

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY

IN THE MATTER OF)	
)	
JAMES SERRATORE, JR.)	
)	
Former Loan Officer)	AA-EC-06-71
MNC Mortgage Corporation, a subsidiary of)	
First Tennessee Bank, N.A., Memphis, Tennessee)	
)	

DECISION AND ORDER

I. INTRODUCTION

This matter is before the Comptroller of the Currency (“Comptroller” or “the OCC”) on the recommendation of the Administrative Law Judge (“ALJ”) for entry of default against James Serratore, Jr. (“Respondent”), a former loan officer of MNC Mortgage Corporation, a subsidiary of First Tennessee, N.A. (“MNC” or “Bank”). The Notice of charges (“Notice”) issued by OCC enforcement counsel seeks the assessment of a civil money penalty, the imposition of a cease-and-desist order for restitution, and an order prohibiting Respondent from further participation in the financial services industry.¹ Upon consideration of the pleadings, the ALJ’s Recommended Decision, and the entire record, the Comptroller concludes that Respondent is in default, assesses a CMP of \$100,000 against Respondent, and orders Respondent to pay restitution of \$460,374 to the Bank. In addition, the Comptroller orders that Respondent is prohibited from any further

¹ Pursuant to Section 303 of the Financial Services Regulatory Relief Act of 2006, signed into law by the President on October 13, 2006, Pub. L. No. 109-351, 120 Stat. 1966 (2006), codified at 12 U.S.C. § 1818(e)(4), the findings and conclusions of the administrative law judge on a removal or prohibition order issued in a case brought by the OCC no longer need to be certified to the Board of Governors of the Federal Reserve System for a determination of whether the order shall issue. Because this change in the law does not impose an “impermissible retroactive effect,” it applies here even though the acts or omissions occurred prior to the date of enactment. *Landgraf v. USI Film Products*, 511 U.S. 244, 274 (1994).

participation in the conduct of the affairs of any institution or entity set forth in 12 U.S.C. § 1818(e).

II. FACTUAL SUMMARY AND PROCEDURAL HISTORY

The facts giving rise to this decision are described in detail in the ALJ's Recommended Decision and are briefly summarized here. On July 20, 2006, the OCC commenced an enforcement action to assess a CMP, and impose an order of restitution and prohibition upon Respondent. The Notice alleged that, between early 1998 until approximately August 2000, Respondent, a loan officer of MNC, assisted a land developer in procuring Federal Housing Authority ("FHA") financing for sixty-four low-income, first-time home buyers through the submission of loan applications to MNC that contained false and misleading information and documentation, including falsified W-2 forms, pay stubs, employment verifications, credit explanation letters, letters from creditors, and gift letters supplied by the land developer to MNC. In numerous instances, Respondent signed FHA "Housing Counseling" forms representing that these sixty-four borrowers had received counseling designed to prepare first-time buyers for home ownership, which would qualify them for a reduced interest rate. In truth, none of these buyers received counseling.

Once all information and documentation supporting each loan was received, Respondent's wife, a loan processor at MNC, prepared a U.S. Department of Housing and Urban Development ("HUD") Addendum to each loan application and certified that the information supporting the addendum was accurate and obtained directly by the lender, as required by Bank policy. Both Respondent and his wife knew these certifications were fraudulent because much of the information and documentation was false and had been obtained from the land developer.

Respondent's wife, acting as the loan processor, then forwarded each completed loan file to an underwriter for review and approval.

These sixty-four loans increased by \$20,400 the volume-based commissions and bonuses that MNC paid to Respondent. In addition, Respondent received from the land developer a kickback of \$500 for each of the sixty-four fraudulently obtained loans. As a result of this fraud, MNC incurred loan losses of approximately \$1,050,000 when borrowers defaulted.

The Notice alleged that by these actions Respondent committed violations of law, engaged in unsafe or unsound banking practices, and breached his fiduciary duty to the Bank. The Notice also asserted that Respondent's conduct caused approximately \$1 million in losses to the Bank and resulted in personal gain, as well as unjust enrichment, to Respondent. Further, the Notice alleged that Respondent's violations, practices, and breaches evidenced a reckless disregard for the Bank's safety and soundness.

