

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

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In the Matter of: :

ROBERT H. VOGUE and
and
RICHARD CAMPBELL,

Respondents

: HUDBCA No. 85-946-D23
: Docket No. 85-1004-DB
: HUDBCA No. 85-947-D24
: Docket No. 85-1005-DB

_____ :
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For the Government

DETERMINATION

Statement of the Case

By letters dated March 21, 1985, Robert H. Voge ("Voge") and Richard Campbell ("Campbell") each were notified by the U.S. Department of Housing and Urban Development ("HUD") that it intended to debar them from participation in departmental programs for a period of three years. The proposed debarment is based on Voge's and Campbell's convictions for violation of 18 U.S.C. §§1010 and 2.

By letters dated April 26 and 29, 1985, the Government amended the original notification regarding Respondents' proposed debarments to include their affiliates: Mark IV Realty Co. ("Mark IV"); Campbell, Stammen and Voge Realty, Inc.; and VOSCO. Voge and Campbell were temporarily suspended pending the determination of debarment. A motion for consolidation of Respondents' respective debarments was granted on July 12, 1985.

The notices of proposed debarment stated that they would serve as the Government's Complaint in the event that Voge or Campbell requested an opportunity to submit documentary evidence and a written brief on the proposed debarment, in accordance with

24 C.F.R. §24.5(c)(2) and 24 C.F.R. Part 26. Both requested hearings on the proposed debarments. Campbell and Voge responded to an Order to Show Cause issued December 12, 1985, by making an adequate showing that their brief was timely filed but misdirected. This Determination is based on the briefs and documentary evidence submitted by the parties.

Findings of Fact

1. Robert H. Voge and Richard Campbell are real estate brokers licensed to practice under the laws of the State of Ohio. In that capacity, they were brokers for property sales involving HUD-insured mortgagees. (Resps.' Affidavits.)

2. On or about July 31, 1979, Campbell knowingly made a false representation to HUD that a buyer would occupy a residence in order to obtain a larger HUD-insured mortgage loan for the property. Because of that action, Campbell was charged in a Bill of Information with violation of 18 U.S.C. §§1010 and 2 (Govt. Exh. D). On June 15, 1984, Campbell was convicted upon a plea of guilty to the Information. He received a two-year suspended sentence and three years probation (Govt. Exh. B and Resp. Answer).

3. On or about June 23, 1980, Voge knowingly made a false representation to HUD that a buyer would occupy a residence in order to obtain a larger HUD-insured mortgage loan. Upon Voge's representation, HUD endorsed a \$40,000 mortgage loan on October 2, 1980 to the buyer. The property went into foreclosure following the last mortgage payment made on March 1, 1982. HUD resold the property on December 13, 1983, at a net loss of \$22,032. (Govt. Exh. E.) On April 2, 1984, Voge was charged in a Bill of Information with violation of 18 U.S.C. §§1010 and 2. (Govt. Exh. D). On June 15, 1984, Voge was convicted upon a plea of guilty to the Information. He received a two year suspended sentence and three years probation. (Govt. Exh. B.)

4. Voge and Campbell are incorporators and shareholders of Campbell, Stammen and Voge Realty, Inc., an Ohio Corporation. Voge is registered as its agent. (Govt. Exh. G.) A filing with the Secretary of State of Ohio shows that Mark IV, a partnership whose partners include Campbell and Voge, is a fictitious name for Campbell, Stammen and Voge Realty Inc. (Govt. Exhs. F and G.) Mark IV also does business under the name of VOSCO (Govt. Exh. F; Resp. Brief at 1).

Discussion

The purpose of debarment is to ensure that the Government does business only with responsible contractors and grantees. 24 C.F.R. §24.0. Debarment is not to be used for punitive purposes, but to protect the public interest. 24 C.F.R. §24.5(a). "Responsibility" is a term of art in Government contract law. It

refers not only to the ability to perform a contract satisfactorily but to the honesty and integrity of the contractor or grantee. 48 Comp. Gen. 769 (1969).

Real estate brokers who participate in HUD-insured mortgage transactions are "contractors or grantees" within the meaning of 24 C.F.R. §24.4(f). In the Matter of Lewis Weinstein, HUDBCA No. 80-531-D57 (Dec. 29, 1980); In the Matter of Steven H. Clayton, HUDBCA No. 80-718-D8 (Feb. 17, 1981). Respondents admit that they were real estate brokers for property sales involving HUD-insured mortgages. Therefore, I find that Voge and Campbell are "contractors or grantees."

