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

In The Matter of:

WALTER C. JOHNSTON

Respondent.

HUDALJ 90-1499-DB

Walter C. Johnston, *pro se*

Austin C. Horowitz, Esquire
For the Department

Before: ALAN W. HEIFETZ
Chief Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arose as a result of a notice issued by the U.S. Department of

Housing and Urban Development ("the Department" or "HUD") on May 2, 1990, pursuant to which it suspended and proposed the debarment of Walter C. Johnston ("Respondent"). The Department proposed to debar Respondent for a period of three years from further participation in nonprocurement activities throughout the Executive Branch of the federal Government and from participation in procurement activities with HUD, as set forth in 24 CFR 24.110(a)(1). The period of debarment was to begin on the date of the notice. The suspension was effective as of the date of the notice, and was to remain in effect pending final determination of the issues in this matter. The Department's actions are based upon Respondent's conviction, in the United States District Court for the District of Columbia, for violating 18 U.S.C. secs. 1010, 2(a) and 2(b).

Respondent requested a hearing on the proposed debarment by a letter which was received in the HUD Office of Program Enforcement on June 4, 1990. Because the proposed action is based upon a conviction, the hearing was limited under 24 CFR 24.313(b)(2)(ii) to submission of documentary evidence and written briefs. The Department filed its brief on June 13, 1990. Respondent's brief was received by the HUD Office of Administrative Law Judges on August 13, 1990. Having received no further submissions from the parties, this matter is ripe for decision.

Findings of Fact

At the time the events occurred which are the subject of Respondent's guilty plea and conviction, Respondent was involved in real estate speculation in the Washington, D.C. area. His activities in that regard included the acquisition, renovation and sale of real property.[1] The mortgages on the properties were insured by HUD through the Federal Housing Administration ("FHA"). *See* Gov't. Brief at 3 and Gov't. Ex. 2 at 3 attached thereto; Resp. Brief at 2 and Resp. Ex. A at 4-6 attached thereto.

Respondent conducted these activities through his involvement with Sixth Street Properties, GNH Associates, and Second Development Corporation. In Late 1981,

[1]Respondent asserts that he "was never primarily involved in speculation and acquisition of real estate" but rather that he "was involved primarily in the construction and renovation of properties and in a retail business." *See* Resp. Brief at 3. Similarly, he states that while Sixth Street Properties/GNH Associates "may have been involved in real estate speculation, [his] involvement was in the area of construction and project management, not in the acquisition and sale of the properties." *Id.* at 2. The memorandum in aid of sentencing, submitted to the District Court on Respondent's behalf, states that "whereas Mr. Litman was primarily responsible for the business end of the operation, including the sales and paperwork, Mr. Johnston was primarily responsible for the renovations, although he did participate in some closings and occasionally discussed the forgiveness of down payments with prospective buyers." *See* Resp. Ex. A at 13. Even assuming Respondent was more directly involved in the renovation work, and, to a lesser extent, was involved in closings, that work and involvement was no less an integral component of the transactions than was the acquisition and resale of the real estate. In any event, his "primary" involvement, in any activity, is not relevant to a finding that he engaged in real estate speculation, including the acquisition, renovation and sale of real property.

Respondent and Arnold Litman formed Sixth Street Properties in order to purchase, renovate and sell certain low-income housing units in Southeast Washington, D.C. In 1982, Respondent and Mr. Litman purchased a group of such units. At that time, they formed GNH Associates to facilitate the purchase. In early 1984, Mr. Litman formed Second Development Corporation to purchase, renovate and sell additional properties in Southeast Washington. In the spring of 1984, Respondent terminated his business relationship with Mr. Litman. *See* Gov't. Ex. 2 at 3; Resp. Ex. A at 4-6.

On October 4, 1989, an Information was filed against Respondent in the United States District Court for the District of Columbia. That information included two counts, each of which constituted a violation of 18 U.S.C. secs. 1010, 2(a) and 2(b). Count One alleged that on or about December 28, 1982, Respondent made and submitted and caused to be made and submitted to HUD and FHA a "Disclosure/ Settlement Statement" concerning the loan closing of a particular property located on Hartford Street in Southeast Washington, D.C. in which he knowingly made a false statement by representing that the borrowers had made a cash payment at settlement of $12,786.58 when he well knew that the borrowers had not made such a cash payment ("Hartford Street transaction"). Count Two contained the same allegation, but concerned the sale of another property located on Jasper Street in Southeast Washington, D.C. for which Respondent made and submitted and caused to be made and submitted the Disclosure/Settlement Statement on or about June 15, 1984 ("Jasper Street transaction"). The cash payment at issue in Count Two was in the amount of $9,149.81. The Information further alleged that the "buyer credit concept" was the method used by Respondent and others to induce individuals to purchase the properties using fraudulently obtained FHA-insured mortgage loans. According to the Information, the individuals were promised that they would receive credit for a sum of money from the loan proceeds which would pay for some or all of the purchaser's downpayment and some of all of the purchaser's settlement costs. This promise was not disclosed to HUD. *See* Gov't. Ex. 2.

