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

In the Matter of:

PETER NOVICK,

Respondent

HUDALJ 89-1403-DB

Peter Novick, pro se

Rebecca J. Holtz, Esquire
For the Department

Before: Alan W. Heifetz
Chief Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

Peter Novick ("Respondent") appeals a proposed debarment issued on September 6, 1989, by C. Austin Fitts, Assistant Secretary of the U.S. Department of Housing and Urban Development ("the Department" or "HUD"). The Department proposes to debar Respondent from further participation in primary covered transactions and lower tier covered transactions as either a participant or principal at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts with HUD for an indefinite period of time. Respondent was temporarily suspended on February 23, 1989, pending a final determination of the debarment action.[1]

The proposed debarment was based on: (1) Respondent's conviction in the United States District Court for the District of Columbia for violating 18 U.S.C. sections 1010, 2(a) and 2(b); and (2) evidence of irregularities in his business dealings with the government. In the Notice of proposed debarment, the Department alleges that Respondent "participated in a scheme whereby strawbuyers were used to originate

[1]Respondent did not appeal the temporary suspension.

HUD/FHA-insured loans" and that he "caused or induced the submission of false statements to HUD which he knew or should have known would be submitted to HUD for the purpose of influencing the Department to insure mortgages" on seventeen properties.

An oral hearing was held on May 7 and 8, 1990, and closing arguments were presented orally at the conclusion of the hearing. Accordingly, this case is ripe for decision.

Findings of Fact

1. In 1982 or 1983, Respondent entered into a private law partnership where he conducted settlements of real estate with mortgages insured by the Federal Housing Administration ("FHA"). He was, therefore, a principal participating in covered transactions. Prior to that time, Respondent worked as an attorney for HUD in various capacities for approximately ten years.

2. Certain actions of Respondent came to light as a result of an investigation by the Federal Bureau of Investigation ("FBI") involving fraudulent FHA transactions. Tr. I-42 (Cantelupo). The FBI discovered that Respondent had settled a substantial number of properties for Ndidi Obaze, a real estate broker doing business in the District of Columbia. *Id.* Mr. Obaze first met Respondent in 1981 or 1982, when, in response to a mass mailing, Respondent contacted him to sell Respondent's property. *Id.* at I-117 (Obaze). Respondent told Mr. Obaze that he was a lawyer, that he handled real estate closings, and that he wanted to handle settlements for Mr. Obaze. *Id.* at I-121-22 (Obaze). Mr. Obaze first utilized Respondent's services as settlement attorney for some "clean" deals, and later brought him cases involving "net deals", the "buyer-credit concept", "flip deals", and "strawbuyers".[2] *Id.* at I-122-23 (Obaze). Jack Spicer and John Slack were real estate speculators who bought and sold properties involving net deals, the buyer credit concept, flip deals and strawbuyers. Byron Smith, a real estate broker and former HUD attorney, participated in some "net deal" property transactions as a broker or agent for members of his family (Tr. at I-208). In these transactions, Respondent acted as settlement attorney, closing FHA-insured loans.

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[2]There was some disagreement as to the definition of a "net deal" and the "buyer credit concept". *See* Gov't Complaint, para. 15; Tr. at 41 (Cantelupo); Tr. at 119 (Obaze). For purposes of this decision, I have adopted the definitions provided by Mr. Cantelupo. A "net deal" is a real estate transaction in which the buyer does not pay any money toward the purchase and the buyer's costs are netted out of the seller's proceeds. Tr. at 41 (Cantelupo). A "buyer credit concept" is similar to a net deal, but the buyer is actually paid money to purchase property in the buyer's name. *Id.* A "flip deal" involves a situation where an investor buys property and sells the contract immediately, and the contract buyer tries to find an ultimate purchaser. Tr. at 120 (Obaze); tr. at 175 (Spicer). The contract buyer turns the property around without going to settlement with the original owner, and a "middle sheet" is drawn up. *Id.* A "strawbuyer" involves a speculator who buys property, gets someone else to obtain the loan, and then takes over the property. *Id.* at I-121 (Obaze) and I-175 (Spicer).

