

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

In the Matter of:

LUTHER E. OLIVER,
OLIVER REALTY INVESTORS 1982 B,
OLIVER REALTY INVESTORS 1983 C,
O.R. RENTALS,
O.R. MANAGEMENT INCORPORATED,
OLIVER RENTAL MANAGEMENT,
INCORPORATED, and
APARTMENT READY

Respondents

HUDALJ 91-1685-DB(S)
Decided: September 10, 1991

Thomas M. Blumenthal, Esquire
For Respondent

Lisa K. Wright, Esquire
For the Department

Before: ALAN W. HEIFETZ
Chief Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

On April 18, 1991, the Acting Assistant Secretary for Housing-Federal Housing Commissioner of the U.S. Department of Housing and Urban Development ("the Department" or "HUD"), suspended Luther E. Oliver ("Respondent Oliver") and his named affiliates, Oliver Realty Investors 1982-B, Oliver Realty Investors 1983-C, Oliver Realty, Incorporated, O.R. Rentals, O.R. Management, Incorporated, Oliver Rental Management, Incorporated, and Apartment Ready, pursuant to 24 C.F.R. § 24.405(b). The suspension is based on an indictment against Respondent Oliver charging violation of 18 U.S.C. §§ 666 and 1956(a)(1)(A)(i). This action excludes Respondent Oliver and his affiliates from primary covered transactions and lower-tier covered transactions as either participants or principals at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts with HUD. Respondents' suspension remains in effect pending resolution of the indictment or any other legal proceedings, including this appeal, which may develop.

Respondent Oliver requested a hearing on the proposed suspension by a letter to HUD's Office of Program Enforcement dated May 25, 1991. Because the action is based solely upon an indictment, the hearing in this case is limited under 24 C.F.R. § 24.313(b)(2)(ii) to submission of documentary evidence and written briefs. An Order dated June 13, 1991, established a schedule for filing briefs. In compliance with that schedule the Department filed its brief on July 12, 1991, and Respondent Oliver submitted his answer on August 12, 1991. As the Department failed to submit a response to Respondent Oliver's answer, this matter is ripe for decision.

Findings of Fact

1. Between January 1987 and August 1988, Luther Oliver was a general partner in Oliver Realty Investors 1982-B and Oliver Realty Investors 1983-C. Oliver Realty Investors 1982-B owned a housing project, Norfolk Apartments, and contracted to accept Housing Assistance Payments from HUD and comply with the HUD regulatory agreement. Oliver Realty Investors 1983-C owned three housing projects, Greentree Apartments, Livermore Heights Apartments, and Weatherholt Hills Apartments, and contracted to accept Housing Assistance Payments from HUD and comply with the HUD regulatory agreement. See Government's Brief in Support of Suspension ("Department's Brief") at unnumbered pages 2-5 and attached Exhibit 1, pages 1, 6, 11, and 17.

2. During that same period, Luther Oliver was the owner, director and president of O.R. Management, Inc. and Oliver Realty, Incorporated. O.R. Management, Inc. was the managing agent of Norfolk Apartments. Oliver Realty, Inc. was the managing agent of Greentree Apartments, Livermore Heights Apartments, and Weatherholt Hills Apartments.

Additionally, Oliver Realty, Incorporated retained Apartment Ready for maintenance duties at Greentree Apartments.¹ See Department's Brief at unnumbered pages 2-5 and attached Exhibit 1, pages 2, 4, 7, 12, and 17.

3. On November 10, 1990, the Federal Grand Jury for the Western District of Kentucky at Louisville returned a five-count indictment against Respondent Oliver charging him with the intentional misapplication of over \$500,000 while managing four housing projects which were receiving HUD financial assistance, and money laundering in connection with the funds from those projects. He was charged under 18 U.S.C. §§ 666 and 1956(a)(1)(A)(i). See Department's Brief, unnumbered page 2 and attached Exhibit 1.

Discussion

¹ The Department includes O.R. Rentals and Oliver Rental Management, Incorporated as respondents in the instant action. See Department's Brief, unnumbered page 1. Respondent Oliver claims these entities "do not even exist." See Respondent Luther E. Oliver's Brief in Opposition to Suspension ("Respondent's Answer") at 1. While the Department offers evidence of affiliation for Oliver Realty Investors 1982-B and 1983-C, Oliver Realty, Incorporated, O.R. Management, Incorporated, and Apartment Ready, it fails to include proof concerning the two disputed entities. See Government's Brief, unnumbered page 5. Additionally, there is no mention of the two entities in the indictment the Department relies upon in this action. Furthermore, the Department has adduced no evidence in response to Respondent Oliver's contention pertaining to the entities' existence. Therefore, there is insufficient evidence to base a finding of affiliation between Respondent Oliver and O.R. Rentals and Oliver Rental Management.

