



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

In the Matter of:

RENEE DIVINS,

Respondent

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: HUDBCA No. 92-C-7511-D30
: Docket No. 92-1804-DB
:
:

Ms. Renee Divins

Respondent, Pro se

Walter E. Warren, Esq.
Office of General Counsel
Department of Housing and
Urban Development
Washington, D.C. 20410

For the Government

DETERMINATION BY ADMINISTRATIVE JUDGE JEAN S. COOPER

June 4, 1992

Statement of the Case

By letter dated December 27, 1991, Renee Divins, Respondent in this case, was notified that the U.S. Department of Housing and Urban Development ("HUD") intended to debar her from participation in primary and lower-tier transactions as a participant or principal at HUD, including HUD procurement contracts, and throughout the Executive Branch of the Federal Government, for a period of five years. HUD proposed a five-year period of debarment, citing an alleged willful and egregious pattern of serious irregularities by Divins while she was employed at Gateway Mortgage Company ("Gateway"). Divins was temporarily suspended pending determination of debarment. HUD cites 24 C.F.R. §24.305(b), (d), and (f) as grounds for Divins' debarment, and 24 C.F.R. §24.405(a)(2) as grounds for her temporary suspension.

Divins filed a timely request for a hearing on the proposed debarment. A hearing was held on May 21-22, 1992. The parties agreed to issuance of a bench decision pursuant to 24 C.F.R. §26.24(d), and this determination is issued from Washington, D.C., without citations to transcript pages, as a bench decision in accordance with that agreement.

Issues in Dispute

HUD charges Divins with making false certifications on the HUD Form 92900, which is the Application for Commitment of Insurance submitted to HUD for mortgage insurance, in three mortgage loan transactions. HUD also charges Divins with "facilitating or allowing" the submission of false documents to HUD in the processing of the three loan packages.

The false certification charge is based on the following allegations:

- 1.) Divins knew that the mortgagors did not have face-to-face interviews with anyone from Gateway,
- 2.) Divins knew that "realtors did all of the loan processing,"
- 3.) Mortgagors signed the HUD Form 92900 in blank at the realtors' offices without the benefit of an examination of the form's contents,
- 4.) Divins approved courier service to transport a HUD Form 92900 one way to a realtor in one transaction,
- 5.) Divins omitted liabilities of mortgagors from the HUD Form 92900 in two transactions,
- 6.) Divins accepted assignment of a loan package without reverifying any credit documents before signing the HUD Form 92900 in one transaction, and
- 7.) Divins knew that verified credit documents in the three transactions had been handcarried by interested third parties who had prepared the credit documents with Divins' knowledge.

HUD concludes that these violations of HUD loan origination requirements by Divins, or with her knowledge, were done as part of a scheme that resulted in the submission of false information and false certifications to HUD. HUD further alleges that this scheme was "stimulated, facilitated and aggravated by failure to conduct required face-to-face interviews with the mortgagors," and that this scheme ultimately allowed mortgagors to avoid making the minimum required investment in the purchase of properties with mortgages insured by HUD through the Federal Housing Administration (FHA).

Divins denied that she processed any of the three loan packages in violation of HUD loan origination requirements. She further denied that she made any false certifications, or that she in any way schemed to induce HUD to issue a certificate for

mortgage insurance in any of the three cases based on false or misleading information.

Findings of Fact

1. Renee Divins has been a loan processor for mortgage lenders for a period of at least eight years, most of those years as a manager of loan processing departments. She is presently employed as a loan processor at Bluebonnet Savings, working on conventional mortgage loans. In June 1987, Divins was employed by Gateway as a loan processor. At a certain point in her employment with Gateway, she was made manager of the loan processing department when more loan processors were hired by Gateway. In April 1990, she was listed on a Gateway employee roster as "Mgr. Processing." Although she signed a transmittal letter to HUD on August 28, 1990 as "Office Manager," Divins only had managerial authority over the other processors. She had no authority over loan officers (originators), underwriters, or closers. Divins considered the underwriters at Gateway to be her superiors. The two underwriters were [REDACTED] Ranier, who was also President of Gateway, and [REDACTED] Walker, who was no longer employed at Gateway as of April, 1990. (Exhs. G-28, G-29; Testimony of Divins.)

2. Divins' duties as manager of the processing department at Gateway included reporting to upper management which loans were "in the pipeline," and what processing functions had been completed for each such loan. Divins assigned loan files to the loan processors, distributed HUD circulars relevant to the processing function, and instructed the processors in the use of computers. All of the processors hired at Gateway were experienced, and Divins did not need to train them in the rudiments of loan processing. (Testimony of Divins.)

3. Divins was an experienced loan processor when she went to work for Gateway. She was also approved by HUD as a mortgage analyst for Gateway, but never worked in that capacity during her Gateway employment. The skills and techniques used by a mortgage analyst are comparable to the work of a loan processor in that both jobs involve evaluation of the reliability of documentation of credit worthiness of mortgage applicants, and computation of the allowable maximum mortgage and ratios. (Testimony of Divins.)

