

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
BOARD OF CONTRACT APPEALS
WASHINGTON, D. C.

In the Matter of:

JOSEPH ANDRULONIS and
CHRISTINA ANDRULONIS,

Appellants

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: HUDBCA No. 79-429-D45
: (Activity No. 79-661-DB)
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APPEARANCES:

For the Appellant:

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For the Government:

Edward Eitches, Esquire
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Statement of the Case

By letter dated June 22, 1979, Joseph and Christina Andrulonis (hereinafter "appellants") were notified that they were being placed on the list of those temporarily denied participation in Federal Housing Administration programs within the jurisdiction of the Jacksonville Area Office for a period of one year pursuant to 24 C.F.R. Part 24 (1979). The action was based on information presented to the Area Office indicating irregularities in FHA cases while appellants were employed by Flick Mortgage Company. On August 16, 1979, appellants' timely request for a hearing was filed with the undersigned, and a hearing was subsequently held in Miami, Florida on October 23 and 24, 1979.

Findings of Fact

Appellants were employees of the Flick Mortgage Company from August, 1978 to June 8, 1979, when they were fired by its President, Jerry Flick. Mr. Flick had been President of Flick Mortgage Company since its inception in March, 1978. At the time of the events under consideration, Joseph Andrulonis was Vice President of Flick Mortgage Company and manager of the Kendall branch office. As branch manager, his duties were to oversee the operation of the branch and to originate loans on behalf of the mortgage company. The branch office was intended to be completely autonomous. (Tr. 267-270).

Christina Andrulonis was Assistant Vice President of Administration at the Kendall Branch Office of Flick Mortgage Company. Her duties included processing mortgage loans submitted to the FHA for federal mortgage insurance. As a loan processor she verified all FHA required information and completed the FHA 2900 form needed to obtain FHA insurance. She signed the FHA 2900 form on behalf of Flick Mortgage Company and submitted the form to FHA for approval. Appellants were the only personnel at the branch office with authority to sign the 2900 form. (Tr. 252-255).

On June 12, 1979, Mr. Flick and Mr. Berlinsky, an attorney who served as a closing agent for Flick, notified John Kane, supervisor of the Coral Gables Service Office of the Department that:

1) an application for one ██████ Smith for an FHA loan processed by the Kendall Branch, had apparently been falsified, and

2) they had found signed in blank 2900 forms in the Kendall branch files.

The first name in the loan application of Mr. Smith had been scratched out and the name ██████ had been written in over the scratched out portion. (Tr. 23, Exh. G-1). James Morano, a real estate broker and investor, testified that ██████ Smith called Morano on the advice of Smith's brother who was employed by Morano. (Tr. 87-88, 93-94). Smith informed him in a telephone conversation that someone from Flick Mortgage Company had told Smith to use another name. (Tr. 89). Mr. Morano added that Mr. Smith was "very guarded" in his

telephone conversation and did not identify a specific person at Flick Mortgage who advised that he use another name. (Tr. 90). In that phone conversation, Mr. Morano advised Smith to take the matter straight to counsel for the Flick firm. (Tr. 88). Mr. Morano verified the telephone conversation with Smith the day before Morano testified (Tr. 90-91, 95-96). The first telephone conversation took place at about the time of the loan application.

Dan H. Watson, area supervisor of the Division of Finance for the Florida State Comptroller's office, testified that [REDACTED] Smith told Watson in a telephone conversation that Smith had been instructed by Mr. Andrulonis to submit his name as [REDACTED] Smith, for the purpose of hiding some judgments that he had incurred in the past. Watson was investigating the events following appellants' firing by Flick and had seen several forms in the Flick offices bearing variations of the Smith signature. (Tr. 113-116). The credit report on [REDACTED] Smith did not show any prior judgments. However, a credit check on [REDACTED] Smith, with the same address as [REDACTED] Smith, shows six bad credits, a number of judgments and an involuntary repossession. (Tr. 31, Exh. G-3, G-6 at 2).

