In the matter of: GARY G. DUGGINS.

Respondent.

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

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

Respondent was temporarily suspended pending determination of debarment. He made a timely request for a hearing, which was held on June 3 and 4, 1991. The parties agreed that a bench decision would be issued at the close of the hearing pursuant to 24 Code of Federal Regulations, Section 26.24(d). This bench decision is based on the sworn testimony and evidence in the record established at the hearing. The Government also filed a pre-hearing brief on the issues in dispute.
Respondent contends that he is not subject to either suspension or debarment by HUD because he is not a "participant" or "principal," as defined in the regulations. He further contends that it is not in the public interest or the interest of HUD to sanction him because HUD did not rely on the information it alleges is false, and because Respondent is otherwise a responsible contractor who met the requirements for participating in the HUD-FHA programs as a loan correspondent.

FINDINGS OF FACT

Gary Duggins is the president and manager of Commencement Mortgage, Inc., a mortgage company located in Tacoma, Washington. On September 30, 1988, he submitted an application on behalf of CMI for HUD-FHA approval as a loan correspondent. The application consisted of HUD Form 92001-E, Schedule I and II; a Master Business License, the resume of Gary Duggins as its sole officer, a
financial statement dated May 1, 1988, and a corporate resolution giving Duggins the authority to transact all business on behalf of CMI. (Exhibit G-1.)

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

On Schedule 1, block 5 requires that employment information be provided for each person the mortgagee applicant is relying upon to establish adequate experience to qualify as a loan correspondent. The only employee or officer listed is Duggins. His Social Security number is again listed as [redacted]. The name of the company where
Duggins gained the required loan origination servicing experience is listed on Schedule I as Fortuna Investments, Inc. It states that Duggins was the general manager of Fortuna Investments, Inc., and that he assisted in the development of programs and markets for conventional real estate mortgages and supervised all phases of the operation. It further indicates that Duggins originated approximately 500 loans and serviced approximately 300 loans for Fortuna Investments, Inc. His employment with Fortuna is listed as covering the period between December 1979 and June 1987. Duggins' second entry in block 5 of Schedule I lists his employment as a loan officer and assistant manager for Graham Mortgage Corporation from July 1978 to December 1979, during which he originated approximately 275 HUD-FHA insured mortgages and 30 conventionally financed mortgages. There are no further entries in block 5.

The professional resume for Duggins submitted with the application states that
he was president of Union Bancorp from August 1987 to February 1988, at which he developed the mortgage subsidiary of West Community Bank, created training manuals, and established markets for conventional loans. In addition to the listing for Union Bancorp, Duggins' employment with SAFECO Title Insurance as a sales representative for two and a half years, and undescribed employment with Delta Corporation, Household Finance Corporation and National Bank of Commerce from September 1971 to October 1975 is also listed. The professional resume describes Duggins' role with Fortuna Investments, Inc., as follows:

"As general manager for this investment group, which was involved in the construction, sales and financing of residential and small commercial buildings, I was responsible for supervising and coordinating the sales, underwriting and marketing of the loans on projects. This also required
preparation of various government reports, investor reports, the supervision of the servicing of the loans and reports to the Board of Directors."

The resume concluded with the following statement:

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

In fact, Fortuna Investments was not a corporation, a partnership, joint venture, or even a legal entity. It was an informal association of approximately five individuals who bought and developed real estate to sell to low income purchasers or purchasers with credit histories that made obtaining mortgage credit very difficult. The investors advertised in newspapers to obtain purchasers. The investors gave putative purchasers one year contracts, which were essentially rental contracts with options
to purchase if and only if they could
qualify for some type of mortgage
financing by the end of that year. If
they could not, they had no further rights
to the property. Duggins was brought in
by the investors to act as a credit
counselor to the putative purchasers.
Duggins interviewed the putative
purchasers to obtain financial information
from them and counseled them on how to
improve their credit so that they could
qualify for a mortgage loan within a year.
Duggins was paid a commission for each
purchaser that qualified for a mortgage
within the year. He did not originate
loans, as that term is used on the
application for mortgagor approval, nor
did he service any loans in his capacity
with Fortuna Investments, despite his
claim on the application that he
originated approximately 500 loans and
serviced approximately 300 loans while
working for Fortuna Investments. The
description of his work for Fortuna
Investments, Inc. contained on both
Schedule I, block 5 and the attached resume are misleading, false, and in no way accurately describe his duties. Furthermore, a false impression is deliberately given that he was fully employed only by Fortuna Investments over the period from 1979 to June 1987.

