

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

.....
In the Matter of:

NEW CENTURY MORTGAGE CO.,

HUDALJ 89-109-MR

Respondent
.....

Eino Zapata, Esquire
For the Respondent

Dane M. Narode, Esquire
For the Government

Before: Robert A. Andretta
Administrative Law Judge

INITIAL DETERMINATION

Jurisdiction and Procedure

This proceeding is a review of the Mortgagee Review Board's (the Board) withdrawal of New Century Mortgage Company's HUD-FHA mortgagee approval under the regulations codified at 24 CFR Part 25 (1988) to promote the purposes of the National Housing Act, 12 U.S.C. Sec. 1701 et seq. (the Act). It is conducted in accordance with the regulations of the Department of Housing and Urban Development (HUD) that are codified at 24 CFR Part 26 (1988). Under Section 512 of the Act, the government is authorized to deny participation in its programs, including by withdrawing mortgagee approval, for failure to comply with HUD's regulations. The rules that are codified at Part 25 provide the enforcement and regulatory procedures for accomplishing the Department's duty to enforce compliance by approved mortgagees with the Act's requirements and the Department's rules and procedures that are established thereunder. Jurisdiction is thereby obtained.

On April 11, 1989, James E. Schoenberger, Chairman of the Mortgagee Review Board, sent written notice to New Century that its mortgagee approval was withdraw upon receipt of the notice for a period of three years. The withdrawal of New Century's

HUD-FHA mortgagee approval was based upon its failure to remit HUD-FHA mortgage insurance premiums and late charges in connection with certain loans which were listed in the notice. Such failure, it was stated to New Century, is a violation of its fiduciary duty to the mortgagors as well as the requirements set forth in 24 CFR Section 203.280. The notice letter further stated that these violations do not conform to generally accepted practices of prudent lenders, and such demonstrated irresponsibility constitutes grounds for withdrawal of mortgagee approval under 24 CFR Sections 25.9(j), (p), and (w). New Century was further advised of its rights to appeal and to this proceeding.

On April 24, 1989, Jimmy Enriquez, president of New Century, filed a timely request for a hearing. After discussions by the parties seeking settlement failed, I issued a Notice of Hearing on June 16, 1989. This Notice included Orders to the Department to file a Statement of Charges by July 14, 1989, and to the Respondent to file an Answer to the Charges by August 18, 1989. Both documents were timely filed. On August 22, 1989, at the request of the parties, counsel and I conferred by phone, and it was agreed that this proceeding should be resolved on the record. Counsel requested leave to submit final briefs, and the request was granted. The Government's Brief In Support Of Respondent's Three-Year Withdrawal From FHA Programs was timely filed on September 22, 1989, and Respondent's Brief In Opposition To Mortgagee Review Board's Three-Year Withdrawal From FHA Programs was filed late, but accepted into the record, on October 16, 1989. On October 18, 1989, the government's counsel filed a Motion For Leave To File Reply Brief on the grounds that Respondent's Opposition raised "several issues and inconsistencies that the Government's needs to clarify." This motion was granted, and the Government's Reply Brief was filed on October 30, 1989. Thus, this proceeding became ripe for decision on this last named date, and, in accordance with the telephone agreement described above, I make the following findings and conclusions on the record.

Findings of Fact

New Century was, at all times relevant to this case, an approved HUD-FHA nonsupervised mortgagee doing business in the State of Texas. New Century's business was to originate FHA-insured loans and sell them to other FHA-approved mortgagees for servicing. Thus, it earned a fee for originating each loan and also made a profit on the sale of each loan.

In September of 1988 Fleet Funding Corporation (Fleet) informed HUD that it had purchased 52 FHA-insured loans from New Century for which there were no mortgage insurance certificates (MIC). Investigation within HUD revealed that over half of these loans had never had their mortgage insurance premiums (MIP) paid, and the rest had been paid over eight months late. At the same time, The Florida Group, Inc. (TFGI) reported that it had bought 13 mortgages from New Century for which the MIPs had not been paid.

