

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
BOARD OF CONTRACT APPEALS

In the matter of: : HUDBCA NO:
: 91-5877-D34
: :
GARY G. DUGGINS, : ACTIVITY DOCKET
: NO: 91-1618
: :
Respondent. :
:

DECISION

STATEMENT OF THE CASE

JUDGE COOPER: By letter dated
November 30, 1990, Gary Duggins,
Respondent in this case, was notified by
the U.S. Department of Housing and Urban
Development ("HUD") that it was proposing
to debar him for three years from the date
of the notice of proposed debarment. The
grounds cited by HUD for the proposed
debarment are that Respondent listed a
false Social Security Number for himself
on HUD Form 92001-E, which is an
application for approval as a HUD-FHA
approved loan correspondent, that he also
falsely represented a video business as a
real estate enterprise on that same HUD
form, and that an audited financial

1 statement submitted with the HUD Form
2 92001-E was not prepared by an independent
3 auditor, but by an employee of his wife,
4 in violation of HUD mortgagee approval
5 requirements, and are causes for debarment
6 under 24 Code of Federal Regulations,
7 Section 24.305. If debarred, Respondent
8 will be prohibited from participation in
9 primary and lower-tier covered
10 transactions as a participant or principal
11 at HUD and throughout the Executive Branch
12 of the federal government.

13 Respondent was temporarily
14 suspended pending determination of
15 debarment. He made a timely request for a
16 hearing, which was held on June 3 and 4,
17 1991. The parties agreed that a bench
18 decision would be issued at the close of
19 the hearing pursuant to 24 Code of Federal
20 Regulations, Section 26.24(d). This bench
21 decision is based on the sworn testimony
22 and evidence in the record established at
23 the hearing. The Government also filed a
24 pre-hearing brief on the issues in
25 dispute.

1 Respondent contends that he is
2 not subject to either suspension or
3 debarment by HUD because he is not a
4 "participant" or "principal," as defined
5 in the regulations. He further contends
6 that it is not in the public interest or
7 the interest of HUD to sanction him
8 because HUD did not rely on the
9 information it alleges is false, and
10 because Respondent is otherwise a
11 responsible contractor who met the
12 requirements for participating in the HUD-
13 FHA programs as a loan correspondent.

14
15 FINDINGS OF FACT

16 Gary Duggins is the president and
17 manager of Commencement Mortgage, Inc.,
18 ("CMI") a mortgage ^{lender} located in Tacoma,
19 Washington. On September 30, 1988, he
20 submitted an application on behalf of CMI
21 for HUD-FHA approval as a loan
22 correspondent. The application consisted
23 of HUD Form 92001-E, Schedule I and II; a
24 Master Business License, the resume of
25 Gary Duggins as its sole officer, a

1 financial statement dated May 1, 1988, and
2 a corporate resolution giving Duggins the
3 authority to transact all business on
4 behalf of CMI. (Exhibit G-1.)

5 Duggins' Social Security number is
6 listed in blocks 8 and 9 of HUD Form 9001-
7 E as [REDACTED]. The form required that
8 a Social Security number be listed in both
9 blocks; however, in the directions or the
10 instruction sheet it indicated this was
11 voluntary. The number listed was not
12 Duggins' Social Security number. It was a
13 number that had not been assigned to
14 anyone by the Social Security
15 Administration. In fact, Duggins' Social
16 Security number is [REDACTED].

17 On Schedule 1, block 5 requires that
18 employment information be provided for
19 each person the mortgagee applicant is
20 relying upon to establish adequate
21 experience to qualify as a loan
22 correspondent. The only employee or
23 officer listed is Duggins. His Social
24 Security number is again listed as [REDACTED]
25 [REDACTED]. The name of the company where

1 Duggins gained the required loan
2 origination servicing experience is listed
3 on Schedule I as Fortuna Investments, Inc.
4 It states that Duggins was the general
5 manager of Fortuna Investments, Inc., and
6 that he assisted in the development of
7 programs and markets for conventional real
8 estate mortgages and supervised all phases
9 of the operation. It further indicates
10 that Duggins originated approximately 500
11 loans and serviced approximately 300 loans
12 for Fortuna Investments, Inc. His
13 employment with Fortuna is listed as
14 covering the period between December 1979
15 and June 1987. Duggins' second entry in
16 block 5 of Schedule I lists his employment
17 as a loan officer and assistant manager
18 for Graham Mortgage Corporation from July
19 1978 to December 1979, during which he
20 originated approximately 275 HUD-FHA
21 insured mortgages and 30 conventionally
22 financed mortgages. There are no further
23 entries in block 5.

