



**Board of Contract Appeals**

U. S. Department of Housing and Urban Development  
Washington, D.C. 20410-0001

In the Matter of:

GARY TRAVIS,

Respondent

HUDBCA No. 01-C-104-D5

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For the Government

FINDINGS OF FACT AND RECOMMENDED DECISION  
By Administrative Judge Jean S. Cooper

September 27, 2001

Statement of Jurisdiction

On May 10, 2001, the United States Department of Housing and Urban Development (HUD) Board of Contract Appeals received the request of Respondent Gary Travis (Travis), for a hearing on the Limited Denial of Participation (LDP) imposed on him by Charles E. Gardner, Director of HUD's Atlanta Homeownership Center (HOC). The administrative judges of the HUD Board of Contract Appeals are authorized to serve as hearing officers and to issue findings of fact and a recommended decision for consideration by the HUD official who imposed the LDP. 24 C.F.R. §§ 24.105, 24.314(b)(2), and 24.713(b). The findings of fact and recommended decision set forth below are based on the administrative record (AR), the

written submissions of the parties to this proceeding, the hearing transcript, and documentary evidence introduced at the hearing.

Statement of the Case

By letter dated March 28, 2001, Charles E. Gardner, Director of HUD's Atlanta HOC, imposed an LDP on Travis as a participant, contractor, and/or principal in HUD programs. The LDP prohibits Travis from participating in all single-family housing programs administered by the Assistant Secretary of Housing/FHA Commissioner within the geographic jurisdiction of the Atlanta HOC for a period of one year.

The stated basis for the LDP is that Travis, a branch manager and loan originator for National City Mortgage Company, doing business as Accubanc Mortgage Corporation (Accubanc), had originated numerous Federal Housing Administration (FHA) single-family insured mortgage loans for Shelter Solutions, Inc. (SSI), at the same time as Travis was serving as a member of SSI's Board of Directors, SSI's Treasurer, and SSI's Chief Financial Officer. The LDP notice states that these multiple capacities in which Travis served created an inherent conflict of interest in the origination of these loans, and violated HUD regulations, directives, and standards. The LDP notice cites the following violations in connection with these loan transactions identified in the LDP notice as reasons "a.)" through "g.)":

- a.) Travis' multiple positions at SSI and Accubanc made his participation in the decision making process at both SSI and Accubanc "a business practice that clearly does not conform to generally accepted practices of prudent mortgagees, demonstrated irresponsibility, and violated 24 C.F.R. § 202.5(j)(4)";
- b.) Travis' receipt of Accubanc "commissions, bonuses, overrides, and/or performance recognition awards and receipt from SSI of other consideration resulting directly or indirectly from the purchase of these properties (for example, fees received by SSI under lease/purchase agreements or the Home SOS program and subsequently disbursed to Travis as gifts, interest, office expenses, professional fees, or otherwise)" violated 24 C.F.R. § 202.5(1) and HUD Handbook 4060.1 REV-1 § 2-24(A)(3);
- c.) Travis' active participation in the management, operation, and control of SSI as board member, Treasurer, and Chief Financial Officer "demonstrates

Travis' failure to be employed exclusively by Accubanc at all times and conduct only the business affairs of Accubanc during normal business hours," in violation of HUD Handbook 4060.1 REV-1 § 2-14;

- d.) Travis' "identification as branch manager" for the Accubanc branches in Marietta, Georgia and Clearwater, Florida, "and originating multiple loans out of these branches as well as a third branch in Dallas, Texas, violates the additional requirement of HUD Handbook 4060.1 REV-1 § 2-14 that branch managers must be located at the branch office they manage and cannot operate or be the manager of more than one branch office at the same time;"
- e.) As a board member of SSI, Travis' "receipt of compensation for origination of SSI loans through Accubanc was a personal benefit derived from SSI's participation as a mortgagor under FHA's programs" and violated the requirement of HUD Mortgagee Letter 96-52 for "a voluntary board whose members do not personally benefit." In addition, as board member, Treasurer and Chief Financial Officer, Travis "had a financial interest in and benefit from the purchase of SSI properties through compensation for loan originations by Accubanc," in violation of HUD Mortgagee Letters 96-52 and 00-08, Amendment 2, and Travis' certification dated January 13, 2000;
- f.) Travis' "multiple roles" for SSI and Accubanc "prevented SSI from acting on its own behalf, put SSI under the influence and control" of Accubanc, and "provided FHA-insured financing without arms length transactions between SSI's officers and board member and the lender" in violation of HUD Mortgagee Letters 96-52, at pages 3-4, and 00-08, Attachment 6;
- g.) As the loan originator for numerous Accubanc loans to SSI, Travis knew that Accubanc did not have documentation required by Mortgagee Letters 96-52 (pages 4-6) and 00-08, Attachment 6, "to determine SSI's financial capacity, its stability, or its proper case management. Complete year-end financial statements and most recent 90-day year-to-date certified financial statements were not submitted and could not have been analyzed for each loan, as required. Consequently, since all of the answers to the questions listed in Mortgagee Letters 96-52 and 00-08 would have been no, "Travis knew that the loans

