

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

In the Matter of:

SERGIO PRADO, and
PAN AMERICAN REAL
ESTATE,

HUDALJ 91-1722-DB

and

RENE TRIMINO,

HUDALJ 92-1777-DB

and

JOSE A. CARRATALA

HUDALJ 92-1796-DB

and

GUADALUPE F. MIRANDA

HUDALJ 92-1786-DB

Decided: August 21, 1992

Respondents

Yocel Alonso, Esquire
For Respondents Sergio Prado and
Pan American Real Estate

Jose A. Carratala, *pro se*

Guadalupe F. Miranda, *pro se*

Rene Trimino, *pro se*

Bryan Parks Saddler, Esquire
Dane Narode, Esquire
For the Department

Before: PAUL G. STREB
Administrative Law Judge

INITIAL DETERMINATION

STATEMENT OF THE CASE

The Respondents in this matter are Sergio Prado, Pan American Real Estate ("Pan American"), Rene Trimino, Jose A. Carratala, and Guadalupe F. Miranda. They have appealed the actions of the Assistant Secretary for Housing-Federal Housing Commissioner (the "Commissioner"), U.S. Department of Housing and Urban Development ("the Government" or "HUD") suspending them and proposing their debarment. Those actions were based on Respondents' alleged falsification of documents or other misconduct in conjunction with the sale of homes financed by mortgages insured by HUD's Federal Housing Administration ("FHA").

On July 16, 1991, the Commissioner issued a notice proposing to debar Mr. Prado and his alleged affiliate, Pan American, for five years from participating in federal nonprocurement transactions covered by 24 C.F.R. Sec. 24.110(a)(1) at HUD and throughout the executive branch of the federal government, and from participating in procurement contracts with HUD. The Commissioner also suspended those Respondents from further participation in HUD programs pending the outcome of the proposed debarment.

On November 8, 1991, the Commissioner issued similar notices of suspension and proposed debarment to the other Respondents. He proposed to debar Mr. Miranda for three years and Messrs. Trimino and Carratala for two years.

Respondents appealed the Commissioner's actions, the cases were consolidated, and a hearing was conducted in Houston, Texas from March 2 through March 6, 1992.¹ The record closed on April 6, 1992, upon receipt of post-hearing briefs from the Government and all Respondents except Mr. Carratala.² My findings are based on a thorough review and study of the entire record, which includes a 970-page transcript and exhibits containing approximately 600 pages.

¹At the conclusion of the Government's case, Mr. Prado moved for judgement in his favor on the basis that the Government did not give him adequate notice of all allegations, and that the Government did not establish a prima facie case. Tr. 877-93. Ruling on the motion was deferred.

²On July 17, 1992, Mr. Trimino filed a motion to have his case transferred to the U.S. Supreme Court for final decision. On August 19, 1992, Mr. Trimino filed a motion to have his suspension lifted pending the issuance of a decision on his proposed debarment. Because there is no authority for such actions, the motions are DENIED.

ANALYSIS, FINDINGS AND CONCLUSIONS

Background

Mr. Prado is a real estate broker and the sole owner of Pan American. In 1989, he sponsored 35 real estate agents and operated a main office and one branch office in Houston, Texas. Tr.³ 830-32, 900. Messrs. Trimino, Carratala, and Miranda are real estate agents who operated as independent contractors at Pan American during 1989. Tr. 845-46.

Wanda Spencer was the loan officer at Horizon Savings Association ("Horizon"). Many Pan American agents referred their clients to her to obtain home mortgage loans. Normally, the agents told the clients what documents to bring to their loan application interviews. Because many of the buyers spoke only Spanish, Ms. Spencer normally took the applications at Pan American's main office, where the agent or another person would serve as a translator.

If additional documents were needed from the borrowers, they normally gave them to their agents, who would transmit them to Ms. Spencer. Mr. Prado's role was generally limited to signing the sales contracts presented to him by the agents. Although he sold some homes to his own clients, he did not become involved in the loan application process. Tr. 731-41, 754, 840, 848.

In 1989, HUD's Office of Inspector General in Houston conducted an audit of home mortgage loans originated by Horizon. The audit was performed by [REDACTED] Elstone, a Supervisory Auditor; [REDACTED] Hoang, an Auditor; and [REDACTED] Buff, an employee of the Monitoring Division of HUD's Office of Lender Activities. Tr. 18-26.

The audit focused on loans approved by Ms. Spencer for homes sold by Pan American agents. Tr. 20-26. The audit revealed that documents concerning borrowers' incomes and other matters had been falsified in 28 of the 30 loan files reviewed. As a result, many borrowers who did not qualify for HUD-insured loans were approved for and received them. Tr. 33-34; Ex. G-119 at 2.

In its Complaints in this case, the Government alleges that Respondents engaged in misconduct in conjunction with the obtaining of mortgage loans for 14 home purchasers. The Department alleges that Respondents caused, directed, influenced, or permitted: (1) the falsification of documents pertaining to mortgagors' income and ability to pay the mortgage debt, e.g., federal income tax returns, W-2 forms, and related documents, and (2) the submission of such false documentation to HUD with intent to mislead HUD and induce it to insure ineligible mortgages. The Government also alleges that Respondents violated certain HUD regulations and program requirements.

³The following abbreviations refer to the record in this case: "Tr." for "Hearing Transcript"; "Ex. G" for "Government's Exhibit"; "Ex. R" for "Respondent Prado's Exhibit"; "Ex. C" for Respondent Carratala's Exhibit"; "Ex. T" for "Respondent Trimino's Exhibit."

Burden Of Proof

A proposed debarment will be sustained if the Respondent is covered by the applicable HUD regulations, if there is cause for debarment, and if debarment is necessary to protect the public interest and the federal government's interest in doing business with responsible persons. 24 C.F.R. Secs. 24.110, .115, .300. The Government bears the burden to prove by a preponderance of the evidence that there is cause for debarment; Respondents have the burden to establish mitigating circumstances. *Id.* Sec. 24.313(b)(3) and (4).

A suspension will be sustained if the Respondent is covered by the regulations, if there is cause for suspension, and if the immediate action of suspension is necessary to protect the public interest and the federal government's interest in doing business with responsible persons. *Id.* Secs. 24.110, .115, .400. The Government bears the burden to prove by "adequate evidence" that there is cause for the suspension. *Id.* Secs. 24.313(b)(3) and (4), .400(b)(1), .413.

