

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGE

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In the Matter of
ARCHIE B. CRENSHAW
Christian Senior Housing, Inc.
AND
DevelCon, Inc.
Respondents
.

Docket No. 82-851-DB

Hugh M. Hadden, Esquire
For the Respondent

Marylea Byrd, Esquire
For the Department

Before: ALAN W. HEIFETZ
Administrative Law Judge

DETERMINATION

Statement of the Case

This proceeding arose as a result of the issuance by HUD's Columbia (South Carolina) Area Office of a Temporary Denial of Participation Order (TDP), as amended, 1/ against Archie B. Crenshaw (hereinafter "Respondent") and his affiliates, effectively precluding them from participation in all HUD multifamily housing programs within that jurisdiction for a period of three months. The basis for the action taken below involved the submission of a false option in connection with an application for a Section 8 housing project in Greenwood, South Carolina. After an adverse determination following an informal hearing, Respondent filed a timely appeal, requesting a hearing pursuant to 24 C.F.R. § 24.7. At the conclusion of that hearing, held on September 15, 1982, I issued a bench decision granting the appeal and vacating the TDP. The following is written confirmation of that decision.

1/ The original TDP prohibited Respondents' participation in multifamily programs for a period of one year and extended to five named affiliates. The subsequent modification affects only Respondent and his affiliates, Christian Senior Housing, Inc. and DevelCon, Inc.

Findings of Fact

Respondent is a developer of HUD-assisted housing. Desiring to respond to an outstanding Notice of Fund Availability, Respondent was introduced to a Lawrence E. McNair of Properties Unlimited, Inc. through George Volker, an individual with whom both had had successful real estate business dealings in the past. McNair subsequently was instrumental in securing option agreements for several proposed construction sites in South Carolina which allowed Respondent to demonstrate the requisite site control in connection with applications for Section 8 projects.

On the eve of the deadline for submission of applications, Respondent discovered that an option on one particular site located in Greenwood, South Carolina, had not been executed. During the course of telephone conversations of that day between McNair's office in Greenville, Respondent's office in Atlanta, and Respondent in Nashville, Tennessee, McNair personally authorized Respondent "to use the Greenwood, South Carolina, site in making a Section 8 submission..." Respondent took this to mean that McNair had "site control."

In reliance upon McNair's representation that he had secured the seller's commitment, Respondent prepared and submitted a form option agreement representing that site control existed. At Respondent's direction, in belief that he was acting within the authority granted him by McNair, the agreement was executed by his assistant as agent for Properties Unlimited, Inc. on behalf of the seller. The Greenwood property, in fact, was never secured by McNair or Properties Unlimited, 2/ and the option which was filed, therefore, was incorrect.

Discussion

The purpose of a Temporary Denial of Participation is essentially the same as that of the sanctions of suspension and debarment, namely, to assure the Government that "...contracts awarded by the Department ... be made only to those contractors and grantees which can demonstrate that Government funds will be properly utilized." 24 C.F.R. §24.0. Department policy requires, therefore, that awards be made only to responsible contractors and grantees. Id.

The Department relies upon the cause stated in 24 C.F.R. §24.18(a)(ii) as regulatory authority for sustaining the TDP imposed against Respondents in this case. Under that provision, adequate evidence of irregularities in a contractor's or grantee's past performance in a Departmental program is

2/ Subsequent to the submission of Respondent's Section 8 proposal, the owners reneged on whatever commitment they had made to McNair.

justification for the sanction. Id. Essentially, the Department's position is that Respondent knew or should have known that in fact he lacked the requisite site control of the Greenwood property, that Respondent's submission of an option agreement reflecting that site control did exist was therefore improper and inaccurate, and that his testimony to the effect that he would take the same action given a similar set of circumstances indicates a continuing lack of responsibility. Given the particular facts of this case, I conclude that the Department has failed to sustain its burden of proof that Respondent's actions were not those of a reasonably prudent businessman.

The record leaves little doubt as to what transpired in this case. In brief, Respondent acted in reliance on the personal authorization of McNair as agent for the sellers, someone who had come highly recommended by a mutual friend who had a history of business dealings with both and who had proven successful in consummating other related real estate deals for the Respondent. There is no allegation that any of those other dealings were in any way fraudulent or that they involved irregularities. Nothing in the record indicates that Respondent should have had reason to believe that he could not rely on the oral representations of McNair. Although the record is silent as to whether McNair had secured a formal commitment on the Greenwood site, I cannot conclude that Respondent acted unreasonably or in any way other than as a prudent businessman in relying on the oral representations of an individual of repute, especially given the time constraints in connection with the subject Section 8 submission and given the history of prior business dealings between the two. Under the unique facts of this case, I conclude that the inaccuracy in the submitted option agreement arose as a result of an excusable mistake of fact.

A temporary denial of participation is not to be used for punitive purposes. It is to protect the public. 24 C.F.R. § 24.5 . Based on the record as a whole, I cannot conclude that Respondent would pose a risk to the government or the public if he were allowed to continue to do business with HUD. To the contrary, to deprive Respondent of further participation in HUD programs would not only work against his interests, but also against those of the public.

CONCLUSION AND ORDER

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause has not been shown for sustaining the temporary denial of participation imposed against Respondent, Archie B. Crenshaw, and his affiliates, Christian Senior Housing, Inc. and DevelCon, Inc.

Accordingly, the appeal is granted and the temporary denial of participation is vacated.



Alan W. Heifetz
Chief Administrative Law Judge
U.S. Department of Housing
and Urban Development
451 7th Street, S. W., Rm. 2156
Washington, D.C. 20410

October 14, 1982