



Board of Contract Appeals
U. S. Department of Housing and Urban Development
Washington, D.C. 20410-0001

In the Matter of:

GABE BROOKS,

Respondent

HUDBCA No. 99-A-104-D3

Gabe Brooks
214 E. Crestview Street
Corona, CA 92879

Respondent, Pro se

Dexter N. Bergounous, Esq.
Office of Counsel
U. S. Department of Housing
and Urban Development
HUD Sacramento Area Office
925 L. Street , Sacramento,
CA 95814-3702

For the Government

FINDINGS OF FACT AND RECOMMENDED DECISION

Background of the Case

On September 1, 1998, the United States Department of Housing and Urban Development ("HUD" or "Department") issued a Limited Denial of Participation ("LDP") charging Respondent with making false statements and certifying as to the accuracy of information contained in the Appraisal Report for property located at 15875 La Vita Drive, Palm Springs, California. The Department's Amended Complaint further charged Respondent with falsely certifying that he performed the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice.

The administrative judges of the HUD Board of Contract Appeals are authorized to serve as hearing officers and to issue findings of fact, conclusions of law, and a recommended decision upon the request of a participant in a HUD program upon whom an LDP has been imposed. 24 C.F.R. §§ 24.105, 24.314 (b) (2), and 24.713 (b). The parties have requested, through a stipulation, that the Board determine this matter based upon their written arguments and documentary evidence. Consequently, pertinent

undisputed and material allegations are set forth below as findings of fact.

Findings of Fact

1. Respondent is licensed in the State of California as a Certified General Real Estate Appraiser and has been appraising property since the mid-1980's. Respondent also holds a real estate broker's license and is experienced in the sale of HUD-owned and other properties. (Respondent's Arguments ("Resp. Arg."), p. 2).

2. On or about May 15, 1997, Respondent was contacted by two acquaintances known to him as TJ and John to discuss the appraisal of certain property. Respondent was told that the men used these names because their foreign names were difficult to pronounce. Respondent knew TJ and John from speaking with them at real estate auctions, where they were accompanied by a licensed appraiser named Jim. Respondent had previously shared real estate information with TJ, John,, and Jim,, and they had, on occasion, provided him with some accurate real estate valuations. (Resp. Arg., pp. 2-3).

3. An Appraisal Report dated May 15, 1997, was ostensibly prepared by Respondent for Diamond Coast, Inc. ("Diamond Coast"), a lending institution, for property located at 15875 La Vida Drive, Palm Springs, California. (Govt. Exh. A) . The purpose of the Appraisal Report was to determine the value of the property and to serve as a basis for the procurement of HUD insurance for a loan relating to the sale of the property. (Letter to Respondent dated Nov. 20, 1998, from Lily A. Lee, Director of the Santa Ana Homeownership Center; Admin. Record, attachment to Notice of Appointment of Hearing Officer).

4. Since Jim had actually performed the appraisal, and "some very important deals were about to be lost because of a personal animosity that 'the lender' had against [Jim] ," TJ and John requested that Respondent sign the Appraisal Report. (Resp. Arg., p. 3).

5. On May 15, 1997, Respondent:

decided that he could properly sign the appraisal at the space on the standard appraisal form designated 'Supervisory Appraiser' and check the box marked 'Did Not' inspect the property. After

reviewing the report for accuracy and adequacy on its face, respondent then signed the report in that manner and charged a fee of \$200. Id.

The record does not contain a document that Respondent signed as "Supervisory Appraiser" with a box checked that Respondent "Did Not Inspect Property." The record does, however, contain a document which is signed by Respondent as "Appraiser" with a box checked that Respondent "Did" inspect the subject property. It is unclear who paid Respondent the \$200 fee for his services. (Unmarked Resp. Exhibit; Govt. Exh. A-1).

6. The relevant sections of the Appraiser's Certification state the following:

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis"
2. . . . I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.

