

In the Matter of:	:	
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William Johnson and	:	HUDBCA No. 03-D-104-D5
Linear Non-Profit Housing Corporation,	:	Docket No. 03-3026-DB(LDP)
	:	
Respondents	:	
	:	

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FINDINGS OF FACT AND RECOMMENDED DECISION

By Administrative Judge Jerome M. Drummond

Statement of Jurisdiction

The HUD Board of Contract Appeals (“Board”) received and docketed the request by Linear Non-Profit Housing Corporation (“Linear”) and William Johnson (“Johnson”) (collectively “Respondents”) for a hearing on a Limited Denial of Participation (“LDP”) imposed by Jeanette Harris (“Harris”), Director, Michigan State Office of Community Planning and Development (“Michigan State CPD Office”) of the U.S. Department of Housing and Urban Development (“HUD” or “Government”). The Administrative Judges of the Board are authorized to serve as hearing officers and to issue findings of fact and a recommended decision for consideration by the HUD official who imposed the LDP. 24 C.F.R. §§ 24.105, 24.314(b)(2), and 24.713(b)(2002). The findings of fact and recommended decision set forth below are based on the administrative record (“AR”) in this case, the written submissions of the parties to the proceeding (“Gov. Exh.”; “Resp. Exh.”), the hearing transcript (“Tr.”), documentary evidence introduced at the hearing, and HUD’s post-hearing brief (“Gov. Brief”).

Findings of Fact

1. During all relevant times prior to 2001, the Community Planning and Development Department (“CPDD”) was a department within the City of Detroit, Michigan (“Detroit”) and received funds for community development activities from Detroit, which, in turn, received funds under a Community Development Block Grant (“CDBG”) funds or HOME Investment Partnership Program (“HOME”) (collectively “CDBG funds”) from HUD for such purposes. From 1996 through 2001, CPDD contracted with non-profit housing corporations which used annual CDBG funds awarded by HUD to pay the cost of rehabilitation work and the administration of Detroit’s Minor Home Repair (“MHR”) program. (Gov. Exhs. 5-6, 9).
2. Linear, a non-profit corporation organized and existing under Michigan law with its principal place of business in Detroit, has participated in community development programs for Detroit for more than twenty years and administered CDBG funds awarded to Detroit by HUD under the MHR program since October 1, 1995. Linear was one of Detroit’s leading non-profit housing corporations and noted for its high volume, repairing more homes than any other non-profit during the period 1996-2000. Linear shared a good business relationship with Detroit. Johnson is Linear’s president and director. He founded Linear in 1978 or 1979. As president, Johnson ran the corporation, made the day-to-day decisions, and executed all significant documents on behalf of Linear, including contracts with CPDD to administer CDBG funds for housing rehabilitation work. He was also the project coordinator on contracts with CPDD to administer CDBG funds under the MHR program. As such, Johnson’s duties included ensuring that Linear complied with both contract and program requirements. Johnson has a degree in civil engineering and is familiar with and had received some training in the program requirements that apply to administering CDBG funds. (Resp. Exh. 31; Gov. Exhs. 3-6, 9; AR 1, 6, 23, 24; Tr. 97-102, 572-574).
3. As a condition precedent to the issuance of the CDBG funds, Johnson, as president of Linear, entered into contracts with CPDD to administer CDBG funds for housing rehabilitation work under the MHR program during the program years commencing on October 1, 1998, October 1, 1999, and October 1, 2000. Johnson signed each contract agreeing to comply with, inter alia, all HUD requirements and regulations applicable to the administration of federal grants by non-profit corporations, during the stated contract periods. Each contract was for a period of twelve months. (Gov. Exhs. 4-6; Resp. Exh. 61).
4. Paragraphs 6.04 and 6.06 of the CDBG funded contracts, signed by Johnson for the program years 1998, 1999, and 2000, contained identical provisions. Paragraph 6.04 required Respondents to submit accurate invoices to Detroit. Paragraph 6.06 restricted Respondents’ use of CDBG funds to the terms and conditions of the respective contracts and to all Federal rules and regulations applicable to the use of CDBG funds, including, but not limited to, 24 C.F.R. Part 84 and OMB Circulars A-122 and A-133. 24 C.F.R. Part 84, Allowable Costs, states: “The allowability of costs incurred by non-profit organizations is determined by OMB Circular A-122.” (Gov. Exhs. 4-6; Resp. Exh. 61; Tr. 573).

