

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

In the Matter of:

BENJAMIN J. ROSCOE
GERALDINE M. ROSCOE

Respondents.

HUDALJ 93-2007-DB
Date Issued: June 26, 1995

Geraldine M. Roscoe, *pro se*
Benjamin J. Roscoe, *pro se*

Timothy J. Hartzel, Esquire
For the Secretary

Before: Thomas C. Heinz
Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arose pursuant to 24 C.F.R. § 24.700 *et seq.* as a result of action taken by the Assistant Secretary of the Department of Housing and Urban Development ("the Department" or "HUD" or "the Government") on March 23, 1993, suspending and proposing to debar Respondents from participating in covered transactions as either participants or principals at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts at HUD for a period of five years beginning October 5, 1992. The action taken by HUD on March 23, 1993, was based on allegations that Respondents had failed to fulfill their contractual obligations to HUD in connection with their operation of two apartment complexes owned by them.

By letter dated March 29, 1993, Respondents appealed the action and requested a hearing. After the parties filed responsive pleadings, a hearing was held in Albuquerque, New Mexico, on October 12, 13, and 14, 1994, and by telephone conference on October 26, 1994. At the close of the hearing on October 14, 1994, the parties were

directed to file post-hearing briefs. All briefs have been filed and the matter is now ripe for decision.¹

Findings of Fact

1. Respondents Benjamin J. Roscoe and Geraldine M. Roscoe, husband and wife, are owners of two apartment complexes in Albuquerque, New Mexico: the Brook Apartments and the Valle del Norte Apartments ("VDN"). Tr. 26, 28; Gx. 3.² Respondents also own and operate "Roscoe Property Management" and "King Property Maintenance," firms that provide management and maintenance services for several apartment complexes, including properties owned by Respondents. Tr. 36-37.

2. In 1989 Respondents, HUD, and the Albuquerque Housing Authority (a public housing authority) entered into a Housing Assistance Payments ("HAP") contract authorizing Respondents to participate in HUD's so-called "Section 8" program at the Brook Apartments. Gx. 1. The HAP contract provides, *inter alia*, that Respondents agree to charge their "Section 8" tenants a fixed amount of rent, and to receive from the Albuquerque Housing Authority a sum for each subsidized tenant. The HAP contract also states:

The portion of the Contract rent payable by the Family ("*tenant rent*") will be an amount determined by the PHA [public housing authority] in accordance with HUD regulations and requirements. This amount is the maximum amount the Owner can require the Family to pay for rent of the Contract unit, including all services, maintenance and utilities to be provided by the Owner in accordance with the Lease....³

* * *

¹Repeated continuances, granted at the request and upon the agreement of both parties, have delayed final resolution of this matter. These delays have caused no harm to the public interest, however, because Respondents have been suspended since the date their debarment was proposed. Furthermore, as demonstrated *infra*, related state and federal court litigation during the pendency of this case has generated significant evidence supporting the conclusions reached in this decision. The last federal case reached final resolution last month, on May 17, 1995.

²In this decision the following abbreviations are used: "Tr." and "Tr. II" refer to the hearing transcripts. The Government's and Respondents' numbered exhibits are identified as "Gx." and "Rx." respectively.

³The contract allowed for an annual rent adjustment determined by HUD and published in the Federal Register. Gx. 1.

HUD may approve a special adjustment to reflect increases in the actual and necessary expenses of owning and maintaining the unit which have resulted from substantial general increases in real property taxes, utility rates or similar costs ..., but only if and to the extent that the Owner clearly demonstrates that the general increases have caused increases in Owner's operating costs which are not adequately compensated for by the annual adjustments provided for in paragraph (A)(1) of this section. The Owner shall submit financial statements to the PHA which clearly support the increase.

3. Respondents purchased VDN in 1986. Gx. 3. They own VDN subject to a mortgage insured by HUD under Section 236 of the National Housing Act. Gx. 4. The cost of Respondents' mortgage on VDN was significantly reduced because of the 236 program. As a precondition to receipt of the insurance, Respondents entered into a Regulatory Agreement ("RA") with HUD. The RA, in part, states:

(6) Owners shall not without the prior written approval of the Commissioner ...

(b) Assign, transfer, dispose of, or encumber any personal property of the project, including rents, or pay out any funds, other than from surplus cash, except for reasonable operating expenses and necessary repairs.

* * *

(7) Owners shall maintain the mortgaged premises, accommodations, and the grounds and equipment appurtenant thereto, in good repair and condition.

* * *

(9) (e) Within sixty days following the end of each fiscal year the Commissioner shall be furnished with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared in accordance with the requirements of the Commissioner certified to by an officer or responsible Owner and, when required by the Commissioner, prepared and certified by a Certified Public Accountant, or other person acceptable to the Commissioner.

* * *

(11) Upon a violation of any of the above provisions of this Agreement by Owners, the Commissioner may give written notice, thereof, to Owners.... If such violation is not corrected to satisfaction of the Commissioner within thirty days after the date such notice is mailed or within such further time as the Commissioner reasonably determines is necessary to correct the violation, without further notice the Commissioner may declare a default under this Agreement.

4. In a letter dated February 11, 1991, the manager of the HUD office in Albuquerque imposed a 12-month Limited Denial of Participation ("LDP") upon Respondents. Gx. 5. On April 12, 1991, HUD affirmed and modified the LDP in a letter that explained the basis for the action as follows:

With respect to Valle del Norte, irregularities include unauthorized assignment or transfer of project income in excess of \$18,000.00 in 1987, for purposes other than meeting reasonable operating expenses and necessary repairs when there was no surplus cash; failure to maintain books and records in accordance with requirements of the Department; continual late submission of audited financial reports; failure to maintain adequate documentation of expenditures for which an identity of interest exists; and unresolved deficiencies in maintenance of the units.

With respect to Brook Apartments, irregularities include excessive charges to tenants, in violation of the Housing Assistance Payments (HAP) Contract between you and the Albuquerque Housing Authority and the assisted lease agreements with various tenants. [Gx. 6]

5. Respondents appealed the LDP, and on January 22, 1992, entered into a Settlement Agreement ("SA") with HUD. The SA required Respondents to provide documentary evidence sufficient to satisfy HUD that they had repaid to VDN misapplied project funds totalling \$24,010. Gx. 7. The SA also required Respondents to:

(a) Relinquish control of the management of VDN for a period of three years, and employ a management agent chosen from a list supplied by HUD.