Mr. Andrulonis testified that [REDACTED] Smith had applied for a mortgage a year earlier and had furnished the information necessary for a complete financial package. At that time, the loan was processed and a firm commitment was issued by FHA. However, Mr. Smith "fled" the State of Florida and could not be located. Consequently, the firm commitment was returned to FHA and the case cancelled. (Tr. 273)

Andrulonis testified further that approximately nine months later, Mr. Smith returned seeking to purchase another home, again under the name of [REDACTED] Smith. Andrulonis referred to the previous case, Smith "verified that everything was still the same" and Andrulonis began to process the case. Subsequently, however, Andrulonis testified that Mr. Smith requested title to be issued in the name of [REDACTED] Smith. Andrulonis advised Smith that this could be done but that the case would have to be reverified and resubmitted to the credit company. Andrulonis also advised Smith that he should consult with Mr. Berlinsky directly on the matter. (Tr. 273-275). Andrulonis testified that he immediately called the closing agent, Mr. Berlinsky, and advised him to run a name search. The next day, June 8, 1979, Mr. Flick locked the doors of the branch office and terminated appellants' employment, after Berlinsky had brought the Smith alias case to Flick's attention. (Tr. 17-18, 292).

On Monday, June 11, 1979, Ofelia Alonso, an employee of Flick Mortgage Company, conducted an audit of the Kendall branch. (Tr. 103). During the audit Miss Alonso found some 20 FHA 2900 forms signed in blank by the applicants in the files of the Kendall branch. (Tr. 104-111, Exh. G-7). The FHA 2900 form is the formal application submitted to FHA which includes all of the information found during the processing of the mortgage loan. It is the principal document upon which the FHA relies in approving or disapproving loans and concludes with a Mortgagee's Certificate to be signed by the mortgagee which states:

The mortgagee certifies that all information in this application is true and complete to the best of its knowledge and belief.

Immediately below the Mortgagee's Certificate is printed a warning of criminal sanctions pursuant to 18 U.S.C. 1010 for submitting false information on the FHA 2900.

Several witnesses for appellant testified that all of the FHA 2900 forms were filled out fully before being signed by the applicant. In addition, Mr. Andrulonis testified that a number of the forms found executed in blank belonged to investor loans and not to loans processed by himself. An investor loan is a loan that is purchased from another mortgage company and is not processed by the branch office. (Tr. 299, 343). Andrulonis also explained that two forms executed in blank in the Steible case were brought into the office by Mr. Berlinsky's father who asked Kendall branch employees to fill out the forms. (Tr. 300). Andrulonis declared that he would have nothing to do with those forms but kept them in the files and prepared new FHA 2900's to send out to the buyers. (Tr. 302). The appellants offered a wide variety of explanations as to why the forms signed in blank were kept in the files.

The Departmental regulation applicable to a temporary denial of participation, 24 C.F.R. Part 24, provides in pertinent part as follows:

§24.4. Definitions.

* * *

(h) "Temporary denial of participation." Unless taken as a result of a pending investigation or an indictment which gives rise to suspension of the contractor or grantee, a temporary denial is an exclusion from HUD programs by an Area Office

Director, Insuring Office Director or a Regional Administrator for a specified period not to exceed twelve months. The denial is limited in effect to the jurisdiction of the office initiating the action and the specific program under which this action is taken.

§24.18 Temporary denial of participation; conditional denial.

(a) Causes and conditions under which a temporary denial of participation may be invoked.

(1) An Area Director, Insuring Office Director or Regional Administrator may issue an order which denies the participation in Department programs of a contractor or grantee.

(2) Causes for denial of participation shall include ...

(ii) Adequate evidence of irregularities in contractor's or grantee's past performance in a Department program

The Mortgagee's Handbook describes the standard of care that approved mortgagees must meet in obtaining the information required by FHA to insure the loan. Mortgagees must follow "accepted practices of prudent lending institutions," that is:

They must obtain and verify information with at least the same care that would be exercised in originating a loan in which the mortgagee would be entirely dependent on the property as security to protect its investment. Mortgagee Handbook No. 4000.2, ¶3-7 (March, 1975).

Discussion

Appellants are contractors subject to the sanction of temporary denial of participation within the meaning of 24 C.F.R. §24.4 (f) (1979). As officers and employees of Flick Mortgage Company they are in a business relationship with a mortgagee recipient of HUD funds.