24 The professional resume for Duggins
25 submitted with the application states that

1 he was president of Union Bancorp from
2 August 1987 to February 1988, at which he
3 developed the mortgage subsidiary of Western
4 Community Bank, created training manuals,
5 and established markets for conventional
6 loans. In addition to the listing for
7 Union Bancorp, Duggins' employment with
8 SAFECO Title Insurance as a sales
9 representative for two and a half years,
10 and undescribed employment with Delta
11 Corporation, Household Finance Corporation
12 and National Bank of Commerce from
13 September 1971 to October 1975 is also
14 listed. The professional resume describes
15 Duggins' role with Fortuna Investments,
16 Inc., as follows:

17 "As general manager for this
18 investment group, which was involved
19 in the construction, sales and
20 financing of residential and small
21 commercial buildings, I was
22 responsible for supervising and
23 coordinating the sales, underwriting
24 and marketing of the loans on
25 projects. This also required

1 preparation of various government
2 reports, investor reports, the
3 supervision of the servicing of the
4 loans and reports to the Board of
5 Directors."

6 The resume concluded with the
7 following statement:

8 "I trust the above information
9 adequately outlines my experience
10 and demonstrates my ability and
11 knowledge of real estate financing.
12 Sincerely, Gary Duggins."

13 In fact, Fortuna Investments was not
14 a corporation, a partnership, joint
15 venture, or even a legal entity. It was
16 an informal association of approximately
17 five individuals who bought and developed
18 real estate to sell to low income
19 purchasers or purchasers with credit
20 histories that made obtaining mortgage
21 credit very difficult. The investors
22 advertised in newspapers to obtain
23 purchasers. The investors gave putative
24 purchasers one year contracts, which were
25 essentially rental contracts with options

1 to purchase if and only if they could
2 qualify for some type of mortgage
3 financing by the end of that year. If
4 they could not, they had no further rights
5 to the property. Duggins was brought in
6 by the investors to act as a credit
7 counselor to the putative purchasers.
8 Duggins interviewed the putative
9 purchasers to obtain financial information
10 from them and counseled them on how to
11 improve their credit so that they could
12 qualify for a mortgage loan within a year.
13 Duggins was paid a commission for each
14 purchaser that qualified for a mortgage
15 within the year. He did not originate
16 loans, as that term is used on the
17 application for mortgagee approval, nor
18 did he service any loans in his capacity
19 with Fortuna Investments, despite his
20 claim on the application that he
21 originated approximately 500 loans and
22 serviced approximately 300 loans while
23 working for Fortuna Investments. The
24 description of his work for Fortuna
25 Investments, Inc. contained on both

1 Schedule I, block 5 and the attached
2 resume are misleading, false, and in no
3 way accurately describe his duties.
4 Furthermore, a false impression is
5 deliberately given that he was fully
6 employed only by Fortuna Investments over
7 the period from 1979 to June 1987.
8 Duggins worked full-time for Fortuna
9 Investments in Portland, Oregon from
10 approximately December 1979 until 1982,
11 when he returned to Tacoma, Washington to
12 manage Fortuna Data, Inc., a TV and video
13 retail store. Initially Fortuna Data,
14 Inc. was owned 95 percent by two of the
15 individuals from Fortuna Investments, Jim
16 Jackson and Bob White. Duggins owned 5
17 percent. However, on the corporate
18 license annual report issued to Fortuna
19 Data, Inc., by the State of Washington,
20 Gary Duggins is listed as the president
21 and sole officer of Fortuna Data, Inc., as
22 of February 16, 1987. (Exhibit G-6.) From
23 1982 to February 1987 Duggins worked full-
24 time seven days a week managing the TV and
25 video store. He still performed credit

1 counseling services for Fortuna
2 Investments, traveling to Portland, Oregon
3 and to Northern California about three
4 days a month to counsel putative
5 purchasers. However, Fortuna Investments
6 phased out its operation between 1985 and
7 1986. By 1985, Duggins was doing almost
8 no credit counseling. In 1986, he bought
9 the TV and video store known as Fortuna
10 Data, Inc., from Jim Jackson and Bob
11 White. However, Duggins was not able to
12 keep the business going, and in the fall
13 of 1986 he prepared to declare the
14 bankruptcy of Fortuna Data, Inc. The
15 resume Duggins submitted to HUD makes no
16 reference at all to Fortuna Data, Inc.

