



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

In the Matter of: _____ :
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 JIMMIE DALLAS, SR., _____ :
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 Respondent _____ :
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 _____ :

HUDBCA No. 91-5922-D64
 Docket No. 91-1681-DB

For the Respondent:

W. A. Kimbrough, Jr., Esq.
 Turner, Onderdonk, Kimbrough
 & Howell, P.A.
 1359 Dauphin Street
 Mobile, Alabama 36604

For the Government:

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 Atlanta, Georgia 30303-3388

ORDER OF DISMISSAL

In accordance with 24 C.F.R. §26.24(d), a bench decision was issued in this case on January 27, 1992. A copy of the transcribed bench decision is enclosed. Respondent was notified at the hearing that the time to request Secretarial Review would begin to run from receipt of this Order and a transcribed copy of the bench decision.

This case is dismissed as decided.

ORDERED this 27th day of January, 1992.

Jean S. Cooper
 Jean S. Cooper
 Administrative Judge

AFTERNOON SESSION

DETERMINATIONStatement of the Case

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4 By letter dated April 25, 1991, Jimmie
5 Dallas, Sr., Respondent in this case, was
6 notified that the United States Department of
7 Housing and Urban Development (HUD) proposed to
8 debar him and his affiliates from participation
9 in departmental programs for a period of five
10 years from the date of a Limited Denial of
11 Participation (LDP) imposed on April 25, 1990.
12 Dallas and his affiliates were temporarily
13 suspended pending determination of debarment.
14 The affiliates named in the notice of proposed
15 debarment were Medical Community, Inc. (MCC),
16 Community Convalescent Center (CCC), and DBS
17 Management Company, Inc.

18 The grounds cited for the proposed debarment
19 concerned Dallas' actions as President of MCC and
20 DBS Management. MCC was the owner of Community
21 Convalescent Center (CCC) in Mobile, Alabama,
22 which was a nursing home with a mortgage insured
23 by HUD-FHA under Section 232 of the National
24 Housing Act; DBS Management was the on-site
25 management agent of CCC. Dallas is charged as a

1 principal of both MCC and DBS Management with
2 wrongfully paying for legal services related to
3 project development and a bankruptcy
4 reorganization of MCC by using project funds of
5 CCC, in violation of the Regulatory Agreement
6 between HUD and MCC; and for refusing to
7 reimburse the project fund account when directed
8 to do so by HUD. Dallas is further charged with
9 refusing to replace DBS Management as management
10 agent for CCC, and for continuing to personally
11 manage CCC after he was under the strictures of
12 an LDP, in violation of the terms of the
13 Regulatory Agreement between HUD and MCC, and the
14 express terms of the LDP. HUD cites 24 C.F.R.
15 Sections 305(b), (c)(2), (d), and (f) as causes
16 for the proposed debarment, and 24 C.F.R. 405
17 (a)(2) as cause for the temporary suspension.

18 Respondent Dallas denies that he
19 committed willful or egregious violations of the
20 Regulatory Agreement between MCC and HUD, or of
21 the Management Agreement applicable to DBS
22 Management, and thus contends that a five year
23 debarment is excessive. He denies all charges of
24 intentional contractual violations, contending
25 that he did not understand the obligations of the

1 Regulatory Agreement or Management Agreement, and
2 thus was unaware that he was in violation of
3 them. He further states that he violated the
4 terms of the LDP by continuing to manage CCC
5 because he could not afford to hire a management
6 agent.

7 Dallas made a timely request for a
8 hearing on the proposed debarment and suspension.
9 This determination is based on the record
10 established at the hearing, and it is issued, by
11 agreement of the parties, as a bench decision
12 pursuant to 24 C.f.R., Section 26.24(d).

