

as Respondent is not entitled, under applicable HUD regulations, to an oral hearing in this matter. 24 C.F.R. § 24.313(b)(2)(ii).

Findings of Fact

1. At all relevant times, Respondent owned and controlled Maple Mortgage, Inc. ("Maple"), a financial institution located in Dallas, Texas, that serviced mortgages, including mortgages insured by HUD. Respondent also owned and controlled Western Community Money Centre of Alberta, Inc. ("Western"), a Canadian thrift registered to do business in California. (Govt. Exh. 2, Indictment No. CR 3-90-190 dated August 8, 1990).

2. As a servicer of mortgages, Maple received and processed mortgage payments from homeowners and paid principal and interest to investors, while holding the tax and insurance in escrow for later payment to taxing authorities and insurance companies. In August, 1988, Western purchased all of the stock of Maple. (Govt. Exh. 2)

3. On August 8, 1990, Respondent was indicted by a Federal grand jury in the United States District Court for the Northern District of Texas on 35 counts of fraud by wire, under Section 1343 of Title 18, United States Code. The indictment alleges that Respondent: (a) caused Western to purchase all of the stock of Maple in order to gain access to the mortgage servicing portfolios which Maple was then servicing; (b) wrongfully and fraudulently used mortgage payment funds held in trust by Maple for homeowners and investors to pay for the stock of Maple; (c) caused Maple to acquire additional mortgage servicing portfolios and the servicing rights to them, and wrongfully and fraudulently used the mortgage payment funds held in trust for homeowners and investors to pay for the portfolios; (d) fraudulently misused tax and insurance funds and principal and interest funds required to be held in trust by Maple, by using the funds for purposes other than paying the principal and interest to investors and the taxes and insurance premiums for homeowners on mortgages being serviced by Maple; and (e) misappropriated and converted to his own use and the use of others mortgage payments being held in trust for homeowners and investors by Maple. The indictment charges Respondent with approximately \$20 million in wire fraud transactions. (Govt. Exh. 2).

Discussion

Under applicable HUD regulations, an indictment constitutes "adequate evidence" of suspected criminal conduct and may be the basis for the suspension of a "participant" in a "covered" transaction in the public interest. 24 C.F.R. § 24.405(b).

The sufficiency of an indictment as the basis, per se, for a suspension is well established. Alexander v. Alexander, Ltd., HUDBCA No. 82-727-D46, 83-1 BCA ¶ 16,228 and cases cited therein.

Respondent's activities as president of a financial institution that serviced mortgages, including mortgages insured by HUD pursuant to the National Housing Act (12 U.S.C. §§ 1701 et seq.), renders Respondent a participant in covered transactions and a principal within the meaning of 24 C.F.R. §§ 24.105(m) and (p). See also 24 C.F.R. § 24.110(a)(1). As such, Respondent is subject to the sanction of suspension if application of the sanction is otherwise determined to be in the public interest and is otherwise effected in conformity with the law. John P. Moscony, HUDBCA No. 89-4444-D17 (May 24, 1989), and cases cited therein.

Underlying the Government's authority not to do business with a person is the requirement that agencies only do business with "responsible" persons and entities. 24 C.F.R. § 115. The term "responsible" as used in the context of suspension and debarment is a term of art which includes not only the ability to perform a contract satisfactorily, but the honesty and integrity of the contractor as well. 48 Comp. Gen. 769 (1969). The test for whether a suspension is warranted is present responsibility, although it is well established that a lack of present responsibility may be inferred from past acts. Schlesinger v. Gates, 249 F.2d 111 (D.C. Cir. 1957; Stanko Packing Co. v. Bergland, 489 F. Supp. 947, 949 (D.C. D.C. 1980). In gauging whether to suspend a person, all pertinent information must be assessed, including the seriousness of the alleged acts or omissions, and any mitigating circumstances. See 24 C.F.R. §§ 24.525(d), 24.314(b)(4), and 24.410(c).

The indictment which underlies this matter charges Respondent with the misuse and misappropriation of escrow funds held in trust for homeowners and investors, in excess of \$20 million. This indictment involves allegations of misconduct, which, if proven, would raise overwhelming concerns with respect to Respondent's fitness to participate in programs of this Department, and which would indeed demonstrate an utter lack of integrity. Moscony, Id. at 4; 24 C.F.R. § 24.305(a)(1).

In opposition to the suspension, Respondent argues that:

. . . [the] allegations contained in the indictment are outside the scope of the Department as the allegations in the indictment do not contain . . . offenses perpetrated while within (sic) the capacity of a contractor or sub-contractor for HUD

Respondent also argues that "the complaint is merely an allegation and that he is innocent until proven guilty." I find

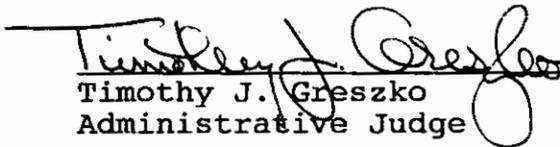
this argument to be totally without merit in the context of a suspension hearing.

In James A. Merritt and Sons v. Marsh, 791 F.2d 328, 330-31 (4th Cir. 1986), the United States Court of Appeals ruled that the formalities attendant to issuing an indictment carry sufficient indicia of reliability to allow the Government to protect itself against future dealings with someone accused of criminal acts. Thus, Respondent's contention that the indictment does not constitute proof of guilt is irrelevant for purposes of this proceeding because proof of guilt need not be established to demonstrate that cause for the suspension exists. Moreover, even if Respondent were correct that his allegedly criminal conduct occurred "outside the scope of the Department," Respondent is clearly a principal and participant in programs of this Department as defined by the Department's regulations, and his assertions to the contrary are specious and unsupported by any evidence. As such, Respondent is clearly subject to Departmental sanctions, including suspensions.

Respondent has made no other arguments nor presented any evidence in mitigation of the alleged offenses. I find on the evidence before me that the Department has shown adequate cause for the suspension of Respondent, and that the suspension has been properly imposed in the public interest.

Conclusion

For the foregoing reasons, it is my determination that the suspension of Respondent is warranted. Respondent shall remain suspended pending resolution of the subject matter of the indictment and any legal or debarment proceedings that may ensue. 24 C.F.R. § 24.415.


Timothy J. Greszko
Administrative Judge