

Statement of the Case

On August 3, 2000, Harold Lucas, Director of the HUD TARC in Cleveland, Ohio, imposed an LDP on Copeland. The notice of LDP states that Copeland is subject to an LDP as the Executive Director of the Muskegon Housing Commission (MHC). The LDP was imposed for a period of twelve months throughout the jurisdiction of HUD's Michigan State Office of Public Housing.

The LDP is based on alleged performance failures by Copeland in his capacity as the Executive Director of the MHC. These alleged failures are:

- 1) Failure to comply with Section 7 of the Consolidated Annual Contribution Contract (CACC) by mortgaging fourteen homes under the Turnkey III program in order to secure a loan from the Michigan Housing Trust Fund;
- 2) Failure to comply with CACC Section 11(D) by expending funds on items which were not budgeted, and which have been declared ineligible;
- 3) Failure to comply with 24 C.F.R. § 85.36 by not having a procurement policy at the MHC, and by procuring duplicate insurance and health benefits for employees of the MHC;
- 4) Failure to comply with Section 9(c) of the CACC by paying over \$700,000 of Public Housing funds to the Section 8 Program; and
- 5) Failure to comply with Attachment III, Section 3 to the CACC, by using sale proceeds from Turnkey III home sales to make principal and interest payments to the Michigan Housing Trust Fund for a loan, which is not included in the approved Administrative Use Agreement.

The notice of LDP states that these acts are causes for an LDP under 24 C.F.R. §§ 705(a)(2), 705(a)(4), and 705(a)(9).

Copeland requested a conference on the LDP pursuant to 24 C.F.R. § 24.712. The conference was held on August 25, 2000, and the LDP was affirmed on September 12, 2000. By letter dated September 15, 2000, Copeland requested a hearing on the propriety of the LDP before a Departmental hearing officer, pursuant to 24 C.F.R. § 24.713. He contends that, although the acts cited in the notice of LDP occurred, he should not be sanctioned for them because of mitigating circumstances, and because other persons who have not been sanctioned by HUD were as responsible, or more responsible, for the cited causes for the LDP.

The parties mutually agreed to waive the 45-day requirement for the hearing to commence, in accordance with 24 C.F.R. § 24.314(b)(2)(ii). The hearing was held in Chicago, Illinois on March 14-15, 2001. The transcript of the hearing was received on April 3, 2001.

Findings of Fact

- 1) Copeland was the Executive Director of the MHC from 1988 until February, 2000, when the LDP was imposed on him. During that time, he also served as Secretary of the MHC Board, but he had no vote on Board matters. The MHC has five Board members, whom Copeland considered his "bosses." HUD considers the Executive Director to be the person who represents the MHC in its dealings with HUD. (Tr. 22, 223-224.)
- 2) The MHC was a department of the City of Muskegon, Michigan until August 6, 2000, when it became autonomous. John Shrier, the City Attorney of Muskegon, provided legal representation for the MHC from 1981 until March, 1997. (Tr. 223, 225-226, 268-270.)
- 3) The City of Muskegon, acting through the MHC, entered into the CACC with HUD in July, 1971. The CACC covers acquisition and operation of low-rent housing projects for which the MHC receives financial assistance from HUD. Part Two of the CACC sets out the terms and conditions of the contract. HUD considers every Executive Director of the MHC to be bound by the CACC, whether that person signed it or not. On April 1, 1993, the CACC was amended by an Administrative Use Agreement for Proceeds of Sales of Homeownership Projects, which allowed the MHC to retain and use the proceeds of sale of properties, including the properties in the Turnkey III Homeownership Projects, for work items listed on an Administrative Use Plan that had been approved by HUD. (Exh. G1(a), (b), and (d); Tr. 21-22.)
- 4) In 1994, the MHC was encouraged by David Wintland, then the City Manager of Muskegon, to take greater advantage of HUD's Single Room Occupancy (SRO) program. The SRO program is part of HUD's Section 8 rental subsidy program. Wintland believed that a vacant building that had formerly housed a mental health center could be developed by the MHC with SRO rental income for use as a Family Financial Center (Center). In 1994, HUD approved the MHC's application to get the Center

established, but there were delays due to problems with additional financing that was needed to purchase a site for the Center. In 1995, Wintland left his position as City Manager, and was replaced by Bryon Mazade. Mazade was not supportive of the Center initiative started by Wintland. HUD had set a timeframe for the selection of the site for the Center, and there was a deadline approaching for the MHC to use subsidies from rent from SRO properties to purchase a site for the Center. (Tr. 197, 229-235.)