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FINDINGS OF FACT

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2 1. On December 19, 1988, Dallas
3 executed a Regulatory Agreement incident to
4 receipt by MCC of a mortgage insured by HUD-FHA
5 for \$3,690,400 under Section 232 of the National
6 Housing Act. Dallas executed the Regulatory
7 Agreement as President of MCC, a closely held
8 Alabama corporation formed in 1970. Dallas was
9 also the majority shareholder of MCC. The
10 purpose of the HUD-insured mortgage was to
11 consolidate the debts of MCC, then in bankruptcy
12 reorganization, so that it could satisfy a
13 construction loan and operate the CCC, a nursing
14 home. (Exh. G-2, Testimony of Mr. Dallas.)

15 2. On June 6, 1988, Dallas also
16 executed a Management Certification Agreement to
17 HUD as President of DBS Management Company. DBS
18 was approved by HUD as management agent for CCC,
19 and Dallas was the on-site manager of CCC. The
20 Management Certification states that DBS agrees
21 to "assure that all project expenses are
22 reasonable in amount and necessary to the
23 operation of the project." DBS further agreed in
24 the Management Certification to comply with the
25 project's Regulatory Agreement, and "any

1 applicable HUD handbooks, notices, or other
2 policy directives that relate to the management
3 of the projects. (Exh. G-28).

4 3. When Dallas executed the Regulatory
5 Agreement and the Management Certification
6 Agreement, he had not read them. Furthermore, he
7 did not read them through at any time to
8 determine the contractual obligations of either
9 MCC or DBS Management. Dallas attended no
10 training or informational sessions conducted by
11 HUD to understand the complex obligations of
12 financial management and reporting that were
13 central to compliance with the Regulatory
14 Agreement and Management Agreement. HUD
15 apparently gave the applicable handbook and
16 training to [REDACTED] Harrell, the CPA who would be
17 preparing the books and records of CCC, not to
18 Dallas. Dallas requested neither training nor
19 the requisite explanatory handbook for his own
20 guidance, although he was the project manager.
21 He believed that so long as MCC remained current
22 on its mortgage payments it was in full
23 compliance with the Regulatory Agreement. He
24 believed that so long as DBS Management was able
25 to run the CCC day-to-day, that it was in

1 compliance with its Management Certification.
2 Dallas believed that all of the income received
3 from patients of CCC was income of MCC, and was
4 not in any way controlled by the terms of the
5 Regulatory Agreement. (Testimony of Mr. Dallas.)

6 4. The closing for the construction
7 loan used to build CCC was scheduled for February
8 14, 1990. The law firm of Sirote, Permute
9 represented MCC at various times, and MCC owed
10 the law firm in excess of thirty thousand dollars
11 (\$30,000) for legal services unrelated to
12 operation of CCC. In September 1989, a Mr.
13 Slepian of the firm demanded from Dallas that MCC
14 pay the firm its legal fees or it would not
15 represent MCC at the loan closing. Dallas, on
16 behalf of MCC, agreed in writing to pay Sirote,
17 Permute ten thousand dollars (\$10,000) in
18 September 1989 and an additional seventeen
19 thousand, five hundred (\$17,500) starting in
20 March 1990. On September 29, 1989, Dallas wrote
21 a check for ten thousand dollars (\$10,000) to
22 Sirote, Permute, using CCC operating project
23 income to cover the check. He did not obtain
24 HUD's permission to write the check before he did
25 so. (Answer to Complaint; testimony of Mr.

1 Dallas; Exh G-4.)

2 5. Dallas was unaware that the ten
3 thousand dollars (\$10,000) he paid to Sirote,
4 Permute was not allowed to be paid using project
5 operating income. The monies received from
6 patients at the nursing home constitute project
7 operating income. Paragraph 6(b) of the
8 Regulatory Agreement provides that MCC as owner
9 of CCC, the project, could not, without the prior
10 written approval of the Secretary of HUD:

11 "...pay out any fund except from
12 surplus cash, except for reasonable
13 operating expenses and necessary
14 repairs." (Exh G-2.)

