

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

In the Matter of:

LEWIS ALLEN,  
Respondent.

HUDALJ 95-5022-DB(LDP)  
Decided: July 12, 1995

Lewis Allen, *pro se*

Georjan D. Overman, Esq.  
For the Department

Before: William C. Cregar  
Administrative Law Judge

**INITIAL DETERMINATION AND ORDER**

Respondent, Lewis Allen, appeals the July 28, 1994, Limited Denial of Participation ("LDP") for a one year period issued by James L. Brady, Acting Deputy Assistant Secretary for Single Family Housing, U.S. Department of Housing and Urban Development ("the Department" or "HUD"). A hearing on this matter was held in Oakland, California, on March 14, 1995. Following the timely submission of the Department's post-hearing brief<sup>1</sup>, the record closed on May 10, 1995.

The Department alleges that Respondent, while employed by Prime Properties of El Sobrane, California, ("Prime Properties") violated HUD regulations and instructions by devising a false gift letter in the amount of \$10,000 and artificially inflating the purchase price of single family property secured by a HUD insured mortgage by that amount. The Department asserts that Respondent's action evidences a lack of present responsibility and that the issuance of an LDP is necessary to protect the public interest. Respondent denies the Department's allegations.

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<sup>1</sup>Respondent did not file a post-hearing brief.

### Findings of Fact

1. Respondent is a licensed real estate and mortgage broker, doing business in Richmond, California. He was employed as a real estate sales agent by Prime Properties from 1987 through 1993. Govt. Ex. 15, pp. 6, 7. He also owns and controls L.A. & Associates.

3. On March 3, 1992, [REDACTED] Raj and [REDACTED] Raj signed an Exclusive Authorization and Right to Sell agreement with Prime Properties, authorizing Prime Properties to act as sales broker for their residence at [REDACTED] Moyers Road, Richmond, California. Respondent signed this agreement as the real estate broker for Prime Properties. The agreement reflected a sales price of \$139,950. Govt. Ex. 1. Because of prevailing economic conditions, Respondent was unable to sell the property at that price. Similar properties were selling for only \$112,000 to \$115,000. Accordingly, Respondent advised the Raj's that they should lower their sales price. Tr. pp. 160-61.

5. On May 27, 1992, [REDACTED] Jones, [REDACTED] Jones, and [REDACTED] Jones presented an offer in the form of a Real Estate Purchase Contract and Receipt for Deposit to purchase the property. Although they are carbon copies of the same original, the Raj's copy and the broker's copy of the form reflect different offers, respectively, of \$115,000 and \$128,000. Govt. Exs. 2, 4.<sup>2</sup>

6. On May 27, 1992, the Raj's made a counter offer in the amount of \$120,000. The purchasers countered with \$118,000, which the Raj's accepted on June 8th. Govt. Ex. 3.

7. Respondent was subsequently informed by the title insurance company that the amount of outstanding liens and encumbrances on the property precluded selling the property for \$118,000. Tr. p. 163. Respondent arranged for a \$10,000 "gift" from one [REDACTED] Davis to [REDACTED] Jones. The "gift" is memorialized by a gift letter signed by [REDACTED] Davis dated July 28, 1992. The letter refers to [REDACTED] Jones as Mr. Jones' cousin. It further provides:

No payment of this gift is expected or implied either in the form of cash or by future services of the recipient(s).

Govt. Ex. 20, p. 4.

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<sup>2</sup>The broker's copy of this document has been altered. The figure of \$4,000 for the "balance of down payment," on the original was altered to \$9,000 and the figure of \$115,000 was altered to \$128,000.

8. Respondent persuaded the Raj's to execute a personal note in the amount of \$10,000 from the Raj's to L.A. & Associates entitled "Straight Note (Balloon Payment)." This note was executed on August 3, 1992, and bears the Raj's signatures. Govt. Ex. 6, Govt. Ex.15, p. 30; Tr. pp. 164-65.

9. The ultimate purchase price of the property as reflected on the HUD settlement statement was \$128,000. At closing, \$10,000 was subtracted from the purchase price "to pay personal note." Govt. Ex. 20, p.1. Respondent did not insure disclosure on the settlement statement of the fact that the personal note was made payable to Respondent's company, nor did he inform HUD of this fact. The \$10,000 was duly deposited in an account belonging to L.A. & Associates. Respondent later withdrew \$10,000 from the account. He transferred the money to [REDACTED] Jones who purchased a cashier's check in that amount which was made payable to [REDACTED] Davis. Govt. Ex. 15, pp. 26-30.

