

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:	:	
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<b>LUCY JELCZ:</b>	:	HUDBCA No. 88-3430-D41
	:	Docket No. 88-1233-DB
Respondent	:	
	:	

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For the Government

DETERMINATION BY ADMINISTRATIVE JUDGE TIMOTHY J. GRESZKO

May 8, 1989

Statement of the Case

By letter dated March 30, 1988, Lucy Jelcz ("Respondent") was notified by the U.S. Department of Housing and Urban Development ("HUD") that it intended to debar her from participation in Departmental programs for a period of three years pursuant to 24 C.F.R. §24.6(c)(3), (11) and (12). The letter stated that the proposed debarment was based on Respondent's improper acts regarding seven FHA-insured mortgages, and specifically alleged that such mortgages were improperly originated in that: (1) as required by HUD program requirements, a face-to-face interview was not conducted with each mortgagor by a representative of Merrill Lynch; (2) mortgagors were instructed to sign forms in blank; (3) a refinance real estate broker was allowed to perform loan processing functions; and (4) as a result of these alleged improprieties, false submissions were made to HUD by Merrill Lynch to induce the Department to insure the mortgages. The letter also informed Respondent that, pending final determination of the issues in this matter, Respondent was temporarily suspended from further participation in HUD programs.

Respondent made a timely request for a hearing on the proposed debarment pursuant to 24 C.F.R. §12. A hearing was subsequently held in Chicago, Illinois to determine whether the debarment of Respondent was in the best interests of the public and the Government. Each party was given the opportunity to submit a post-hearing brief, but only the Government submitted such a brief. This decision is based upon a consideration of the entire record in this case.

### Findings of Fact

1. In the summer of 1986, HUD's Chicago Office conducted an audit of HUD's single family mortgage insurance programs in the Chicago area. The scope of the audit included a review of mortgage loans originated in the Itasca, Illinois branch office of Merrill Lynch Mortgage Company ("MLMC"). The auditors concluded, inter alia, that in every case involving loans referred to MLMC by the loan brokerage firm American Mortgage Services ("AMS"), the mortgagors were unaware of the identity and involvement of MLMC in their loans, and in every instance, the mortgagors did not recall having dealt with anyone from MLMC prior to closing. (Tr. pp. 58-63, 72-76, 79-80, 87-90, 130-137, 140, 144-157; Govt. Exhs. 2-6, 17-20, 22-23, 34, 37-39, 41, 43-46, 48-49.)

2. Respondent was employed as a loan officer in the Itasca, Illinois branch office of MLMC, and in such capacity originated the loans in question in late 1983 and 1984.<sup>1</sup> Each loan was submitted to the Federal Housing Administration ("FHA") for FHA-insurance, and the loans were subsequently indorsed for insurance by FHA. (Joint Exh. 1, Stipulation of Fact ("Stip."), 1-2).

3. Each of the subject loans involved the refinancing of an existing debt. AMS was the refinancing broker involved in obtaining the refinancing of these loans. (Stip. 3-4).

4. ██████████ Taylor, the mortgagor under FHA Case No. ██████████ ██████████, contacted AMS in response to a newspaper advertisement. A representative of AMS named "Jim" came to the Taylor house, and had Taylor sign a number of documents. Subsequently, Taylor went to an office in Schaumburg, Illinois at Jim's request to either finish processing the loan or to close the loan. Taylor signed a

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<sup>1</sup> Evidence was introduced at hearing relative to four loans referenced under FHA Case Numbers ██████████ ██████████ ██████████ ██████████, and ██████████. (Govt. Exhs. 1-7, 16-23, 33-41, 42-49). All counts in the complaint relative to 3 loans referenced under FHA Case Numbers ██████████, ██████████, and ██████████ were dismissed at hearing for failure to produce evidence. (Tr. pp. 409-414).

large number of documents in the Schaumberg office, including blank forms, and further recalled that there were two women in the office, one of whom was named "Lucy." Taylor did not recognize Respondent at the hearing. <sup>2</sup>The Residential Loan Application Form 1003 (FNMA Form 1003<sup>2</sup>) for Taylor's loan indicates on page 2 that the application was taken by Respondent in a face-to-face interview. The application bears the signature "Lucy Jelcz," at the bottom of page 2. (Tr. pp. 189-194, 197; Govt. Exh. 4).

5. The HUD/FHA Application For Commitment for Insurance under the National Housing Act (HUD Form 92900<sup>3</sup>; hereinafter "Form 2900"<sup>3</sup>) for Taylor's loan contains certifications in Section III thereof, which provide in relevant part that:

26B. The information contained in Section II was obtained directly from the borrower by a full-time employee of the undersigned or its duly authorized agent....