Jurisdiction

The regulations governing debarment and suspension apply to all persons who have participated, are currently participating, or may reasonably be expected to participate in transactions under federal nonprocurement programs. 24 C.F.R. Sec. 24.110(a). Mr. Prado served as broker, and Messrs. Trimino, Carratala, and Miranda served as agents in the home sales in question. The homes were sold by HUD and were bought with mortgages insured by HUD. Therefore, those Respondents are covered by the regulations. *See id.* Secs. 24.105 (m) and (p)(11), 24.110(a)(1)(i).

Debarment and suspension actions may include affiliates of a participant who are specifically named and given notice of the actions and an opportunity to respond. *Id.* Secs. 24.325(a)(2), .420. Individuals or legal entities are affiliates of each other "if, directly or indirectly, either one controls or has the power to control the other" *Id.* Sec. 24.105(b). Mr. Prado owns, and therefore, controls Pan American, Tr. 830; it was named in the action; and it responded through counsel. Therefore, Pan American is Mr. Prado's affiliate and is covered by the regulations.

Summary Of Allegations And Findings

The Government alleges that Mr. Carratala participated in the falsification of documents regarding the loan applications of Messrs. Granados and Mehia. I find those allegations to be sustained.

The Government alleges that Mr. Miranda participated in the falsification of documents regarding the loan applications of Messrs. Villegas and Saucedo.⁴ I do not

⁴The Commissioner alleged in his notice of proposed debarment that Mr. Miranda had falsified documents for an additional borrower, Mr. Socarras. However, the Complaint does not make that allegation.

find those allegations to be sustained. The Government also alleges that Mr. Miranda hand-carried a Verification of Employment form ("VOE") to Mr. Saucedo's employer. I find that allegation to be sustained.

The Government alleges that Mr. Trimino participated in the falsification of documents regarding the loan applications of Messrs. Morillo and Espeche. I find the allegation to be sustained as to Mr. Morillo's loan; I do not find the allegation to be sustained as to Mr. Espeche's loan.

The Government's allegations against Mr. Prado are based on the theory of imputed liability. In this regard, the Government first alleges that several Pan American agents (Messrs. Trimino, Carratala, Miranda, Alaniz, Aragon, Ponce, Flores, Rodriguez, and Fernandez, and Ms. Santos) participated in the falsification of documents regarding the loan applications of several borrowers (Messrs. Benitez, Grisales, Koulianos, Herrera, Granados, Morillo, Ramirez, Nunez, Espeche, and Saucedo, and Mr. Nava/Ms. Ardon).

I find those allegations to be sustained as to the loans of Messrs. Benitez, Grisales, Koulianos, Herrera, Granados, and Morillo, and Mr. Nava/Ms. Ardon. I do not find the allegations to be sustained as to the other loans.

The Government alleges further under the imputed liability theory that Mr. Prado is liable for the misconduct of the Pan American agents who participated in the falsification of documents. I do not find that allegation to be sustained.

Allegations Sustained

I find that the Government has proven its allegations of falsification by the preponderance of the evidence in the cases involving the borrowers listed below. The findings discussed below are based on largely unrebutted evidence gathered by the auditors. They took written statements, which are labeled as Declarations, from the borrowers explaining the involvement of the agents in the falsification of tax returns and other documents. The auditors also made copies of the falsified documents found in the loan files and obtained memoranda from the Internal Revenue Service showing data in the true tax returns of the borrowers.

Although the Declarations are unsworn hearsay, I find for several reasons that they are sufficiently reliable. The auditors took the Declarations after displaying credentials that identified themselves as employees of the Office of Inspector General -- an action that should have made the borrowers aware of the seriousness of the matter. Tr. 329. The Declarations contain language similar to that contained in affirmations ("I/we declare that the foregoing is true and correct to the best of my knowledge and belief"). Also, the declarations are supported by other evidence and are largely uncontested.

Moreover, the borrowers had little to gain by falsely accusing the agents; all of the borrowers acknowledged their own participation in the falsification of the documents. Although Respondents contend that the auditors coerced the mortgagors

into making statements against them in the Declarations, I find no evidence to support that allegation.

Benitez

█████ Benitez took his true tax returns for 1987 and 1988 to his Pan American agent, Roberto Alaniz, and Ms. Spencer. Those tax returns show that Mr. Benitez reported an adjusted gross income (AGI) of \$█████⁵ in 1987 and \$█████ in 1988. Mr. Alaniz told him that the income shown on the returns was insufficient to qualify him for a loan.

In the presence of Mr. Benitez and Ms. Spencer, Mr. Alaniz then prepared false tax returns showing that Mr. Benitez's AGI was \$█████ in 1987 and \$█████ in 1988. At Ms. Spencer's request, Mr. Benitez signed the false tax returns, and they were placed in the Horizon loan file. The income reported in Mr. Benitez's loan application was based on the false 1988 tax return. Ex. G-1, 17, 18, 19, 83; Tr. 89-102.

Grisales

█████ Grisales took his true tax returns for 1987 and 1988 to his Pan American agent, Hector Aragon. The 1988 tax return shows that Mr. Grisales reported an adjusted gross income (AGI) of \$█████ in 1988. Mr. Aragon told him that he might not qualify for a loan based on his tax returns.

Mr. Aragon then told him to go to Mr. Jorge Santos to have different tax returns prepared for those years. Based on information given by Mr. Grisales, Mr. Santos prepared false tax returns showing that Mr. Grisales' AGI was ██████ in 1987 and \$█████ in 1988. Mr. Grisales gave those false tax returns to Mr. Aragon, and they were placed in the Horizon loan file.

The income reported in Mr. Grisales' loan application was based on the false 1988 tax return. HUD determined that Mr. Grisales would not have qualified for the loan if his true income information had been used. Ex. G-3, 25, 26, 27, 60, 85, 108; Tr. 108-30.

Nava/Ardon

█████ Nava and ██████ Ardon discussed their income with their Pan American agent, Sebastian Ponce. After determining that their income was not sufficient to qualify them for a loan, Mr. Ponce told them in Ms. Spencer's presence that he would put enough income on their loan application for them to qualify.

The 1987 and 1988 Nava/Ardon tax returns and W-2 forms in the Horizon loan file were false. Those tax returns and W-2 forms show that Mr. Nava and Ms. Ardon

⁵The incomes listed for the borrowers do not include cents.

filed joint returns, and that their AGI was \$[REDACTED] in 1987 and \$[REDACTED] in 1988. Mr. Nava's true tax returns show that his filing status was "head of household," and that his AGI was \$1[REDACTED] in 1987 and \$[REDACTED] in 1988. Ms. Ardon earned \$[REDACTED] in 1987 and \$[REDACTED] in 1988.

