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

In the Matter of:	)	HUDALJ 08-043-PF
Joseph N. Giuliano, Gary Stanco, and Cecilia LaPointe,	)	HUDOGC 08-3515-PF (LaPointe) HUDOGC 08-3516-PF (Stanco) HUDOGC 08-3517-PF (Giuliano)
Respondents.	)	

HUD
DEPT EXECUTIVE SECRETARIAT CTR
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DEFAULT JUDGMENT AND ORDER

I. Procedural History

On April 28, 2008, the United States Department of Housing and Urban Development (HUD) instituted this action by issuing a nine (9) count Complaint to Joseph N. Giuliano (Respondent or Giuliano) and two other parties, Cecilia LaPointe and Gary Stanco, pursuant to the Program Fraud Civil Remedies Act ("PFCRA"), 31 U.S.C. §§ 3801-3812 and the applicable regulations at 24 C.F.R. Part 28.[1] The Complaint alleges that Giuliano (and the others) submitted, or caused to be submitted, to HUD, loan applications which they knew or had reason to know contained false statements and/or false certifications in order to induce HUD to issue mortgage insurance on the loans. Specifically, HUD asserts that Respondent Giuliano as the owner, operator, and chief financial officer of First Source Financial USA, Inc. (FSF), a former Federal Housing Administration (FHA) approved mortgagee, submitted or cause to be submitted to HUD for the purpose of obtaining mortgage insurance, Uniform Residential Loan Applications (URLAs) and addendums thereto (URLA Addendums) in connection with nine (9) mortgage loans issued by FSF in 2002. Said URLAs and URLA Addendums contained false lender certifications to the effect that they represented to being signed by a FHA-approved lender, that the loans were originated by an employee of said lender, that the supporting credit reports and/or employment verifications were directly ordered, requested and/or received by said lender, that the statements made in the application for insurance therein were true and accurate, and that said lender did not pay any kickbacks,

1. Based upon settlements reached, HUD's actions against Gary Stanco and Cecilia LaPointe were dismissed by Orders dated July 10, 2008 and August 22, 2008, respectively. Prior thereto, HUD submitted a Prehearing Exchange with various exhibits in regard to its claims against Cecilia LaPointe, which are cited herein as "HUD PHE Ex."

fees, or other consideration to any parties in connection with the transaction except as permitted by HUD regulations and administrative instructions. The certifications were false the Complaint asserts because the URLA's and/or Addendums were signed by and/or the supporting documentation acquired by Cecilia Lapointe, and/or Five Star Partnership, LLC *dba* Fire Star Mortgage or SGL Enterprises, Inc. or others, who were not employees or authorized branches or agents of FSF at the time the loan originated, and for which they received unpermitted compensation. In addition, the Complaint alleges that the loans used FSF's lender identification code to conceal the fact that the loans were being originated by an non-FHA approved lender. For the nine counts of violations alleged in the Complaint, HUD requested imposition upon Respondent Giuliano of an aggregate civil penalty in the amount of $49,500, and the imposition of a penalty in the same amount upon each of the other two respondents.

Having received no response to the Complaint from Respondent Giuliano, on August 15, 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 on the nine counts and that a $24,500 civil penalty be imposed upon him therefor, said amount being the initial penalty sought of $49,500 less the sum of $25,000 being the amount HUD has already received as a result of its settlement with the other two respondents named in the Complaint.[2]

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

II. Motion for Default

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

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2. By Memorandum dated March 24, 2008, DOJ authorized HUD to institute an action against the three parties named herein seeking civil penalties "jointly and severally, in the amount of $88,000." *See*, Exhibit 1 to Motion for Default. The Complaint, however, does not request a finding of joint and several liability and instead requests imposition of a civil penalty against *each* of the three respondents in the amount of $49,500, for a total of $148,500. *See*, Exhibit 2 to Motion for Default. In its Motion for Default (footnotes 1 and 2) HUD acknowledges this inconsistency and indicates that it is therefore now seeking joint and several liability and only in the total amount of $49,500 and consistent therewith has reduced the civil penalty it currently seeks from Respondent Giuliano based upon sums it obtained in settlement from the other two respondents. Such reduction brings the total penalty now sought in this case to within that amount authorized by DOJ.

