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

In the Matter of:	
WILLIAM ROBERT MCKENZIE, Respondent.	HUDALJ 90-1482-DB

Phillip L. Schulman, Esquire
For the Respondent

Marylea W. Byrd, Esquire
For the Department

Before: Thomas C. Heinz
Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arose pursuant to 24 C.F.R. Sec. 24.700 *et seq.* as a result of action taken by the Assistant Secretary for Housing in the Department of Housing and Urban Development ("the Department" or "HUD" or "the Government") on March 27, 1990, proposing to debar Respondent William Robert McKenzie ("Respondent") from participating in covered transactions as either a participant or a principal at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts at HUD for an indefinite period. This action was based on Respondent's conviction for violation of 18 U.S.C. Sec. 1012 and allegations that Respondent participated in a scheme involving equity skimming and straw buyers in the sale of single family properties with mortgages insured by HUD. Respondent was also suspended pending the outcome of any hearing on the proposed debarment.

Thereafter, the Department reduced the period of the proposed debarment to three years. Pursuant to a stipulation between the parties and 24 C.F.R. Sec. 24.313(b)(2)(ii), the hearing is limited to the submission of written briefs and documentary evidence.

Findings of Fact

Respondent is a [redacted] year-old attorney in Shreveport, Louisiana. His entire practice of law for some 18 years has involved the settlement of residential mortgage loans for local lenders. In that capacity, he has served as settlement attorney in connection with conventional, Veterans Administration guaranteed, and HUD-FHA insured loans. Approximately 80% of his practice has involved the closing of HUD-FHA loan transactions. (Respondent's Affidavit)

On August 29, 1989, Respondent was charged in the United States District Court for the Western District of Louisiana in a One Count Information with violating 18 U.S.C. Sec. 1012, a misdemeanor. On the same day, based on a plea of *nolo contendere*, Respondent was convicted of violating "18 U.S.C. 1012 - Did knowingly, willfully and with intent to defraud make false statements to the Department of Housing & Urban Development." (Gov.Ex.A)

On October 18, 1990, Respondent was given a sentence that, *inter alia*, included a $15,000 fine, 200 hours of community service, probation for five years, and a prohibition from engaging in HUD-related business for the first year of the probation period. (Gov.Ex.A)[1]

Discussion

The purpose of debarment is to protect the public interest by precluding people who are not "responsible" from conducting business with the Federal Government. *See*, 24 C.F.R. Sec. 24.115(a). *See also, Stanko Packing Co. v. Bergland*, 489 F.Supp. 947, 949

[1]The Judgment of the Court reads:

> As to count one, it is ordered the defendant be fined $15,000.00 to be paid directly to the Clerk of Court. The defendant is assessed $25.00 for the Crime Victim Fund to be paid to the Clerk of Court immediately. It is further ordered on count one that imposition of a confinement sentence is suspended and the defendant is placed on supervised probation for a period of five (5) years. Special conditions of probation are as follows: (1) The defendant is prohibited from participating in Housing and Urban Development Programs during the first twelve (12) months of probation. (2) The defendant shall perform two-hundred (200) hours of community service within the first twelve (12) months of probation at the direction of the probation officer.

Section 1012 of 18 U.S.C. authorizes confinement up to six months and a fine up to $1,000.00.

(D.D.C. 1980); *Roemer v. Hoffman*, 419 F.Supp. 130,131 (D.D.C. 1976). In government contract law, "responsibility" is a term of art that encompasses integrity, honesty, and business performance ability. Determining "responsibility" requires an assessment of the present risk that the Government will be injured in the future by doing business with a

respondent. That assessment may be based upon past acts. *See, Schlesinger v. Gates,* 249 F.2d 111 (D.C. Cir. 1957); *Roemer, supra*.

The Respondent in this case is subject to the Department's debarment regulations codified at 24 C.F.R. Part 24, because as a settlement attorney who has engaged in closing HUD-FHA insured loans, he is a "participant" within the meaning of 24 C.F.R. Sec. 24.110 (a)(1)(ii)(C)(11) and a "principal" within the meaning of 24 C.F.R. Sec. 24.105(p)(13).