Also, the VOE in the loan file falsely shows that Mr. Nava's yearly income was \$[REDACTED] -- the same amount shown on the false 1988 tax return. Mr. Ponce and Ms. Spencer took the VOE to Mr. Nava's employer to have him sign it. Mr. Ponce asked his employer to do him a favor by signing it.

The income reported in the Nava/Ardon loan application was based on the false 1988 tax return. HUD determined that Mr. Nava and Ms. Ardon would not have qualified for the loan if their true income information had been used. Ex. G-4, 5, 28, 29, 30, 31, 32, 86, 95, 109.

Koulianos

[REDACTED] Koulianos took his true tax returns for 1987 and 1988 to Ms. Spencer. The returns show that Mr. Koulianos's AGI was approximately \$[REDACTED] in 1987 and \$[REDACTED] in 1988. Mr. Koulianos's Pan American agent, Ercilia Santos, later brought false tax returns to him and asked him to sign them. Mr. Koulianos signed the false returns, which show that his AGI was \$[REDACTED] in 1987 and \$[REDACTED] in 1988.

The income reported in Mr. Koulianos's loan application was based on the false 1987 tax return. HUD determined that Mr. Koulianos would not have qualified for the loan if his true income information had been used. Ex. G-7, 35, 36, 88, 110; Tr. 72-89.

Herrera

[REDACTED] Herrera took their true 1987 and 1988 tax returns to Pan American and left them for their agent, Issac Flores. Those returns show that the Herreras' AGI was \$[REDACTED] in 1987 and \$[REDACTED] in 1988.

Mr. Flores later brought false tax returns to the Herreras' apartment for their signature. The false returns show that the Herreras' AGI was \$[REDACTED] in 1987 and \$[REDACTED] in 1988. The income reported in the Herreras' loan application was more than twice their true 1988 income. HUD determined that the Herreras would not have qualified for the loan if their true income information had been used. Ex. G-15, 52-54, 93, 114; Tr. 35-66.

Granados

[REDACTED] Granados showed his true tax return for 1988 to his agent, Mr. Carratala. The 1988 tax return shows that Mr. Granados reported an AGI of \$[REDACTED] in 1988. Mr. Carratala told him that his income was not sufficient to qualify for the loan, but "they can fix it up."

He and Mr. Carratala then went to a tax preparer located next to the Pan American office. Mr. Granados paid the tax preparer \$75 to prepare false tax returns showing that his AGI was \$[REDACTED] in 1987 and \$[REDACTED] in 1988. Mr. Granados signed the false returns, and they were placed in the Horizon loan file.

The income reported in Mr. Granados' loan application was based on a yearly income that was higher than that shown in the false 1988 tax return. HUD determined that Mr. Granados would not have qualified for the loan if his true income information had been used. Ex. G-13, 14, 48-50, 92, 113.

Mr. Carratala testified generally that the allegations against him were false. Tr. 955. However, he presented no specific testimony or other evidence to rebut the detailed evidence against him.

Mehia

[REDACTED] Mehia's true tax returns show that his AGI was \$6,210 in 1987 and \$[REDACTED] in 1988. However, the tax returns in the Horizon loan file falsely show that Mr. Mehia's AGI was \$[REDACTED] in 1987 and \$[REDACTED] in 1988.

Mr. Mehia's agent, Mr. Carratala, had the false tax returns prepared by David Hernandez, a tax preparer. Mr. Carratala requested Mr. Mehia to sign the false returns. The VOE in the loan file falsely states that Mr. Mehia earned \$[REDACTED] in 1988. Mr. Carratala took the VOE to Mr. Mehia's employer to obtain his signature.

The income reported in Mr. Mehia's loan application was based on the false 1988 tax return. HUD determined that Mr. Mehia would not have qualified for the loan if his true income information had been used. Ex. G-128, 143-46, 165, 167; Tr. 202-05, 211-26.

Although Mr. Carratala denied the allegations of wrongdoing in his testimony, he did not have a good recollection of the transaction in question. Tr. 953-55. Moreover, he presented no specific testimony or other evidence to rebut the detailed evidence against him.

Morillo

Mr. Trimino showed several homes to Mr. [REDACTED] Morillo, his wife, and their son. After they selected a home, Mr. Morillo discussed his income with Mr. Trimino and told him that his wife had a poor credit history. Tr. 404-05; Ex. G-16. Mr. and Mrs. Morillo filed joint tax returns in 1987 and 1988; their AGI was \$[REDACTED] in 1987 and \$[REDACTED] in 1988. Ex. G-57.

Someone from Pan American or Horizon told Mr. Morillo that false tax returns were being prepared to enable him to qualify for a loan. He discussed the preparation of those returns with Mr. Trimino. Tr. 411-17. The false returns show that Mr. Morillo filed as a single person, and that his AGI was \$[REDACTED] in 1987 and \$[REDACTED] in 1988.

Ex. G-55, 56. Mr. Trimino gave Mr. Morillo the false returns and asked him to sign them. Ex. G-16.

Mr. Trimino denied that he engaged in any wrongdoing in this matter. He testified that, although he asked Mr. Morillo to sign the tax returns, his sole purpose was to obtain an original signature in accordance with HUD requirements. He pointed out that the false tax returns were not in his handwriting, and that Mr. Morillo had signed them twice. Tr. 625-26, 926-27.

Although the false tax returns are not in the same handwriting as other documents filed by Mr. Trimino, the Government need not show that he prepared them in order to prove that he "caused, directed, influenced, or permitted" their falsification. It is clear from the testimony of Mr. Morillo, upon which the above findings are largely based, that Mr. Trimino was actively involved in the plan to falsify the tax returns.

I found Mr. Morillo to be a very credible witness. He was sincere, he took time to recollect before answering when necessary, Tr. 406, and his testimony was consistent with his declaration. Although Mr. Trimino forcefully denied all allegations of wrongdoing, Tr. 923-24, he did not recall the details of the transaction very well, Tr. 924, and he offered no reasonable explanation as to how the documents could have been falsified without his knowledge or involvement.

Further, the handwriting on the false returns does not match Mr. Morillo's signature on those returns and on other documents. Ex. T-1, G-16, 94. Rather, the handwriting on the false returns is the same as that on the false returns in the Benitez and Nunez files. Ex. G-17, 18, 37, 38. This evidence negates the possibility that Mr. Morillo submitted copies of the false returns on his own initiative, and that Mr. Trimino merely had him sign those returns again to obtain an original signature. Although this evidence shows that a third person was involved in the falsification of the returns, it does not establish that Mr. Trimino was innocent.

The income reported in Mr. Morillo's loan application was based on the false 1988 tax return. Ex. G-94. HUD determined that Mr. Morillo would not have qualified for the loan if his true income information had been used. Ex. G-115; Tr. 165-73.