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 Judge 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©. 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).

On April 28, 2008, pursuant to 24 C.F.R § 28.25(a), the Complaint was sent to Respondent Giuliano at 43 Desert Highlands Drive, Henderson, NV 89052 by certified mail, return receipt requested. *See*, Certificate of Service accompanying the Complaint; attached as Exhibit 2 to the Motion. The Complaint that HUD mailed to Respondent was returned to HUD "UNCLAIMED" on or about May 17, 2008. *See* Exhibit 4 to the Motion. On April 30, 2008, HUD personally served Respondent Giuliano with a copy of the Complaint. *See,* Declaration of HUD Special Agent Murray Stravers attached as Exhibit 3 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 consitute 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 25-26. 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 August 11, 2008. *See*, Motion, Exhibit 5. The motion reflects that HUD served a copy of its Motion for Default Judgment upon Respondent by UPS Overnight at 43 Desert Highlands Drive, Henderson, NV 89052 on August 15, 2008. *See*, Certificate of Service attached to Motion.

To date, the Office of Administrative Law Judges has not received from Respondent Giuliano 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. 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).

Therefore, pursuant to 24 C.F.R. § 26.39, Complainant's Motion is hereby **GRANTED**, and Respondent is hereby found in **DEFAULT**.

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, 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 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); 24 C.F.R. Part 202.

3. Mortgages insured by HUD/FHA under section 203 of the National Housing Act (12 U.S.C. § 1702 *et seq.*) must be wholly originated, funded, closed and submitted by FHA-approved mortgagees in their own name. *See*, HUD PHE Ex. 26 (HUD Handbook 4060.1 REV-1 (Sept. 30, 1993)) ¶¶ 1-2, 2-15, 2-25.; and PHE Ex. 27 Mortgagee Letter 00-15.

4. The loan officer originating FHA-insured mortgages on behalf of an FHA-approved mortgagee must be exclusively employed by the mortgagee and may not be independent contractors or contract employees. *See*, HUD PHE Ex. 26 (HUD Handbook 4060.1 REV-1) ¶ 2-14; PHE Ex. 19 referring to Mortgage Letter 96-12 (third parties may not originate FHA-insured mortgages).

5. To ensure that a prospective borrower qualifies for an FHA-insured loan, loan officers of FHA-insured mortgagors must establish, among other things, that the prospective borrower meets HUD's employment, credit and cash investment requirements. *See* 24 C.F.R. §§ 203.33 and 203.34.

6. To ensure that a prospective borrower has adequate income and satisfactory credit, employees of the FHA-approved mortgagee must directly collect and verify certain documents and information relating to the prospective borrower and his or her qualification for a mortgage loan. *See*, HUD Handbook 4155.1 REV-4 CHG 1 ¶ 3-1 and 4000.2 REV-2 ¶ 3-6.

7. Further, a FHA-approved mortgagee is prohibited from paying any fee, kickback or consideration of any type, including a portion of the mortgage origination fee) directly or indirectly, to any one else in connection with this transaction except as permitted under HUD regulations and administrative instructions. See, HUD Handbook 4060.1 REV-1 ¶ 2-24.

8. Applying for a HUD/FHA-insured mortgage requires the prospective borrower and the loan officer or other employee authorized to bind the FHA-approved lender to complete, sign, and submit to HUD a "Uniform Residential Loan Application" (URLA) and an "Addendum to URLA" (Form 92900-A) (URLA Addendum) which, *inter alia*, contains express certifications as to the accuracy of the information and statements contained in the URLA and the URLA Addendum and an acknowledgment that the certifications are being made by the FHA-approved mortgage lender to induce HUD to issue mortgage insurance in connection therewith. *See e.g.* HUD PHE Ex. 28 (URLA and URLA Addendum (HUD form 92900-A)); HUD PHE Ex. 26 (HUD Handbook 4060.1 REV-1) ¶ 2-15, 4-2.

