

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

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In the Matter of :
TWYLA N. CORDRY : HUDALJ 89-1366-DB(LDP)
Respondent :
..... :

Twyla N. Cordry, Pro se
William G. Nichols, Esquire,
Joseph James, Esquire, and
E. Kenneth McDonald, Esquire,
For the Department
Before: William C. Cregar
Administrative Law Judge

INITIAL DETERMINATION
Statement of the Case

This proceeding arose as a result of an appeal by the Respondent of a limited denial of participation ("LDP") issued by the Kansas City Office of the Department of Housing and Urban Development ("HUD" or "Department"). By letter dated March 24, 1989, Respondent was denied participation in the Department's insured housing programs in the states of Iowa, Kansas, Missouri, and Nebraska for a period of one year from that date. After two conferences with HUD Kansas City officials, the action was affirmed on May 30, 1989. The Respondent appealed the action by letter dated June 22, 1989. Subsequently, the parties agreed to waive an oral hearing and proceed on the written record. The parties also agreed that the sole issue for my consideration is the appropriateness of the sanction. This matter being ripe for decision, I now make the following findings of fact and conclusions based upon the record submitted:

Findings of Fact

On March 21, 1988, Respondent submitted an application to HUD's Kansas City Office to become a HUD-approved loan correspondent doing business as Ozark Home Mortgage, Sunrise Beach, Missouri. ("Ozark") Respondent's application listed herself as President and sole officer of Ozark. Under HUD regulations, a loan correspondent is "an institution that originates and closes loans for sale to its sponsor¹ or sponsors." 24 C.F.R. Sec. 203.5 (a) A loan correspondent must also process and close all loans in its own name unless it has direct indorsement authorization.² Id. HUD regulations also set forth a procedure by which HUD approves loan correspondents. As part of the application process, the applicant must satisfy HUD that it has sufficient assets and lines of credit. 24 C.F.R. Sec. 203.5 (b) Respondent's application was initially incomplete. At HUD's request and in order to complete the application, Respondent submitted a financial statement on March 30, 1988.

By letter dated April 18, 1988, the HUD Kansas City Office required Respondent to submit evidence of the value of office furniture she claimed as assets on the financial statement. On April 21, 1988, Respondent spoke with J. Carol Heard, Mortgage Credit Loan Specialist in the office. During the conversation Heard discussed the contents of the April 18th letter and confirmed that Respondent was not, as of that date, approved as a loan correspondent. (Affidavit of J. Carol Heard, Memo of J. Carol Heard, dated April 21, 1988) Respondent never submitted the information requested in the letter of April 18, 1988 and HUD never approved her application.

Between April 18, 1988 and March 15, 1989, Ozark originated sixteen loans which it transferred to Countrywide. Two other loans were originated by Ozark and transferred prior to April 18, 1988. Ozark's origination activities included taking the applications, preparing credit packages, and forwarding the files to Countrywide for underwriting and subsequent closing. (Memo from William Heyman, Director, Office of Lender Activities and Land Sales Registration to Gerald Simpson, Regional Administrator, Kansas City Regional Office, dated March 15, 1989)

1 The sponsor was to be Countrywide Funding Corporation of Pasadena, California. Countrywide agreed to fund all loans originated and closed by Ozark which it committed itself to purchase. (Countrywide letter to Ozark Mortgage, February 4, 1988)

2 Direct indorsement lenders may issue HUD mortgage commitments without prior HUD approval. Neither of the parties claims that this exception is applicable to this case.

Discussion

The Department relies upon the causes stated in 24 C.F.R. Sec. 605 (a) (1) and (2). These provide for the issuance of a Limited Denial of Participation upon "adequate evidence" that approval of an applicant for insurance would constitute an unsatisfactory risk and based upon irregularities in a participant's past performance in a HUD program. Respondent contests neither the applicability of these causes to her actions, nor the underlying factual bases for taking the action of a Limited Denial of Participation. By agreement of the parties the only issue before me is the appropriateness of the sanction.