Duggins worked full-time for Fortuna Investments in Portland, Oregon from approximately December 1979 until 1982, when he returned to Tacoma, Washington to manage Fortuna Data, Inc., a TV and video retail store. Initially Fortuna Data, Inc. was owned 95 percent by two of the individuals from Fortuna Investments, Jim Jackson and Bob White. Duggins owned 5 percent. However, on the corporate license annual report issued to Fortuna Data, Inc., by the State of Washington, Gary Duggins is listed as the president and sole officer of Fortuna Data, Inc., as of February 16, 1987. (Exhibit G-6.) From 1982 to February 1987 Duggins worked full-time seven days a week managing the TV and video store. He still performs credit
counseling services for Fortuna Investments, traveling to Portland, Oregon and to Northern California about three days a month to counsel putative purchasers. However, Fortuna Investments phased out its operation between 1985 and 1986. By 1985, Duggins was doing almost no credit counseling. In 1986, he bought the TV and video store known as Fortuna Data, Inc., from Jim Jackson and Bob White. However, Duggins was not able to keep the business going, and in the fall of 1986 he prepared to declare the bankruptcy of Fortuna Data, Inc. The resume Duggins submitted to HUD makes no reference at all to Fortuna Data, Inc.

In preparing the bankruptcy petition, which Duggins and his wife did themselves, he created what he described as a mock format containing financial information that would have to be entered on the bankruptcy papers. He testified that although he does not know precisely how or when the incorrect Social Security number that he used on the FHA mortgagee approval
application was created, he believed it was the "mock format" number he used, for unexplained reasons, in the preparation for the bankruptcy of Fortuna Data, Inc. Duggins was unaware the Social Security number on the format was not his. He used it believing it was correct.

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

Upon the closing of Fortuna Data, Inc., Duggins went to work for Western Community Bank as president of a mortgage subsidiary known as Union Bancorp. He was affiliated with Western Community Bank's Union Bancorp from August 1987 to February 1988. In that position he established markets for conventional loans and
generated both commercial and residential loans.

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

...[M]ust submit a certified financial report comprehensive in scope, performed in accordance with generally accepted accounting standards which will permit the accountant to express his opinion. To be acceptable to HUD an
independent public accountant must be either a CPA or a public accountant licensed by a regulatory authority of a state or other political subdivision of the United States on or prior to December 31, 1970. (Exhibit R-5.)

In preparing the application for HUD-FHA mortgagee approval, Duggins wrote the resume attached to the application, directed the wording and information to be typed on Schedule I at block 5, and further directed that dates and his Social Security number be copied from the financial format information he developed for the bankruptcy petition of Fortuna Data, Inc. Duggins prepared a financial statement for CMI, based on sample financial statements provided to him by CMI's sponsor for mortgagee approval. Duggins asked a customer of his at the video store, Bob Brandt, to sign the financial statement. Brandt indicated to Duggins that he was retired and did not have a company, but Duggins suggested that
Brandt sign the financial statement on letterhead for Professional Lines Services, Inc. The cover letter dated May 30, 1988, which purports to be an opinion of an independent public accountant, was prepared totally by Duggins and was merely signed by Brandt. Underneath Brandt's name appears the words "Professional Lines Services, Inc., Independent (sic) Public Accountants." Brandt was never employed by Professional Lines Services.

