UNITED STATES OF AMERICA

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

BOARD OF CONTRACT APPEALS

Washington, D. C.

In the Matter of:	:	
CHARLES KIRKLAND,	:	HUDBCA No. 80-541-D60
Appellant	:	

Mr. Charles Kirkland
[redacted] For the Appellant, Pro Se

Mark M. Eisenstadt, Esquire
Office of General Counsel
U.S. Department of Housing
and Urban Development
Washington, D. C. 20410 For the Government

DETERMINATION

Statement of the Case

On September 10, 1980, Assistant Secretary Lawrence B. Simons, on behalf of the Department of Housing and Urban Development ("Department" or "HUD"), notified Charles Kirkland ("Appellant") of the Department's intention to debar him and his affiliates for an indefinite period of time, but not less than five years from the date of the notice. The notice was based upon the facts and circumstances relating to certain transactions involving [redacted] Caradine and certain residential real property located at [redacted] West 19th Place, Gary, Indiana ("the property"). The notice also stated that pending final determination of the issues involved, Appellant and his affiliates were temporarily suspended from further participation in HUD programs.

Appellant filed a Motion To Dismiss on February 26, 1981, which was denied. A hearing was conducted on May 28, 1981, in Chicago, Illinois, at which the Appellant represented himself and his affiliates, House of Charles Realty Co. ("House of Charles"), and Local Citizens Mortgage Co., Inc. ("Local Citizens"). Being no longer active, C.C. Graves & Company Real Estate was excluded

from the scope of the hearing. (Tr. 4-5.) Neither House of Charles nor Local Citizens filed a separate appeal.

The Government contends, in substance, that Kirkland and certain affiliates were responsible for two false certifications affecting HUD which were made by the Caradines, as purchasers of the property. In addition, the Government contends that the Appellant made an impermissible loan to the Caradines to close the purchase transaction, and that to force repayment of the loan Appellant denied the Caradines possession of the property and rented it to one of the sellers. Later, he effected the transfer of title to the property to an affiliate, Local Citizens, and eventually effected a conditional sale of the property back to the Caradines on substantially less favorable terms than those of the original sale. The original sale was financed with an FHA insured mortgage later assumed by Local Citizens. The Government contends that these actions were willful and so egregiously improper as to warrant the debarment of Appellant and his affiliates for an indefinite period of not less than five years pursuant to HUD regulations.

In his defense, the Appellant contends that the evidence was insufficient to establish that his actions were of the willful and egregiously improper character alleged; that the pressures for closing the transaction were so great and his realization that the purchasers did not have the necessary funds to close so unexpected, that to make the loan was his only reasonable course of action. Portraying himself as a good Samaritan, he also contends that his actions were justified by the need for small minority real estate brokers to remain competitive in serving low and moderate income families in the low cost housing market.

I find that both the particular elements and the course of Appellant's conduct viewed as a whole were willfully contrived, and of such an egregiously improper character as to warrant the debarment of Appellant and his affiliates for an indefinite period of not less than five years. My conclusion is reinforced by the fact that Appellant had actual and extraordinary notice that he had no latitude to deviate from strict adherence to "all rules, procedures, policies, regulations and requirements of HUD in connection with participation in departmental programs" as a result of his explicit agreement with HUD to abide by all such strictures entered into on December 9, 1977.

Findings of Fact

By a contract dated July 10, 1978, [redacted] Caradine agreed to purchase the property of [redacted] Phillips at [redacted] West 19th Place, Gary, Indiana, for $14,650 (Exh. G-7). The purchase was financed with a mortgage of the property to Lake Mortgage Company, Inc. of Gary, Indiana ("Lake Mortgage"), which was insured by FHA.

It was stipulated that "Mr. Charles Kirkland is the President of Local Citizens Mortgage Co., Inc., a corporation, and is the owner/manager of The House of Charles Realty Company, a sole proprietorship" and that Kirkland and his affiliate companies identified as House of Charles and Local Citizens were at the relevant times "contractors or grantees" as defined in 24 C.F.R. §24.4(f) (Tr. 7-8). Appellant identified himself in testimony as a Director and the chief executive officer, who controlled the activities of Local Citizens, a family corporation, though he disclaimed being its legal representative (Tr. 250-55).