4. Divins was the loan processor, and signed the Lender's Certification on the HUD Form 92900 for mortgage applicants named Douglas and Robinson. She also signed VA Form 26-1802a, Application for Commitment of Insurance, for the mortgage application of applicants named McClanahan. The VA Form is identical to the Form 92900. Each of the three transactions involved the purchase of a single-family house by the applicants that would be financed with a mortgage insured by HUD-FHA. Divins placed the credit information on these forms using a

computer or typewriter to fill in the front of the form where the financial information about the applicants is listed, and using a typewriter for the back of the form, which contains the Lender's Certification and the Borrower Certification. Divins either typed the information herself or directed the information that needed to be placed on the forms. It was her duty to check the information on the Form 92900 and the VA Form 26-1802a before she signed the Lender's Certification. (Exhs. G-9, G-16, G-22; Testimony of Divins.)

5. The Lender's Certification at Section III of both the Form 92900 and the VA Form 26-1802a, signed by Divins in all three transactions, states, in pertinent part, as follows:

The undersigned lender makes the following certifications ...

26A. The information furnished in Section I is true, accurate, and complete.

26B. The information contained in Section II was obtained directly from the borrower by a full-time employee of the undersigned lender or its duly authorized agent and is true to the best of the lender's knowledge and belief.

26C. The credit report submitted on the subject borrower (and spouse, if any) was ordered by the undersigned lender or its duly authorized agent directly from the credit bureau which prepared the report and was received directly from said credit bureau.

26D. The verification of employment and verification of deposits were requested and received by the lender or its duly authorized agent without passing through the hands of any third persons and are true to the best of the lender's knowledge and belief.

26E. This application was signed by the borrower after Section I, II and V were completed.

26F. This proposed loan to the named borrower meets the income and credit requirements of the governing law in the judgment of the undersigned.

26G. The names and functions of any duly authorized agents who developed on behalf of the lender any of the information or supporting credit data submitted are as follows:

If no agent is shown above, the undersigned certifies that

all information and supporting credit data were obtained directly by the lender.

Box 27 of Section III is for entry of the date of the Lender's Certification, Box 28 for the name of the Lender, Box 29 for the lender's telephone number, and Box 29 for the "Signature and Title or Officer of Lender." (Exhs. G-9, G-16, and G-22.)

6. Gateway was a Direct Endorsement (DE) lender. As a DE lender, Gateway underwrote loans for HUD, and submitted them after closing for issuance of a Mortgage Insurance Certificate. HUD relies on its DE lenders to originate and underwrite loans using prudent lending practices, following HUD procedures outlined in relevant Handbooks. Walker and Ranier were the two DE underwriters for Gateway. (Exh G-18; Testimony of Jimmy R. Brown; Testimony of Divins.)

7. In September 1988, [REDACTED] Douglas purchased a single-family home located at [REDACTED] Racine Drive, Dallas, Texas. The seller of the property was Jeff Bosse, President of J & D Real Estate, Inc. Bosse testified that he called up Kay Yarbrough, a loan officer at Gateway, to set up a loan file for the Douglases. At Yarbrough's request, Bosse interviewed the Douglases to obtain the information necessary to complete a preliminary loan application (FNMA Form 1003). He wrote the information on a legal pad, and gave it to Yarbrough to be transferred to the FNMA Form 1003. Yarbrough filled out the Form 1003 in her handwriting using the data provided her by Bosse, and gave the completed form back to Bosse to obtain the signatures of the Douglases. The Douglases signed the Form 1003 but did not date it. Bosse returned the signed Form 1003 to Yarbrough. Yarbrough signed the 1003, wrote "received 9/12/88" below her name, and checked on the form that she had taken the application information from the Douglases by mail and by telephone, not by a face-to-face interview. [REDACTED] Douglas testified that Yarbrough never interviewed her at all, nor did any other employee of Gateway. (Testimony of [REDACTED] Douglas and Jeff Bosse; Exh. G-10.)

8. Renee Divins was the loan processor for the Douglas mortgage application. She compiled the information for the Form 92900 based on the information provided to her by Yarbrough on the FNMA Form 1003, and from verification forms sent out by Divins and returned to Gateway. On the Form 92900, it states that [REDACTED] Douglas was a teacher at [REDACTED] Day Care and earned \$ [REDACTED] a month. In fact, [REDACTED] Douglas testified that she never earned that much money a month and was a teacher's aid, not a teacher. However, a Verification of Employment (VOE) was received from Douglas' employer that listed the amount of earnings and position title of Douglas that Divins placed on the Form 92900. Douglas had "no idea" where the false VOE came from. She also testified that a W-2 form and pay stub purporting to be

hers are false, and that her husband's income as listed on the Form 92900 was incorrect. Divins relied on verification documents received in the normal course of processing to support the information she placed on the Form 92900 for the Douglasses. (Exhs. G-9 and G-11; Testimony of Divins; Testimony of Douglas.)

9. The Form 92900 for the Douglasses states that the Douglasses had \$[REDACTED] cash, including cash on deposit for the purchase of the house. In fact, the Douglasses did not have any cash to make a down payment or to cover the closing costs. Bosse paid about \$1000-2000 for the Douglasses to use to close the house purchase. [REDACTED] Douglas wrote a letter at the direction of Bosse, stating that she did not believe in banks but that she had the necessary money to close the loan. She has no recollection of going to a notary to swear to the contents of the letter or to her signature on it. Divins was given [REDACTED] Douglas' letter, notarized on a separate page by [REDACTED] Carlock, and a letter to Gateway from Dallas Title Company, dated September 22, 1988, also signed by [REDACTED] Carlock, stating that Dallas Title Company had received earnest money of \$[REDACTED] from the Douglasses, and an additional deposit of \$[REDACTED] for a total of \$[REDACTED]. Divins relied on [REDACTED] Douglas' notarized letter and the letter from Dallas Title Company verifying the cash on deposit that the Douglasses actually had the cash to close, and that the funds had not been given to them by the seller or another improper source of funds. (Exhs. G-9, and G-11; Testimony of Divins; Testimony of [REDACTED] Douglas; Testimony of Jeff Bosse.)