(b) Obtain the services of a HUD-approved engineering firm to inspect VDN and estimate the cost of repairs to VDN facilities.

(c) Cease imposing improper, excessive or unauthorized charges against the Section 8 tenants of Brook Apartments and show that such charges were either not collected from, or were refunded to, tenants.

(d) Charge tenants of the Brook Apartments only the cost of reasonable labor and materials for repairing damage in excess of normal wear and tear to their apartments. Submit a schedule of labor costs and materials to the Albuquerque Housing Authority.

(e) Execute only HUD-approved leases with Brook Apartment tenants.

(f) Establish and execute a rent schedule consistent with HUD regulations and approved by the Albuquerque Housing Authority.

6. The SA also contained a provision stating that:

Any breach of the terms and conditions of this Settlement Agreement with Roscoe shall constitute independent grounds for an administrative sanction, pursuant to 24 C.F.R. Part 24, and also affords the Department the right to pursue any remedy in law or equity in Federal District court. Gx.7, paragraph 15.

7. In a letter dated April 20, 1992, HUD notified Respondents that HUD's review of VDN's 1991 audited financial statements revealed the following discrepancies:

Finding No. 1. Unauthorized use of project funds to pay legal fees for the proposed Limited Denial of Participation (LDP). Unauthorized use of project funds to pay identity of interest management company, a.k.a. Benjamin Roscoe, administrative fees for LDP preparation. Amounts of unauthorized expenditure from project income...totalling \$20,868....

Finding No. 2. Failure to maintain books and accounts in accordance with requirements of the Secretary....

Finding No. 3. The Balance Sheets indicate a receivable still owed the project from the owner in the amount of \$4,039. Check #8058, dated 12/26/91 in the amount of \$8,000 issued to Valle del Norte, is not reflected in the Statement of Receipts and Disbursements or elsewhere in the financial statements, i.e. residual receipts....

Finding No. 4. Accounts were not reconciled. The project's cash balances per books were not reconciled to the appropriate bank reconciliations, and security deposits were not reconciled to supporting detail accounts or documentation. Rents received are not reconciled to total rent revenue per approved rent schedule....

Finding No. 5. Failure to respond to HUD's letter dated 1/14/92, regarding the audited financial statement for fiscal year ending 12/31/90. Violation of paragraph 9(f) of the Regulatory Agreement....

Finding No. 6. Leasing and occupancy problems still exist; tenant files are incomplete, annual inspections and recertifications are not timely made. This finding has appeared on the past 3 years' audits. The owner's response is inadequate and has not effected correction of noted deficiencies....

Finding No. 7. Incorrect calculation of project payable in the amount of \$10,323 to owner....

HUD demanded that Respondents immediately repay all improperly allocated funds, and requested that Respondents reply within 30 days of receipt of the letter. Respondents did not reply to this letter. Gx. 12. Tr. 201.

8. In a separate letter also dated April 20, 1992, HUD also informed Respondents that they had breached the SA in the following ways:

- (a) The audited financial statement for the year ending December 31, 1991, did not reflect the payment of \$8,000 to the project memorialized in the SA.
- (b) The SA required that Respondents submit monthly accounting reports to confirm repayment of monies owed to VDN Apartments. Respondents submitted no such reports between January and November 1991.
- (c) Respondents failed to furnish required documents to both HUD and the City of Albuquerque, including a physical assessment and cost of repairs report, a document pledging to the City of Albuquerque that Respondents would not impose improper, excessive and unauthorized charges to Section 8 residents, a general schedule of labor costs for typical repairs of tenant damages, and a confirmation that Respondents would submit all lease addenda and tenant rules to the City of Albuquerque. Gx. 8.

9. In response to the two letters dated April 20, 1992, Respondents submitted documents and a physical inspection report prepared by C. Blackman of "Handyman Services." By letter dated May 15, 1992, HUD informed Respondents that Mr. Blackman's physical inspection report was unacceptable because HUD was unable to ascertain whether he was qualified to perform such an inspection. The letter also noted that Mr. Blackman's inspection did not address major structural conditions or items listed as "outstanding" in previous HUD inspections. Moreover, the inspection consisted of evaluations of only four of 24 VDN units and failed to include required cost estimates for necessary repairs. The letter notified Respondents that HUD was preparing to hire its own inspector to make a physical evaluation of VDN. -Gx. 9. In a letter dated May 21, 1992, Respondents informed HUD that they would not allow inspectors access to VDN apartments. Gx. 10.

10. HUD conducted an inspection of VDN's exterior on May 26, 1992. In a letter dated May 28, 1992, HUD informed Respondents of the results of this inspection. Gx. 10. The physical inspection report listed a number of physical deficiencies in the VDN apartments, including unlocked disconnect boxes for the main electrical system, improperly mounted electrical masts, improper storage of old refrigerators, and a broken window. The letter of May 28, 1992, explained that both the RA and SA required Respondents to repair the identified physical deficiencies immediately. Gx. 10.

11. Under cover of a letter dated August 6, 1992, HUD forwarded to Respondents reports of physical condition and management based on reviews of VDN conducted on May 26, 1992, and June 9, 1992. HUD found both the physical maintenance and the management of VDN "unsatisfactory." All 24 of the VDN units failed to meet housing quality standards. The report itemized specific repairs that Respondents needed to make on the VDN units to achieve a satisfactory rating. Respondents were directed to meet with HUD managers and to draw up a plan detailing a schedule for making required repairs. Gx. 11; Tr. 342-43.

12. Respondents did not respond as directed to the reports that HUD sent to them on August 6, 1992, nor did they set up a schedule to repair the reported physical deficiencies. Gx. 11; Tr. 342-43.

13. Pursuant to the SA, Respondents hired Monarch Properties, Inc., to serve as VDN's property manager effective March 4, 1992. In their "Property Management Agreement," Monarch agreed, among other things, to collect rents, disburse funds, and provide physical maintenance. Gx. 30; Tr. II, 11-12. The Agreement also stated, in part:

The Agent shall not be liable for any error of judgment or for any mistake of fact or law, or for anything which it [the Agent] may do

or refrain from doing hereinafter, except in cases of willful misconduct or gross negligence.

* * *

Everything done by Agent ... shall be done as the agent of the Owner, and all obligations of expenses incurred hereunder shall be for the account of, on behalf of, and at the expense of Owner....