- 5) Wintland had suggested that the MHC go to the city for full faith and credit financing to purchase and rehabilitate the building for the Center. Mazade was opposed to the city using full faith and credit financing. The sale price for the building to be used as the Center was \$583,000, although the sellers were willing to take a \$100,000 letter of contribution to assist in the purchase. The Michigan Housing Trust Fund (Trust Fund) is a non-profit gap financing agency in Michigan that helps non-profit organizations and agencies begin projects. The MHC contacted the Trust Fund about the possibility of a gap loan to purchase the building for the Center. (AR 5; Tr. 231-237.)
- 6) Christine Helbig, Financial Director of the Trust Fund, visited the MHC to discuss possible financing with Copeland. Helbig thought that the Trust Fund could loan the MHC \$140,000, but some collateral would be needed for the loan. Copeland and the MHC Board knew that the MHC had debt forgiveness and sale proceeds from the Turnkey III project that could possibly be used as collateral for the loan. Helbig requested a list of properties in the Turnkey III project with a market value of at least \$10,000 each for possible collateral, if the Trust Fund Board would not accept other collateral for the loan. Copeland and the MHC Board members selected the properties with a value of at least \$10,000 from the inventory of the MHC. Those properties were included on a list that the MHC gave to Helbig. Although neither Copeland nor the MHC Board contacted HUD about the propriety of this process, they had observed that HUD was generally permissive about the use of SRO proceeds. In early 1996, Copeland was still in regular contact with HUD officials in Washington, D.C. and Detroit, Michigan about progress on the Center. In January, 1996, Mazade persuaded the city not to use its full faith and credit to finance the Center, but the city offered to sign for the

property and then put the financial deals together to purchase it. (AR 5; Tr. 231-237.)

- 7) Shrier notified Copeland and the MHC Board about the demands of the city if it structured the financing for the Center. Shrier informed the MHC Board that the fourteen properties included on the list that had been given to Helbig would need to be collateral for both the mortgage and the pledging of SRO proceeds to finance the loan. Shrier directed the MHC to hold a special Board meeting to pass a resolution to approve pledging the fourteen properties as collateral. At the special Board meeting, Copeland spoke against pledging the properties as collateral because the MHC would not be permitted by HUD to mortgage the properties. Shrier argued at the special Board meeting that the loan had to be financed by pledging the 14 properties as collateral, as part of the total financing package. Although the audio tape of the special Board meeting was not produced because neither Copeland nor the MHC had control of it, Maxine Lenear, Vice Chair of the MHC Board, corroborated the positions that Copeland and Shrier took at the meeting. The MHC Board passed the resolution over Copeland's objection. Lenear assumed that Shrier was more knowledgeable than Copeland about allowable financing because Shrier was a lawyer, and she voted in favor of the resolution. (Exhs. G8, R1; Tr. 244-253, 308, 311, 319.)
- 8) Section 7 of the CACC provides that the MHC "shall not pledge as collateral for a loan the assets of any project covered under this ACC." The 14 properties pledged as collateral for the loan from the Trust Fund were assets covered by the CACC. (Exh. G1(c) and (d).)
- 9) The City of Muskegon purchased the building for the SRO Center with a \$480,000 mortgage, using the building as collateral. Included in the financing package was a \$140,000 mortgage from the Trust Fund, and \$100,000 from a Community Development Block Grant. Shrier acted as the attorney for these parts of the transaction. The money needed to get the Center program "off the ground" and to rehabilitate the building was to be financed with \$400,000 in tax credits. The tax credit financing was arranged by an attorney who specialized in such matters, not Shrier. Copeland signed certain loan documents prepared by the attorneys as "incorporator" of the entity that would own the building. The Michigan State Housing Development Authority notified Copeland that, as the incorporator

under Michigan law, the property had to be in the name of the corporate entity to which the tax credit was issued. In late 1996, the MHC went to the city to get it to deed the property over to the corporation so that the tax credits could be utilized, but Mazade recommended that the city let the tax credits revert back to the state. The City Commissioners directed Mazade to work it out so that the tax credits would not be lost. (AR 5; Tr. 257-260.)