10. Divins denies that she knew that any of the information she placed on the Form 92900 was false, or that the documents used to verify the information contained false information. Bosse testified that, to the best of his knowledge, Divins did not know that he, not Yarbrough, had interviewed the Douglasses, or that he had given them the money to close, although Yarbrough knew both facts. Divins and Yarbrough were not close, and in the absence of evidence to the contrary, I find that Divins did not know about Yarbrough's arrangement with Bosse or that information and verifications supplied to her were false. (Testimony of Divins; Testimony of Bosse.)

11. The Douglasses did not sign the Form 92900 until the closing. Divins had signed the lender's certification prior to the closing on September 27, 1988. Normally, Divins would not send a loan package forward for underwriting without the signatures of the borrowers. In the case of the Douglas loan package, Divins was told by Yarbrough that it was a "rush case," and to send the package to underwriting without the signatures of the Douglasses. The underwriter on the Douglas loan was Ray Walker. Divins told Walker of Yarbrough's request, and sent the package for underwriting. Walker underwrote the loan without the signatures of the Douglasses. The Loan Closing Instructions from Tynette Clark, a Gateway closer, state that the borrower and co-

borrower were to sign the "2900" which is a short form reference to the HUD Form 92900, as a special condition of the closing. Divins considered the handling of the Douglas loan package to be unusual but not unheard of, because loans at Gateway would sometimes be underwritten without borrowers' signatures on the Form 92900. (Testimony of Divins; Testimony of [REDACTED] Douglas; Exh. G-8, G-10.)

12. It was apparent from the FNMA Form 1003 that Yarbrough had not conducted a face-to-face interview with the Douglasses before filling out that form. However, Divins believed that Yarbrough had talked with them by telephone and had obtained information from them by mail. Divins knew that a face-to-face interview is required by HUD. Nonetheless, she submitted the file for underwriting without verifying that someone at Gateway had actually met and interviewed the Douglasses. (Testimony of Divins.)

13. The Douglas loan package was reviewed in detail after closing by Jerry Bushy, a HUD reviewer of loan packages, and Bushy essentially re-underwrote and approved the loan package, based on the same documents and information provided to Divins and Walker. HUD had issued a Mortgage Insurance Certificate for the loan on November 11, 1988. (Exhs G-11; G-6).

14. [REDACTED] McClanahan purchased a home with a mortgage insured by HUD-FHA on July 8, 1988. The McClanahan loan package had been sent to Gateway from Royal Mortgage, which had rejected the loan. The loan package was apparently received at Gateway by Ray Walker, the underwriter, who gave the loan package to Divins for reverification. It had been compiled at Royal Mortgage. Divins limited her reverification of the financial data in the McClanahan file to those she could do by telephone, because Walker told her to verify "as possible" by telephone. Divins only did telephone reverifications of some of the data in the McClanahan file. She reverified nothing by mail or by courier. Divins was unable to reverify the Verification of Deposit (VOD) in the file because no one at the bank would give out that information by telephone. She did not reverify a purported gift letter because the amount of the alleged gift was reflected in the unreverified VOD. (Testimony of Divins.)

15. As of September, 1988, HUD provided in its relevant Handbook for telephone reverification of information in loan packages transferred from one mortgagee to another. However, the record was not clear whether HUD allowed such a reverification a few months before that when Divins followed Walker's instructions, although Divins believed that HUD did allow telephone reverifications under such circumstances before September, 1988. (Testimony of Divins; Exh. M-2.)

16. Divins knew that no one at Gateway had interviewed the

McClanahans, nor did she believe that an interview was required for transferred loan packages. As of September 1988, although HUD did allow telephone reverification of credit data for transferred loan packages, it absolutely required that a face-to-face interview be conducted by the mortgagee to whom the package was transferred. (Exh. M-2; Testimony of Divins.)

17. Divins relied on a gift letter in the file, a copy of a check from the gift donor, a deposit slip showing a cash deposit of \$4620.09, the credit report, the FNMA Form 1003, and the VOD and VOE's collected by Royal, to fill out the Form 92900 for the McClanahans. Divins was not aware that the McClanahans had a car given to them by Mrs. McClanahan's [REDACTED], to whom they were making monthly payments. This debt did not appear on the credit report because it was private, and the McClanahans were told by their realtor not to list it on any of the application forms. It is not listed on the FNMA 1003, which states "cars are clear." Divins had no reason to know or believe that the debt on the car existed. There was a financial information form signed in blank in the file provided by Royal, but Divins either did not notice it or was not alerted to possible irregularities in Royal's loan processing procedures by the existence of this form. Divins signed the Form 92900, but did not date her signature. The only name listed on the 92900 for those who developed the information on behalf of the lender is Credit Data. There is no indication in the Lender's Certification that Royal Mortgage actually developed all of the data relied on by Divins in filling out the Form 92900. (Exhs. G-13, G-14, G-16.)

