



Board of Contract Appeals
U.S. Department of Housing and Urban Development
Washington, D.C. 20410-0001

In the Matter of:

DAVID VYNCKE,

Respondent

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: HUDBCA No. 90-5112-D6
: Activity Docket No.
: 90-1404-DB(LDP)
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Respondent, Pro se:

Mr. David Vyncke
[REDACTED]

For the Government:

Geoffrey Roupas, Esq.
Office of Counsel
Department of Housing and
Urban Development
626 West Jackson Boulevard
Chicago, Illinois 60606

DETERMINATION AND ORDER

A determination was rendered from the bench in this case on April 30, 1990, in which the Limited Denial of Participation (LDP) imposed on Respondent, David Vyncké, was sustained as supported by adequate evidence of an irregularity in Respondent's past performance in a HUD program. 24 C.F.R. § 24.605(a)(2). This Determination and Order summarizes the bench decision issued in this case. The LDP expired on June 29, 1990.

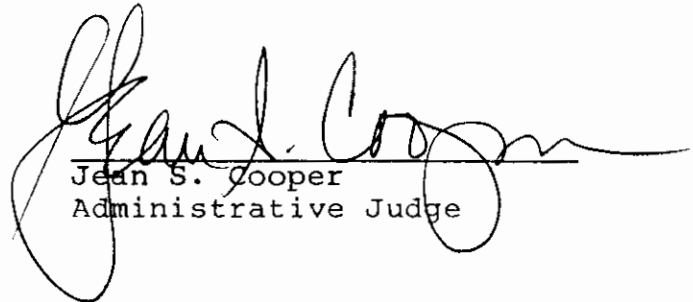
Summary of Bench Decision

A one-year LDP was imposed on Respondent by Gertrude W. Jordan, HUD Regional Administrator, Chicago, Illinois on June 29, 1989, based on Respondent's refusal to convey to HUD \$1,000 in earnest money that Respondent had accepted from Mark Griffin for the purchase of a HUD-owned property located at [REDACTED] Moline, Illinois. The sale of the property was not closed

because Respondent failed to carry out his duties on behalf of Griffin, and because Respondent and Griffin otherwise failed to timely close the sale of the property or to get an extension of time in which to do so from HUD. Under the terms of the Earnest Money Certification signed by both Respondent and Griffin, as well as the conditions of the sale contract, in the event that the sale did not close by the scheduled date and was not extended by an agreement from HUD, Respondent had a contractual duty to remit to HUD the earnest money collected from Griffin. (Govt. Exhs. 1, 2, 3, 17.) Respondent has never remitted the earnest money to HUD that he collected from Griffin, despite written demands from HUD. (Govt. Exhs. 6, 7.) Based on the evidentiary record established at the hearing, it was found that Respondent and Griffin had not performed functions necessary to effect the closing. Although the HUD closing agent, Jesse Outlaw, had also failed to perform some functions required of him on time, his failure did not prevent the closing from taking place as scheduled. Respondent's unexcused delay and his conscious decision not to perform certain functions such as obtaining a title search or getting the lender bank to actually schedule the closing and notify HUD's closing agent of the time and place of the closing, were not the acts of a responsible participant in HUD programs.

ORDER

The Limited Denial of Participation imposed on Respondent David Vyncke was supported by adequate evidence of existence of a cause for imposition of the sanction, and was otherwise imposed in accordance with law.


Jean S. Cooper
Administrative Judge

Date: October 4, 1991