

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: :

THOMAS L. ZEBERT, :  
SUNSET INVESTMENT COMPANY : HUDBCA No. 88-3467-D73  
INC., and : Docket No. 88-1278-DB  
MCKINLEY, ZEBERT & CHILDRE, :  
Respondents :  
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For the Respondents

Robert G. Nichols, Jr., Esq.  
Catherine Lee, Esquire  
Unifirst Federal Savings Building  
Suite 616  
Jackson, Mississippi 39205

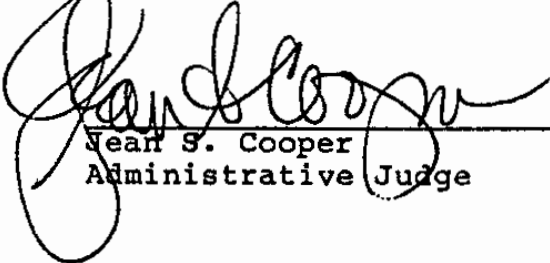
For the Government:

Ronnie Ann Wainwright, Esq.  
Emmett N. Roden, Esq.  
Office of General Counsel  
Department of Housing and  
Urban Development  
Washington, D. C. 20410

DECISION AND ORDER

The decision and order issued from the bench in this case pursuant to 24 C.F.R. §26.24(d) on April 5, 1989 is incorporated by reference in this Decision and Order. A copy of the transcription of the decision is attached. The parties shall have 15 days from receipt of this Decision and Order to request Secretarial Review.

ORDERED this 19th day of May, 1989.

  
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Jean S. Cooper  
Administrative Judge

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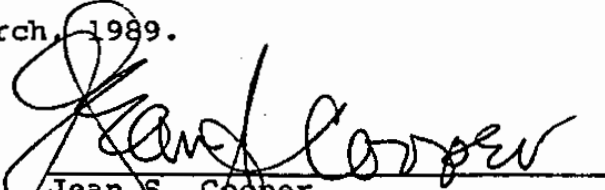
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ORDER ON ERRATA

The following errata shall be corrected as follows:

- Transcript p. 306, line 6 - "His is" to "He is"
- Tr. p. 315, line 4 - "due tot he" to "due to the"
- Tr. p. 318, line 6 - "to set up" to "who set up"

ORDERED this 24th day of March, 1989.

  
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Jean S. Cooper  
Administrative Judge

1 U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
2 BOARD OF CONTRACT APPEALS  
WASHINGTON, D.C.

3 In the Matter of:

4 THOMAS L. ZEBERT,  
5 SUNSET INVESTMENT COMPANY, INC., HUDBCA No. 88-3467-D73  
and MCKINLEY, ZEBERT & CHILDRE,

6 Respondents

7 DECISION

8 STATEMENT OF THE CASE

9 By letter dated June 3, 1988, Thomas L. Zebert and  
10 his named affiliates, Sunset Investment Company;, Inc. and  
11 McKinley and Zebert, now McKinley, Zebert & Childre, were  
12 notified that the U.S. Department of Housing and Urban  
13 Development proposed to debar them for a period of three years  
14 from the date of the Notice of Proposed Debarment. The cited  
15 grounds for the proposed debarment were Zebert's alleged  
16 submission of HUD-1 Settlement Statements containing  
17 information that he knew or should have known were false, for  
18 the purpose of inducing HUD to insure the mortgages in five  
19 real estate transactions in which Zebert was the closing  
20 attorney. These charges, if proven, will be grounds for  
21 debarment pursuant to 24 CFR Section 24.6(c)(3), (12) and  
22 (13). Zebert and his affiliates were temporarily suspended  
23 pending determination of debarment. A timely request was made  
24 for a hearing on the proposed debarment. This decision is  
25 based on the record established at the hearing held on April 4

1 and 5, 1989. It is issued pursuant to 24 CFR Section  
2 26.24(d), as agreed by the parties.

3 FINDINGS OF FACT

4 1. Thomas L. Zebert is a licensed attorney practicing in the  
5 State of Mississippi with the law firm of McKinley, Zebert &  
6 Childre. His is also a youth court judge. For 24 years,  
7 Zebert has been conducting real estate settlements, 75% of  
8 which involved HUD-insured mortgages.

