

76-HUD(JD)-16
Washington, D.C.
April 27, 1979

UNITED STATES OF AMERICA

before the

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

In the Matter of:

LEO DONIGAN, DONIGAN & SKLOVER
INVESTMENT CO., SHAMROCK REALTY
CO., AND LEO DONIGAN INVESTMENT CO.

Docket No. 79-636-DB

Respondents

Gerald S. Robinson, Attorney for
the Department of Housing and
Urban Development

Leo Donigan, Attorney of Lapeer
Michigan, for Respondents

DETERMINATION
Statement of the Case

On June 6, 1975, Michael T. Savage for David M. DeWilde, then Acting Assistant Secretary--Commissioner, Department of Housing and Urban Development, herein the Department, served Leo Donigan, Donigan & Sklover Investment Co., Shamrock Realty Co., and Leo Donigan Investment Co., herein Respondents, with a Notice of Suspension, pursuant to the Department's Rules and Regulations, 24 C.F.R. Part 24, herein the rules, because of Respondent Donigan's indictment by the Grand Jury of the United States District Court of the Eastern District of Michigan on charges of violation of 18 U.S.C. §§201(b) and 201(f). There was no request for hearing on the Notice of Suspension.

On January 16, 1979, Lawrence B. Simons, Assistant Secretary--Federal Housing Commissioner of the Department served Respondents with Notice of Debarment pursuant to the Rules Part 24 because of his conviction in the United States District Court for the Eastern District of Michigan, Southern Division, for violation of 18 U.S.C. §201(f). On January 30, 1979, Respondents, replied, requested a hearing on the debarment, and applied for reinstatement.

The undersigned was designated to hear and decide the case on March 16, 1979. The Parties were requested to submit their documentary evidence and briefs by April 23, 1979; both Parties responded.

In the absence of any substantial questions of fact or credibility bearing on material issues an evidentiary hearing on the record is deemed unnecessary. Sedgewick, 77-HUD(JD)-40 (July 27, 1977). Accordingly, on the basis of the entire record, I make the following:

FINDINGS OF FACT

1. Respondent Leo Donigan, except as noted herein, was at all times material a licensed attorney and a licensed real estate broker in the State of Michigan. His principal place of business was at Troy, Michigan, and has been more recently at Lapeer, Michigan. Real Estate sales in which Respondent Donigan acted as real estate broker were on the basis of mortgages insured by the Federal Housing Administration, herein FHA, pursuant to the National Housing Act, 12 U.S.C. §1701 et seq., herein the Act. No evidence was offered of the relationship between Respondent Donigan and any of the other Respondents.

2. On May 9, 1975, Respondent Donigan was indicted by the Grand Jury of the United States District Court for the Eastern District of Michigan, Southern Division on 4 counts of violation of 18 U.S.C. §§201(b) and 201(f). Count 3, the only count involved in the debarment proceedings, stated as follows:

That on or about October 21, 1971, in the Eastern District of Michigan, Southern Division, Leo Donigan, defendant herein, unlawfully and knowingly did, directly and indirectly, give and offer and promise money and other things of value, that is, One Hundred Dollars (\$100.00), to William C. Payne, an officer and employee of the United States Department of Housing and Urban Development, that is, a Commitment Appraiser, for and because of official acts performed and to be performed by the said William C. Payne, otherwise than as provided by law for the proper discharge of his official duties as such Commitment Appraiser, to-wit: the obtaining of favorable treatment in the handling of Federal Administration appraisals by William C. Payne, for the issuance of conditional commitments for mortgage insurance on property owned or being sold by Leo Donigan from the said United States Department of Housing and Urban Development, said appraisals being matters which would be handled by and placed before the said William C. Payne in his official capacity and place of trust, as Commitment

Appraiser for the aforesaid United States Department of Housing and Urban Development, in Detroit, Michigan; in violation of Section 201(f), Title 18, United States Code.

3. On July 6, 1976, Respondent entered a plea of guilty in the United States District Court for the Eastern District of Michigan, Southern Division, to Count 3 of the Indictment. The Court adjudged Respondent guilty and entered sentence as follows:

The defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 18 months on Count three (3) of the Four Count Indictment.

IT IS FURTHER ADJUDGED that Count two (2) is hereby dismissed and that Counts One (1) and (4) remain Open pending Appeal. It is the further intent of this Court that the defendant have until July 16, 1976 at 9:00 a.m. to file an appeal in this matter or surrender himself to the U.S. Marshal.

On May 5, 1977, following an appeal, the sentence was reformed as follows:

On May 6, 1976, Leo Donigan pleaded guilty to Count III of a four-Count Indictment which charged him with violation of 18 U.S.C. §201. On July 6, 1976, this Court sentenced him to the custody of the Attorney General of the United States for a period of 18 months.

Defendant has brought this timely Motion for a Reduction of Sentence pursuant to Rule 35, Fed.R.Crim.P. The Court has reviewed the file and the Motion of defendant in the present case, and feels that a reduction of the sentence imposed is warranted.

Therefore, IT IS ORDERED that the imposition of sentence be suspended, and that Defendant Leo Donigan be, and hereby is, placed on probation for a period of two (2) years.

IT IS FURTHER ORDERED that as a condition of probation, Defendant Leo Donigan be required to continue his present work at Alcoholics Anonymous.

