

UNITED STATES OF AMERICA

before the

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

In the Matter of:

RICHARD L. LEE

MAY LEE

Respondents

Docket Nos. 81-740-DB

81-741-DB

Initial Determination

Statement of the Case

By letters dated September 30, 1980, both Richard L. Lee and May Lee, husband and wife, were advised that their debarment and the debarment of their affiliates was being proposed for a two year period commencing September 30, 1980. The reason for their proposed debarment was their alleged violation of a Regulatory Agreement whereby they acquired deeds to fourteen Section 236 projects known collectively as Project Action.

On October 8, 1980, Mr. and Mrs. Lee sent a letter signed by both of them to the Department official who had proposed their debarment, i.e., Hon. Lawrence B. Simons, then Assistant Secretary for Housing - Federal Housing Commission, in which letter they objected to their proposed debarment and requested that the matter be withdrawn, and, if not withdrawn, they requested a hearing.

On January 9, 1981, Assistant Secretary Simons wrote to Mr. and Mrs. Lee and advised them that he was not withdrawing the proposed debarment and that their request for a hearing would be honored.

On January 16, 1981, Administrative Judge Jean S. Cooper of the HUD Board of Contract Appeals was designated Hearing Officer. On January 27, 1981, the cases of Mr. and Mrs. Lee were transferred to me, and on that date I sent a letter to Mr. and Mrs. Lee and advised them of their right to waive oral hearing and have the matter determined on the written record, and, I further advised them that if they did not wish to waive oral hearing, they

should coordinate with counsel for the Department and submit some mutually agreed upon dates for the hearing to me for my consideration.

On March 5, 1981, I again wrote to Mr. and Mrs. Lee, since I had not heard from them, and requested that they communicate with counsel for the Department and let me know when they wanted the hearing. On April 6, 1981, counsel for the Department advised me that June 30, 1981 would be a good date for the hearing and he requested Los Angeles as the site of the hearing.

On April 14, 1981, I sent out an order consolidating the cases of Mr. and Mrs. Lee and directing that the hearing be held on June 30, 1981 in Los Angeles, California. On June 30, 1981, the hearing was held. Mr. and Mrs. Lee were present at the hearing. They appeared without counsel.

#### Findings and Discussion

Project Action, Inc., a nonprofit California Corporation, was the owner of fourteen separate multi-family housing projects with a total of 246 units. The properties were located at fourteen separate locations and were planned for occupancy by low and moderate income families. They were collectively known as "Project Action." Project Action, Inc., and the Department of Housing and Urban Development (hereinafter Department or HUD) had entered into standard Regulatory Agreements in connection with each of the fourteen separate properties since the properties were financed pursuant to Section 236 of the National Housing Act. Section 236 is a means whereby HUD, in order to encourage the availability of housing for low and moderate income families, will insure mortgages so that lenders will make loans to mortgagors who in turn provide housing for low and moderate income families. In addition, pursuant to Section 236, HUD subsidizes the borrower so that the effective rate of interest on the mortgage, which HUD has insured, is kept quite low. A standard Regulatory Agreement is entered into between HUD and the owner of the multi-family housing project being assisted through Section 236. Regulatory Agreements were entered into by HUD and Project Action, Inc., as noted above, and a standard clause was contained in each of the agreements which provided that the owner would not transfer the property without the prior written approval of HUD. Accordingly, pursuant to the Regulatory Agreements, Project Action, Inc., was not to transfer the property, i.e., any of the fourteen projects, without HUD's prior written approval.

Unfortunately, HUD's experience with Project Action, Inc., was less than satisfactory and in just a few years the mortgages on all fourteen properties had been assigned to HUD, and HUD had been forced to pay off the lenders because the owner, Project

Action, Inc., had defaulted. HUD did not wish to foreclose on the fourteen properties and possibly see the property purchased by a private investor and have this housing stock taken away from the low and moderate income families for whom it was intended.