Allegations Not Sustained

I find that the Government has not proven its allegations by the preponderance of the evidence in the cases involving the borrowers listed below. As explained below, the Government did not establish Respondents' knowledge of or involvement in the falsification of documents in those cases.

Ramirez

██████████ Ramirez gave Ms. Spencer and his Pan American agent, Fernando Rodriguez, his true 1987 and 1988 tax returns and W-2 forms. However, the tax returns, W-2 form, and VOE form in the loan file are false. For example, the W-2 form for his

part-time hotel job shows that he earned \$[REDACTED] in 1988, but his true earnings from that job that year were \$[REDACTED].

The income reported for the hotel job in Mr. Rodriguez's loan application was based on the false wage information in the 1988 W-2 form. HUD determined that Mr. Ramirez would not have qualified for the loan if his true income information had been used. Ex. G-10, 11, 39-44, 90, 103, 111.

The Government has not shown that Mr. Rodriguez had any involvement in or knowledge of the falsification of documents in the Ramirez case. Although Mr. Rodriguez was present when Mr. Ramirez presented information concerning his true income, there is no evidence that Mr. Rodriguez believed that that income was insufficient to obtain a mortgage. Also, there is no evidence that he participated in or was aware of a plan to falsify the documents.

Nunez

[REDACTED] Nunez worked for [REDACTED] Vital, his step-father, at El Banquito Latino. Mr. Vital paid Mr. Nunez in cash and did not provide him with W-2 forms or check stubs. Thus, the W-2 forms for 1987 and 1988 and the check stub purportedly from El Banquito Latino in Mr. Nunez's loan file are false. The income reported in Mr. Nunez's loan application was based on the wage information in the false check stub. Ex. G-9, 89, 101.

The Government has not shown that Mr. Nunez's Pan American agent, Antonio Fernandez, had any involvement in or knowledge of the falsification of documents in this case. There is no evidence that Mr. Fernandez knew that Mr. Nunez would be unable to qualify for the loan unless documents were falsified. Although Mr. Fernandez visited Mr. Vital and asked him to help Mr. Nunez by signing a VOE, Ex. G-9, there is no evidence that the VOE is false.

As discussed below, Mr. Nunez's declaration provides some support for the Government's allegations against Mr. Fernandez, but there are significant inconsistencies between his declaration and his deposition. Mr. Nunez stated in his declaration that he gave his true 1987 and 1988 income tax returns and W-2 forms to Mr. Fernandez, and that the tax returns and W-2 forms in the loan file were false. Ex. G-8. However, he stated in his deposition that the tax returns and W-2 forms in the loan file were not false. Ex. R-17 at 19, 22, 24, 25. Moreover, the accuracy of Mr. Nunez's statement that he gave his true W-2 forms to Mr. Fernandez is questionable because he did not receive any W-2 forms from Mr. Vital, and there is no evidence that he had another job.

Mr. Nunez also stated in his declaration that Mr. Fernandez gave him a VOE, which he took to Mr. Vital. However, in his deposition, he denied that those events occurred. Ex. R-17 at 32. Because of those inconsistencies, I find that Mr. Nunez's statements are not reliable.

Socarras

Mr. Socarras told Ms. Spencer that he made \$[REDACTED] per week. His AGI was \$[REDACTED] in 1987 and \$[REDACTED] in 1988. However, the W-2 forms in the loan file falsely show that his wages were \$[REDACTED] in 1987 and \$[REDACTED] in 1988. Mr. Socarras' VOE falsely shows that he earned \$[REDACTED] per week. A check stub in the loan file showing that he earned \$[REDACTED] one week is also false.

The income reported in Mr. Socarras' loan application was based on the false 1988 W-2 form and other false documents. HUD determined that Mr. Socarras would not have qualified for the loan if his true income information had been used. Ex. G-12, 45-47, 79, 91, 105, 106, 112.

The Government has not shown that Mr. Prado had any involvement in or knowledge of the falsification of documents. Mr. Prado was the agent for Jesus Socarras.⁶ Tr. 136, 870. However, Mr. Prado was not involved in the loan application process. He was not present during Mr. Socarras' conversation with Ms. Spencer; Mr. Trimino served as translator during that conversation. Tr. 579, 752-53.

There is no evidence that Mr. Prado knew what Mr. Socarras' true income was or knew that his income was insufficient to obtain a mortgage. Nor is there any evidence that he participated in or was aware of a plan to falsify the documents.

The Government stresses that Mr. Socarras stated in his declaration that, "I showed [my true W-2 and 1099 forms] to real estate agent." However, it is not clear if Mr. Socarras was referring in that statement to Mr. Prado. Mr. Socarras did not state that he gave the forms to "his" agent, and he did not identify Mr. Prado as the agent or otherwise refer to him in the declaration.

Mr. Socarras' initial and only other reference in his declaration to a real estate agent was to the one who translated during the interview (Mr. Trimino). He used the same language to identify that agent as he used to identify the agent to whom he gave the forms. He stated that Ms. Spencer interviewed him "thru the interpreting of real estate agent of Pan American" [sic]. Because borrowers normally brought documentation of their income to the application interview, Tr. 592, 594, a reasonable interpretation of Mr. Socarras' statement is that he showed his true W-2 and 1099 forms to Mr. Trimino during the interview.

Also, Mr. Prado credibly denied being involved in any wrongdoing in this matter. Tr. 909-10. He asserted that Mr. Socarras told him the amount of his income, but did not give him any documentation of it. Tr. 868, 873. He asserted that he knew where Mr. Socarras worked, that he had good credit, and that he made a large downpayment

⁶The Government's Complaint erroneously stated that Mr. Miranda was Mr. Socarras' agent. When Mr. Prado objected to the introduction of evidence against him concerning the Socarras transaction, I ruled that such evidence was admissible concerning the issue of his imputed liability. Tr. 143-49.

(\$9,000 on a \$34,000 house), but that he did not specifically prequalify him for the loan. Tr. 868-89, 899-900.

Although the Government contends that Mr. Prado was not a credible witness, I disagree. The Government relies in this regard on the testimony of Mr. Elstone that, when he told Mr. Prado that the auditors had discovered false documents in the Socarras loan file, Mr. Prado denied that he was Mr. Socarras' agent. Tr. 163-64, 266.