14 6. The Regulatory Agreement defines
15 most of the relevant terms it uses. "Project" is
16 defined to include the mortgaged property and
17 "all its other assets of whatsoever nature, used
18 in or owned by the business conducted on said
19 mortgaged property." "Surplus cash" is defined
20 to be the cash remaining after the payment of all
21 mortgage sums currently due, the deposit of
22 required reserves, all other current financial
23 obligations of the project, and the segregation
24 of required special funds and tenant security
25 deposits. Surplus cash is computed twice a
fiscal year, in June and January. (Exh. G-2;

1 Testimony of Ralph Ruggs.)

2 7. The ten thousand dollars (\$10,000)
3 paid by Dallas to sirote, Permute was not from
4 surplus cash. The payment was made using
5 operating project funds derived from payments
6 from the patients at CCC. The payment by Dallas
7 was recorded on the Schedule of Disbursements in
8 the Monthly Accounting Report filed with HUD on
9 September 30, 1989. The ten thousand dollars
10 (\$10,000) covered legal fees for representation
11 of MCC in Bankruptcy Court, and for other work
12 incident to corporate and operational costs of
13 MCC. None of the legal fees were for operating
14 expenses of CCC. (Exhs. G-4; G-9.)

15 8. By letter dated January 16, 1990, [REDACTED]
16 [REDACTED], Chief of HUD's Loan Management Branch,
17 asked Dallas for clarification of payment of the
18 ten thousand dollars (\$10,000) to the law firm.
19 HUD stated in that letter that, "This appears to
20 be an expense of the owner and should not be paid
21 by the project. Provide evidence to show that
22 the project has been reimbursed ten thousand
23 dollars (\$10,000)." (Exh. G-5.)

24 9. On February 23, 1990, HUD received
25 Dallas' response to its January 16, 1990, letter.

1 In that response, Dallas wrote that the check to
2 the law firm "was for legal fees for Community
3 Convalescent Center and not for personal legal
4 expenses of Mr. Dallas." Dallas apparently did
5 not understand that the owner referred to in the
6 January 16 letter from HUD was MCC, and not
7 Dallas personally. (Exh. G-6.)

8 10. On February 23, 1990, [REDACTED]
9 Lunsford, Manager of the HUD Area Office in
10 Birmingham, wrote Dallas a memorandum letter
11 entitled "Notice of Regulatory Agreement
12 Violations." At Page 2 of that document, it
13 states the requirements of Paragraph 6(b) of the
14 Regulatory Agreement, and charges that improper
15 payment of ten thousand dollars (\$10,000) to the
16 law firm was made in violation of Paragraph 6(b)
17 in September 1989, because the payment was not
18 for an operating expense of the project, but was
19 in the nature of a development cost, which is not
20 payable from project operating income. Dallas,
21 on behalf of MCC, was ordered to cease making any
22 payments in violation of the Regulatory
23 Agreement. He was also ordered, within 30 days,
24 to provide satisfactory evidence to HUD that all
25 cited violations of the Regulatory Agreement had

1 been corrected. (Exh. G-7.) On March 6, 1990,
2 Dallas sent a written response to HUD on other
3 issues raised in the February 23, 1990 Notice of
4 Regulatory Violations, but stated that the law
5 firm itself would respond to HUD to show that the
6 ten thousand dollars (\$10,000) was for operating
7 expenses of the project. (Exh. G-8.)

8 11. On March 7, 1990, the law firm, by
9 then renamed E & Permute, P.C., sent a letter to
10 Lunsford at HUD, describing the legal service for
11 which it was paid the ten thousand dollars
12 (\$10,000). Joseph P. Jones, Jr., the attorney
13 from the law firm that wrote the March 7 letter,
14 apparently misunderstood HUD's concern with the
15 payment to the firm of ten thousand dollars
16 (\$10,000) from project income. Jones somehow
17 understood that HUD believed the legal work had
18 been performed for individual officers of MCC,
19 not the corporation itself. There is no
20 indication that Jones' response was written based
21 on his familiarity with the Regulatory Agreement,
22 Management Agreement, or relevant HUD handbook.
23 Nonetheless, I find that Jones' response to HUD
24 establishes that the ten thousand dollars
25 (\$10,000) payment was for legal services related

1 to the closing on the construction loan,
2 representation of MCC in Bankruptcy Court,
3 construction development costs related to CCC,
4 and corporate administration services to MCC.
5 None were for operating costs of CCC. (Exh.
6 G-9.)