5. The CPDD is within the jurisdiction of the HUD Michigan State CPD Office for purposes of administering and overseeing HUD programs and grants. As part of a routine review of Detroit's financial management of the CDBG financed MHR program and the quality of the rehabilitation work completed, the CPDD was scheduled for a monitoring review which commenced in August 2000. The monitoring included review of Detroit's files relating to contracts with non-profit corporations under the MHR program during the program year October 1, 1999 to September 30, 2000. Linear was one of three non-profit housing corporations subject to physical inspections and a financial management review. (Gov. Exhs. 9, 11; AR 3).
6. Bill Osis ("Osis") was the investigator from the HUD Michigan State CPD Office who conducted the review. He determined that Linear's actual repairs were acceptable. His review relative to the financial management of the program revealed that Detroit had not well managed its contract with Linear for the program year October 1, 1999 to September 30, 2000. (Gov. Exh. 9; AR 16).
7. Linear had submitted, on request, payments of \$3,065.27 at least twice within an 18-month period. He also discovered numerous computer equipment and software purchases over \$50.00 which lacked pre-approval by Detroit. (Gov. Exh. 9; AR 3).
8. Osis also discovered evidence suggesting that Linear: (1) received reimbursement from Detroit for expenses totaling \$4,423.88 which were not necessary for the administration of the CDBG program; (2) failed to submit administrative allocation plans in 1999 and 2000 even though it performed contracts with Detroit for housing rehabilitation using CDBG funds and disaster relief contracts with Michigan, Wayne county, and Detroit during these years; (3) submitted for reimbursement Invoice No. 3494 from Natural Graphics which had been changed from "bill to" Digital Media to Linear; (4) failed to submit required audits for the program years 1999 and 2000 even though it received payments totaling \$310,318 under a disaster relief contract with Wayne County during that period; (5) submitted Invoice No. 3494 for payment of \$142 even though it was inaccurate; (6) failed to gain pre-approval from Detroit for certain purchases; and (7) used CDBG funds for an entity called Digital Media whose operation was unrelated to the performance of the CDBG-funded housing rehabilitation activity. Due to these deficiencies, the HUD Michigan State CPD Office expanded its review of Linear. (AR 16I; Gov. Exhs. 9, 23, 29, 30, 39; Tr. 251; Resp. Exh. 61).
9. The HUD Michigan State CPD Office also investigated a complaint by Kathi Bobbitt ("Bobbitt"). She had been employed as a secretary with Linear from August 1984 to November 2001. Her duties had included handling Linear's invoices and bill payments until 1998. During that time Linear was having problems with incorrect and altered invoices being submitted to Detroit for payment under the MHR program. Despite his belief that Bobbitt was responsible for Linear's problems with invoices and bill payments, Johnson did not always review documents that Bobbitt had prepared for his signature. The investigation was conducted simultaneously with monitoring review for Detroit. (AR 16P; Tr. 27, 28, 595-599).

10. During an interview with Special Agent Wixted (“Wixted”) of the HUD Office of Inspector General (“OIG”), Bobbitt allegedly admitted that, under Johnson’s direction, she improperly altered Invoice No. 3494 from a supplier to Digital Media to reflect that the Invoice was sent instead to Linear. Bobbitt did not testify at the hearing for this case. The representation by Bobbitt to Wixted that she had been directed by Johnson to alter the invoice was contradicted by Johnson. There is no dispute that Invoice No. 3494 had been altered prior to its submission to Detroit for reimbursement. A tape recording produced at the hearing failed to clarify why Bobbitt altered Invoice No. 3494. (Tr. 27-28; 600-604).
11. By letter dated June 14, 2001, the HUD Michigan State Office conveyed to Detroit the final report of the monitoring review. The report, also dated June 14, 2001, examined administrative costs for Linear totaling \$1,275,163.27 and disallowed costs totaling \$6,340.73. The report found that Respondents had used CDBG funds for ineligible purposes and made recommendations. These problems did not exist with the other non-profit housing corporations which were investigated as part of the monitoring review. (Resp. Exh. 34; Gov. Exh. 9; Tr. 251).
12. Following issuance of the monitoring review report, the HUD Michigan State CPD Office attempted to obtain information to resolve the finding in the report that CDBG funds had been expended by Linear for ineligible purposes. (AR 8, 12-15).
13. By letter dated October 11, 2001, Raymond J. Perry, Program Manager, HUD Michigan State CPD Office, notified Detroit that, regarding allocating costs to Digital Media, equipment purchased for Digital Media had been shipped to Linear’s office. The letter stated:

