

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

In the Matter of:	:	
	:	
JOHN E. SIGNORELLI,	:	HUDBCA No. 86-1517-D8
Petitioner	:	Docket No. 85-1047-DB
	:	
	:	

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For the Government

DECISION

Statement of the Case

By letter dated November 8, 1985, Respondent John E. Signorelli ("Signorelli" or "Respondent") was notified that the Department of Housing and Urban Development ("HUD") proposed to debar him from participation in HUD programs for two years, based on alleged misrepresentations and omissions contained in a March 31, 1985 unaudited statement of financial position published by MortgageBanc and Trust, Inc. ("MBT"). HUD alleges that Signorelli, as President, Chief Operating Office and Chairman of MBT, was responsible for the publication of false and misleading financial statements to at least three potential MBT lenders and/or corporate investors. Signorelli was temporarily suspended pending determination of whether debarment was warranted.

A hearing was held on June 5-6, 1986 to determine the rights of the parties. Both parties filed post-hearing briefs. This determination is based on the record as a whole.

Findings of Fact

1. Signorelli is President, Chairman and Chief Executive Officer of two affiliated mortgage banking trust financial institutions located in Conroe, Texas; Central Mortgage and Trust, Inc. ("CMT") and MortgageBanc and Trust, Inc. ("MBT"). (Signorelli, Tr. 6, 7, 8.)
2. CMT was incorporated by Signorelli on behalf of the "Signorelli Trust" in 1982. CMT's principle business is mortgage lending. CMT was an approved financial institution regulated by HUD in relation to lending activities authorized through Title I & II of the Federal Housing Administration (FHA), and an approved seller-servicer of the Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC) and the Government National Mortgage Association (GNMA). (Signorelli, Tr. 10, 11.)
3. CMT's status as an FHA (Title II) approved mortgagee was withdrawn by HUD on May 10, 1984. On November 28, 1984 GNMA notified Signorelli that CMT had breached guarantee agreements executed in connection with GNMA secured loans. HUD withdrew CMT's status as a Title I approved lender December 18, 1984. GNMA declared CMT in default on the secured loans in January 1985. (G- 8.)
4. On February 19, 1985, Signorelli incorporated MBT pursuant to a two-stage business plan. Signorelli's plan was designed to protect CMT assets placed in potential jeopardy by the withdrawals of Title I and II approval and the GNMA default. Step one called for the creation of a mortgage banking and trust company identical to CMT. This new entity, MBT, would then seek to obtain the agency approvals denied CMT in 1984. In step two, Signorelli planned that MBT should acquire substantially all of CMT's assets and liabilities in exchange for stock. MBT would then carry on CMT's mortgage banking business, with CMT becoming a wholly owned subsidiary of MBT. (Signorelli, Tr. 18-25.)
5. On February 22, 1985, the accounting firm of Peat, Marwick and Mitchell issued a certified Balance Sheet and Auditor's Report for the newly-formed MBT. On March 12, 1985, Signorelli submitted a copy of the certified Balance Sheet and Auditor's Report to HUD with an application for approval of MBT as an FHA Title I and Title II lender. (G-2; Allison, Tr. 23, 36; Signorelli, Tr. 25.)
6. On or about March 31, 1985, MBT's accounting department prepared an unaudited statement of financial position ("SFP") at the direction of Signorelli. The SFP stated that MBT is "regulated by Housing and Urban Development (HUD) in relation to lending activities authorized through the Federal Housing Administration (FHA) [and that] MortgageBanc and Trust, Inc. is

recognized as a direct endorsement lender under Title I and Title II of the Federal Housing Administration (FHA) ... which qualifies the company ... under the Government National Mortgage Association." It further represented that CMT had transferred substantially all of its assets to MBT. Signorelli certified in the SFP that the information represented in it was "a true and accurate account of the financial condition of MBT." According to Signorelli, the SFP was prepared for the benefit of individuals and organizations having an "existing relationship" with CMT but the SFP itself contains no such explanation. Numerous copies of the SFP were printed and formally bound. (G-1; Signorelli, Tr. 30).

7. The transfer of assets from CMT to MBT had not yet occurred on the publication date of the SFP, nor had MBT obtained HUD or GNMA approvals. Eight million dollars in assets listed as MBT's in the SFP are also listed as assets of CMT in CMT's bankruptcy petition, a document also prepared at the direction of Signorelli. (Signorelli Tr. 28-31; Yates, T. 12; G-1.)