- 10) In December, 1996, Shrier created a legal scheme that provided that all proceeds from the sale of the SRO properties should be treated as excess funds that went into the city general fund. The MHC Board passed a resolution to that effect, which it characterized as having been done "under duress," and that also provided that Mazade and his successors would appoint all of the MHC Board members in the future. Copeland sent a copy of the resolution passed by the MHC Board "under duress" to HUD. Copeland notified Mazade in writing on April 26, 1997, that the Michigan Attorney General, the U.S. Department of Justice, and HUD had been notified by Copeland about the city "diverting funds from a Federally funded program to the City's General Fund." (AR 5.)
- 11) In March, 1997, the MHC Board passed a resolution demanding autonomy from the City of Muskegon. MHC had also complained to HUD about being forced to use Shrier as its attorney. HUD issued a legal opinion that the MHC could not be forced by the city to use Shrier as its attorney. Shrier resigned as the lawyer for the MHC. (AR 5; Tr. 268-269.)
- 12) After the autonomy resolution was passed by the MHC Board, the city started slowing down any action having to do with the MHC. On March 23, 1998, the city declared its intent to make the MHC autonomous, but the city would not implement autonomy until certain conditions were met. Mazade initially stated that autonomy would occur "shortly, in a month." The MHC employees would have to resign as city employees on the implementation date, and would no longer be covered by the insurance policy that the city used to cover its employees. In September, 1998, the MHC purchased private insurance for its employees, after being told that autonomy would be implemented on October 1, 1998. Autonomy implementation did not take place on that date, but the MHC was told that it definitely would occur by the end of 1998. This also did not occur and

delays continued. Two members of the MHC Board went to meetings of the city government to complain about the delay in implementing the autonomy of the MHC. They specifically raised the issue of having to continue to pay for private insurance for employees of the MHC in anticipation of the change, when those employees were also covered by insurance provided by the city until the implementation date. Copeland stated that it was difficult to obtain sources for insurance to cover the MHC employees, and he did not want to face a situation in which the employees were suddenly uninsured. He did not cancel the insurance policy that he had purchased on behalf of the MHC employees in September, 1998 for this reason, although that resulted in there being two insurance policies that covered the same employees. (AR 5; Exhs. R16, R17, R18, R21, R26, R27; Tr. 271-275.)

- 13) The MHC Board decided that it needed to do "whatever it could" to keep the Center running and to finish rehabilitating it, despite interference by the city that delayed the MHC getting the tax credits to fund this work. The MHC Board decided to use monies from the Low Rent program, of which the SRO program was not a part, to pay the costs of the Center. These costs were paid for, over time, with approximately \$700,000 in funds from the Low Rent program account, the reserve account, the Turnkey III account, and rent subsidies from HUD. This practice began in 1996, and continued until at least August, 2000. Copeland did not suggest to the MHC Board that it borrow monies from the other program accounts to pay for the Center expenses, but he did not object to this decision by the MHC Board. The MHC had routinely borrowed between program funds in the past but it had always paid those funds back to the rightful fund by the end of the fiscal year. Copeland and the MHC Board expected to be able to repay the funds borrowed for the Center-related expenses once the state tax credits were received. The tax credits were delayed, but the MHC Board approved all expenditures at its meetings, and instructed Copeland to pay the bills to keep the power and other services going in the Center. Fiscal year 1997 was the first year in which the MHC could not pay back accounts from which it borrowed before the end of the fiscal year. (Exh. G4; Tr. 283, 285-288, 388-389.)
- 14) Copeland did not check HUD requirements or the CACC before doing the things the Board directed him to do. He believed that he was hired "to put out fires" as the Board directed. Copeland had attended a HUD training

session for Executive Directors of public housing authorities, at which the standard HUD CACC was explained and copies of it were passed out, but Copeland never attempted to review its provisions to see what could and could not be done by the MHC under the terms of the CACC. (Tr. 384-385, 388-389, 394.)