In applying for this mortgage, the Caradines certified on August 21, 1978,

> that the amount of $500.00 for closing costs and downpayment on the purchase of property located at: [redacted] West 19th Place, Gary, Indiana ... was derived from [s]avings from earnings [and]
>
> ...not borrowed and in no way derived from secondary financing.

Appellant testified that such savings came from money that [redacted] Caradine had saved and deposited with Appellant and from credit for repair work Caradine had performed on Appellant's automobile. He provided no supporting documentation. At the hearing Caradine flatly denied both the deposits and the work for credit. (Exh. A-11; Tr. 42-44, 46-49, 51, 63-66, 78-84, 209, 224-28, 230, 235-36, 241-47.) A $500.00 earnest money deposit from [redacted] Caradine was evidenced by a receipt dated July 10, 1978, for that amount signed by "Charles Kirkland DBA House of Charles" (Exh. A-11; Tr. 42-44, 46-47, 80-84, 224-28).

The Firm Commitment for Mortgage Insurance under the National Housing Act, FHA Form No. 2900-4, dated October 20, 1978, ("Firm Commitment") was issued by the Mortgagee on condition that "one of the Mortgagors will be an owner occupant." (Exh. G-12A.) On December 22, 1978, the date of the closing, each of the Caradines executed another Mortgagor's Certificate printed on the lower half of the Firm Commitment which certified that:

> (a) The mortgaged property ... will be owned by me free and clear of all liens other than that of such mortgage.
> (b) I will not have outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of said property except obligations which are secured by property or collateral owned by me independently of the said mortgaged property, or obligations approved by the Commissioner.
> (c) One of the undersigned is the occupant of the subject property.

(d) All charges and fees collected from me as shown in the settlement statement have been paid from my own funds, and no other charges have been or will be paid by me in respect to this transaction. (Exh. G-12A.)

On December 9, 1978, [redacted] Caradine executed a receipt for $500.00 received from the House of Charles and identified as "Refund of earnest money deposit to be redeposited for closing of loan" (Exh. A-12; Tr. 80-84, 245-46). Appellant testified that on that date he paid $500.00 in cash to Caradine. Caradine flatly denied having received such an amount of cash or having requested it from Appellant. (Tr. 44-47, 65-66, 79-84, 209, 243-46.) The receipts may have been executed just to create a paper record. In any event, it is clear that the Caradines provided no money at closing, either by prior escrow deposit or otherwise.

Appellant testified that there was great pressure to effect the closing on December 22, 1978, as arranged, because, "The transaction had been set up for closing, repairs had been made to meet code, costs for materials and labor were due and the seller, Mr. Phillips had packed all of his personal belongings into a van and was planning to leave immediately after the closing." (Tr. 210.) Caradine appears to have shared that sense of urgency (Tr. 52-53, 87-89, 90). However, Appellant himself was a creditor at the closing for costs of repairs to the property in the amount of $620.00. He also claimed a $1,025.50 commission. Thus he was personally interested in an immediate closing too. (Exh. A-20, -22, -31.) While Phillips may have been eager for the closing in order to escape from his recently divorced wife, it was clear from the testimony of his wife, who was being abandoned, that she certainly felt no such urgency to close (Tr. 172-76). I find that the real pressure to close was Appellant's and that it was not irresistible under the circumstances.

Since the Caradines did not have funds, Appellant advanced the funds necessary to close the purchase. To evidence the loan created by his advance at closing, Appellant caused the Caradines to execute a promissory note dated December 22, 1978, to the Order of Charles Kirkland d/b/a House of Charles Realty Company in the amount of $687.02 at 10% interest per annum. The terms of the note provided for repayment in installments of $50.00 per month commencing on March 1, 1979, with a final payment of the indebtedness to be effected no later than August 1, 1979. The terms of the note provided that the obligation was "To be further secured by an unrecorded Quit Claim Deed." (App. Reply Brief, p. 5; Exh. A-33; Tr. 99-100, 176-77, 210-11, 224-28, 256-58.)

