

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

UNITED STATES DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT,

Petitioner,

v.

RUBEN VARGAS and CARMEN AMADOR VARGAS,

Respondents.

19-JM-0022-PF-003

May 8, 2019

DECISION ON DEFAULT JUDGMENT

The above-captioned matter is before this Court on a *Motion for Default Judgment* (“*Motion*”), filed on April 19, 2019, by the United States Department of Housing and Urban Development (“the Government” or “HUD”) against Ruben Vargas (“Respondent Vargas”) and Carmen Amador Vargas (“Respondent Amador”) (collectively, “Respondents”). Respondents did not file an Answer to HUD’s *Complaint* nor did they respond to the present *Motion*. Accordingly, the Government’s motion for default judgment is **GRANTED**.

On November 9, 2018, the Government filed a *Complaint* against Respondents. The *Complaint* alleged violations of the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, as implemented by 24 C.F.R. Part 28, and sought liability of \$305,700 in civil penalties and assessments, jointly and severally, against Respondents for a false claim Respondents caused to be made for HUD single family mortgage benefits. The first *Scheduling Order* in this case was issued on December 13, 2018. The first *Scheduling Order* required Respondents to file a response no later than January 14, 2019. A *Notice of Stay of Proceedings* in this case was issued on December 26, 2018, due to a partial lapse in federal appropriations. The Court lifted the stay on January 29, 2019 and entered a second *Notice of Hearing and Order* on February 7, 2019, which extended the deadline for Respondents’ Answer to February 21, 2019. As of the date of this *Decision on Default Judgment*, Respondents failed to file an answer to the Government’s *Complaint* or otherwise appear in this matter.

The *Complaint* charged that Respondents caused to be made a false claim for single family mortgage insurance benefits. This false claim was made pursuant to Respondents’ engagement in an illegal scheme to purchase a property with a Federal Housing Administration (“FHA”) insured mortgage (the “Vargas Mortgage”), through which Respondent Vargas used forged and fraudulent documents submitted with his loan application. Through the Single

Family Mortgage Insurance Program, the FHA, an entity within HUD, insures mortgage loans originated and underwritten by lenders to finance home purchases by qualified borrowers. The program is intended to assist low- and moderate-income persons in becoming homeowners by lowering the costs associated with mortgages and providing protection to lenders in the event of a default by the borrower. Lenders are encouraged to make loans to creditworthy borrowers who might not satisfy conventional underwriting standards. HUD, through the FHA, insures mortgage loans using funds from the Mutual Mortgage Insurance Fund (“MMIF”).

FHA requires each borrower to complete a *Uniform Residential Loan Application* (“URLA”) and to certify to the integrity of both the information in the URLA and the documentation supporting the URLA. HUD also requires the submission of a Verification of Employment (“VOE”) of the borrower and the borrower’s most recent pay stub. A VOE is used by lenders to review the employment history of a borrower, to determine the borrower’s job stability, and cross-reference income history with that stated on the URLA. A Letter of Explanation (“LOE”) is also part of the underwriting and FHA loan approval process to verify income from an employer.

Here, Respondent Vargas, with his wife Respondent Amador’s assistance, applied for an FHA-insured mortgage loan using forged and fraudulent documents submitted with the loan application. Respondent Vargas stated on the URLA that he submitted with his application that 1) he was employed by Karoline’s Beauty Salon, 2) that he received a monthly income of \$3,000.83 from this employment, and 3) that he had been employed at this business from October 10, 2001 to the date of the application, which was on or about September 21, 2007. These statements were false, and contributed to a falsely inflated total gross monthly income total that Respondent listed on his URLA of \$11,289.50.

To assist Respondent Vargas in perpetuating the fraud scheme, Respondent Amador sent a VOE that falsely stated that Respondent Vargas had worked at Karoline’s Beauty Salon since October 2001, was working in accounting there, and stated that his probability of continued employment there was “excellent.” Respondent Amador also falsely stated in this VOE that Respondent Vargas earned bi-weekly pay of \$1,385 from Karoline’s Beauty Salon. In fact, Respondent Vargas only worked for Karoline’s Beauty Salon for six months intermittently, and earned less than the bi-weekly pay of \$1,385 stated on the URLA.

Respondent Amador signed the fraudulent VOE using her maiden name, Amador, in order to hide the fraud by making it falsely appear that Respondent Amador was Respondent Vargas’s employer, and that this employment income was real, when in fact these assertions were not true. Respondent Vargas then listed himself as unmarried on the URLA, when in fact he was and is married to Respondent Amador, in order to obfuscate the fraud by hiding Respondent Amador’s status as his wife.

Respondent Vargas then falsified a LOE with false employment information and signed Respondent Amador’s maiden name. This LOE represented itself as one from Karoline’s Beauty Salon and falsely stated that Respondent Vargas had been performing accounting services for Karoline’s Beauty Salon since October 10, 2001 through July 27, 2007 for “GROSS . . . \$1385 \$20775. year [sic] to date July 27/2007” [sic]. Respondent Amador also provided Respondent

Vargas with a false paycheck from Karoline's Beauty Salon, which Respondent Vargas signed using Respondent Amador's maiden name. This check was dated August 10, 2007, made payable for the amount of \$1,053.65, and stated in the memo field that the payment was for "Salary." This LOE, check, and the description of the payment on the check were false on the same bases as the URLA's falsity.