18. Divins was not aware that the gift letter, copy of the "gift" check, and deposit slip in the McClanahan's file were false. The McClanahan's realtor, Bob Hinckley, had given them \$4000 to deposit, and directed the preparation of the false gift letter. Hinckley gave the gift letter to Cindy McClanahan to obtain from the "donor" her signature on the gift letter, a check for \$4000 and a deposit slip. McClanahan did as Hinckley directed. The check from the "donor" was never deposited, but it was copied for the benefit of the loan package, and the deposit slip was filled out to make it appear that the check had been cashed. In fact, the only money deposited by the McClanahans was the money from Hinckley. Also, no one at Royal Mortgage had ever interviewed the McClanahans, and the information placed on the FNMA Form 1003 probably came from Hinckley. However, there is no evidence that Divins knew any of these facts. (Testimony of Divins, and [REDACTED] McClanahan.)

19. The McClanahans were told by Hinckley "not to tell anybody" about the money he gave them, that the gift letter was false, or that they owed money to Mrs. McClanahan's [REDACTED] for the car she had given to them. Although [REDACTED] McClanahan testified that he probably would have told someone at Gateway or Royal about the car debt, if they had asked him about it

directly, I do not believe that he would have told anyone about the more serious misrepresentation concerning the true source of funds for the closing. The McClanahans had already been turned down once for a mortgage, and they were willing to follow Hinckley's directives exactly in order to get a house. (Testimony of [REDACTED] McClanahan.)

20. Divins submitted the loan package to Ray Walker for underwriting, even though only [REDACTED] McClanahan had signed the Form 92900. At Gateway, it was internal policy that a loan package would be accepted for underwriting without the signatures of all borrowers on the Form 92900, and the missing signatures would be collected at the loan closing. [REDACTED] McClanahan never signed the Form 92900. (Testimony of Divins; Exh. G-16.)

21. The McClanahan loan package was sent to HUD for approval because Royal Mortgage was not a DE lender, and HUD had already issued a conditional commitment for the loan and underwritten the appraisal. A transmittal letter signed by Ray Walker characterized the loan package as "complex," noting a poor credit history that Walker attributed to the cost effects on the McClanahans of a child born with [REDACTED]. The loan package was approved by Jerry Bushy for HUD, a firm commitment was made by HUD, and a Mortgage Insurance Certificate was issued on November 9, 1988. (Exhs. G-12, G-18.)

22. On June 26, 1989, [REDACTED] Robinson bought a single-family house with a mortgage insured by HUD-FHA. Divins was the loan processor for the loan package, Barbara Rector was the Gateway loan officer, and both Ray Walker and Michael Ranier underwrote the loan package. The Robinsons had previously had another mortgage loan go into foreclosure in 1988, and were also making monthly payments under a Chapter 13 bankruptcy order at the time that they applied to Gateway for a mortgage. (Testimony of [REDACTED] Robinson; Testimony of Renee Divins; Exhs. G-20, G-27.)

23. The bankruptcy trustee to whom the Robinsons made monthly payment was Tim Truman. Truman's name was familiar to HUD, and to the mortgage lending community, as the bankruptcy trustee in the area. (Exhs. G-20, G-27; Testimony of Brown; Testimony of Divins.)

24. During the processing of the Robinsons' loan package, a spelling error appeared in a written request sent to Truman by Gateway, in which Truman's name was spelled "Thurman." Truman responded to the request with the required information, and no one apparently noticed the incorrect spelling of his name. The incorrect spelling of Truman's name was inadvertently carried over into the computer data used by Gateway to print up the front of the Form 92900. The Form 92900 lists at Block 21 (liabilities) that the Robinsons were making monthly payments of

\$[REDACTED] to "Tim Thurman," with a balance due of \$[REDACTED]. The amounts were correct. However, there is no indication on the face of the Form 92900 that the payments were being made to the bankruptcy trustee, either by the correct spelling of his name or by use of his title. Divins acknowledged that the word "trustee" should have appeared with the creditor's name to signal that this was a bankruptcy liability, although there is no specific HUD requirement to this effect. Divins checked the Form 92900 to make sure that all of the numbers were correct, but she did not check spelling. Divins signed the Lender's Certification on the Form 92900. The Form 92900 was not the only document sent by Divins to the underwriter, and ultimately to HUD after closing. The loan package included all of the relevant bankruptcy papers, which clearly listed Tim Truman as the trustee, and also contained a letter from Truman giving permission for the issuance of the mortgage. (Exhs G-22 and G-27; Testimony of Divins.)

25. In Section V, the Borrower Certification, on the Form 92900, at Block 31C, the borrowers must certify whether during the past five years they have been obligated on a loan, including a mortgage, that resulted in foreclosure. The Robinsons had a mortgage on a conventional loan go into foreclosure in 1988. The box for "yes" and for "no" at Block 31C both have "XX" typed into them, to answer the question about whether a foreclosure occurred. Divins believes that she either typed the form herself or directed that it be typed, and that she checked it over for errors. She acknowledges that, as typed, the answer to Block 31C makes no sense. The Credit Analysis worksheet prepared by Divins or someone else under her supervision, records that the Robinsons were first time homebuyers, which was not so. This would have created confusion for the underwriters. Furthermore, Block 31C requires that if the "yes" box is checked, details of the foreclosure, including the date, name and address of lender, FHA or VA case number, if any, and reasons for the action be provided on a separate sheet. There is no indication that Divins had a separate sheet prepared to attach to the Form 92900, as required at Block 31C. Divins signed the Lender's Certification that states, among other things, that Section V was completed before the application was signed by the borrower, but she did not date her signature. (Exhs. G-22, G-27; Testimony of Divins.)