3. At closing, the settlement attorney prepares a HUD-1 Settlement Statement ("HUD-1 statement"), which should accurately summarize all the fees and charges paid by the borrower and seller. Tr. at I-15-17 (Semelsberger). It includes gross amounts due from the borrower and to the seller, any adjustments due either party, and the amount of cash at settlement due from the borrower (Line 303) and to the seller (Line 606). After settlement, all documents executed at the closing are returned to the lender or mortgagee, who prepares a package with the executed documents and a copy of the HUD-1 statement and sends it to HUD with a request for an insurance certificate. If everything is in order, HUD issues a mortgage insurance certificate. The closing attorney prepares a ledger sheet that reflects the receipts and disbursements made at closing. Tr. at I-45-47 (Cantelupo). For the transactions at issue, the ledger sheets, not the HUD-1 statements, accurately reflected the fees collected and disbursed at the closings. Tr. at II-24 (Respondent).

4. On May 25, 1989, Respondent pleaded guilty to one count of an information in the United States District Court for the District of Columbia for violating 18 U.S.C. sections 1010, 2(a) and 2(b). The information charged that Respondent willfully and knowingly made and caused to be made a false HUD-1 statement dated January 31, 1984, to HUD to obtain FHA mortgage insurance for property at [redacted] 16th Street, S.E., Washington, D.C. That HUD-1 statement represented, among other things, that the purchaser had paid from his own funds the closing costs and down payment as shown on the HUD-1 statement, whereas Respondent knew that the purchaser had not made the financial investment indicated, and that therefore, HUD was induced to insure an amount in excess of its underwriting requirements. Respondent was sentenced to one year in prison and was ordered to pay restitution to HUD in the amount of $5,000. He served his sentence in a halfway house, but, as of the date of the hearing, he had not begun to make restitution.

5. Respondent acted as closing attorney for twelve additional properties[3] between March 31 and November 17, 1983. The ledger sheets revealed that buyers in ten transactions made no down payments and did not pay any money towards closing costs; the remaining two paid only some of those costs.[4] Of the ten who did not pay any money at the closings, six received money back from the seller. Of those six, three received that money in the form of checks signed by Respondent himself. G-14, G-54.

6. Respondent closed loans involving strawbuyers for three of the properties, [redacted] 16th Street, S.E. and [redacted] D Street, S.E. For those properties, the buyer or seller was Daniel Davids, an alias used by Mr. Obaze. As a public notary licensed in Maryland, Respondent either notarized loan documents which he saw Mr. Obaze sign as

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[3]Although in the Notice of proposed debarment and in its Complaint, the Department alleged improprieties by Respondent concerning seventeen properties, at the hearing, it withdrew counts 5, 8, 13 and 15, which related to four of the seventeen properties.

[4]The buyer for the property at [redacted] 16th Street, S.E., which was the property involved in Respondent's conviction, also paid only part of the closing costs and down payment.

Daniel Davids or notarized the signature of Daniel Davids without personally witnessing it.[5]

7. Although Respondent asserts that, at the time of the closings involving Daniel Davids, he did not know that Davids was a fictitious name for a strawbuyer used by Mr. Obaze, Respondent himself used a strawbuyer less than two months prior to the Daniel Davids' closings and served as settlement attorney to close that loan. *See* G-34. Thus, Respondent knew that strawbuyers could be used and he knew how to use them.[6] Respondent's credibility in asserting otherwise is significantly weakened by his sworn statements under oath in discovery in which he denied ever being involved personally in a straw deal and closing a loan in which he knew the purchaser was a strawbuyer.[7] Tr.

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[5]Mr. Obaze and Respondent's testimony differed as to the circumstances under which Respondent had notarized the closing documents of Daniel Davids. Mr. Obaze testified that Respondent knew that he was Daniel Davids, that he did not take closing documents to the buyer or seller to sign except for perhaps one occasion, and that he signed the name Daniel Davids at closings in front of Respondent. Tr. at I-125, 149 and 166. Mr. Obaze also testified that when there was an excess of money over the purchase price, Respondent made most of the checks out directly to Mr. Obaze, not to Daniel Davids. Tr. at I-125, I-145-46. Mr. Spicer testified that, for more than half of the closings, he went to Respondent's office to sign the closing documents and would leave prior to the closings. Tr. at I-193-95. Respondent, on the other hand, insisted that he did not see Mr. Obaze sign that name, that Mr. Obaze used to take the closing documents out of the office to the buyer and seller to sign, and that Respondent notarized the documents without personally witnessing the Davids signature, relying on Mr. Obaze's representation that Mr. Obaze saw the witness sign. Tr. at II-28, II-59-60. Respondent also testified that he issued most or all of the checks to Daniel Davids at Mr. Obaze's request. Tr. at I-59-60.

