

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

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In the Matter of :
 OLIVER L. WALKER, SR. : HUDALJ 88-1264-DB(LDP)
 Respondent :
.

William C. King, Jr., Esquire
For the Respondent

Dolores L. Keegan, Esquire
For the Department

Before: ALAN W. HEIFETZ
Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This is an appeal from a Limited Denial of Participation ("LDP") imposed on Oliver L. Walker, Sr. ("Respondent") by the Pittsburgh Office of the U.S. Department of Housing and Urban Development ("the Department" or "HUD") pursuant to 24 C.F.R. § 24.26(a)(2) (1987). The LDP was effective as of April 13, 1988, for a period of one year, or until Respondent provided evidence that his past unsatisfactory performance had been corrected, whichever occurred first. The LDP was a result of complaints regarding his performance as an FHA fee appraiser.

A hearing was held on July 19, 1988, in Pittsburgh, Pennsylvania, at which time the parties had an opportunity to present witnesses and documentary evidence in the matter. The parties were given until August 10, 1988, to file any post-hearing briefs. As this date has passed with neither party filing a brief, the matter is ripe for decision. Therefore, based on the evidence before me, I make the following findings and conclusions:

Findings of Fact

On April 13, 1988, the Department issued a letter notifying Respondent of an LDP action against him. (HUD Exh. 1). The LDP was based on Respondent's performance as an FHA fee appraiser during appraisal assignments at three addresses: [redacted] Garlow Street, [redacted] Alder Street and [redacted] East Hutchinson Street. (HUD Exh. 1). In addition, HUD cited as further support for the

LDP, complaints filed by mortgagees concerning Respondent's performance and behavior. (Id. at 3). A supplementary finding was issued on May 4, 1988, regarding Respondent's alleged false certification, on a compliance inspection report, that repair items had been satisfactorily completed for property located at 833 Flemington Street. (HUD Exh. 10). This supplementary finding was made an additional basis for the LDP. (Id.).

On February 17, 1988, Respondent had an appointment at 3:30 p.m. to perform an appraisal of the property located at ■■■ Garlow Street. (Tr. at 97). At 3:25 p.m., when Respondent arrived at the location, the occupant requested that Respondent show some identification. (Tr. at 100). Respondent rudely refused to identify himself or to wait five minutes for the real estate agent to arrive at the appointed hour and identify him. (Tr. at 52, 100, 104).¹ Respondent stated to the occupant that he could not come back to do the appraisal for two weeks and that there would be an extra charge for him to come back. (Tr. at 45, 106). As a result of the investigation, HUD concluded that Respondent's behavior at ■■■ Garlow Street had been unsatisfactory and irregular. (Tr. at 16; HUD Exh. 1).

On July 10, 1987, Respondent completed an appraisal at ■■■ Alder Street. (Tr. at 46; HUD Exh. 15). Respondent conditioned the appraisal on the installation of a separate furnace and hot water heater in each unit of the two-unit dwelling, purportedly in accordance with the BOCA Code.² (Tr. at 156). When questioned by the occupant about the BOCA Code, Respondent would not or could not cite to specific sections of the Code. (Tr. at 46). Further, Respondent used comparables from three neighborhoods different from the neighborhood where the subject property was located. (HUD Ex. 3). After investigating the matter, HUD determined that the BOCA Code was inapplicable to the subject property and that the comparables used were not indicative of the value of the property. (Tr. at 155-161, 215-218). Additionally, HUD determined that Respondent was uncooperative in not answering questions posed by the occupant about the BOCA Code. (Tr. 46-47).

On July 2, 1988, Respondent performed an appraisal at ■■■ East Hutchinson. (HUD Exh. 17). Respondent put as conditions on the appraisal the installation of base and wall cabinets "in

¹ A complaint regarding Respondent's behavior relating to ■■■ Garlow Street was filed also by the Manager of Merrill Lynch Realty. (HUD Exh. 6). The complaint alleged Respondent became abusive with employees of Merrill Lynch during phone conversations about the incident at 209 Garlow Street. (Id.).

² The BOCA Code is the national building code of the Building Officials Conference of America.

middle of kitchen floor,"³ and "clean out gutters and downspouts."⁴ (HUD Exh. 17). On July 8, a loan processor had a telephone conversation with Respondent to discuss the conditions placed on the property and the comparables used. (Tr. at 66). During the conversation, Respondent became uncooperative and rude, and asked the loan processor if she was white. (Tr. at 67). Respondent further stated that he would charge \$25.00 per photo for pictures of needed repairs. (Tr. at 67). After a review of the property at █████ East Hutchinson, HUD officials concluded that some of Respondent's conditions were unnecessary or unclear,⁵ (Tr. at 171) and that the adjustments Respondent made to the comparables were not supported.⁶ (Tr. at 173-76).

On December 28, 1987, Respondent performed an appraisal on the property located at █████ Flemington Street. (HUD Exh. 19). The appraisal cited, as conditions, the replacement of all cracked windows and the installation of an overflow pipe on the hot water heater, downward until 6-8 inches off the floor. (*Id.*). On his compliance inspection report, Respondent certified that these conditions had been taken care of satisfactorily. (HUD Exh. 27). However, after this certification, HUD officials inspecting the property found that two windows remained cracked and no downward pipe had been installed on the hot water heater. (Tr. at 196-98; See HUD Exh. 9). HUD's investigation led to the May 4, 1988, supplementary finding charging Respondent with false certification. (Tr. at 17-18).

