

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

In the Matter of:)	
)	
Omni Capital, LLC,)	HUDALJ 10-E-080-MR/45
)	
Respondent.)	
)	

**ORDER GRANTING JOINT MOTION TO DISMISS WITH PREJUDICE
AND INITIAL DECISION**

On March 24, 2010, this action was initiated by the United States Department of Housing and Urban Development (“HUD”) under the National Housing Act (NHA), 12 U.S.C. § 1708(c) and its applicable regulations, 24 C.F.R. Parts 25 and 202. On March 30, 2010, the Respondent, Omni Capital, LLC, filed its response thereto. Thereafter, this Tribunal issued a Notice of Hearing and Prehearing Order.

By Joint Motion filed April 7, 2010, the parties move to dismiss this proceeding with prejudice. The Motion indicates that the Respondent intends to voluntarily comply with the one year withdrawal of its HUD/FHA approval implemented by the HUD Mortgagee Review Board pursuant to 24 C.F.R. Part 25, as set forth in the March 24, 2010 Notice of Administrative Action.

The applicable regulations provide that:

When a motion to dismiss the proceeding is granted, the ALJ shall make and file a determination and order in accordance with the provisions of § 26.50.

24 C.F.R. § 26.40(g).

In turn, 24 C.F.R. § 26.50 provides in pertinent part that:

The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the relief granted. The ALJ’s initial decision shall not become effective unless it becomes or is incorporated into final agency action in accordance with §§ 26.50(c) or 26.52(l).

24 C.F.R. § 26.50(a). Section 26.50(c) makes initial decisions final if no appeal is timely filed with the Secretary. 24 C.F.R. § 26.50(c). Section 26.52(l) makes initial decisions final if an appeal is made to the Secretary and the Secretary does not act on the appeal within 90 days. 24

C.F.R. § 26.52(l).

In accordance with 24 C.F.R. Section 26.50(a), I make the following findings of fact and conclusions of law based upon the documents of record:

1. Upon application, Respondent Omni Capitol LLC (FHA ID: 27550-000-3) was approved by the Secretary of HUD to participate in the HUD/FHA insured mortgage programs under NHA Title II. *See*, Notice of Administrative Action; 12 U.S.C. § 1709; 24 C.F.R. Part 202.
2. Pursuant to 24 C.F.R. Part 202, Respondent was required to submit, in a timely and appropriate manner, audited financial statements, including therein an unqualified "SAS 29 Opinion on FDT." *See*, Notice of Administrative Action; 12 U.S.C. §1709; 24 C.F.R. Part 202.
3. The SAS 29 Opinion on FDT was omitted or qualified in the audited 2008 financial statement submitted by Respondent for review, which violates HUD/FHA recertification requirements. *See*, Notice of Administrative Action and e-mail from Respondent dated March 29, 2010 attached thereto.
4. In response thereto, on October 27, 2009, the Mortgagee Review Board (Board) of HUD issued a Notice of Violation to Respondent. *See*, Notice of Administrative Action.
5. By letter dated March 3, 2010, Respondent notified HUD that it "would like to voluntarily withdraw [its] FHA approval effective 12/31/2009." *See*, March 3, 2010 letter attached to Notice of Administrative Action.
6. On March 24, 2010, more than 30 days after the issuance of the Notice of Violation as required by 12 U.S.C. § 1708(c)(4)), the Board issued Respondent a Notice of Administrative Action imposing an immediate one year withdrawal of its HUD/FHA approval based upon Respondent's "serious violation of HUD/FHA's regulations and requirements," as authorized by 12 U.S.C. § 1708(c)(3)(D) and 24 C.F.R. § 25.6. *See*, Notice of Administrative Action
7. Respondent has consented to such withdrawal. *See*, Joint Motion to Dismiss.

ORDER

Based upon the foregoing, for good cause shown, the parties Joint Motion to Dismiss with prejudice is hereby **GRANTED**, and further, it is hereby found that for violation of HUD/FHA's regulations and requirements, Respondent Omni Capitol LLC's HUD/FHA approval under NHA Title II (FHA ID: 27550-000-3) is hereby withdrawn for a period of one-year effective March 24, 2010.



Susan L. Biro
Chief Administrative Law Judge¹

Date: April 8, 2010
Washington, D.C.

¹ 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 4, 2010.