After the closing on December 22, 1978, the Caradines did not take actual possession of the property and occupy the house. Appellant apparently prevented them from doing so in order to enforce repayment of the advance at closing. Instead, [redacted] Phillips, who had not moved out, continued to live in the house and to pay rent to Appellant until Appellant evicted her for

non-payment of rent in early 1980 after she ran out of money. (Exh. G-11; Tr. 41-42, 89-99, 108, 111-12, 168-70, 176-79, 210-11, 263-65, 268-70.) The $147.00 per month she paid to Appellant was evidenced by receipts from House of Charles for the months of February thru December, 1979. Those payments were equal in amount to the monthly payments required by the Caradine's HUD-insured mortgage. (Exh. G-11; Tr. 124-25, 133-34, 262-63, 266-67.) Monthly payments were apparently made in turn by Appellant from January to September, 1979, to Lake Mortgage, which was responsible for servicing the mortgage for the Federal National Mortgage Association (Tr. 117, 261). There is no evidence that the Caradines objected to this arrangement, but they were dependent on Appellant and had no independent understanding of their rights.

The unrecorded quit claim deed from the Caradines to Local Citizens, referred to in the Caradines' promissory note, was originally dated January 31, 1978, and the names of the grantors were misspelled "Cardine" (Exh. G-6). The instrument was originally recorded on April 9, 1979, shortly after the second installment payment was due under the terms of the note. Appellant had apparently sought immediate repayment of the debt by a letter to Caradine dated January 10, 1979, demanding immediate reimbursement of the $687.00 advance and offering to take him to the bank to apply for a loan. (Exh. A-25; Tr. 130-31, 135-37, 144-47, 151-65, 211, 256-62, 270-71.)

On October 2, 1979, the mortgage payments were in arrears for September and October, 1979. It was not until then that Lake Mortgage realized that Appellant, through the House of Charles, and not the Caradines as mortgagors of record, was making payments on the Caradine loan, and that the Caradines were not occupying the property (Tr. 116-20, 138). Lake Mortgage refused to accept tender of payment under the mortgage from House of Charles until February 7, 1980, when Lake Mortgage received and accepted a payment from Appellant which covered October 1979 through February 1980, and which brought the loan current (Tr. 125-27, 131-33).

At meetings in early February 1980, Appellant admitted to Lake Mortgage officials that he had loaned the Caradines the funds necessary to close the purchase on December 22, 1978, and that he had taken back a deed to the property to secure the loan. (Tr. 129-32.)

By a Real Estate Contract dated April 1, 1980, Local Citizens sold the property back to the Caradines, agreeing among other things to deliver a deed to the property to [redacted] Caradine, but only after the full amount of the specified $15,500 purchase price, payable in monthly installments of $187.00, with $500.00 in initial cash and the balance with interest at 12% per annum, had been fully paid. The new interest rate of 12% compared with 9-1/2% on the original FHA insured mortgage which had been assumed by Local Citizens; the monthly payment was

$187.00 payable to Local Citizens compared with $147.00 under the original FHA insured mortgage; and title remained in the seller under the new contract for deed until the purchase price was paid, instead of being transferred at closing to the purchasers as it had under the original FHA-insured mortgage transaction. (Exh. G-10, -12A; Tr. 210-11, 224-28, 256-63, 270-71.) Appellant asserted that part of the increase in price reflected the advances made by Local Citizens to protect the mortgage (Tr. 271).

Local Citizens did not formally assume the Caradines' mortgage until April 17, 1980. Appellant advised Lake Mortgage of the transfer and assumption of the mortgage by letter dated May 7, 1980 (Exh. A-28; Tr. 210-12). A correction deed was recorded May 30, 1980, changing the spelling to "Caradine" and the date to "1979". The initials "CK" appear in the margin beside each of the corrections which were made on the instrument as originally recorded. The record is silent as to the extent of participation, if any, by the Caradines in this "correction" of the deed. The transfer of title and assumption of the FHA insured mortgage were not reflected on Lake Mortgage's records until May 30, 1980. (Exh. G-6; A-28-32; Tr. 135-37, 143-46, 151-57, 159.)

Appellant served as the broker and received a $1,025.50 commission for the initial sale by the Phillips to the Caradines by virtue of a written agreement with the Phillips dated August 30, 1977. Nevertheless, Caradine and his wife relied entirely upon Appellant to make all significant arrangements and to advise them with respect to the purchase of the property which [redacted] Caradine wanted but knew he could not afford (Tr. 45-46, 48, 53-58, 90, 224). [redacted] Caradine's testimony at the hearing reflected limited recall, and very little understanding of the transactions in which he had been involved (Tr. 38-58, 69-73, 75, 80-82, 85-94). It appears obvious that he had not understood the extent to which Appellant would have control of the property after the purchase (Tr. 55-58). He apparently understood that he was buying a home and that he had borrowed from Kirkland the money to close the transaction, but he appears to have understood or appreciated little else about the transactions in which he was involved. Mrs. Caradine did not testify, but apparently occupied a purely passive role as co-signatory.