14. Upon assuming the management of VDN, Monarch attempted to remedy the outstanding violations of housing quality standards that had been identified by HUD, but inadequate funds prevented completion of all of the required repairs. Tr.II 8-9. On one occasion, Respondents demanded that Monarch refuse HUD agents access to VDN's grounds to conduct a physical inspection. Tr.II, 12.

15. On May 28, 1992, a New Mexico district court issued a decision in a class action suit entitled *Brook Apartments Tenants (a class), Plaintiff v. Benjamin Roscoe and Brook Apartments, Defendants*. The court found that Defendants had fined tenants for acts that caused no damages or verifiable economic harm to Defendants. The court also found that Defendants had billed tenants for damages without allowing the tenants an opportunity to be heard, billed tenants without authorization for "investigation" and "handling by management" charges, and imposed utility surcharges on tenants for alleged "excessive use of utilities," despite lease terms requiring Defendants to pay utility charges for tenants. On September 14, 1992, the findings of fact and conclusions of law adopted by the district court on May 28, 1992, were incorporated by reference by that court in an order permanently enjoining Respondents from levying charges not listed in their leases with tenants. Gx. 23.

16. In a letter dated August 17, 1993, from Respondents to Ms. [REDACTED] Chavez, FNMA loan technician, Respondents stated that because HUD had terminated its Section 236 loan insurance program for the VDN Apartments, Respondents would no longer make the mortgage insurance premium payments, and would no longer accept any mortgage interest reduction payment from the Government. Gx. 15.

17. Respondents contacted Mr. [REDACTED] MacGillivray of Monarch Properties, Inc., manager of VDN, in a letter dated August 17, 1993. The letter instructed Mr. MacGillivray not to pay the FNMA mortgage insurance premium or accept FNMA mortgage interest reduction payments. Respondents also directed Mr. MacGillivray to raise the monthly rent for each VDN unit by ten percent. Respondents further instructed Mr. MacGillivray not to allow HUD agents to enter VDN premises or to give HUD any information concerning the operations of VDN apartments. Gx. 16. Mr. MacGillivray

responded by letter dated August 20, 1993. In that letter, he informed Respondents that VDN was still participating in the Section 236 program, and therefore Monarch could neither refuse FNMA payments nor raise rents without HUD's permission. Gx. 18.

18. HUD's audit of Respondents' 1992 operations found that Respondents had failed to correct the previous year's deficiencies or comply with the corrective actions specified by HUD. Gx. 12 at 12. In a letter dated August 17, 1993, HUD informed Respondents that its audit revealed misapplied VDN project funds. The letter demanded that Respondents immediately repay the following sums:

- (a) Project funds in the amount of \$14,416 that Respondents had put to unauthorized use, including excess management and maintenance fees, unsupported laundry room rent revenue and savings withdrawn by the owner for return of indemnity payment.
- (b) Security deposit funds and other project income placed into CDs by Respondents in the amount of \$17,378. This money was not available to Monarch when the company commenced management of VDN, resulting in a deficit of funds to effect necessary physical repairs.
- (c) Laundry room revenue that Respondents failed to transfer to Monarch.
- (d) Project funds that Respondents incorrectly allocated as payable to owners. Specifically, a sum of \$10,323 that Respondents agreed to repay under the SA, and \$6,730 in project funds that Respondents used to pay personal legal fees.

Gx. 17.

19. On August 31, 1993, Monarch resigned as manager of VDN. Respondents then hired Sovereign Management Corporation ("Sovereign") as its management agent, effective November 3, 1993. Gx. 21. During the interim period between August and November, Respondents personally assumed the management of VDN. Tr. 228.

20. On or about August 31, 1993, Respondents distributed a memorandum to VDN tenants above the title "Valle Del Norte Apartments/Property Manager," which stated that Mr. David Martinez was assuming the position of VDN resident manager. Attached to the memorandum was a notice dated August 31, 1993, informing tenants of a large rent increase, payable to Respondent Benjamin Roscoe. Gx 19; Tr. 229.

21. In a letter dated September 16, 1993, HUD informed Respondents that rent increases at the VDN Apartments had not been approved by HUD, and that Respondents'

continuing violations of their contractual duties could cause HUD to take further action against them, including foreclosure. Gx. 20.

22. On October 8, 1993, pursuant to a complaint filed by VDN tenants, the United States District Court for the District of New Mexico issued a permanent injunction against Respondents enjoining them from, among other things, enacting the rent increases announced the previous August, attempting to evict tenants in full compliance with HUD-approved leases, altering HUD-approved leases, and acting in any managerial capacity at VDN in violation of the SA. The injunction also required Respondents to hire another HUD-approved managing agent for VDN, pursuant to the SA. Gx. 25, Tr. 486.

23. In an audit dated December 31, 1993, and forwarded under cover letter dated July 21, 1994, an independent auditor reviewed Respondents' operations to determine whether they had complied with the list of corrective actions generated by HUD's 1991 audit of VDN.⁴ The auditor found that some corrective actions had been taken, but found no evidence that funds totalling \$16,039 had been repaid to the project or that the amounts of receivables owed to the project by the owners had been recalculated as required by HUD. Gx. 21.

24. In a letter to Respondents dated March 28, 1994, HUD repeated the request made on August 17, 1993, that Respondents turn over to Sovereign \$17,378 in project funds held in a savings account for deferred maintenance costs. Gx. 22. As of the date of the hearing, Respondents had not repaid these funds. Tr. 236.

25. On or about November 2, 1994, Respondents were indicted in the District Court of the United States for the District of New Mexico on charges of equity skimming, making false statements to HUD, making and using false and fraudulent documents, and aiding and abetting the commission of those felonies in connection with their ownership and operation of VDN and Brook Apartments.⁵

⁴The auditor from Emmons, Hagood & Company, Certified Public Accountants, could not certify to HUD that Respondents had complied with applicable laws, regulations, contracts and grants applicable to VDN because VDN management had refused to provide the auditor with written statements regarding these issues as required by generally accepted auditing standards. Gx. 21.