Under 24 C.F.R. Sec. 24.305 the Department may debar a participant or principal based on, *inter alia*:

> (a) Conviction or civil judgment for...
> (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice;

Section 24.313(b)(3) of 24 C.F.R. provides that cause for debarment must be established by a preponderance of the evidence, a standard deemed met by evidence of a conviction. Since the record shows Respondent has been convicted of willfully making false statements to HUD, the Government unquestionably has satisfied its burden under 24 C.F.R. Sec. 24.313(b)(4) to prove cause for debarment.[2] However, a debarment cannot stand simply and solely on evidence sufficient to establish cause for debarment. Debarment is discretionary. It is therefore necessary to consider what the evidence shows about the seriousness of the Respondent's conduct as well as evidence of any mitigating factors in order to determine whether the Respondent is presently so lacking in "responsibility" that the Government cannot conduct business with him without incurring an unacceptable risk. (*See*, 24 C.F.R. Sec. 24.115)

Because this case is based solely on a conviction, the evidence is limited to documents submitted into the record by the parties. (24 C.F.R. Sec. 24.313(b)(2)(ii)) Respondent filed six exhibits,[3] and the Government filed three exhibits: Exhibit A, a copy of the Judgment against Respondent; Exhibit B, copies of purported settlement statements for

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[2]On brief the Government abandoned its allegations in the Amended Complaint that cause may also be found to debar Respondent under 24 C.F.R. Secs. 24.305(d) and (f).

[3]Exhibit A is Respondent's affidavit. Exhibit B contains the settlement sheets from one of the 25 transactions that precipitated this action. Exhibit C is a copy of the Judgment. Exhibit D contains copies of 19 testimonial letters from professional colleagues of the Respondent. Exhibit E is a letter from Respondent's prosecutor on his behalf. Exhibit F contains two letters from two mortgage companies urging that Respondent be permitted to return to the business of closing HUD-FHA loans.

the 25 transactions out of which Respondent's conviction arose; and Exhibit C, apparently a draft copy of an "Application and Affidavit for Search Warrant" of Respondent's business premises by James D. Hudson, represented to be an agent of the F.B.I.

Exhibit C has not been certified as a true copy of a public record. The application portion of Exhibit C is not signed by an affiant or a judicial officer, and the "affidavit"

portion of the document is not signed, dated, or notarized. The "affidavit" in large part merely repeats allegations made by other putative agents of the F.B.I. It contains hearsay within hearsay. In other words, Exhibit C is an unsigned, undated, unsworn, unauthenticated recitation of hearsay that lacks any formal sign of trustworthiness and reliability. Accordingly, it has no probative value in this forum.

In his capacity as settlement attorney, Respondent prepared settlement statements ("HUD-1's") that indicated the costs and proceeds of settlement to each party. Copies of settlement statements prepared by Respondent appear in Exhibit B. On their face they reveal no wrongful conduct by Respondent. Standing alone, the documents in Exhibit B therefore say nothing about Respondent's "present responsibility."

Exhibit A likewise fails to address the issue of Respondent's "present responsibility." It shows Respondent's conviction was based on a plea of *nolo contendere* to the charge that he "[d]id knowingly, willfully and with intent to defraud make false statements to the Department of Housing & Urban Development" (Gov.Ex.A and Respondent's Ex.C), but it does not prove that he in fact made any false statements. It is well established that a *nolo contendere* plea differs from a guilty plea in that a *nolo contendere* plea does not admit guilt, that is, it does not admit the factual allegations upon which the conviction was based. *United States v. Dorman*, 496 F.2d 438 (4th Cir. 1974), *cert. denied*, 419 U.S. 945 (1974); *Milton H. Girard*, HUDBCA No. 82-730-D47 (May 23, 1983), citing *Tseung Chu v. Cornell*, 247 F.2d 929 (9th Cir. 1957), *cert. denied*, 355 U.S. 892; *Ramsey A. Agan*, HUDBCA No. 83-773-D17 (April 21, 1983); *Willie J. Hope*, HUDBCA No. 80-521-D52 (March 5, 1981); *Leona C. Mazany*, HUDBCA No. 80-456-D9 (October 28, 1989); *Edward G. Venable*, HUDBCA No. 77-232-D54 (June 30, 1989). Therefore, evidence of Respondent's conviction (Gov.Ex.A) cannot be cited to demonstrate the seriousness of his past conduct or his lack of "present responsibility." In order to sustain a debarment action based on a conviction following a *nolo contendere* plea, the record must reveal independent probative evidence of the facts that led to the conviction, beyond evidence of the conviction itself. *Milton H. Girard, supra*. The Government has submitted no such evidence in the instant case. Nevertheless, Respondent himself has submitted evidence sufficient to sustain his debarment.