I find that neither the testimony of Mr. Obaze nor that of Respondent is credible. Both attempted to portray themselves as naive and willing totally to trust and rely on each other for advice concerning the propriety of the closings that occurred. Neither witness appeared naive, both were highly educated, and both seemed capable of independent thought. Moreover, the testimony of Mr. Obaze was internally inconsistent. *See* Tr. at I-135 and I-145; I-136 and I-141; I-138-39, I-148 and I-163; I-144 and I-154. For reasons discussed *infra*, Respondent's testimony was also inconsistent and contradicted earlier responses given under oath in discovery that he had never been involved personally in a straw deal and that he did not close a loan where he knew the purchaser to be a strawbuyer. Tr. at II-32-36. When confronted with the inconsistency between his discovery responses and his testimony, Respondent was unable to admit that the inconsistency existed but, rather incredibly, argued that he misunderstood the question concerning his involvement in a straw deal. Further, when government counsel asked Respondent in the deposition whether he considered himself to have done anything wrong with regard to the settlements, Respondent answered in the negative by reframing the question to avoid giving a truthful answer and admitting wrongdoing. Tr. at II-32.

Nonetheless, it is unnecessary to resolve whether Mr. Obaze's version or that of Respondent is more credible because, as explained above, there is other evidence that shows that Respondent knew that Mr. Obaze was Daniel Davids. Furthermore, whether or not Respondent saw Mr. Obaze sign the name Daniel Davids at the closings is insignificant; notarization of fictitious signatures or notarization of signatures that he did not witness are equally egregious violations of Respondent's duty as a notary public.

[6]One of Respondent's former law partners knew of and disapproved of Respondent's handling of closings with fictitious buyers and sellers. *See* G-9. On March 19, 1984, the partner wrote Respondent that "[t]his real estate transaction [1638 16th Street, S.E.] appears to be not dissimilar to others you have handled in which there have been pseudonyms".

[7]In the deposition, government counsel asked Respondent whether he was "ever personally involved in a straw deal." Respondent answered: "No. I have answered that question in the interrogatories." In interrogatory 24, government counsel asked Respondent to "[s]tate whether [he has] ever employed use of a

at II-35-36 (Respondent). In addition, Respondent asserts that he asked Mr. Obaze many times who Daniel Davids was and that Mr. Obaze told him that Daniel Davids was a friend.[8] Tr. at II-59. Respondent's own files for [redacted]D Street, S.E., however, contained a new case report dated August 16, 1983, for client Daniel Davids, whose address is the same as Mr. Obaze's.[9] *Compare* G-15 *and* G-17. Thus, despite Respondent's purported expressed interest in ascertaining the identity of Daniel Davids, he did not look in his own files for any help in that regard. I find that, at the time of the closings involving Daniel Davids, Respondent, in fact, knew that Mr. Obaze was Daniel Davids.

8. Respondent prepared two settlement sheets selling property at [redacted]D Street, S.E., from a Mr. Bowers to Daniel Davids for $42,600 and from Daniel Davids to [redacted] Dixon for $69,000 only four days later. G-18 and G-53. Similarly, Respondent prepared two settlement sheets on the same date reflecting the sale of property at [redacted] 16th Street, S.E., from Mr. Spicer to Daniel Davids for $56,000, and from Mr. Spicer to the ultimate purchaser, Mr. Portee, for $69,900. G-1 and G-3. Mr. Spicer sold the contract to Mr. Obaze who resold it the same day to Mr. Portee. Tr. at I-177. Respondent acted as settlement attorney in these "flip deal" transactions in which property was immediately resold at inflated prices to the ultimate purchasers.