7 12. On March 13, 1990, [REDACTED] Martin of
8 HUD sent a second letter to Dallas asking for
9 clarification and/or correction of numerous
10 payments made or received by CCC or MCC. Martin
11 states in his letter to Dallas that the legal
12 fees in the amount of seventeen thousand, five
13 hundred dollars (\$17,500) was payable to Sirote,
14 Permute, pursuant to the fee payment agreement
15 between MCC and the law firm, is a development
16 expense and could not be paid out of the project
17 operating account. Martin directed that Dallas
18 provide evidence to HUD that the seventeen
19 thousand, five hundred dollars (\$17,500) had been
20 reimbursed to the project operating account. The
21 additional seventeen thousand, five hundred
22 dollar (\$17,500) payment from MCC to the law firm
23 was made on December 14, 1989, and was listed on
24 the January 31, 1990 Monthly Accounting Report
25 filed on behalf of the project with HUD. (Exh.

1 G-10.)

2 13. By letter dated March 28, 1990, from
3 [REDACTED] Lunsford to Dallas, as President of
4 MCC, HUD declared MCC in default on the
5 Regulatory Agreement, and directed MCC to
6 terminate the existing management contract with
7 DBS within 30 days. He also directed Dallas to
8 contact HUD to arrange for a meeting to
9 coordinate a smooth management transition.

10 Lunsford stated that the payments of ten thousand
11 dollars (\$10,000) and seventeen thousand, five
12 hundred dollars (\$17,500) to Sirote, Permute and
13 failure to reimburse those payments to the
14 project operating account constituted the
15 Regulatory Agreement default, as originally
16 outlined in the violations notice letter of
17 February 23, 1990, from Lunsford to Dallas.

18 (Exh. G-11.)

19 14. On April 11, 1990, Lunsford received
20 a letter from [REDACTED] Stewart, personal
21 attorney for Dallas. Stewart's letter purports
22 to respond to the default action under the
23 Regulatory Agreement, but it in no way does so.
24 Rather, it recites a series of charges and events
25 that were irrelevant or ancillary to the central

1 default. Stewart, like Jones, shows no
2 familiarity with the terms and requirements of
3 the Regulatory Agreement in his response. He
4 makes an offer to HUD on behalf of Dallas, to
5 "offset" the ten thousand dollar (\$10,000)
6 payment to Sirote, Permute from "over forty
7 thousand dollars (\$40,000.,00)" loaned to MCC by
8 Dallas since August 1989. (Exh. G-12.)

9 15. On April 12, 1990, Lunsford
10 responded in writing to Stewart, making clear why
11 the payment of legal fees for development costs
12 could not be paid out of project operating funds.
13 Lunsford referenced specified HUD handbook
14 sections, and cited two case decisions to support
15 HUD's legal position. Lunsford further stated
16 that if reimbursement to the project operating
17 account was not promptly made, HUD would pursue
18 appropriate administrative sanctions. (Exh. G-
19 13.)

20 16. Stewart responded to Lunsford in
21 writing on April 17, 1990. He reiterated his
22 disagreement with HUD's legal position that the
23 ten thousand dollar (\$10,000) payment to Sirote,
24 Permute was a "construction cost", and also
25 reiterated the offset offer in conjunction with

1 loans made by Dallas to MCC. Stewart also
2 requested a copy of the HUD handbook materials
3 cited in Lunsford's April 12 letter. (Exn. G-
4 14.)