In August of 1988, Gary Cooper, a former New Century employee, wrote to HUD to complain that Jimmy Enriquez, the president and owner of New Century, and Robin Mueller, another New Century employee, willfully delayed the processing of MIPs and willfully mismanaged escrow funds, sometimes using them to pay MIPs. During this period, Celia Wetwiska, the closing and servicing manager at New Century, reported to HUD that on one occasion she had brought approximately 25 loan files to the attention of Enriquez because they were missing evidence of their MIPs having been paid. Enriquez told her not to worry about it as the situation had been corrected. She also reported that she brought another long list of loans without MIP payments to Enriquez but was told angrily not to interfere.

Based on these complaints, the matter was referred to the Mortgagee Review Board. The Board issued a 30-day warning letter advising New Century that it was considering taking administrative action against it for failure to remit MIPs, late charges, and interest payments to HUD on 14 FHA-insured loans, and failure to remit MIPs and late charges on 28 other FHA-insured loans.

Enriquez admitted the problems and attributed them to poor procedures and a business dispute with TFGI. He claimed it was all being corrected, but the Board concluded, after further investigation, that Enriquez was "less than candid in his response." In fact, as of September 22, 1989, government documents show that New Century had not paid all the MIPs and still owed TFGI over \$12 thousand that TFGI had paid to HUD to get MIPs for its customers. Another over \$13 thousand was still owing to Fleet, and a time-payment schedule, dependent on future sales, had been agreed to.

On March 30, 1989, the Board met to consider the charges against New Century and its president's response, and voted unanimously to withdraw New Century's HUD-FHA approval. On April 11, 1989, the Board issued the notice letter referred to in the second paragraph above. Respondent does not deny the facts, as stated, and I find them to be true.

Applicable Law

The Federal Housing Administration (FHA) is an agency within HUD that was created by the congress to administer federal mortgage insurance programs. See 42 U.S.C. Section 3531; 12 U.S.C. Section 1702, et seq. Under the program involved here, the Department becomes a 100% insurer of mortgage loans that are accepted from approved lenders. For a mortgage to be covered by FHA insurance, the mortgage lender is required to pay the MIP to HUD. It is assumed that the home purchaser pays this amount to the lender, but such is not a requirement of the program. The Department's regulations codified at 24 CFR 203.280 provide for the one-time MIP as follows, in pertinent part:

For mortgages for which a one-time MIP is to be charged ... the mortgagee shall within fifteen days of closing and as a condition to the endorsement of the mortgage for insurance, pay to the Commissioner for the account of the mortgagor ... a premium representing the total obligation for the insuring of the mortgage by the Commissioner.

Penalties in the form of additional payments for late payment of MIPs are provided by the regulation codified at 24 CFR 203.282.

The Mortgage Review Board was established by codification of the regulations found at 24 CFR Part 25 for the purpose of determining acceptability of mortgagees and ensuring their compliance with the applicable regulations. Its power relating to administrative actions against mortgagees is found at 24 CFR 25.2. The grounds for the Board's application of sanctions upon mortgagees are listed at 24 CFR 25.9 and include the following subsections, which are applicable to this case:

(j) Violation of the requirements of the contract with the Department, or violation of the requirements set forth in any statute, regulation, handbook, mortgagee letter, or other written rule or instruction;

(p) Business practices which do not conform to generally accepted practices of prudent lenders or which demonstrate irresponsibility;

(w) Any other reason the Board, Secretary or Hearing Officer, as appropriate, determine (sic) to be so serious as to justify an administrative action.