9. The mortgage on each property was endorsed for FHA insurance under the Single Family Mortgage Insurance program pursuant to section 203(b) of the National Housing Act. *See* 12 U.S.C. section 1709(b). Four of the thirteen properties have had

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strawbuyer to sell or purchase property...." Respondent answered: "Respondent has not engaged a strawbuyer to sell or purchase the property." When asked at the hearing if he wanted to change those answers, Respondent stated: "I think I've amplified on it completely. I told you the complete story." Tr. at II-36.

Respondent's use of the word "amplified" was nothing more than a euphemism for the word "changed." At the hearing, Respondent was still not able to state that he had ever been involved personally in a straw deal, even though he admitted that a Wilbert Lassiter did in fact purchase property for him and without paying any money at closing. Tr. at II-32-34 (Respondent). *See also* Tr. at I-134 (Obaze). He insisted that he did not *purchase* property and that he had understood the question posed in the deposition and interrogatories to ask that question. However, the questions posed in discovery are clear and cannot be interpreted reasonably in that manner. Further, in interrogatory 25, government counsel asked Respondent to "[s]tate whether [he has] ever closed a loan in which he knew the purchaser was a 'strawbuyer'...." Respondent answered that he "has not closed a loan where he knew the purchaser to be a 'strawbuyer.'"

[8]There was testimony which, standing alone, would tend to corroborate Respondent's assertion that Mr. Obaze may have told Respondent that Daniel Davids was a friend. Mr. Spicer testified that Mr. Obaze originally told him that Daniel Davids was Mr. Obaze's cousin or a relative. Tr. at I-176. However, as discussed above, there is overwhelming evidence that, at the time of the loan closings, Respondent knew that Mr. Obaze was Daniel Davids.

Although Mr. Smith testified that Respondent had told him that Mr. Obaze was Daniel Davids, he did not recall when that had occurred. Tr. at I-205.

[9]According to Respondent, a paralegal would have requested that a new case report be prepared for a client. Tr. at II-25 (Respondent). He further testified that Mr. Obaze probably called and asked her to prepare the report. *Id.* The new case report reflects that "Daniel Davids" was referred to Respondent by Mr. Slack. G-15.

property claims made on the HUD-insurance fund. The total loss HUD sustained on the four properties was $198,612.52. Tr. at II-4-5 (Thorson).

10. During the relevant time period, Respondent was having marital difficulties which ultimately concluded in acrimonious divorce and custody actions. His wife was absent from the home a great deal, he was responsible for the care of his three daughters, and it was an extraordinarily stressful time for him. Tr. at II-83-85 (Bonnin).

11. Respondent knowingly participated in a series of transactions to fraudulently secure FHA-insured loans for buyers for thirteen properties.[10] He closed loans involving strawbuyers, involving flip deals where properties were resold immediately to other purchasers at inflated prices, and involving buyers who failed to satisfy the minimum investment requirement. The HUD-1 statements[11] for thirteen properties were false because they did not disclose that the seller would repay the buyer's down payment and settlement costs out of the proceeds of the sale.[12] Conversely, Respondent did not collect the receipts or make the disbursements in accordance with the information contained on the HUD-1 statements.

Discussion

The Department relies on the causes stated in 24 CFR 24.305(a)(3), (4), (d), and (f). These regulations provide for debarment: (1) upon conviction of a crime involving falsification or false statement (24 CFR 24.305(a)(3) and (4)); (2) for any other cause of so serious or compelling a nature that it affects the present responsibility of a person (24

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[10]In paragraph 10 of the Complaint, the Department alleged that Respondent and Messrs. Obaze, Spicer and Slack devised a scheme to market properties in the District of Columbia with inflated mortgagees and strawbuyers. The Department further alleged that Respondent participated in such a scheme. There is no evidence that Respondent participated in devising a scheme or that he participated in the overall scheme to market properties with inflated mortgages. A "scheme" is a "systematic plan of action" or a "plot". Webster's II New Riverside University Dictionary, 1044 (1984). There is no evidence that he participated in a systematic plan of action, although there is overwhelming evidence that he knowingly falsified settlement sheets in the thirteen transactions that were brought to him.

