



On December 21, 1983, Respondent pleaded guilty to one count of an information charging Respondent with a violation of 18 U.S.C. § 1012. The Information alleged that on or about June 26, 1980, Respondent made, with intent to defraud, a false statement to HUD in order to facilitate a real estate sales transaction. The Information alleged that Respondent submitted a Disclosure/Settlement Statement to the Department in which he falsely and knowingly represented that ████████ Hinds, a.k.a. ████████ Ferry, was the borrower for property she was purchasing at ████████ Sharpe Avenue, Nashville, Tennessee ("Sharpe Avenue property"), while in truth and in fact, Ms. Hinds was neither the borrower nor the purchaser of the Sharpe Avenue property. On the same day, a Judgment and Probation/Commitment Order was issued by the United States District Court for the Middle District of Tennessee. Respondent received a suspended seven-month sentence and was placed on probation for a two-year period. In addition, Respondent was fined \$500.00, to be paid within the first six months of the probation period, and was required to perform 100 hours of community service work during his probation period.

Since December 20, 1984, Respondent and Parkhurst Realty have been suspended from participation in HUD programs.

The evidence proffered by the Department in support of its proposal to debar Respondent and his affiliate from further participation in HUD programs consists primarily of Respondent's plea of guilty, his conviction and subsequent admissions of making false statements as contained in the signed statement provided pursuant to his negotiated plea agreement, and his handwritten letter to the Tennessee Real Estate Commission submitted pursuant to a January 1985 disciplinary proceeding. 1/

The Department's documentary evidence includes copies of a September 9, 1982, statement provided by Ms. Hinds to an investigator for the HUD Atlanta Regional Inspector General for Investigation regarding the transaction giving rise to Respondent's conviction; a Statement of Facts provided by the Atlanta Regional Inspector General for Investigation to the United States Attorney, Nashville, Tennessee; the Information and signed statement upon which Respondent's negotiated plea agreement was based; Respondent's Judgment and Probation/Commitment Order filed by the District Court; the handwritten letter

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1/ Respondent's January 31, 1985 Answer to the Complaint, entitled Brief in Support of Robert W. Parkhurst and Parkhurst Realty Company, states that in this debarment proceeding, Respondent relies primarily on the statements and letters of support submitted to the Tennessee Real Estate Commission pursuant to its January 1985 disciplinary proceeding. Accordingly, I have incorporated this documentation into Respondent's Answer, and have afforded it full consideration as such.

submitted by Respondent to the Tennessee Real Estate Commission pursuant to its disciplinary action; and the January 9, 1985, Consent Order entered into between Respondent and the Commission. 2/

Respondent has at all times admitted that he made the false statements and misrepresentations alleged in the one count Information. However, in support of his attempt to mitigate his criminal conviction, Respondent submitted along with his Answer the complaint issued by the Tennessee Real Estate Commission, his letter of response to the Commission, and statements of support submitted to the Commission by his attorney, W. E. Weems, II 3/ and Rex M. Turner, Vice President and Branch Manager of Nashville City Bank, Nashville, Tennessee. In addition to furnishing a copy of the Consent Order from the Tennessee Commission, Respondent also included a letter of support sent by Robert J. Hayes, Executive Director of East Nashville Cooperative Ministry, Nashville, Tennessee, to the Commission, stating that Respondent had satisfactorily performed his community service obligation as required by the District Court.

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2/ Pursuant to the Consent Order, the Commission and Respondent mutually agreed to the following terms of disciplinary action:

- (1) The broker firm license of Respondent shall be downgraded to that of an affiliate broker. Respondent must immediately return the broker firm license to the Office of the Commission.
- (2) The Respondent must successfully complete three real estate courses: Real Estate Law; Real Estate Finance; and Office and Brokerage Management. These courses must be completed and proof of such submitted to the Executive Director of the Commission within one (1) year from the effective date of this Order.
- (3) Respondent shall not be entitled to sit for the broker's examination for a period of three (3) years. Future application implies no guarantee of licensure.
- (4) Respondent must become affiliated with a broker knowledgeable of Respondent's violation of the Broker's Act, and of the terms and conditions of this Order. Proof, in the form of a letter setting forth this knowledge shall be submitted to the Commission Office with the transfer form.

3/ In view of Counsel's efforts to interject himself as a witness in this proceeding and the ethical questions raised by that attempt, Counsel's attention is invited to ABA Model Code of Professional Responsibility, DR 5-102.