9 2. Between November 5, 1983 and October, 1985, Zebert acted  
10 as the settlement agent for the closing of the sale of five  
11 properties purchased with mortgages insured by HUD-FHA that  
12 went into early default. A HUD Office of Inspector General  
13 audit of First City Mortgage, the mortgagee in all five  
14 transactions, revealed that the requisite investment had not  
15 been made by the purchasers, although the settlement papers  
16 prepared by Zebert stated that the requisite investments had  
17 been made.

18 3. On October 9, 1985, Zebert was the settlement attorney for  
19 the closing of a sale of a property located at [REDACTED] Houston  
20 Avenue, Jackson, Mississippi. In that capacity, he had a HUD-  
21 1 Settlement Statement prepared by his secretary at his  
22 direction, which listed the earnest money paid by the  
23 purchaser, [REDACTED] Pourteau, as \$1,750 at line 201 of the form.  
24 On line 303 of the HUD-1, Zebert indicated that Pourteau had  
25 also paid \$1000.56 in cash at the closing. The net cash to

1 the seller paid at the closing was listed on line 603 of the  
2 HUD-1 as \$19,367.96. The HUD-1 contained two certifications.  
3 The first certification stated that the purchaser and seller  
4 approved and authorized the disbursement of funds in  
5 accordance with the HUD-1 and knew of no liens against the  
6 property. The second certification is by Zebert as the  
7 closing attorney. He certified that the HUD-1 is a true and  
8 correct account of funds received and disbursed in connection  
9 with the sale transaction.

10 4. In fact, the net cash paid to the seller of the property  
11 at ■ Houston Avenue was \$16,617.40, not \$19,367.96, as shown  
12 on the HUD-1 at line 603, a difference of \$2750.56. This  
13 difference reflects the sum of the earnest money down-payment  
14 plus cash to be paid by the purchaser at closing. I find,  
15 based upon the evidence considered as a whole, that the  
16 purchaser made no down-payment at all for the property, nor  
17 did he pay to the seller any cash at closing. The information  
18 contained on the HUD-1 in this transaction is false.

19 5. On November 21, 1983, Zebert was the settlement attorney  
20 for the closing of a sale of a property located at ■  
21 Rosemary Avenue, Jackson. In that capacity, he had a HUD-1  
22 Settlement Statement prepared by his secretary at his  
23 direction, which listed the earnest money deposit paid by the  
24 purchasers, Mr. and Mrs. ■ Campbell, as \$2000, at line 201  
25 of the form. On line 303 of the HUD-1, Zebert indicated that

1 the Campbells had also paid \$400.58 in cash to the seller at  
2 the closing. The net cash to the seller paid at closing was  
3 listed on line 603 of the HUD-1 as \$37,350.16. Zebert  
4 certified that the HUD-1 was a true and correct account of  
5 funds received and disbursed in connection with the sale  
6 transaction.

7 6. In fact, the net cash paid to the seller of the property  
8 at [REDACTED] Rosemary Avenue was \$34,949.58, not \$37,350.16, as  
9 listed on the HUD-1 at line 602, a difference of \$2,400.58.  
10 This difference reflects the sum of the earnest money down-  
11 payment plus cash to be paid by the purchasers at closing.  
12 Mr. Campbell testified that he and his wife paid no money as a  
13 deposit or in cash at closing. I find, based upon the  
14 evidence, that the purchasers made no down-payment at all for  
15 the property, nor did they pay the seller any cash at closing.  
16 The information contained on the HUD-1 is therefore false.

17 7. On September 11, 1985, Zebert was the settlement attorney  
18 for the closing of the sale of a property located at [REDACTED]  
19 Clubview Drive, Jackson. In that capacity, he had a HUD-1  
20 Settlement Statement prepared by his secretary at his  
21 direction, which listed the earnest money paid by the  
22 purchaser, [REDACTED] Johnson, as \$1700 at line 201 of the form.  
23 On line 303 of the HUD-1, Zebert indicated that Johnson had  
24 also paid \$202.29 in cash at the closing. The net cash to the  
25 seller paid at closing was listed on line 603 of the HUD-1 as

1 \$8,887.88. Zebert certified that the HUD\_1 was a true and  
2 correct account of funds received and disbursed in connection  
3 with the sale transaction.