In addition to Respondent's performance regarding the preceding four appraisals, HUD also based the LDP on numerous other complaints from Choice Homes Realtors regarding Respondent's attitude and appraisal methods (See Tr. at 107-20,142-48), and

³ The complainant was confused as to whether this meant install island units in the middle of the floor, or take the cabinets sitting in the middle of the floor and install them on the wall. (Tr. at 70).

⁴ The complainant felt this was an unusual request. (Tr. at 71).

⁵ Specifically, the officials found that, as a required condition, installation of base and wall cabinets "in middle of kitchen" was unnecessary and confusing. (HUD Exh. 18). They found cleaning gutters and downspouts to be routinely deferred maintenance items. (*Id.* at 2).

⁶ HUD disagreed with the market adjustments made to the comparables, but did find them to be in the acceptable range established by HUD's field office policy. (HUD Exh. 18 at 3).

complaints from Margaretten & Co., concerning Respondent's appraisal methods and billing tactics. (Tr. at 132-44). Basically, Respondent became rude, argumentative and problematic in dealing with employees of companies involved in the appraisal process. (Tr. at 110, 143-47). For example, after waiting an hour for Respondent at a property assigned for him to appraise, an employee of Choice Homes Realty called Respondent's office, only to be told that it was she who had missed the appointment. (Tr. at 143). When the appraisal was finally completed, Respondent told the employee that only one item needed correcting. (Tr. at 144). However, when she contacted the bank handling the loan some days later, the employee was told that the appraisal had come in with a list of 5 or 6 items that needed correcting. (Tr. at 145). Although Respondent was notified that a lockbox was placed on the house and no appointment was necessary for the reinspection, he did not reinspect the property because he said he could not contact the employee to make a reinspection appointment. (Tr. at 146). Notwithstanding his reminder that an appointment was not necessary, Respondent still failed to do the reinspection, alleging that there was no key in the lockbox. (Tr. at 147). However, the employee found the key in the lockbox later that same day. (Tr. at 147). Employees for both Choice Homes and Margaretten concluded that Respondent often required reinspection for non-existent or minor problems (Tr. at 110-13). For example, on one appraisal, Respondent required a reinspection of the plumbing because the water was not on at the time of inspection. (Tr. at 110-13). However, the employee found that the water was, in fact, on during Respondent's appraisal. (Tr. at 111). Further, Respondent was known for his practice of calling the mortgage companies every day until he was paid, even though the companies' payment procedures were acceptable to HUD and (Tr. at 135-36) could not be revised locally.

In regard to the evaluation of a fee appraiser's performance, the Department has promulgated standards governing behavior and technical competence. In July 1986, HUD distributed standards and procedures for performance to all fee appraisers. (Tr. at 22). Further, HUD issued new procedures on January 29, 1988, which were also sent to all fee appraisers. (Tr. at 24). These procedures notified the fee appraisers that unsatisfactory performance or irregularities in performance would be actionable. (Tr. at 22, 24). Additionally, at a December 1987 recertification meeting, which all fee appraisers had to attend in order to continue membership on the fee panel, Department officials discussed the evaluation of appraisers' performance.⁷ (Tr. at 26-27). Fee appraisers were told specifically to be cooperative with the

⁷ One of the certifications that the fee appraisers had to sign at this meeting was that they would follow all HUD regulations. (Tr. at 29).

people they came in contact with because their actions reflected on HUD. (Tr. at 28).

Conclusions of Law

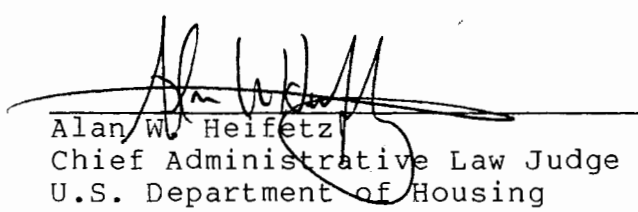
The Department relies on 24 C.F.R. § 24.26(a)(2) as regulatory authority for Respondent's limited denial of participation in the HUD single family home mortgage insurance program. This regulation provides that irregularities in a participant's past performance in a HUD program are cause for an LDP. 24 C.F.R. § 24.26(a)(2) (1987). The Department may order an LDP upon adequate evidence of such irregularities in a participant's performance; however, the decision to order an LDP is discretionary, and is to be made in the best interests of the Government.

HUD alleges that evidence of Respondent's unsatisfactory performance as an FHA fee appraiser warrants the issuance of an LDP. Respondent declined to present any evidence at the hearing of this case. Therefore, it is necessary only to determine if the Department has presented a prima facie case that its imposition of a limited denial of participation on Respondent was based on adequate evidence and in the best interests of the Government. I conclude that HUD has met its burden. The Department's evidence shows that Respondent has had numerous unsatisfactory and irregular performances, that he has been rude and uncooperative to individuals involved in the loan process, and that he has not always performed the technical aspects of his appraisals adequately. Respondent also submitted a falsely certified compliance inspection report for ██████ Flemington Street. Consequently, and in the absence of any mitigating circumstances, I conclude that the Department did not abuse its discretion in imposing the LDP based on the evidence it had before it.

ORDER

Having concluded that the Department has made a prima facie case that adequate evidence exists to issue a Limited Denial of Participation against Respondent for irregularities in his performance as an FHA fee appraiser, it is

ORDERED, that the Limited Denial of Participation is affirmed.


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

Dated: August 11, 1988