17 In preparing the bankruptcy petition,
18 which Duggins and his wife did themselves,
19 he created what he described as a mock
20 format containing financial information
21 that would have to be entered on the
22 bankruptcy papers. He testified that
23 although he does not know precisely how or
24 when the incorrect Social Security number
25 that he used on the FHA mortgagee approval

1 application was created, he believed it
2 was the "mock format" number he used, for
3 unexplained reasons, in the preparation
4 for the bankruptcy of Fortuna Data, Inc.
5 Duggins was unaware the Social Security
6 number on the format was not his. He used
7 it believing it was correct.

8 Duggins continued to use that
9 incorrect Social Security number until
10 sometime in 1989. He had to file two
11 corrected W-2 forms for tax years 1987 and
12 1988 to correct the false number. He also
13 used it on a life insurance policy.
14 Although he was on notice from late 1987
15 that the number was incorrect he made no
16 attempt to find out the nature of the
17 error or how it occurred.

18 Upon the closing of Fortuna Data,
19 Inc., Duggins went to work for Western
20 Community Bank as president of a mortgage
21 subsidiary known as Union Bancorp. He was
22 affiliated with Western Community Bank's
23 Union Bancorp from August 1987 to february
24 1988. In that position he established
25 markets for conventional loans and

1 generated both commercial and residential
2 loans.

3 In March 1988, Duggins founded CMI as
4 its president and chief executive officer.
5 On September 30, 1988, Duggins applied to
6 HUD-FHA on behalf of CMI to become an
7 approved HUD loan correspondent. The
8 instruction sheet for preparing the
9 application indicated that the Social
10 Security numbers are provided to HUD on a
11 voluntary basis, but that failure to
12 provide that information could cause delay
13 in processing the approval application.
14 (Exhibit R-5.) The materials required to
15 be submitted with the application were
16 described in the instruction sheet. The
17 instruction stated in pertinent part that
18 the applicant:

19 ...[M]ust submit a certified
20 financial report comprehensive in
21 scope, performed in accordance with
22 generally accepted accounting
23 standards which will permit the
24 accountant to express his opinion.
25 To be acceptable to HUD an

1 independent public accountant must be
2 either a CPA or a public accountant
3 licensed by a regulatory authority of
4 a state or other political
5 subdivision of the United States on
6 or prior to December 31, 1970.

7 (Exhibit R-5.)

8 In preparing the application for HUD-
9 FHA mortgagee approval, Duggins wrote the
10 resume attached to the application,
11 directed the wording and information to be
12 typed on Schedule I at block 5, and
13 further directed that dates and his Social
14 Security number be copied from the
15 financial format information he developed
16 for the bankruptcy petition of Fortuna
17 Data, Inc. Duggins prepared a financial
18 statement for CMI, based on sample
19 financial statements provided to him by
20 CMI's sponsor for mortgagee approval.
21 Duggins asked a customer of his at the
22 video store, Bob Brandt, to sign the
23 financial statement. Brandt indicated to
24 Duggins that he was retired and did not
25 have a company, but Duggins suggested that

1 Brandt sign the financial statement on
2 letterhead for Professional Lines
3 Services, Inc. The cover letter dated May
4 30, 1988, which purports to be an opinion
5 of an independent public accountant, was
6 prepared totally by Duggins and was merely
7 signed by Brandt. Underneath Brandt's name
8 appears the words "Professional Lines
9 Services, Inc., Independant (sic) Public
10 Accountants." Brandt was never employed
11 by Professional Lines Services.

12 Brandt was neither a licensed public
13 accountant nor a CPA. He was, in fact, a
14 bookkeeper. Duggins did not ask him
15 whether he met the requirements for
16 performing an audit, as outlined in the
17 instruction form, before asking him to
18 sign the May 30th letter. Brandt
19 performed no audit functions for CMI. He
20 merely signed his name, a situation not
21 only known by Duggins, but created by him.