4 8. In fact, the net cash paid to the seller, Sunset  
5 Investment Companies, was \$8685.59, not the amount listed on  
6 the HUD-1 at line 603, a difference of \$202.29. That amount  
7 of \$202.29 was the amount to be paid by Johnson at the closing  
8 in cash to complete his required down-payment and required  
9 prepaid items. In addition, line 701 of the HUD-1 states that  
10 Circle C Real Estate, the broker, received \$2,232 as a  
11 commission at settlement. In fact, Zebert only distributed  
12 \$532 to Circle C Real Estate at the closing. The sales  
13 contract for this transaction states that an earnest money  
14 deposit of \$1700 had previously been paid to the broker. The  
15 \$532 would be the difference due to broker if the broker had  
16 actually received and retained a down-payment check of \$1700  
17 from Johnson. Based on the evidence considered as a whole,  
18 including the unrefuted signed statement of Johnson, I find  
19 that the purchaser did not make a down-payment of \$1700, nor  
20 did he pay \$202.29 in cash before or at closing. The  
21 information contained on the HUD-1 is therefore false.

22 9. The seller of the property at [REDACTED] Clubview was Sunset  
23 Investment Companies, Inc. of Pearl. Zebert was Vice-  
24 President of Sunset, a director, and also prepared the  
25 incorporation papers for it. He knew Clete Christian, the

1 President of Sunset and also Christian was the broker from  
2 Circle C Real Estate on the sale of the property. Zebert was  
3 still Vice-President of Sunset in August, 1985, as evidenced  
4 by an annual report for the company, confirmed by Zebert,  
5 which is Exhibit G-50. Zebert stated that although he was an  
6 officer and a director of Sunset, he received no compensation  
7 in either capacity and performed no corporate actions.  
8 Rather, he incorporated Sunset in his attorney capacity, and  
9 in February 1988 prepared the dissolution papers for Sunset.  
10 I find that Zebert did not exercise any control over Sunset in  
11 his capacity as an officer or director, nor was it intended  
12 that he do so. In any event, I credit Zebert's testimony that  
13 Sunset has been dissolved as a corporation as of February  
14 1988.

15 10. On July 31, 1985, Zebert was the settlement attorney for  
16 the closing of a sale of a property located at [REDACTED] Halsey  
17 Avenue, Jackson. In that capacity, he had a HUD-1 Settlement  
18 Statement prepared by his secretary at his direction, which  
19 listed the earnest money paid by the purchasers, [REDACTED]  
20 [REDACTED] Womack, as \$600 on line 201 of the form. On line 303 of  
21 the HUD-1, Zebert indicated that the Womacks had also paid  
22 \$781.20 in cash at the closing. The net cash to the seller  
23 paid at the closing was listed on line 603 of the HUD-1 as  
24 \$16,748.63. Zebert certified that the HUD-1 was a true and  
25 correct account of funds received and disbursed in connection



1 with the sale transaction.

2 11. In fact, the net cash paid to the seller of the property  
3 at [REDACTED] Halsey Avenue was \$15,367.43, not \$16,748.63 as shown  
4 on the HUD-1 at line 602, a difference of \$1,381.20. This  
5 difference reflects the sum of the earnest money down-payment  
6 plus cash to be paid by the purchaser at closing. I find,  
7 based upon the testimony of [REDACTED] Womack and documentary  
8 evidence, that the Womacks made a down-payment of \$100 to  
9 Johnny Jolley, the broker, and paid an additional \$900 either  
10 at or before closing in cash, totaling a \$1000 cash investment  
11 in the property by the Womacks. \$1000 is less than the 3%  
12 down-payment required by HUD. I find that the information on  
13 the HUD-1 is therefore false.

14 12. On November 21, 1983, Zebert was the settlement attorney  
15 for the closing of a sale of a property located at 5255 Mattox  
16 Street, Jackson. In that capacity, he had a HUD-1 Settlement  
17 Statement prepared by his secretary at his direction, which  
18 listed the earnest money deposit paid by the purchasers,  
19 [REDACTED] Jeanes, as \$500 on line 201 of the form.  
20 On line 303 of the HUD-1, Zebert indicated that the Jeanes had  
21 also paid \$2024.74 in cash at the closing. The net cash to  
22 the seller paid at the closing was listed on line 603 of the  
23 HUD-1 as \$39,168.84. Zebert certified that the HUD-1 was a  
24 true and correct account of funds received and disbursed in  
25 connection with the sale transaction.