⁵The indictment read as follows:

COUNT I

Between on or about the 1st day of January, 1991, and on or about January 1994, at Albuquerque, in the State and District of New Mexico, the defendants, BENJAMIN J. ROSCOE AND GERALDINE M. ROSCOE, as

26. On May 17, 1995, the United States District Court indictment that had been issued against Mr. and Mrs. Roscoe in November of 1994 was dismissed pursuant to a plea agreement wherein Mr. Roscoe pleaded guilty to a misdemeanor charge in a criminal information alleging that he violated 18 U.S.C. § 1012 by making false statements to HUD. The court placed Mr. Roscoe on probation for one year and fined him \$2,500.⁶

owners of property, that is, Valle del Norte Apartments, Albuquerque, New Mexico, which was security for a United States Department of Housing and Urban Development (HUD) loan insured under Section 236 of the National Housing Act, 12 U.S.C. § 1715z-1, as referred to in the regulations of the Secretary of HUD, did willfully and knowingly use and authorize the use of rents, tenant security deposits, and other funds derived from such property for purposes other than to meet actual and necessary expenses arising in connection with Valle del Norte Apartments, in violation of regulations prescribed by the Secretary of HUD, and while the project was in a non-surplus cash position as defined by the Regulatory Agreement covering the property. The amount of funds so expended was in excess of \$25,000.00

In violation of 12 U.S.C. § 1715z-19 and 18 U.S.C. § 2.

COUNT II

On or about the 22nd day of February, 1993, in the State and District of New Mexico, the defendants, BENJAMIN J. ROSCOE AND GERALDINE M. ROSCOE, knowingly and willfully falsified, concealed, and covered up material facts by a trick, scheme, and device and made false, fictitious, and fraudulent statements and representations and made and used false writing and documents, knowing the same to contain false, fictitious, and fraudulent statements and entries; and did so in matters within the jurisdiction of a department and agency of the United States, in that the defendants knowingly, fraudulently, and willfully submitted to Don Montoya, Assistant Housing Director of Bernalillo, New Mexico, Housing Department, a deed and letter falsely purporting to transfer ownership of Brook Apartments from the defendants to their son, for purposes which include misleading the governmental entities involved, so as to fraudulently and falsely continue Brook Apartments' participation in a program within the jurisdiction of HUD, when such participation was prohibited by virtue of the defendants' ownership of Brook Apartments, in conjunction with a Limited Denial of Participation issued to the defendants by HUD.

In violation of 12 U.S.C. § 1715z-19 and 18 U.S.C. § 2.

⁶Pursuant to 24 C.F.R. § 26.2(c)(8), I take official notice of the indictment and the order of dismissal as matters of public record in the United States District Court for the District of New Mexico.

Subsidiary Findings and Discussion

The purpose of debarment is to protect the public interest by precluding persons who are not "responsible" from conducting business with the federal government. 24 C.F.R. § 24.115(a). *See also Agan v. Pierce*, 576 F. Supp. 257, 261 (N.D. Ga. 1983); *Stanko Packing Co., Inc. v. Bergland*, 489 F. Supp. 947, 948-49 (D.D.C. 1980). The debarment process is not intended to punish; rather, it is designed to protect governmental interests not safeguarded by other laws. *Joseph Constr. Co. v. Veterans Admin.*, 595 F. Supp. 448, 452 (N.D. Ill. 1984). In other words, the purpose of debarment is remedial, not punitive. *See* 24 C.F.R. § 24.115.

In the context of debarment proceedings, "responsibility" is a term of art that encompasses integrity, honesty, and the general ability to conduct business lawfully. *See* 24 C.F.R. § 24.305. *See also* *Gonzalez v. Freeman*, 334 F.2d 570, 573 & n.4, 576-77 (D.C. Cir. 1964). 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 Col., Inc. v. U.S. Dep't of Defense*, 800 F.2d 334, 338 (3rd Cir. 1986). That assessment may be based on past acts. *See Agan*, 576 F. Supp. 257; *Delta Rocky Mountain Petroleum, Inc. v. U.S. Dep't of Defense*, 726 F. Supp. 278 (D. Colo. 1989).

Respondents Are Subject to Debarment Regulations

By entering into the HAP contract and securing mortgage insurance under the Section 236 program (covered transactions under the regulations), Respondents became "participants" and "principals" within the meaning of 24 C.F.R. §§ 24.105(m) and (p). *See* 24 C.F.R. § 24.110(a)(1)(ii)(C)(11). Participants and principals in covered transactions are subject to the jurisdiction of the Department's debarment regulations. 24 C.F.R. § 24.110(a).

Cause Exists to Debar Respondents

The record contains abundant evidence of cause to debar Respondents. Much of that evidence focuses on HAP contracts between Respondents and the Albuquerque Housing Authority. Those contracts require Respondents to use only HUD-approved leases. Gx. 1. The decision issued by a New Mexico state court contains findings of fact that demonstrate that Respondents imposed various charges on tenants at the Brook Apartments that were not authorized by their leases or by HUD. GX. 23, 24.

Respondents also gave cause for debarment by violating the terms of the RA regarding VDN. That agreement specifically requires Respondents to maintain the

premises in good repair and condition. Gx. 4, section 7. Respondents and their agents were notified repeatedly and as early as October 1990 of maintenance deficiencies at VDN. Many of these deficiencies have gone uncorrected. Gx. 5, 6, 10, 11, 22, 26, 28; Tr. 73, 168. In fact, three of Respondents' own witnesses testified that during their employment by Respondents, VDN was not in a fair state of maintenance and repair. Tr. 453-54, 470, 479. Respondents manifested their attitude toward their obligations to ensure proper maintenance of the property by attempting to prevent HUD agents from inspecting VDN and by ignoring deficiency notices. Tr. 12, 97, 157, 235, 308-09, 342-43; Gx. 11.

The RA provides that:

Owners [Respondents] shall not without the prior written approval of the Secretary: assign, transfer, dispose of, or encumber any personal property of the project, including rents, or pay out any funds except from surplus cash, except for reasonable operating expenses and necessary repairs. [Gx. 4]

Respondents were notified in 1991, 1992, and 1993 that they had violated these provisions by using project funds to pay personal legal fees, administrative fees, and a \$3,400 personal note at Sunwest Bank. These notices were based in part on audits submitted by Respondents themselves. Gx. 11, 12, 13, 17, 21, 29; Tr. 126, 27, 201, 234, 343-44, 348. Respondents also improperly invested tenant security deposits and other project income in certificates of deposit rather than using those funds to correct VDN's many physical deficiencies. Gx. 17.