By "Judgment In A Criminal Case" filed on January 17, 1990 in the District Court, Respondent entered a plea of guilty to Counts One and Two of the Information. Respondent was thereafter convicted of Counts One and Two. The District Court committed Respondent to the custody of the Attorney General or his authorized representative for a period of two years on each count, with the sentences to run concurrently. Respondent was ordered to serve three months of the sentence in a Community Correction Center, with execution of the balance of the sentence suspended. Respondent was further ordered to pay a special assessment of $4,000 pursuant to 18 U.S.C. sec. 3013. *See* Gov't. Ex. 3.

Discussion

1. Respondent is a "Participant" and a "Principal" With Respect to both the Hartford Street and Jasper Street Transactions

The notice of suspension and proposed debarment dated May 2, 1990, states:

> Because you have participated in a covered transaction, or may reasonably be expected to participate in a covered transaction in the future as a person with critical influence on or substantive control over a covered transaction, you are a principal, as defined in Title 24, Code of Federal Regulations, Section 24.105(p).

While Respondent acknowledges in his brief that he is a "principal" under 24 CFR 24.105(p) with respect to the loan closing settlement of the Hartford Street property, which occurred on or about December 28, 1982, he argues that he is not a "principal" with respect to the loan closing settlement of the Jasper Street property, which occurred on or about June 15, 1984. *See* Resp. Brief at 3. According to Respondent, he held no ownership interest or office in Second Development Corporation, but performed renovations on the dwellings and assisted in some of the closings. He asserts that Mr. Litman's wife owned the company's stock, and that he did not receive any proceeds from the sale of Second Development properties. *See* Resp. Ex. A at 5-6. Respondent further asserts that he had "no authority of any type in Second Development Corporation" and he "did not have any 'critical influence' over the operation of the company." *See* Resp. Brief at 3. Respondent also argues that he "did not have any financial obligations in connection with the business; i.e. he was not on the construction loan, he was not on the checkbook and he did not have the authority to commit the company financially (See Exhibit B)." *Id.*[2]

Respondent further asserts that he "did not participate in the HUD Mortgage insurance program" since "it was the purchaser's [sic] who applied for and obtained the insurance." *Id.* He further argues with particular regard to the Jasper Street transaction that he "does not fall within the definition of a 'covered person' since he has not participated in covered programs since 1984 nor did he participate without the aid of professionals." *Id.* at 2. He then argues that he was not a participant under 24 CFR 24.105(m) because "he did not have any 'critical influence' over the operation of [Second Development Corporation]." *Id.* at 3.

The HUD regulations define the term "debarment" as "[a]n action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions." *See* 24 CFR 24.105(f). The regulations further provide that they apply "to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs." *Id.* at 24.110(a). Such transactions are referred to as

[2]Respondent relies on a purported "Exhibit B" in his brief, but notes that the exhibit "has been requested from the FBI and will be provided as soon as obtained". *See* Resp. Brief at 8. As of the issuance of this determination, that exhibit had not been provided.

"covered transactions." *Id.* A "participant" is "[a]ny person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction." *Id.* at 24.105(m). The term "participant" also includes "any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant." *Id.* Finally, the term "principal" is defined as an "[o]fficer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has critical influence on or substantive control over a covered transaction, whether or not employed by the participant." *Id.* at 24.105(p). Such persons who have a critical influence on or substantive control over a covered transaction include "[c]losing agents" and "[e]mployees or agents of any of the above". *Id.* at 24.105(p)(15), (22).