[11]Respondent's testimony that he knew that the HUD-1 statements were sent to the lender but that he did not know exactly what was done with them (Tr. at II-26) is simply not credible. The phrase "U.S. Department of Housing and Urban Development Settlement Statement" appears at the top of the HUD-1 statements, and Respondent knew that the loans all involved claims for FHA insurance.

[12]For a mortgage to be eligible for FHA insurance, the mortgagor must have paid in cash or its equivalent a minimum investment of at least 3% of the first $25,000 and 5% of the balance if owner occupied. If investment property, the minimum investment is increased by an additional 15%. Tr. at I-14 (Semelsberger).

The seller may pay all or part of the buyer's closing costs, but the buyer is still required to make a minimum cash investment. Tr. at I-15 (Semelsberger). That information must be disclosed to the mortgagee and to HUD. The underwriter subtracts the amount paid by the seller from the sales price to determine the adjusted sales price, and the maximum mortgage is calculated so that the buyer makes the minimum cash investment. *Id.*

CFR 24.305(d)); and (3) for material violation of a statutory or regulatory provision or program requirement applicable to a public transaction including applications for insurance or to the performance of requirements under a conditional or final commitment to insure (24 CFR 24.305(f)).

Respondent's conviction for falsification and/or making false statements is grounds for suspension or debarment. *See* 24 CFR 24.305(a)(3), (4), and (d). The Department proved by preponderant evidence that Respondent knowingly closed loans involving strawbuyers and the sale of properties to buyers at inflated prices, and that he made false statements that the buyers paid closing costs and made down payments where Respondent knew that those costs were passed on through the seller's proceeds. Such actions involved providing false information on HUD-1 statements, information on which HUD relied in insuring thirteen loans, the recipients of four of which have defaulted resulting in claims on HUD's insurance fund. Thus, Respondent's conduct in closing the loans on the thirteen properties at issue is also grounds for debarment under 24 CFR 24.305(d) and (f).

Debarment is a sanction which may be invoked by HUD as a measure of protecting the public by ensuring that only those qualified as "responsible" are allowed to participate in HUD programs. *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 used in government contract law. It encompasses the projected business risk of a person doing business with HUD. This includes his integrity, honesty, and ability to perform. The primary test for debarment is present responsibility although a finding of present lack of responsibility can be based upon past acts. *Schlesinger v. Gates*, 249 F.2d 111 (D.C. Cir. 1957); *Roemer, supra*. The debarment sanction may also be justified on the basis of its deterrent effect on those who do business with the government.

A debarment generally should not exceed three years, but where circumstances warrant, a longer period of debarment may be imposed. 24 CFR 24.320(a)(1)(1989). The Department contends that, because Respondent's offenses were of such a willful and egregious nature, a debarment of indefinite length is necessary to protect the public interest. Although the current regulations no longer require a showing of willful or egregious conduct, such a showing is one situation where a debarment period of greater than three years may be warranted. For reasons set forth below, the Department proved by preponderant evidence that Respondent's actions were willful and egregious.

The government reasonably expected Respondent, as a settlement attorney, to act with the highest degree of integrity and honesty when dealing with it and the public fisc. He failed, however, to conduct himself in accordance with those high standards when he knowingly and intentionally submitted false statements which he knew HUD would rely upon to decide whether to insure the subject loans. Respondent was convicted for his involvement in one of the transactions and, accordingly, his licenses to practice law have been suspended and/or revoked. His improper conduct was not confined to an isolated instance, but rather was pervasive and deliberate. His responsibility and integrity have been implicated not only by his knowing involvement in these transactions, but also by

his conflicting testimony under oath. At the hearing, Respondent appeared to have convinced himself that he was telling the truth and that he was an unfortunate, vulnerable and innocent person who was misled by others. However, the picture that Respondent painted of himself was simply nothing more than chimera. In actuality, Respondent's actions were willful and egregious, and his self delusions only reinforce the conclusion that a period of debarment shorter than one of indefinite duration would not be adequate to protect the public from unacceptable business risk.