22 Professional Lines Services, Inc., is
23 owned by Duggins' wife, Karen. She is its
24 owner, president and director, as
25 evidenced by a Corporate License Renewal

1 dated September 30, 1987. (Exhibit G-8.)
2 Professional Lines Services, Inc., is an
3 engineering consulting and detailing
4 company. It is not and never has been in
5 the business of accountancy in any way.
6 Duggins created the document which
7 purports to be a certified financial
8 report prepared by Brandt of the
9 independent public accounting firm of
10 Professional Lines Services, Inc., a
11 fiction in all respects except that the
12 underlying financial data has not been
13 challenged as false.

14 Rebecca Tuttle, a mortgagee approval
15 specialist with HUD in Seattle, did the
16 initial review for approval of CMI's
17 application for mortgagee approval. She
18 ordered a credit report on Duggins as
19 CMI's only officer, using the incorrect
20 Social Security number provided on the
21 application. A credit report was obtained
22 for Duggins from Lida Credit Agency, Inc.
23 and from Dun and Bradstreet, Inc. Neither
24 report indicated any adverse financial
25 information. Tuttle interviewed Duggins

1 at an on-site inspection of the business
2 premises of CMI. She concluded that
3 Duggins had sufficient knowledge of the
4 HUD-FHA mortgagee insurance process and
5 that the application of CMI was otherwise
6 acceptable. She recommended approval of
7 CMI as an FHA loan correspondent. Only
8 one year of experience as a loan
9 originator or servicer is required to be
10 an FHA loan correspondent. Duggins
11 clearly had that required experience from
12 his work at CMI and Union Bancorp, as well
13 as at Graham Mortgage Corporation. Tuttle
14 had no reason to believe that the
15 application contained false information,
16 that Brandt was not a licensed public
17 accountant, or that he had performed no
18 audit functions other than looking over
19 papers prepared by Duggins and signing his
20 name under a false title and false
21 employer.

22 Tuttle forwarded CMI's application to
23 HUD in Washington, D.C. CMI's application
24 was approved and it started to originate
25 and process FHA insured loans.

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In early 1990, an FHA approved lender called HUD to report that CMI's application for FHA mortgagee approval contained false information and was accompanied by an audited financial statement not prepared by an independent auditor. The reporting lender had been approached by Duggins to be another loan sponsor for CMI. In the process of investigating CMI, and using a copy of the application package Duggins had submitted to HUD and to the lender, the lender found a number of problems with the application. [REDACTED] Barton, a certified fraud examiner in HUD's Office of Lender Compliance, was assigned to investigate the charges against CMI made by the lender. Barton found that the Social Security number on the application was a fiction -- it had never been assigned to anyone by Social Security. He also found that no corporation ever existed by the name of Fortuna Investments, Inc., but that Duggins was president of a video and TV corporation named Fortuna Data, Inc.,

1 which had gone bankrupt. He also
2 discovered that Professional Lines
3 Services was owned by Karen Duggins and
4 was an engineering firm. He concluded
5 that the application of CMI contained
6 deliberately misleading false information
7 and that the audit report was not prepared
8 by an independent auditor. His
9 conclusions about the audit report were
10 based on a belief that Brandt was an
11 employee of Karen Duggins, which he was
12 not, and that Gary Duggins was an officer
13 and co-owner of his wife's business, facts
14 not established in this case on the
15 record.

16 As a result of the investigation of
17 CMI, by letter dated April 12, 1990, to
18 Duggins from Raymond Bradley, of HUD,
19 Duggins was notified that CMI would not be
20 allowed to process loans through its
21 sponsors under its Direct Endorsement
22 Program, but would be required to submit
23 all loan packages prepared by CMI to HUD
24 for approval pending the results of the
25 investigation. The letter did not state

1 the reasons for the investigation and
2 Bradley declined to tell Duggins what the
3 reasons were in a telephone call. Duggins
4 was called by a woman from the HUD office
5 in Washington, D.C., to ask him whether
6 Brandt was a CPA or licensed. He believed
7 that the investigation into CMI only had
8 to do with Brandt.