9. Specifically, the Lender's Certification on the first page of the URLA Addendum states: "[t]he undersigned lender makes the following certifications to induce…the Department of Housing and Urban Development-Federal Housing Commissioner to issue a firm commitment for mortgage insurance or a Mortgage Insurance Certification under the National Housing Act." *See e.g.* HUD PHE Ex. 28 (URLA Addendum (HUD form 92900-A) Part II, § 21).

10. In addition, the Lender's *Certification* on the first page of the URLA Addendum (HUD form 92900-A) states in pertinent part that:

> The credit report submitted on the subject borrower (and co-borrower, if any) was ordered by the undersigned lender or its duly authorized agent directly from the credit bureau which prepared the report and was received directly from said credit bureau.
>
> The verification of employment … w[as] requested and received by the lender or its duly authorized agent without passing through the hands of any third persons and [is] …true to the best of the lender's knowledge and belief.

See e.g. HUD PHE Ex. 28 (URLA Addendum form, Part II, § 21© and (D)).

11. The URLA Addendum form also contains on page four a Lender's *Certificate* wherein the lender by its signature thereon further certifies as true, *inter alia*, that:

> (a) The statements made in its application for insurance and in this Certificate are true and correct; [and]

* * *

(g) It has not paid any kickbacks, fee or consideration of any type, directly or indirectly, to any party in connection with this transaction except as permitted under HUD regulations and administrative instructions.

See e.g. HUD PHE Ex. 28 (URLA Addendum form, Page 4).

12. Under the Program Fraud Civil Remedies Act (PFCRA), a civil penalty may be imposed upon a person who makes, presents, or submits or causes to be made, presented, or submitted, a written statement that the person knows or has reason to know asserts a material fact which is false, fictitious, or fraudulent and contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement. *See* 38 U.S.C. § 3802(a)(2); 24 C.F.R. § 28.10(b)(1).

13. Under the PFCRA, a statement includes any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made in relation to (including relating to eligibility for) a mortgage loan from a person or entity, if HUD will reimburse that person or entity for any portion of the loan. *See* 38 U.S.C. § 3801(a)(9); 24 C.F.R. § 28.5.

14. 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* 38 U.S.C. § 3801(c); 24 C.F.R. § 28.10(b)(2)-(3).

15. In January 2001, First Source Financial USA, Inc., ("FSF") was approved by HUD to be an FHA-approved (Title II) lender and assigned Mortgagee number 16805500006). *See*, HUD's PHE Ex. 2. On September 13, 2004, FSF, including all its branches, resigned its FHA approval. HUD's PHE Ex. 21.

16. 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 the owner, operator, chief executive officer, president, secretary and/or treasurer of FSF. *See*, HUD's PHE Exs.1, 2, 3, 14.

17. FSF was the mortgagee of record in each of the nine loan transactions identified respectively in the nine Counts of the Complaint as the: Brittany Way Loan (Count 1); Viewmont Drive Loan(Count 2); Tollbrook Way Loan (Count 3); Lucky Strike Way Loan (Count 4); Harley Way Loan (Count 5); Lucite Lane Loan (Count 6); Luna Way Loan (Count 7); Chapman Drive Loan (Count 8); and Bonita Avenue Loan (Count 9). *See*, HUD's PHE Exs. 2, 4, 10, 13, 21, 28, 29, 37.

18. Cecilia LaPointe was the loan officer who originated all nine of the FHA-insured mortgage loans at issue in the Complaint. *See*, HUD's PHE Ex. 6.

19. At the time the nine loans were originated Cecilia LaPointe was not an employee or duly authorized agent of FSF or any branch thereof. *See*, HUD's PHE Ex.8 and 20 (wherein Respondent Giuliano represents that Cecilia LaPointe was hired by FSF as a loan officer on April 26, 2002) and Ex. 23 (indicating that Cecilia LaPointe's Registration as being with FSF "Closed" on May 2, 2002 according to the records of the State of Nevada Mortgage Lending Division). All the subject loans in this matter originated and/or closed after May 2, 2002, between May 31, 2002 and July 30, 2002.

20. Cecilia LaPointe certified or caused certifications to be made, in each of the nine loans at issue in the Complaint, that the credit reports and other loan documents described in the Complaint had been requested and/or received by FSF, when, in fact, the documents had been requested and/or received by SGL Enterprises, Inc., Five Star Partnership, LLC *dba* Five Star Mortgage, Las Vegas Mortgage or Desert Mortgage or the employees or agents of those entities or others.