Two principal grounds have been presented in support of the proposed temporary denial of participation. Firstly, the Government alleges that Joseph Andrulonis wrongfully submitted a FHA 2900 form for one ██████████ Smith under an alias and, secondly, the Government alleges that the various FHA forms found signed in blank at the Kendall office constituted a serious business irregularity within the meaning of 24 C.F.R. §24.18 (ii) (1979).

The evidence supporting the first contention is comprised of three elements:

- (1) a credit application in which the first name of the applicant had been changed;
- (2) credit reports for two persons with the same address, "██████ Smith" showing a good credit rating and ██████ Smith showing an unacceptable rating; and
- (3) testimony of two witnesses that ██████ Smith called them and told them that he had been told to use an alias by Andrulonis or someone in the Kendall branch office.

Taken together these elements raise considerable suspicion but do not constitute adequate evidence of irregularities within the meaning of §24.18 of the regulation.

The statements of ██████ Smith in the telephone conversations constitute hearsay, that is, a statement made outside of the hearing which is offered in evidence for the purpose of proving the truth of an alleged wrongdoing by appellants. See Federal Rule of Evidence 801. The statements do not fall within any of the generally accepted exceptions to the hearsay rule. See F.R.E. 803 and 804. Assuming, arguendo, that the declarant was not available, the statements do not fall within the most likely exception, a statement against the declarant's pecuniary or proprietary interest because the potential self-serving motivation outweighs the "disserving" potential. Consequently, the statements are simply not sufficiently trustworthy to bring them within the exception. 3 Wigmore on Evidence §§1455, 1457 (3rd Ed. 1940). Moreover, wholly aside from the technical niceties of the hearsay rule, the circumstances surrounding the statements evidence a self-serving interest that deprives the statements of any probative value.

The remaining elements of the evidence offered to prove wrongdoing by Joseph Andrulonis are insufficient either to establish circumstances or trustworthiness for the Smith telephone statements or to arise to the status of adequate evidence themselves. In fact, the two credit reports indicate a long standing practice by ██████ Smith of using two names in connection with his business transactions. There is nothing in the credit reports or the earlier mortgage application of "██████" Smith to suggest that Andrulonis initiated or participated in the deception.


The second principal ground for temporarily denying appellants' participation presents a substantially different situation. Some 20 FHA 2900 forms were found in the Kendall office signed in blank. These forms are the critical document for obtaining FHA insurance on mortgage loans. The mortgagor's signature certifies that all information in the FHA 2900 is true and complete. A certification to false information subjects the mortgagor to criminal penalties. To permit the forms to be signed in blank represents a fundamental irregularity that goes to the essence of the FHA insurance program.

Both appellants were experienced in the field and both were aware of the reliance that the FHA placed upon the FHA 2900. Christina Andrulonis was in charge of loan processing in the Kendall Branch and both appellants were the only people in the office authorized to execute the FHA 2900 on behalf of the mortgagee, Flick Mortgage Company.

The potential for submission of fraudulent applications for mortgage insurance resulting in defaults and loss of funds is substantially enhanced by the practice of executing FHA 2900 forms in blank. That practice falls far short of the standard of prudence required of appellants by the Mortgagee Handbook. In the Matter of Mechanics National Bank, et al., HUDBCA Docket No. 75-5-MR (March 6, 1979). Appellants' various explanations as to why the executed blank forms were retained are neither persuasive nor an excuse for such an imprudent practice. Cf. Mark B. Horner, HUDBCA Docket No. 79-410-D43 (March 11, 1980). Consequently, the imposition of the temporary denial of participation was warranted to protect the integrity of the FHA program and the public interests therein.

Determination

Upon consideration of the public interest and based upon the entire record in this case, appellants, Joseph and Christina Andrulonis shall be, and they hereby are, temporarily denied participation in FHA programs within the jurisdiction of the HUD Jacksonville Area Office for one year commencing June 22, 1979 and terminating on June 22, 1980.


 B. Paul Cotter, Jr.
 Administrative Judge

Issued at Washington, D. C.
 on June 5, 1980