

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGE

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In the Matter of .
LEONARD J. FERNANDEZ . HUDALJ 88-1224-DB
Respondent .
.

Leonard J. Fernandez, pro se

Heidi Weckwart, Esquire
For the Department

Before: ALAN W. HEIFETZ
Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arose as a result of a proposal by the Department of Housing and Urban Development ("the Department" or "HUD") to debar Leonard J. Fernandez ("Respondent") from participation in HUD programs for a period of three years. HUD's action is based on allegations that Respondent improperly handled six FHA insured mortgages. Respondent was notified of the proposed debarment by letter dated February 26, 1988, and on March 21, 1988, filed a request for a hearing. An order was issued on April 18, 1988, setting the dates for filing the Department's Complaint and the Respondent's Answer.

The Department's Complaint was timely filed on May 18, 1988. Respondent's Answer was due on or before June 20, 1988. Since by June 22, 1988, Respondent had failed to file an Answer, he was ordered, on that date, to show cause by July 6, 1988, why a summary decision should not be issued in favor of the Government. The Order to Show Cause also stated that failure to respond to the Order in a timely fashion would constitute consent to the entry of such a summary decision.

Petitioner has failed to respond to the Order to Show Cause and has therefore consented to the entry of the following:

Findings and Conclusions

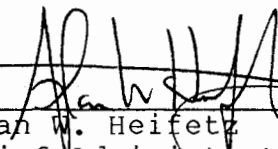
Respondent is a former loan officer for Commonwealth Mortgage Company of America, located in Oak Forest Illinois. (HUD Complaint at 2). Respondent originated HUD/FHA-insured mortgages

for the company. (Id.). The Department based its action on irregularities in Respondent's handling of six FHA-insured mortgages. Specifically, Respondent failed to conduct face-to-face interviews with the mortgagors and allowed the realtor, an interested third party, to perform loan origination and processing functions. (Id. at 19). As a result, false information was submitted to HUD which HUD relied on in insuring the mortgages. (Id.). Further, Respondent caused or allowed the lender to falsely certify that all credit information was obtained directly from the mortgagor and that verifications of employment did not pass through the hands of any third persons. (Id.).

The Department relies on 24 C.F.R. §§ 24.6(c)(3), (11) and (12) and § 24.18(a)(2) as regulatory authority for the proposed debarment. These regulations authorize debarment for conduct indicating a lack of present responsibility, making false statements to influence governmental action and violating regulations relating to applications for financial assistance. See 24 C.F.R. §§ 24.6(c)(3), (11) and (12); 24 C.F.R. § 24.18(a)(2) (1987).

Debarment is a sanction which may be invoked by HUD as a measure for protecting the public by ensuring that only those qualified as "responsible" be allowed to participate in HUD programs. 24 C.F.R. § 24.1 (1987); Roemer v. Hoffman, 419 F.Supp. 130, 131 (D.D.C. 1976). 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.

The concept of responsibility is manifestly relevant to a loan officer originating HUD/FHA-insured mortgages. Respondent does not deny that he violated HUD regulations in his handling of the six loans, nor that he lacks the present responsibility necessary to do business with the Department. Therefore, I can only conclude, upon consideration of the entire record in this matter, that good cause exists to debar Respondent, Leonard J. Fernandez, from participating in HUD programs for a period of three years beginning February 26, 1988, and ending February 25, 1991.


Alan W. Heifetz
Chief Administrative Law Judge
U.S. Department of Housing
and Urban Development
451 7th Street, S. W., Rm. 2156
Washington, D. C. 20410

Dated: July 12, 1988