21. At the time each of the nine loans at issue here were originated SGL Enterprises, Inc., Five Star Partnership, LLC *dba* Five Star Mortgage, Las Vegas Mortgage and Desert Mortgage, were not employees, authorized branches and/or duly authorized agents of FSF or any branch thereof. *See*, HUD's PHE Ex.8., 24; HUD PHE Ex. 26 (HUD Handbook 4060.1 REV-1) ¶ 2-27 (defining "authorized agents" of FHA-approved mortgagees as another authorized FHA-approved mortgagee who has been previous approved by HUD to act in such capacity); HUD PHE Ex. 27 (Mortgagee Letter dated May 1, 2000 noting that separate entities may not operate as branches of a HUD/FHA-approved mortgagee if they lack FHA approval).

22. Respondent Giuliano and FSF submitted and/or caused to be submitted to HUD in connection with each of the nine mortgage loans at issue URLAs and URLA Addendums containing materially false certifications for the purpose of obtaining an HUD-insured mortgage loan in regard thereto.

23. Each of the URLA Addendum forms signed and submitted or caused to be submitted by Respondent Giuliano to HUD in regard to Count 1-the Brittany Way Loan; Count 2-the Viewmont Drive Loan; Count 4-the Lucky Strike Loan; Count 5-the Harley Way Loan; and Count 6-the Lucite Lane Loan identified in the Complaint contained the following Lender's Certifications:

(I) The credit report submitted on the subject borrower (and co-borrower, if any) was ordered by the undersigned lender or its duly authorized agent directly from the credit bureau which prepared the report and was received directly from said credit bureau.

(ii) The statements made in its application for insurance and in this Certificate are true and correct; [and]

(iii) It has not paid any kickbacks, fee or 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 PHE Ex. 28 (Brittany Way Loan URLA Addendum signed on FSF's behalf by Gary Stanco as "Lender's Officer" in two places on June 20, 2002); Ex. 29 (Viewmont Loan URLA Addendum signed on FSF's behalf by Nicole Desmond on July 10, 2002); Ex. 31 (Lucky Strike Loan URLA Addendum signed on FSF's behalf by Nicole Desmond on July 11, 2002); Ex. 31 (Harley Way Loan URLA Addendum signed on FSF's behalf by Nicole Desmond for Cecilia LaPointe on June 20, 2002); and Ex. 33 (Lucite Lane Loan URLA Addendum signed on FSF's behalf by Cecilia LaPointe on June 24, 2002).

24. The foregoing certifications made in regard to those five loans by FSF were false. FSF did not request and receive the credit reports directly from the credit reporting agency. Five Star Mortgage, which lacked HUD's approval to originate FHA-insured mortgages, ordered and received the referenced credit reports. *See*, HUD PHE Exs. 28 , 29, 31, 32 and 33 evidencing credit reports in regard to Brittany Way, Viewmont, Lucky Strike, Harley Way and Lucite Lane were prepared for Five Star Mortgage.

25. Additionally, FSF paid Cecilia LaPointe and/or SGL Enterprises, Inc. in connection with the origination of these five loans and said payments were not fees or consideration permitted under HUD's regulations and/or administrative instructions.

26. Each of the URLA Addendum forms for these five mortgages used FSF's lender identification code concealing from HUD the fact that the FHA-insured mortgage loans were not originated or funded by FSF but by Five Star Mortgage and/or its employees or agent or others. *See,* HUD PHE Exs. 28-33 (URLA Addendums Box 13) generally and particularly the HUD PHE Exs. 31 and 32 Settlement Statements indicating the loans on which FSF sought HUD insurance were funded by Five Star Mortgage and Mercury Mortgage, respectively.

27. Each of the URLA Addendum forms signed and submitted or caused to be submitted by Respondent Giuliano to HUD in regard to Count 3-the Tollbrook Way Loan and Count 7-the Luna Way Loan, identified in the Complaint contained the following Lender's Certifications:

(I) The verification of employment...w[as] requested and received by

the lender or its duly authorized agent without passing through the hands of any third persons and [is] true to the best of the lender's knowledge and belief;

(ii) The statements made in its application for insurance and in this Certificate are true and correct; and

(iii) [The lender] 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.