Discussion

New Century admits in its responses that it failed to pay the named MIPs to HUD within 15 days of closing, and that this failure is in violation of the requirements codified at 24 CFR 203.280. It admits, moreover, that such violations constitute grounds for a sanction as provided by 24 CFR 25.9(j). It also admits that by failing to remit the MIPs it violated the conditions under which it obtained its HUD-FHA approval as a nonsupervised lender, and that this violation constitutes grounds for an administrative action by the Board. Further, New Century has admitted that it violated normal prudent lending practices by failing to pay MIPs that it charged to mortgagors, and that it thus misled the mortgagors and the mortgagees who purchased the loans into believing that the actually-uninsured loans were covered by FHA insurance.

New Century does not deny that its conduct gives rise to an administrative action, nor that its conduct provides adequate grounds for the Board to refuse it authorization to do business with the Department. Instead, it argues that the Board's sanction is based upon a subjective view of New Century's motivations and is disproportionate to its conduct, and that the Board should impose a more appropriate sanction. More specifically, New Century's counsel pleads that the Board's choice of sanction is based upon unsworn allegations, as well as its own opinion of, "profiteering," "willful delay in processing of MIPs," "willful mismanagement of escrow funds," "malfeasance," "intentional failure to remit MIPs," and the Board's view that New Century was misleading in its response.

I conclude that this is not so. The Board found New Century's president's response to be misleading, and the government's counsel discussed some, but not all, of the above-quoted elements. However, the Board's action, as announced in its letter of April 11, 1989, was based solely upon New Century's failure to pay the MIPs mentioned earlier. This is what the Board said in its letter notifying Respondent of the withdrawal of its HUD-FHA approval:

The withdrawal of NCM's HUD-FHA mortgage approval is based on NCM's failure to remit HUD-FHA mortgage insurance premiums and late charges in connection with the loans set forth in Attachments A and B to this letter. ... Failure to remit mortgage insurance premiums represents a serious violation of HUD FHA requirements as set forth in 24 CFR 203.280,

is a violation by NCM of its fiduciary responsibility to the mortgagors and constitutes business practices which do not conform to generally accepted practices of prudent lenders. As such, it demonstrates irresponsibility and is grounds for withdrawal of NCM's HUD-FHA mortgagee approval pursuant to 24 CFR Sections 25.9(j), 25.9(p) and 25.9(w).

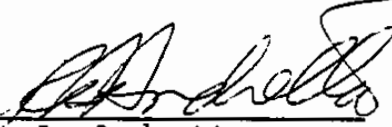
As to the appropriateness of the sanction, Part 25 of Title 24 of the Code of Federal Regulations was promulgated to protect the public interest from acts such as those perpetrated by New Century, including by deterrence of other parties from committing such acts. Thus, withdrawal of mortgagee approval from participants such as Respondent serves the purposes of exclusion of the irresponsible parties from the HUD-FHA program and dissuasion of others from like conduct.

Respondent's argument that its conduct did not cause the government to sustain a monetary loss is without merit. Failure to remit the MIPs paid to it deprived mortgagors of insurance for which they had paid, jeopardized their housing acquired under a HUD program, and put HUD at risk of sustaining losses for which it should not have been at risk. All of this is contrary to normal, prudent lending practices and violative of the public trust embodied in the HUD-FHA insurance program.

Conclusion and Order

New Century failed to remit to HUD late charges and MIPs that had been paid to it for government-provided insurance coverage of home mortgages. In doing so, it violated its fiduciary responsibility to its mortgagors and engaged in irresponsible lending practices that do not conform to generally accepted practices of prudent lenders. Accordingly, I conclude that the three-year withdrawal of Respondent's HUD-FHA approval is appropriate and necessary in this case to ensure that the seriousness with which HUD views New Century's conduct will not be misconstrued by New Century's owners and officers, or by any others doing like or similar business with FHA, and that the public interest will thereby be protected. Good cause having been shown for the withdrawal of New Century Mortgage, Inc.'s mortgagee approval for a period of three years commencing April 14, 1989, it is

SO ORDERED


 Robert A. Andretta
 Administrative Law Judge
 U.S. Department of Housing
 and Urban Development
 451 7th Street, S.W., Suite 2156
 Washington, D.C. 20410

Dated: November 6, 1989