originated by SSI should not have been submitted or approved."

The LDP notice concludes that the alleged violations described in reasons a.) through g.) constitute cause for an LDP pursuant to 24 C.F.R. §§ 24.705(a)(2), (4), (8), (9), and (10). It also names SSI; J. S. Herren, Chief Executive Officer of SSI; Michael Kalember, Secretary of SSI, Annette Risse, Secretary of SSI, J. Scott Herron, Assistant Secretary of SSI, and Bruce Mote, Assistant Secretary of SSI, as affiliates of Travis, pursuant to 24. C.F.R. § 24.105.

Travis requested a conference on the LDP, in accordance with 24 C.F.R. § 24.712. A conference was held on April 17, 2001, by N. Daniel Rogers, III, of the Atlanta HOC. By letter dated May 4, 2001, Gardiner affirmed the LDP for all of the reasons cited in the LDP except reason b.). Travis thereafter requested a hearing on the LDP pursuant to 24 C.F.R. § 24.713.

The hearing was held on June 22, 2001. The Board received the complete transcript of the hearing by July 9, 2001.

#### Findings of Fact

1. Travis has been a mortgage loan officer since 1978, working for a number of mortgagees in that capacity. He owned his own mortgage lending company for four years from 1990 to 1994. In 1998, he went to work for Accubanc as the branch manager of its Marietta, Georgia office. He also functions as a loan officer in Accubanc's Marietta office. Travis' duties as branch manager include supervising the three employees in the Marietta office, hiring, signing pay cards, and firing when necessary. (Tr. Vol. 2, p. 250-251, 253, 294-296.)
2. Travis reports to Eugene Lugat, who is located in the Columbia, Maryland regional office of Accubanc. Processing and underwriting of all loans originated in the Marietta office are done in the Columbia office. Travis does not receive a base salary. He receives "overrides," which are payments of a small number of basis points, on all loans done by other loan officers in the Marietta office. For loans originated by him as a loan officer he, receives the standard origination commission and Accubanc receives the override. Travis only receives commissions on loans that close. He has no authority to make any decisions on whether a loan will be approved by Accubanc. (Tr. Vol. 2, p. 253-254, 273, 280-281.)

3. SSI is a non-profit charitable organization that provides housing for low and moderate income families. It has certificates of authority to do business as a non-profit corporation in Georgia, Florida, New Jersey, New Hampshire, Massachusetts, Minnesota, Texas, Ohio, Virginia and the District of Columbia. In 1994, SSI received approval to participate in HUD programs as a non-profit mortgagor, which gave SSI access to FHA financing to purchase and renovate houses, including houses owned by HUD, and then sell those properties to low and moderate income families. (Exhibit R-2, Tabs 3, 4, 10, 13; Tr. Vol. 2, p. 161, 167.)
4. SSI directors are volunteers and do not receive payment from SSI for performing their duties as directors. HUD encourages real estate professionals to serve on non-profit boards. Travis joined SSI's Board of Directors on June 12, 1993. (AR Tab 3A; Tr. Vol. 2, p. 69, 166-167, 170, 250-251.)
5. Travis was elected Treasurer of SSI. The duties of the Treasurer are listed in SSI's bylaws, including the duty to compile the financial records of SSI, have custody of all funds and securities of SSI, to receive, deposit, and disburse those funds, and "cause full and true accounts of all receipts and disbursements to be kept." Travis performed none of the Treasurer's duties listed in SSI's bylaws. Those tasks were all performed by SSI staff members or SSI's outside accountant. SSI has no officer position entitled "Chief Financial Officer," and Travis never held such a position at SSI. Travis attended board meetings about four times a year, voted on corporate actions at those meetings, and generally advised SSI about real estate programs. He also verified the progress of rehabilitation on three properties. All work Travis did for SSI was on his own time, and was not done during his working hours as a loan officer or branch manager. (Exh. R-2, Tab 10; Tr. Vol. 2, p. 170-172, 174, 251-252, 256.)
6. Joe Herren is the President of SSI. Pursuant to a resolution dated June 10, 1994, Herren was authorized by the SSI Board of Directors to act on behalf of SSI to purchase and sell real estate, and to obligate SSI for mortgage and other indebtedness. He made all of the decisions for SSI on what properties to buy, what properties to sell, the sale price of properties, and where to get financing for the purchase of properties. SSI used approximately 24 different mortgagees as sources of financing for its purchase of properties. (AR Tab 2A; Exh. R-2, Tab 10, 12, 13; Tr. Vol. 2, p. 36-37, 161, 164, 178, 260-261.)