* * * * *

7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice"
8. I have personally inspected the . . . subject property and all . . . comparables in the appraisal report;
9. I personally prepared all conclusions and opinions . . . If I relied on significant professional assistance < . . . in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. (Govt. Exh. A-1) .

7. Respondent also signed the "Certification" page which accompanied the Appraisal Report. In pertinent part, it states as follows:

I CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF: The statements of fact contained in this report are true and correct. The reported analyses, opinions, and conclusions . . . are my personal unbiased professional analysis, opinions and conclusions.

I have made a personal inspection of the real estate that is the subject of this report. No one provided significant professional assistance to the person signing this report. (Govt. Exh. A-2).

8. Sometime after May 15, 1997, TJ and John told Respondent that the lender would not accept the appraisal report unless he signed as "Appraiser" rather than as "Supervisor Appraiser". The men told Respondent that Respondent should sign the report at that time, and later inspect the property to verify the information. With regard to TJ and John's suggestion, Respondent concluded that:

this seemed plausible and given the history of receiving accurate property valuations from the parties, the fact that Jim was licensed and apparently qualified, and the urgency of the matter to fellow small businessmen . . . [Respondent] intended to follow up on the verifications within the next couple of days. . . .

Respondent signed the "Appraiser's Certification" page under the column entitled "Appraiser," and not under the column entitled "Supervisory Appraiser." While Respondent intended to follow up on the verifications within the next couple of days, he claims that he "never had the opportunity to follow up as intended" Thus, Respondent never personally performed the appraisal of the subject property. (Resp. Arg., pp. 2-4; Govt. Exhs. A-1 and D).

9. Kit Walters, an underwriter in the Santa Ana Homeownership Center of HUD, states that:

2. In January of 1998, I was asked to perform a market analysis and inspection of the property located at 15875 La Vida Drive, Palm Springs (hereinafter referred to as subject property). I was to review the appraisal of the subject prepared by Gabe Brooks (hereinafter referred to as appraisal) .

3. My site inspection found the subject property to be unoccupied and uninhabitable and appeared to be vacated for a couple of years. The water meter was pulled for unauthorized consumption in May of 1997. Although the appraisal indicated that the property was connected to sewer, there were no sewer lines. The electric meter was not active and there had been no electricity billing in the last 2 years.

4. The appraisal noted that the subject property was "well maintained with all major upgrades and landscaping appeared well maintained." However, there was no landscaping, rubble littering the concrete slab (no flooring), and there was a high urine/feces stench throughout.

5. There are no public facilities, shopping, schools or public transportation in the subdivision.

Property values are \$30,000 to a maximum of \$80,000. The appraisal erroneously describes the tract as "good quality residential tract development reflecting overall good exterior maintenance levels with "good locational amenities and conveniently located to schools, parks, shopping and employment."

6. The appraisal comparables were deficient as follows:

(a) 162 9 Verbena Drive: This property is 7 miles south and in an older community of large estate properties with all public facilities. The superior neighborhood bares [sic] no comparability to the subject's community. Photo is not the correct property.

(b) 1130 E. Via Colusa: There is no such address.

(c) 1807 S. Palm Canyon Drive: This property is 13 miles, rather than 13 blocks, from the subject property. It is in area far superior to the subject property. Also, an incorrect photo of the property was included in the appraisal.

7. Based on inspection of supportable and comparable property sales in the area of the subject property, on January 15, 1998, I estimated the fair market value of the subject property as \$39,000.

8. My review of data compiled from public records found that the subject property was sold in 1989 with a transfer value of \$40,000, resold in 1995 with a transfer value of \$48,172, resold December 12, 1996, with a transfer value of \$9,000 [sic], and resold in January of 1997, with a transfer value of \$11,500 [sic]. In December of 1999 the property was conveyed ' with a transfer value of \$35,000. The subject appraisal was submitted to support a loan of \$155,790.

9. I am familiar with the Uniform Standards of [Professional] Appraisal Practice (USPAP") attached to my Declaration. The appraisal of the subject property violated the standards as follows:

Standard Rule 1-1(b): The appraiser committed several substantial errors relating to comparables, condition of the property, and amenities which significantly affected the value.