- 15) In February, 1999, the HUD TARC took oversight of the MHC after it was declared a "troubled public housing authority," based on its audit for the fiscal year ending September 30, 1997. A TARC audit team was sent to the MHC to do an initial assessment of where the MHC would need assistance, and to review documents to see if they supported the certifications filed by the MHC with HUD. Jaime Jaunty was one of the members of the TARC audit team. Over a two-year period, the TARC team made six on-site visits to the MHC. The TARC team was concerned about the MHC because all of its reserves had been spent, and it could not pay its bills. Jaunty found an audit report addressing the financing problems, and Copeland gave Jaunty a copy of the mortgage showing that the fourteen properties had been used as collateral for the loan with the Trust Fund. Jaunty also reviewed the pledge of proceeds from the sale of those properties. Jaunty was particularly concerned about the interfund "borrowing" done by the MHC, and its failure to reconcile the funds by the end of the fiscal year. She discussed this with Copeland, and she believed that he had agreed to stop the practice. The TARC team discussed this matter with Copeland every time they were on-site. However, the borrowing between funds not only continued, but increased. Jaunty also pointed out to Copeland that the insurance coverage he had purchased for the MHC employees since September, 1998, was unnecessary and duplicative. She told him that it would be necessary for the MHC to reimburse its public housing account for this double insurance coverage. The MHC was notified by HUD in four separate letters that the insurance was an ineligible expenditure under the CACC because it was duplicative of existing coverage. Copeland never complied with these directives. (AR 1A; Exhs. G4, G9, G10; Tr. 124, 142, 147-154, 17-173.)
- 16) On March 2, 1999, the MHC Board passed a resolution to ask HUD to approve an amendment to the Administrative Use Plan to allow it to use Turnkey III sale proceeds for rehabilitation and other costs of the Center. Those expenditures would not have fit within any of the ten proposed uses that HUD had previously approved. A

copy of the resolution was sent to HUD's Cleveland office. HUD never received an actual request for an amendment to the Administrative Use Plan from the MHC. By letter dated November 30, 1999, HUD informed the MHC that a Board resolution alone was insufficient to request an amendment of or to amend the Administrative Use Plan. Copeland never followed through on the March 1999 resolution to make a formal request to HUD for amendment of the Administrative Use Plan, and use of Turnkey III sale proceeds for costs of the Center was never approved by HUD. However, the MHC regularly used Turnkey III proceeds to make loan payments to the Trust Fund. Copeland admits that he knew this could not technically be done without HUD's approval of an amendment to the Administrative Use Plan. (Exhs. G1(d), G5; Tr. 155-157, 159-161, 183, 286, 357-358, 360-363.)

- 17) According to Leneer, by March, 2001, the MHC had borrowed almost \$800,000 from the general fund to pay the costs of the Center, and those funds had not been paid back, to her knowledge. The MHC became an autonomous entity shortly after Copeland departed, but its fiscal problems are not yet solved. The Center itself never became the success that the MHC envisioned when it purchased the building for the Center. By 1999, when JoAnn Adams, Director of the HUD Michigan State Office of Public Housing, and Michael Polsinelli, a staff attorney in HUD's Michigan State Office made an on-site visit to the MHC, the building was "essentially empty" except for the MHC office. Community groups that had initially rented space in the building had left, and no new tenants had been found. Although both Adams and Jaunty told Copeland to call them if he needed help or advice, he had never contacted either one of them to seek their advice or assistance as the financial problems of the MHC continued to grow worse. (Tr. 16, 58, 62-63, 87-88, 142-143, 306, 324.)

Discussion

An LDP is a discretionary administrative sanction that is imposed in the best interest of the Government. 24 C.F.R. § 24.700. Underlying the Government's authority not to do business with a person is the requirement that agencies only do business with "responsible" persons and entities. 24 C.F.R. § 24.115. The term "responsible," when used in the context of administrative sanctions such as LDPs, debarments, and suspensions, is a term of art which includes not only the ability

to perform satisfactorily, but the honesty and integrity of the participant. 48 Comp. Gen. 769 (1969).

The test for whether a sanction is warranted is present responsibility, although lack of present responsibility may be inferred from past acts. Schlesinger v. Gates, 249 F. 2d 111 (D.C. Cir. 1957), Stanko Packing v. Bergland, 489 F. Supp. 947, 949 (D.D.C. 1980). The Government bears the evidentiary burden of demonstrating by adequate evidence that cause for Copeland's LDP exists, that the LDP is in the public interest, and that the LDP was not imposed for punitive purposes. 24 C.F.R. § 24.705. Adequate evidence is defined in the regulations applicable to an LDP as "information sufficient to support a belief that a particular act or omission had occurred." 24 C.F.R. § 24.105(a). It is likened to the probable cause necessary for an arrest, search warrant, or a preliminary hearing. Horne Bros. v. Laird, 463 F.2d 1268, 1271 (D.C. Cir. 1971). It is not a rigorous level of proof.