The following excerpts from Respondent's affidavit describe the transactions that led to his conviction:

> In 1985, I was approached by Michael Willis, a local realtor and investor, about serving as settlement agent in connection with Willis' purchase of 25

town homes from Wintergarden Properties, Inc. ("Wintergarden")...In the Spring of 1985, Willis informed me that a few of the units were ready to close. This was the first time I became aware that Willis intended to sell the units to non-owner investors.[4] The non-owner investors agreed to reconvey the

properties to Willis through assumptions after closing...I was aware that Willis intended to reimburse the borrowers for their settlement costs...At Willis' direction, I also prepared assumption deeds from the investors to Willis...I will never again close a loan in which the seller pays the buyer to transfer the property back to him or her....

[4]The term "non-owner investor" makes no sense. An "investor" is necessarily an "owner." This is either a purposeful obfuscation or, more charitably construed, a slip of the tongue meaning "non-occupant investor."

Although this language is not as forthright as it should be, the conclusion is inescapable that Respondent has confessed to participating in a series of sham transactions using straw buyers. Apparently all parties to the transactions, including the developer of the townhouses and the mortgagee, knew these transactions were bogus. As acknowledged by Respondent's counsel on brief (p.4), the purpose of this charade was to circumvent HUD-FHA regulations that prohibit an investor from owning more than seven FHA mortgage-insured units in a contiguous area. (24 C.F.R. Sec. 203.42) After the 25 sham transactions were completed, investor Willis owned 25 Wintergarden properties with FHA-insured mortgages, rather than the maximum of seven permitted by regulation. As a result, because one investor owned a large block of properties in one project, the Government's risk of exposure to insurance claims necessarily increased markedly.[5] This violation of the law could not have occurred if the loans had not been closed, and Respondent was the closing attorney. To use terms from the criminal law, Respondent was an "accomplice" who "aided and abetted" a violation of 24 C.F.R. Sec. 203.42. Accordingly, there is no justification for Respondent's claim that he "violated no HUD rules." (Affidavit, p.3)

The so-called "Rule of Seven" now found at 24 C.F.R. Sec. 203.42 is not new; it has been in HUD regulations since at least December of 1971. (*See, In The Matter of Robert Gordon Darby, et al.*, HUDALJ 89-1373-DB, April 13, 1990, pp.5-6) Respondent is an attorney with more than 18 years' experience in the real estate business who says approximately 80% of his practice involved HUD-FHA loans. Given this kind of experience, it is inconceivable that he was not fully aware of the Rule of Seven at the time he participated in the 25 transactions that led to his conviction. This conclusion is confirmed by counsel's admission on brief that the purpose of the transactions was to evade the requirements of FHA rules. But whether or not Respondent was in fact personally aware of the Rule of Seven, he is charged with knowing the requirements of the law.

By knowingly aiding and abetting a material violation of 24 C.F.R. Sec. 203.42, Respondent committed cause for debarment as set out in 24 C.F.R. Sec. 24.305(d) and 24 C.F.R. Sec. 24.305(f). Subsection 24.305(d) authorizes debarment for any "cause of so serious or compelling a nature that it affects the present responsibility of a person."

Section 24.305(f) of 24 C.F.R. reads in part:

> HUD may debar a person from participating in any programs or activities of the Department for material violation of a statutory or regulatory provision or program requirement applicable to a public agreement or transaction

[5]According to Respondent's brief, pp.9-10, these transactions led to Willis' trial and conviction for 35 criminal violations, including defrauding HUD. This suggests that insurance claims were indeed filed on the mortgages. If so, the Government has suffered a real, not just a potential, financial loss as a result of Respondent's conduct. As for Respondent, the record shows his financial benefit from these transactions consisted solely of his standard $500 fee charged for each closing. Since he was fined $15,000 by the U.S. District Court, he made no money on these transactions. ($500 x 25 = $12,500)

> including applications for grants, financial assistance, insurance or guarantees, or to the performance of requirements under a grant, assistance award or conditional or final commitment to insure or guarantee.