7. Herren had asked Travis to originate FHA loans for SSI, but Travis had never worked for a lender that would consider loans for non-profit organizations until he joined Accubanc in 1998. Travis inquired in writing to Steve Atwood, an Executive Vice-President of Accubanc, whether Accubanc would be willing to make loans to SSI. Travis provided an information package to Atwood about SSI, including the fact that Travis served on SSI's Board of Directors. Based upon the information Travis provided, Accubanc agreed to consider making loans to SSI as a non-profit organization. Travis was notified of this decision by Marty Burkhardt in Accubanc's Quality Control Office. Travis asked Atwood whether he would have to resign from SSI's Board of Directors. Atwood's only question to Travis was whether Travis received a salary as a board member. Travis assured him that he received no payment for serving on SSI's board. Atwood did not direct Travis to resign from SSI as a condition of Accubanc's willingness to consider loan applications from SSI, and Travis assumed he could both continue as an SSI board member and originate loans for SSI. Travis was still uncomfortable with what he saw as an appearance of a conflict of interest between his roles at SSI and Accubanc if SSI were to bring its loan business to Accubanc. He was apparently concerned that the real estate sales community would not bring its business to Accubanc if it perceived Travis' activities on behalf of SSI to be a conflict of interest. Travis expressed his reservations to Herren, who made inquiries about how to deal with Travis' concerns. (AR Part I, Tab 3F; Tr. Vol. 2, p. 184-185, 258-259.)
8. Herren consulted Herb Cohn, the Executive Director of a HUD-approved non-profit organization, about the appearance of conflict of interest raised by Travis. Cohn told Herren that his non-profit organization had a lender and an appraiser on its board, and that they had used a "recusal" as a way to cure any appearance of conflict of interest. Herren also consulted with the local judges familiar with corporate governance how to do a recusal. Neither Herren nor Travis called or wrote HUD for advice. (Tr. Vol. 2, p. 202-206, 227, 261, 277, 312-315.)
9. On November 13, 1998, the Board of Directors of SSI passed Travis' motion that he "recuse himself from all decisions involving loans made to Shelter by any mortgage company with which Gary O. Travis is affiliated." At the same meeting, the SSI Board of Directors passed a motion that another director recuse himself from all decisions involving the sale of insurance policies to SSI by State Farm, that director's employer. (AR, Part II - Tab C.)

10. Starting in late 1998, Accubanc accepted and approved a number of loan applications from SSI. In each case, Herren made the decision to apply to Accubanc for the loan, and Travis was the loan officer who originated the loan. Travis was paid the regular commission rate by Accubanc for those loans. (Exh. R-5; Tr. Vol. 2, p. 253.)
11. SSI did not get a special loan rate from Accubanc, but Herren preferred going to Accubanc for loans because Accubanc was offering loans to all of its customers at a lower loan rate than other lenders in the area who would make loans to non-profit organizations. Accubanc was able to do this because it is a large national lending organization that participates in Ginnie Mae mortgage pools, and sells loans quickly through pooling. (Exh. R-5; Tr. Vol. 2, p. 253, 270-272.)
12. Between late 1998 and early 2000, Travis originated between 106 and 158 loans at Accubanc on behalf of SSI. He estimates that he received approximately \$70,000 in commissions for all of the loans he originated for SSI. To originate a loan, Travis would conduct the loan application interview, and fill out and sign the loan application form on behalf of Accubanc. He would then order credit reports and appraisals, and direct the collection of bank statements, tax returns, and current financial statements. Travis played no role in evaluating SSI's financial information or determining its sufficiency. The application and the collected credit information would be sent to Accubanc's Columbia, Maryland office for loan processing, underwriting and approval of each loan originated by Travis. It is Accubanc's policy to require that a loan application be taken from any customer that requests it, but the decision on whether or not to approve each application is made in Accubanc's Columbia office by the underwriters. (AR Tab 2A; Exh. R-5; Tr. Vol. 2, p. 273, 288.)
13. SSI was doing significant business in the State of Florida, and Travis' superiors at Accubanc were interested in doing business with SSI in Florida. Accubanc had a wholesale office in Clearwater, Florida that had been set up in May, 1999. Travis started originating SSI loans for Florida properties. Travis did this work out of his Marietta office. No HUD program requirement was produced in evidence that would show that Travis was prohibited from originating loans for Florida properties from his office in Marietta, Georgia. Travis denies that he has ever been in Clearwater, Florida, or that he was the branch manager for the Accubanc Clearwater office at any time. However,