\* \* \* \* \*

26D. The verification of employment and verification of deposits were requested and received by the undersigned lender or its duly authorized agent without passing through the hands of any third persons....

The lender's certification further indicated in Section III, line 26.G.(3), that MLMC had no duly authorized agents for the development of information on behalf of the lender. These certifications were made on behalf of MLMC by "Bonnie Russell" "loan processor." (Govt. Exh. 2).

6. [REDACTED] LaBoy, the mortgagor in FHA Case No. [REDACTED], also contacted AMS in response to a newspaper advertisement to arrange for the refinancing of his home loan. LaBoy recalled that a male AMS representative was involved in the procedures and the processing of paperwork relative to his refinancing. Two men and a woman were present at the closing. LaBoy did not indicate that he participated in any face-to face interviews with a woman

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<sup>2</sup> Forms 1003 are preliminary applications which are not forwarded to the FHA by lenders, but remain in the lender's loan file. (Tr. p. 338).

<sup>3</sup> The HUD Form 2900 is the formal loan application which is forwarded to FHA. The FHA relies on the certifications therein when issuing insurance. (Tr. pp. 22-23).

prior to closing. LaBoy's Forms 1003 and 2900 contain the same representations and certifications as set out in paragraphs 4 and 5 above. (Tr. pp. 202-206; Govt. Exhs. 17-18).

7. [REDACTED] Pausz (formerly "Sareny"), the mortgagor in FHA Case No. [REDACTED], also refinanced a home with MLMC through AMS. Pausz testified that a man representing AMS, possibly Rocco Esposito, came to her house on two occasions to obtain information and to execute the loan application. Pausz did not recall any other pre-closing face-to-face interviews. The Pausz Forms 1003 and 2900 contain the same representations and certifications as set out in paragraph 4 and 5 above. (Tr. pp. 213-217; Govt. Exhs. 34, 37, 40).

8. [REDACTED] Burris, the mortgagor in FHA Case Number [REDACTED], refinanced his home with MLMC through AMS to obtain funds needed to repair his truck and to consolidate other bills. Burris provided information relative to his loan to a man named "Goldman." Burris testified that he observed a large woman in an office when he was filling out loan-related documents in either Itasca or Schaumburg, Illinois, but he did not indicate that he provided information to Respondent in a face-to-face interview. The Burris Forms 1003 and 2900 contain the same representations and certifications as set out in paragraphs 4 and 5 above. (Tr. pp. 226-229; Govt. Exhs. 43-44).

9. Bonnie Russell was Respondent's loan processor at the Itasca office of MLMC. Russell had worked closely with Respondent for a number of years at another loan company and was asked by Respondent to come and work with her at MLMC. One of Russell's responsibilities as a loan processor at MLMC was to assure that all required documentation relative to each loan was properly executed and filed. She was also required to assemble such documentation for submission to the underwriter for approval of the loan. Among such documents were Forms 1003, Forms 2900, and a number of verifications, to include verifications of employment and verifications of deposit.

During her tenure with Respondent, Russell began to notice that she had more cases for processing for Respondent than other processors had for their loan officers. She also noticed that many of Respondent's cases were referrals from AMS, and that no other loan officer had as many mortgage loan refinances as Respondent. Russell did not conduct face-to-face interviews with the AMS loan applicants. She also did not believe that Respondent was conducting face-to-face interviews with these applicants, because completed loan applications (Forms 2900) were being forwarded to MLMC by AMS. She never observed any of the AMS applicants at the Itasca MLMC office.

Russell indicated that she observed Respondent filling out many Forms 1003, which had been initially taken by AMS, on forms

which had been signed in blank by the applicants. Russell also indicated that she was instructed by Respondent to let AMS resolve problems relative to verifications of deposits and employment in lieu of sending such verifications directly back to the bank or institution in question, and that she was further instructed by Respondent to provide completed Forms 2900 to Rocco Esposito of AMS so that he could obtain applicant's signatures thereon. Russell testified that she complained about these practices to Marianne Eichler, the MLMC office manager. (Tr. pp. 260-267, 269-271, 279, 283, 285, 288-289, 291-297, 299, 321-322, 328, 329; Govt. Exhs. 2, 17, 34, 43).

10. Rocco Esposito, the founder and owner of AMS, was Russell's primary point of contact at AMS. Esposito indicated in testimony that the customary practice of AMS was to perform the initial screening of loan applicants, and to subsequently refer the applications to Respondent and other mortgage companies, after the completion of the Form 1003. AMS also provided the applicants with authorization forms for a number of verifications. Esposito denied that AMS ever made out loan applications (Forms 2900), but admitted that AMS on rare occasions received verifications from MLMC loan processors to be returned to employers and banks. Authorization forms were typically given to the applicants by AMS to provide to the loan processor at MLMC. The loan processor would give such forms back to him on occasion to be hand-carried by AMS to banks and employers when there had been problems with the information originally provided by the loan applicants. Esposito also indicated that from time-to-time, Respondent interviewed loan applicants at the AMS Schaumburg office. (Tr. pp. 239-246, 249-250, 252, 254, 256).