5 17. By letter dated April 20, 1990,
6 Stewart again wrote Lunsford, disagreeing with
7 the declaration of default of the Regulatory
8 Agreement by HUD, and questioning why HUD
9 rejected Dallas' "offset" offer as unallowable
10 under the terms of the Regulatory Agreement. He
11 further stated that Dallas would not put in place
12 a new management agent at CCC because the expense
13 of "outside management" would sink the project
14 financially. Stewart's letter states that
15 Dallas' intent to refuse to comply with any of
16 HUD's directives concerning either reimbursement
17 of improperly distributed project funds, or
18 replacement of the management agent. (Exh. G-
19 15.)

20 18. Lunsford had apparently directed the
21 replacement of DBS as the management agent of CCC
22 as early as January 17, 1990, based on a letter
23 that of that date, to Dallas which refers to
24 management failures of DBS. The "deadline" set
25 by Lunsford in that letter for replacement of DBS

1 was April 1, 1990. Likewise, [REDACTED] Ruggs,
2 Director of HUD's Housing Management Division,
3 reiterated that demand in a letter to Dallas
4 dated January 25, 1990, and also sent Dallas
5 copies of the required HUD forms for obtaining
6 HUD approval of the new management agent. The
7 Ruggs' letter was a follow-up to a meeting held
8 on January 18, 1990, with Dallas, and his two
9 partners in DBS, [REDACTED] Bennett and [REDACTED] Smith;
10 the Board members of CCC, and three HUD
11 officials, including Ruggs. Ruggs described the
12 January 18, 1990, meeting as a catastrophe.
13 Dallas, Bennett and Smith were fighting so much
14 among themselves that the HUD officials were
15 unable to present their serious concerns about
16 management problems at CCC. Dallas resisted all
17 of HUD's explanations and suggestions at that
18 meeting, according to Ruggs, questioning HUD's
19 right to examine the books and records of the
20 project, and contesting HUD's right to demand a
21 replacement of the management agent. Dallas
22 apparently believed that his ownership role in
23 MCC was threatened, which it was not, and also
24 refused to "give up" management to Smith and
25 Bennett. Bennett was strongly in favor of

1 replacement of management because he believed
2 Dallas was incompetent. Dallas had apparently
3 been managing CCC alone and had frozen out
4 Bennett and Smith as co-managers. Subsequent to
5 the January 25 follow-up letter, Ruggs had one
6 more contact, by telephone, with Dallas, because
7 Dallas had failed to submit the required papers
8 for HUD approval of a new management agent to
9 replace DBS, and Dallas continued to question
10 HUD's legal authority to direct the replacement
11 of management. (Exhs. G-16, G-17, G-18, G-21;
12 Testimony of [REDACTED] Ruggs.)

13 12. Dallas sent a letter dated April 9,
14 1990, to Lunsford, claiming that "acceptable
15 management team", called "Consulting Group and
16 Management Consistent Team" was in place at CCC.
17 In that letter, Dallas stated what the new
18 management team was doing, but did not name any
19 of the management personnel, and did not file any
20 of the required approval forms for the alleged
21 new management. In fact, Dallas was continuing
22 to manage CCC, and had hired a company called
23 King and Associates to assist him by putting in a
24 computer system. (Exhs. G-19, G-25; Testimony of
25 Dallas.)

1 13. By letter dated April 25, 1990,
2 Lunsford imposed an LDP on Dallas and DBS, as his
3 affiliate. The LDP forbade Dallas to participate
4 in any program administered by the HUD Assistant
5 Secretary of Housing for one year. Dallas did
6 not request an informal conference, as was his
7 right, and the LDP went into effect immediately
8 for its full term. (Exh. G-27; Admissions of
9 Respondent.)