Section 24.305(b) of 24 C.F.R. provides that debarment may be imposed for:

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

- (1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;
- (2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or
- (3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

Section 24.305(f) of 24 C.F.R. provides that a person may be debarred "for material violation of a statutory or regulatory provision or program requirement applicable to a public agreement or transaction...." Although negotiated by private parties and public entities, HAP contracts and RAs are "public agreements" within the meaning of the regulations, because they are agreements invested with the public interest. Respondents entered into HAP contracts with the Albuquerque Housing Authority, a public housing agency as defined in the United States Housing Act of 1937.⁶ Those contracts were part of the "Section 8 Housing Assistance Payments Program." Gx. 1. Respondents' repeated violations of the RA and the HAP contracts fall within the proscriptions of 24 C.F.R. §§ 305(b) and (f) and therefore created cause for debarment.

Finally, Respondents also created cause for debarment by repeatedly violating the terms of the SA of January 22, 1992, which arose out of the LDP issued by the Albuquerque office of HUD on February 11, 1991. Contrary to the requirements of the SA, Respondents failed to obtain the services of a qualified engineering firm to estimate repair costs at VDN; repay project funds that they had used improperly; timely submit specified documents to HUD and to the Albuquerque Housing Authority; and cease imposing improper and unauthorized charges on tenants. Violating a material provision in an agreement settling a debarment action in itself constitutes grounds for debarment.⁷ See 24 C.F.R. § 24.305(c)(4).

In short, the record is replete with evidence showing cause for debarment under 24 C.F.R. §§ 24.305(b), (c)(4), and (f). Accordingly, it is unnecessary to decide, as urged by the Government, whether Respondents have also given cause for debarment by violating 24 C.F.R. § 24.305(d). Nevertheless, debarment cannot stand simply and solely on evidence sufficient to establish cause for debarment. Because debarment is a discretionary action, the seriousness of Respondents' conduct, as well as any evidence in mitigation, must be considered. See 24 C.F.R. § 24.115(d).

Respondents' conduct unquestionably demonstrates serious irresponsibility. They have repeatedly, flagrantly, and willfully refused, in the face of repeated notices and warnings, to comply with requirements imposed upon them by agreement, contract, regulation, and statute. Their contumacy has provoked at least five separate legal actions in three different fora since 1991 in vain attempts to convince Respondents that they must conform their conduct with the requirements of the law. An LDP was issued in 1991, followed by this debarment action in 1993, a state court class action lawsuit in 1992, federal court civil litigation initiated by tenants in 1993,

⁷The SA in this case grew out of an LDP, a type of debarment.

and finally a federal criminal case in 1994. Respondents have not prevailed in any of these actions. The record contains no evidence to mitigate their offenses.

Respondents have mounted a militant defense that attacks the Government's case on the facts, on the law, on procedural grounds, and with broadside allegations that they are victims of numerous incompetent and dishonest Government agents who are unlawfully seeking to punish them. Their post-hearing brief consists of two volumes comprising 151 unnumbered pages.⁸ Volume two of their brief contains 19 separate motions setting out most of their arguments, which will be addressed below. All of the motions will be denied.

Motion 1: To Dismiss
Complaint Allegations Unsupported by Probative Evidence⁹

Respondents contend that the Government failed to submit probative evidence to support Complaint paragraphs 6 (improper labor charges), 12 (improper tenant charges), 13 (failure to submit documents), and 14 (failure to establish a rent schedule). Respondents' contention is mostly baseless.

Nearly all of the allegations in paragraphs 6 and 12 of the Complaint are supported by findings made by the New Mexico district court. That court found on May 28, 1992, and September 14, 1992, that Respondents overcharged tenants for rent and repair costs. Gx. 23, 24. However, the record does not show that Respondents failed to demonstrate to HUD that tenants who had been overcharged received a refund, as alleged in paragraph 12 of the Complaint.

As for paragraph 13 of the Complaint, the SA required Respondents to submit several different documents to HUD and to the Albuquerque Housing Authority by certain deadlines. As explained elsewhere in this decision, Respondents either failed to timely submit a document, or if timely submitted, the document failed to contain the information dictated by the SA. However, the record fails to prove that the schedule of labor costs finally submitted by Respondents contained excessive and unauthorized charges, as alleged in the last sentence of paragraph 13 of the Complaint.

Paragraph 14 of the Complaint addresses the SA requirement that Respondents submit to HUD a rent schedule approved by the Albuquerque Housing Authority and

⁸ Respondents failed to follow the court's instructions regarding the length and format for the post-hearing briefs.

⁹ Some of Respondents' motions will be paraphrased to clarify their meaning.

consistent with HUD guidelines. Respondents introduced a copy of a letter dated February 1, 1992, addressed to an attorney for the City of Albuquerque which purports to set out the rent schedule for Brook Apartments. Rx. 16. However, the rents on this schedule differ significantly from the rents contained in another rent schedule dated March 2, 1993, covering the same period, which was also introduced into the record by Respondents. Rx. 18. In the cover letter to the schedule dated March 2, 1993, Mr. Roscoe acknowledged that Albuquerque Housing Authority approval for the rent schedule had not been secured as of that date. I therefore conclude that, as alleged in paragraph 14 of the Complaint, Respondents failed to submit to HUD a rent schedule approved by the Albuquerque Housing Authority and consistent with HUD guidelines.

The minor failures of proof explained above fall far short of undermining the Government's case.

Motion 2: To Quash
Government's Supplemental Pleadings

Pursuant to Order, on December 17, 1993, the Government filed supplemental pleadings showing that after the Complaint was filed Respondents attempted to increase tenant rents at VDN, prompting the tenants to file a class action in state court, which in turn led to issuance of an injunction against Respondents. Section 26.12(b) of the rules of practice (24 C.F.R. § 26.12(b)) authorizes supplemental pleadings "concerning transactions, occurrences, or events which have happened or been discovered since the date of prior pleadings." Respondents' argument to the contrary notwithstanding, the rules do not require the Government to first file a notice of administrative action pursuant to 24 C.F.R. § 26.9 before filing a supplemental pleading. Section 26.9 pertains to the procedure required to initiate a case, not to the procedure required to expand the scope of a case already in litigation.

Motion 3: To Dismiss Allegations
Barred by LDP Dismissal with Prejudice

Respondents argue that paragraphs 8, 10, 15, 19, and 20 of the Complaint must be dismissed because they cover matters dismissed with prejudice against the Government as a result of the SA of the 1991 LDP. Respondents have their argument exactly backwards. Pursuant to a joint motion by the parties, Respondents' appeal and request for hearing from the 1991 LDP were dismissed with prejudice against *Respondents*; the dismissal was not with prejudice against the Government. In other words, Respondents' appeal from the LDP was dismissed, not the LDP itself. Dismissal therefore did not preclude the Government from later seeking to impose

sanctions against Respondents based on the same facts that prompted issuance of the LDP. *See* Exhibits B and C, Government's Post-Hearing Brief. Moreover, 24 C.F.R. § 24.710(b) provides that the "imposition of [an LDP] shall not affect the right of the Department to suspend or debar any person under this part."