11. Marianne Eichler managed the Itasca office of MLMC, supervised Russell, and worked with Respondent throughout the time period in question. Eichler observed Rocco Esposito, an AMS representative, in the Itasca office of MLMC on a daily basis, exchanging information and documents with Russell and Respondent. It was highly unusual for loan brokerage representatives to visit the MLMC offices with such frequency. Eichler testified that Russell complained to her about Respondent's loan origination practices with AMS and that these complaints were passed on to the branch manager, who chose to ignore them, because he felt that Respondent knew what she was doing. Respondent typically spent 10-12 hours a day in Eichler's presence in the Itasca office, and was clearly the top producer in the office. Eichler indicated on the basis of her experience as a loan processor, loan officer and branch office supervisor, that it would have been very difficult for Respondent to have originated as much business as she did along with conducting face-to-face interviews with mortgagors. She based this opinion on the amount of time that Respondent typically spent in the office, since most loan officers generate the bulk of their business in meetings with

their customers at locations remote from the office. (Tr. pp. 352-357, 360-361, 364-365, 369, 372-373, 375, 378, 380, 387, 395, 403, 404).

### Discussion

Sanctions such as suspension and debarment are to be used to protect the public, and not for punitive purposes. Gonzalez v. Freeman, 334 F.2d 570, 577 (D.C. Cir. 1964); 24 C.F.R. §24.5(a). The purpose of debarment is to assure the Government that it only does business with responsible contractors or grantees. 24 C.F.R. §24.1. Responsibility is a term of art in government contract law, defined to include not only the ability to perform a contract, but the honesty and integrity of the contractor or grantee as well. Roemer v. Hoffman, 419 F.Supp. 130 (D.C. D.C. 1976); Paul Grevin, HUDBCA No. 85-930-D16 (Jul. 10, 1986).

It is uncontested that Respondent is a "participant" in a "specially covered activity" of the Department as defined in 24 C.F.R. §§24.3(a)(2) and 24.3(u). Specially covered activities encompass, inter alia, participation in the loan and insurance programs of the Department. Respondent's activities as a loan officer of the Merrill Lynch Mortgage Company fall clearly within these definitions.

The Department's regulations also provide at 24 C.F.R. §24.6(c), that a debarment may be imposed for:

(3) Conduct indicating a lack of business integrity or honesty which affects the present responsibility of a ...participant;

\* \* \* \* \*

(11) Violation of any law, regulation, or obligation relating to applications for financial assistance, insurance, or guaranties...;

(12) Making or causing to be made any false statement for the purpose of influencing in any way any action of the Government;....

Counts II, IV, VIII, and X of the Government's complaint charge that Respondent caused or allowed the lender to falsely certify that all information was obtained directly from the borrowers in question by a full-time employee of MLMC, when in fact Respondent allowed the refinance broker's employees to obtain the necessary information. Counts I, III, VII and IX of the Government's complaint charge that Respondent failed to

conduct a face-to-face interview with the borrowers in question in violation of HUD requirements and prudent lending practices, and further charge that Respondent improperly allowed the refinance broker's employees to perform critical loan processing functions. Count XV of the Government's complaint charges that Respondent, by failing to conduct face-to-face interviews with the borrowers, and by causing or allowing false information to be submitted to HUD, enabled refinance brokers to mislead borrowers regarding their refinance transactions and their subsequent liabilities with respect to the HUD-FHA insured loans.