In furtherance on the fraudulent scheme, Respondent Vargas recruited a neighbor, Juan Marte, to falsely state that his local market, Marte Grocery, employed Respondent Vargas. On the URLA, Respondent Vargas stated that he was employed by "The Marte Grocery" for seven years and nine months in accounting services, and had been employed for 12 years in this profession. These assertions were false. In fact, Respondent Vargas only worked as a salesperson, not an accountant, for Marte Grocery, and worked there for only six months. Respondent Vargas also had not worked for 12 years in the accounting services profession. Mr. Marte signed, on behalf of Marte Grocery and at Respondent Vargas's request, a VOE stating that Respondent Vargas worked for Marte Grocery since November 1, 1999 and was in the "Present Position" of "Accounting Svcs" [*sic*] with a "100%" probability of continued employment. The VOE stated that Respondent Vargas earned a salary of \$88,244 per year, with a total salary to date in 2007 of \$61,092. Those statements were false. In fact, Respondent Vargas earned less than the amount that he claimed to have earned in the VOE and URLA, and Respondent Vargas had not worked for Marte Grocery since 1999 as the VOE indicated. Respondent Vargas only worked approximately six months for Marte Grocery and was paid in cash.

Mr. Marte created and signed, on behalf of Marte Grocery and at Respondent Vargas's request, a false paycheck to Respondent Vargas dated September 7, 2007, from "The Marte Grocery" for \$1,125.90, purportedly for "SALARY." Respondent Vargas later admitted that he never received this check as income. Mr. Marte also signed, on behalf of Marte Grocery, and at Respondent Vargas's request, a purported paystub dated September 7, 2007, for \$1,697.00 in gross pay, for "ACCOUNTING SERVICES." This paystub also falsely stated that Respondent Vargas's purported employment was from November 1, 1999 to the September 7, 2007. In fact, Respondent Vargas only worked for approximately six months for Marte Grocery as a salesperson, and Marte Grocery did not pay Respondent Vargas this amount.

Respondent Vargas also certified in his loan application that he would occupy the property as his primary residence, but he did not. Rather, he rented the property, and failed to use the rental income to make mortgage payments.

Respondents Vargas and Amador knew the income stated in Respondent Vargas's loan application, including his URLA, VOE, LOE, and purported checks submitted from Karoline's Beauty Salon and Marte Grocery were false, and that the lender was using this false income to qualify Respondent Vargas for an FHA-insured mortgage. The lender used the false information from Respondents Vargas and Amador in determining the debt-to-income ("DTI") ratio for Respondent Vargas when manually inputting this loan application information. Based on these false statements, and other false statements submitted or caused to be submitted by Respondents Vargas and Amador inflating Respondent Vargas's income, falsifying Respondent Vargas's

employment history, and falsifying his projected future employment, Respondent Vargas qualified for the Vargas Mortgage, for which he otherwise would not have qualified.

Following Respondent Vargas's receipt of the Vargas Mortgage, the Vargas Mortgage went into default, and on December 14, 2012, FHA paid a claim from the MMIF for insurance benefits totaling \$491,739.31, which included the Vargas Mortgage principal and interest, to the holder of the Vargas Mortgage at that time. FHA recouped \$111,337.46 when it sold the Vargas Mortgage note. Due to this recoupment, there was a total loss to the MMIF of \$380,401.85. Had FHA known that the mortgage was underwritten and approved based on materially false statements made or caused to be made by Respondents as to the financial qualifications of Respondent Vargas for the FHA-insured Vargas Mortgage, it would not have endorsed the mortgage for insurance coverage and would not have been called upon to pay the claim.

The *Complaint* notified Respondents of their right to respond to HUD's allegations and request a hearing. It also notified them that any response must include the admission or denial of all the allegations against them, that a failure to respond could result in HUD seeking a default judgment that could result in a finding that they had admitted all the allegations against them, and that the penalties set forth in the *Complaint* would be immediately due and payable without further proceedings in the event of an issuance of a default order.

Consistent with the PFCRA, a HUD OIG agent personally served the *Complaint* on Respondents separately at their places of employment on November 13, 2018.¹ Respondent Vargas acknowledged receipt of the *Complaint* in a December 11, 2018 request to the Court for an extension of time to file an answer, which the Court granted in its first *Scheduling Order* when it set an initial deadline to respond of January 14, 2019. As noted above, the Court subsequently replaced this *Scheduling Order* with a second *Scheduling Order* that set a new deadline for a response of February 21, 2019. Respondents did not file an answer, in spite of Respondent Vargas' letter to the Court stating that he would do so.