On brief the Government abandoned the contention in the Amended Complaint that Respondent may be debarred under the provisions of these subsections. Nevertheless, the record contains sufficient evidence to support a finding that cause to debar exists under the broad language in both subsections. Aiding and abetting a violation of 24 C.F.R. Sec. 203.42, thereby materially increasing the risk of loss to the public fisc, unquestionably demonstrates a lack of "present responsibility" meriting debarment.

Respondent's confession that he knowingly participated in sham transactions also demonstrates a lack of "present responsibility" on the dates of those transactions. That confession belies his protests that the settlement statements he prepared in connection with those transactions were accurate. He argues in his affidavit:

> The settlement documents I prepared in all 25 transactions were accurate. The amounts listed on the HUD-1 Settlement Statement and the source of those funds were exactly as represented on the form...In all transactions, I insisted that the funds paid by the borrower come from the borrower's own checking accounts and that all funds netted out from loan proceeds be paid directly to the seller.

(Respondent's Affidavit, p.2) It may well be that the entries on the settlement statements were superficially accurate, but they were in fact false because they were fundamentally misleading and deceptive. Respondent prepared those official government documents (HUD-1's) knowing the purported purchasers of the properties shown on the documents were not the true purchasers; he knew they were mere straw buyers used to get HUD to insure the mortgages. He has admitted that he knew the straw-buyer borrowers were being reimbursed for their settlement costs and were selling the properties back to the seller. In light of those admissions, the argument that the settlement statements were accurate and therefore lawfully prepared falls far short of the mark. It is a clever argument, but it cannot hide the fact that the settlement statements were misleading and deceptive. In short, despite Respondent's argument to the contrary, I find that the record contains independent probative evidence that Respondent has made false statements. Since those statements were made in connection with an unlawful scheme to acquire FHA mortgage insurance, preparing and submitting those statements to HUD constituted serious misconduct showing a lack of "present responsibility."

Collateral Estoppel

Respondent argues that HUD is collaterally estopped from debarring him because he has already been prevented from engaging in HUD-related business for one year by the

U.S. District Court. That argument is without merit. The doctrine of collateral estoppel precludes relitigation of issues actually and necessarily decided in a prior action. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.5 (1979). As stated by the Court of Appeals for the Tenth Circuit in *Lombard v. Axtens*, 739 F.2d 499 (10th Cir. 1984) at page 502, this doctrine applies in subsequent actions when:

> (1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.

The Second Circuit Court of Appeals has stated the same principle in *Lipsky v. Com. United Corporation,* 551 F.2d 887, 894 (2nd Cir. 1976):

> [A] prior judgment can only be introduced in a later trial for collateral estoppel purposes if the issues sought to be precluded were actually adjudicated in the prior trial. *Buckeye Powder Co. v. E.I. DuPont*, 248 U.S. 55, 63, 39 S.Ct. 38, 63 L.Ed. 123 (1918); *International Shoe Mach. Corp. v. United Shoe Machinery Corp.*, 315 F.2d 449 (1st Cir. 1963)....

The central question in the instant case is the issue of Respondent's "present responsibility." Whatever sanction is imposed depends upon the way that issue is decided. Assuming (without deciding) that the District Court would have jurisdiction to decide that issue, the record does not show that the question of Respondent's "present responsibility" was raised, fully and fairly litigated, and finally decided in the criminal action ending in Respondent's conviction.[6] It does not necessarily follow from the District Court sentence precluding Respondent from engaging in HUD-related business for a year that the Court in fact considered the "present responsibility" issue. No such inference can be made because, in the absence of any evidence to the contrary, it is fair to conclude that the purpose of the sentence handed down in the criminal proceeding brought under a penal code was entirely punitive. The purpose of the present action, however, is not simply to punish the Respondent; rather, it is to protect the public interest. (24 C.F.R. 24.115(b)). In short, Respondent has not satisfied his burden to demonstrate that the issue of "present responsibility" was actually adjudicated in the prior proceeding. *See, Harris v. Jacobs*, 621 F.2d 341, 343 (1980). Accordingly, since the issues decided in the criminal action leading to Respondent's conviction necessarily differed from those presented in the instant case, and the record does not show that the issue of "present responsibility" was fully adjudicated in the criminal proceeding, the doctrine of collateral estoppel does not preclude HUD from debarring Respondent.

