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

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,	)	
Petitioner,	)	
v.	)	HUDALJ 08-023-PF
	)	OGC Case No. 08-3471-PF
GEORGE RIVAS and GUILD MORTGAGE COMPANY,	)	
Respondents.	)	

DEFAULT JUDGMENT AND ORDER

I. Procedural History

On December 7, 2007, the Department of Housing and Urban Development ("HUD" or "the Department") instituted this action by issuing a Complaint to Respondent George Rivas ("Rivas") as well as Guild Mortgage Company ("Guild") charging them with one count of violating the Program Fraud Civil Remedies Act of 1986 ("PFCRA"), 31 U.S.C. §§ 3802(a)(1), and its implementing regulation, 24 C.F.R. § 28.10(a). Specifically, the Complaint alleges that, on or about November 27, 2000, Rivas, a loan officer for Guild, submitted to HUD a Uniform Residential Loan Application in the name of a fictitious borrower, supported by various false and fraudulent financial documents, in order to induce HUD to provide Guild mortgage insurance on a loan to purchase real property. HUD relied upon the false and fraudulent material facts in the documents submitted and insured the mortgage loan funded by Guild. Upon default of the loan, HUD paid Guild's insurance claim and took possession of the property. For this violation, the Department sought to impose against Rivas and Guild, jointly and severally, a civil penalty in the amount of $5,500 plus assessment of twice the amount of the insurance claim paid ($296,437.04) less its recovery on the sale of the property ($111,000), for a total of $190,937.04.

On December 18, 2007, HUD resolved its case against Guild pursuant to which Guild paid $3,000 in penalty and $37,218.52 in assessment. Having notice that the Complaint previously issued had never reached Respondent Rivas, the Department resent it to a corrected address on December 21, 2007 and subsequently received notice that Respondent Rivas accepted service of it on January 4, 2008.

On February 11, 2008, having received no response to the Complaint from Respondent Rivas, HUD filed a Motion for Default ("Motion") together with a copy of the Complaint, pursuant to 24 C.F.R. §§ 26.39 and 28.30(b), supported by the Declaration of Tammie Parshall, Paralegal Specialist and Docket Clerk, United States Department of Housing and Urban Development. The Motion requests that default judgment be entered against Respondent Rivas and that he be found liable for the full amount of the civil penalty and assessment sought in the Complaint less that portion thereof paid by Guild, for a reduced total penalty of $2,500 and assessment of $148,218.52.

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

II. Relevant Statutory and Regulatory Provisions

Section 3802(a)(1) of the Program Fraud Civil Remedies Act ("PFCRA") provides in relevant part that -

> Any 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; [or]
>
> (C) includes or is supported by any written statement that –
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> (i) omits a material fact;
>
> (ii) is false, fictitious, or fraudulent as a result of such omission; and
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> (iii) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact;
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> * * *
>
> shall be subject to . . . a civil penalty of not more than [$5,500] for each such claim. [S]uch person shall also be subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim, or the portion of such claim, which is determined under this chapter to be in violation of the preceding sentence.

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

For the purposes of the PFCRA, the term "claim" means –

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[1] 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 civil penalty for such violations was increased as of September 29, 1999 from $5,000 to $5,500. *See* 28 C.F.R. § 85.3(a)(10); 64 Fed. Reg. 47099(August 30, 1999).

any request, demand, or submission --

(A) made to an authority for property, services, or money (including money representing grants, loans, insurance, or benefits)

* * * *.

31 U.S.C. § 3801(a)(3)(A); 24 C.F.R. § 28.5. An "authority" means an executive department. 31 U.S.C. § 3801(a)(1)(A). 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,* 24 C.F.R. § 28.10(d); 31 U.S.C. § 3803(f).

