

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

In the Matter of:

YOEL MOVTDY,

Respondent.

HUDALJ 95-5054-DB(S)

Dated: August 21, 1995

Kevin J. Keating, Esquire  
For the Respondent

Scheryl C. Portee, Esquire  
For the Government

Before: Robert A. Andretta  
Administrative Law Judge

**INITIAL DETERMINATION**

**Statement of the Case**

This proceeding arose as a result of a suspension by the Department of Housing and Urban Development ("the Department" or "HUD") dated April 27, 1995, of Respondent Yoel Movtady from participation in primary covered transactions and lower tier covered transactions as either a participant or principal at HUD, and throughout the Executive Branch of the Federal Government, and from participating in procurement contracts with HUD. The suspension was imposed pending resolution of the subject matter of an indictment returned by a Federal Grand Jury that was convened for the U.S. District Court for the Eastern District of New York, and any legal, debarment or Program Fraud Civil Remedies Act proceedings which may ensue. The indictment, dated November 30, 1994, charges Respondent with violation of Title 18, §§ 2, 371, 1343, and 3551, *et seq.*, of the United States Code.

By letter dated June 2, 1995, counsel for Respondent Movtady requested a hearing on the suspension. On June 12, 1995 the matter was assigned to me to conduct the appropriate proceedings under the Department's rules that are codified at 24 CFR Parts 24 and 26, and jurisdiction is thereby obtained. Because the suspension is based upon an indictment, the proceeding in this case is limited by the regulation found at 24 CFR

§ 24.313(b)(2)(ii) to a review on the record of documentary evidence and briefs submitted by the parties.

On June 12, 1995 I issued a Notice Of Hearing And Order stating the limitation of the proceedings to that of a review of the record, and setting forth a schedule for the submission of briefs and documentary evidence by the parties. On August 14, 1995 Respondent's Response Brief to the Government's Brief In Support of Suspension was timely received by this forum. Thus, this matter became ripe for an initial determination on this last-named date.

### Findings Of Fact

On November 30, 1994 Yoel Movtady was charged by the Grand Jury in a seven-count indictment in the U.S. District Court for the Eastern District of New York for violating Title 18, §§ 371, 1343, 2, and 3551 *et seq.*, of the United States Code. Respondent Movtady is vice president of Liberty Mortgage Bankers, Ltd. ("Liberty"), a HUD-approved lender. Movtady is also vice president of Camel Properties, Inc. ("Camel"), and the 22-12 123rd Street Corporation ("Street").

The indictment charges that between March 1990 and December 1992, Yoel Movtady conspired with [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and others to devise a scheme and artifice to knowingly and willfully defraud the Federal Home Mortgage Corporation ("Freddie Mac") and to obtain money and property from Freddie Mac by fraudulent pretenses and representations for the purpose of executing the scheme by means of wire communications in interstate commerce. In addition, Yoel Movtady and others are charged with knowingly and willfully conspiring to defraud the Federal National Mortgage Association ("Fannie Mae"), between September and November of 1990, through the sale of residential mortgage loans by means of wire communications in interstate commerce.

In a further count of the indictment, Movtady and others are charged with a scheme to defraud the National Westminster Bank ("NatWest"), a federally-insured financial institution in New York, by causing wire transfers of cash and negotiable securities from Fannie Mae's account at Security Pacific Bank in New York. These funds are alleged to have been transferred to Liberty's mortgage account with the European American Bank in Uniondale, New York.

The indictment also charges that in September 1990, Liberty obtained a loan of approximately \$2.3 million from NatWest and other lending institutions, and that the money was lent to Liberty to fund several residential mortgage loans. Liberty is alleged to have sold these mortgage loans to Fannie Mae with the proceeds supposed to be

distributed to NatWest. Instead, it is alleged that the funds were wire transferred from Fannie Mae to Liberty's brokerage account at Security Pacific and from Security Pacific to Liberty's mortgage account with European American Bank. The Grand Jury believed that these transactions were for the purpose of obtaining money and property by false and fraudulent pretense and representations.

### **Discussion**

Respondent Movtady, at all times relevant to this matter, was vice president of Liberty, an FHA-approved mortgagee. Liberty is a company that originated residential mortgage loans, underwrote mortgage loans originated by other brokers, and resold them on the secondary market. Liberty was approved as a Freddie Mac mortgage seller in 1987 to sell conventional mortgage loans. In 1989, Congress transferred to the secretary of HUD all regulatory authority and oversight responsibility of Freddie Mac. In addition, Liberty became an approved Fannie Mae mortgage seller in 1984. Therefore, Respondent Movtady is a participant and principal as defined in the Department's regulations found at 24 CFR §§ 24.105(m), 24.105(p), and 24.110(a), and he is therefore subject to suspension under the provisions of 24 CFR Part 24 as next described.

It is the responsibility of the federal government to do business only with responsible persons. 24 CFR § 24.115(a). Accordingly, HUD is authorized to impose suspensions to protect the public interest. 24 CFR § 24.115(b). A principal may be suspended from further participation in covered transactions based on adequate evidence to suspect that the principal has committed fraud or made false statements. 24 CFR §§ 24.405(a), 24.305(a)(1) and (3).

In this case, Respondent has been indicted on multiple counts of fraud and making false statements to HUD. Charges of fraud and making false statements demonstrate a lack of business integrity and honesty that poses a clear and immediate threat to the government. Under the regulations, an indictment constitutes "adequate evidence" for purposes of a suspension action. 24 CFR § 24.405(b). This conclusion has been upheld by an United States Court of Appeals in *James A. Merrit and Sons v. Marsh*, 791 F.2d 328 (4th Cir. 1986) at 330:

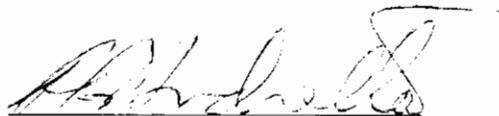
A decision to issue an indictment is made by a deliberative public body acting as an arm of the judiciary, operating under constitutional and other legal restraints. The Constitution does not require the government to wait for the outcome of the criminal proceedings before implementing an administrative suspension when a contractor has been accused of fraud after the grand jury's

investigation and deliberative process.... The formalities attendant to issuing an indictment carry sufficient indicia of reliability to allow the government to act to protect itself against future dealing with someone accused of fraud.

Thus, while an indictment is not proof of guilt, it constitutes probable cause to believe that the allegations contained in it are true. The allegations in this case indicate a lack of business integrity "that seriously and directly affects the present responsibility of a person." 24 CFR § 305(d). Accordingly, I find that Respondent's suspension from doing business with HUD is in the public interest and, further, that it's being invoked prior to final resolution of the matters contained in the indictment was appropriate.

### **Conclusion and Determination**

Upon consideration of the public interest and the record in this matter, I conclude and determine that good cause existed to suspend Respondent Yoel Movtady from participating in covered transactions either as a participant or as a principal at HUD and throughout the Executive Branch of the Federal Government, and from participating in procurement contracts at HUD pending resolution of the charges set forth in the indictment against Respondent that was handed down by the Grand Jury for the United States District Court for the Eastern District of New York on November 30, 1994.



Robert A. Andretta  
Administrative Law Judge

Dated: August 21, 1995.