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[6] In all probability, the sentence was the result of a plea bargain in which Respondent agreed to plead *nolo contendere* and the Government agreed to recommend the terms of the sentence to the Court. In such a scenario, the issue of "present responsibility" would not have been addressed by anyone.

The Government has proposed debarring Respondent for three years beginning on October 18, 1989, the date Respondent was first prohibited from participating in HUD programs by the U.S. District Court. Absent credible mitigating evidence, that proposal would be adopted. (*See*, 24 C.F.R. 24.320(a)(1)).

Mitigating Evidence

In his affidavit Respondent gives the appearance of acknowledging that he has engaged in serious misconduct:

> I have paid a heavy price -- both financially and emotionally -- for closing those transactions back in 1985...I deeply regret those actions. I feel remorse and understand fully what is expected of me in future FHA transactions.

But despite these expressions of contrition, Respondent attempts, in the main, to avoid personal responsibility for his conduct. For example, at least 10 of the 24 paragraphs in his affidavit address the conduct of the mortgagee, Family Mortgage Corporation. He argues:

> As a settlement agent, I have no privity of contract with the U.S. Department of Housing and Urban Development ("HUD"). My legal and contractual obligations are to disburse loan proceeds in accordance with the closing instructions provided by the lender. In this case, all loans were closed in accordance with the closing instructions provided by Family Mortgage...No HUD statute, regulation, handbook or other written guideline requires settlement agents to verify the source of funds for a HUD-FHA insured transaction. It is my understanding that the HUD-FHA approved mortgagee is responsible for verifying the source and amount of downpayment and closing costs. In this case, the mortgagee was Family Mortgage Corporation.

This is not a contract action. Whether or not Respondent has privity of contract with HUD is irrelevant. That Respondent may have fulfilled his legal and contractual obligations to his mortgagee is similarly irrelevant. No one is complaining that Respondent breached a contract. The point is that he did not fulfill his legal obligations to the U.S. Government. It is likewise irrelevant that HUD did not require settlement agents to verify the source of settlement funds; Respondent was not prosecuted and this action was not brought because he failed to "verify" the source of funds for HUD-FHA transactions.[7] Respondent was prosecuted because he knowingly participated in sham transactions designed to evade the requirements of the law. He cannot escape responsibility for that conduct by pointing a finger at his mortgagee.

[7]In any event, Respondent admits that at the time he prepared the settlement statements he knew both the immediate and the ultimate source of funds for those transactions. Hence there was nothing for him to "verify."

Taken as a whole, the affidavit does not paint a picture of someone who has clearly and fully acknowledged his unlawful conduct. Although the affidavit consists of four single-spaced, typed pages, only two sentences clearly acknowledge the true nature of Respondent's offense:

> I will never again close a loan in which the seller pays the buyer to transfer the property back to him or her. If I have knowledge of such transactions, I will not close the loan and will report the matter promptly to the local HUD Field Office.

The bulk of the affidavit attempts to evade responsibility by addressing irrelevant issues, denying any unlawful conduct, or shifting blame to Family Mortgage Corporation. I therefore do not find Respondent's expressions of contrition and remorse wholly convincing. Doubts about the sincerity of these expressions have led, in part, to the conclusion that it would be contrary to the public interest to find Respondent was "presently responsible" as of the date of his affidavit, October 31, 1990. Respondent clearly has made significant progress toward becoming a person who is both fully aware of his responsibilities and fully committed to fulfilling those responsibilities. But he has not yet reached the condition where he can be deemed "presently responsible."