In mitigation, Respondent argues that: (1) he was under such tremendous pressure, stress and emotional trauma caused by his domestic situation that he was probably barely functioning, and that he did not realize and, unfortunately, probably care that there was a problem (Tr. II-40-41); (2) his work during that time was extremely out of character; (3) he entered a guilty plea in the criminal action for reasons other than his guilt or innocence; (4) he filled out the HUD-1 statements as just a mathematical exercise and that he was just carrying out the instructions of the buyer and seller; (5) he relied on advice from Mr. Obaze and Mr. Smith that what he was doing was proper;[13] (6) he relied on the mortgagee's approval of the loan applications; (7) he lacked experience in single-family matters; and (8) he accepts responsibility for his involvement in these transactions and appreciates the wrongfulness of his actions.

Respondent's assertions that his marital situation was responsible for his involvement in these transactions and that, as a result, his actions were autonomic are not credible. One month after he conducted the first settlement involved in these proceedings, and in the midst of his domestic upheaval, Respondent assumed the mantle of leadership as president of a religious congregation, and committed to serve in that capacity for two years because he "felt an obligation" to do so. Tr. at II-37 (Novick). Also during that time period, Respondent engaged in active solicitation of business. Tr. at I-121-22, I-137 (Obaze); Tr. at I-197 (Spicer); Tr. at I-231 (Smith). Clearly his sense of obligation to the religious community and his active concern for the growth of his legal practice belie any claim of torpidity, for whatever reason. His conduct did not involve inadvertence or inaction; it involved planned, deliberate and knowing misconduct in not one, but thirteen instances. Moreover, even assuming that Respondent's personal dilemma was a contributing factor to his decision to participate in the transactions at issue, he offered no evidence to show that, if he is faced with a stressful situation in the future, he would be able to conform his conduct to that of a "responsible" participant in Departmental programs.

In attempting to establish his present responsibility, Respondent pointed to the quality of his subsequent two-year employment at HUD, and the effects of his conviction, such as separation from his family, loss of his job at HUD, and the prospect of loss of his license to practice law. Tr. at II-76-78 (Novick). He asserts that his

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[13]He claims that he did not know that anything was wrong until a closing where the mortgagors were switched and that he severed his relationship with Mr. Obaze after the closing. Tr. at II-40-41. Respondent did not explain why he closed the loan under those circumstances. The responsible course of action would have been to refuse to act as settlement attorney.

outstanding work performance in the past is testimony to his capabilities, and that his experiences in the wake of his conviction have taught him to avoid any repetition of the activities that led to that conviction. Finally he states that he has learned not to rely on the advice of others, but rather that he should check with the Department if there is any question of propriety. However, while there is no question on this record as to Respondent's intellectual capabilities, there is precious little upon which one could conclude that his present character and moral fiber are such that he would be capable of weathering the turbulence of any future life crisis that may befall him. His own self-serving statements are not convincing. Both character witnesses whom he called testified that if it were true that he was responsible for false statements in 13 separate settlements, their prior opinion of his good character would change[14]. No former law partner, no former business associate, nor any clergyman, colleague or physician was called to testify affirmatively that, based upon his actions following his conviction, Respondent's character, integrity or honesty were of such a nature that would demonstrate present responsibility and trustworthiness. Under the circumstances, his promise to "check with the Department" rings hollow in the face of the demonstrated evidence that (1) notwithstanding his professional responsibility, he relied on the legal advice of his nonlawyer client; (2) he failed to research or consult applicable law and regulations[15] despite his professed ignorance of, and lack of experience in single family housing matters; and (3) he abrogated his responsibility as a notary by notarizing signatures which were not executed in his presence.

Respondent's assertions that he pled guilty for reasons not associated with his guilt or innocence, but rather to avoid the trauma of a criminal trial with its concomitant effects on his new family[16], also do not militate against an indefinite period of debarment. Tr. at II-30-31, II-58-59. A conviction may not be collaterally attacked in a debarment proceeding. *See Edythe (Ava) Kupchick and Ava Realty, Inc., Affiliate*, HUDALJ 88-1277-DB (1989). Not only are the facts underlying that conviction binding in this forum, but also, the record in this case demonstrates that Respondent knowingly made false statements on the HUD-1 statements in the thirteen closings at issue, including the one for which he was convicted.