HUD PHE Ex. 30 (Tollbrook Way Loan URLA Addendum signed on FSF's behalf by Nicole Desmond on May 28, 2002) and Ex. 34 (Luna Way Loan URLA Addendum signed on FSF's behalf by Cecilia LaPointe on June 13, 2002).

28. The foregoing certifications were false. The Verifications of Employment were not requested and/or received by the lender, FSF, without passing through the hands of Five Star Mortgage or Las Vegas Mortgage or other third persons. *See*, HUD PHE Exs. 30 and 34 indicating Credit Report/Employment information in regard to the Tollbrook Way and Luna Way Loans were prepared for National City Mortgage).

29. Additionally, FSF paid Cecilia LaPointe and/or SGL Enterprises, Inc. in connection with the origination of these five loans and said payments were not fees or consideration permitted under HUD's regulations and/or administrative instructions. *See*, HUD PHE Ex. 30 (Tollbrook Way loan settlement statement reflecting loan origination fee paid to Five Star Mortgage).

30. Each of the URLA Addendum forms for these five mortgages used FSF's lender identification code concealing from HUD the fact that the FHA-insured mortgage loans were originated or funded not by FSF but rather by LaPointe, Five Star Mortgage, or others. *See,* HUD PHE Ex. 30 (Tollbrook loan URLA Addendum); Ex. 34 Settlement statement for Luna Way Loan indicating the lender as National City Mortgage Company.

31. Each of the URLA Addendum forms signed and submitted or caused to be submitted by Respondent Giuliano to HUD in regard to Count 8-the Chapman Drive Loan and Count 9-the Bonita Avenue Loan identified in the Complaint contained the following Lender's Certifications:

1. The verification of employment...w[as] requested and received by the lender or its duly authorized agent without passing through the hands of any third persons and [is] true to the best of the lender's knowledge and belief;

2. The credit report submitted on the subject borrower (and co-borrower, if any) was ordered by the undersigned lender or its duly authorized agent directly from the credit bureau with prepared the report and was received directly from said credit bureau;

3. The statements made in its application for insurance and in this Certificate are true and correct; and

4. [The lender] 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.

HUD PHE Ex. 35 (Chapman Drive Loan URLA Addendum signed on FSF's behalf for Cecilia LaPointe on July 10, 2002); HUD PHE Ex. 36 (Bonita Avenue Loan URLA Addendum on FSF's behalf by "G. Weber - Shipper" on June 27, 2002)

32. These certifications were false. The Verifications of Employment obtained in regard to these loans were not requested and/or received by FSF without passing through Five Star Mortgage and/or Desert Funding, a third persons.

33. Further, FSF did not request and receive the credit reports directly from the credit bureau. The credit reports were ordered and received by Don Salazar, Iris Benavidez Salazar and/or Sophie LaPointe, employees, agents or owners of Five Star Mortgage and/or Desert Funding. See, HUD PHE Exs. 35, 36

34. Additionally, FSF paid Cecilia LaPointe and/or SGL Enterprises, Inc. in connection with the origination of these five loans and said payments were not fees or consideration permitted under HUD's regulations and/or administrative instructions.

35. Each of the URLA Addendum forms for these five mortgages used FSF's lender identification code concealing from HUD the fact that the FHA-insured mortgage loans were originated or funded not by FSF but by others. See, HUD PHE Ex. 35 (Settlement Statement for Chapman Drive Loan indicating the lender as National City Mortgage Company and Ex. 36 indicating the lender on the Bonita Avenue Loan as Realty Mortgage Corp.).

36. At all times pertinent hereto, Respondent Giuliano, as the officer who managed FSF, had knowledge of FSF's business practice of permitting non-FHA approved entities to originate FHA-insured mortgages using FSF's FHA identification number .

37. At all times pertinent hereto, Respondent Giuliano, as the officer who managed

FSF, knew or had reason to know that false statements were being submitted to HUD in connection with the nine mortgage loans identified in the Complaint.