Specifically, in his letter to the Commission, Respondent stated that he regretted having committed the strawbuyer transaction which led to his conviction, and that his conduct was the result of "bad financial straights." According to Respondent, because of high interest rates, he was having difficulty selling some of his rental properties and was unable to obtain refinancing on his residence due to outstanding indebtedness. Respondent also owed the IRS \$14,000.00. As a result, he was persuaded by Luis Delmazo, the former manager of the lender holding his mortgage, to engage in the strawbuyer transaction. 4/

According to Respondent, Mr. Delmazo told him "of the numerous friends and relatives he had that would act as purchaser and in that manner refinance some of my rental properties." In defense of his actions, Respondent stated, "that though at that time I objectively knew the acts to be wrong, I subjectively never meant to defraud the U.S. Govt. [sic], or the investor funding the loans, or anyone else. If the loans are repaid, no one suffers unless the loans made on my property keep some legitimate borrower from getting a home loan and we all know there was no shortage of funds for F.H.A. loans."

Respondent also asserted in his letter that he did not commit the strawbuyer transaction as a real estate agent but as a principal of Parkhurst Realty. Respondent stated, "I have never and will never commit illegal acts in the capacity of agent. As principal, I had never before and will never again commit those or any other illegal acts."

Finally, Respondent stated that he is responsible for the financial support of his wife and three young children and that he has "already suffered great mental anguish and financial hardships as a result of what I did."

#### Discussion

Debarment is a sanction which may be invoked by HUD as a measure for protecting the public by insuring that only those qualified as "responsible" be allowed to participate in HUD programs. 24 C.F.R. § 24.0; 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 in government contract law which speaks to the projected business risk of a contractor or grantee, including his integrity,

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4/ For the purpose of setting forth the totality of relevant circumstances leading up to Respondent's conviction, he also submitted documentation surrounding the conviction of Mr. Delmazo. Apparently, Mr. Delmazo was the middleman who, for a commission, arranged not only for the fraudulent sale between Respondent and Ms. Hinds, but also for two other strawbuyer transactions involving Respondent.

honesty, and ability to perform. See Roemer v. Hoffman, supra; 49 Comp. Gen. 139 (1969); 39 Comp. Gen. 468 (1959). The primary test for debarment is present responsibility, although a finding of a present lack of responsibility can be based on past acts. Schlesinger v. Gates, 249 F.2d 111 (D.C. Cir. 1957); Roemer v. Hoffman, supra. Integrity is central to a contractor's responsibility in performing a business duty toward the Government. 39 Comp. Gen. 468 (1959).

The concept of responsibility is manifestly relevant to a real estate broker who knowingly makes false statements to misrepresent the purported status of a borrower and purchaser of property in order to benefit from the advantages HUD was providing to mortgage assistance applicants based on established income and outstanding indebtedness limitations.

Respondent does not dispute that he is a "contractor or grantee" within the meaning of 24 C.F.R. § 24.4(f) or that Parkhurst Realty is a known affiliate within the meaning of 24 C.F.R. § 24.4(d). Nor does he dispute that the conviction precipitating this debarment action is governed by the regulatory authority relied upon by the Department. 5/ Rather, Respondent

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5/ The Department relies upon the cause stated in 24 C.F.R. § 24.6(a) (4) (5) (6) and (9) as regulatory authority for the proposed debarment. Under that provision, HUD may debar a "contractor or grantee" for:

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract ...  
\* \* \*
- (4) Any other cause of such serious compelling nature affecting responsibility, as may be determined by the appropriate Assistant Secretary, to warrant debarment.  
\* \* \*
- (5) Violation of any laws, regulation, or procedure relating to the application for financial assistance, insurance, or guarantee or to the performance of obligations incurred pursuant to a grant of financial assistance, or conditional or final commitment to insure or guarantee.  
\* \* \*
- (6) Making or procuring to be made any false statement for the purpose of influencing in any way the action of the Department.
- (9) Conviction for any other offense indicating a lack of business integrity or honesty, which seriously and directly affects the question of present responsibility.

argues that the existence of "cause" does not compel debarment where mitigating circumstances militate against imposition of the sanction. This is correct. However, I am not persuaded that it is in the best interests of either HUD or the public to conclude that debarment in this case is unwarranted. Respondent contends that he had "gotten into bad financial straights," and though he "objectively knew the acts to be wrong, [he] subjectively never meant to defraud the U.S. Govt. [sic] or the investor funding the loans, or anyone else." Respondent also contends that he was not acting in the capacity of a realtor in the transaction with Ms. Hinds. These assertions do not alter the fact that Respondent fraudulently misrepresented the existence of an unlawful strawbuyer to HUD. Respondent was under an obligation to deal honestly and forthrightly with the Department. This he failed to do.