10 14. Dallas continued to manage CCC,
11 notwithstanding the LDP, after April 25, 1990.
12 Payments to a "CCC Management" were reflected on
13 Monthly Accounting Reports filed with HUD.
14 Dallas states that he did not cash any of those
15 checks, and later "returned" them to HUD. No
16 documentary evidence was presented of the return
17 of the checks or of the fact that they were not
18 cashed. It is unclear how King and Associates
19 was being paid, if King and Associates was, in
20 fact, assisting Dallas at that time in management
21 of CCC. (Exh. G-23; G-25; Testimony of Mr.
22 Dallas.)

23 15. Sometime in September 1990, Dallas
24 was removed from the operation of CCC and MCC as
25 an officer and director, but continued to hold an

1 equalized share in the ownership of MCC. His
2 removal was accomplished in part by an action of
3 the U. S. Bankruptcy Court and in part by a
4 stockholders' action. At present, Dallas is
5 forbidden to play any role in the management of
6 CCC or MCC. DBS is defunct. (Agreed Statement
7 of Counsel; Testimony of Mr. Dallas.)

8 16. During the period from December 1988
9 to at least April 1990, MCC was current on its
10 mortgage payments. Also, CCC was apparently
11 operating satisfactorily as a nursing home,
12 notwithstanding HUD's numerous concerns about its
13 financial management. (Testimony of Mr. Dallas;
14 Testimony of [REDACTED] Ruggs.)

15 17. Default is defined at Paragraph
16 13(h) of the Regulatory Agreement to occur when a
17 violation of the Regulatory Agreement "is not
18 corrected to the Secretary of HUD's satisfaction
19 within the time allowed by the Agreement after
20 written notice." Dallas had never read the
21 Regulatory Agreement and was unaware that the
22 term "default" in the Regulatory Agreement
23 referred to matters much broader than timely
24 payment of mortgage obligations. Likewise, under
25 Paragraph 11 of the Regulatory Agreement, the

1 Secretary, or his designee, may declare a default
2 of the Agreement if there has not been correction
3 of violations of the Agreement within 30 days
4 after written notification of such violations.
5 The official written notification of violation in
6 this case was dated February 23, 1990, and when
7 no correction was made with 30 days, a default
8 was declared on March 28, 1990, in accordance
9 with the requirements of the Regulatory
10 Agreement. (Exhs. G-2, G-7, G-11.)

11 18. Paragraph 9 of the Regulatory
12 Agreement provides that any management contract
13 entered into by the owners, shall contain a
14 provision that, in the event of default, the
15 management contract shall be subject to
16 termination upon written request by HUD, on
17 behalf of the Secretary. Upon such request:

18 "...Owners shall immediately arrange
19 to terminate the contract within a
20 period of not more than thirty (30)
21 days and shall make arrangements
22 satisfactory to the Secretary for
23 continuing proper management of the
24 project." (Exh. G-2.)

22 19. In the Management Certification, at
23 Paragraph 7, Dallas on behalf of DBS, agreed that
24 HUD representatives had the right to inspect any
25 project records and records of the owner and

1 agent. Paragraph 8 of the Management Agreement
2 Certification states that HUD has the right to
3 terminate the Agreement for DBS' failure to
4 comply with the provisions of the Certification,
5 thirty (30) days after HUD mails written notice
6 of its desire to terminate the Management
7 Agreement. Paragraph 9 of the Management
8 Certification Agreement states that the owner
9 must submit a new Management Certification to HUD
10 before it undertakes self management or permits a
11 new agent to operate the project and/or collect a
12 fee. (Exh. G-24.)

13 20. On April 25, 1991, the Assistant
14 Secretary for Housing proposed that Dallas be
15 debarred for 5 years from April 25, 1990, and
16 that he be immediately suspended.

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Discussion

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2 The purpose of debarment is to assure
3 the Government that it only need do business with
4 responsible participants. 24 C.F.R., Section
5 24.115(A). Dallas is a participant and a
6 principal, as defined at 24 C.F.R., Section
7 24.105(m) and (p) because he was an owner and
8 director of a participant in a covered
9 transaction, which was the operation of a nursing
10 home with a mortgage insured by HUD. Therefore,
11 he is subject to debarment and suspension, if the
12 record merits imposition of a sanction.