Regarding allocating costs to Digital Media, the City states in its response that Mr. William Johnson of Linear Nonprofit claims that Digital Media is merely a hobby, not a business. The City further points out that HUD has been unable to produce any solid evidence that Digital Media was selling services. We agree that is the case. However, in terms of allowable costs it is clear that equipment purchased for Digital Media was shipped to the Linear NPHC offices whose rent is paid for by CDBG funds, received by persons being paid by CDBG, and that invoices were paid on Linear NPHC checks prepared by people being paid by CDBG. This is sufficient evidence to show that the CDBG program funded non-program related activities. Digital Media does not have to be a profitable business for the use of program resources to be improper.

Given the above statement regarding the propriety of the use of the program resources by Digital Media, we agree that there is at this time insufficient information to assess a portion of the direct or indirect administrative costs of Linear NPHC to Digital Media. (AR 13).

14. Respondents have provided no evidence that explains why mail for Digital Media was delivered to Linear's address. This question remains unanswered. (Resp. Exhs. 50, 61; AR 15).
15. By letter dated July 29, 2002, Harris, Director, HUD Michigan State CPD Office, imposed an LDP against Johnson and his affiliates. The LDP prohibited Respondents from participating in HUD programs throughout the jurisdiction of the HUD Michigan State Office for a twelve-month period. The LDP against them alleged performance failures by Johnson as president of Linear. (Resp. Exh. 61).
16. The LDP notice dated July 29, 2002 cited the following failures by Respondents:
 - a) Failure to comply with 24 C.F.R. § 84.27 and OMB Circular A-122 by purchasing 21 items which are not ordinary and necessary costs for a housing rehabilitation program;
 - b) Failure to comply with paragraph 6.08 of Linear's contract with Detroit and OMB Circular A-122 by not submitting a cost allocation plan for the program years beginning October 1, 1999 and October 1, 2000;
 - c) Failure to comply with OMB Circular A-133 in that the required audits for program years 1999 and 2000 were not submitted to Detroit in accordance with OMB Circular A-133;
 - d) Fraudulently submitting an altered invoice to Detroit for reimbursement with federal funds;
 - e) Failure to comply with paragraph 6.04 of Linear's contract with Detroit by submitting inaccurate invoices for reimbursement;
 - f) Failure to request pre-approval for expenditures of over \$500 as required by paragraph 7 of Linear's contract with Detroit;
 - g) Failure to comply with the cost principles set forth in OMB Circular A-122 by utilizing facilities and personnel paid for by CDBG funds to order and receive materials for Digital Media, an entity whose operation is unrelated to the performance of the CDBG funded housing rehabilitation activity.

The LDP notice concludes by stating that the alleged violations described above constitute cause for an LDP pursuant to 24 C.F.R. § 24.713. (Resp. Exh. 61).

17. The monitoring review found that Linear received \$ 4,423.88 as reimbursement for computer hardware and software expenses and other expenses which the HUD Michigan State CPD Office deemed to be unallowable under 24 C.F.R. § 85.27 and the costs principles set forth in OMB Circular A-122. These expenses include:
 - (1) Travel to a MacWorld computer show in California;
 - (2) Microsoft Flight Simulator;
 - (3) Family Gathering software;

- (4) Virtual Game Station;
- (5) Kai's Photosoap software;
- (6) Rice Cookbook;
- (7) TurboTax for Mac;
- (8) KPT Actions software;
- (9) Painter 6 software;
- (10) Jiggle, Model Master and Clouds II software;
- (11) Corel Draw 6 software;
- (12) Eye Candy and Texturescape software;
- (13) Natural Scene Designer software;
- (14) Kai's Power Tools (software);
- (15) Vertigo 3D (software);
- (16) Various periodicals: "Most Popular Websites," "Wired," and "Mac Today;"
- (17) Raygun software;
- (18) Intellihance Pro 4.0;
- (19) Adobe After Effects 5; and
- (20) Media Paint software (Resp. Exh. 61).