26. When the Robinsons applied for their mortgage with Gateway, Mrs. Robinson owed Lane Bryant, a women's clothing store, \$55.00. That debt is listed on the credit report dated May 8, 1989, but it was no longer listed on a credit report dated June 23, 1989. Divins did not list the debt to Lane Bryant on the Form 92900, signed by [REDACTED] Robinson only on June 15, 1989. The Robinson closing occurred on June 26, 1989. Sometime in June, Barbara Rector gave Divins a photocopy of a cashier's check for \$55.00 made out to "Bryant Lane." Rector told Divins that the cashier's check photocopy was evidence of payment of the Lane Bryant debt, and directed Divins to send the photocopy to the

Credit Bureau as evidence to be verified by the credit company for a "new" credit report, presumably the credit report dated June 23, 1989. Divins did not wait to receive the new credit report. She decided that the Lane Bryant debt had been satisfied, based only on the photocopy of the cashier's check shown her by Rector. She considered the name reversal on the certified check to be unimportant, and had no doubt the check was cashed. When she received a June 23, 1989 credit report, a week or more after she had already signed the Lender's Certification on the Form 92900, she treated the report as proof that the debt had been paid because it did not appear on the June credit report. In fact, the cashier's check for \$55.00 made out to Bryant Lane was never cashed. HUD investigators found it in Gateway's loan file for the Robinsons. Neither Robinson paid the \$55.00 debt by any other means. It is unclear whether it was, in fact, paid at all, under the circumstances, despite the June 23, 1989, credit report. Divins denies having seen the actual uncashed cashier's check in Gateway's file. (Testimony of Divins; Testimony of [REDACTED] Robinson; Exhs. G-24, G-25, G-26.)

27. After Divins processed the Robinson's loan file, she gave it to Ray Walker for underwriting. If Walker "disagreed" with a file, he would give it to Michael Ranier to review. Ranier reviewed the Robinson file. The loan was approved by Rainer. HUD issued a mortgage insurance certificate for the loan on August 22, 1989. (Exh. G-27; Testimony of Divins.)

28. Jimmy R. Brown, Chief of Mortgage Credit in HUD's Fort Worth Regional Office, testified that the face-to-face interview required for all HUD mortgage insurance applications must take place when the lender goes over the Form 92900 with the applicants before they sign the Borrower Certification on the form, if not before. The face-to-face interview need not be held during the taking of the initial application (FNMA Form 1003), although that is usually when the lender first interviews the applicants. If there is more than one applicant, both applicants must be interviewed, except in the case of a refinancing transaction or if one applicant is out of the country. According to Brown, the Lender's Certification cannot be signed before both applicants have signed it, but there is no such requirement in the HUD Handbooks or on the Form 92900 itself. Divins believed that the Lender's Certification meant that financial and credit information given to the lender had been verified, and that significant inconsistencies had been resolved before the Certification was signed. (Testimony of Brown; Testimony of Divins; Exhs. G-1, G-2, G-3, G-4, G-5.)

29. In Mortgagees' Handbook 4000.2 REV-1, Section 1-6 states that in order to protect the public interest, HUD housing programs must be honest, free of fraud and other abuses. To that end, it states,

Any violation of law or regulation, false statements or program abuses that are detected by the mortgagee or any of its employees should be reported immediately to the HUD Area Office or to the HUD Regional Office of Inspector General. (Exh. G-1.)

Although Divins did call the lack of applicant signatures on the Form 92900 to the attention of the underwriter in the Douglas transaction, she believed that no program abuses had occurred that required her to report anything to her superiors or to HUD. She did not believe that it was her duty to police the face-to-face interview requirement, and assumed that the loan officer was conducting them at some point prior to the closing. (Testimony of Divins.)

30. Section 5-2(a) of Mortgagees' Handbook No. 4000.2 REV-1 requires that the face-to-face interview "must be conducted by a company employee, at which time the fully completed loan application should be reviewed with the loan application." Appendix 1 to the Mortgagee Approval Handbook No. 4060.1 likewise refers to this timing for the interview. Underwriting and closing is not to take place until these steps have been completed. HUD requires that the Form 92900 be completed prior to the applicant's signing the Borrower Certification. (Exh. G-3, G14.)

31. HUD Regulations 24 C.F.R. §203.2(a)(2) and 203.10, as well as Handbook 4060.1, require that all loans submitted to HUD "must be fully processed by employees of the mortgagee." (Exh. G-4.) Interested third parties are not allowed to handle verification and credit documents used in processing. Divins approved the use of a courier to bring a HUD Form 92900 for the signature of applicants that was to be delivered to Chad Norcross, a real estate agent, who is not permitted to be the recipient or conduit of such a document. Divins believed that it was allowable to approve the courier authorization as written because she was told that Kay Yarbrough was waiting at Norcross' office to actually receive the Form 92900. Divins could not explain why she did not require that Yarbrough be listed as the recipient. (Testimony of Divins; Exh. G-30.)