(a) Standard Rule 1-3: The appraiser incorrectly identified neighborhood trends and economic demands.

(b) Standard Rule 1-4: The appraiser incorrectly collected, analyzed, and

reconciled comparable sales data.

(c) Standard Rule 1-5: The appraiser failed to consider prior sales, including a recent sale of \$11,500. (Govt. Exh. B, Declaration of Kit Walters).

10. On September 1, 1998, Lily A. Lee, Director of Santa Ana Homeownership Center, sent a letter to Respondent notifying him that an LDP was being imposed against him with regard to HUD's Single Family Insurance Program. The letter stated that the LDP prohibited Respondent from "participating directly or indirectly in Single Family Insurance Programs within the jurisdiction of the Santa Ana Homeownership Center" The letter also stated that the LDP would be effective for twelve months from the date of the notice. (Admin. Record, attachment ■ to Notice of Appointment of Hearing Officer).

11. Lee further stated in the September 1, 1998 letter that the cause of the LDP was that Respondent made false statements and certified as to the accuracy of the information contained in his appraisal of the subject property. Lee determined that "[f]alse information and an inconsistent and poor analysis of the property's market and condition contributed to an overvaluation of approximately \$100,000.00,-" and that, the appraisal constituted irregularities in Respondent's performance which were grounds for issuance of a LDP under 24 CFR 24.705 (a) (2), (7), and (10). (Admin. Record, attachment to Notice of Appointment of Hearing Officer) .

12. On November 20, 1998, Lee sent a letter to Respondent, stating that, after considering Respondent's comments made at an informal conference on November 5, 1998, she was affirming the LDP. In support of her decision, Lee stated that:

The appraisal contained false information and an inconsistent and poor analysis of market and condition of the property resulting in a substantial overvaluation. If the loan was insured, the government could have suffered losses in excess of \$100,000 for which you would have been held accountable. Your signing of the appraisal without visiting the property or verifying the information was done with a reckless disregard for the consequences of your actions. We consider this intentional action on your part to be a very serious violation evidencing your lack o [f] responsibility to participate in HUD programs.- (Admin. Record, attachment to Notice of Appointment of Hearing Officer).

13. By letter dated December 21, 1998, Respondent

requested a hearing before a Departmental hearing officer, pursuant to 24 C.F.R. § 24.713, to appeal Lee's affirmation of the LDP. (Admin. Record, attachment to Notice of Appointment of Hearing Officer).

14. On May 4, 1999, the Government amended its Complaint to also charge Respondent with false certification because he signed the appraisal without visiting the property or verifying the information, in violation of 24 C.F.R. §§ 24.705 (a) (2), (7), and (10) .

15. On January 12, 2000, the parties filed with the Board a Joint Status Report in which the parties agreed that the sole contested issue in this proceeding is:

[w]nether the appraisal . . . submitted and signed by Respondent, is adequate evidence for issuance of [an LDP] in the event that Respondent did not actually perform the field work for the appraisal.

In the Joint Status Report, the parties also requested that this Board rule on this matter based only on the written arguments to be subsequently submitted by the parties.

Discussion

Underlying the Government's authority not to do business with a person or entity is the requirement that agencies only do business with "responsible" persons and entities. 24 C.F.R. § 24.115. The term "responsible", as used in the context of HUD administrative sanctions such as suspension, debarment, and LDP, is a term of art which includes not only the ability to perform a contract satisfactorily, but the honesty and integrity of the participant as well. 48 Comp. Gen. 769 (1969). The test for whether an administrative sanction is warranted is present responsibility, although lack of present responsibility may be inferred from past acts. *Schlesinger v. Gates*, 249 F.2d 11 (D.C. Cir. 1957); *Stanko Packing Co. v. Bergland*, 489 F.Supp. 947, 949 (D.D.C. 1980). The sanctions imposed by HUD upon participants in its programs "shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment." 24 C.F.R. § 24.115.