18. Respondents admit that at least five of these purchases were improper, but attribute the problem to Bobbitt. Respondents turned over all items to Detroit on October 1, 2001. Sometime after August 8, 2001, Respondents completed reimbursing Detroit for all expenses. (Tr. 594-599; Resp. Exh. 11; AR 16I).
19. The monitoring review revealed that Respondents had disaster relief contracts with the State of Michigan, Wayne County, and Detroit in 1999 and 2000 and had failed to submit cost allocation plans contrary to the clear language in paragraph 6.08 of Linear's contracts with Detroit. (Gov. Exhs. 5, 6, 9, 10, 16I; AR 1, 23, 24; Resp. Exh. 61).
20. The HUD Michigan State CPD Office determined, based upon documents provided by CPDD for these years, that Linear had received approximately \$141,500 in administrative funds from the disaster relief programs during 1999 and 2000 and charged 100 percent of Linear's administrative expenses to Detroit under the CDBG program. Respondents admit that in 1999 and 2000, Linear received separate disaster relief grants from the State of Michigan, Wayne County, and Detroit. Respondents allege that these funds paid for approximately 60 percent of the housing rehabilitation units as well as a proportionate share of administrative costs. Respondents admit that they did not submit a cost allocation plan until August 18, 2001. (Gov. Exhs. 5, 6, 9, 10, 16 I; AR 1, 23, 24; Resp. Exh. 61).
21. OMB Circular A-133 requires non-federal entities that expend \$300,000 or more in a year in Federal award to have a single or program specific audit conducted for that year. (OMB Circular A-133 §200(a)). (AR 16I; Gov. Exh. 13).
22. The uncontroverted evidence in the record reveals that Respondents received reimbursements totaling \$310,318 from their disaster relief contract with Wayne County. I therefore find that Respondents should have submitted an audit in 1999. (Gov. Exhs. 24, 28-30).

23. Paragraph 6.04 of the contract states that Detroit has the “right to rely on the [Respondent] for submission of accurate invoices. . . .” Invoice No. 3494 from Natural Graphics was addressed to Bill Johnson at Digital Media. This invoice was subsequently changed to read Bill Johnson at Linear. (Gov. Exhs. 3, 31A).
24. Johnson testified that he had not altered any invoices which were submitted for payment under the MHR program. There is no evidence in the record that conclusively shows otherwise. (Tr. 600-607; Gov. Exh. 31B). Johnson admits that during the period in question, Linear was having “terrible problems with its records.” He became aware of the problems with the handling of invoices and billings for Linear in 1997 or 1998. These problems continued until about 2000. (Tr. 595-596).
25. Contrary to the failure charged in the LDP notice at paragraph (f), I find no language in paragraph 7 of the contract between the Respondents and Detroit which would require Linear to request pre-approval for purchases costing over \$500.00. (Gov. Exhs. 4-6, 9).
26. After reviewing the July 29, 2001, LDP letter, Respondents made a timely request for an informal conference on the LDP. Harris testified that, following the informal conference, she affirmed the LDP against the Respondents because she did not see a change in behavior or recognition of the problem by Respondents. (Tr. 111-120).
27. Following the conference, Respondents requested a hearing on the LDP pursuant to 24 C.F.R. § 24.713. The parties mutually agreed to waive the 45-day requirement for the hearing to commence, in accordance with 24 C.F.R. § 24.314(b)(2)(ii). The Board convened a de novo hearing in Detroit, Michigan. The time period for the LDP expired on July 29, 2003.

Discussion

An LDP is a discretionary administrative sanction that is imposed in the best interest of the Government. 24 C.F.R. §24.700. Underlying the Government’s authority not to do business with a person is the requirement that agencies only do business with “responsible” persons and entities. 24 C.F.R. §24.115. The term “responsible,” when used in the context of administrative sanctions such as LDPs, debarments, and suspensions, is a term of art which includes not only the ability to perform satisfactorily, but the honesty and integrity of the participant. In the Matter of McKinley v. Copeland, HUDBCA No. C-113-D14, 02-1 BCA ¶31,785 (Nov. 29, 2001). 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).