32. According to Divins, the loan officers at Gateway "controlled the tone" of the operation. They were aggressive sales people, and cut corners to make more money faster. Divins believed that her ability to process loans correctly at Gateway was adversely affected by the undue influence of the loan officers. Yarbrough was the top producer of new business for Gateway and upper management, which also included the top underwriter, accommodated Yarbrough even when it meant cutting corners on good loan origination practices and HUD requirements. At Gateway, only loan officers were to talk to applicants, and Divins did not feel comfortable calling applicants directly to

verify information or to resolve discrepancies. In contrast, she now works in an environment that she characterizes as "professional," where no corners are cut, and all loan packages are complete before the processors send them on for underwriting. (Testimony of Divins.)

33. Divins admitted at the hearing that the Douglas, McClanahan, and Robinson loan files were "a mess," "horrible," and that she was not proud of them in retrospect, but she did them three or four years ago when she was under a lot of pressure at Gateway. She stated that she should have handled the three transactions differently, such as doing careful proofreading, making sure all required signatures were on documents before sending packages for underwriting, making sure that credit information was true by proper verification or reverification, and otherwise resisting pressure to do quick and sloppy processing. (Testimony of Divins.)

Discussion

HUD is proposing the five-year debarment of Renee Divins, based on her alleged participation in a scheme to defraud HUD by inducing the Department to insure mortgages based on false certifications, false documentation of creditworthiness of mortgage applicants, and otherwise covering up defective loan origination procedures that helped foster schemes to defraud HUD. HUD cites 24 C.F.R. §§24.305(b), (d), and (f) as grounds for Divins' debarment.

The purpose of debarment is to assure the Government that it only does business with "responsible" persons and entities. 24 C.F.R. §24.115(a). The term "responsible," as used in the context of suspension and debarment, is a term of art which includes both the ability to perform a contract satisfactorily and the honesty and integrity of the participant. 48 Comp. Gen. 769 (1969). Even if cause for debarment is established by a preponderance of the evidence, existence of a cause alone does not automatically require that a debarment be imposed. The test for whether a debarment is warranted is present responsibility, although 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.D.C. 1980). In deciding whether to debar a person, all pertinent information must be assessed, including the seriousness of the alleged acts or omissions, and any mitigating circumstances. 24 C.F.R. §§24.115(d), 24.314(a) and 24.320(a). A debarment shall be used only to protect the public interest and not for purpose of punishment. 24 C.F.R. §24.115(b).

The Government may only debar participants, principals and their affiliates, as defined in 24 C.F.R. §24.105. Divins was a loan processor who participated in the past in covered

transactions, and she may also be reasonably expected to do so in the future. I find that she is a participant, as defined at 24 C.F.R. §24.105(m). However, I do not find that she is a principal, as defined at 24 C.F.R. §24.105(p), even though she had supervisory duties at Gateway over other processors, because loan processors are missing from the list of designated principals, which includes loan officers, underwriters, and closing agents. It should be noted that mortgage lending companies are also absent from the list of named principals, and thus mortgagee employees who are not specifically listed in the definition are not included under the catchall for employees or agents of principals at 24.105(p)(22). However, inasmuch as Divins is a participant, she is subject to debarment by HUD if cause for debarment is established and her debarment is necessary to protect the public interest.

The record in this case does not establish that Divins participated in any scheme to defraud HUD, or that she even knew of the schemes of others. That there were schemes to defraud is evident from this record; equally evident is that Divins was kept ignorant of them. Divins did not do a careful, thorough job of processing the Douglas, McClanahan, and Robinson loans. But, HUD does not propose to debar her for negligent processing. Rather, it contends that she was an important, knowing player in two transactions permeated to a greater or lesser degree by fraud (Douglas and McClanahan), and one in which seriously defective loan origination procedures were used. (Robinson).

The centerpiece of the Government's case is the charge that Divins falsely certified on the Form 92900 or its VA equivalent in the three transactions. To support the false certification charge, the Government made seven specific allegations against Divins, most of which charge her with actual knowledge of, and complicity in, impermissible loan origination practices.

The Lender's Certification is different for each of the sections of the application form. Section I is entitled "Purpose, Amounts, Terms of and Security for Proposed Loan." There has been no allegation and no proof that there was any false information provided in Section I of any of the three applications. Section II, entitled "Personal and Financial Status of Applicant" is the Section which the Government contends that Divins falsely certified to that 1) the information was true and correct to the best of her knowledge and belief, 2) that it was obtained directly from the borrower by a full-time employee of the lender, and 3) that verifications of employment and deposits were requested and received by the lender without going through the hands of any third persons and are true to the best of the certifier's knowledge and belief.

First, Divins did believe that all of the information placed in Section II on all three applications was true and correct to

the best of her knowledge and belief. As she pointed out in her testimony, a loan processor can only fill out the Form 92900 using the information provided, both directly and through verifications. If the information provided is verified, it goes on the form, unless the processor believes the information is not reliable. Further verification and resolution of discrepancies then take place. However, if the loan processor does not have certain information, it cannot be placed on the form, and the certification is truthfully made without it.

Divins is charged with knowing "that realtors did all of the loan processing," meaning that the realtors were the only ones who actually gathered or provided the verifications of financial information. This is not only impermissible, but Divins certified that this did not occur. First, the record in this case does not establish that the realtors did "all of the loan processing" in the three cited transactions. Second, Divins believed that she had processed the Robinson and Douglas loans because she collected information for those loans from the credit companies, sent out and received back verifications in the ordinary course of business, and then prepared the Forms 92900, or had them prepared at her direction.