Motion 4: To Dismiss Cause Allegations
for which HUD Already Has Remedies

Respondents further argue that paragraphs 8, 9, 10, 15, 19, and 20 of the Complaint should be struck because HUD has failed to avail itself of its contractual remedies before resorting to this debarment action to redress the wrongdoing alleged in those paragraphs of the Complaint. This argument has no merit because HUD is not obligated to exhaust all other legal and equitable remedies before bringing a debarment action.

Motion 5: First Motion to Vacate
the Administrative Action Under Review

Respondents contend that this administrative action must be vacated because, by virtue of the LDP of 1991 and their suspension by HUD in March 1993, they were not "participants" in covered transactions at the time of the events giving rise to this action. Respondents argue, in effect, that the Secretary no longer has jurisdiction over them because they are no longer "participants." That argument has no merit, because the debarment regulations apply to persons who have participated in covered transactions in the past as well as current participants. *See* 24 C.F.R. § 24.110(a). Respondents unarguably participated in covered transactions in the past and hence fall under the jurisdiction of the Secretary. Furthermore, under 24 C.F.R. § 24.220, HUD may authorize the continued participation of a debarred or suspended person.

Motion 6: Motion to Dismiss Allegations
Citing Violations of SA as Causes for Debarment

Respondents contend that their alleged violation of the terms of the SA cannot create cause for debarment because violating the terms of an SA based on an LDP is not a listed cause for debarment in 24 C.F.R. § 24.305. That argument has no merit because 24 C.F.R. § 24.305(c)(4) expressly prohibits violation of a material provision of "any settlement of a debarment or suspension action," and an LDP is a type of debarment action. *See In the Matter of Jeffrey J. Wirth, The Wirth Companies, and The Small Building Redevelopment Corp.*, HUDALJ 93-1941-DB(LDP)(February 10, 1994).

Motion 7: To Quash Allegations Based on
Alleged Civil Judgment as Grounds for Suspension and Debarment

Respondents argue that paragraphs 16 and 17 of the Complaint cannot describe cause for debarment because these paragraphs relate to a state court action that led to an injunction rather than to a civil judgment, admittedly a cause for debarment under 24 C.F.R. § 24.305(c)(4). Whether or not a state court injunction constitutes a civil judgment (or civil liability) within the meaning of the debarment regulations, the findings of fact upon which the New Mexico state court issued its injunction clearly show that Respondents violated the terms of the HAP contracts. Official notice has been taken of those findings of fact. By imposing and attempting to impose rents and charges contrary to the terms of the HAP contracts, Respondents engaged in a "material violation of a statutory or regulatory provision or program requirement applicable to a public agreement" within the meaning of 24 C.F.R. § 24.305(f). Respondents had been warned that they must comply with the terms of HAP contracts and were prohibited from requiring tenants to pay anything except charges authorized by contract and by HUD. Their violations of 24 C.F.R. § 24.305(f) were therefore clearly willful, not accidental.

Motion 8: To Dismiss Allegations Based on Events that Occurred
When Respondents Were Not Managers of VDN

Although Respondents selected Monarch as management agent for VDN, they did not thereby escape responsibility for compliance with the SA and the RA, their argument to the contrary notwithstanding. Under the RA and their agreement with Monarch, Respondents were obligated to supply the necessary funds to meet the expenses of VDN, regardless of who managed the property. Gx. 30. These expenses included, *inter alia*, mortgage payments and physical repair costs. Furthermore, in their management contract with Monarch, Respondents agreed to indemnify Monarch for any liabilities incurred during the term of the agency:

The Agent shall not be liable for any error of judgment or for any mistake of fact or law, or for anything which it [the Agent] may do or refrain from doing hereinafter, except in cases of willful misconduct or gross negligence.

* * *

Everything done by Agent ... shall be done as the agent of the Owner, and all obligations of expenses incurred hereunder shall be for the account of, on behalf of, and at the expense of Owner

Respondents do not argue and the record contains no evidence that Monarch was guilty of willful misconduct or gross negligence while it managed VDN. Therefore, because Respondents were the principals of Monarch, they are responsible for Monarch's management of VDN affairs as though they conducted those affairs themselves.

Motion 9: To Dismiss Allegations for which HUD Failed to Promptly
Report Information on Causes for the Administrative Action

Respondents argue that paragraphs 8, 9, 10, 15, 16, 17, 18, and parts of paragraphs 19 and 20 of the Complaint must be dismissed because HUD took more than a year after the alleged events occurred to take action against Respondents, in violation of 24 C.F.R. § 24.311, which requires that information concerning cause for debarment shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. That argument has no merit.

Although the regulations do not define "promptly," the lapse of time between the date when cause for debarment occurred and the date the debarment action began could, in a particular case, undermine the probative force of the alleged cause for debarment. In other words, if evidence for debarment is too stale, it may fail to prove that the respondent is not "presently responsible." But the instant case does not suffer from that problem. The record covers a period of several years, and Respondents have been repeatedly irresponsible throughout the period. Furthermore, the record does not show that Respondents suffered any prejudice as a result of the amount of time HUD took to begin this action after Respondents first gave cause for debarment.

Motion 10: Second Motion to Vacate the Administrative Action

Respondents argue that the case must be dismissed because it rests on the incredible testimony of two HUD witnesses: Tracy Ingles and Robert Salazar. Respondents' argument is meritless.

According to Respondents, the testimony of these two witnesses is not worthy of credit because they prepared a letter addressed to Respondents falsely claiming that Respondents failed to pay \$8,000 to the project as required by the SA. Gx. 8. However, the letter in question, dated April 20, 1992, does not say that Respondents failed to pay the \$8,000; rather, the letter asserts that Respondents submitted a document that failed to properly *account* for the \$8,000 payment. The pertinent paragraph states:

The current review of the audited financial statement for fiscal year ending 12/31/91, does not reflect payment of \$8,000 to the

project in the Statement of Receipts and Disbursements or elsewhere in the statements.

Respondents also complain that the letter of April 20, 1992, falsely claims that they had failed to submit monthly accounting reports. Again, the letter does not state that the reports had not been submitted, but rather that reports "confirming repayment of monies as outlined" in the SA had not been submitted.