The burden is on the Government to prove by a preponderance of the evidence that cause for debarment exists. 24 C.F.R. §24.13(c); James J. Burnett, HUDBCA No. 80-501-D42, 82-1 BCA ¶15,716. I find the evidence in the record before me proves that the Respondent was utilizing employees of AMS to obtain virtually all of the information that was needed to process the LaBoy, Pausz, and Burris loans, and that such information was not obtained by MLMC employees or authorized agents in face-to-face interviews with the mortgagors. Each mortgagor testified that they were not aware of the fact that MLMC was the mortgagee until the closing of their loans or sometime thereafter. Each mortgagor was cognizant of AMS' involvement in the process, and could recall certain details with respect to AMS' involvement in the process. None of these mortgagors were able to indicate any recollection of involvement in the process by any employee of MLMC or by Respondent prior to the closing of their loans. Russell's testimony that AMS employees were obtaining information from the applicants was partially corroborated by the testimony of Rocco Esposito, and Esposito also admitted to acting as a conduit for the return of verifications of employment and deposit to employers and banks. Moreover, this evidence is corroborated by the testimony and papers of the auditors, and is supported circumstantially by Eichler's testimony that it would have been very difficult for Respondent to have generated all of this business on her own, while at the same time conducting face-to-face interviews with mortgagors, considering the amount of time that Respondent was spending in the office. Respondent both vehemently denied that she utilized AMS to obtain information as charged, and further asserted that she always conducted face-to-face interviews with loan applicants. However, there is inadequate evidence in support of her assertions. I find that this evidence in support of Respondent's contention is inadequate to overcome the Government's prima facie case. I also find that Respondent, as the loan officer with primary responsibility for each of the subject loans, allowed false certifications to be made on the Forms 2900 associated with the subject loans.

I find counts III and IV of the complaint, which charge that Respondent failed to conduct a face-to-face interview with Taylor and that Respondent caused false statements to be made with respect thereto, to be unsupported by the evidence. Taylor's

testimony that a woman named Lucy was present at either the processing of or closing of his loan renders it as likely as not that Respondent conducted a face-to-face interview with Taylor prior to the closing of his loan.

I find count XV of the complaint, which charges that Respondent's conduct enabled lenders to mislead borrowers with respect to the terms of their loans, to be speculative and not supported by the evidence. Although there is some evidence to support a finding that the borrowers were confused with respect to the terms of their loans, such evidence is inconclusive that the lending practices in question caused such confusion.

It has been previously held by this Board that a mortgagee's failure to conduct a face-to-face interview is both contrary to HUD guidelines and an imprudent practice. Mechanics National Bank and Mechanics National Mortgage Company, HUDBCA No. 77-5-MR (Unpub.) (March 6, 1979), and authorities cited therein. See also HUD Handbook 4000.2 REV-1, Mortgagee's Handbook--Application through Insurance; HUD Handbook 4060.1, Mortgagee Approval Handbook, Appendix 1.<sup>4</sup> This Board more recently held that a face-to-face interview is "critical" to prudent lending practices. See bench decision in Joan Galati, HUDBCA No. 88-3455-D64 (February 23, 1989), Tr. at 49-50. It is also an imprudent practice and a violation of HUD guidelines for a mortgagee to permit applicants to sign forms in blank, or for a mortgagee to allow verifications of employment and deposits to pass through the hands of third parties. HUD Handbook 4000.1 REV-1, Mortgagee's Handbook, para. 5-5, 5-5c.1.

I find accordingly, that the Government has established cause for the debarment of Respondent.

Respondent's conduct with respect to these loans demonstrates a decided lack of present responsibility and integrity. Respondent was an experienced loan officer with extensive experience in the field of Federally-insured loans. Her failure to conduct face-to-face interviews with applicants is clearly established by the record in this case. This deliberate omission, along with her involvement in imprudent lending practices and the making of false statements relative thereto, constituted a complete disregard of HUD guidelines, and a systematic circumvention of the critical protections upon which HUD must rely in order to maintain the integrity of the Federally-insured loan program. A participant may be excluded from HUD programs for a period based upon projected business risk. Roemer v. Hoffman, 419 F.Supp. 130 (D.C. D.C. 1976). Any

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<sup>4</sup> The statutory authority for the Secretary of HUD to promulgate such guidelines is found under Section 203(a) of the National Housing Act, as amended, 12 U.S.C. §1709(a).

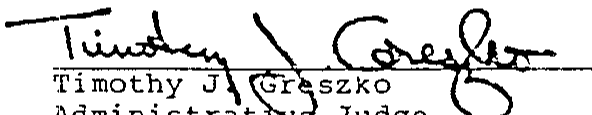


mitigating circumstances affecting responsibility must be considered. Roemer v. Hoffman, supra. Therefore, debarment is inappropriate if the affected participant demonstrates that, notwithstanding any past nonresponsible conduct, he no longer constitutes a business risk. 24 C.F.R. §24.1. The Government's evidence is neither significantly contradicted by nor mitigated by any evidence in the record. The record therefore establishes the necessity and appropriateness of a substantial period of debarment of this Respondent to protect the public interest.

HUD has proposed a debarment of not less than three years to protect the public interest. The nature of the conduct in question and the lack of mitigating evidence warrant Respondent's debarment for a period of three years.

#### Conclusion

It is hereby ORDERED that Respondent shall be debarred from participation in HUD programs through March 29, 1991, credit being given for the time Respondent has been temporarily suspended.

  
Timothy J. Greszko  
Administrative Judge