Nevertheless, the record contains mitigating evidence requiring a reduction in the period of debarment from three years to 18 months. That conclusion is based almost entirely on a review of letters written by others and submitted on Respondent's behalf, rather than on Respondent's declarations made on his own behalf.

Twenty-two people prepared letters supporting Respondent. The majority of them, 16, are lawyers and mortgage bankers. The remaining letters came from a trial judge, a law professor, an accountant, a realtor, a clerk of a Louisiana court, and the U.S. Attorney who prosecuted Respondent. With the exception of the U.S. Attorney, these testimonials came from people who appear to know very little about the facts leading to Respondent's conviction; they speak almost entirely to Respondent's general reputation for honesty and integrity. Many characterize Respondent's crime as a mere "mistake of judgment," a characterization that unjustifiably trivializes Respondent's conduct. Nevertheless, this is an impressive list of character witnesses whose statements supporting Respondent merit serious consideration.

The United States Attorney who prosecuted Respondent, Joseph S. Cage, Jr., sent the letter which should be given the greatest weight.[8] He states in part:

[8]For another debarment case where a prosecuting attorney's statements on behalf of a prosecuted person were given considerable weight, see *In the Matter of Deryle Bourgeois*, HUDALJ 90-1407-DB, May 30, 1990, pp.9-10.

> Addressing Mr. McKenzie's case specifically, I feel that the Court's sentence was more than adequate. He received a substantial fine and was ordered to

> perform meaningful community service, which he has now completed. Most importantly, he has been banned from all HUD programs for the past year. This special condition of probation has, in effect, prevented him from earning a very large portion of his income.
>
> In summary, I feel that the Court's sentence properly served justice and adequately addressed the concern of the public in our community....

Although Mr. Cage's strongly stated opinion in Respondent's favor militates against imposing a debarment any longer than the one year already served, his comments were made in his role as a prosecutor protecting the public interest in the Western District of Louisiana, what he calls "our community." The public interest in a debarment action is not the same as the public interest in a criminal action in Federal District Court. To be sure, there are some congruent factors. For example, like debarment, sanctions imposed in criminal actions are often intended, in part, to deter the particular individual who is the subject of the action, as well as others similarly situated, from future violations of the law. In other words, both actions serve the goals of individual and general deterrence.[9] However, as noted, *supra*, debarment differs from a criminal sanction in that it is not designed to punish violators; rather, it is designed to protect the Federal Government from persons who are not "presently responsible." Accordingly, since the criminal proceeding in which Mr. Cage participated served different purposes, Mr. Cage's opinion regarding the proper sanction in Respondent's criminal proceeding cannot be accorded conclusive weight as to the proper sanction to be imposed in this proceeding.

The record shows Respondent is not yet "presently responsible." Nevertheless, on the strength of Mr. Cage's statement and the statements submitted on Respondent's behalf by professional friends, colleagues, and associates, plus Respondent's statements made on his own behalf, it is appropriate to reduce the length of debarment from the proposed three years to 18 months beginning on October 18, 1989. To reduce it any further would nullify the seriousness of the cause for debarment, thereby jeopardizing the integrity of the Government's debarment program. Respondent has already served more than a year of debarment. The additional months of debarment imposed by this action will give Respondent the time to become "presently responsible" and will impress upon him and everyone else engaged in business with the Government that those who fail to fulfill their obligations to the Government do so at their peril.

CONCLUSION AND DETERMINATION

[9]For debarment cases illustrating this proposition, *see, e.g., L.P. Steuart & Bro., Inc. v. Bowles, Price Administrator*, 322 U.S. 398 (1944); *Janik Paving & Construction, Inc. v. Brock*, 828 F.2d 84 (2nd Cir. 1987); *Copper Plumbing & Heating Co. v. Campbell*, 290 F.2d 368 (D.C. Cir. 1961).

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause exists to debar Respondent William Robert

McKenzie from further participation in covered transactions (*See*, 24 C.F.R. Sec. 24.110(a)(1)) as either a participant or a principal at HUD and throughout the Executive Branch of the federal Government and from participating in procurement contracts with HUD for a period of 18 months from October 18, 1989.

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THOMAS C. HEINZ
Administrative Law Judge

Dated: December 28, 1990.