It is uncontested that Respondent is a participant in a HUD program. As such. Respondent is subject to the administrative sanctions set forth at 24 C.F.R. Part 24. If adequate evidence of certain causes listed at 24 C.F.R. § 24.705 is established, an LDP may be imposed. The Government bears the burden of demonstrating, by adequate evidence, that cause for imposition of the LDP exists. 24 C.F.R. §§ 24.314(c) and 24.713(B); *James CL, Burnett*, HUDCA No. 80-501-D42, 82-1 BCA SI 15,716. Existence of a cause for a sanction does not automatically require its

imposition.

I. There is Adequate Evidence to Warrant the Issuance of an LDP Pursuant to 24 C.F.R. § 24.705 (a) (2) .

24 C.F.R. § 24.705 (a) (2) states that a cause for imposition of an LDP may be " [i]rregularities in a participant's or contractor's past performance in a HUD program". The Government contends that Respondent's violations of the USPAP, failure to visit the subject property, and use of deficient and nonexistent comparables, "are irregularities in performance which are **adequate** evidence that Respondent is not a responsible person who should be doing business with HUD," pursuant to 24 C.F.R. § 24.705 (a) (2) . (Govt. Arg., p. 5 } . Respondent argues that Section 24.705 (a) (2) does not apply to the instant matter because at issue is only one Appraisal Report certified by Respondent, and the words "irregularities" and "past performance," as used in the regulation, clearly contemplate "a repetitive pattern of errors or questionable performance over a period of time." (Resp. Arg., p. 5).

In its brief, the Government alleges that Respondent's violations of general appraisal practices constitute "irregularities in performance which are adequate evidence" that Respondent is in violation of Section 24.705 (a) (2) (Govt. Arg., at p. 5) . I find Respondent's failure to correctly complete the multiple steps necessary to perform a proper appraisal to constitute "irregularities," even though Respondent's actions concern only this one appraisal, and I reject Respondent's argument that this regulation contemplates "a repetitive pattern." "Where regulatory language is ambiguous, the agency's interpretation will be given effect 'so long as it is reasonable, that is, so long as the interpretation conforms to the purpose and wording of the regulations.'" *Rock of Ages Corp. v. Secretary of Labor*, 170 F.3d 148, 154 (2nd Cir. 1999) [quoting *Martin v. Occupational Safety & Health Review Comm'n*, 499 U.S. 144, 150-51, 111 S.Ct. 1171, 1176 (1991)] . See also *Wilson v. U.S. Parole Comm'n*, 193 F.3d 195, 199 (3rd Cir. 1999) .
However,

I do not find Section 24.705(a)(2) to be ambiguous with respect to its use of the terms "irregularities" and "past performance". An LDP, like many other types of HUD administrative sanctions, is a prospective sanction intended to protect the Department from engaging in future business with a participant which it has found, based upon that participant's previous conduct, to be lacking in responsibility. It is in this context that the Department does, and rightly should, view a participant's past conduct as indicative of that participant's future conduct should that participant engage, or seek to engage, in a future business relationship with the Department. Here, Respondent has performed certain past actions which the Department views as irregular. In the light of the circumstances of this case, I find no inconsistency or error in viewing Respondent's actions related to the subject appraisal to be an irregularity in his past performance. Section 24.705(a)(2) is applicable in this matter, and is an appropriate cause for imposition of the subject LDP.

II. There Is Inadequate Evidence to Support an LDP Issued pursuant to 24 C.F.R. § 24.705(a)(10).

24 C.F.R. § 24.705(a)(10) states that a cause for the issuance of an LDP may be a participant's "[m]aking or procuring to be made any false statement for the purpose of influencing in any way an action of the Department." The Government asserts that, although there is no direct evidence that Respondent knowingly participated in an attempt to defraud HUD, Respondent's acts and omissions are extremely serious because, if undiscovered, HUD would have suffered a substantial loss. (Govt. Arg., pp. 6-7). Respondent contends that 24 C.F.R. § 24.705(a)(10) does not apply in the present case because it is not based on a strict liability theory and because there is no evidence that he had knowledge of the false information in the Appraisal Report. (Resp. Arg., p. 5).