1 13. In fact, the net cash paid to the seller of the property  
2 at [REDACTED] Mattox Street was \$36,644.10, not \$39,168.84 as stated  
3 on the HUD-1, a difference of \$2,524.74. This difference  
4 reflects the sum of the earnest money down-payment plus cash  
5 to be paid by the purchasers at closing. [REDACTED] Jeanes  
6 testified that he and his wife made no down-payment at all  
7 and paid no additional cash either at or before the closing.  
8 The seller of the property was Mrs. Jeanes mother, [REDACTED]  
9 [REDACTED]. The information contained on the HUD-1 is therefore  
10 false.

11 14. Zebert conducted each of the closings in the same general  
12 manner. To prepare the HUD-1, he first used forms of his own  
13 that he preferred to the HUD-1. These were a loan closing  
14 statement form and a checklist. The checklist did not contain  
15 space to enter deposits or cash due from the purchasers at  
16 closing. In each of the five transactions, Zebert wrote on  
17 his loan closing statement form the net amount that was  
18 actually paid the seller in each case, as distinguished from  
19 the amount he listed on each HUD-1 at line 603. Zebert did  
20 not accept personal checks from parties because they might  
21 affect the actual balance of his escrow account unfairly.  
22 That would be if the checks bounced. He therefore suggests to  
23 all parties in all closings that they exchange their personal  
24 checks for any down-payments or other expenses due outside of  
25 his escrow account. This is the way in which closings are

1 routinely conducted in Mississippi and there are no statutes  
2 or regulations to prohibit such a practice. I credit the  
3 testimony of both Mr. Zebert and Ms. Brown in this regard.

4 15. Zebert testified that in each of the five transactions he  
5 was told by at least one of the parties, usually the seller,  
6 that monies that would have been otherwise paid in cash at the  
7 closing had already been paid. He relied on those statements  
8 and did not require further proof, such as a sworn statement  
9 or the check itself, that these amounts had been paid.

10 Inasmuch as no cash was paid at any of the closings by the  
11 purchasers, with the possible exception of the Womack  
12 transaction, I find it to have been a false statement made on  
13 line 303 of each of the HUD-1s that any cash had been paid at  
14 closing. The record did not establish when Zebert was  
15 notified of these alleged payments, but it was probably not  
16 until the closings. Cash payments other than those actually  
17 made at the closing should not have been listed on line 303 of  
18 the HUD-1. They should have been listed in the 200 series of  
19 blocks on the HUD-1 after block 203. They also should have  
20 been recorded in the 500 series of blocks on the HUD-1 after  
21 block 505, to reflect any payments made by the purchasers to  
22 the sellers in advance of the closing. The HUD-1 was filled  
23 out incorrectly by Zebert to reflect the payments that he was  
24 told by the parties were made or exchanged in advance of the  
25 closings. The HUD-1s as filled out by Zebert, do not reflect

1 either what the parties told him had occurred or the actual  
2 facts of what had occurred.

3 16. Zebert relied on the sale contract, HUD Commitment  
4 Certification, HUD 9-2900 application and oral statements of  
5 the parties in filling out the amount of earnest money  
6 deposits made by purchasers. This is standard practice in the  
7 industry and is responsible conduct. The entries on line 201  
8 of each HUD-1 made by Zebert were made responsibly because  
9 those figures were reflected in the appropriate documents and  
10 Zebert received no extrinsic information that would had led  
11 him to believe the information was false.

12 17. Zebert did not know that information given to him about  
13 alleged earnest money deposits and monies paid before the  
14 closings was false. He was not a knowing participant to any  
15 of the fraudulent schemes in these five transactions. He had  
16 no knowledge, nor was there any hint to him, that any of the  
17 transactions involved straw buyer transactions. Zebert had  
18 worked with or knew a number of the participants in these  
19 transactions and saw no reason to question their honesty at  
20 the time of the transactions. The procedures he followed in  
21 verifying any sums he was told about were essentially those  
22 procedures used by closing attorneys in the locality and were  
23 not of themselves irresponsible or negligent.