9 Duggins claims that he only found out
10 belatedly that Brandt was neither a CPA
11 nor a licensed accountant. He tried to
12 find an acceptable accountant to prepare
13 an audited financial statement but found
14 the cost to be prohibitive. Because CMI
15 was originating so few FHA loans, Duggins
16 concluded that the cost of the CPA would
17 not be worth the expense. He wrote a
18 letter dated June 21, 1990, to William
19 Heyman, Director of Lender Activities and
20 Land Sales Registration at HUD withdrawing
21 CMI as an FHA approved lender, citing the
22 costs of an audited financial statement as
23 his reason. Since that date, CMI and
24 Duggins have not participated in HUD
25 programs.

1 At the hearing, Duggins testified
2 that he did not know his Social Security
3 numbers, as it appeared on CMI's approval
4 application, was incorrect and he used
5 that number believing it was correct, for
6 all purposes for a number of years, until
7 sometime in 1989. He also testified that
8 he believed a resume is an advertisement
9 designed to "sell an applicant" and that
10 inaccuracies and exaggerations are to be
11 expected in one. He stated that he did
12 not intend to mislead HUD by either the
13 resume or the description of his work on
14 Schedule 1 block 5. He was not forthright
15 when questioned on discrepancies in his
16 testimony, nor could he satisfactorily
17 explain the worst examples of deliberate
18 attempts to mislead, namely the fictional
19 employment of Brandt as an accountant for
20 Professional Lines Services, Inc., and the
21 fantasy that passed for a job description
22 of his work for Fortuna Investments. He
23 believed, and still believes, that these
24 are minor discrepancies that do not mean
25 that either he or CMI should not be a

1 participant in HUD programs. As of the
2 hearing, he had not corrected his resume
3 and was still using false descriptions of
4 his work. Furthermore, it was revealed
5 that he had a tax lien placed on him
6 personally by the IRS around 1984 and,
7 although satisfied by him, that
8 information was not accessed by HUD
9 because of the incorrect Social Security
10 number provided by Duggins.

11 DISCUSSION

12 The purpose of debarment is to assure
13 HUD that it only does business with
14 responsible participants. Responsibility
15 is a term of art which connotes integrity,
16 honesty and uprightness, as well as the
17 ability to perform. Romer v. Hoffman, 419
18 F. Supp. 130 (D.D.C. 1976). Although the
19 test for the need for debarment is present
20 responsibility, a finding of lack of
21 present responsibility may be based on
22 past acts. Schlesinger v. Gates, 249 F.
23 2d 11 (D.C. Circuit 1957).

24 HUD seeks to debar Duggins for three
25 years based upon 24 Code of Federal

1 Regulations, Section 24.305 (b) (d) and
2 (f). Sections 305 (b) and (f) provide in
3 pertinent part as follows:

4 "(b) Violation of the terms of a
5 public agreement or transaction so
6 serious as to affect the integrity of
7 an agency program..." this is a
8 ground for debarment, and the second
9 ground is:

10 "(f) In addition to the causes set
11 forth above, HUD may debar a person
12 from participation in any programs or
13 activities of the Department for
14 material violation of a statutory or
15 regulatory provision or program
16 requirement applicable to a public
17 agreement or transaction including
18 applications for grants, financial
19 assistance, insurance or guarantees,
20 or to the performance of requirements
21 under a grant, assistance award or
22 conditional or final commitment to
23 insure or guarantee."

24 I find that Gary Duggins has violated
25 the terms of a public transaction or

1 agreement so serious as to affect the
2 integrity of that program, the FHA loan
3 correspondent program, by submitting an
4 application so fraught with false
5 statements, misleading descriptions and an
6 entirely un-independent and improperly
7 prepared audited financial statement that
8 it shows an utter disregard for truth,
9 honesty, and the need for information of a
10 quality that can be relied upon by HUD and
11 by other participants in FHA programs. In
12 addition, I find that HUD has established
13 a ground for debarment based on 24 CFR,
14 Section 24.305 (f) based on the false
15 representations made by Duggins in the
16 application.

