

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

_____ :
In the Matter of: :

MYRA WOODS, :

Appellant :

HUDBCA No. 82-743-D55
:

_____ :
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For the Appellant

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DETERMINATION OF
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statement of the Case

This case concerns the disapproval of participation of Myra Woods, Appellant, as a director and principal in a borrower corporation by the Multifamily Participation Review Committee of the Department of Housing and Urban Development ("MPRC"). The MPRC denied Woods' participation as a director and principal of the borrower corporation through a 2530 review proceeding pursuant to 24 C.F.R. §200.210, et seq.

Woods made a timely request for a hearing pursuant to 24 C.F.R. §200.243. These findings of fact and conclusions of law are based on the record established at that hearing.

Findings of Fact

1. Myra Woods was elected to serve on the Board of Directors of the West Oakland Health Facilities Corporation ("WOHC"). The day-to-day fiscal and administrative decisions of WOHC are the responsibility of its treasurer and Executive Director. However, the Board of Directors has the authority to approve or disapprove the decisions of the Executive Director, to advise him on corporate matters, and to fire him. (Tr. 30, 41-43, 64-66.)

2. WOHC applied to HUD for a loan under HUD's Section 202 program to finance a multifamily housing project in West Oakland, California (Govt. Exh. 1).

3. As a condition of approving the loan application, the names of all officers and directors of WOHC, including that of Myra Woods, were required to be listed on a Previous Participation Certificate, HUD Form 2530, for participation approval. All of the listed officers and directors signed the Form 2530 certification. The HUD Participation Control Officer recommended to the MPRC that the participation of Woods as a principal of WOHC be disapproved because she had been convicted of a crime in connection with HUD's Section 8 rental subsidy program. (Govt. Exhs. 1 and 2.)

4. Woods had been convicted of violation of 18 U.S.C. §1003 for making false statements to HUD between 1977 and 1980 concerning her income in order to receive Section 8 rental subsidies (Govt. Exhs. 6, 7, 8; Tr. 19-20).

5. The MPRC disapproved Woods' participation as a director-principal of WOHC under the Section 202 program, based upon her criminal conviction. The MPRC notified both Woods and WOHC that it would not approve the loan application unless and until Woods was removed as a director-principal of WOHC. (Govt. Exhs. 3, 4 and 5.)

6. The Board of Directors of WOHC suspended Woods from serving as a director of that corporation, based on the denial of her participation by the MPRC and the direction received from the MPRC concerning Woods' removal as a director (Tr. 21-32).

7. After HUD was notified that Woods was no longer serving as a director of WOHC, it approved WOHC's application for financial assistance (Tr. 35-36).

Conclusions of Law

A previous participation certificate (HUD Form 2530) must be completed by every principal in a transaction involving projects to be financed pursuant to Section 202 of the Housing Act of 1959. 24 C.F.R. §200.217(a)(2). A principal is defined to include a corporation. When a corporation is a principal, all of its officers and directors are likewise defined as principals pursuant to 24 C.F.R. §200.215(3) and must be listed on the certificate. If those individuals listed have a separate participation record in HUD programs apart from that of the corporation, they must certify and sign the Form 2530. 24 C.F.R. §200.218(a). The certification is intended to fully disclose all information concerning the previous participation history of all of the principals. Ibid.

Each principal must certify, among other things, that for a period beginning 10 years prior to the date of the certificate, except as shown on the certificate, he or she "has not been convicted of a felony and is not presently the subject of a

complaint or indictment charging a felony." 24 C.F.R. §200.219(a)(2)(v). Woods' conviction was for a criminal offense defined as a misdemeanor. The HUD Participation Control Officer referred Woods' file to the MPRC, along with the documents and information concerning Woods' conviction for making false statements to HUD in connection with Section 8 rental subsidies, and recommended that her participation be denied on that basis, in accordance with 24 C.F.R. §200.226(a)(3).

Approval is required as a precondition for participation as a principal. 24 C.F.R. §200.233. The MPRC may disapprove a principal's participation based upon the standards for disapproval set forth at 24 C.F.R. §200.230. Those standards provide that unless the MPRC "finds mitigating or extenuating circumstances that enables it to make an intelligent risk determination for approval, any of the following occurrences attributable or legally imputable to the fault or negligence of a principal may be the basis for disapproval...". 24 C.F.R. §200.230(c). Among the "occurrences" listed is a "criminal record or other evidence that the principal's previous conduct or method of doing business has been such that his participation in the project would make it an unacceptable risk from the underwriting standpoint of an insurer, lender, or governmental agency." 24 C.F.R. §200.230(c)(7).

The MPRC disapproved Woods as a principal based upon her criminal conviction for the misdemeanor of making false statements to HUD concerning her income. Woods contends that because her criminal conviction was for a misdemeanor rather than a felony, and the Form 2530 previous participation certificate addresses only felonies, that the phrase "criminal record" should be read to be limited to felonies.

I cannot conclude that that the phrase "criminal record" is limited to a felonious criminal record. The standard for disapproval at issue does not even limit the MPRC to consideration of the criminal record. It expressly includes "previous conduct" that would make participation by the principal an "unacceptable risk from the underwriting standpoint." I conclude as a matter of law that the MPRC could base its disapproval of Woods on her criminal record even though it was not felonious, so long as it determined that her criminal record or previous conduct in a HUD program made her approval an unacceptable underwriting risk. 24 C.F.R. §200.233(c)(7).

The evaluation of underwriting risk is reserved to the MPRC by regulation. 24 C.F.R. §200.25. No reliable evidence in mitigation of the seriousness of Woods' past conduct in HUD's Section 8 program was presented at the hearing before me that would expand the record originally presented to the MPRC. The crime for which she was convicted was a financial crime indicating a serious lack of integrity and honesty as a HUD program participant. Such a lack of integrity concerning financial reporting was an appropriate basis for the MPRC's conclusion that Woods posed an unacceptable risk from the underwriting standpoint. Despite arguments presented at the


hearing, I cannot conclude that Woods was unaware of the criminality of her conduct or was otherwise ill-advised to plead guilty to the criminal charges on which the MPRC relied.

~~Woods contends that the role of the Board of Directors of WOHC is only "advisory" in nature, and that it was unnecessary to disapprove her participation as a principal. I disagree. I find that the role of the Board of Directors of WOHC is not "advisory."~~ It has the authority to control the direction of the corporation, to approve or disapprove the decisions of its Executive Director, and indeed to fire him. While Woods may not have had the day-to-day responsibility for, or control over, the financial activities of WOHC, the soundness of her judgment as to appropriate and legally acceptable conduct vis-a-vis financial statements and certifications was believed by the MPRC to be questionable, in light of the reasons for her criminal conviction. That moral and judgmental blindspot in her character could affect her evaluation of corporate actions over which she had control by her vote or influence by her advice. I find that the Board of Directors of WOHC had sufficient authority over the corporation's actions to justify the limitation of participation of a director in accordance with the applicable standards for disapproval of participation.

While it may seem unusual for HUD to disapprove the service of an elected corporate official, the Departmental regulation makes no exception for elected officials in its requirements for participation approval. 24 C.F.R. §200.215(e)(2). Woods falls within none of the limited exceptions to the definition of a principal. 24 C.F.R. §200.215(e)(3). Therefore, she was a principal of WOHC by virtue of her elected office and is within the ambit and purview of the previous participation review procedure.

CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, the denial of participation of Myra Woods as a principal of the West Oakland Health Facilities Corporation in a HUD Section 202 project was supported by the evidence and in accordance with the regulations of this Department.



 Jean S. Cooper
 Administrative Judge

Dated: July 21, 1983.