However, Mr. Elstone was not certain if Mr. Prado was ever asked during the interview if he was the agent, Tr. 324, and his notes of the interview do not reflect that Mr. Prado specifically denied being the agent, Tr. 266-67. Although the notes state that, "Prado denied being involved in any aspect of the sale except signing the sales contract," they also state that "[Mr. Prado] only handled the \$1,000 earnest money, which he gave to his secretary." Because accepting earnest money is a normal function of agents, the latter statement is inconsistent with the notion that Mr. Prado was attempting to conceal the fact that he was the agent.

Moreover, Mr. Prado credibly testified that he told the auditors that he did not initiate the sale of the house to Mr. Socarras, and he (Mr. Prado) had never even seen the house. He explained that Mr. Socarras, who worked at a restaurant where he frequently had lunch, came to him and asked him to put in a contract on the house. Tr. 868, 903. This testimony is consistent with and tends to explain the statement in Mr. Elstone's notes that, "Prado denied being involved in any aspect of the *sale* except signing the sales contract." [emphasis added]

Therefore, it is likely that Mr. Elstone, who I found to be a candid and credible witness, was mistaken on this point. The fact that Mr. Prado does not speak perfect English, Tr. 903, may have contributed to Mr. Elstone's misunderstanding of Mr. Prado's statements.

Espeche

Espeche was employed by Gro Tech in 1983 or 1984. Thereafter, he was self-employed and did some work for Gro Tech from time to time in that capacity. However, the loan file contains a false VOE, a false check stub, and false W-2 forms showing that Mr. Espeche was an employee of Gro Tech in 1987-89. Mr. Espeche's loan application also states falsely that his employer was Gro Tech. Ex. G-20-24, 72, T-5, 6.

Although Mr. Trimino was the agent for Mr. Espeche, the Government has not shown that Mr. Trimino had any involvement in or knowledge of the falsification of documents. There is no evidence that Mr. Trimino believed or told Mr. Espeche that he might not qualify for a loan because he was self-employed. Mr. Trimino denied being present during Mr. Espeche's loan application interview with Ms. Spencer, Tr. 635-36, and there is no evidence to the contrary. Mr. Espeche's sister served as translator during that interview. Tr. 821; Ex. T-3 at 21-22.

Although Mr. Espeche told Mr. Trimino that he used to work for Gro Tech in 1983 or 1984, Ex. G-2, Mr. Trimino denied knowing that there was a check stub, VOE form, and W-2 forms in the loan file showing that Mr. Espeche worked there after that time. Tr. 638, 642. There is no evidence to the contrary.

The Government asserts that Mr. Trimino's complicity is shown by the fact that the form of and the typing on the pay stub in Mr. Espeche's loan file matches the other pay stubs involved in these cases. The Government contends that this shows that the common denominator in the falsification of documents was a group of Pan American agents.

I disagree. The same form was used for the pay stubs of Mr. Espeche and Mr. Nunez, but the typing on them is different. Ex. G-21, 101. A different form was used for the pay stubs of both Mr. Villegas and Ms. Alvarado, and the typing on them is different from each other. Ex. G-151, 175. Another different form was used for the pay stub of Mr. Socarras. Ex. G-106. Yet another different form was used for a pay stub from Rhodes Interiors for Mr. Saucedo. Ex. G-100. The typing on three of the pay stubs appears to be the same, Ex. G-100, 101, 106, but the typing on the other pay stubs is different from them and from each other,⁷ Ex. G-21, 151, 175.

Moreover, Mr. Trimino was the agent for only one of the mortgagors whose pay stubs are in the record. Ms. Spencer was the only person who dealt with all of those mortgagors.

Villegas

██████ Villegas told Ms. Spencer and his agent, Mr. Miranda, that he worked as a sub-contractor for both Golden Greek Carpets and Bargain Carpets. He gave them copies of his true 1988 tax return and his 1099 form from Golden Greek Carpets.

However, the loan file contains a false check stub and false W-2 forms for 1987 and 1988 showing that Mr. Villegas worked for a non-existent firm named "Golden Creek Carpet" as an employee. The loan file also contains a VOE form stating falsely that Mr. Villegas worked for "Golden Creek Carpet," but stating correctly that he worked as a sub-contractor. The loan application falsely states that Mr. Villegas' "employer" was "Bargain Carpet/Golden Creek." Ex. G-170, 173-78; Tr. 173-202.

The Government has not shown that Mr. Miranda had any involvement in or knowledge of the falsification of documents in the Villegas case. Although Mr. Miranda was present when Mr. Villegas stated that he worked as a sub-contractor, there is no evidence that Mr. Villegas would not have qualified for the loan because he worked as a

⁷There is another pay stub in the record, Ex. G-151, but it does not pertain to any of the cases involved in this matter.

subcontractor, not an employee. Also, there is no evidence that Mr. Miranda believed that Mr. Villegas would not have qualified for that reason.

Furthermore, there is evidence showing the lack of a motive for Mr. Miranda to falsify the documents in question. Mr. Villegas' mother and brother were co-applicants for the loan. Ex. G-173. Mr. Miranda testified credibly that, if he had known of any problem that would have prevented Mr. Villegas from obtaining a loan, he could have solved it by simply asking him to withdraw from the application. Mr. Villegas' brother had enough income to qualify for the loan in his own name. Tr. 959.

Saucedo

██████████ Saucedo was employed by Accent Draperies; his wages were \$██████████ in 1987 and \$██████████ in 1988. A VOE received by Horizon from Accent Draperies erroneously listed Mr. Saucedo's 1988 wages as \$██████████. When Ms. Spencer detected this error, she arranged for Mr. Miranda to deliver another VOE to Accent Draperies in violation of HUD's rule requiring that VOEs be mailed.⁸ The owner of that company completed the VOE correctly and returned it to Horizon. Tr. 771-72; Ex. G-6, 96, 98, 124.

Mr. Saucedo also did business as a contractor with Rhodes Interiors; that company paid him \$██████████ in 1987 and \$██████████ in 1988. Ex. G-34. A VOE received by Horizon from Rhodes Interiors shows that Mr. Saucedo's 1989 earnings through July 14 were \$██████████ it also shows erroneously that he had no earnings in 1988. Ex. G-99.

The loan processor at Horizon told Ms. Spencer that the loan application would be rejected because of the VOE from Rhodes Interiors. Ex. G-119, App. B at 7. Another VOE was obtained; it states falsely that Mr. Saucedo earned \$██████████ at Rhodes Interiors in 1988. Ex. G-97. The loan file also contains false W-2 forms showing that Mr. Saucedo was an employee of Rhodes Interiors and that his wages were \$██████████ in 1987 and \$██████████ in 1988. Ex. G-33. The income reported in Mr. Saucedo's loan application was based on the sum of his true 1988 income from Accent Draperies and the income shown on the false W-2 form from Rhodes Interiors. Ex. G-87.