Respondent's own admissions and depiction of his relationship with Sixth Street Properties/GNH Associates and Second Development Corporation, as well as his guilty plea and conviction, support the finding that he is a participant and a principal with respect to both the Hartford Street and Jasper Street transactions. By his own admission, at GNH Associates he hired and supervised subcontractors to renovate the properties whose mortgages were to be insured by HUD/FHA, and he "did become involved in some property sales and management activities." *See* Resp. Ex. A at 5. With regard to Second Development Corporation, he acknowledges his having "[done] renovation work on those dwellings and assisted in some of the closings." *Id.* at 6. *See also supra* n. 1. He performed all these functions either in his capacity as a partner with Mr. Litman or in order to otherwise assist in the pursuit of Mr. Litman's business enterprise. As evidenced by his guilty plea and conviction, he made false representations to HUD/FHA regarding the cash payments made at settlement by the borrowers on the Disclosure/Settlement Statements, and thereby acted as a functionary at the closings. He did so either as a partner of or for Mr. Litman. Accordingly, he is a "participant" and a "principal" as those terms are used in the applicable HUD regulations.

2. Respondent's Conviction Constitutes Cause for Debarment

In its brief, the Department relies upon the cause stated in 24 CFR 24.305(a)(3) as the ground for debarment of Respondent. Section 24.305(a)(3) provides for debarment for conviction of or civil judgment for:

> Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, *making false statements,* receiving stolen property, making false claims, or obstruction of justice[.]

(Emphasis added). In its notice of suspension and proposed debarment, however, the Department also cites to 24 CFR 24.305(d) as a cause for Respondent's debarment. Section 24.305(d) provides that debarment may be imposed for "[a]ny other cause of so serious or compelling a nature that it affects the present responsibility of a person." In

its brief, the Department further relies on 24 CFR 24.313(b)(3) which provides that where a proposed debarment is based upon a conviction, cause for debarment is deemed to have been established by the requisite preponderance of the evidence.

Respondent "admits that the charges plead [sic] to meet the criterion of 24 C.F.R. [sec.] 24-305(a)(3)", but argues that "[sub]section (d)...does not apply." *See* Resp. Brief at 1-2. Respondent further argues that his conviction does not provide cause for debarment because he was "convicted of aiding and abetting of the filing of false statements not of filing false statements." *Id.* at 3. According to Respondent, it is his understanding that "the charge of aiding and abetting only shows that [he] participated in the making of a false statement and not that he knowingly and willfully intended to make a false statement." *Id.* at 4.[3]

As acknowledged by Respondent, the ground for his debarment falls squarely within the specifically enumerated cause concerning convictions set forth at 24 CFR 24.305(a)(3). Therefore, there is no need to apply section 24.305(d) in this case.

Both counts to which Respondent pleaded guilty and for which he was convicted state that Respondent:

> for the purpose of influencing the actions of HUD and the FHA, *knowingly and willfully made and used and caused to be made and used a false statement and report, knowing said statement and report contained a false and fictitious statement as to a material fact....*

[3]In support of his argument that his conviction does not constitute cause for debarment, Respondent further contends that because "the acts in question occurred over six and eight years ago" they "hardly show a lack of 'present responsibility'." *See* Resp. Brief at 3. The length of time which has passed since Respondent's conviction does not bear upon whether there is cause for debarment. Rather, as discussed more fully *infra,* it bears upon a determination of whether mitigating factors exist that weigh against imposition of the sanction.

See Gov't. Ex. 2 (emphasis added). The District Court's Judgment provides that Respondent was convicted of "Counts 1 & 2: False statement to the Department of Housing and Urban Development, in violation of 18 USC 1010, 2(a) & 2(b)". *See* Gov't. Ex. 3.

Section 1010 makes it a crime, punishable by a fine of no more than $5,000 and imprisonment of no more than two years, or both, *inter alia,* to knowingly make, pass, utter or publish any false statement for the purpose of influencing the action of the Department, including the obtaining of any mortgage insured by the Department. *See* 18 U.S.C. sec. 1010. Section 2 does not identify a separate "crime", as such, but rather defines the class of persons who will be punishable as "principals". *See, e.g., United States v. Kegler,* 724 F.2d 190, 200 (D.C.Cir. 1984). With regard to "aiding and abetting", subsection (a) provides, "[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal." *See* 18 U.S.C. sec. 2(a). Subsection (b) provides, "[w]hoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal. *See* 18 U.S.C. sec. 2(b). Thus, having aided, abetted and caused the knowing and willful making of false statements to HUD, Respondent was punishable as a principal.

