

79-HUD (JD)-15
Washington, D.C.
April 27, 1979

UNITED STATES OF AMERICA

before the

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

In the Matter of:

JULIAN V. SAFFORD

Docket No. 79-633-DB

Respondent

Robert C. Anderson, Attorney
for the Department of Housing
and Urban Development

Julian V. Safford, in his own
behalf

DETERMINATION
Statement of the Case

On January 24, 1979, Lawrence B. Simons, Assistant Secretary--Federal Housing Commissioner, Department of Housing and Urban Development, herein the Department, served Juilian V. Safford, herein Respondent, with Notice of Debarment pursuant to the Department's Rules and Regulations, 24 C.F.R. Part 24, herein the Rules, because of his conviction by the United States District Court for the Central District of California of violation of 18 U.S.C. §§1012 and 2(b). On February 13, 1979, Respondent requested review. On March 16, 1979, the undersigned was designated to consider and decide the case. The parties were requested to submit their documentary evidence and briefs pursuant to the Rules §24.5(c)(2) by the close of business April 23, 1979. The Department made timely response; Respondent made no response.

On the entire record, I make the following:

Findings of Fact

1. Julian V. Safford, Respondent, was at all times material employed as a real estate broker by TD Properties, 11117 Inglewood Avenue, Lennox, California. TD Properties was owned by Thomas Louis D'Alessandro. Real

Estate sold for owners by TD Properties was in some cases pursuant to mortgages insured by the Department's Federal Housing Administration, herein FHA, pursuant to the National Housing Act, 12 U.S.C. §1701 et seq., herein the Act.

2. On July 10, 1978, Respondent together with Joseph Tesoro were charged in a complaint filed in the United States District Court for the Central District of California on 3 counts violation of 18 U.S.C. §§1012, 1014, and 2(b). Respondent was named as defendant in 2 counts. Count III, the only count involved in these proceedings stated as follows:

On or about November 28, 1975, in Los Angeles County, within the Central District of California, defendants JOSEPH TESORO and JULIAN VAUGHN SAFFORD, in a matter within the jurisdiction of and material to the United States Department of Housing and Urban Development, Federal Housing Administration (HUD-FHA), and with the intent that a loan to be made in the names of [REDACTED] King be offered to said HUD-FHA for loan insurance, knowingly and with an intent to defraud, made and caused to be made to HUD-FHA in a document entitled, "U.S. Department of Housing and Urban Development Credit Analysis Page" (FHA form number 2900-2), dated November 28, 1975, the following false, material statement: that the mortgagors of property located at [REDACTED] South Grevillea Avenue, Inglewood, California had themselves made a downpayment of \$500.00 toward the purchase of that property; which statement was false, as defendants JOSEPH TESORO and JULIAN VAUGHN SAFFORD knew, in that the Kings had not made any payments of any kind as a downpayment toward the purchase of that property.

3. On August 14, 1978, Respondent entered a plea of guilty to Count III of the complaint, the court found that, "[Respondent] has been convicted as charged of the offenses of knowingly and with intent to defraud, making and causing to be made to HUD-FHA a false and material statement in violation of Title 18 United States Code, Sections 1012 and 2(b), a misdemeanor/minor offense." The Court imposed sentence as follows:

". . . imposition of imprisonment is suspended and a fine of \$1000 is imposed, and [Respondent] is placed on probation for a period of two (2) years on the following terms and conditions: (1) that he will comply with all rules and regulations of General

Order 135, and (2) that he will participate in 100 hours per year for a period of two years of voluntary community service. [Respondent] is ordered to submit a proposed plan for such service to the Court within 30 days, for approval.

IT IS ORDERED, on motion by the Government, that Counts I and II of the complaint be and hereby are dismissed.