17 Duggins contends that he is not a
18 participant in the HUD programs because he
19 voluntarily withdrew CMI as an FHA loan
20 correspondent as of June 21, 1990. The
21 regulations applicable to debarment and
22 suspension provided that they apply to:

23 "...[A]ll persons who have
24 participated, are currently
25 participating or may reasonably be

1 expected to participate in
2 transactions under Federal non-
3 procurement programs. For purposes
4 of these regulations, such
5 transactions will be referred to as
6 'covered transactions.' 24 Code of
7 Federal Regulations, Section 24.110
8 (a)."

9 A "participant" is defined as:

10 "Any person who submits a proposal
11 for, enters into, or presumably may
12 be expected to enter into a covered
13 transaction. This term also includes
14 any person who acts on behalf of or
15 is authorized to commit a participant
16 in a covered transaction as an agent
17 or representative of another
18 participant. 24 Code of Federal
19 Regulations, Section 13.105 (m)."

20 I find as a matter of fact and law
21 that Gary Duggins is a participant in HUD
22 programs because he has submitted a
23 proposal for, and participated in covered
24 transactions, and may reasonably be
25 expected to do so in the future, if not

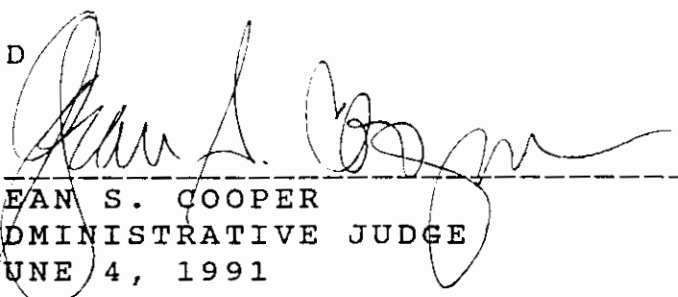
1 otherwise prevented, despite withdrawing
2 CMI as an FHA loan correspondent. CMI is
3 a struggling business, and Duggins may
4 well need to seek employment with other
5 mortgagees if CMI fails. Therefore, I do
6 not find it sufficient that he has
7 withdrawn CMI from one HUD program. The
8 intent of the debarment regulations is to
9 allow the Government to protect itself
10 from those participants who have in the
11 past committed acts that require
12 continuing exclusion from participation in
13 Government programs for a time certain.
14 This case certainly presents a portrait of
15 a participant who still is not
16 responsible, nor does he even realize why
17 HUD is so enraged at the information he
18 submitted to it. He thinks that because
19 he had one year unchallenged experienced
20 as a loan originator and processor, that
21 the fabric of false information,
22 misleading descriptions, and fabricated
23 statistics are just extra verbiage that
24 HUD should ignore. Indeed, it is
25 remarkable that Duggins went to the

1 trouble he did to perpetrate these false
2 credentials because he did qualify for the
3 loan correspondent program without them.
4 He went to extraordinary lengths to rope a
5 video store customer into posing as an
6 employee of his wife's company, to
7 misrepresent the nature of that company's
8 business, and to misrepresent that the
9 audit was prepared by Brandt and was an
10 independent audit. All of these actions
11 bespeak of dishonesty, utter disregard for
12 the quality and reliability of information
13 submitted to HUD on which it must rely,
14 and ultimately scorn for the FHA program
15 itself.

16 HUD has a right and a need to presume
17 that information presented to it is
18 accurate. In the Mortgagee Approval
19 Program, it looks to mortgagees, be they
20 correspondents or self-insurers, to verify
21 the completeness, accuracy and reliability
22 of information on which loans will be
23 insured. If an applicant submits false
24 and misleading information on its
25 application, HUD can expect no more from

1 deliberately provided to mislead, I
 2 conclude that two and a half years rather
 3 than three years is an appropriate period
 4 of exclusion based on this record. The
 5 seriousness of the remaining
 6 irregularities, however, leave me no
 7 choice but to impose such a sanction.
 8 Debarment is prospective and cannot be
 9 retroactively imposed. Gary Duggins has
 10 been suspended since November 30, 1990,
 11 therefore, he shall be debarred from this
 12 date up to and including May 30, 1993,
 13 credit being given for the period he was
 14 suspended.

15 SO ORDERED

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 17 -----
 18 JEAN S. COOPER
 19 ADMINISTRATIVE JUDGE
 20 JUNE 4, 1991

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