24 18. In each transaction, the earnest money deposit was  
25 listed on the sales contract as being given to the broker. In

1 all but one of the transactions, the alleged earnest money was  
2 credited by Zebert to the seller without making any notation  
3 to that effect on the HUD-1. Inasmuch as that deposit should  
4 have normally been netted against the commission due to the  
5 broker, a notation should have been made that the parties told  
6 Zebert the deposit had been transferred to the seller. In the  
7 Pourteau loan, Zebert had a check written for the entire  
8 amount of the broker's commission, despite the fact that the  
9 broker allegedly held the deposit check. I do not find that  
10 Zebert handled these matters in this fashion to mislead or to  
11 defraud. However, the HUD-1 in each case did not reflect what  
12 Zebert believed or had been told had happened with the monies.  
13 Nonetheless, even if Zebert had recorded what he was told or  
14 believed on the correct lines of the HUD-1, this would not  
15 have changed the fact that the parties were lying to him,  
16 their certifications were false and information on the  
17 documents he relied on were also false.

18 19. Even if Zebert had placed each entry on the HUD-1 in its  
19 correct place, with correct notations to reflect what happened  
20 at each closing as seen by Zebert, I find that HUD would still  
21 have insured each of the loans. Based on the testimony of  
22 ██████████ Cooper, Mr. Walls and Mr. Stewart, HUD would not have  
23 insured the loans if it had known that the requisite down-  
24 payments had not been made by the various purchasers. Those  
25 facts would not have been revealed because Mr. Zebert was

1 given incorrect and false information.

2 20. Zebert did not intend to mislead or make false statements  
3 on the HUD-1. However, he did certify that certain entries on  
4 the HUD-1 reflected what actually occurred at the closing when  
5 he knew or believed that the closing had transpired  
6 differently. In particular, he knew that no monies were paid  
7 in cash at closing by the purchasers, yet he filled out line  
8 303 on each HUD-1 to show that such events had occurred. I  
9 find that he did not understand what entries were required on  
10 the HUD-1 in which sections. He believed that line 303 could  
11 be used to enter payments made before or at the closing, which  
12 is not correct. A careful study of the HUD-1 would have shown  
13 this was not correct.

14 21. I find that Zebert learned for the first time during the  
15 hearing in this case how the HUD-1 should have been filled out  
16 in each of the five transactions, even allowing his reliance  
17 on statements of the participants and documents in the closing  
18 package that were false, but which he treated reasonably. The  
19 instructions from the lender made no reference to how or where  
20 to record such information or even how to verify, collect or  
21 disburse it. Likewise, the Real Estate Settlement Procedures  
22 Act of 1974 gives no guidance on these matters. No HUD  
23 regulations or handbooks were placed in evidence or referred  
24 to that would give more specific guidance.

25 22. Zebert did as much verification of information given to

1 him as is done by other loan closing attorneys under similar  
2 circumstances. In the absence of requirements in statutes,  
3 regulations or handbooks, I find that this was sufficient for  
4 purposes of HUD-insured loans as well as for conventional  
5 loans, although it clearly resulted in false information being  
6 given to HUD in these five transactions.

7 23. Zebert filled out the HUD-1 in each case incorrectly,  
8 giving rise to false and misleading information to which he  
9 certified, even if he did not intend to mislead or to make  
10 false statements.

11 24. The law firm of McKinley, Zebert & Childre is a loose  
12 association in which McKinley is deceased and Zebert and  
13 Childre do not share profits, work together or control each  
14 other's work. Childre played no role in any of the loan  
15 closings, nor did he receive any payments from any of the  
16 closings done by Zebert.

#### 17 DISCUSSION

18 The purpose of debarment is to assure the government  
19 that it only does business with responsible participants.  
20 Zebert has admitted that he is a participant as defined in the  
21 regulation applicable to debarment. The government has cited  
22 three grounds for debarment of Zebert. I find that it has  
23 established one ground, that the manner in which Zebert filled  
24 out and certified to the HUD-1 form in each transaction was so  
25 seriously irresponsible that it warrants debarment. I do not

1 find that he made any false statements for the purpose of  
2 misleading HUD or causing HUD to insure loans it would not  
3 have otherwise insured. That ground for debarment was  
4 committed by the other participants in the various  
5 transactions. Zebert was made the unwitting goat in these  
6 transactions by the individuals to set up or carried out the  
7 fraud. He trusted, to his detriment. He passed this trust on  
8 in the form of the HUD-1 and certifications on line 201, and  
9 implicitly in the other information , although he placed the  
10 information on the HUD-1s in such a way that it was  
11 misleading, confusing and ultimately incorrect.

