

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

IN THE MATTER OF:

MICHAEL JAMES JUSTICE
and EM-JAY INVESTMENTS, Inc.

Respondents

HUDALJ 89-1319-DB

Jerome D. Wurst, Esquire
For the Respondent

William L. Johncox, Esquire
For the Department

Before: William C. Cregar
Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arose as a result of a proposal by the Department of Housing and Urban Development ("the Department" or "HUD") dated December 21, 1988, to debar Michael James Justice and his affiliate, EM-JAY Investments, Inc., from further participation in HUD programs for a period of three (3) years from that date. The Department's actions are based upon a civil judgment against Respondents in the 348th Judicial District Court of Tarrant County, Texas, for violating Sections 17.46 and 17.50 of the Texas Deceptive Practices Act. The Respondents were notified of the proposed debarment and timely requested a hearing by letter dated January 20, 1989. Because the proposed action is based

upon a civil judgment, the hearing was limited under a Departmental regulation to submission of documentary evidence and written briefs. 53 Fed. Reg. 19,187 (1988) (to be codified as 24 C.F.R. Sec. 24.313(b)(2) (ii)). This matter being ripe for decision, I now make the following findings of fact and conclusions based upon the record submitted:

Findings of Fact

On December 13, 1983, Respondents entered into a contract to sell real estate to one Arthur Ford. Respondents were to convey the property to the buyer by warrantee deed "upon full performance". (Govt. Ex. 3) The purchase price of the property was \$35,880. Mr. Ford was to make a down payment of \$12,000 followed by monthly payments until the unpaid balance was paid off. Ford made the down payment and the monthly payments to the Respondents until May, 1985. However, Respondents did not have title to the property, and made payments on a Deed of Trust Note until they defaulted on July 1, 1984. The property was sold at a foreclosure sale by the Trustee on June 2, 1985. Mr. Ford was evicted.

Mr. Ford filed suit against the Respondents alleging violations of the Texas Deceptive Trade Practices Act. He alleged breaches of warrantee in failing to make payments on the property resulting in the foreclosure and failing to disclose information known at the time of the sale. According to Mr. Ford's petition, the Respondents failed to mention, among other things, that the deed of trust was not in Respondents name; that Respondents could not convey good title to the property; and that the \$12,000 down payment would not be used to reduce indebtedness on the property.

The matter came to trial on April 9, 1986. Respondents filed an answer but did not appear. The court held that Respondents violated Sections 17.46 and 17.50 of the Texas Deceptive Trade Practices Act, and that such action was "unconscionable and was committed knowingly, and that it was the producing cause of actual damages to the plaintiff." (Govt. Ex. 2) Mr. Ford was awarded actual and punitive damages, attorneys fees, court costs, and interest until the judgment¹

¹ The award was as follows:

(1) \$14,000 as actual damages plus two times actual damages not in excess of \$1,000; (2) \$33,000 as three times actual damages in excess of \$1,000; (3) \$15,000 as attorneys fees; (4) \$137 for cost of Court; and (5) interest at the rate of ten (10%) percent per

was paid.

On January 25, 1989, Anthony Vaughn, attorney for Mr. Ford, was contacted by Respondent's counsel regarding a possible compromise of the judgment. Since that date there has been no further discussion of settlement. As of March 7, 1989, Respondents had paid nothing. (Govt. Ex. 6).

Respondent is an officer of Taylor Mortgage, Inc., a HUD approved mortgagee; was a participant in a HUD covered transaction (Govt. Ex. 5); and may reasonably be expected to participate in future HUD transactions with critical influence or substantial control over covered transactions. (53 Fed. Reg. 19183, 19184 (1988) to be codified as 24 C.F.R. Secs. 24.105(p), 24.110(a)).

Discussion

The Department relies upon the cause stated at 53 Fed. Reg. 19184 (1988) (to be codified at 24 C.F.R. Sec. 24.305(a)(4)). This regulation provides for debarment upon commission of an offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person. The regulation expressly recognizes that an action may be taken as a result of a civil judgment.

year on the judgment from the date of judgment until paid.

24 C.F.R. Sec. 24.305(a).² HUD also argues that a three year debarment is necessary to protect the public interest and to deter misconduct by other participants in HUD programs.

The Respondent makes the following contentions by way of defense and mitigation:

(1) The "civil judgment" was a default judgment, and not as serious as a judgment resulting from a full adversary proceeding. Mr. Justice did not appear at the trial because he could not afford an attorney and because he "felt sorry" for Mr. Ford. It is normal for a judge to award punitive damages in an amount three times the amount of actual damages.