Copeland was a "participant" and a "principal" as defined at 24 C.F.R. § 24.105. As the Executive Director of the MHC, he had the authority to commit the MHC in a covered transaction and he also had primary management responsibility for the MHC, which was a participant in HUD low income housing programs and its Section 8 program, among others. Therefore, if cause for the LDP is established, Copeland is subject to the sanction.

The five charges cited as the causes for the LDP would constitute a basis for the sanction if any of them are established by adequate evidence. 24 C.F.R. § 705(a)(2) provides that irregularities in a participant's past performance in a HUD program are cause for an LDP. Failure to honor contractual obligations or to proceed in accordance with contractual specifications or HUD regulations is cause for an LDP pursuant to 24 C.F.R. § 24.705(a)(4). Likewise, violation of any procedure relating to the obligations incurred pursuant to a grant of financial assistance is a cause for an LDP under 24 C.F.R. § 24.705(a)(9).

The first charge in the LDP is that Copeland, as Executive Director of the MHC, failed to comply with Section 7 of the CACC by mortgaging fourteen properties under the Turnkey III Program in order to secure a loan from the Trust Fund. The pledging of the fourteen properties as security for the loan was in clear violation of Section 7 of the CACC. That section of the contract unequivocally prohibits the encumbrance of any project or portion thereof without the prior approval of HUD. In addition, it states that the MHC "shall not pledge as collateral for a loan the assets of any project" covered under the CACC. Copeland opposed the mortgaging plan, but he was overruled by a vote of

the MHC Board, which was persuaded by the City Attorney that this was both allowable and necessary as part of the financing package for the purchase of the Center building. I find Copeland's conduct to be some mitigation of his personal culpability for this violation of the CACC. He did all that he believed he could do to convince the Board not to follow Shrier's advice, but once he failed in that, he did as he was directed by Shrier in signing the legal documents that effected the purchase.

However, Copeland did not notify HUD of the action taken by the Board over his objection. He was reluctant to take any independent action against the Board's wishes because he viewed himself as the Board's employee. He seemed unaware that HUD expected him to act independently of the Board if it violated the CACC. Even if Copeland could not prevent this violation of the CACC, he should have notified HUD that its properties had been pledged as security for a loan against his advice. HUD could then have stepped in and possibly prevented the loan from closing. Copeland's perceived duty of loyalty to the Board of the MHC prevented him from taking the independent action of notifying HUD what had occurred, and this lack of independence ultimately allowed an illegal contractual obligation to take place without HUD's knowledge. While I sympathize with the difficult position in which Copeland found himself, I question the wisdom of his decision to give no notice at all to HUD that the 14 properties had been pledged as collateral for the loan from the Trust Fund, an action which Copeland believed, correctly, to be in violation of the MHC's and the City of Muskegon's contractual relationship with HUD.

The second charge in the LDP states that Copeland failed to comply with CACC Section 11(D) by expending funds on items which were not budgeted, and which have been declared ineligible. Section 11(D) of the CACC provides that "The HA [Housing Authority] shall not incur any operating expenditures except pursuant to an approved operating budget. If unbudgeted expenditures are incurred in emergencies to eliminate serious hazard to life, health and safety, the operating budget shall be amended accordingly." This charge is primarily directed at the MHC's purchase of insurance for its employees when its employees were still covered by insurance provided by the city. Copeland explained that this was done in anticipation of imminent separation from the city and the termination of city-provided insurance coverage. Initially, this expenditure, although not budgeted or approved by HUD, was reasonable as a stopgap measure. However, two years later, when the "imminent" independence of the MHC had been delayed time and again, such an unbudgeted expenditure was unreasonable. Furthermore, the HUD TARC team repeatedly told Copeland orally and in writing that the insurance expenditure was an ineligible one, and the monies had to be

repaid to the MHC general account. Despite these repeated warnings, Copeland did nothing to comply with this directive, and I find his failure to comply to be irresponsible. Even if such insurance is difficult to obtain, there should have been little problem in ending the double coverage because, once there was actually a need for the private insurance coverage, the MHC knew which company could provide it. Considering that the MHC often had no money to pay its monthly bills for such necessities as water and heat, it was not responsible to continue to make payments for an unnecessary expenditure.