Appellant claimed to have previously befriended [redacted] Caradine in a variety of ways (Tr. 59-65, 207-11, 243, 269-70). Notwithstanding his resulting familiarity with Caradines' financial and other background, Appellant unpersuasively claims that he was surprised when Caradine did not have the money necessary for closing after withdrawing his earnest money deposit in early December (Tr. 226).

Appellant's attempt to portray his relationship with Caradine as extended and paternalistic was not persuasive. Rather, the relationship appeared to be largely self-serving and

overreaching. (Tr. 59, 74-82, 207-209, 242-47, 269-70.) It is clear that Appellant knew Caradine was relying upon him and encouraged Caradine to do so (Tr. 45-46, 48, 53-54, 80-82, 207-09, 224-25, 240-41). Appellant was present and involved and effectively in control in each instance when the Caradines signed the certificates on their mortgage application on August 21, 1978, in the interim, and at the closing on December 22, 1978, as well as when they signed other significant documents necessary to the FHA insured mortgage. (Exh. G-8; Tr. 47-48, 53, 69-74, 114, 221-22, 229-30, 235-40). Appellant's effective control obviously derived from his personal relationship with [redacted] Caradine. It also derived from the fact that notwithstanding his broker's relationship with the sellers, Appellant was the only advisor the Caradines had. He prepared the documents necessary for the Caradines to deal with the sellers and other parties involved, to obtain the FHA mortgage insurance, and to take title in compliance with local governmental requirements. Appellant also acted as escrow officer. (Exh. A-14, -18, -19, -20, -22, -23, -31; Tr. 58-59, 64-65, 207-10, 224-25, 237-47.)

Appellant by his own admission was an experienced real estate broker, familiar with FHA-insured mortgages and related the documents (Tr. 90-94, 203-05, 219-30, 234-41, 263-64). Thus, he knew or should have known that the required certifications would conflict with the arrangements that Appellant had made with respect to the earnest money deposit, with his loan to the Caradines, and with his prevention of their occupancy of the property (Tr. 90-94, 219-24, 227, 235-42).

After the closing, Appellant effected the self-serving series of transactions which resulted in the transfer of title to the property from the Caradines to Local Citizens, the creation of a lease/management contract for the property between Local Citizens and "Charles Kirkland d/b/a House of Charles Realty Co.", dated April 10, 1979, the continued occupancy of the property by [redacted] Phillips as a tenant to the exclusion of the Caradines, and the resale of the property back to the Caradines pursuant to a significantly less favorable financial and ownership arrangement for the Caradines than they had under the HUD approved purchase and FHA-insured mortgage. (Exh. A-28; Tr. 224-27, 234-47, 263-69.)

Viewed separately and as a whole, virtually all of these transactions involved violations of HUD requirements. It is thus of particular significance that Appellant had agreed in writing with HUD in 1977 that:

> 1. Kirkland recognizes his obligation to abide by all rules, procedures, policies, regulations, and requirements of HUD in connection with participation in Departmental programs.
>
> 2. Without specifically admitting the propriety of the charges specified in the aforementioned letter dated

> April 7, 1977, Kirkland agrees to act in conformity with said rules, procedures, policies, regulations and requirements in connection with any future participation in HUD programs.

(Exh. A-3, -4; G-3.) This agreement provided Appellant with actual and explicit notice that he would be held strictly accountable for any deviation from any applicable HUD requirements.

Discussion

The Government's proof established an ample basis for debarment of Appellant and his affiliates for an indefinite period but not less than five years. That proof was well within the scope of the Government's notice of intention to debar, and supported most of the stated grounds for imposition of the administrative sanction. The evidence against Appellant and his affiliates showed a manifest lack of responsibility which would extend to the present. There was no significant evidence in mitigation.

The Assistant Secretary's notice cited 24 C.F.R. §24.6(a)(4), (5), and (6) as the grounds for its debarment action. The Government elected not to pursue certain other grounds identified in the notice which related to certain prior proceedings involving Appellant. However, the existence and terms of the 1977 agreement between Appellant and HUD were not disputed. As noted above, it was stipulated that Appellant and the named affiliates are "contractors or grantees" 24 C.F.R. §24.4(f).

