

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

In the Matter of:

PETER F. RICE,

Appellant

HUDBCA No. 83-778-D20
(Activity No. 83-875-DB)

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DETERMINATION

Statement of the Case

This is an appeal from a Temporary Denial of Participation ("TDP") imposed on Peter F. Rice, Appellant, by the Reno Service Office of the U. S. Department of Housing and Urban Development ("HUD") pursuant to 24 C.F.R. §24.18. The ground for imposition of the TDP was submission of false statements by Rice to HUD on an application for mortgage insurance. The TDP was imposed for a period of twelve months from September 2, 1982, and was limited to a denial of participation in single-family mortgage insurance programs funded through the National Housing Act within the geographic jurisdiction of the Reno Service Office. The TDP was affirmed on December 10, 1982 after an informal hearing and reconsideration of the sanction in accordance with 24 C.F.R. §24.18(a) (5).

A hearing was held pursuant to 24 C.F.R. §24.7 to determine whether the imposition of the TDP was warranted. The TDP is sustained in part and modified in part for the reasons set forth in this Determination.

Findings of Fact

1. Peter F. Rice is a licensed real estate broker in Carson City, Nevada, who has familiarity and experience with HUD programs (Tr. 86).

2. On June 3, 1982, Rice signed a Mortgagee's Application for Mortgagor Approval and Commitment for Mortgage Insurance Under the National Housing Act, Section 203(b), known as a HUD Form 2900. The Form 2900 was executed for the purpose of obtaining HUD-FHA mortgage insurance in connection with the purchase of a property by Rice and his wife located at [REDACTED] Michael Street, Carson City, Nevada. (Govt. Exh. 3.)

3. The Form 2900 required that all assets, liabilities, employment history and monthly income of the mortgagor, in this case the Rices, be listed specifically. The Rices certified on the Form 2900 that all of their monthly financial obligations were listed as liabilities. The liabilities listed on the Form 2900, which Rice certified with his initials, failed to include a second mortgage in the form of a deed of trust recorded on October 7, 1981, on a property purchased by Rice at Incline Crest Village. (Govt. Exhs. 3, 5; App. Exh. 1.)

4. Rice executed the Mortgagor's Certificate on the Form 2900, in which he certified that he had never been obligated on a home loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment. On February 18, 1982 a Notice of Breach and Default and Election to Sell in Foreclosure had been recorded against Rice and his wife for failure to pay the monthly installments due on the second mortgage for the Incline Crest property. A Notice of Trustee's Sale, dated June 1, 1982, was published that gave Rice until July 6, 1982 to cure the default or the property would be sold. Subsequent to executing the Mortgagor's Certificate on the Form 2900, Rice cured the default on the second mortgage, and the foreclosure sale did not take place. (Govt. Exhs. 3, 6; App. Exhs. 1, 2.)

5. HUD approved the application for mortgage insurance, and made a firm commitment on June 8, 1982, based on the information on the Form 2900 which had been certified by Rice and on other verifications which substantiated the information on the Form 2900. The existence of the second mortgage on the Incline Crest property and Rice's default on that obligation were unknown to HUD at the time it made the firm commitment. A firm commitment for mortgage insurance cannot be withdrawn by HUD once it is signed. (Tr. 14, 17, 19-20, 26.)

6. The HUD Loan Realty Specialist in the Reno Insuring Office, who reviewed and approved the Form 2900 application for mortgage insurance, would not have approved the application if she had known that Rice had a second mortgage liability on the Incline Crest property because his financial obligations and

income, without reference to those additional factors, presented a "close case" in terms of the HUD guidelines for approval of mortgage insurance (Tr. 18-19, 83-85).

7. Rice admitted that he failed to include the second mortgage liability on the Form 2900. His only explanation for that failure was inadvertence. Rice offered no coherent, credible explanation of why he certified to an inaccurate listing of his liabilities. (Tr. 89, 111.)

8. There is no evidence that Rice ever told the mortgagee that the second mortgage on the Incline Crest property was subject to imminent foreclosure. Rice testified that he signed the Mortgagor's Certificate regarding foreclosures on property because he did not remember receiving notice of the imminent foreclosure action until after he had initially submitted his financial information for the Form 2900, and possibly until after he had signed the Certificate. (Tr. 90-91.)

9. HUD places great weight on the Mortgagor's Certificate and the information listed on the Form 2900 in deciding whether to insure a mortgage. Because HUD is only able to do a "back-up check" on 5 percent of all mortgage insurance applications, it relies heavily on mortgagees and mortgagors to report all required information fully and accurately. (Tr. 10, 15-16.)