The Government has not shown that Mr. Miranda had any involvement in or knowledge of the falsification of documents in the Saucedo file. Although Mr. Miranda translated during Mr. Saucedo's interview with Ms. Spencer, there is no credible evidence that Mr. Miranda believed or knew that Mr. Saucedo would be unable to obtain a mortgage unless the documents in question were falsified.

As discussed below, Mr. Saucedo's declaration and deposition provide some support for the Government's allegations against Mr. Miranda. However, because there

⁸One of the specific allegations in the Complaint is that Mr. Miranda hand-carried Mr. Saucedo's VOE's. Thus, that allegation is sustained to the extent that Mr. Miranda hand-carried the VOE to Accent Draperies.

are significant inconsistencies in those documents, I do not find Mr. Saucedo's statements to be credible. The first inconsistency concerns a conversation concerning Mr. Saucedo's income; he stated as follows in his declaration concerning that matter:

I told Guadalupe Miranda ... and Wanda Spencer ... that I worked for Accent Draperies making approximately \$[REDACTED] a year. Wanda told me I needed more income. I told her I make some extra cash doing piece work at home but did not tell her how much. I told her I did not show this on my income tax and did not have W-2's or check stubs. She stated, "Don't worry we can fix that."

Ex. G-6. However, during his deposition, Mr. Saucedo stated that he did not have such a conversation with Ms. Spencer. He stated that he had a similar conversation with Mr. Miranda concerning his income, but he did not recall anyone stating, "Don't worry we can fix that," in response to his statement that he did not have documentation to support his secondary income. Ex. R-18 at 28-30.

The other inconsistency involves Mr. Saucedo's assertion that Mr. Miranda took a VOE to Rhodes Interiors. Mr. Saucedo stated in his declaration that Mr. Miranda told him that he gave a VOE to Mr. Rhodes. Ex. G-6. However, he stated during his deposition that the source of his knowledge that Mr. Miranda had come to verify his employment was Mr. Rhodes. Ex. R-18 at 34-38.

In contrast to Mr. Saucedo's inconsistent statements, Mr. Miranda testified consistently and credibly that he did not visit Rhodes Interiors to verify Mr. Saucedo's employment, and that he did not engage in any wrongdoing in this matter. Tr. 669-70, 964. Mr. Miranda testified at one point that, "I did take the verification of employments in person, in blank, and I left it there with them." Tr. 962. Although his use of the term "verification of employments" suggests the plural, his use of the word "it," as well as the context of the statement, shows that he was referring only to the VOE for Accent Draperies. Moreover, Mr. Miranda did not demonstrate a good knowledge of English at the hearing. Tr. 205-08. These factors also explain the statement in his answer to the complaint that he "admits hand carried VOEs."

Furthermore, the notion that Mr. Miranda went to Rhodes Interiors to obtain a false VOE form after learning during the loan application interview that Mr. Saucedo's income was insufficient is inconsistent with the fact that the false VOE form was not obtained until after the loan processor determined that the income shown on the first VOE from Rhodes Interiors was insufficient for loan approval.

Imputed Liability

The Government contends that the misconduct of the Pan American agents should be imputed to Mr. Prado pursuant to 24 C.F.R. Sec. 24.325(b)(1), which provides in pertinent part as follows:

The fraudulent, criminal, or other seriously improper conduct of any ... employee or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

I find that the Government has not established the requirements for imputed liability. Mr. Prado is a "participant" under section 24.325(b)(1) because, as the owner of Pan American and as a broker, he was involved in the home sales in question; those homes were sold by HUD and were bought with mortgages insured by HUD. *See id.* Secs. 24.105 (m) and (p)(11), 24.110(a)(1)(i).

The Pan American agents do not constitute "employees" under the regulation because they were independent contractors. *See In re Emily Guillen and Emily Investments*, 1992 WL 45853, HUDBCA No. 91-7008-D99, slip op. at 4 n.4 (Final Determination, April 9, 1992). In return for a monthly fee, Mr. Prado acted as their sponsoring broker and provided them office space and equipment at Pan American. Tr. 845-46. Each agent retained all commissions resulting from the sale of homes. Tr. 908-09.

However, because of their agent/broker relationship with Mr. Prado on the transactions in question, the agents were "individuals associated with a participant" under section 24.325(b)(1). *See Guillen* at 4. The agents' misconduct did not occur "in connection with [their] performance of duties for or on behalf of [Mr. Prado]" because they were independent contractors, not employees. *See Guillen* at 4-5.

There is no evidence that Mr. Prado had actual knowledge of the agents' misconduct, that he approved it, or that he acquiesced in it. Although the Government argues that Mr. Prado accepted the benefits derived from the agents' misconduct, I disagree. Any benefits from the misconduct would derive from the commissions on the sale of the homes in question. Payment of part of those commissions to Mr. Prado would constitute evidence that he knew of, approved of, or acquiesced in the agents' misconduct. *See Guillen* at 9. However, Mr. Prado did not receive any of those commissions.

Although Mr. Prado received a monthly fee of \$275-\$325 from each agent, the amount of the fee was unrelated to their commissions. The amount of the fee varied with the amount of the expenses, such as advertising, that were shared between the agents and Pan American each month. It was payable regardless of whether the agents sold any homes in a given month. Tr. 845-46. Thus, the monthly fee was not a benefit derived from the agents' misconduct; it was a benefit that Mr. Prado derived from his business arrangement with the agents.

Imputed liability may also be established if Mr. Prado had reason to know about the agents' misconduct.⁹ *See Guillen* at 6. The factors to be considered in resolving that issue are the degree to which the misconduct was facially apparent, whether Mr. Prado exercised reasonable diligence in supervising the agents, and the degree of control he had over them. *See id.* at 6-9.

The evidence does not show that the misconduct was facially apparent. Although much of it occurred at Pan American's main office, that office was not an open area where conversations could be readily overheard. Mr. Prado had a private office, and his door opened onto a reception area. Two or three agents shared each of the remaining five separate offices. Ex. R-16.

Although seven agents engaged in the misconduct, there were a total of 35 agents in 1989, and there is no evidence that the falsification of documents was a topic of conversation in the office. Moreover, it has not been shown that the misconduct was widespread when viewed in terms of the number of homes sold by Pan American agents in 1989. Misconduct was involved in eight sales, but 176 homes were sold that year by the 11 agents involved in the allegations.¹⁰ Ex. R-5-15.