Respondents' convictions for making false statements to HUD provide adequate cause to debar Respondents, pursuant to 24 C.F.R. §§24.6(a)(6) and (a)(9). False statements concerning owner occupancy are evidence of a serious lack of business integrity and honesty. Under the National Housing Act, 12 U.S.C. §1701 et seq., and HUD regulations, owner occupants are permitted a smaller down payment than investors. 24 C.F.R. §§203.18(a) and (c). HUD will insure a mortgage for approximately 95-97 percent of the property value for an owner occupant purchaser, but for only about 85 percent of the property value for an investor. The purpose of this policy is to reduce HUD's risk in the case of non-owner occupants, by requiring them to make a greater investment in the property as an incentive to make the mortgage payments. Respondents undermined the policy and administration of this program by falsely representing to HUD that the buyers would be owner occupants when, in fact, they were investors. HUD relied upon these false representations and insured loans for which purchasers had not made the required minimum down payments. In the case of the investor who purchased the property through Voge, the HUD-insured loan went into foreclosure and the Department suffered a net loss of \$22,032.

Although the test for the need for debarment is present responsibility, a finding of lack of present responsibility can be inferred from past acts. Schlesinger v. Gates, 249 F. 2d 111 (D.C. Cir. 1957). Respondents claim that debarment is an inappropriate action since they have already suffered enough for their misconduct. The extent to which a contractor may have suffered professionally, economically, or socially as a result of a criminal proceeding is not at issue in a debarment proceeding. Harold Farrell, HUDBCA No. 85-954-D29 (May 30, 1986.) Nowhere in the record has either Respondent shown any understanding of the seriousness of his actions or the lack of responsibility implicit in those actions. I find that the record lacks evidence of present responsibility on the part of either Respondent. HUD has a particular cause for concern in this case because Respondents' misrepresentations were intentional, they directly affected administration of a HUD program, and the Department was financially harmed when one of the loans went into default. Furthermore, the record is devoid of any evidence that would

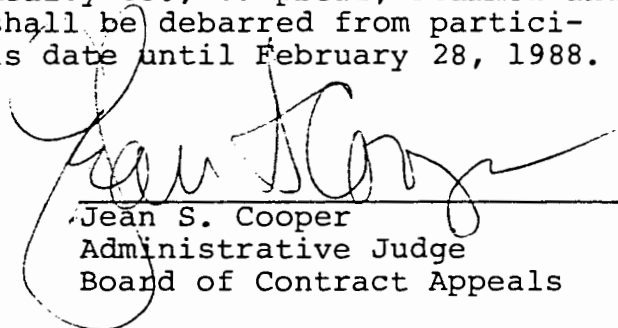
mitigate the seriousness of Respondents' actions. Despite the fact that the actual transactions on which the convictions were based took place a number of years ago, I find that a three-year period debarment is warranted in this case to protect the public interest and HUD.

Pursuant to 24 C.F.R. §24.5(d), an administrative sanction may include a contractor's affiliates. Respondents are shareholders of Campbell, Stammen and Voge Realty, Inc., and partners of Mark IV, which also does business as VOSCO. All three companies are controlled by Voge and Campbell. Therefore, they are subject to debarment under HUD's regulations. In the Matter of Roy C. Markey, The Roary Company; Be-Mark Homes, 83-2, BCA ¶16,688 (July 18, 1983); In the Matter of Arthur A. Padula, et al, HUDBCA No. 78-284-D30 (June 27, 1979.) Respondents admit that Mark IV was involved in the transactions which resulted in their convictions because it guaranteed the sale of the property sold by Campbell, and the agents involved in both of the sales in question worked for Mark IV. Given the nexus of Respondents and their affiliates, failure to include these affiliates in Respondents' debarment would undermine the effectiveness of the sanction and provide insufficient protection to HUD and the public. William J. Smith, Jr. and William J. Smith and Sons, Inc., HUDBCA No. 86-1295-D6 (June 3, 1986). I find that debarment of Respondents' affiliates, Mark IV Realty Co., Campbell, Stammen and Voge Realty, Inc., and VOSCO, is necessary to protect HUD and the public interest.

Robert H. Voge and Richard Campbell have been temporarily suspended since February 28, 1985. Debarment is a prospective sanction and cannot be applied retroactively. I consider it appropriate to give credit for the time Respondents were suspended in determining the necessary duration of their three-year debarments. I find that a period of debarment from this date until February 28, 1988 is warranted and appropriate.

Conclusion

For the foregoing reasons, ROBERT H. VOGUE, RICHARD CAMPBELL, and their affiliates, Mark IV Realty Co.; Campbell, Stammen and Voge Realty, Inc.; and VOSCO, shall be debarred from participation in HUD programs from this date until February 28, 1988.


 Jean S. Cooper
 Administrative Judge
 Board of Contract Appeals

Date: July 2, 1986