The Government sent letters by certified mail, return receipt requested, to Respondents at the Vargas Residence on February 26, 2019. Through this correspondence, the Government sought to engage Respondents in the pre-hearing requirements provided in the Court's *Scheduling Order*. While Respondent Amador received and signed for receipt of this correspondence on behalf of herself and her husband, Respondent Vargas, at the Vargas Residence (as evidenced through her signature receiving on the certified mail receipt on March 1, 2019), Respondents did not respond to the Government's inquiry.

On March 6, 2019, an attorney informed HUD that he had been retained by Respondent Vargas ("Vargas Counsel") to review paperwork and allegations in this case, e-mailed HUD counsel to request a copy of all files pertaining to this case. HUD counsel e-mailed the requested

¹ The *Complaint* was also mailed by United States Postal Service regular certified mail, return receipt requested, on November 9, 2018 to Respondents at their then most recent known place of residence prior to that date, which was 5601 Kennedy Boulevard East., Apt. 19D, West New York, NJ 07093. While serving Respondents personally at their places of employment, HUD learned that Respondents had recently moved to their current residence at 6609 Lincoln Place, Apt. 1, West New York, NJ 07093 (the "Vargas Residence"). HUD has since mailed correspondence in this case by certified mail to the current Vargas residence, and notified the Court of the changed address.

files in separate emails to Vargas Counsel on March 6 and March 19, 2019. HUD counsel sent Vargas Counsel another e-mail on March 21, 2019, stating that Vargas Counsel had not filed an answer or entered an appearance in the case and that HUD planned to move for default if it did not receive an answer within the following two weeks. Vargas Counsel called HUD counsel on or about March 27, 2019 to state that he had just been retained for this case for work beyond reviewing the paperwork and allegations, and that he planned to file an answer within the following few days. Despite this assurance, Vargas Counsel did not file an answer or enter an appearance on behalf of either Respondent.

HUD counsel called and left a message on April 2, 2019 with Vargas Counsel after he did not file an answer, to request a specific time by which Respondents planned to file an answer. Vargas Counsel did not return HUD counsel's phone message. On April 5, 2019, HUD sent another email to Vargas Counsel stating that HUD planned to file a default motion against Respondents in this case if HUD did not receive an answer to its *Complaint* by April 15, 2019. Neither Respondents nor Vargas Counsel have filed an answer or responded to this communication.

HUD's regulations provide that if a respondent fails to file a timely response to a complaint against him or her, the Administrative Law Judge may, upon motion, issue a default judgment against that party. 24 C.F.R. § 26.41(a). Moreover, failure to file a timely response, as defined by HUD regulations, constitutes an admission of all facts alleged in the Complaint, a waiver of a respondent's right to a hearing, and entitles the petitioner to a judgment in the amount proposed in its complaint. 24 C.F.R. § 26.41(c).

FINDINGS OF FACT

1. On November 13, 2018, HUD served both Respondents personally and separately by hand delivery with the Complaint.
2. On February 26, 2019, HUD sent letters by regular mail, return receipt requested, warning that it planned to move for default against Respondents if Respondents did not reply to the *Complaint*.
3. HUD sent e-mails to Vargas Counsel on March 21, 2019 and April 4, 2019, warning that it planned to move for default against Respondents if Respondents did not reply to the *Complaint*.
4. Respondents have not responded to HUD's *Complaint* in a timely manner.
5. Pursuant to HUD regulations and the second *Scheduling Order* in this case, any response to HUD's *Complaint* was due no later than February 21, 2019.
6. Respondents have not filed any response to HUD's Motion.
7. Respondents have failed to defend this action.

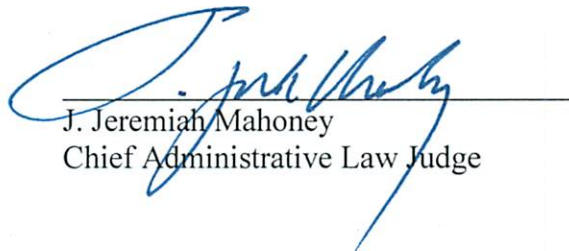
8. Due to Respondents' failure to respond to HUD's *Complaint*, all facts alleged in the *Complaint* are deemed admitted by Respondent.

CONCLUSIONS OF LAW

By reason of the facts in the *Complaint* deemed admitted, Respondents Ruben Vargas and Carmen Amador Vargas caused the submission of a false claim for HUD single family mortgage benefits in connection with their participation in the Title II Federal Housing Administration Single Family Mortgage Insurance Program. Respondents are therefore jointly and severally liable for a penalty of \$7,500 and an assessment of \$300,000, minus \$1,800 in restitution that Respondent Vargas has already paid pursuant to a criminal conviction for the same mortgage fraud. 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28.10(a). This Court finds Respondents jointly and severally liable for \$305,700 in civil penalties and assessments under the PFCRA.

Pursuant to 24 C.F.R. § 26.41(b), this order constitutes final agency action.

So **ORDERED**,



J. Jeremiah Mahoney
Chief Administrative Law Judge

Judicial Review shall be available in accordance with applicable statutory procedures and the procedures of the appropriate federal court. 24 C.F.R. § 26.54; 31 U.S.C. § 3805.