I find that Mr. Prado exercised reasonable diligence in supervising the agents. He attended the required HUD seminars and held meetings to advise the agents of changes in FHA requirements. Tr. 656, 835-37. He visited his branch office once per week. Tr. 841. He reviewed the contracts before signing them and questioned the agents on matters concerning the buyers' qualifications. Tr. 600, 659-60, 837. He "fired" several agents, including Mr. Carratala, for violating various rules and his instructions.¹¹ Tr. 645, 804, 867-68.

Regarding the extent to which Mr. Prado could exercise control over the agents, his ability to control them was less than that present in a traditional employment relationship because they were independent contractors. *See Guillen* at 9. However, his action of "firing" several agents demonstrates that he would not hesitate to sever his business relationship with agents when he believed that they were engaging in improper conduct.

In sum, I find that Mr. Prado could have discovered the wrongdoing of the agents only by conducting an audit like the one conducted by HUD. There is no evidence that

⁹I have not considered whether the agents' misconduct should be imputed to Mr. Prado under the doctrine of *respondeat superior*, *see Guillen* at 4-6, because the Government did not make such a contention.

¹⁰It is unclear how many homes were sold by the other 24 Pan American agents that year.

¹¹There is no evidence that Mr. Prado's "firing" of Mr. Carratala was based on falsification of documents. Mr. Carratala was subsequently rehired.

he had a duty to take such action in the absence of any reason to suspect that the agents were falsifying loan documents.¹²

Adequacy of Notice

Mr. Prado contends that the Government failed to give him adequate notice of its allegation of imputed liability. Although the Government did not cite section 24.325(b)(1) in its notice of administrative action or its complaint, I find that Respondent had adequate notice of the allegation of imputed liability.

Due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Transco Security v. Freeman*, 639 F.2d 318, 323 (6th Cir.), *cert. denied*, 454 U. S. 820 (1981) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1949)). Debarment actions must be processed "as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in sections 24.311 through 24.314." *Id.* Sec. 24.310.

Section 24.313(b) provides that hearings shall be governed by the procedures set forth in 24 C.F.R. Part 26. Section 26.9 provides that the notice shall state "the reasons" for the action. Similarly, section 26.10 provides that the complaint "shall state the grounds upon which the administrative action is based."

In the July 16, 1991 notice to Mr. Prado of his suspension and proposed debarment, the Commissioner asserted that "you and/or your employees" participated in the falsification of documents and other misconduct in conjunction with several transactions. (Emphasis added.) The Commissioner alleged that "your actions or failures" in that regard were cause for debarment. (Emphasis added.)

The Government's September 6, 1991 Complaint against Mr. Prado alleged, among other things, that the action was based on "serious irregularities by Sergio Prado and/or his employees..." (Emphasis added.) The Complaint then made detailed allegations concerning the participation of several Pan American agents in the falsification of documents and other misconduct in numerous real estate transactions in which he served as broker. The complaint alleged that Mr. Prado controlled Pan American and that he "caused, directed, influenced, or permitted" the misconduct. (Emphasis added.)

Thus, both the notice and the complaint informed Mr. Prado, in essence, that he was liable for the misconduct of Pan American agents. That is the basis of the imputed liability theory. Moreover, on the first day of the hearing in this matter, the Government identified 24 C.F.R. Sec. 24.325(b) as the applicable regulation. Tr. 151.

¹² Although a broker's debarment could also be warranted if he or she failed to take appropriate action upon being notified of an agent's misconduct, *see Guillen* at 10, that is not an issue in the present case because the Government did not make such an allegation in its Complaint against Mr. Prado.

Respondent has not alleged or shown that he did not understand the allegations against him or that he was prejudiced by the manner in which he received notice in this case.

Discriminatory Enforcement

Respondents contend that HUD officials discriminated against them in enforcing the debarment regulations because of their Hispanic national origin. HUD regulations prohibit the exclusion of any person from participating in any HUD program on the basis of national origin. 24 C.F.R. Sec. 0.735-201(h). Respondents bear the burden to establish their claim of discriminatory enforcement. *Cf. United States v. Hughes*, 585 F.2d 284, 288 (7th Cir. 1978) (burden on respondent to prove claim of discriminatory enforcement of False Claims Act). I find that they did not meet that burden.

Respondents point out that all of the agents and 29 of the 30 buyers involved in the transactions that were audited were Hispanic. Tr. 278-81. Respondents also note that four other Hispanic-owned real estate firms were included in the audit, and that HUD suspended those firms and some of their Hispanic agents. Tr. 270, 310; Ex. T-9.

However, the lender in all cases selected for audit was Horizon, which is not a Hispanic-owned firm. Tr. 270, 320. The loan officer in all of the cases selected for audit was Ms. Spencer, who is not Hispanic. Tr. 26, 737. Moreover, most Horizon borrowers were Hispanic, virtually all of Pan American's clients were Hispanic, and many of the real estate firms that used Ms. Spencer to originate loans were Hispanic-owned. Tr. 310, 802, 849. Also, the fact that virtually all of the buyers were Hispanic has no real significance because there is no evidence that HUD took any action against them as a result of the audit.

Messrs. Elstone, Houn, and Buff credibly denied identifying cases for audit because the buyers, agents, or realty firms involved were Hispanic. Tr. 278-81, 462, 521. Rather, the audit was requested by HUD's Houston Field Office because its Mortgage Credit Branch had identified various problems in 10 loans that had been originated by Horizon. Tr. 20-22. The auditors identified 20 additional cases for audit because their preliminary review of Horizon loan files revealed that there might be problems in those cases. Tr. 23-26.

When further investigation revealed that loan documents had been falsified, HUD did not single out Hispanics and Hispanic-owned companies for suspension and debarment. HUD also took such actions against a non-Hispanic company -- Horizon -- and a non-Hispanic person -- Ms. Spencer -- who were allegedly involved in wrongdoing. Tr. 131-32, 725. Therefore, I do not find that HUD engaged in discriminatory enforcement in this matter.