13 Debarment is not to be imposed as a
14 punishment, but rather to protect the public and
15 the Government's interest. Even if cause for
16 debarment is established, it is not required that
17 a debarment be imposed. Rather, all mitigating
18 factors must be considered and weighed against
19 the seriousness of the acts or omissions cited as
20 the cause for the proposed debarment (24 C.F.R.
21 Section 24.115(b) and (d). The test for
22 debarment is present responsibility, although a
23 finding of present lack of responsibility may be
24 based on past acts. Responsibility is a term of
25 art, referring to the ability to perform a

1 contract acceptably, and also to the honesty and
2 integrity of the participant or principal.

3 HUD cites 24 C.F.R. Section 24.305(b),
4 (c)(2), (d) and (f) as causes for the proposed
5 five-year debarment of Dallas. A five-year
6 debarment for causes other than those related to
7 Subpart F of Part 24, which is not germane to
8 this case, is reserved for serious and egregious
9 circumstances that warrant a debarment of more
10 than three years, which is generally considered
11 to be the appropriate maximum sanction. 24
12 C.F.R., Section 24.320(a)(1).

13 HUD has proven by a preponderance of the
14 evidence that Dallas, in his capacities as
15 President of MCC and DBS Management, so seriously
16 violated the terms of two public agreements,
17 Regulatory Agreement and the Management
18 Certification Agreement, that those violations
19 affected the integrity of HUD programs. Dallas
20 violated Paragraph 6(b) of the Regulatory
21 Agreement, and compounded that violation by
22 refusing to correct it, acknowledge it, or even
23 read the Agreement itself to see what was
24 required by it. His failure to perform became a
25 history of failure to perform, growing ever more

1 egregious and irrational as time passed, and he
2 stonewalled every HUD attempt to focus him on the
3 contractual obligations he had assumed on behalf
4 of MCC and DBS. Although Dallas did not
5 originally intentionally violate the Regulatory
6 Agreement or Management Certification Agreement,
7 when he made the initial ten thousand dollar
8 (\$10,000) payment to Sirote, Permute using
9 project funds, he had a duty to know the
10 contractual requirements he had assumed as a
11 corporate and a partnership principal. It has
12 been shocking and disturbing that Dallas has
13 steadfastly refused to familiarize himself with
14 the obligations outlined in those documents,
15 executed by him. He did not read them before
16 signing, he did not read them after, and even at
17 his hearing chose to remain "deaf, dumb and
18 blind" to clear definitions and requirements.
19 HUD made no requests or demands that were not
20 fully in accordance with the two agreements. Had
21 Dallas ever read them, he would have known that.
22 A participant and principal who enters into a
23 contractual relationship with the Government
24 without at any time familiarizing himself with
25 the written obligations of those contracts, is so

1 lacking in responsibility that it boggles the
2 mind. Dallas is not an uneducated man. But he
3 made a conscious decision from 1988 to the
4 present to remain ignorant of any of the
5 obligations he assumed on behalf of MCC or DBS.
6 He is a serious risk as a participant in Federal
7 programs.

8 To make matters all the worse, Dallas then
9 continued to participate in HUD programs, sub
10 rosa, by continuing to manage CCC after he was
11 LDP'ed. Government sanctions are to be
12 scrupulously obeyed, not evaded, not ignored, not
13 stonewalled. It is immaterial that CCC could not
14 "afford" the three percent (3%) management fee
15 for outside management, if indeed that was so.
16 HUD had the contractual right to direct
17 replacement of DBS, the right to approve its
18 replacement, and the right above all, to know who
19 was managing the project. Dallas placed himself
20 above his contractual obligations, above his
21 statutory obligations, and above his obligations
22 as a participant in Government programs by his
23 astonishing display of stubbornness, self-imposed
24 ignorance, and absolute lack of responsibility.