12 HUD has every right to expect that attorneys closing  
13 HUD-insured loans know how to fill out the HUD-1, know how to  
14 accurately record the transaction, and understand the scope of  
15 the certification. Zebert did not know or have reason to know  
16 that information given him by others was false in these five  
17 transactions; however, his very limited and confused  
18 understanding of the HUD-1 leads me to conclude that he is not  
19 presently a responsible contractor, although I find him  
20 honest. He has to be more conscientious in the way he carries  
21 out his closing agent duties, particularly with the HUD-1 and  
22 its certification. He used shortcuts on the form, did not  
23 correct it to reflect what had actually occurred at the  
24 closings and did not clarify or in any other way responsibly  
25 indicate to HUD what he believed had occurred. This is simply



1 not responsible. I credit Zebert's lack of intent to defraud,  
2 misstate or mislead. I found him forthcoming and genuinely  
3 contrite. He needs some time to learn what he should have  
4 known all along -- how to fill out a HUD-1 Settlement  
5 Statement and Certification correctly and to appreciate their  
6 purpose. His discomfort with the HUD-1 is disquieting. It is  
7 now required in almost all transactions, HUD-insured or not,  
8 and Zebert's attachment to his own forms prevented him from  
9 really familiarizing himself with the HUD-1.

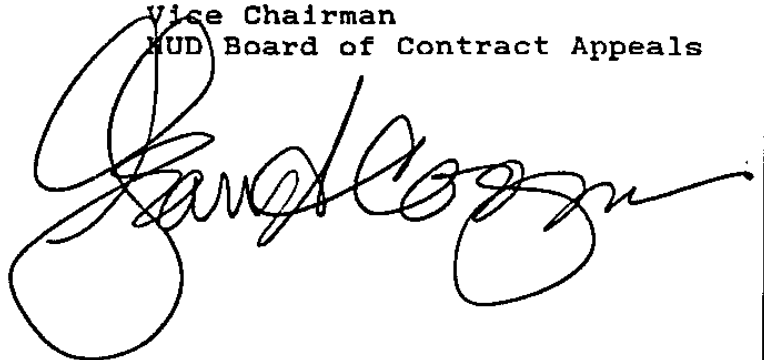
10 I do not find that Sunset Investment Companies, Inc.  
11 of Pearl is presently an affiliate of Zebert because it no  
12 longer exists. I further find that he had no control over it  
13 as an officer or director when it did exist. Therefore, it is  
14 not an affiliate. The law firm of McKinley, Zebert & Childre  
15 is likewise not a true affiliate of Zebert, because it neither  
16 controls it or Childre. It is essentially an expense-sharing  
17 relationship. There is no splitting of profits, no  
18 partnership agreement, no sharing of cases or ideas.  
19 Therefore, I find he does not have the requisite control over  
20 the entity to find that McKinley, Zebert and Childre is his  
21 affiliate for the purposes of the debarment regulation,  
22 although the firm does hold itself out as such to the public.

23 Zebert has been suspended since June 3, 1988, a  
24 period of about ten months. I find that an additional period  
25 of debarment of six months is warranted and necessary to

1 protect the public interest while Zebert learns thoroughly how  
2 HUD expects loans to be closed. He has the right attitude as  
3 of today. He now must just get himself up to the level at  
4 which HUD has every right to expect him to perform. He shall  
5 therefore be debarred until October 5, 1989.

6 Ordered this 5th of April, 1989.

7 Jean S. Cooper,  
8 Administrative Judge and  
9 Vice Chairman  
10 HUD Board of Contract Appeals

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1 JUDGE COOPER: Both parties have a right to request  
2 review of this decision by the Secretary of HUD within 15 days  
3 after receipt of the decision. We will not count today as  
4 being receipt of the decision. The date from which your time  
5 to appeal will run is the date on which you will receive an  
6 order from me, incorporating my findings at this hearing, and  
7 deciding the case with official signature. It is from that  
8 date that you receive that, that your time for appeal, for  
9 either side, will begin to run.

10 We will be in adjournment.

11 (Whereupon, the hearing was concluded at 3:25 p.m.)  
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