Debarment is a sanction which may be invoked by HUD as a measure for protecting the public interest by ensuring that only those qualified as "responsible" are allowed to conduct business with the federal Government. *See* 24 CFR 24.115(a). *See also 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 the federal Government. This includes integrity, honesty, and ability to perform. The primary test for debarment is present responsibility, although a finding of a lack of present responsibility can be based upon past acts. *See Schlesinger v. Gates,* 249 F.2d 111 (D.C. Cir. 1957); *Roemer, supra.*

Respondent evidences a clear lack of present responsibility based upon his conviction for knowingly and willfully representing to the Department that cash payments had been made by the borrowers in order to accomplish the sales of the properties with mortgages were insured by FHA. That the conviction encompasses a finding of "aiding and abetting" does not render the conviction outside the scope of 24 CFR 24.305(a)(3).[4] As stated by the court in *United States v. Campbell:*

[4]Respondent's attempt to distinguish the nature of his participation in the crime on the basis of the charge for which he pleaded guilty and was convicted is further addressed *infra* as an argument raised in

mitigation.

> In order to aid and abet the commission of an offense, a defendant must "associate himself" with it, must "participate in it as in something that he wishes to bring about," and must "seek by his action to make it succeed." *Nye & Nissen v. United States,* 336 U.S. 613, 619, 69 S.Ct. 766, 770, 93 L.Ed. 919 (1949). Although an aider and abettor "need not perform the substantive offense,...need not know its details,...and need not even be present...." *United States v. Sampol,* 636 F.2d 621, 676 (D.C.Cir. 1980)(citations omitted), it must be proven "that the defendant consciously assisted the commission of the specific crime in some active way." *United States v. Dickerson,* 508 F.2d 1216, 1218 (2d Cir.1975).

702 F.2d 262, 265 (D.C.Cir. 1983). *See also United States v. Garrett,* 720 F.2d 705, 713-14 (D.C.Cir. 1983), *cert. denied,* 465 U.S. 1037 (1984). Thus, under 18 U.S.C. sec. 2, "the acts of the perpetrator become the acts of the aider and abettor and the latter can be charged with having done the acts himself." *See Kegler,* 424 F.2d at 200-01.

Respondent's conviction for "aiding and abetting" constitutes his having been held responsible for the unlawful acts of knowingly and willfully making, using and causing to be made false statements. Those acts indicate a lack of business integrity and honesty, substantially increase the Government's risk in dealing with Respondent, and therefore, are cause for his debarment.

3. A Three-Year Period of Debarment is Appropriate in this Case

Debarment is a serious action which can be used "only in the public interest and for the Federal Government's protection and not for the purposes of punishment." *See* 24 CFR 24.115(b). Moreover, the existence of cause for debarment does not necessarily require that the sanction be applied. The seriousness of the acts or omissions at issue, and any mitigating factors should be considered in deciding whether to impose a debarment. *Id.* at 24.115(d). Even when the sanction is imposed, the period of debarment must be "for a period commensurate with the seriousness of the cause(s)." *Id.* at 24.320(a). Where the cause for debarment is a conviction, the regulations provide that the period of debarment "generally should not exceed three years"; however, "[w]here circumstances warrant, a longer period of debarment may be imposed." *Id.* at 24.320(a)(1).

The Department argues that the crime for which Respondent was convicted involves a knowing and willful act against the United States, and that the seriousness of the matter is underscored by Respondent's guilty plea, conviction and sentence. Accordingly, the Department asserts that Respondent has demonstrated a "serious lack of business integrity and honesty which directly affects his present responsibility as a participant in HUD programs" and that "[his] intentional and flagrant violation of the law

evidences a serious business risk to the Department which warrants the imposition of a three year debarment." *See* Gov't. Brief at 9.

The Department further asserts that the arguments made in mitigation by Respondent in his request for a hearing are wanting in substance. In his request for a hearing, Respondent argued that "inspite [sic] of the conviction, which was the result of a plea bargain, [he] was at all times considered to be a minor participant and would not have been prosecuted had [his] partner not been a major participant"; he is "not a real estate broker, agent, mortgage broker or other real estate professional" and in both of the transactions for which he pleaded guilty, "such professionals were involved and always led [him] to believe that the transactions were perfectly proper and legal"; and the Department has lost no money in connection with the two properties involved in his guilty plea. *See* Resp. Request for Hearing.