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), 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 a decision on the motion for default shall issue within 15 days after the expiration of the time for filing a response thereto, which is within seven (7) days of 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

In accordance with 24 C.F.R. § 28.25(a), on December 7, 2007, the Complaint was sent by certified mail to Respondent George Rivas at his last known address. *See*, Declaration of Tammie Parshall, attached as Exhibit 1 to the Motion.[2] That mailing was returned to HUD with the representation of "no such number." On December 21, 2007, the Department served the Complaint upon Respondent Rivas at a corrected address. *Id.* Respondent Rivas received the Complaint on January 4, 2008. *Id.; see* "Green Card" attached as Exhibit 1 to the Parshall Declaration. As required by 24 C.F.R. § 28.25, the Complaint advised Respondent Rivas that he may submit a written response to it within thirty days and that if he did not respond -

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[2] On April 16, 2008 HUD submitted to this Tribunal a copy of a Memorandum for File indicating that it had received from the Department of Justice the approval required by 24 C.F.R. §§ 28.20 and 28.25 to file this Complaint in a Memorandum dated November 13, [illegible].

> . . . HUD will file the Complaint along with a motion for default judgment against . . . Respondent, 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 . . . Respondent's right to a hearing on such allegations. The penalty proposed in this Complaint shall be set forth in the default order and shall be immediately due and payable by Respondent[]. *See*, 24 C.F.R. § 26.39(c).

See, Complaint at 9. The Complaint states that copies of 24 C.F.R. Part 28 and Part 26, Subpart B, were included with the Complaint. *Id. See also*, Motion, Exhibit 2.

HUD represents in its Motion for Default that it has not received any response to the Complaint or other pleading from Respondent Rivas, and in support, presents a Declaration made by Tammie Parshall, its Custodian of Records, dated February 11, 2008. *See*, Motion, Exhibit 1. The file reflects that HUD served a copy of its Motion for Default upon Respondent Rivas by UPS (Ground) delivery on February 11, 2008 as an attachment to its memorandum of "Referral to the Administrative Law Judge" of this action. *See*, Certificate of Service attached to Referral memorandum.

To date, the Office of Administrative Law Judges has not received from Respondent Rivas any response to the Complaint or to the Motion for Default. In that the time periods provided for Respondent Rivas to respond to the Complaint and/or Motion for Default have expired, Complainant's Motion is hereby **GRANTED**, and Respondent Rivas is hereby found in **DEFAULT** pursuant to 24 C.F.R. § 26.39.[3] In accordance with that regulation, default constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent Rivas' right to a hearing on such allegations.

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

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[3] It is recognized that HUD's regulations (24 C.F.R. § 26.39(b)) 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, which is within seven (7) days of service of the motion, and that this Decision is not being issued in such time frame. As explanation therefore, it is noted that this matter is being heard by the Administrative Law Judges of the United States Environmental Protection Agency pursuant to an Interagency Agreement which first became effective on March 12, 2008. Such Agreement was necessary because of the retirement as of the end of the last calendar year of all of the Administrative Law Judges at HUD. Neither party is significantly prejudiced by the delay in issuance of this Decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The U.S. Department of Housing and Urban Development ("HUD") is an executive department of the United States Government and as such an authority within the definition of 31 U.S.C. § 3801(a)(1).

2. Pursuant to Section 203(b) of the National Housing Act, 12 U.S.C. § 1709(b), HUD, through the Federal Housing Administration ("FHA"), insures private lenders against losses they may sustain as a result of a mortgage loan defaulted on by a borrower.[4]

3. To obtain HUD/FHA insurance under Section 203(b) of the National Housing Act, it must be established to HUD's satisfaction that the intended borrower has a satisfactory credit standing and income that is and will be adequate to meet: (1) periodic payments required by the mortgage submitted for insurance, and (2) other long-term obligations. *See,* 24 C.F.R. § 203.33-34.

4. The Section 203(b) loan insurance program requires the intended borrower to submit a Uniform Residential Loan Application ("URLA") containing financial information to be relied upon in underwriting the loan. The URLA requires the applicant to identify his current employer(s), employment history, as well as indicate his current monthly income and combined housing expenses. In addition to the URLA, HUD also requires the intended borrower to provide documentary proof of income, generally in the form of W-2s, Verification of Employment, or paycheck stubs, to ensure that the borrower has sufficient gross income to meet current debt payments and periodic mortgage payments.