More important, the loan payments for the Center were unbudgeted, and it was those loan payments that placed the MHC in a financially untenable position. The Center was not critical to the life, health or safety of the MHC's tenants, and the loan payments for the Center fit in no category of payment that would have been an approved operating expenditure in the MHC budget. Instead, those payments placed the MHC on the brink of financial ruin, and did threaten the life and safety of MHC's tenants to the extent that their basic services were in jeopardy for lack of funds to cover them.

The third charge concerns Copeland's failure to comply with 24 C.F.R. § 85.36 by not having a procurement policy at the MHC, and by procuring duplicate insurance and health benefits for employees of the MHC. Specifically, 24 C.F.R. § 85.36(b)(4) requires that a grantee's procurement procedures "will provide for a review of a proposed procurement to avoid purchase of unnecessary or duplicative items." At the hearing, HUD indicated that the MHC did have a procurement policy, but that it was not followed in the case of the purchase of duplicate insurance for its employees. The fact of the duplicate purchase has never been in debate. Rather, Copeland argues that this violation is mitigated and justified by the imminent change of status of the MHC from a city governmental agency to an independent entity. As noted in the discussion of the second charge, any mitigation that may have initially been compelling, lost its significance as time passed, and it was no longer justifiable. Finally, after two years had passed, and warnings by the TARC team were ignored, Copeland's conduct relative to the continuing procurement of insurance had become mere stonewalling. I find it to be in violation of 24 C.F.R. § 85.36(b)(4), and one for which initial mitigating circumstances had long since disappeared.

The fourth charge cites Copeland's failure to comply with Section 9(c) of the CACC by paying over \$700,000 of public housing funds to the Section 8 program. Copeland does not deny that this occurred. He states that his personal culpability for this contractual failure should be mitigated by the fact that the MHC Board told him to do whatever was necessary to keep bills

paid, including using low rent public housing funds to make payments on the Center loan and to cover other rehabilitation expenses on the Center, which was part of the Section 8 programs. Copeland admits that he knew this was not permissible but he did not raise that issue with the MHC Board.

Section 9(c) of the CACC provides as follows, referring to the MHC as "HA" and the CACC as "ACC":

The HA shall maintain records that identify the source and application of funds in such a manner as to allow HUD to determine that all funds are and have been expended in accordance with each specific program regulation and requirement. The HA may withdraw funds from the General Fund only for: (1) the payment of the cost of development and operation of the projects under ACC with HUD; (2) the purchase of investment securities as approved by HUD; and (3) such other purposes as may be specifically approved by HUD. Program funds are not fungible; withdrawals shall not be made for a specific program in excess of the funds available on deposit for that program.

The raiding of the low rent housing general fund to cover the costs related to the Center continued to increase each year after the Center was purchased. Ultimately, the MHC could no longer repay the general fund at the end of each fiscal year because the debts were far greater than the resources of the MHC. The core business of the MHC was the operation of the low rent housing programs. The depletion of the fund for operation of those programs became so serious that the TARC was brought in to identify ways in which the MHC could get itself out of financial trouble. Copeland had a duty to keep reminding the MHC Board that what it was directing him to do was not only in violation of the CACC, but was placing the low rent housing programs in real jeopardy.

Copeland is an intelligent man, and surely he could see that the MHC could no longer repay the general fund for withdrawals it had made, in violation of the CACC, to cover the Section 8 expenses of the Center. Even if these funds were "not fungible" in the language of the CACC, in the past HUD had tacitly allowed such internal borrowing, provided that the books were balanced by the end of the fiscal year. However, the MHC dug itself into a deeper financial hole each year, with no real chance of paying back the borrowed funds, all to cover the cost of the Center, which was not part of its core business. The precarious financial condition of the MHC is directly related to the purchase of the Center, and the MHC Board's stubbornness in not recognizing the problem it created every time it borrowed from the general fund to pay costs of the Center. Copeland had an

important role to play in discouraging this mismanagement, but he elected to remain silent. He failed the MHC, HUD, and the MHC's tenants by his silence. His acquiescence in the Board's misguided financial dealings was not the conduct of a responsible Executive Director of a public housing authority, and I cannot find unchallenged "directives" from the Board to mitigate the seriousness of Copeland's dereliction of duty in this regard.