Cause For Debarment

The regulations set forth various acts and omissions that constitute cause for debarment. *Id.* Sec. 24.305. The Government asserts that Respondents' actions constitute cause for debarment under three separate provisions of the regulations. The first regulation invoked by the Government is section 24.305(b), which provides that debarment may be imposed for:

Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

...
(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

The Government also invokes section 24.305(f), which provides that:

... 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 including applications for ... insurance

Messrs. Carratala, Miranda and Trimino do not dispute that their misconduct constitutes cause for debarment under these provisions. The participation of Messrs. Carratala and Miranda in the falsification of documents in connection with FHA-insured mortgage transactions was prohibited by 18 U.S.C. Sec. 1010 and was in violation of HUD's requirement that accurate information be submitted concerning borrower's income during the loan application process. Mr. Miranda's action of hand-carrying a VOE was in violation of a HUD requirement prohibiting such action. Therefore, I find that there is cause for debarment of those Respondents under sections 24.305(b) and (f).¹³

Public And Governmental Interest

Another issue for consideration is whether the debarment of Mr. Carratala for two years, Mr. Miranda for three years, and Mr. Trimino for two years, commencing November 8, 1991, is necessary to protect the public interest and the federal government's interest in doing business with responsible persons. The debarment process is not punitive in nature. *Id.* Sec. 24.115(b). Rather, it protects public and

¹³The Department also invokes section 24.305(d), which provides that debarment may be based on "[a]ny other cause of so serious or compelling a nature that it affects the present responsibility of a person." Because cause for debarment exists under the other regulatory provisions, it is not necessary to decide whether cause exists under this section.

governmental interests by precluding persons who are not "responsible" from conducting business with the federal government. *See id.* Sec. 24.115(a) and (b); *Delta Rocky Mountain Petroleum, Inc. v. U.S. Dep't of Defense*, 726 F. Supp. 278, 280 (D. Colo. 1989).

"Responsibility" is a term of art which encompasses business integrity and honesty. *See, e.g., Delta Rocky Mountain Petroleum*, 726 F. Supp. at 280. Determining "responsibility" requires an assessment of the current risk that the government will be injured in the future by doing business with a respondent. *See Shane Meat Co., Inc. v. U.S. Dep't of Defense*, 800 F.2d 334, 338 (3d Cir. 1986). That assessment may be based on past acts. *See, e.g., Agan v. Pierce*, 576 F. Supp. 257, 261 (N.D. Ga. 1983).

The offenses of Mr. Carratala and Mr. Trimino are sufficiently serious that they affect their present responsibility. They actively participated in the falsification of documents in connection with applications for federally insured mortgages. Those offenses show that they are not persons of honesty and integrity. They offered no evidence to show that they have been rehabilitated. Thus, there is an inference that their dishonest conduct might well continue in the future.

Mr. Carratala proposed the idea to falsify the documents to his clients. Moreover, his misconduct was not an isolated incident; it was repeated on another occasion. Therefore, I conclude that the proposed two-year debarment of Mr. Carratala is necessary to protect the public interest and the federal government's interest in doing business with responsible persons.

Because Mr. Trimino's misconduct occurred on only one occasion, I conclude that his proposed two-year debarment would be excessive, punitive, and not in the public interest. I conclude that a one-year debarment will suffice to protect the public interest and the federal government's interest in doing business with responsible persons.

Mr. Miranda's misconduct was limited to violating HUD's rule prohibiting the hand-carrying of VOE's. He took that action on only one occasion. He did not act on his own initiative or for his own benefit in this matter. Rather, his action was prompted by Ms. Spencer's receipt of a VOE by mail that erroneously showed the borrower's 1988 wages to be higher than they were. Although Ms. Spencer should have sent another VOE to the employer by mail, she arranged for Mr. Miranda to hand-carry it. Apparently, the only beneficiary of Mr. Miranda's action was Horizon, which would have had to pay a \$300 penalty if the sale had not been completed within HUD's time limits because of the erroneous VOE. Tr. 669-72, 771-74, 823-24.

In view of those circumstances, I conclude that the proposed three-year debarment of Mr. Miranda would be excessive, punitive, and not in the public interest. I conclude that a 30-day debarment will suffice to protect the public interest and the federal government's interest in doing business with responsible persons.

Suspension

Cause For Suspension

Cause for suspension exists upon "adequate evidence" either to suspect the commission of an offense listed in 24 C.F.R. Sec. 24.305(a) or that cause for debarment under Sec. 24.305 may exist. *Id.* Sec. 24.405(a). "Adequate evidence" is defined as "[i]nformation sufficient to support the reasonable belief that a particular act or omission has occurred." *Id.* Sec. 24.105(a). The "adequate evidence" standard is a minimal one; it is similar to the standard of probable cause for an arrest, search warrant, or preliminary hearing in criminal cases. *Guillen* at 11 (citations omitted).

I find that there was "adequate evidence" to support the Respondents' suspensions pending the outcome of this proceeding. As discussed above, the audit revealed that, in 28 of the 30 loan files reviewed, documents concerning borrowers' incomes and other matters had been falsified. As a result, many borrowers who did not qualify for HUD-insured loans were approved for and received them. Tr. 33-34; Ex. G-119 at 2. Many borrowers had accused their real estate agents of participating in the falsification of loan documents. All of the agents worked at Pan American. Mr. Prado owned Pan American and signed all of the sales contracts in question. *See Guillen* at 11 (sustaining a realtor's suspension on similar grounds).

Need For Immediate Action

HUD is authorized to impose suspensions to protect the public and governmental interest, but not for purposes of punishment. See 24 C.F.R. Sec. 24.115(b). Suspension is a serious action, and may be imposed only when immediate action is necessary to protect the public interest. *Id.* Sec. 24.400(b). In view of the numerous and serious charges of falsification of documents involving Pan American agents, I find that Respondents' immediate suspensions were warranted to promote public confidence in the integrity of HUD's loan program and to protect the public interest.

DETERMINATION AND ORDER

My determination in these matters is as follows:

(1) The Commissioner's proposal to debar Mr. Prado and Pan American for five years is NOT SUSTAINED. Mr. Prado's motion for judgment on the basis of inadequate notice is DENIED; his motion for judgment on the basis that the Government did not establish a prima facie case is GRANTED.

(2) The proposal to debar Mr. Carratala for two years commencing November 8, 1991, is SUSTAINED.

(3) The proposal to debar Mr. Miranda for three years is NOT SUSTAINED; it is ORDERED that that action be replaced by a 30-day debarment commencing November 8, 1991.

(4) The proposal to debar Mr. Trimino for two years is NOT SUSTAINED; it is ORDERED that that action be replaced by a one-year debarment commencing November 8, 1991. Mr. Trimino's motions to have his case transferred to the U.S. Supreme Court for final decision and to have his suspension lifted pending the issuance of a decision on his proposed debarment are DENIED.

(5) The Commissioner's suspension of Respondents pending the outcome of this proceeding is SUSTAINED.

FINALITY AND SECRETARIAL REVIEW

This Initial Determination shall be final unless the Secretary of HUD or the Secretary's designee, within 30 days of receipt of a request for review, decides as a matter of discretion to review the Determination. Any party may request such a review in writing within 15 days of receipt of the Determination. 24 C.F.R. Sec. 24.314(c).

A handwritten signature in cursive script, reading "Paul G. Streb", written in dark ink.

PAUL G. STREB

Administrative Law Judge