5. The URLA contains a certification which must be signed by the intended borrower that the information being provided is true and correct and that any misrepresentations could lead to criminal and civil penalties as well as "liability for monetary damages to the Lender, its . . . insurers . . . who may suffer loss due to reliance upon any misrepresentation which I/we have made on this application."

6. If the financial documentation is deemed sufficient, the lender certifies to HUD that the mortgage is eligible for insurance and HUD in turn relies on the lender's certification as well as the URLA and supporting proof in agreeing to insure the mortgage.

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[4] "The goal of the National Housing Act is to provide a decent home and a suitable living environment for every American family. []. To accomplish this goal, Congress established a mortgage insurance program . . . The mortgage insurance program was designed to permit lenders to offer 'virtually risk-free mortgages to low income families,' by guaranteeing the lenders against loss in the event of a default." *Wingfield v. Wolf,* 1989 U.S. Dist. LEXIS 13469 (D. Pa. 1989)(quoting *Madison v. U.S. Dept. of Housing and Urban Development, et al.*, 60 B.R. 837, 838 (E.D. Pa. 1986))

7. At the time relevant hereto, Respondent Rivas was employed by Guild Mortgage Company as a loan officer responsible for helping potential borrowers complete URLAs and submitting supporting documentation in applying for loans from Guild secured by real property.

8. On or about November 27, 2000, Respondent Rivas created a fictitious buyer,"Ariel Sbroso," in order to purchase a property located at 9908 S. Main Street, Los Angeles, California (hereinafter referred to as "Property"). The purchase price of the property was approximately $138,000.

9. In connection with said purchase, Respondent Rivas submitted to HUD an FHA loan application packet in the name of the fictitious buyer. (FHA# 197-1836415) The materially false and fraudulent documents contained in the application packet included a URLA, W-2 forms, pay stubs, Verification of Employment forms, and income tax returns.

10. Rivas knew or had reason to know that the Sbroso statements in the URLA and the supporting documentation were false because he created the fictitious buyer as part of a scheme he was involved that provided, caused or otherwise arranged the materially false and fraudulent URLA, W-2 Forms, pay stubs, Verification of Employment forms, and income tax returns.[5]

11. The false URLA, W-2 Forms, pay stubs, Verification of Employment forms, and income tax returns that Rivas submitted to HUD were material to HUD's decision to endorse the mortgage issued to the fictitious buyer by Guild.

12. HUD relied on the false URLA, W-2 Forms, pay stubs, Verification of Employment forms, and income tax returns submitted to determine the mortgage was eligible for insurance, which resulted in HUD endorsing the mortgage for insurance.

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[5] On October 17, 2005, Respondent Rivas pled guilty to violating 18 U.S.C. § 1341 (mail fraud) and 18 U.S.C. § 2 (aiding and abetting) based on his conduct at issue in this case. In the plea agreement relating thereto, Respondent Rivas admitted that beginning prior to January 2001, he and others devised and carried out a scheme to defraud HUD and to obtain money and property from HUD through false and fraudulent pretenses. As part of this scheme, Rivas and others prepared and/or caused to be prepared false loan applications and false supporting documentation on behalf of fictitious and unqualified borrowers. Respondent Rivas and others also created and/or caused to be created, fraudulent identification and income documentation. Rivas and others would then submit these fraudulent documents to HUD to induce HUD to insure the mortgages. Based upon said plea, a judgment and conviction were entered against Rivas on or about January 17, 2007 in the United States District Court for the Central District of California. *United States v. George Rivas,* No. CR 05-01025(C.D. Cal. 2007).

13. On or about June 2001, there was a default on the Property's mortgage loan and on April 22, 2002, Guild submitted an insurance claim to HUD in regard thereto. HUD paid Guild's claim in the amount of $148,218.52 and took possession of the Property, which it later sold for $111,000.00.