Debarment is a measure which may be invoked by HUD to exclude or to disqualify "contractors and grantees" lacking present responsibility from participation in HUD programs for a period reflecting an assessment of projected business risk as a measure for protecting the public. 24 C.F.R. §24.5(a); See Stanko Packing Co. v. Bergland, 489 F. Supp. 947, 979 (D.D.C. 1980); Roemer v. Hoffman, 419 F. Supp. 130, 131 (D.D.C. 1976). "Responsibility" is a term of art which in the instant context has been defined to include integrity and honesty as well as ability to perform. See Roemer v. Hoffman, supra; 49 Comp. Gen. 139 (1969); 39 Comp. Gen. 468 (1959); 34 Comp. Gen. 86 (1954). The primary test for debarment is present responsibility, but a finding of a present lack of responsibility may be based on past acts. Stanko Packing Co. v. Bergland, supra; Schlesinger v. Gates, 249 F.2d 111 (D.C. Cir. 1957); Roemer v. Hoffman, supra; Onofrio Vincent Bertolini, HUDBCA No. 79-390-D33 (Nov. 13, 1979). Integrity is central to a contractor's responsibility in performing a business duty toward the Government. 39 Comp. Gen. 468 (1959); 34 Comp. Gen. 86 (1954).

The ultimate issue before me is whether Appellant currently possesses the requisite responsibility for participation in Government programs. Debarment is not a penalty, but a way for

the Government to execute its statutory obligations effectively to protect the public. See L. P. Steuart & Bros. v. Bowles, 322 U.S. 398 (1944); Gonzales v. Freeman, 344 F. 2d 570 (D.C. Cir. 1964). Debarment means exclusion from participation in HUD programs for a reasonable, specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance, generally not to exceed five years. However, the hearing officer may exclude a party for an indefinite period because of egregious and willful improper conduct. 24 C.F.R. §24.4(a).

Considering the bases for the debarment action in the order listed in the Assistant Secretary's notice, I find, on the basis of evidence which is not in material dispute that on December 22, 1978, Appellant made an improper loan in the amount of $687.02 to [redacted] Caradine for use as a downpayment on the property and to pay closing costs related to its purchase. The difference between this amount and the $500.00 amount which the Government alleged in its notice of proposed debarment is not crucial for purposes of this determination. The difference is attributable to closing costs, but the principle involved is not affected. The loan was made in violation of HUD requirements because it circumvented the requirement that the Caradines use their own money for the down payment and closing costs and that they so certify.

The precise timing of the execution by the Caradines of the false Mortgagor's Certificate on the HUD Form 2900-4 that was effective at the closing of the sale also does not affect the principle involved. Whether the loan which Appellant made to the Caradines was actually formalized and the related documents executed and delivered before or after the Caradine's certification at closing is immaterial. I find that the various elements of the transaction were effectuated pursuant to a plan whose execution began before and extended after the closing. Thus, the loan and all of its elements may be deemed to have been accomplished substantially contemporaneously with the closing and in clear violation of the HUD requirements reflected in the Caradine's certification.

Kirkland, knowing the extent to which the Caradines depended upon him, had a duty which he breached to treat the Caradines fairly, to provide adequate disclosure, and not to mislead or exploit them. Nevertheless, Appellant initiated, facilitated, manipulated, procured, and controlled every aspect of that series of transactions among the Phillips, the Caradines, and himself and his affiliates which deviated from HUD requirements and left the Caradines with a worse financial burden than had been approved by HUD and without title to their property. As a necessary part of the process, he knowingly and willfully

procured the false certifications by each of the Caradines as mortgagors on the HUD Form 2900-4 that

> "(a) The mortgaged property ... will be owned by me free and clear of all liens other than that of such mortgage,"

and that each would

> "(b) ... not have outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the said property except obligations which are secured by property or collateral owned by me independently of the said mortgaged property, or obligations approved by the Commissioner."

The Caradines' obligation to repay their loan from Appellant, and the security for it, were not incurred independently of the property as required. The loan, therefore, represented a clear violation of HUD's requirements reflected in the HUD Form 2900-4 utilized to close the transaction. Appellant's making and exploiting such a loan with knowledge that the Caradines had made such a certification as borrowers was both willful and egregiously improper. Such security interest as was created by the quit claim deed was clearly contrary to the purpose of the Caradine's certification and the HUD policies governing down payments that it reflected. I find that Appellant improperly procured these false certifications from the Caradines, and that he did so with the purpose of influencing the Department's decision to insure the Caradine's mortgage of the property.