The Department contends that Respondent's conduct warrants a one year denial of participation. In addition, it relies upon various misstatements made by Respondent during her conference with HUD officials on April 10, 1989. The Department alleges that at that conference Respondent initially denied, and later admitted, processing eighteen loan applications, and that she personally had processed the loans. She also allegedly claimed and later denied and that she assumed she had been approved as a loan correspondent. Finally, she continued to assert that Ozark had not processed the loans, but, rather, the loans had been processed by Ozark for Countrywide. This assertion was made despite strong evidence to the contrary. (Affidavit of Steven D. Kottman) The Department argues that these misstatements constitute additional evidence that continued dealing with the Respondent would pose an undue risk to HUD's programs.

Respondent's account of the April 10, 1989, meeting differs substantially. She states that she never contested the number of applications actually processed by Ozark, nor did she deny that Ozark actually processed them with her knowledge.

She continues to deny that she called Ms. Heard on April 18, 1988. She also argues that her errors were innocent and did not "hurt anyone" or cost anyone any money. She urges that a lesser period for the denial of participation is called for, claiming a lack of intent to knowingly violate HUD's rules, and the adverse impact of this action on the local real estate community.³

3 Respondent has submitted letters from a former employee and brokers who point out that the local real estate community misses her ability to rapidly process FHA and VA loans. One broker states: "Both (Respondent and her husband) have taken a personal interest in our area by providing us with guidance, direction, and an understanding of all the rules and regulations for FHA and VA." (Letter of Judy Miller Redmond, dated September 6, 1989). A second broker observes: "(Respondent) endeavors to keep abreast of current regulations and abide by them. She also

As the parties elected not to have an oral hearing in this case, I am unable to evaluate the credibility of the statements made at the conference held on April 10, 1989. However, I need not evaluate these statements as the written record, without reference to the April 10, 1989 meeting, is sufficient to permit the conclusion that Respondent's protestations of innocence are unworthy of belief. She has eighteen years of experience in the real estate business. She knew enough about HUD's loan correspondence program to obtain and submit an application. She also must have known that HUD's approval was required before she or Ozark was authorized to originate FHA loans. It is not crucial to the outcome of this case that she was told by Ms. Heard on April 21, 1988, that HUD approval had not been given to her application. The letter of April 18, 1988, clearly informed her that more information was required before HUD would approve her application. Yet, Ozark processed sixteen loan applications after Respondent received that letter.⁴ She admits knowledge of these transactions. Accordingly, I conclude that the record contains adequate evidence that Respondent's conduct was intentional.

I also conclude that the record provides no support for Respondent's claim that no one was harmed. Even if I disregard the expense of investigation and litigation of this matter, it is not possible to determine whether any defaults will occur on the loans which Ozark improperly originated. In addition, I conclude that harm would result from HUD's nonaction in a situation such as this where HUD regulations were so flagrantly violated. Although not punitive, Limited Denials of Participation not only protect the Government from the risk of additional harm, but may also serve as a deterrent to others.

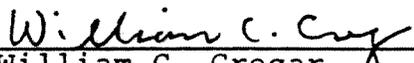
sees that those who process loans through their organization know and follow current guidelines and regulations." (Letter of Willia M. Duncan, undated) In view of the evidence of record in this case, what little weight these letters may be given requires no elucidation.

⁴ Respondent's knowledge that Ozark lacked authorization to process the loans is also demonstrated by her own letter to Mr. Elmer Binford, the HUD official taking this action, dated May 2, 1989. Her letter states that upon learning that an FHA application had already been processed, she exclaimed "We can't do this." Yet the record establishes that eighteen applications were processed by Ozark. At least fourteen of these were made after this exclamation. (As noted above, sixteen of the eighteen were processed after Respondent received the April 18, 1988, letter from HUD.) Finally, the record also reflects that, since Ozark did not have its own access to HUD's computer system, it used Countrywide's FHA lender approval number to order FHA appraisals.

Conclusion and Order

Upon consideration of the entire record in this matter, I conclude and determine that the Limited Denial of Participation of Twyla N. Cordry is supported by adequate evidence. I also conclude that its duration of one year is appropriate to protect the public fisc and is in the public interest. Accordingly, it is

ORDERED that the appeal of the Limited Denial of Participation dated March 24, 1989, is hereby dismissed.


William C. Cregar
William C. Cregar
Administrative Law Judge

Dated: September 8, 1989