4. The complaint arose out of a situation where on or about November 28, 1975, Respondent and Joseph Tesoro, another real estate broker employed by TD Properties, handled a real estate purchase of property located at [REDACTED] South Grevillea Avenue in Inglewood, California. The sale was insured by an FHA mortgage between Mr. and Mrs. [REDACTED] Picard, as sellers, and Mr. and Mrs. [REDACTED] King, as buyers. So that Mr. and Mrs. King would qualify for the purchase of the Grevillea Avenue property under FHA terms, it was jointly agreed between Tesoro, Respondent and the sellers that Mr. and Mrs. Picard would pay the closing costs and the down payment on behalf of the buyers. The Act forbids FHA from guaranteeing a loan where the buyers themselves do not make the down payment. Thus, Respondent and Tesoro knowingly caused the submission of an FHA loan application which fraudulently stated that Mr. and Mrs. King, as mortgagors, had made the down payment themselves. The purpose of the submission was to induce FHA to insure a loan where the loan would not be obtainable if the true facts and circumstances had been known.

5. Respondent offers no evidence. From the investigation it appears that Respondent is [REDACTED] years old. He has no prior record of misconduct or criminal behavior.

SUMMARY

The Department seeks a three year period of debarment because of ". . . the willful nature of Respondent's participation in the intentional falsification of an FHA loan application for which he was convicted, the Department must conclude that debarment for a [lesser] period. . . would impair public confidence in the Department's responsibility for the protection of its funds and the public interest. Respondent made no argument.

The case arises in the regulatory scheme contemplated by the Act, 12 U.S.C. §1701 et. seq., because of Respondent's operations as a real estate broker under the auspices of the Act. Pursuant to Section 512 of the Act the Department is authorized to deny participation to participants under statutory procedures. The Rules 24 C.F.R. Part 24 provide the enforcement and regulatory procedure for accomplishing the Department's duty to require compliance with the Act's requirements and the Rules and procedures established thereunder. Hammer, et al., 78-HUD(JD)-27 (August 31, 1978). In the absence of substantial questions of fact or credibility bearing on material issues, procedural requirements under the Act and the Rules, 24 C.F.R. Part 24 and §24.5(c)(2) are consistent with the adjudicatory requirements of the Administrative Procedure Act, 5 U.S.C. §554 et seq., applicable hereto. Howland, 79-HUD(JD)-6 (April 3, 1979).

Respondent is a participant within the meaning of Section 512 and contractor within the meaning of Part 24 as a real estate broker where the mortgage is insured by FHA.

It would be inappropriate not to debar Respondent in view of his conviction of a crime involving his business with the Department. Although conviction by the Court is preponderant evidence of lack of responsibility, it must be considered that this was a misdemeanor-minor offense rather than a felony conviction. Here the Court suspended sentence and placed Respondent on probation for 2 years. Further, the Court imposed a 100 hour requirement of community service for years, and fined Respondent \$1,000.00. Respondent has no prior record of misconduct or criminal behavior. Under all the circumstances including especially the misdemeanor character of the conviction, the limited sentence imposed by the Court, and Respondent's prior good record, a one year period of debarment beginning January 24, 1979, is deemed appropriate.

CONCLUSIONS OF LAW

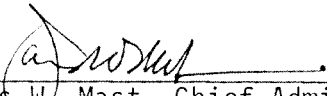
1. Respondent is a contractor within the meaning of the Department's Rules, 24 C.F.R. §24.4(f).

2. By his conduct resulting in his misdemeanor-minor offense conviction of violation of 18 U.S.C. §1012 and 2(b), Respondent violated the Department's Rules 24 C.F.R. §24.6(a)(1).

ORDER

It is ordered that Julian V. Safford is debarred for a period of one (1) year beginning January 24, 1979 and ending January 23, 1980. Department funds shall not be expended for financial assistance to Julian V. Safford or to any concern in which he has a substantial interest. Bids and proposals shall not be solicited therefrom, and subcontracts with Julian V. Safford will not be approved, unless determined to be in the best interests of the Government.

Issued at Washington, D.C. on
April 27, 1979



James W. Mast, Chief Administrative
Law Judge

U.S. Department of Housing and Urban
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