As a general partner in two investment concerns receiving Housing Assistance Payments from HUD, Respondent Oliver is considered a participant and a principal in covered transactions. 24 C.F.R. §§ 24.105(m), 24.105(p), 24.110(a)(1). The investment groups, Oliver Realty Investors 1982-B and Oliver Realty Investors 1983-C, hired O.R. Management, Inc., and Oliver Realty, Inc., respectively to be the managing agents for the properties. Oliver Realty, Inc. hired Apartment Ready to do maintenance work on one of the properties involved in the instant case. Because Respondent Oliver, either as general partner of Oliver Realty Investors, or as owner and president of the remaining three entities, "controls or has the power to control" them, they are Respondent Oliver's affiliates. 24 C.F.R. § 24.105(b). Accordingly, Respondent Oliver, Oliver Realty Investors 1982-B, Oliver Realty Investors 1983-C, Oliver Realty, Inc., O.R. Management, Inc., and Apartment Ready are subject to HUD's suspension regulations.²

Suspension is a serious action to protect the Federal Government and the public interest.³ See 24 C.F.R. § 24.115(b). It is taken solely "upon adequate evidence" to suspect the commission of an offense listed in § 24.305(a) or the existence of a cause for debarment under § 24.305. 24 C.F.R. § 24.405(a). Respondent's indictment constitutes the adequate evidence necessary to uphold a suspension.⁴ 24 C.F.R. § 24.405(b). See *also* 24 C.F.R. § 24.313(b)(3).

The relevant causes in the instant action are the following:

- (1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private

² In his Answer, Respondent Oliver claims that Oliver Realty, Inc., O.R. Management, Inc., and Apartment Ready are no longer in business and their corporate charters were revoked December 31, 1988. He further claims that he resigned as general partner from Oliver Realty Investors 1982-B and 1983-C in August 1988. Because of these entities' current status, Respondent Oliver asserts that they should not be included in the suspension proceedings.

This attempt to disengage his affiliates from suspension is unpersuasive. The underlying indictment in the instant action involves offenses undertaken through the affiliates. Because they were under Respondent Oliver's control, they are treated as his alter ego.

³ In its brief arguing for Respondent Oliver's suspension, the Department occasionally argues for Respondent Oliver's debarment. Its third argument is headed "Respondent's indictment provides cause for debarment" and its fourth argument describes the purposes and tests for debarment. See Department's Brief unnumbered pages 5, 7, and 8. Respondent Oliver is understandably dismayed at his apparent vulnerability to debarment before his indictment's resolution. See Respondent's Answer at 3.

The debarment language, presumably, was included in Department's Brief by errant word processing. While the inclusion of this language is harmless error not affecting the decision in this case, the importation into the brief of "canned language" has apparently caused unnecessary confusion on the part of Respondent.

⁴ Respondent's argument that the suspension process applied in the instant action violates his Fifth Amendment due process rights need not be addressed. An administrative proceeding is not an appropriate forum for considering and deciding that type of Constitutional argument. *Califano v. Sanders*, 430 U.S. 99 (1977).

agreement or transaction. 24 C.F.R. § 24.305(a)(1).

(2) Any other offense indicating a lack of business integrity or business honesty. *Id.* § 24.305(a)(4).

Respondent Oliver is charged with four counts of violating 18 U.S.C. § 666. Count One alleges that Respondent Oliver intentionally misapplied approximately \$170,644 in HUD funding for Greentree Apartments. Count Two alleges that Respondent Oliver intentionally misapplied approximately \$79,119 in HUD funding for Livermore Heights Apartments. Count Three alleges that Respondent Oliver intentionally misapplied approximately \$87,215 in HUD funding for Weatherholt Hills Apartments. These three housing projects were owned by Oliver Realty Investors 1983-C and managed by Oliver Rental, Inc. Count Four alleges that Respondent Oliver intentionally misapplied approximately \$87,215 in HUD funding for Norfolk Apartments, a housing project purchased by Oliver Realty Investors 1982-B and managed by O.R. Management, Inc. In violation of the HUD Regulatory Agreement, in each case, Respondent diverted HUD money to other businesses and projects in which Respondent had a substantial financial interest.

Respondent Oliver is also charged with one count of violating 18 U.S.C. § 1956(a)(1)(A)(i). Count Five alleges that Respondent Oliver engaged in money laundering with the funds for Greentree Apartments. He is charged with depositing \$11,405.66 in restricted HUD funds in a St. Louis bank and then using those funds to purchase two cashier's checks. The indictment alleges the cashier's checks were used to pay utility bills for a non-HUD housing project owned by Respondent Oliver.

Suspensions are invoked when the evidence indicates that immediate action is needed to protect the government. 24 C.F.R. § 24.410(c). The indictment against Respondent Oliver is adequate evidence of cause for suspension. While an indictment is not proof of guilt, it does constitute probable cause to believe that the allegations contained therein are true. Those allegations in this case indicate a lack of business integrity "that seriously and directly affects the present responsibility of a person." 24 C.F.R. § 305(d). The acts charged by the indictment involve tremendous sums of money being diverted at four different projects controlled by Respondent Oliver. If true, such a systematic misapplication of HUD funding by Respondent constitutes the immediacy requisite to upholding the suspension.

Accordingly, I conclude that the suspension of Respondent Oliver, and his named affiliates, Oliver Realty Investors 1982-B, Oliver Realty Investors 1983-C, Oliver Realty, Incorporated, O.R. Management, Incorporated, and Apartment Ready is based on adequate evidence of regulatory cause, is necessary to protect the government, and should be sustained.

ALAN W. HEIFETZ

Chief Administrative Law Judge

Dated: September 10, 1991