Richard L. Lee and May Lee, husband and wife, purchased all fourteen properties known as "Project Action" from Project Action, Inc., without the prior approval, written or otherwise, of HUD. The issue in the case is whether or not their doing so is cause for their debarment. Mr. Lee, speaking for himself and his wife, stated at the hearing that "The Lee's, myself and May, we do not desire to deal with HUD at all...." (Transcript, p. 151). However, while they don't want to deal with HUD in the future, they do object to being debarred. They claim that they did nothing improper. They maintain in defense of the transfer of the Project Action properties to them without prior HUD approval that the Regulatory Agreement did not apply to them because they were not a signatory to it. Further, they allege that it was a good thing to get the property away from Project Action, Inc., because they were terrible managers. While the latter certainly appears to be the case, it does not excuse what the Lees did as noted infra.

The evidence at the hearing revealed the following scenario. During the summer of 1978, Mr. Lee was a limited partner in a partnership which was looking into the purchase of the properties, and I find as a matter of fact that he knew at that time that prior HUD approval was required before any transfer of the property could take place. Mr. and Mrs. Lee, acting through their alter ego Oceanside Properties, Ltd. (Transcript, p. 67), engaged in negotiations to purchase the fourteen Project Action properties beginning in January or February, 1979, and both Mr. and Mrs. Lee met with HUD officials in Los Angeles on March 7, 1979, and were told that prior HUD approval was required before any of the Project Action properties could be transferred to them. On March 9, 1979, a letter was sent from HUD to Mr. Lee, again advising him that prior approval of HUD was necessary before transfer of the properties could take place and that the requirement was in the Regulatory Agreement which has been discussed earlier in this decision. The Regulatory Agreements between Project Action, Inc., and HUD were all recorded and available for inspection by anyone interested in acquiring the properties. In spite of their knowledge that prior approval of HUD was required prior to transfer, Mr. and Mrs. Lee nevertheless, on March 29, 1979, acquired the deeds and had the properties transferred to them (Transcript, pp. 130, 138), and on March 30, 1979, they had the deeds recorded (Government Exhibit 6, Transcript, p. 50).

In addition, there was a nation-wide moratorium on approvals of transfers of HUD projects from nonprofit mortgators (such as Project Action, Inc.) to limited-dividend mortgators (such as

Mr. and Mrs. Lee acting through their alter ego Oceanside Properties, Ltd.) and Mr. and Mrs. Lee were well aware of this moratorium since it was spelled out clearly in the March 9, 1979 letter to Mr. Lee (Government Exhibit 4).

It is clear to me that Mr. and Mrs. Lee knew that HUD had to give approval before the transfer of the properties could take place. They deliberately chose to ignore that requirement.

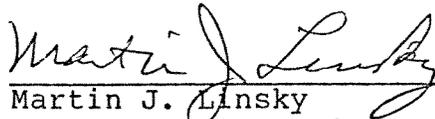
Obviously, Project Action, Inc., violated the terms of the Regulatory Agreements to which it was a signatory in transferring the properties, but they are not before me at this time. As a practical matter, "it takes two to tango," and Project Action, Inc., could not violate the Regulatory Agreement regarding transfer without prior HUD approval all by themselves. They needed a transferee. In this case, Mr. and Mrs. Lee were the transferees and, thereby, aided and abetted Project Action, Inc., in the violation of the Regulatory Agreement, and Mr. and Mrs. Lee did so knowingly.

Because of their participation in the transfer of the properties which were insured by HUD, they are "contractors or grantees" within the meaning of 24 C.F.R. §24.4(f) and therefore subject to being debarred. Their conduct reflects that they are less than responsible and should be debarred. 24 C.F.R. §24.6. See generally, Schlesinger v. Gates, 249 F.2d 111 (D.C. Cir. 1957) cert. den., 355 U.S. 939 (1958); Gonzales v. Freeman, 344 F.2d 570 (D.C. Cir. 1964); Roemer v. Hoffman, 419 F. Supp. 130 (D.C. D.C. 1976). No mitigating evidence has been presented that warrants any reduction in the length of the debarment period proposed by Assistant Secretary Simons.

#### Order

It is hereby ordered that Richard L. Lee, May Lee, and affiliates, to include Oceanside Properties, Ltd., be debarred for a period of two years commencing September 30, 1980 and terminating September 29, 1982.

Issued at Washington, D.C.  
on July 27, 1981



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Chief Administrative Law Judge  
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