8. In a letter dated May 13, 1985, MBT was notified that its application for FHA Title I and Title II approval had been denied by HUD because of the apparent overlapping of assets of CMT and MBT. HUD also expressed concern about possible asset restrictions imposed by Texas State securities authorities and the unavailability of a CMT audit for review. (G-3.)

9. MBT has never obtained approval as a mortgage-backed security issuing lender by GNMA because HUD/FHA approval under Titles I and II is a prerequisite for approval by GNMA. Most lenders in the secondary market in Government-backed mortgages require that an organization be approved by GNMA before considering a loan or extending a credit line to a mortgage origination organization such as MBT. (Yates Tr. 12, 15.)

10. On and after April 1, 1985, signed copies of the SFP were disseminated to at least five potential lenders and/or financial services corporation investors. The policy of MBT was that no financial reports, including the SFP, could be sent to a third party without Signorelli's authorization and approval. (Elmi T. 21; Affidavit of Mary Lou Brown.)

11. On March 27, 1985, MBT submitted an application, signed by Signorelli, to Foremost Financial Services Corporation ("Foremost") to sell installment contracts for manufactured housing units (G-4). William Sill, Foremost's Manager of Asset Services, requested additional information on MBT because most of MBT's assets appeared to be held in the name of CMT. On May 14, 1985, Laura Elmi, MBT Vice-President, sent Sill a copy of the SFP with an accompanying letter projecting increases in MBT warehouse credit lines. Sill was not informed by anyone at MBT that the SFP did not represent MBT's current financial position. Sill relied on the information contained in the SFP for a limited time period, but discovered that MBT did not have HUD or GNMA approval

after telephoning HUD and GNMA in the course of Foremost's standard application review procedure. Elmi testified that Signorelli suggested, authorized and approved sending the SFP to Sill. (Elmi, T. 10-15; Sill, T. 19.)

12. During April 1985, Charles A. Archer, Senior Vice President of Northwest Bank and Trust, Houston, Texas met with Signorelli and Lyn Watson, an MBT representative, respecting a warehouse line of credit for MBT. Archer requested additional financial information about MBT, and sometime thereafter, Archer received copies of the SFP and the Certified Balance Sheet and Auditor's Report from MBT. Based on what Archer termed "conflicting facts within the financial statements," he did not grant MBT's request for a warehouse line of credit. (Archer, T. 6, 7, 10 and 25.)

13. In May 1985, Mr. Wendell Franke, Executive Vice President of Brady National Bank, was approached by Becky Dent, manager of MBT's Lubbock Branch, regarding a warehouse line of credit for MBT. Dent contacted Franke at the direction of Mary Lou Brown, a Vice President of both MBT and CMT. Franke requested that Dent provide him with financial reports and a copy of the GNMA pooling agreement. Dent requested those documents from Mary Lou Brown. A packet containing the SFP and the certified Balance Sheet and Auditor's Report was sent by Brown to Dent and Dent forwarded it to Franke. (Dent, T. 10, 11; Franke, T. 9; Affidavit of Mary Lou Brown.) Based on the financial information provided to Franke by MBT, including oral and written representations by MBT officers and employees that GNMA pool commitments were forthcoming, the Brady National Bank Board of Directors granted MBT a provisional warehousing line of credit of \$250,000. The credit line was contingent on the personal guarantee of John Signorelli and MBT's receipt of the GNMA pool commitment. On July 1, 1985, Brady National Bank cancelled the credit agreement because the contingent conditions were not satisfied. (Franke, T. 14-25.)

14. Becky Dent approached two other lending institutions regarding lines of credit for MBT. Dent hand carried copies of the packet containing the SFP and the certified Balance Sheet and Auditor's Report, which had been sent to her from MBT's central office for that purpose, to officials of Century Savings and Loan and Liberty State Bank. Liberty State Bank increased the amount of the preexisting CMT-MBT credit line to one million dollars after receipt of the financial reports from Dent. (Dent T. 15-17.)