Divins did not "process" the McClanahan loan, as that term is used, because the file had been transferred complete from Royal Mortgage. Divins filled out the Form 92900 improperly for the McClanahan file because none of the information on it was developed or collected by anyone from Gateway, but the form does not reveal that fact, as it is required to do. Divins should have included at Block 26G on the Lender's Certification that Royal Mortgage was the source of the information, particularly because Divins was unable to reverify by telephone the critical financial information, and she knew that no one at Gateway had interviewed the McClanahans. As filled out, Divins' certification on the McClanahan application is false for this reason. The Government has carried its burden of proof on the charge of false certification as to the McClanahan loan package. There was a scheme to defraud in the McClanahan case, which Divins' misleading certification and failure to process properly allowed to proceed unchallenged and unstopped. However, I do not find that Divins filled out Block 26G of the Lender's Certification incorrectly with the intent to mislead or defraud HUD as part of a scheme.

The Government charges that mortgage applicants signed the HUD Form 92900 in blank at the realtors offices without the benefit of an examination of the form's contents. The record does not support this allegation. I find that the form was filled out completely in each case by Divins, or at her direction, at Parts I, II, and V, before they were signed by the applicants. Therefore, her certification at Block 26E of the Lender's Certification was true.

Divins is also charged with knowing that mortgagors did not have face-to-face interviews with anyone from Gateway and that this knowledge made her Lender's Certification false. Block 26E of the Certification, which Government counsel cited for the source of such a required certification, does not refer to the obligation of a lender to conduct a face-to-face interview with loan applicants. Rather, Block 26E refers to a certification that the form was not signed in blank by the applicants, or without complete information which they would be certifying as true. In fact, there is no place in the Lender's Certification which requires a certification that a face-to-face interview was held. Rather, the certification only verifies that the information at Part II was received directly from the applicants by a full-time employee of the mortgagee, or its agent who must be listed at Block 26G. Divins believed from the FNMA Form 1003 that Kay Yarbrough had interviewed the Douglasses by telephone and mail and that Yarbrough had obtained the information for Part II directly from the Douglasses in this way. Thus, she certified to the best of her knowledge and belief in the Douglas case. The fact that Yarbrough did not interview the Douglasses at all is not relevant to the truthfulness of Divins' certification because there is no evidence that she was even aware of this fact.

Divins is charged with knowing that verified credit documents in the three transactions had been hand carried by interested third parties who had prepared the credit documents with Divins' knowledge. This is a variation on the charge that the realtors did all of the loan processing. The Government has failed to carry its burden of proof that such events occurred with Divins' knowledge, or that she did not control the handling of the credit documents.

In one instance, Divins approved a courier request that, on its face, would allow a courier to give a Form 92900 to a realtor to obtain a signature. This is not a permitted process because the realtor is an interested third party. However, the use of a courier is not forbidden, so long as the courier is operating at the direction and under the control of the lender. Divins testified that she believed that Kay Yarbrough was waiting at the realtor's office to go over the form with the applicants, and never thought that the realtor would be the one to actually handle the form. Divins was not being a responsible processor when she approved this request form as written because there is no mention of Yarbrough on the request form and no directive to give it directly to Yarbrough. Thus, the Government has carried its burden of proof that Yarbrough approved courier service to transport a HUD Form 92900 to a realtor, but I do not find that she did this to defraud HUD as part of a scheme. Nonetheless, it was improper, and it aided and fostered any scheme that was already in place. Divins should never have approved the authorization, as written. However, it does not make the Lender's Certification false because it certifies that the

information at Section II of the Form 92900 was developed from information provided by the applicants, and that verification forms had not been handled by interested third parties. Inasmuch as the Form 92900 would already have been filled out at Section II when ready for the applicants' signatures, the elements of the certification, as opposed to HUD requirements for proper loan origination procedures, were satisfied. Thus, I cannot find that a false Lender's Certification resulted from the improper approval by Divins of a Form 92900 being delivered to a realtor's office for signature.

HUD charges that Divins omitted liabilities of mortgagers from the HUD 92900 in the McClanahan and Robinson transactions. In the case of the McClanahans, the private obligation to make car payments was unknown to Divins, and did not appear on any credit report or initial application. Therefore, she could not knowingly omit what was never revealed. She certified truthfully that to the best of her knowledge and belief the information at Section II of the Form 92900, where liabilities are listed, was true and correct. In the Robinson case, Divins, somewhat foolishly, relied on a copy of a cashier's check shown to her by Barbara Rector as proof that a minor debt of \$55 owed by Mrs. Robinson had been paid when Divins signed the Form 92900 for the Robinsons. When Divins signed the form, she did not yet have reliable proof that the debt had been satisfied because she had not yet received a revised credit report which removed the debt from a list of liabilities of the Robinsons. In fact, the debt may have been paid off, but not by the Robinsons and not with the certified check. Divins swore under oath that she was only shown a photocopy of the check, and never saw the uncashed check in the file because she "wasn't looking for it." Nonetheless, she improperly certified that the debt had been satisfied before she had sufficient information to make that representation.