In response to these arguments, the Department asserts that contrary to Respondent's description of his role as a minor participant, Respondent was "no small participant in efforts to obtain HUD mortgage insurance on varied District of Columbia properties." *See* Gov't. Brief at 9-10. The Department acknowledges that Mr. Litman's "involvement -- in terms of the number of fraudulent transactions -- exceeded [Respondent's]" and that "[t]o date HUD has not lost money on the two properties involved in the guilty plea". *Id.* at 10. According to the Department, what is of most significance is that Respondent's guilty plea "resulted from his participation in an illegal scheme to obtain FHA-insured mortgage loans"; during the relevant period, Respondent was the partner of Mr. Litman, "who was previously sentenced in the same Court following his guilty plea to false statements (18 U.S.C. [sec.] 1001), a five year felony, and five counts under 18 U.S.C. [sec.] 1012, false statements to HUD, each a one-year misdemeanor"; and the Government's net loss on 12 of the properties was $461,948.66, all in Washington, DC. *Id.* Finally, the Department argues that "there has been no showing of any remorse by Respondent for his wrongful acts", and that the "deterrent effects of suspension and debarment support the debarment of the Respondent." *Id.* at 11-12.

In his response to the arguments made by the Department, Respondent asserts that his debarment is not necessary to protect the public interest; that the Department seeks to impose the sanction for the purposes of punishment; that his misconduct does not support a three-year period of debarment; that his arguments in mitigation are not wanting in substance; and that the deterrent effect of the sanction does not support his debarment. *See* Resp. Brief at 4-7.

In support of these arguments, Respondent states that there is no evidence that he has participated in any HUD work since 1984, and that therefore, there is no need to

protect the Government and the public. Respondent further states that prior to the acts for which he pleaded guilty and was convicted, he had no previous problems with HUD, and that he has not participated in any illegal activities since June 1984. Indeed, he asserts that he ceased all unlawful activities a year prior to the beginning of the grand jury investigation which led to his conviction. He alleges that in the spring of 1984, at about the time of the sale of the Jasper Street property, he ceased those activities when an attorney advised him of the illegality of the transactions. He also asserts that he cooperated with the FBI in its investigation, without the assistance of counsel. *Id.* at 4, 6; Resp. Ex. A at 14, 16.

Respondent also asserts that the Department's reliance on any of the other properties with which he and Mr. Litman were involved is improper because the Department cannot assume he would plead guilty to the transactions involving those properties or that he would be convicted of such charges. Respondent suggests that the public interest would be better served if the Department inquired into the activities of lending institutions which in his view "routinely choose to foreclose and take the HUD insurance rather than work with the mortgagor to save the loan." *See* Resp. Brief at 5-6. He also states that it is "interesting to note" that the purchasers who applied for and obtained the mortgages insured by HUD/FHA "are not being prosecuted and debarred", and that this constitutes "selective enforcement of the regulations." *Id.* at 3.

According to Respondent, a guilty plea demonstrates that "the person has recognized the error of his ways, is willing to admit his mistake, pay for it and resume his place in society." *Id.* at 5. As evidence of his present responsibility he also asserts that:

> he has maintained his own construction business, has not been involved in any real estate speculation, has married, has become a father, has assisted in supporting and maintaining a household, continues to care for his alcoholic mother in Philadelphia, has actively contributed to the community through participation in the United Way and other non-profit organizations and is currently serving in a Community Correctional Fascility [sic].

Id. at 6-7.

Finally, Respondent argues that since he has not been involved in any HUD sponsored projects since 1984, no deterrent effect would result from his debarment. According to Respondent, the only effect of his debarment would be punitive. *Id.* at 7.

The seriousness of Respondent's actions is best expressed in terms of the result of his knowing and willful falsification. The result of those actions is to frustrate the purpose of the federal mortgage insurance program. That purpose is to aid an identified class of beneficiaries while placing the limited pool of funds available at minimized risk.

The identification of those beneficiaries and minimization of that risk to available funds is dependent upon the integrity and veracity of the information submitted to the Department. Respondent's conduct demonstrates that as a person once engaged in business dealings involving this federal program, he cannot be expected to act with the candor and probity necessary for HUD to make such determinations of eligibility or to otherwise rely on statements he may be required to submit.

Respondent correctly asserts that the Department cannot in this proceeding rely on the transactions outside of those for which he was charged in the Information. However, the fact that the Department has not, to date, alleged any loss on the two transactions at issue does not militate against imposition of a three year period of debarment. The fact remains that public funds were placed at risk because terms and conditions knowingly, willfully and falsely were represented to the Government.

Respondent has failed to express genuine feelings of remorse for his actions. Rather than directly accepting blame and responsibility, Respondent has proffered a generalized interpretation that a guilty plea constitutes a recognition of error and willingness to pay for that error.[5] However, guilty pleas may be entered for a variety of reasons which do not necessarily involve acceptance of blame and responsibility. In the absence of a direct statement of his personal feelings, I cannot determine that Respondent understands the nature and consequences of his actions and takes full responsibility for them.