Debarment is not a penalty but a way for the Government to execute its statutory obligations effectively to protect the public. Gonzales v. Freeman, 344 F.2d 570 (D.C. Cir. 1964). The deterrent effect of debarment cannot be overlooked as a means to assure that end. If governmental regulations are to have any validity, adherence to their requirements must be assured. To ignore or make light of their breach is to condone such conduct and to encourage its repetition. Furthermore, Respondent is mistaken in his assertion that "he had the process worked out so no one would sustain a loss" in that "if the loans are repaid, no one suffers unless the loans made on my property keep some legitimate borrower from getting a home loan and we all know there was no shortage of funds for FHA loans." Mortgagor income and outstanding indebtedness limitations facilitate the Department's policy of channeling assistance to those most in need of that assistance. By falsifying the identity of the borrower and purchaser upon whose financial data the Department bases its determinations, it is possible that Respondents' actions resulted in a denial of assistance to more needy buyers who would otherwise have received the financing wrongfully made available to Ms. Hinds and, ultimately, to Respondent. Whether Respondent's actions actually resulted in a denial of FHA loans to some unknown borrower is irrelevant to ascertaining Respondent's required conduct. Moreover, Respondent was in no position to adjudge the overall availability of federal funds in this HUD program. His assertion of no shortage of FHA loan funds and therefore no harm is an outrageous example of an attitude which fosters that kind of fraud, waste and abuse of taxpayers' money which no government can tolerate.

Furthermore, even if his improper acts resulted in no actual denial of assistance to more needy borrowers, such a showing would not change the fact that Respondent breached his affirmative duty truthfully to represent all information to the Department. That he was acting not as a real estate sales agent but as principal of Parkhurst Realty is irrelevant to a finding that Respondent breached an obligation owed to the Department. Given Respondent's extensive experience in the real estate

business, his familiarity with the FHA-insured loan process and the fact that he was a licensed real estate broker, Respondent's fraudulent actions are particularly egregious. Finally, because Respondent stopped making payments on the property and defaulted on the FHA-insured loan, the Government has suffered actual, measurable and foreseeable loss. Respondent admits to having known that as a strawbuyer, Ms. Hinds never intended either to occupy the property or to make any monthly loan payments. Thus it came as no surprise to Respondent that the Sharpe Avenue property went into foreclosure, thereby leaving the Government to absorb the loss.

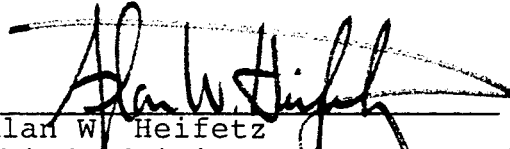
Accordingly, I conclude that debarment is appropriate and necessary in this case to insure that the seriousness with which HUD views Respondent's conduct will not be misconstrued by him, or by any others doing business with the Department, and that the public will thereby be protected.

The Department has sought a two-year period of debarment based on Respondent's conviction. Respondent has taken the position "that in light of all the specific circumstances of this case (criminal convictions, state imposed supervision for the next three years and the passage of five years since the offense without further offense, etc.) would render debarment punitive in nature." However, Respondent's strained financial condition and the pressure it put on his ability to meet his family obligations, as well as his belief that no one would be hurt by his conduct, do not excuse his admittedly intentional acts of falsification and misrepresentation which caused monetary loss to the Government. Furthermore, neither the disposition of his case by the District Court nor the actions of the Tennessee Real Estate Commission militate against reducing the period of debarment requested by the Department. In fact, the dispositions made by these other tribunals point both to the seriousness of Respondent's conduct and the propriety of the Department's position that a significant period of debarment is necessary not to punish, but to assure protection of the public interest. The strength of this position is not diminished merely because Respondent has complied with the terms of the District Court's sentence and the Commission's Consent Order, or because he can call on the support of his attorney and a longtime business associate. As a matter of fact, his statements to the Tennessee Commission support it!

Respondent has been suspended from participating in Departmental programs since December 20, 1984. In view of Respondent's failure to show mitigating circumstances justifying a debarment of less than two years, I find that protection of the public and the Government's interest will be served by a minimum of a two-year period of debarment from the date of Respondent's suspension.

Conclusion

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause exists to debar Respondent, Robert W. Parkhurst and his affiliate, Parkhurst Realty Company, from doing business with HUD for a period of two years from December 20, 1984 to December 20, 1986.



Alan W. Heifetz  
Chief Administrative Law Judge  
U.S. Department of Housing and  
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Washington, D.C. 20410

Dated: May 24, 1985