The language of Section 24.705(a)(10) is clear in that the participant must make or procure to be made any false statement. The parties have stipulated that the sole issue in this proceeding is whether the appraisal is adequate evidence for the imposition of an LDP even if Respondent did not personally perform the appraisal. The wording of the stipulation indicates that the parties accept as true Respondent's claims that he did not perform the appraisal, and that he did not "make" the false statements. Moreover, the Government does not provide sufficient evidence that Respondent procured, i.e., obtained, acquired, or caused, the making of the false statements. Therefore, in view of the stipulation entered into by the parties in this proceeding, I find that there is not adequate evidence to support

the issuance of an LDP based upon the cause set forth in Section 24.705(a)(10).

III. There is Adequate Evidence to Warrant the Issuance of an LDP Pursuant to 24 C.F.R. § 24.705(a)(7).

24 C.F.R. § 24.705(a)(7) states that one of the causes of an LDP is "[f]alsely certifying in connection with any HUD program, whether or not the certification was made directly to HUD." The Government contends that the imposition of the LDP pursuant to 24 C.F.R. § 24.705(a)(7) was warranted due to Respondent's false certification that he performed the subject appraisal and was not significantly assisted in the appraisal by a third party.

Respondent counters that the phrases "personally inspected" and "personally prepared," as contained in the Appraiser's Certification and accompanying Certification, should not be interpreted literally. Respondent submits that USPAP Standard Rule 2-5 states "(a) n appraiser who signs a real property appraisal report prepared by another, even under the label of 'review appraiser' must accept full responsibility for the contents of the report." (Resp. Arg., p. 7). Respondent claims that the relevant language of the Rules "suggests that one can sign a report prepared by another appraiser without having to sign as the 'review appraiser' so long as he is willing to accept responsibility for its contents." Id. Respondent claims that, in light of the Statements on Auditing Standards ("SAS"), which provide that auditors may use outside qualified agents in developing his/her auditor's examination, his actions were not unreasonable or irresponsible. (Resp. Arg., p. 3).

It would appear that this argument, while well articulated by Respondent, is not helpful to his cause. According to Respondent's logic, a supervising party may, under both the USPAP and SAS, sign an appraisal report or an auditor's examination without having actually personally performed the appraisal or examination or signing as the "reviewer". Respondent seems to suggest that a person is not technically making a false certification when he or she signs a report containing false information not supplied by the signatory. Even without addressing this narrow issue, it is uncontested that the USPAP and SAS standards condone such practices only "so long as [the reviewer] is willing to accept responsibility for its contents." (Res. Arg., p. 7). Giving full weight to Respondent's argument as to the applicability of these pertinent provisions of the USPAP and SAS, if Respondent signed the Appraisal Report and did not actually perform the appraisal, he would, nevertheless, be responsible for the veracity and reliability of the Appraisal Report's contents. In that case, an LDP would have been properly issued pursuant to Section 24.705(a)(10) because Respondent would

be responsible for the false statements contained in the Appraisal Report as though he personally made them.

Respondent does not specify whether USPAP Rule 2-5 applies in all cases, or whether the signing of an appraisal report is viewed differently (1) when the certification is specific to the party who performed the appraisal, or (2) when the certifying party received assistance in the performance of the appraisal, as are the circumstances here. Nevertheless, pursuant to USPAP Rule 2-5, Respondent cannot escape certain liabilities if he certifies to the accuracy of a document containing false information.