Accubanc had listed Travis as the Clearwater branch manager on a form that it filed with HUD. Lugat, Travis' immediate superior, states in an affidavit dated June 6, 2001, that "Gary O. Travis has never acted as the branch manager for more than one office" although "Accubanc listed Mr. Travis as the Branch Manger of Accubanc's Clearwater, Florida branch office." There is no evidence that Travis ever functioned as the Clearwater branch manager, despite his listing by Accubanc in that capacity. (AR 1E, Exh R-5; Tr. Vol. 1, p. 40-41; Tr. Vol. 2, p. 268, 301, 303-304-327.)

14. In late 1999, Gail Knowlson, Director of Program Support in HUD's Atlanta HOC, contacted Herren by telephone to ask him if Travis was on SSI's Board of Directors and if Travis was originating loans for SSI. Herren answered "yes" to both questions. (Tr. Vol. 1, p. 31-32; Tr. Vol. 2, p. 174-175.)
15. In January, 2000, all SSI board members, including Travis, were asked to sign an identical certification for the Atlanta HOC, the language of which had been provided by Knowlson. The certification signed by each SSI board member states as follows: "I certify that I have not individually gained profit from transactions performed by Shelter Solutions, Inc., its subsidiaries or affiliates." Herren thought the certification language dictated by Knowlson meant that none of the SSI board members were profiting from the sale of homes by SSI. Travis concluded the same, and signed the notarized certification on January 13, 2000. (AR, Tab 1D; Tr. Vol. 2, p. 192-193.)
16. Herren signed a certification for HUD's Atlanta HOC, dated March 27, 2000, as the President of SSI. That certification states as follows:

Shelter Solutions, Inc. certifies that the members of its Board of Directors serve in a voluntary capacity and receive no compensation, other than reimbursement for expenses, for the services (on the Board of Directors) and the nonprofit agency operates in a manner so that no part of its net earnings is passed on to any individual, corporation or other entity. (AR, Tab 3B).
17. SSI had to apply every two years to the various HUD HOCs around the country for recertification of its right to participate in HUD's programs as a non-profit mortgagor within each HOC's jurisdiction. In 2000, it applied for recertification to the Atlanta HOC, but its application was denied for lack of audited financial reports. Although



other HUD HOCs had approved SSI's 2000 recertification application, that approval was withdrawn after the Atlanta HOC did not recertify SSI. SSI has not been certified to participate in HUD programs as a non-profit mortgagor since February, 2000. (Ex. R-2, Tab 1; Tr. Vol. 2, p. 175-176, 211, 217.)

18. SSI moved its headquarters from Georgia to Florida in August, 2000. Travis and another SSI board member resigned from SSI's Board of Directors on September 20, 2000, effective October 1, 2000, because of the inconvenience of traveling to Florida to participate in future SSI board meetings. (AR, Tab 3A; Exh. R-2, Tab 1; Tr. Vol. 2, p. 164, 183, 221, 276.)
  
19. Mortgagee Letters 96-52 and 00-08, both addressed to mortgagees, set out technical financial evaluation criteria and questions for mortgagee underwriters to use in deciding whether a non-profit application for a mortgage should be approved, including the effect of proposed mortgage debt on the financial condition and obligations of the non-profit applicant. Nora Kittrell, an accountant in the Atlanta HOC, determined in February, 2001, that SSI was carrying too much mortgage debt and should not have been approved by SSI or other mortgagees for new mortgages. None of the SSI loans are in default. (Exh. G-1; Tr. Vol.2, p. 197-198.)