38. Additionally, Respondent Giuliano 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 who were not employees of FSF.

39. In regard to each of the nine mortgage loans identified in the Complaint, Respondent Giuliano submitted or caused to be submitted to HUD written statements 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.

40. The accuracy of the information contained within the FHA loan applications at issue is material to the Department.

41. The fact that each of the loans at issue was originated by an entity not approved by HUD to originate FHA-insured loans is material to the Department.

42. HUD relied upon the false certifications that Respondents Giuliano caused to be submitted to HUD as part of the mortgage loan applications described in the Complaint.

43. HUD would not have approved the nine mortgage loans for FHA insurance if HUD had been aware of the false certifications described above and in the Complaint.

44. Respondent Giuliano has failed to file an Answer to the Complaint or a response to the Motion for Default Judgment.

45. In regard to the nine mortgage loans identified in the Complaint, Respondent is hereby found to have committed *at least* nine separate violations of 31 U.S.C. § 3802(a)(2) in 2002.

46. 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.

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.

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 6 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 six month period, Respondent Giuliano knowingly and intentionally caused false certifications/statements to be submitted to the U.S. Government nine times. He attempted to conceal the falsity by allowing non-FHA-approved branches to use FSF's lender identification code. As a result, HUD insured in excess of $1.16 million in loans originated by a non-FHA-approved entities. Giuliano's company received at least $500 for each loan, fees charged to the originating companies, and obtained money in the form of volume bonuses from FSF's sponsors. 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. Giuliano's false certifications/statements have potentially exposed the FHA insurance fund to significant losses. 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. Having obtained $25,000 as a result of settlements entered into with the other two parties named in the Complaint, HUD has indicated that at this point it is seeking only a reduced penalty in the amount of $24,500 against Respondent Giuliano, which amounts to approximately $2,722.22 for each of the nine violations or approximately half the maximum allowable civil penalty.

CONCLUSION

HUD regulations require this Tribunal, where it finds a respondent in default, to accept as fact all allegations contained in the Complaint. These facts support the imposition of the penalty currently proposed by HUD. Additionally, Respondent Giuliano has had ample opportunity to put forth defenses and proffer a differing view of the facts at hand, and has failed to do so. Absent any defenses, the record itself contains no factual basis for a reduction in penalty, outside of the monies collected from related settlements.

For the foregoing reasons, Complainant's Motion is hereby **GRANTED**, and Respondent Joseph Giuliano is individually assessed an aggregate civil penalty of **$24,500** for nine violations of the PFCRA found herein.[3]

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3. While HUD's Motion for Default suggests at certain points that it is seeking entry of "joint and several liability" in this case, such a finding would be inappropriate in that the Complaint does not seek such a finding. Moreover, HUD's prior settlements with the other two respondents has precluded an evaluation of their liability by this Tribunal and HUD has presented no evidence that the other respondents have otherwise admitted liability on the nine violations alleged. Therefore, liability is imposed here against Respondent Giuliano individually.

ORDER

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

47. Pursuant to 31 U.S.C. §3803, Respondent Joseph Giuliano is found to have committed nine (9) violations of the Program Fraud Civil Remedies Act, 31 U.S.C. § 3802(a)(2), as enumerated above and is subject to assessment of aggregate civil penalty in the amount of **$24,500**.

48. The resolution of liability and/or settlement of this matter with respect to the other Respondents in this proceeding having been settled, the civil penalties set forth in this order shall be immediately due and payable by Respondent Giuliano without further proceedings.

49. This Order constitutes a final agency action.

Susan L. Biro
Chief Administrative Law Judge
United States Environmental Protection Agency[4]

Dated: September 4, 2008
Washington, D.C.

4. 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 08-043-PF; HUDOGC Case No. 08-3515-PF and HUDOGC Case No. 08-3517-PF were sent to the following parties on this 4th day of September, 2008, in the manner indicated:

Maria Whiting-Beale
Staff Assistant

FIRST CLASS MAIL TO:

Mr. Joseph N. Giuliano
[redacted]

REGULAR MAIL AND FACSIMILE TO:

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