10. HUD's mortgage credit handbook provides:

*Gift funds.* An outright gift of the cash investment or of equity in the property is acceptable if the donor is a relative of the borrower, the borrower's employer or labor union, a charitable organization, a governmental agency or public entity that has a program to provide homeownership assistance to low-and moderate-income families or first-time homebuyers, or a close friend with a clearly defined interest in the borrower. A gift from any other source is considered an inducement to purchase and requires a reduction in the sales price. *No repayment of the gift may be expected or implied.*

Govt. Ex. 21, pp. 1,2 (HUD Handbook 4155.1 Rev-4)(emphasis added).

11. There are two adverse consequences to HUD resulting from the use of a false gift to purchase real estate. First, taxpayers through HUD are exposed to a greater payout (in this case \$10,000) in the event of a default than would be the case had the property been sold for the bargained for purchase price. Second, purchasers are more likely to default if they have no financial stake in the property. Tr. pp. 133-34.

### Discussion

HUD regulations authorize the limited denial of participation of participants and principals in HUD programs. As a real estate agent and broker Respondent participated in the sale of a single family property secured by a HUD insured mortgage, a primary covered transaction. Accordingly, he is a principal and participant. 24 C.F.R. §§ 24.105 (p)(11) and 24.110(a).

An LDP is a type of debarment. Debarments are imposed by agencies of the Federal in order 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)." *In the Matter of Jeffrey Wirth, et al*, HUDALJ 93-1941-DB(LDP) (February 10, 1994). *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).

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; *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. *Wirth*; *See also 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 Agan*, 576 F. Supp. 257; *Delta Rocky Mountain Petroleum, Inc. v. U.S. Dep't of Defense*, 726 F. Supp. 278 (D.Colo. 1989).

Section 24.700 of 24 C.F.R. authorizes HUD to impose an LDP on participants in HUD programs based on adequate evidence of, among other things:

Violation of any law, regulation, or procedure relating to . . . insurance. . . .

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Making or procuring to be made any false statement for the purpose of influencing in any way any action of the Department.

24 C.F.R. § 24.705(a)(9) and (10). "Adequate evidence" is "[i]nformation sufficient to support the reasonable belief that a particular act or omission has occurred." 24 C.F.R. § 24.105. Adequate evidence establishes that Respondent knowingly participated in a scheme to generate a false gift letter and to artificially inflate the sales price of a single family property, thereby inducing HUD to insure a mortgage in violation of its requirements.

The "Straight Note, Balloon Payment," constitutes adequate evidence that the transfer of \$10,000 to the Raj's was not in fact a gift, but instead was a loan to them. Adequate evidence further establishes that this loan was repaid out of the sales proceeds. Respondent did not inform HUD of either of these facts.<sup>3</sup> In addition, the record

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<sup>3</sup>The actual nature of this transaction only came to light when the Raj's complained to their attorney, Granade Wilson, that the Internal Revenue Service had sent them a document indicating that their property had been sold for \$128,000 when they had understood the sales price to be \$118,000. Mr. Wilson informed HUD of this discrepancy and brought suit to recoup this amount.

establishes that Respondent was aware that HUD required buyers to have an actual, not a fictitious, investment in the property. Indeed, he admits that he was aware that sellers are prohibited from paying the down payment and that these rules protect the Department from the risk of default. Tr. pp. 170-71. Finally, the prohibition is implied by the language of the gift letter itself which, although not directly prohibiting repayment, states that no repayment of a gift "may be expected or implied." Govt. Ex. 20, p. 4.

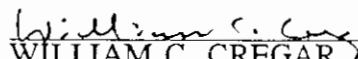
Respondent's knowing participation in a scheme to create a false gift letter and to artificially inflate the purchase price of single family property without disclosing the true nature of this transaction to the Department, increased the risk of a default and increased the Department's financial exposure in the event of such a default. Thus, his conduct indicates a lack of present responsibility. Accordingly, the record demonstrates that Respondent poses a risk to the government were it to do business with him in the future.

Respondent contends that his acts should be excused because he was merely helping the Raj's out of a financial predicament, and that he received a small commission. Respondent's first excuse subordinates the public interest to the mutual commercial interest of both Respondents and sellers. This rationale could, if universally applied, justify virtually any violation of regulations designed to protect the public fisc. The second contention is a *non sequitur*. Respondent's acts establish that he would pose a risk to the Department even if he had received no commission.

Accordingly, I conclude that an LDP for one year is supported by adequate evidence and is necessary to protect the public interest and to impress upon him the importance of complying with the rules, regulations, and criteria governing federal housing programs *In the Matter of Salvadore Doucette*, HUDALJ 86-1066-DB (Nov. 26, 1986) at p. 4.

### ORDER

For the foregoing reasons, the issuance of the LDP for a period of one year is *affirmed*.

  
WILLIAM C. CREGAR  
Administrative Law Judge

Dated: July 12, 1995