14. Based upon the foregoing, it is hereby found that Respondent Rivas violated 31 U.S.C. § 3802(a)(1) by submitting a claim to HUD that he knew or had reason to know was false, fictitious or fraudulent and/or included or was supported by a written statement which asserted a material fact that was false, fictitious or fraudulent, in connection with obtaining FHA/HUD mortgage insurance for the loan secured by the Property.

DETERMINATION OF CIVIL PENALTY AMOUNT

15. Section 26.39 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).

16. Section 3802(a)(1) of PFCRA, 31 U.S.C. § 3802(a)(1)(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 the violation of 31 U.S.C. § 3802(a)(1) found here. In addition to such penalty, said Section provides that the violator shall also be subject to an "assessment in lieu of damages sustained by the United States" of not more than twice the amount of false claim submitted. 31 U.S.C. § 3802(a)(1).

17. Section 28.40(b) of the applicable Rules provides with regard to the factors to consider in determining amount of the penalty and assessment 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.

24 C.F.R. § 28.40 (emphasis added).

18. Neither the Complaint nor the Motion indicates that HUD took these factors into consideration in determining the penalty or the assessment proposed, which, less the sums paid by Guild, is the maximum allowed by law for such violations.

19. Nevertheless, having found that Respondent Rivas violated the PFCRA, I have determined that imposition of a $2,500 civil penalty and an assessment in the amount of $148,218.52, as proposed in the Motion, is appropriate.

20. In doing so, I have taken into account the seventeen (17) factors identified in 24 C.F.R. § 28.40 and in particular I note that the record evidences that Respondent has a high degree of culpability for the violation in that, *while employed in the capacity of a loan officer*, he engaged with others in a scheme which caused numerous wholly and materially false and fraudulent documents to be submitted to HUD in order to obtain the benefit of its Section 203(b) insurance. Further, as a result of Respondent's violative acts, HUD paid Guild's substantial insurance claim of $148,218.52 and incurred responsibility for disposing of the property. In addition, HUD undoubtably also incurred the cost both in terms of time and money of investigating Respondent Rivas' misconduct. Moreover, such misconduct undermined the laudable intent of the National Housing Act by diverting Department resources from providing services and benefits to the intended beneficiaries of HUD's Section 203(b) loan insurance program: low income families and their lenders. There is a strong need to deter Respondent Rivas and others, especially those who are in the position of a loan officer, from engaging in such egregious misconduct. It is noted that the penalty sought here by HUD is reduced from that proposed in the Complaint by the amount HUD recovered from Guild and the assessment sought represents the amount of the claim paid by HUD less the amounts recovered upon re-sale of the property and from Guild in settlement. Finally, it is noted that although given an opportunity to do so, Respondent has proffered no evidence in support of the mitigation of the proposed penalty.

ORDER

1. For failing to respond to the Complaint in a timely manner as indicated above, and upon motion filed, Respondent Rivas is hereby found in **DEFAULT**.

2. Pursuant to 31 U.S.C. § 3803, Respondent Rivas is found to have violated the Program Fraud Civil Remedies Act, 31 U.S.C. § 3802(a)(1). A civil penalty in the amount of $2,500 and an assessment, in lieu of damages, in the amount of $148,218.52 are hereby imposed against him for such violation.

3. The civil penalty and assessment imposed here are due and payable immediately without further proceedings. 24 C.F.R. § 26.39(c).

4. This order shall constitute a final agency action. 24 C.F.R. § 26.39(b).

Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency[6]

Dated: April 18, 2008
Washington, D.C.

[6]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 this **Default Judgment And Order** issued by Susan L. Biro, Chief Administrative Law Judge, in HUDALJ 08-023-PF and OGC Case No. 08-3471-PF were sent to the following parties on this 18th day of April, 2008, in the manner indicated:

Maria Whiting-Beale

Maria Whiting-Beale
Acting Docket Clerk

REGULAR MAIL AND CERTIFIED MAIL RETURN RECEIPT TO:

George Rivas
[redacted]

REGULAR MAIL AND FACSIMILE TO:

Elissa O'Leary, Esquire
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