Johnson was a “participant” and a “principal” as defined at 24 C.F.R. §24.105. As the president of Linear, he had the authority to commit Linear in covered transactions and he also had primary management responsibility for Linear, which was a participant in housing rehabilitation programs funded by grants from HUD.

The charges cited as the causes for the LDP would constitute a basis for the sanction if any of them are established by adequate evidence. 24 C.F.R. § 705(a)(2) provides that irregularities in

a participant's past performance in a HUD program are cause for an LDP. In the Matter of McKinley v. Copeland, supra. Failure to honor contractual obligations or to proceed in accordance with contractual specifications or HUD regulations is cause for an LDP pursuant to 24 C.F.R. § 24.705(a)(4). Violation of any procedure relating to the obligations incurred pursuant to a grant of financial assistance is a cause for an LDP under 24 C.F.R. § 24.705(a)(9). Id.

The Government contends that Respondents:

- a) Failed to comply with 24 C.F.R. § 84.27 and OMB Circular A-122 by purchasing 21 items which are not ordinary and necessary costs for a housing rehabilitation program;
- b) Failed to comply with paragraph 6.08 of Linear's contract with Detroit and OMB Circular A-122 by not submitting a cost allocation plan for the program years beginning October 1, 1999 and October 1, 2000;
- c) Failed to comply with OMB Circular A-133 in that the required audits for program years 1999 and 2000 were not submitted to Detroit in accordance with OMB Circular A-133;
- d) Fraudulently submitted an altered invoice to Detroit for reimbursement with federal funds;
- e) Failed to comply with paragraph 6.04 of Linear's contract with Detroit by submitting inaccurate invoices for reimbursement;
- f) Failed to request pre-approval for expenditures of over \$500 as required by paragraph 7 of Linear's contract with Detroit;
- g) Failed to comply with the cost principles set forth in OMB Circular A-122 by utilizing facilities and personnel paid for by CDBG funds to order and receive materials for Digital Media, an entity whose operation is unrelated to the performance of the CDBG funded housing rehabilitation activity.

Respondents contend that: (1) they have acted in such a way as to mitigate the violation set forth in paragraph (a) above by repaying all 21 listed expenses that HUD found were unnecessary costs for a housing rehabilitation program; (2) with respect to the violation listed as paragraph (b), Detroit waived the contract requirement for a cost allocation plan; (3) Respondents did not, per se, alter Invoice No. 3494; (4) Respondents did not utilize CDBG funds inappropriately; and (5) the LDP was being imposed for punitive purpose.

With respect to the violation listed at paragraph (a) of the LDP notice, both 24 C.F.R. § 84.27 and the cost principles set forth in OMB Circular A-122 require that, for costs to be allowable under a grant, they must be recognized as ordinary and necessary and the individuals concerned must have acted with prudence in incurring those costs. Respondents agree that the Microsoft Flight Simulator, the Family Gathering Software, the Kai's Photoshop Software, the Rice Cookbook, and the TurboTax For Mac are not ordinary and necessary purchases for a housing and rehabilitation program. For these purchases, Respondents subsequently reimbursed Detroit. (AR Tab 16, p.4; Tr: 614-639).

In regard to all other expenses noted in the violation listed at paragraph (a) of the LDP notice, Johnson asserts that he could not be “expected to look at every piece of paper his secretary put before him for his signature” and “everyone makes mistakes and HUD makes mistakes and Respondents should therefore be excused for their mistakes.” I find this argument to be self serving, irresponsible, and indicative of a lack of Johnson’s commitment to his supervisory obligations, and suggests that Johnson condones, to an unacceptable degree, conduct which places public funds at unnecessary risk. (Tr. 599).

This Board has held that “the doctrine of respondeat superior, holding employers liable for the acts of their employees, may be advanced as a cause for debarment[. U]sually the employer or corporate officer will not be debarred unless it can be shown that he or she either knew, should have known, or by reasonable diligence could have prevented the acts of employees.” In re Howard Bigelow, 1982 WL 6958 (HUDBCA), 82-2 BCA P 15,798, HUDBCA No. 80-467-D15, HUDBCA, May 11, 1982, (NO. 76-674-DB). “A corporate officer who can exert control, supervision, and leadership but fails to do so takes the risk of that failure.” Id. In Bigelow, the Board held that the secretary-treasurer and fifty-percent owner of a HUD-approved mortgagee would be debarred for failing “to carry out his responsibilities as a corporate officer of a HUD-approved mortgagee.” Id. Similarly, in Carl Mayer and The Mayer Company, HUDBCA No. 81-543- D1 (December 1, 1981), a corporate president was debarred for failing to control and guide those who reported to him. Similarly, given the circumstances of this case, it is reasonable to hold Johnson accountable for his secretary’s willful alteration of an important document upon which Detroit justifiably relied.