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

Professional Lines Services, Inc., is owned by Duggins' wife, Karen. She is its owner, president and director, as evidenced by a Corporate License Renewal
dated September 30, 1987. (Exhibit G-8.) Professional Lines Services, Inc., is an engineering consulting and detailing company. It is not and never has been in the business of accountancy in any way. Duggins created the document which purports to be a certified financial report prepared by Brandt of the independent public accounting firm of Professional Lines Services, Inc., a fiction in all respects except that the underlying financial data has not been challenged as false.

Rebecca Tuttle, a mortgagee approval specialist with HUD in Seattle, did the initial review for approval of CMI's application for mortgagee approval. She ordered a credit report on Duggins as CMI's only officer, using the incorrect Social Security number provided on the application. A credit report was obtained for Duggins from Lida Credit Agency, Inc. and from Dun and Bradstreet, Inc. Neither report indicated any adverse financial information. Tuttle interviewed Duggins
at an on-site inspection of the business premises of CMI. She concluded that Duggins had sufficient knowledge of the HUD-FHA mortgagee insurance process and that the application of CMI was otherwise acceptable. She recommended approval of CMI as an FHA loan correspondent. Only one year of experience as a loan originator or servicer is required to be an FHA loan correspondent. Duggins clearly had that required experience from his work at CMI and Union Bancorp, as well as at Graham Mortgage Corporation. Tuttle had no reason to believe that the application contained false information, that Brandt was not a licensed public accountant, or that he had performed no audit functions other than looking over papers prepared by Duggins and signing his name under a false title and false employer.

Tuttle forwarded CMI’s application to HUD in Washington, D.C. CMI’s application was approved and it started to originate and process FHA insured loans.
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. 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.
which had gone bankrupt. He also
discovered that Professional Lines
Services was owned by Karen Duggins and
was an engineering firm. He concluded
that the application of CMI contained
deliberately misleading false information
and that the audit report was not prepared
by an independent auditor. His
conclusions about the audit report were
based on a belief that Brandt was an
employee of Karen Duggins, which he was
not, and that Gary Duggins was an officer
and co-owner of his wife’s business, facts
not established in this case on the
record.

As a result of the investigation of
CMI, by letter dated April 12, 1996, to
Duggins from Raymond Bradley, of HUD,
Duggins was notified that CMI would not be
allowed to process loans through its
sponsors under its Direct Endorsement
Program, but would be required to submit
all loan packages prepared by CMI to HUD
for approval pending the results of the
investigation. The letter did not state
the reasons for the investigation and Bradley declined to tell Duggins what the reasons were in a telephone call. Duggins was called by a woman from the HUD office in Washington, D.C., to ask him whether Brandt was a CPA or licensed. He believed that the investigation into CMI only had to do with Brandt.

Duggins claims that he only found out belatedly that Brandt was neither a CPA nor a licensed accountant. He tried to find an acceptable accountant to prepare an audited financial statement but found the cost to be prohibitive. Because CMI was originating so few FHA loans, Duggins concluded that the cost of the CPA would not be worth the expense. He wrote a letter dated June 21, 1990, to William Heyman, Director of Lender Activities and Land Sales Registration at HUD withdrawing CMI as an FHA approved lender, citing the costs of an audited financial statement as his reason. Since that date, CMI and Duggins have not participated in HUD programs.
At the hearing, Duggins testified that he did not know his Social Security number, as it appeared on CMI's approval application, was incorrect and he used that number believing it was correct, for all purposes for a number of years, until sometime in 1989. He also testified that he believed a resume is an advertisement designed to "sell an applicant" and that inaccuracies and exaggerations are to be expected in one. He stated that he did not intend to mislead HUD by either the resume or the description of his work on Schedule 1 block 5. He was not forthright when questioned on discrepancies in his testimony, nor could he satisfactorily explain the worst examples of deliberate attempts to mislead, namely the fictional employment of Brandt as an accountant for Professional Lines Services, Inc., and the fantasy that passed for a job description of his work for Fortuna Investments. He believed, and still believes, that these are minor discrepancies that do not mean that either he or CMI should not be a
participant in HUD programs. As of the hearing, he had not corrected his resume and was still using false descriptions of his work. Furthermore, it was revealed that he had a tax lien placed on him personally by the IRS around 1984 and, although satisfied by him, that information was not accessed by HUD because of the incorrect Social Security number provided by Duggins.