10. HUD officials in the Reno Service Office decided that a TDP was necessary as a sanction against Rice because HUD considered the omissions on Rice's Form 2900 to be very serious. The second mortgage, requiring payments of \$500 a month, would have been a determining factor in HUD's evaluation of whether Rice could financially sustain the burden of the additional mortgage that would be insured by HUD. Rice's past history of serious delinquency on the second mortgage would have been a significant factor in determining his creditworthiness and financial responsibility. (Tr. 44.)

11. By letter dated September 2, 1982, Rice was notified that a TDP had been applied to him which precluded his direct or indirect participation in any single-family mortgage insurance programs funded through the National Housing Act for a period of twelve months. The TDP was effective within the geographical jurisdiction of the HUD Reno Service Office. The reason for the TDP was stated as follows:

The decision to deny you participation is based on a [sic] investigation completed by the Reno Service Office, which revealed that you submitted false statements to HUD regarding your financial liabilities; specifically, the imminent default of a trust deed on real property described as Unit 99, Incline Crest IIIB, Incline Village, Nevada. Your failure to disclose this liability resulted

in HUD insuring for you a low-ratio (non-owner occupied) loan on the property at [REDACTED] Michael Street, Carson City, Nevada. (Govt. Exh. 1.)

12. Rice made a request for an informal hearing to reconsider the TDP. On December 10, 1982, the TDP was affirmed by the HUD Regional Administrator, based on the information provided at the informal hearing. (Govt. Exh. 2.)

DISCUSSION

A TDP may be invoked when a HUD contractor or grantee is suspected upon adequate evidence of violating any law, regulation or procedure relating to the application for financial assistance, insurance or guarantee, or making any false statement for the purpose of influencing in any way the action of the Department. 24 C.F.R. §24.18(a)(2)(iv), incorporating 24 C.F.R. §24.13(a)(2). Rice is a "contractor or grantee" within the meaning of the regulation applicable to the TDP sanction because he is a participant in a program in which HUD is an insurer. 24 C.F.R. §24.4(f).

I find that the TDP is warranted because the Government has established that Rice made a false statement on the Form 2900 concerning his liabilities which led the Department to make a firm commitment for mortgage insurance. Had the Department been aware of the second mortgage on the Incline Crest property and Rice's record of non-payment on that mortgage, it would not have insured the mortgage on the Michael Street property. The Department had a right to know that Rice had a record of non-payment that led to a foreclosure action. The omission of that information and the omission of the information concerning Rice's mortgage liability which was the subject of the foreclosure action put the Department at a serious disadvantage in evaluating both Rice's financial responsibility and his available resources to make payments on yet another mortgage.

Technically, Rice did not have a loan which resulted in "foreclosure, transfer of title in lieu of foreclosure or judgment." Therefore, I cannot conclude that he made a false statement on his Mortgagor's Certificate. However, the totality of his actions and the false certification of his liabilities on the Form 2900 were not the conduct of a responsible contractor. The Government must be able to protect itself so that it only does business with responsible contractors and grantees. 24 C.F.R. §24.0. I find that it was in the best interests of the Government to invoke a TDP against Rice for a twelve-month period.

Rice's counsel argued that the letter notice of the TDP did not put Rice on sufficient notice of the ground for the imposition of the sanction. That notice expressly stated that

Rice made a false statement concerning his financial liabilities. The second mortgage was that liability. Rice certified that the listing of his liabilities was complete. It is that certification that was the basis for the Department's action. The pending foreclosure action on that liability for non-payment would only have reinforced the significance of the omitted liability. The financial status of that loan would have been easily discovered had it been properly listed.

The scope of the TDP as applied to Rice included all single family mortgage insurance programs funded through the National Housing Act within the geographical jurisdiction of the Reno Service Office. The offense which was the basis of the TDP occurred in the Section 203(b) program under the National Housing Act. The scope of a TDP is "limited to the program under which the offense occurred." 24 C.F.R. §24.18(3)(i). I find that the scope of the TDP, as applied to Rice, exceeded that allowed by the Department's regulation. The TDP should have been limited in scope to the Section 203(b) program, the program under which the offense occurred. See Michael J. Papa, HUDBCA No. 83-770-D14 (May 25, 1983).

CONCLUSION

For the foregoing reasons, the invocation and duration of the Temporary Denial of Participation of Peter F. Rice is sustained, but the programmatic scope of the sanction shall be limited to the Section 203(b) program.



JEAN S. COOPER
Administrative Judge

Issued at Washington, D. C.
July 14, 1983.