According to the ALJ, OCC enforcement counsel served the Notice upon Respondent by mailing a copy by registered mail to Respondent's last home address and to his current address of record (effective April 3, 2006) on file with the U.S. Postal Service. A copy of the Notice was also served by hand, on July 26, 2006, to the broker/owner of Re/Max Centre Realtors in Jamison, Pennsylvania, which was the location advertised by Respondent to the general public as his current place of employment. Moreover, on September 15, 2006, the OCC personally served a copy of the Notice upon Respondent at the Bucks County Correctional Facility, where Respondent was then awaiting trial on un-related criminal charges. Respondent acknowledged receipt of this Notice, and was released from the Bucks County Correctional Facility on September 16, 2006.

Because Respondent failed to file a timely answer as required by 12 C.F.R. § 19.19(a), OCC enforcement counsel, on October 13, 2006, moved for an order of default, pursuant to 12 C.F.R. § 19.19(c). The motion was served by overnight UPS and by certified mail at Respondent's current address of record. On October 24, 2006, the ALJ issued an Order requiring Respondent to appear and show cause why the default motion should not be granted. The Order was served upon Respondent by Federal Express at his business address of record, as well as by Federal Express and certified mail at his home address. The service upon his business address was successful, although the service at his home address was returned. When Respondent failed to appear, the Recommended Decision was issued.

III. DECISION

The Comptroller agrees with the ALJ that Respondent is in default. The record establishes that Respondent was properly served with the Notice pursuant to 12 C.F.R. § 19.11. The failure of a respondent to file an answer within the time provided by 12 C.F.R. § 19.19(a) constitutes a waiver of respondent's right to appear and contest the allegations in the notice. 12 C.F.R. § 19.19(c)(1). Moreover, the failure of a party to oppose a written motion, such as OCC enforcement counsel's motion for entry of an order of default here, is deemed consent to entry of an order substantially in the form of the order accompanying the motion. 12 C.F.R. § 19.23(d)(2). And the failure of a party to file exceptions to findings of law and fact in the ALJ's recommended decision, such as the ALJ's recommended decision here, is deemed a waiver of any objection. 12 U.S.C. § 19.39(b). In addition, and specifically with respect to the notice of assessment of a CMP, the failure to request a hearing converts the notice of assessment into a "final and unappealable order." 12 U.S.C. § 1818(i)(2)(E)(ii); *see also* 12 C.F.R. § 19.19(c)(2).

Accordingly, the Comptroller finds that an order entering default against Respondent is warranted in this case and agrees with the Recommended Decision of the ALJ. With respect to the CMP of \$100,000, Respondent in connection with the scheme to fraudulently procure FHA loans knowingly participated in violations of law, breaches of his fiduciary duty to the Bank, and unsafe or unsound practices which caused more than a minimal financial loss to the Bank and pecuniary gain to Respondent. *See* 12 U.S.C. § 1818(i); *see also* 12 U.S.C. § 1813(u). Respondent's misconduct resulted in a loss to the Bank of approximately \$1 million and personal gain to Respondent of at least \$50,000. Moreover, given the Respondent's knowing participation in the fraud and the magnitude of the loss to the Bank and unjust enrichment of himself, the assessment of a \$100,000 CMP is appropriate. *See* 12 U.S.C. § 1818(i)(2)(G).

With respect to the payment of restitution, restitution in the amount of \$460,374 is appropriate in light of the \$1,050,000 loss to the Bank. The Comptroller, pursuant to 12 U.S.C. § 1818(b)(6), may require an institution-affiliated party, who has been unjustly enriched by his or her misconduct, to reimburse the Bank for the losses caused by the misconduct. The record establishes that Respondent was unjustly enriched and the payment of \$460,374 is approximately fifty percent of the Bank's losses (once the \$100,000 CMP is taken into consideration and subtracted). Finally, with respect to prohibition, the Respondent's unsafe or unsound practices and breaches of fiduciary duty to the Bank constituted personal dishonesty on the part of Respondent and caused the Bank to suffer financial loss of approximately \$1 million. *See* 12 U.S.C § 1818(e).

IV. ORDER

Based on the entire record of the proceeding and the Recommended Decision of the ALJ, the Comptroller hereby finds Respondent in default pursuant to 12 C.F.R. §§ 19.19(c)(1) and

