalty to be imposed, the MRB considered the factors described in 12 U.S.C.A. § 1735f(c)(3) and found also at 24 CFR 30.80, which are: (1) the gravity of the offenses; (2) Respondent's history of prior offenses; (3) Respondent's ability to pay a penalty; (4) the injury to the public; (5) the benefits received by the Respondent; (6) the extent of potential benefit to other persons; (7) the deterrence of future violations; (8) the degree of Respondent's culpability; and (9) such other matters as justice may have required. Complaint, ¶¶ 8 - 10.

4. By letter dated December 13, 2000, the MRB notified AFS of the Board's decisions to withdraw the HUD/FHA approval of AFS for three years, effective upon AFS's receipt of the letter, and to seek civil money penalties against AFS in the amount of $45,000. AFS received the Withdrawal Letter on December 14, 2000, and by letter dated January 11, 2001, AFS requested a hearing with respect to the withdrawal action and the imposition of a civil money penalty. Complaint, ¶¶ 11 - 13.

5. In accordance with the provisions of the Order To Show cause and Respondent's subsequent consent to the entry of a default judgment, the following facts as stated in the Government's Counts contained in the Complaint at the paragraphs named are deemed to be true:

¶ 22 (Count 1) -- In violation of Mortgagee Letter 95-3 and HUD Handbook 4155.1 Rev-4 Chg-1, the Respondent knowingly and willfully failed to comply with HUD/FHA reporting requirements for 1997, 1998, and 1999.

¶ 25 (Count 2) – In FHA case number 011-4181463, the Respondent knowingly and materially used false gift letters to originate an FHA loan in violation of HUD requirements. Specifically, AFS loan officer and president John Kelly told the

seller to give the purchaser $3,000 for closing costs. Two gift letters in the file pledged $6,200 in gift funds, but the file did not contain verification of receipt of the $6,200.

¶ 28 (Count 3) – In FHA case number 011-4190731, in violation of HUD Handbook 4060.1, para. 2-25, and Mortgagee Letter 94-39, sec. D, the Respondent knowingly approved a home loan based upon a loan application that was taken by a real estate agent and not an employee of AFS.

¶ 31 (Count 4) – In FHA case number 011-4197559, in violation of HUD handbook 4060.1, para. 2-14, and Mortgagee Letter 94-39, the Respondent knowingly approved the McMonigal loan in spite of the fact that the AFS loan officer for this loan, Lou Thorne, was also listed as the real estate agent on the sales contract and other documents.

¶ 34 (Count 5) – In FHA case number 011-4244995, in violation of HUD Handbook 4000.2 Rev. 2, para. 5-10, Respondent knowingly failed to provide the Amison file to HUD upon its request.

¶ 37 (Count 6) – In FHA case number 011-4289314, in violation of HUD Handbook 4000.2 Rev. 2, para. 5-10, Respondent knowingly failed to provide the Hatcher file to HUD upon its request.

¶ 40 (Count 7) – In FHA case number 011-4304428, in violation of HUD Handbook 4000.2 Rev. 2, para. 5-10, Respondent knowingly failed to provide the Randall file to HUD upon its request.

¶ 43 (Count 8) – In FHA case number 011-4273740, in violation of HUD Handbook 4000.2 Rev. 2, para. 5-10, Respondent knowingly failed to provide the Perkins file to HUD upon its request.

¶ 46 (Count 9) – In FHA case number 011-4371191, in violation of HUD Handbook 4000.2 Rev. 2, para. 5-10, Respondent knowingly failed to provide the Shoemaker file to HUD upon its request.

¶ 49 (Count 10) – In FHA case number 011-4217408, in violation of HUD Handbook 4000.2 Rev. 2, para. 5-10, Respondent knowingly failed to provide a portion of the Adams file to HUD upon its request.

¶ 52 (Count 11) – In FHA case number 011-4244977, in violation of HUD

Handbook 4000.2 Rev. 2, para. 5-10, Respondent knowingly failed to provide a portion of the Pleasant file to HUD upon its request.

¶ 55 (Count 12) – In FHA case number 011-4349578, in violation of HUD Handbook 4000.2 Rev. 2, para. 5-10, Respondent knowingly failed to provide information regarding the HUD-1 referenced "buydown" contained in the Brown file to HUD upon its request.

¶ 58 (Count 13) – In FHA case number 011-4073755, in violation of HUD Handbook 4000.2 Rev. 2, para. 5-10, Respondent knowingly failed to provide a portion of the Frazier loan file to HUD upon its request.

¶ 61 (Count 14) – In FHA case number 011-4297551, in violation of HUD Handbook 4000.2 Rev. 2, para. 5-10, Respondent knowingly failed to provide a portion of the Payne loan file to HUD upon its request.

Conclusion and Order

Allied Financial Services was found to be in default and thus is deemed to have admitted the allegations of fact and law made by the Board. *See* 24 CFR 30.90. Therefore, I find that Respondent AFS knowingly and materially violated the applicable statutes and regulations listed in the Complaint and referenced in paragraph five, above, of this Default Decision And Order in the manner described in the 14 counts named in the Complaint. I further find that the three-year withdrawal of HUD/FHA approval is justified and that the civil money penalty in the amount of $45,000 is appropriate.

Respondent Allied Financial Services, Inc., shall forbear any HUD/FHA mortgage activity and pay the last-named amount to the Secretary of HUD without further proceedings and within 45 days of the date of this Order. In accordance with the regulation that is codified at 24 CFR 26.39, this Order constitutes the final agency action on this matter.

So **ORDERED**.

ROBERT A. ANDRETTA
Administrative Law Judge

Dated: March 5, 2002