The testimony and evidence are in conflict and are somewhat ambiguous as to whether the certification by the Caradines to HUD on August 21, 1978, that they had made a $500.00 down payment whose source was savings from earnings, was actually false. The certification itself as executed, appears in its form to be partially incomplete, though it obviously refers to an earnest money deposit.

Nevertheless, Appellant's manipulative conduct, including his exploitation of his peculiar relationship with [redacted] Caradine by obvious overreaching, leads me to conclude that the Caradines made no earnest money deposit as such. A deposit, if made through credits as Appellant alleged, was clearly not properly segregated for the benefit of the sellers and maintained by Appellant in a manner appropriate to his responsibility as broker. Appellant advanced no evidence of an accounting and produced no documentation to prove a credit of $500.00 or more owed by him or an affiliate to Caradine. Moreover, even if there were such credits as Appellant alleged, they were not treated as an earnest money deposit if Appellant, as he asserts, returned the $500.00 deposit to Caradine at his request to be used for unrelated purposes. There was no evidence that the Phillips, HUD, or Lake Mortgage, as interested parties, were informed or consented.

they also violated the terms of the December 9, 1977, agreement between Appellant and HUD. In general, Appellant's course of conduct was so fraught with improprieties of various descriptions that Appellant's debarment and that of his affiliates for an indefinite period of not less than five years is clearly warranted, especially in light of Appellant's prior express agreement to adhere to all of HUD's requirements. The deviations from HUD's requirements were proved by the Government without dispute as to virtually all material facts. They were clearly willful, and were fundamental and egregiously improper, not merely technical.

Appellant's contention in mitigation that, in order to sell houses in low income areas to low income purchasers, such misconduct is necessary or promotes desirable social objectives is unpersuasive. Appellant was on notice as a result of the December 9, 1977, agreement that he had no latitude to deviate to any extent whatever from HUD's requirements. The argument that because such misconduct might have social utility, it should be considered in mitigation, has been repeatedly rejected. See, e.g., Winnie Faye Owings, HUDBCA No. 80-468-D16 (Jan. 22, 1981); Matthew J. Waskelo, HUDBCA No. 80-483-D28 (Dec. 24, 1980); Virginia Fried, HUDBCA No. 79-362-D18 (Apr. 17, 1979). The record does not support the contention that Appellant was helping his friend, [redacted] Caradine, whom he claimed to regard almost as a son. Moreover, whatever pressure there was to close the purchase and sale seems to have been generated for the most part by Appellant's selfish interests, not by any interests of the parties involved which are entitled to special protection.

In his brief, for the first time, Appellant suggests that he was adversely affected in presenting his case by the circumstances under which the hearing was conducted, including its length. In the absence of a timely objection on such grounds on the record, or a showing of actual prejudice, these belated complaints may be disregarded. Appellant expressly acquiesced in the suggestion of the undersigned that because of the lateness of the hour, final argument be reserved for the parties' briefs. The record shows that Appellant was given every appropriate consideration especially in light of the fact that he had elected to proceed pro se. Thus, I find that there was no prejudice to Appellant stemming from the manner in which the hearing was conducted.

On January 26, 1982, Appellant filed a Subsequent Motion To Dismiss, which I construe to allege, in substance, failure of proof by the Government, and personal hardship from administrative actions against him by HUD and the Indiana Real Estate Commission and from administrative delays. The propriety of any administrative actions other than this debarment action, and matters involving Appellant's minority status, are, not before me. The other contentions, to the extent they can be fathomed, have been otherwise disposed of by this determination. The Motion, therefore, is denied.

Conclusion

Upon consideration of the record in this matter and the best interests of the Government and the public, Charles Kirkland, and his affiliates, House of Charles Realty Company and Local Citizens Mortgage Co., Inc., should be debarred from participation in HUD programs for an indefinite period, but not less than five years, to begin as of the date immediately following the date of this Determination through September 10, 1985, credit having been given for the period of Appellant's suspension from September 10, 1980.

Edward Terhune Miller
Administrative Judge
Board of Contract Appeals

Date: April 21, 1982.