The “Allowable Costs” section of 24 C.F.R. § 84.27 states “The allowability of costs incurred by non-profit organizations is determined by OMB Circular A-122.” (24 C.F.R. §84.27). OMB Circular A-122 states that in determining whether a cost is allowable it must be “reasonable for the performance of the award.” (Circular No. A-122 A(2)(a)). The Respondents CDBG contract with Detroit is for the purpose of administering the MHR Program. Respondents have not provided sufficient evidence that the purchases in dispute were reasonable for the execution of the MHR Program. At the hearing Respondents provided no evidence showing how the items in dispute were reasonably connected or used for the MHR program.

The violations listed at paragraphs (d) and (e) against Respondents allege that Linear fraudulently submitted an invoice to Detroit for reimbursement. Pursuant to Paragraph 6.04 of the contract, Detroit has the “right to rely on the [Respondent] for submission of accurate invoices. . . .” (Gov. Exh. 3 ¶ 6.04). Originally, Invoice No. 3494 was addressed to Bill Johnson at Digital Media from Natural Graphics. (Gov. Brief, p. 18; Gov. Exh. 31B). Before submitting the invoice to Detroit for reimbursement under the MHR program, the Natural Graphics invoice was altered by Bobbitt to read Bill Johnson at Linear. (Tr. 600-604).

The violation set forth at paragraph (g) of the LDP notice charges Respondents with violating OMB Circular A-122 by utilizing facilities and personnel paid for by the CDBG grant in order to receive materials for a separate entity, Digital Media, whose operation is unrelated to the performance of the CDBG funded housing rehabilitation activity. Johnson testified that Digital Media was just a name he used to gain credibility in the media field and obtain a reputation as a legitimate media provider. (Gov. Exh. 39). OMB Circular A-122 states that costs must be adequately documented. (OMB Circular A-122 (2)(g)).

From the record, it is not clear what activities Linear's employees participated in for Digital Media. In an interview with Wixted, Johnson stated that Digital Media used facilities and personnel paid for by the CDBG grant in order to receive materials, shipments or payments. (Gov. Exh. 30). Later in his testimony at the hearing, Johnson stated that "Linear employees did not receive mail, shipments [or] pay bills to Digital Media. They set it aside." Johnson's statements show that the employees of Linear did act on behalf of Digital Media, by either receiving materials, shipments or payments, or setting these items aside. Since the employees of Linear spent some time of their day working or facilitating mail service for Digital Media, Respondents should have allocated expenses between Linear and Digital Media, but they failed to do so. Violation of any procedure relating to the obligations incurred pursuant to a grant of financial assistance is a cause for an LDP under 24 C.F.R. §24.705(a)(9). In the Matter of McKinley v. Copeland, *supra*.

Respondents' argument that the LDP in this case constitutes a penalty for alleged misconduct is not convincing. The Government bears the evidentiary burden of demonstrating by adequate evidence that cause for the LDP against the Respondent exists, that the LDP is in the public interest, and that the LDP was not imposed for punitive purposes. 24 C.F.R. §§ 24.324 (c) and 24.713 (b); James J. Burnett, HUDBCA NO. 80-501-D42, 82-1 BCA ¶ 15,716. Respondents have made no showing that the imposition of an LDP under the circumstances of this case does not reflect the Government's desire to protect the public interest pursuant to 24 C.F.R. § 24.115(a) or that its imposition reflects an abuse of agency discretion. Consequently, Respondents' arguments that the LDP in this case is punitive and constitutes a penalty fails for lack of proof.

CONCLUSION

For the foregoing reasons, I find that the LDP was supported by adequate evidence, except for the violation set for paragraph (f) of the LDP notice. I find no mitigating factors sufficient to invalidate the sanction. The imposition of the LDP upon Respondents is AFFIRMED.

Jerome M. Drummond
Administrative Judge

July 2, 2004