25 Dallas' record of conduct since 1990 has

1 been abysmal. He contends that he relied, in
2 part, on legal advice. He clearly received
3 absolutely uninformed, incorrect, indeed
4 unprofessional advice from at least two attorneys
5 who consulted neither the contractual documents
6 nor the applicable handbooks or regulations
7 before giving what passed for legal advice.

8 However, had Dallas read what he signed,
9 and even half-heartedly tried to understand the
10 obligations he assumed on behalf of MCC and DBS,
11 I believe that he would not be in the mess he is
12 in today. Had he shown the legal instruments to
13 the attorneys in question, who are not current
14 counsel in this case, he may have received more
15 reliable legal advice.

16 A participant in Government programs may not
17 choose to remain ignorant, may not choose to
18 refuse to hear, to refuse to learn, to refuse to
19 respond to legitimate requests, and still be
20 allowed the privilege of participation in
21 Government programs. Dallas' acts and omissions
22 do indeed constitute serious causes for debarment
23 under 24 C.F.R., Section 24.305(b), (c)(2) and
24 (f). Likewise, there was adequate evidence on
25 which HUD based the temporary suspension pursuant

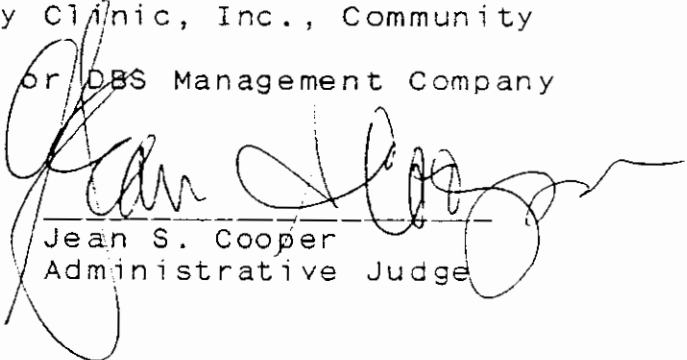
1 to 24 C.F.R., Section 24.405(a)(2).

2 As Dallas' Counsel has pointed out,
3 Dallas relied at least in part upon professional
4 legal advice. He argues that this factor, alone,
5 should merit a period of time of less than five
6 years debarment. I find this factor of some
7 mitigation but not enough to reduce the proposed
8 period of debarment substantially. I have rarely
9 encountered a more recalcitrant participant in
10 over 14 years as a Judge, nor one who so
11 adamantly refused, even at his hearing, to
12 acknowledge his most basic obligations as a
13 Government contractor. Indeed, his attitude was
14 so obdurate that it counterweighs against what
15 may have otherwise been a mitigating factor in
16 considering how long a debarment is necessary to
17 protect the public interest.

18 I find that five years from April 25, 1990,
19 for Dallas to be removed from participation in
20 public programs is in no way overlong, punitive,
21 or inappropriate because he is at this juncture a
22 distinct threat to the public interest were he to
23 be involved in any Government contracts. He
24 simply doesn't believe it necessary to read the
25 contracts that he signs. Although this debarment

1 is limited to HUD, and is not posed Government-
2 wide, it is indeed appalling to consider the
3 prospect of another Government agency doing
4 business with an individual who steadfastly
5 refused to accept or acknowledge the simple
6 concept of the duty to perform contractual
7 obligations freely assumed. Mr. Dallas may not
8 be a dishonest man, but he poses as much risk as
9 a man who is.

10 Debarment is a prospective sanction.
11 Credit will be given for the period that Dallas
12 has been LDP'ed and suspended. I find it to be
13 in the public interest that he be debarred from
14 this date up to April 25, 1995. He presently has
15 no affiliates, as that term is defined, and this
16 debarment applies to Jimmie Dallas, Sr. only, not
17 to Medical Community Clinic, Inc., Community
18 Convalescent Center or DBS Management Company

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Jean S. Cooper
Administrative Judge