**DISCUSSION**

The purpose of debarment is to assure HUD that it only does business with responsible participants. Responsibility is a term of art which connotes integrity, honesty and uprightness, as well as the ability to perform. *Rogers v. Hoffman*, 419 F. Supp. 110 (D.D.C. 1976). Although the test for the need for debarment is present responsibility, a finding of lack of present responsibility may be based on past acts. *Schlesinger v. Gates*, 249 F. 2d 11 (D.C. Circuit 1957).

HUD seeks to debar Duggins for three years based upon 24 Code of Federal
Regulations, Section 24.305 (b) (d) and (f). Sections 305 (b) and (f) provide in pertinent part as follows:

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

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

I find that Gary Duggins has violated the terms of a public transaction or
agreement so serious as to affect the integrity of that program, the FHA loan correspondent program, by submitting an application so fraught with false statements, misleading descriptions and an entirely un-independent and improperly prepared audited financial statement that it shows an utter disregard for truth, honesty, and the need for information of a quality that can be relied upon by HUD and by other participants in FHA programs. In addition, I find that HUD has established a ground for debarment based on 24 CFR, section 24.305 (f) based on the false representations made by Duggins in the application.

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

"...[A]ll persons who have participated, are currently participating or may reasonably be
expected to participate in transactions under Federal non-procurement programs. For purposes of these regulations, such transactions will be referred to as 'covered transactions.' 24 Code of Federal Regulations, Section 24.110 (a)."

A "participant" is defined as:
"Any person who submits a proposal for, enters into, or presumably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant. 24 Code of Federal Regulations, Section 13.105 (m)."

I find as a matter of fact and law that Gary Duggins is a participant in HUD programs because he has submitted a proposal for, and participated in covered transactions, and may reasonably be expected to do so in the future, if not
otherwise prevented, despite withdrawing CMI as an FHA loan correspondent. CMI is a struggling business, and Duggins may well need to seek employment with other mortgagees if CMI fails. Therefore, I do not find it sufficient that he has withdrawn CMI from one HUD program. The intent of the debarment regulations is to allow the Government to protect itself from those participants who have in the past committed acts that require continuing exclusion from participation in Government programs for a time certain. This case certainly presents a portrait of a participant who still is not responsible, nor does he even realize why HUD is so enraged at the information he submitted to it. He thinks that because he had one year unchallenged experienced as a loan originator and processor, that the fabric of false information, misleading descriptions, and fabricated statistics are just extra verbiage that HUD should ignore. Indeed, it is remarkable that Duggins went to the
trouble he did to perpetrate these false credentials because he did qualify for the loan correspondent program without them. He went to extraordinary lengths to rope a video store customer into posing as an employee of his wife’s company, to misrepresent the nature of that company’s business, and to misrepresent that the audit was prepared by Brandt and was an independent audit. All of these actions bespeak of dishonesty, utter disregard for the quality and reliability of information submitted to HUD on which it must rely, and ultimately scorn for the FHA program itself.

HUD has a right and a need to presume that information presented to it is accurate. In the Mortgagee Approval Program, it looks to mortgagees, be they correspondents or self-insurers, to verify the completeness, accuracy and reliability of information on which loans will be insured. If an applicant submits false and misleading information on its application, HUD can expect no more from
deliberately provided to mislead, I conclude that two and a half years rather than three years is an appropriate period of exclusion based on this record. The seriousness of the remaining irregularities, however, leave me no choice but to impose such a sanction. Debarment is prospective and cannot be retroactively imposed. Gary Duggins has been suspended since November 30, 1990, therefore, he shall be debarred from this date up to and including May 30, 1993, credit being given for the period he was suspended.

SO ORDERED

JEAN S. COOPER
ADMINISTRATIVE JUDGE
JUNE 4, 1991

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