15. Signorelli testified that he had no recollection of approving the dissemination of the SFP to any of the institutions that received it except the Brady National Bank. Signorelli's recollection of the circumstances involving the Brady National Bank conflicts with the testimony of Becky Dent and the post-hearing affidavit of Mary Lou Brown. The testimony of Laura

Elmi that Signorelli directed her to send the SFP to William Sill is persuasive. I find the recollections of Dent, Brown and Elmi to be more reliable than Signorelli's and conclude that Signorelli approved and directed the dissemination of the SFP to the financial institutions that received it. (Signorelli, Tr. 30, 62-63, 85-87, 110-120; Elmi, Tr. 13-23; Dent, Tr. 9-15; Affidavit of Mary Lou Brown.)

16. The SFP was disseminated to other financial institutions without either a written or oral explanation that GNMA and HUD-FHA approvals had not yet been obtained and that the assets of CMT had not yet been purchased by and transferred to MBT on any of the dates on which the SFP was disseminated. (Affidavit of Mary Lou Brown; G-1; Dent, Tr. 10.)

DISCUSSION

The purpose of debarment is to assure the Government that it only does business 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. 24 C.F.R. §24.5. "Responsibility" is a term of art in Government contract law, connoting not only the ability to perform a contract satisfactorily, but the honesty and integrity of the contractor or grantee. 48 Comp. Gen. 769 (1969); In the Matter of Paul Grevin, HUDBCA No. 85-930-D16 (July 10, 1986.)

Signorelli is a "contractor or grantee" within the scope of 24 C.F.R. §24.4(f) because he is president of a mortgage company that was, until recently, a participant in programs where HUD is the guarantor or insurer, and has applied to have that participation reinstated. HUD has proposed the debarment of Signorelli because it determined that circulation of the SFP containing false statements about HUD-FHA and GNMA approvals, and misleading and false information about the assets actually transferred to MBT, under a certification by Signorelli that they were accurate, constitutes a cause of such serious compelling nature, affecting responsibility, that debarment is warranted pursuant to 24 C.F.R. §24.6(a)(4).

Based upon the record considered as a whole, I conclude that the debarment of Signorelli is warranted and necessary to protect the public. Signorelli was responsible for the circulation of a grossly misleading document that purported to be a true and accurate statement of the financial status of MBT. It was circulated without any indication that some of the most significant statements contained in it were untrue at the time the document was circulated. In each case, it was provided to a lending institution that would either extend lines of credit or provide other financial backing and opportunities that would all but require GNMA, if not HUD-FHA Title I and II, approval. It is immaterial whether the institutions ultimately extended lines of credit to MBT. What is important is that Signorelli saw nothing

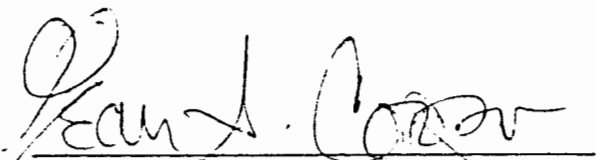
wrong with providing those institutions with the SFP without any explanation that it did not reflect the true and accurate financial state of MBT.

I find Signorelli's attempts to explain how the SFP got disseminated "without his knowledge" to be disingenuous at best, and at worst dishonest. His memory was conveniently faulty, but those of the other witnesses were not; their recollections of detail and setting were entirely convincing. I also find Signorelli's attempts to explain the "internal purpose" of the SFP -- that it was a "future picture" of MBT's financial state -- lacking in credibility. If its purpose was indeed as he explained, a cover letter to that affect or other explanation still would have been absolutely essential when it was disseminated outside the corporation. Plainly put, I find that the SFP was deliberately misused with the blessing and active approval of Signorelli to induce other financial institutions to rely upon information in it that was false. I find such conduct to be utterly lacking in business integrity and it convinces me that Signorelli is presently lacking the requisite responsibility to do business as a HUD contractor or grantee.

Debarment is a prospective sanction. The Government has proposed a period of debarment of two years, which I find to be warranted by the facts in this case. However, Signorelli has been temporarily suspended from participation in HUD programs since November 8, 1985. I deem it appropriate to credit him with the time he has been suspended. Thus, I find that a period of debarment from this date until November 8, 1987 is in the best interest of the public and the Department.

CONCLUSION

For the foregoing reasons, JOHN SIGNORELLI shall be debarred from participation in all HUD programs from this date until November 8, 1987.


 Jean S. Cooper
 Administrative Judge
 Board of Contract Appeals

Date: September 30, 1986.