4. On February 28, 1978, the State Bar Grievance Board of Michigan suspended Respondent Donigan for a period of 120 days because of his conviction noted herein. On June 30, 1978, Respondent Donigan was automatically reinstated as an attorney in the State of Michigan.

5. On June 22, 1978, the Department of Licensing and Regulation, Real Estate Division of the State of Michigan suspended Respondent Donigan because of the same conviction. Respondent Donigan was reinstated as a real estate broker. He has continued throughout the period as a licensed residential builder.

6. It is uncontested by the Department that Respondent Donigan is presently 77 years old and in semiretirement. His current address is a combination residence and office. Any of the Respondent companies which may have been affiliates of Respondent Donigan have been dissolved. There is no evidence of any other misconduct.

Respondent has been an attorney since he was admitted in New York in 1939. He has lived in Michigan since 1946 but was admitted to the Bar in Michigan in 1972. He has had limited legal experience; most of his working life, he has engaged in the real estate business.

SUMMARY

The Department seeks a three year period of debarment because of Respondent Donigan's indictment and conviction, and because of the potential risk to the public interest caused by Respondent Donigan's lack of responsibility. The Department, further, opposes the application for reinstatement because Respondent Donigan is not eligible to apply for reinstatement under the Rules §24.11(a) and because Respondent has failed to sustain the burden of showing grounds for reinstatement under §24.11(c).

Respondent argues that his suspension since June 6, 1975, has imposed ". . . more than appropriate discipline and punishment. . .;" that the 2 year probation, which is to expire May 5, 1979, indicates the seriousness with which the Court regarded his misconduct; that both the Michigan State Bar Association and the Real Estate Division of the Michigan Department of Licensing and Regulations imposed limited suspensions indicating that ". . . neither agency consider[s him] a criminal type who is a danger to society;" and that his present condition warrant reinstatement.

The case arises in the regulatory scheme contemplated by the National Housing Act, 12 U.S.C. §1701 et seq., because of Respondent Donigan's operations as a real estate broker under the auspices of the Act. Pursuant to Section 512 of the Act [§1731(a)] the Department is authorized to deny participation to participants through the statutory procedures. The Rules, Part 24, provide the enforcement and regulatory procedure for accomplishing the Department's duty to require compliance by participants, such as Respondent Donigan, with the Act's requirements and Rules and procedures established thereunder. Howland, 79-HUD(JD)-6 (April 3, 1979) and Safford, 79-HUD(JD)-15 In the absence of substantial questions of fact or credibility bearing on material issues which warrant an evidentiary hearing, the summary procedures of the Act and the Rules §24.5(c)(2), are consistent with the adjudicatory requirements of the Administrative Procedure Act, 5 U.S.C. §551 et seq., applicable hereto. Howland, supra and Safford, supra.

Respondent is a participant within the meaning of Section 512 and a contractor within the meaning of Part 24 as a real estate broker where the mortgages are insured by FHA. Because of the FHA insured mortgage Respondent is an indirect recipient of funds under the Rules. Sampson, 78-HUD(JD)-30 (November 17, 1978).

It would be inappropriate not to debar Respondent in view of his conviction of a crime involving his business with the Department. Here the Respondent's misconduct is indicative of dishonesty and lack of responsibility. Nevertheless, Respondent was suspended June 5, 1975, within a month of his indictment and has remained suspended since that date. Although he was convicted on July 6, 1976, the debarment resulting from the suspension was not begun until January 16, 1979, fully 30 months later. If the debarment had been initiated with the same timeliness as the suspension and Respondent had received the maximum debarment allowable prior to the amendment of the Rules, January 27, 1977, Respondent would have by now been automatically reinstated. This is not to suggest that laches should bar the present action.

In considering the period of debarment great weight should be given to the seriousness of the offense. Although it is a serious offense, the Court considered the offense and the Respondent and reduced the sentence to probation which expires May 5, 1979. Further, both the Michigan State Bar and the Real Estate Division imposed limited suspension which have already expired. Finally, consideration is given to the present condition of Respondent. Under all these circumstances and especially the punishment imposed by the Court a 3 year 11 month period of debarment beginning

June 6, 1975, and ending May 5, 1979 is determined to be appropriate.

Although Counsel for the Department is entirely correct in his argument on the application for reinstatement, in view of my determination on debarment I find it unnecessary to consider the application for reinstatement. Thus, Respondent will automatically be reinstated on May 6, 1979. Further, as it appears that all alleged affiliates are now dissolved, I find it unnecessary to determine the question of the status on affiliates under §24.4(d).

CONCLUSIONS OF LAW

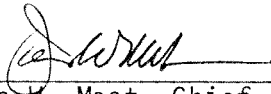
1. Respondent is a contractor within the meaning of the Department's Rules, 24 C.F.R. §24.4(f).

2. By his conduct resulting in his conviction of violation of 18 U.S.C. §201(f), Respondent violated the Department's Rules, 24 C.F.R. §24.6(a)(4) and (6).

ORDER

It is ordered that Leo Donigan is debarred for a period of three (3) years eleven (11) months beginning June 6, 1975 and ending May 5, 1979. Department funds shall not be expended for financial assistance to Leo Donigan or to any concern in which he has a substantial interest. Bids and proposals shall not be solicited therefrom, and subcontracts with Leo Donigan 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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