The Government also charges that Divins deliberately omitted important information about the Robinson's listed liability, a bankruptcy workout, because the name of the creditor is listed as "Tim Thurman" and he is not identified otherwise on the Form 92900. Technically, Divins made a false certification on the Robinson 92900 because no money was owed to "Tim Thurman." However, this spelling error was just that. The loan file contains all of the bankruptcy papers as well as the letter from the trustee, Tim Truman, giving permission for the Robinsons to apply for the mortgage. The liability information is correct as to the amount of the debt to Truman. Taken in context, Divins was a sloppy proofreader but there is absolutely no evidence that she deliberately entered the spelling error to mislead HUD or cover up the bankruptcy. Therefore, I give no weight to the incorrectness of her certification, because I cannot find that she meant to mislead or that anyone was misled.

The most misleading part of the Robinson application is

found at Section V, which Divins had typed and should have proofread. It creates the impression that the Robinsons had never had a mortgage placed in foreclosure because the specific details of that foreclosure, which are required, were omitted from the Form 92900, and both the "yes" and "no" boxes were checked which added to the confusion. Insofar as Divins was responsible for the accuracy and correctness of information placed on the form by the mortgagee, she is responsible for what is tantamount to false and misleading information in the Borrower Certification. It was her duty to prepare the information sheet on the foreclosure and to attach it to Section V. Divins falsely certified that Section V had been filled out completely before the borrowers signed it. In fact, Section V was incomplete on the Robison application because the details about the foreclosure were missing. This is very important information that must be carefully considered in underwriting a loan. Its omission was serious.

The Government has carried its burden of proof on certain of the specific allegations it made against Divins to establish that she had falsely certified on the Lender's Certification for the McClanahan and Robinson loans. However, her violations are in the nature of technical falsehoods, and were not done with the intent to defraud.

The Government proposes to debar Divins for five years. The record does not justify a five-year debarment because there is no evidence of intent to defraud, no evidence of participation by Divins in fraudulent schemes, and there are mitigating circumstances in the three transactions which explain some of the reasons why Divins used poor loan processing procedures. This is not a record that factually supports charges of willfulness and egregiousness necessary for more than a three-year debarment. See 24 C.F.R. §24.320(a)(1).

However, the record does establish cause for debarment pursuant to 24 C.F.R. §24.305(b) and (f). Divins showed a history in 1988-89 of unsatisfactory performance of one of more public transactions, which adversely affected the integrity of HUD's mortgage insurance program. See 24 C.F.R. §24.305(b). She also violated program requirements for processing of mortgage insurance applications. See 24 C.F.R. §24.305(f). Furthermore, she never seemed to realize how many loan processing errors and errors of professional judgment she had made in the three transactions until the end of her hearing. It was only then that she acknowledged that the loan files were in her words, "horrible, a mess." Divins attempted to give assurances that she was presently responsible and was working in an employment atmosphere that encourages professional conduct. The improved professional setting in which she is now employed is encouraging. However, I am not at all sure that Divins really understands the full extent and seriousness of the Lender's Certification, or

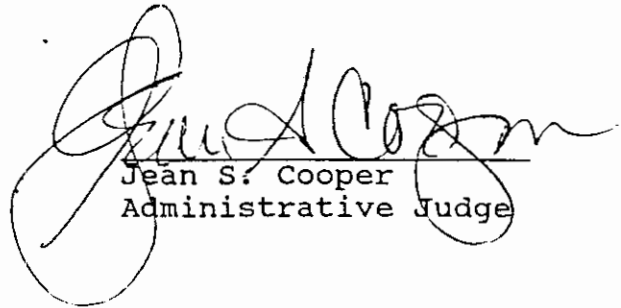
when HUD requirements, such as the face-to-face interview, are to be performed. There is a purpose underlying HUD's requirements. They are all designed to assure that a loan is based on true, complete, and up-to-date information of creditworthiness. The lender has a duty to actually interview applicants, carefully collect, check and verify their financial information, and then to go over the application line by line with the applicants and to explain the Borrower Certification to them before they sign it. Divins' job at Gateway limited her participation in this process to the collection and verification of financial information. However, she indicated that she believed a face-to-face interview could be done anytime before closing. For the interview to take place after the loan has been underwritten defeats the purpose of the requirement and it is rendered meaningless. This is one example of a curious gap in Divins' knowledge, although she had been a processor of HUD loans for a number of years. Her failure to date her signature on the Form 92900, and other inexplicable lapses, continue to raise questions about whether Divins is presently responsible. Furthermore, she had the background and training to recognize "warning signals" in files, such as the form signed in blank that was included in the McClanahan file transferred from Royal Mortgage, yet she seemed not to recognize that as a problem.

I find that Divins has become more aware, more careful since her days at Gateway. However, I do not believe that she adequately explained all of the irregularities in her processing during that time, which certainly did not nothing to impede, and may have aided, fraud by others. She "passed the buck" to the underwriters, rather than insisting that she do her job properly. Despite her assurances, I cannot be sure that she would resist the pressures of a work situation such as the one at Gateway, were she to encounter them again today.

Based on the record considered as a whole, and because the events in question occurred almost four years ago in only three transactions for which I find some mitigation of their seriousness, I find that a period of exclusion of eighteen months from when Divins was temporarily suspended to be sufficient to protect the public interest. Inasmuch as debarment is a prospective sanction, Divins will be given credit for the time she was suspended in determining when her debarment will end. She shall be debarred up to and including June 26, 1993.

CONCLUSION

For the foregoing reasons, Renee Divins shall be debarred from this date up to and including June 26, 1993.



Jean S. Cooper
Administrative Judge