Respondent also argues that the doctrine of *respondeat superior* is inapplicable here because civil liability is not an issue since HUD did not suffer damages. (Resp. Arg., p. 8) . Respondent concludes that the real issue in this matter is whether the appraiser "has shown a lack of moral character, or such incompetence so as to create such a risk to the government that he should be prevented from participating in HUD programs." Id. In support of this conclusion, Respondent claims that his lack of knowledge of the false statements, his reasonable belief that the work had been performed by a competent appraiser, and the lack of blatant errors in the Appraisal Report, indicate that his signing the Appraisal Report was not immoral and did not create such a risk that an LDP should have been issued,,

Respondent may be correct in that the doctrine of *respondeat superior* is not a relevant issue here, but he errs in his conclusion that this is because HUD did not suffer monetary damages. Respondent may be more on point when he suggests that the issue is whether he has shown a lack of moral character and whether he has exhibited an incompetence that would put HUD programs at risk. However, the salient issue before me is whether Respondent is a responsible participant and whether Respondent's actions adversely affected the integrity of a HUD program, regardless of whether his actions adversely caused monetary losses. Respondent's moral character becomes an issue only to the extent that it impacts upon the issue of his responsibility as a participant in a HUD program. Respondent certified that he "'personally performed" the appraisal, when he clearly knew that he had not done so. By this act, Respondent's moral character could properly be called into question.

It is well-established that a lack of intent to mislead HUD does not summarily exculpate the perpetrator from the consequences of false certification. See First Capital Home Improvements and Roy G. Lovelace, HUDBCA Nos. 99-D-108-D7; 97-A-127-D21 at p. 31 (Nov. 24, 1999) .

Participants must be held strictly accountable for their certifications and bear full responsibility for any false certification. A false certification in connection with any HUD program is a serious offense because HUD must rely upon the truthfulness of the representations made by those who participate in its program and who certify to the accuracy of their representations. A failure to do so, notwithstanding any intent to mislead, undermines the integrity of the HUD program and is indicative that HUD is not doing business with a responsible person. CKJ Realty & Management, Inc. and Clinton Williams, Jr., HUDBCA No. 98-A-111-D8 (Dec. 16, 1998).

Consistent with this "strict accountability" standard, Respondent cannot be viewed as a responsible party due to his signing of false certifications which were subsequently submitted to HUD. Nevertheless, a participant's knowledge of the falsity of his or her statement should be considered in the determination of whether a certification is a material misrepresentation. See CKJ Realty & Management, Inc. and Clinton Williams, Jr., HUDBCA No. 98-A-111-D8 (Dec. 16, 1998). In CKJ Realty, the Board found that case distinguishable from William D. Muir and Metro Community Development Corp., HUDBCA No. 97-A-121-D15 (Nov. 6, 1997), because in CKJ Realty, the Respondents' belief that their statement that a fidelity bond was in force was reasonable given the absence of any evidence that the existing bond had been terminated. On the other hand, in Muir, Respondent Muir, president and chief executive officer of Metro Community Development Corp., falsely certified that Metro was not delinquent in any Federal debt although Muir was aware that Metro was delinquent in taxes due to the Federal government. The Board determined that Muir's misrepresentation was material because, although there was no evidence that Muir's certification had an adverse affect on the HUD-related project at issue, it did, per se, "lead HUD officials to [erroneously] believe that Metro was a credit-worthy participant in a Federal Program." See CKJ Realty at 10. See also Muir at 9.

In a manner quite analogous to Muir's misrepresentation, Respondent knew at the time he signed the Appraisal Certification and accompanying Certification that he had not performed the appraisal, and that other individuals had essentially performed the appraisal, yet Respondent did not indicate this fact anywhere on the Appraisal Report. Respondent insists that he was urged to change his signature from under the "Supervisory Appraiser" column to the "Appraiser" column of the Appraisal Certification, yet Respondent offers no proof of the existence of a document

which he originally signed as "Supervisory Appraiser." Yet even if such a document existed, Respondent, as a Supervisory Appraiser, would have responsibility for the Appraisal Report's contents and conclusions as a review appraiser. This is a correct interpretation given to the pertinent rules by Respondent himself. The SAS provisions cited by Respondent permit the use of outside agents in developing an auditor's examination, but only if the auditor's actions were not unreasonable or irresponsible. Even if we concede the applicability of these SAS provisions which relate to audits to the circumstances of this case, I would still be compelled to find that Respondent's actions in the certification of the Appraisal Report were unreasonable and irresponsible.