The fifth charge states that Copeland failed to comply with Attachment III, Section 3 to the CACC, by using sale proceeds from Turnkey III home sales to make principal and interest loan payments to the Trust Fund, which is not included in the approved Administrative Use Agreement.

The Administrative Use Agreement between HUD and the City of Muskegon, acting through the MHC, applies to "[A]ny or all undertakings necessary for planning land acquisition, demolition, construction, or equipment, in connection with a property to be used to provide low-income housing pursuant to this Agreement." The Administrative Use Agreement allowed the MHC to retain and use the proceeds of sale of Turnkey III homes, rather than remitting those proceeds to HUD. The funds were to be used for housing assistance for low-income families in accordance with the Administrative Use Plan approved by HUD in 1993. None of those uses included, or could be construed to include, loan payments to the Trust Fund for the expenses of the Center. Copeland admitted as much, and the MHC Board even approved a resolution to amend the Administrative Use Plan to include the Center, but Copeland never followed through on presenting a written request for amendment to HUD. Thus, the use of the Turnkey III proceeds to make loan payments to the Trust Fund was in violation of the Administrative Use Agreement, which is Attachment III to the CACC. Copeland was responsible for this violation by not making the required amendment request to HUD on behalf of the MHC, and by acquiescing in making these payments, which he knew were not approved under the existing Administrative Use Plan. Again, his silence made him complicit in these acts, which he knew were not permitted, but which he carried out nonetheless at the direction of the MHC Board.

Overall, Copeland is an intelligent, resourceful man, and was a dedicated defender of the MHC, but he believed that it was his duty to do what the MHC Board wanted. He defined his position in such a way that he ceded his independent judgment to the will of the Board. However, an Executive Director of a Housing Authority is more than simply a "yes man." He is to give guidance and warnings about the contractual framework between HUD and the city that governs much of the operation of the MHC. Copeland never made an attempt to obtain a copy of the CACC, even after a HUD training course that he took focused on its

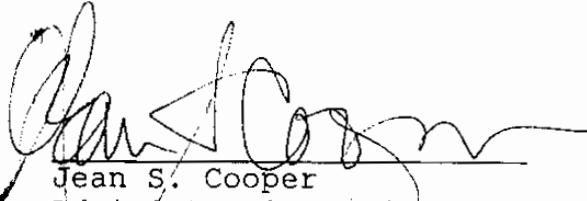
importance. Had Copeland been familiar with the CACC, he would have had more ammunition to convince the MHC Board that it should not have done certain things, such as the pledging of the property as security for the Trust Fund loan and using so much of the low income housing general fund to pay the costs of the Center that it would be impossible to reimburse the general fund.

The Board was so determined to purchase and develop the Center that core operations were given second-class status in the fight with City Hall to get the Center financed. It is ironic that the MHC would likely have avoided most of its problems if it had not focused so much of its political energy and financial resources on the Center. Copeland took on the MHC's battle for the Center as though it were his own, and he became both stubborn and intractable as things worsened, refusing to listen to the TARC team, not accepting the hard fact that Center was an unnecessary purchase and a burden to the operation of the MHC, and not stepping in to prevent the financial ruin of the MHC general fund. Admittedly, Copeland could not prevent certain things from happening, and the City Attorney and the City Manager certainly made matters much more difficult for the MHC, but Copeland essentially gave up trying to guide the MHC Board after he failed to convince them not to pledge the properties as security for the Trust Fund loan.

In light of this, Copeland is more complicit in the irregularities at the MHC than he is willing to admit. Even if others were more responsible for the irregularities than Copeland, I still must consider Copeland's case on its own facts, and those facts are troubling. I find that the LDP was supported by adequate evidence, and the mitigating factors were not sufficient to invalidate the sanction.

Recommended Decision

For the foregoing reasons, I recommend that the Limited Denial of Participation on McKinley V. Copeland not be terminated because it was supported by adequate evidence and was otherwise in accordance with law.



Jean S. Cooper
Administrative Judge