#### 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" as 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 Travis' 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. However, in a hearing in which witnesses testify under oath or affirmation, and are subject to cross-examination, evidence is tested and evaluated to determine its probative value, to assure that it is sufficient to support a belief that a particular act or omission has occurred.

Travis was a "participant" in a primary covered transaction, and a "principal" as defined at 24 C.F.R. § 24.105. Therefore, if cause for the LDP is established, Travis is subject to the sanction.

Travis states that he did not knowingly violate any HUD regulation, rule, or program requirement by originating loans for SSI during the time when he served on SSI's board, and that the recusal action taken by SSI's board showed an intent to act responsibly to cure any appearance of a conflict of interest by Travis. Travis denies that he actually performed any services as Treasurer or Chief Financial Officer of SSI, or that he had any special knowledge about SSI's financial status because of the titles he held in SSI. Travis denies that he was an employee of SSI at any time, or that he performed work for SSI during his working hours at Accubanc. He denies that he was the branch manager of Accubanc's Clearwater office at any time. Travis further denies that he or Accubanc had influence and control over SSI by virtue of Travis' roles at SSI and Accubanc, or that SSI received special treatment or consideration as a loan applicant from Travis and Accubanc.

There is no factual dispute that Travis received his regular commissions from Accubanc for originating the SSI loans that Herren brought to Accubanc. All but one of the Government's reasons for imposing the LDP on Travis flow from that fact.

Reason "a.)" for the LDP alleges that Travis' actions constituted a business practice "that clearly does not conform to generally accepted practices of prudent mortgagees," and was therefore in violation of 24 C.F.R. § 202.5(j)(4). The regulation cited by HUD is part of the "general approval standards" section of the HUD regulations applicable to "Approval of Lending Institutions and Mortgagees." There was no evidence offered by the Government that established any generally accepted practices of prudent mortgagees that were violated by Travis. I cannot find that what Travis did was imprudent because all he did was take loan applications. The decisions concerning those loan applications were made in Accubanc's Columbia office, and Travis

played no role in those decisions. He also tried to satisfy any appearance of a conflict of interest in his roles at Accubanc and SSI by the recusal action.

The Department has failed to establish cause for the LDP based on reason "a.)" cited in the LDP notice.

Reason "c.)" for the LDP states that Travis' active participation in the management, operation, and control of SSI as board member, Treasurer, and Chief Financial Officer demonstrates Travis' failure to be employed exclusively by Accubanc at all times and to conduct only the business affairs of Accubanc during normal business hours, in violation of HUD Handbook 4060.1 REV-1 § 2-14. Mortgagee Approval Handbook 4060.1 REV-1 §2.14 provides, in pertinent part, that "all employees of the mortgagee ... must be employed exclusively by the mortgagee at all times and conduct only the business affairs of the mortgagee during normal business hours."

The evidence in the record does not support the factual allegations of the charge. Travis never performed any duties as either Treasurer or "Chief Financial Officer," a position that did not exist at SSI. Furthermore, Travis' other duties as a board member were minimal, at best, and took place after working hours. The only facts mustered to support this reason for the LDP was that Travis drove past three SSI properties under rehabilitation on his way home from work to verify the progress of the rehabilitation, and one time he made a similar visit to a property on his lunch hour. None of these minor activities interfered in any way with Travis serving full-time in his position at Accubanc, nor does this demonstrate that he was an employee of SSI at any time. The Department has failed to establish cause for the LDP based on reason "c.)" cited in the LDP notice.

Reason "d.)" for the LDP states that Travis' identification as branch manager for the Accubanc branches in Marietta, Georgia and Clearwater, Florida, and his originating multiple loans out of these branches violates the requirement of HUD Handbook 4060.1 REV-1-§2-14 that branch managers must be located at the branch office they manage and cannot operate or be the branch manager of more than one branch office at the same time.

The fact that Travis may have originated loans for Florida properties out of his Marietta office is not prohibited by any HUD program requirement that was presented at the hearing. The Handbook cited in the LDP Notice only addresses the prohibition of managing more than one branch office at the same time. The evidence at the hearing established that, although Travis was listed by Accubanc as the manager of Accubanc's Clearwater,