Respondent's argument that completion of the HUD-1 was simply a mathematical exercise is sophistic and is devoid of ethical considerations. That a summary statement of credits and liabilities is a mathematical exercise is self evident; but whether such a statement is a true and accurate accounting of the amounts due or owing to parties to the transaction is not. In his "state of mind at the time," he admits that he was obviously

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[14] Mr. Nimmer's personal opinion of Respondent has not changed and he continues to profess his friendship for him. However, the motivations and criteria for friendship are not relevant to, nor necessarily concomitant with those which concern business relationships and the projections of business risk.

[15] According to Respondent, he did not refer to HUD's regulations pertaining to minimum investment requirements because he was "just so busy and so stretched that [he] abrogated [his] duty." Tr. at II-75 (Respondent).

[16] When Respondent pled guilty, he indicated that it was a willing plea. Tr. at I-104-05 (Cantelupo).

not concerned that the statement accurately reflected the money that the borrower paid at settlement. Tr. at II-27. He also testified that, at the time, he did not even understand why he was going through the exercise of completing the FHA loan form. *Id.* Yet the fact that there were several drafts of HUD-1 statements in some of his files, Tr. at II-28, and the fact that the information contained on the HUD-1 was carefully chosen so that the information contained on the line purporting to show the amount of cash from the borrower satisfied the minimum investment requirement, demonstrate that there was method and purpose to the "exercise." Indeed, he and Messrs. Spicer and Obaze discussed Mr. Spicer's concern about tax aspects of the transactions and the way in which funds were to be disbursed. They signed a document to assure that Mr. Spicer would not have a problem in the future. Tr. at I-187-88 (Spicer). Moreover, Respondent was the closing attorney for both ends of flip deals, where the contract sales price had been inflated significantly without any significant passage of time. Under such circumstances, increases of 25% and 62% of the sales prices in less than six days in each transaction should have given pause even to the somnolent.

Finally, Respondent's claims of contrition are not convincing; his testimony during the hearing vacillated between admitting and denying that what he did was wrong. At the conclusion of the hearing, he argued that he did not know that he was doing something wrong, and that he had no idea that the transactions he closed defrauded the government. Tr. at II-103-04. Although he claimed that he has always accepted responsibility for his actions,[17] his arguments proffered in mitigation merely evince an attempt to avoid that responsibility by blaming external forces.[18] What is most lamentable is that Respondent is a bright, articulate, well educated and well mannered individual who is obviously capable of performing at the highest levels of his profession. However, the words of his deposition ring clarion, if not disquieting, and compel the conclusion that he cannot responsibly do business with the federal government: "I do not feel that I did anything wrong here." Tr. at II-31-32.

Based on the record in this case, I conclude that a debarment for an indefinite period is appropriate and warranted under the circumstances to insure that the seriousness of the Respondent's misconduct will not be misconstrued and that the public trust and fisc will not be subjected to future risk.[19] If circumstances were to change in

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[17] FBI agent Cantelupo testified that Respondent acknowledged his association with Mr. Obaze and the net deal concept and that he was cooperative and accepted responsibility for his actions. Tr. at I-102, I-112 (Cantelupo). Mr. Cantelupo also testified, however, that Respondent made excuses for his actions, i.e., he was going through a difficult divorce and that was paramount on his mind at the time. *Id.* at I-102.

[18] Respondent also argued that there is insufficient guidance coming from mortgagees (Tr. at II-62-63); and he placed reliance on the fact that, prior to 1986, there was no requirement that the settlement agent certify that the settlement sheets were completed accurately, although he admitted that, as settlement attorney, he was responsible for the accuracy of the HUD-1 statements. Tr. at II-23-24.

[19] Respondent's defenses of estoppel and laches are rejected. Both claims are premised on his assertion that the Department has been aware of his involvement in the transactions since 1984. Assuming arguendo that those defenses are legally valid, there is, however, no evidence of when the Department may have become aware of his involvement.

such a way in the future as to require reconsideration of this determination, an appropriate source of relief is available under 24 CFR 24.320(c).

Conclusion and Order

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause exists to debar Peter E. Novick from further participation in primary covered transactions and lower tier covered transactions as either a participant or principal at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts with HUD for an indefinite period of time.

Alan W. Heifetz
Chief Administrative Law Judge

Dated: June 25, 1990