Indeed, Respondent has attempted to minimize his involvement in the transactions for which he pleaded guilty. Rather than accept blame and responsibility for his involvement in the transactions which unlawfully used the buyer credit concept, he attempts to compartmentalize the transactions into three discrete phases of "acquisition", "renovation" and "sale", and thereby limit his "primary" role to the "renovation" stage. He also attempts to distinguish the nature of his participation in the acts at issue by characterizing the crime for which he pleaded guilty as "aiding and abetting." Those attempts fail, especially in light of Respondent's admission that he was involved in some closings and discussions with prospective buyers concerning the "forgiveness" of downpayments (*see supra* n.1), and his guilty plea and conviction, as a

[5]The Memorandum in Aid of Sentencing submitted to the District Court on behalf of Respondent refers to a statement, submitted to the Probation Office by Respondent, in which he purportedly asserts that he takes "'full responsibility for participating in not requiring a down payment to be made and take[s] responsibility for the fact not being indicated on loan papers to HUD.'" *See* Resp. Ex. A at 11. That purported statement was not submitted into evidence nor is it supported by the record of this proceeding.

principal, for knowingly and willfully making false statements on the loan closing settlement statements at issue in this proceeding.

Moreover, his depiction of himself as a "minor participant" and Mr. Litman as a "major participant", as well as his assertions that he would not have been prosecuted but for Mr. Litman's involvement, that the Department would do better to inquire into the activities of lending institutions, and that the borrowers who purchased the properties at issue should be prosecuted and debarred, are disingenuous attempts to disassociate himself from his conduct. Indeed, his purported reliance on the advice of real estate professionals in the transactions at issue, and his purported decision to end his relationship with Mr. Litman and cease participation in all illegal activities in 1984 once an attorney advised him of the illegality of the transactions, are unsubstantiated by any direct evidence, and further support the conclusion that Respondent has rationalized his direct involvement in the knowing and willful making of false statements.

Much of Respondent's personal background, as set forth in his brief and the accompanying memorandum in aid of sentencing that was submitted to the District Court on his behalf, is laudatory, and many of his accomplishments, especially those since his conviction are commendable. However, they do not belie the seriousness of his knowing and willful falsification. The United States Attorney, in his memorandum in aid of sentencing, noted that Respondent "was not a 'neophyte' in the housing industry and 'was fully aware of his wrongdoing.[']" *See* Gov't. Ex. 4(a). Moreover, although Respondent currently participates in the activities of many worthy organizations, much of that participation predates the acts for which he pleaded guilty and, therefore, does not bear on the issue of his post-conviction business integrity. *See* Resp. Ex. A at 1-10.

There is no record evidence which refutes Respondent's assertions that he has not participated in any HUD work or in any illegal activities since 1984,[6] or that he had had no problems with HUD prior to the events which led to his conviction. Furthermore, the record evidence supports Respondent's assertion that he cooperated with the Government in its investigation of the use of the buyer credit concept. *See* Gov't. Ex. 4(a). Finally, it is also well taken that the acts at issue occurred eight and six years ago, respectively. However, due to the seriousness of Respondent's actions, his failure to appreciate the seriousness of that action, his failure to demonstrate that he has taken

[6]Respondent argues that since he has not been involved in any HUD sponsored projects since 1984, no deterrent effect would result from his debarment. However, Respondent fails to note that in the absence of a decision debarring him, he would be free to pursue business ventures involving the Department. Moreover, although the remoteness of the acts for which the Department seeks a debarment, coupled with a finding that the respondent has taken full responsibility for his actions, would, in the appropriate case, significantly weigh against imposition of the sanction, this is not such a case. As discussed *supra,* there is no basis to assume that Respondent appreciates the seriousness of his prior conduct, or that he is presently willing and able to conform his conduct to law and regulations. For those reasons, debarment in this case would achieve a deterrent effect.

full responsibility for those actions, and his failure to demonstrate that he is prepared to accept such responsibility in the future, I conclude that it is in the public interest and necessary for the purpose of protecting the federal Government that Respondent be debarred for a period of no less than three years.

Conclusion and Determination

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause exists to debar Respondent Walter C. Johnston from further participation in primary covered transactions and lower tier covered transactions (*see* 24 CFR 24.110(a)(1)) 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 a period of three years from May 2, 1990.

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ALAN W. HEIFETZ
Chief Administrative Law Judge

Dated: September 26, 1990