(2) Respondents did not mislead Mr. Ford. The contract plainly states that he would not receive a warrantee deed until the indebtedness was paid in full. Ford was informed that the transaction was a "wrap around" mortgage and that the down payment would not be applied against the indebtedness on the property. Mr. Ford was represented by a licensed broker and was urged by Respondents to have an attorney represent him.

(3) Respondent attempted to help Ford perform the contract and did not act from bad motives. Mr. Ford defaulted several times. By not pursuing contractual remedies, Respondent permitted Ford to keep all of the money he deposited.

(4) Respondents admittedly did not satisfy the judgment. Ford's original attorney is deceased. Despite a "substantial investigation" to determine the whereabouts of Mr. Ford, attempts to contact him to arrange for payment of the indebtedness were unsuccessful until late February, 1989. The judgment is excessive. Respondent lacks sufficient assets

² The regulation in effect at the time of the judgment provided that debarment could be taken as a result of "Any other cause of such serious compelling nature, affecting responsibility. . ." 24 C.F.R. Sec. 24.6(a)(4) (1985).

to satisfy it.

Debarment is a sanction which may be invoked by HUD as a measure for protecting the public by ensuring that only those qualified as "responsible" are allowed to participate in HUD programs; Stanko Packing Co. v. Bergland, 489 F. Supp. 947, 949 (D.D.C. 1980); Roemer v. Hoffman, 419 F. Supp. 130, 131 (D.D.C. 1976). "Responsibility" is a term of art used in government contract law. It encompasses the projected business risk of a person doing business with HUD. This includes his integrity, honesty, and ability to perform. The primary test for debarment is present responsibility although a finding of present lack of responsibility can be based upon past acts. Schlesinger v. Gates, 249 F.2d 111 (D.C. Cir. 1957); Roemer, supra.

I have considered the matters submitted by the Respondents. These fall into two categories: First, reasons why the default judgment should be ignored or excused; and second, explanations surrounding the admitted fact that the judgment has not been satisfied.

The District Court of Tarrant County, Texas determined that Respondent's violation of the Texas Deceptive Trade Practice Act, "was unconscionable and was committed knowingly, and that it was the producing cause of actual damages to the plaintiff." (Govt. Ex. 2) Despite the fact that this was a default judgment, the application of the principal of collateral estoppel precludes relitigation of the issues litigated and decided in that proceeding. See generally, 4 Davis, Administrative Law Treatise, Sec. 21.7 (2d ed. 1983). The finding that the Respondents violated these statutes and that their acts were "unconscionable and committed knowingly," is binding on this forum, and supports a conclusion that HUD would be at risk in any future dealings with the Respondents.

Respondent's failure to pay any amount in satisfaction of the judgment further supports this conclusion. Mr. Justice claims that he has been unable to reach Mr. Ford until very recently; that it was he who contacted Mr. Ford; and that he (Respondent) has been unwilling and unable to pay what he considers an excessive judgment. Respondent's explanations for his failure to make any payments are unpersuasive. The judgment was rendered in April 1986. Three years have elapsed. It was not until after the proposed debarment was issued that Respondent attempted to contact Mr. Ford. (Govt. Ex. 6) Even now, Respondent

disputes the amount of the award and expresses the hope for a "favorable settlement". He admits that he would be willing to borrow money to reimburse Mr. Ford for his down payment, "reasonable" attorney fees, and some undisclosed amount for Ford's mental anguish. He does not agree to pay the award as ordered. (Respondent's Supplemental Response, p. 3) The passage of this substantial period without any documented attempt, until recently, to obey the court's order, and the admitted unwillingness or inability of the Respondent to satisfy the judgment provides additional evidence that HUD would not be free from risk in any future dealings with the Respondents.

Conclusion and Order

Upon consideration of the public interest and the entire record in this matter I conclude and determine that good cause exists to debar Michael James Justice and EM-JAY Investments, Inc., from further participation in primary covered transactions and lower tier covered transactions as either principals or participants at HUD and throughout the Federal Government and from participating in procurement contracts for a period of three years from December 21, 1988.

William C. Cregar
Administrative
Law Judge

Dated: May 26, 1989

CERTIFICATION OF SERVICE

I hereby certify that copies of this DECISION AND ORDER issued by WILLIAM C. CREGAR, Administrative Law Judge, HUDALJ 89-1319-DB, were sent to the following parties on this 26th day of May, 1989, in the manner indicated:

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