Respondents similarly complain that, contrary to an assertion in the letter of April 20, 1992, they in fact submitted to HUD a document entitled "Physical Assessment and Cost Estimate of Repairs," as required by the SA. However, the record shows that Respondents did not submit that report until after May 13, 1992. GX. 9. The letter of April 20, 1992, was therefore accurate. Furthermore, when Respondents finally did submit the required report, it was fatally defective in that it did not address previously identified structural defects at VDN, did not appear to have been prepared by a qualified engineer, did not cover all of the units in the project, and did not include estimates for the cost of repairs. Gx. 9.

Respondents repeat the pattern of their arguments in their complaint that the letter of April 20, 1992, falsely states that they did not provide the City with a quarterly rent schedule and a schedule of repair labor costs. The letter of April 20, 1992, asserts that Respondents had failed to supply the City with a general schedule of labor costs for typical repairs, and that Respondents had failed to provide the City with "confirmation of your agreement to submit all lease addenda, tenant rules, etc., for approval...in relation to the establishment of a quarterly rent schedule." Contrary to Respondents' argument, the letter does not state that Respondents had failed to give the City a quarterly rent schedule. Moreover, the only evidence supporting Respondents' assertion that they indeed sent the City a general schedule of labor costs for typical repairs is a copy of a self-serving letter addressed to an attorney for the City and signed by Mr. Roscoe on March 2, 1993, in which Mr. Roscoe claims to have sent the schedule to the City a year earlier. The record contains no other proof that the schedule was sent, that the addressee of the letter of March 2, 1993, received it, or that the City in fact ever received a schedule of labor costs from Respondents. Respondents' argument on these points cannot be credited.

It is unnecessary to address the other meritless arguments Respondents make in their attempt to undermine the credibility of Ms. Ingles and Mr. Salazar. I find that Ms. Ingles and Mr. Salazar were credible witnesses based on their demeanor at hearing and a review of the evidence as a whole.

Motion 11: To Dismiss Certain Paragraphs in the Complaint
Because HUD Failed to Show Alleged Violations Were Willful

Respondents move to dismiss paragraphs 6 through 15 and 19 and 20 of the Complaint because the Government failed to show that the violations alleged in those paragraphs were willful. The motion has no merit. In *In re Seb J. Passanesi*, HUDALJ 92-1835-DB (December 16, 1992), this court defined "willful" as follows:

Conduct is "willful" when "the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow...." *Prosser and Keeton on the Law of Torts* at 213, 5th ed., West Publishing Co. (1984). "Willful" behavior must be distinguished from "mere mistake resulting from inexperience, excitement or confusion, and...mere thoughtlessness or inadvertence, or simple inattention." *Id.* at 214.

Respondents did not commit mere mistakes resulting from inexperience, excitement, confusion, or inattention. They repeatedly failed to comply with instructions from HUD and with clearly expressed duties imposed by contract, agreement, and regulation. Their conduct was unquestionably "willful" within the meaning of the regulations.

Motion 12: To Quash Government Exhibits and Testimony

Respondents move to quash all of the Government's evidence because they claim that some of the documentary evidence did not accompany Government witnesses as required when they were deposed and because the Government allegedly failed to exchange proposed exhibits and witness lists as required before the hearing. This motion essentially duplicates an unsuccessful motion made by Respondents at hearing. The motion will be denied again because Respondents have failed to demonstrate either that the Government failed to comply with the court's orders, or, assuming the Government indeed failed to comply with the court's orders in some respect, that they suffered any prejudice as a result of that failure. Respondents clearly had adequate notice of the Government's case to permit preparation of their defense.

Motion 13: To Vacate the Administrative Action Because
It Was Motivated by Baseless Fear

Respondents complain that Mr. Salazar justified Respondents' debarment on the ground that he feared Respondents would default on the VDN mortgage, forcing HUD to pay off the mortgage. Respondents argue that Mr. Salazar's fear is baseless, and that in

any event, the Government would not be injured by a default because the property is worth far more than the mortgage. In other words, Respondents argue that they should not be debarred because there is no realistic risk that they will cause the Government any financial harm. Respondents' complaint is beside the point. The ultimate issue in this proceeding is whether or not Respondents are "presently responsible." That term includes not only financial responsibility but also the capacity and willingness to comply with governmental rules and regulations. The record in the instant case amply demonstrates that Respondents are unable or unwilling to comply with governmental rules and regulations. They must therefore be considered irresponsible, quite apart from their financial condition.

Motion 14: To Vacate the Administrative Action Because
It Was Motivated by a Desire to Punish Respondents

HUD has acknowledged that it is doing business with Respondents and intends to continue doing so even though Respondents are suspended and regardless of the outcome of the debarment proposal. In light of this acknowledgment, Respondents argue that HUD is seeking to debar them for punishment purposes and not for legitimate reasons. This argument has no merit.

HUD intends to continue doing business with Respondents (at least in the near term) out of concern for their low-income tenants. To sever all business ties with Respondents, HUD would have to permit Respondents to pay off the mortgage that HUD insures. But if HUD were to allow prepayment of Respondents' section 236-insured mortgage, federal restrictions on the use of the property for the benefit of low and moderate-income households would end. HUD counsel has explained that prepayment of such mortgages is allowed only when HUD concludes that doing so would not materially increase the economic hardship of current tenants; would not cause individuals to pay more than 30 percent of their income for rent; and would not cause involuntary displacement where comparable affordable housing is unavailable. *See* 24 C.F.R. § 248.141. HUD asserts that these conditions cannot be satisfied in the current market for housing in Albuquerque. HUD is therefore encouraging sale of the property to a new owner who would be subject to the same restrictions under which Respondents have operated VDN for the benefit of many low and moderate-income tenants.

Regardless of whether or not Respondents sell VDN and pay off their mortgage, upon Respondents' debarment the Government will have the tool in place that will prevent Respondents from entering into any additional covered transactions at HUD and throughout the Executive Branch of the Federal Government and from participating in

procurement contracts at HUD. These results suffice to justify HUD's pursuit of debarment, whether or not Respondents continue to own VDN with a HUD-insured mortgage.