But for HUD's own investigation, the false statements contained in the Appraisal Report would have remained undiscovered and the Department could have insured a loan for a home well in excess of \$100,000.00, an amount significantly more than what the property was worth. Respondent took no action to mitigate any potential damage to HUD by ensuring that the statements in the Appraisal Report were indeed true and correct, as indicated in the accompanying Certification. In First Capital, Respondent performed remedial actions at his own expense, despite the fact that a Completion Certificate had been executed. The Board found the circumstances in First Capital distinguishable from the circumstances present in *George F. Marshall, et al. v. Andrew Cuomo, et al.*, No. 98-1780, 1999 U.S. App. Lexis 23113, at 2 (4th Cir. 1999). In *Marshall*, Respondent failed to remedy his lack of compliance, even after *Marshall* was notified of his failure to comply with his contractual obligations. *Id.* at 29-30. The U.S. Court of Appeals for the Fourth Circuit characterized *Marshall's* behavior as a "willful failure to comply" with, and a "disregard for," his contractual obligations. *Id.*

Similarly, Respondent's inaction with respect to the deficiencies in the appraisal is also evidence of a "willful failure to comply" with, and a "disregard for," his obligations. Respondent's failure to visit the property to determine the truthfulness of the appraisal evidences Respondent's disregard for his obligations as a HUD participant, and demonstrates a dereliction of duty as a competent, licensed appraiser. Although Respondent stated that he searched for blatant errors when he looked at the Appraisal Report, I find it difficult to believe that Respondent would have been able to determine with confidence whether there were errors in the report by that type of review. As evidenced by Walters' Declaration, the majority of the errors could only have been discovered by a visit to the property. As an experienced, licensed appraiser, Respondent should have been aware of this. Had Respondent visited the property or reviewed

the subject property's prior sale records, it is highly probable that he would have found and corrected the false statements or brought them to HUD's attention without the Department's actions which resulted in the disclosure of these false statements.

Respondent obviously believed that his assessment of TJ, John, and Jim and his consideration of their needs as small businessmen were reasonable. This conduct was foolhardy. Respondent referred to these men as acquaintances, and admits that he did not know their real names. A reasonable investigation may have led Respondent to discover who these individuals were and the degree of their professional competence and honesty. Respondent's assessment of, and reliance upon, these individuals leaves much to be desired, and places the soundness of Respondent's business judgment in serious doubt.

In light of the foregoing, I conclude that Respondent's false certification was a material, blatant, and deliberate misrepresentation, and, as such, constituted a serious act that placed the integrity of a Federal program at risk. Even in the absence of evidence that HUD suffered a monetary loss due to Respondent's false certification, Respondent's certification as to the accuracy of false information, his certification disavowing the assistance of others in the preparation of the report, and his failure to perform an on-site review reflects conviction of a party with whom the Department should not be engaged in a business relationship.

Recommended Decision

Based upon the findings of fact and conclusions of law set forth above, it is my determination that: (1) the Government has not shown that there exists adequate evidence to establish cause for the LDP pursuant to 24 C.F.R. § 24.705 (10); and (2) the Government has shown that there exists adequate evidence to establish cause for the LDP pursuant to 24 C.F.R. §§ 24.705(a)(2) and (7).

It is my determination that, upon due consideration of the facts and the law in this matter, the imposition of the LDP under

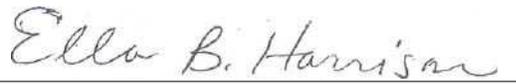


David T. Anderson Administrative Judge September 15, 2000

the circumstances of this case was proper and warranted.

CERTIFICATE

I certify that the foregoing is a true and exact copy of the Findings of Fact and Recommended Decision of the HUD Board of Contract Appeals in HUDBCA No. 99-A-104-D3, In the Matter of GABE BROOKS.'


Ella B. Harrison
Ella B. Harrison
Staff Assistant/Recorder

September 15, 2000