Motion 15: To Dismiss Certain Allegations of the Complaint for Failure to Show Adverse Effect on Integrity of Any Agency Program

Respondents complain that inasmuch as the Section 236 insurance program (the only agency program in which they have participated) is alive and well, they cannot be accused of having adversely affected the "integrity" of an agency program. Respondents misinterpret the meaning of "integrity" in 24 C.F.R. § 24.305(b). It is not necessary to demonstrate that an entire governmental program failed or was in danger of failing as a result of a respondent's conduct in order to show cause for debarment. Any significant or material violation of an agency program requirement necessarily will have an adverse effect, however small, on the integrity of the program, thereby providing cause for debarment.

Motion 16: To Vacate Administrative Action for Failure to Show Effects on Government's Interests

The motion will be denied as incomprehensible.

Motion 17: To Vacate Administrative Action for Failure to Comply with 24 C.F.R. Sec. 24.310

Respondents argue that this action must be vacated because it rests on recommendations for debarment by HUD personnel who had no first-hand information regarding the alleged causes for debarment, and because HUD's "information source employees" did not have first-hand information regarding the alleged causes for debarment, in violation of the requirements set out in 24 C.F.R. § 24.310. The regulations do not require the debarring official (the official who proposes debarment) to have first-hand knowledge of the causes for debarment. Nor do the regulations require that each Government witness possess first-hand knowledge of the alleged causes for debarment. Hearsay testimony is admissible and may be relied upon in a debarment proceeding. If the preponderance of the evidence in the record shows cause for debarment, as here, the Government has satisfied its burden.

Motion 18: To Vacate Administrative Action for Failure of HUD to Sufficiently Investigate

This motion essentially duplicates Motion 17.

Motion 19: That the Court Find that HUD Perverted
the System for Debarment and Suspension

This motion summarizes arguments made in other motions and urges the court to find that the action was brought for punishment rather than remedial purposes. Although the record contains some evidence suggesting that some HUD personnel may have misunderstood the purpose of a debarment proceeding, as explained *supra*, the preponderance of the evidence demonstrates ample cause to debar Respondents. Respondents' debarment rests on objective evidence untainted by improper motives on the part of some misinformed Government employees.

Respondents' Other Arguments Have No Merit

In addition to the arguments contained in the motions set out above, Respondents have also argued that they should not be debarred because various HUD employees have engaged in misconduct in connection with this case. Respondents have been informed repeatedly that equitable defenses are not available to them in this administrative proceeding, and that evidence of misconduct by Government employees would be admitted only upon a preliminary showing that the alleged misconduct by Government employees was directly relevant to Respondents' conduct as alleged in the Complaint. Respondents were told that such preliminary showing would have to demonstrate that Respondents did not, in fact, engage in the conduct alleged in the Complaint. Respondents were further informed that unsworn allegations from them would not suffice, and that in order to satisfy this threshold requirement, they would have to submit affidavits made under oath and subject to penalties for perjury, reliable documentary evidence, transcripts from other adjudicatory proceedings, or other relevant and persuasive evidence. Respondents have made no such preliminary showing, and there is no reliable evidence of governmental misconduct in the record.

Before submitting their brief, Respondents filed a series of post-hearing motions to which the Government either failed to respond or did not respond timely. On November 25, 1994, Respondents filed a proposed order arguing that the allegations contained in their post-hearing motions must be deemed admitted because of the Government's failure to respond timely to their motions. Respondents further demanded that if the proposed order was not issued within five days, the "judge in this case be excused."

On November 1, 1994, Respondents were ordered to cease filing substantive motions in an Order noting that they were directed at hearing to make their legal arguments in their post-hearing brief, not in post-hearing motions. The Government will

not, therefore, suffer any prejudice for failing to respond timely to motions filed in contravention of the court's order.¹⁰

Respondents' demand that the presiding judge "be summarily excused" from this case does not comply with the rules of practice governing this proceeding, and it has no support in fact or law. Section 26.5 of the rules (24 C.F.R. § 26.5) provides in part:

Whenever any party believes that the hearing officer should be disqualified from presiding in a particular proceeding, the party may file a motion with the hearing officer requesting the hearing officer to withdraw from presiding over the proceedings. This motion shall be supported by affidavits setting forth the alleged grounds for disqualification.

Respondents did not submit affidavits in support of their demand.

Respondents complain that I am biased against them. The Supreme Court has ruled that "governmental decision-makers are considered unbiased absent a showing of conflict of interest or some other specific reason for disqualification." *Schweiker v. McClure*, 456 U.S. 188, 195 (1982). To show bias, a party must present evidence that the decision-maker possesses some interest outside of the proceeding favoring a particular outcome. Absent such a showing, hearing officers and administrative law judges are assumed capable of judging a controversy fairly and without bias or prejudice. *See Giles Lowery Stockyards, Inc. v. Dept. of Agriculture*, 565 F.2d 321, 324 n.2 (5th Cir. 1977) *cert. denied*, 436 U.S. 957 (1978). I have no interest outside of this proceeding favoring a particular outcome, and I harbor no bias or prejudice against Respondents. Accordingly, there is no reason why I should withdraw from this proceeding.

Respondents' remaining arguments, although not expressly addressed herein, have been carefully considered and rejected because they are either incomprehensible, repetitious, or frivolous.

* * *

The Government proposes that Respondents be debarred for a period of five years. Section 24.320(a) of 24 C.F.R. provides that debarment "shall be commensurate with the seriousness of the causes(s)." Subsection 24.320(a)(1) of 24 C.F.R. provides further that for cases other than those involving illegal drugs, debarment "generally should not exceed


¹⁰The motions filed by Respondents between the hearing and the filing of their brief have not been addressed because they were filed in violation of the court's order.

three years," but where "circumstances warrant, a longer period of debarment may be imposed."¹¹ This is not an ordinary case. Over a period of several years Respondents have repeatedly demonstrated their inability or unwillingness to comply with the law, including several orders issued by this court. On the record before me, it appears a near certainty that Respondents will continue to behave irresponsibly long into the future. If the Government had proposed a longer period of debarment, even an indefinite period, that proposal would have been endorsed as consistent with the public interest.

Conclusion and Determination

Respondents' motions 1 through 19 are denied.

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause exists to debar Respondents Benjamin J. Roscoe and Geraldine M. Roscoe from participating in covered transactions as either participants or principals at HUD and throughout the Executive Branch of the Federal Government, and from participating in procurement contracts at HUD, for a period of five years beginning October 5, 1992.


THOMAS C. HEINZ
Administrative Law Judge

¹¹Notwithstanding Respondents' contrary argument, the regulations do not restrict five-year debarment periods to drug cases.