



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

In the Matter of:

MARK BECK & LIHC, INC.,

Respondents

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HUDBCA No. 93-C-D11
Docket No. 93-1922-DB

DETERMINATION BY ADMINISTRATIVE JUDGE JEAN S. COOPER

June 4, 1993

UNITED STATES OF AMERICA
BOARD OF CONTRACT APPEALS
U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

In the Matter of:)	
)	
MARK B. BECK)	
)	
and)	
)	HUDBCA No. 93-C-D11
LIHC, INC.,)	Docket No. 93-1922-DB
)	
Respondents.)	
)	

DETERMINATION

Statement of the Case

By letter dated October 7, 1992, Mark Beck was notified that the U. S. Department of Housing and Urban Development (HUD) intended to debar Beck and LIHC, Inc., also known as Condominium Associates West, from participation in primary and lower-tier covered transactions as either principals or participants at HUD and throughout the Executive Branch of the Federal Government, and from participating in procurement contracts for a period of four years from the date of a Limited Denial of Participation (LDP) imposed on Beck and LIHC, Inc. on October 4, 1991 by HUD's Fort Worth Regional Administrator. Pending determination of debarment, Respondents Beck and LIHC, Inc. were temporarily suspended, and the suspension superseded the "LDP," which in fact had expired three days before

1 imposition of the suspension.

2 Respondents made a timely request for a
3 hearing on their suspension and proposed debarment.

4 The causes for debarment and suspension stated
5 in the October 7, 1992, letter notice concern alleged
6 irregularities in Back's ownership and operation of
7 Regency Place Apartments, a multi-family housing project
8 with a mortgage insured by the Federal Housing
9 Administration (FHA) under Section 221(d)(4) of the
10 National Housing Act.

11 The irregularities cited in the notice and the
12 Government's complaint are:

13 1.) Failure to make payments due under the
14 note and deed of trust, as required under the Regulatory
15 Agreement governing project operations.

16 2.) Improper use of \$89,348.67 in project
17 funds for owner entity expenses and other business
18 ventures, without HUD's approval, and in violation of
19 Paragraphs 8(b), 8(e) and 12(g) of the Regulatory
20 Agreement.

21 3.) Payment of \$23,180.37 in unapproved
22 management fees; payment of \$1,800 for bookkeeping
23 services for which there was inadequate documentation;
24 and payment of \$3,041.98 for unsupported items, in
25 violation of Paragraph 8(b) of the Regulatory Agreement

1 and contrary to Paragraphs 2-21A, 2-7 and 2-23A of HUD
2 Handbook 4381.5 REV-1 CHG-1, Management Documents, Agents
3 and Fees.

4 4.) Denial of access to HUD auditors to
5 project records and provision of misleading information
6 concerning certain improper payments that caused severe
7 audit scope impairment, in violation of Paragraph 12(c)
8 of the Regulatory Agreement.

9 5.) Failure to provide monthly accounting
10 reports, and failure to provide annual audits for the
11 years ending December 31, 1988, 1990 and 1991, in
12 violation of Paragraphs 12(e) and (f) of the Regulatory
13 Agreement.

14 6.) Disbursement of project funds to make
15 payment on subordinate liens, without prior written
16 approval of the Secretary of HUD, although the project
17 had no surplus cash, and no payment had been made by
18 LIHC, Inc. on the mortgage, in violation of Paragraphs
19 8(b) and 8(e) of the Regulatory Agreement.

20 7.) Failure to fund tenant security deposits,
21 in violation of Paragraph 8(g) of the Regulatory
22 Agreement and Paragraph 9(b), HUD Handbook 4370.2 CHG-1.

23 8.) Failure to meet fidelity bond coverage
24 requirements, as required by HUD Handbook 4370.2 CHG-1,
25 Paragraph 9(c); and HUD Handbook 4381.5 REV-1, CHG-1,

1 Paragraph 2-4A.

2 9.) Aiding or causing violation of Paragraph
3 8(a) of the Regulatory Agreement by purchasing and
4 encumbering the project outside of HUD's transfer of
5 physical assets procedures, and contrary to HUD Handbook
6 4350.1, Chapter 4, Section 11.

7 HUD cites these irregularities as causes for
8 debarment pursuant to 24 C. F. R. Section 24.305(b), (d)
9 and (f). Respondents were temporarily suspended pursuant
10 to 24 C. F. R. Sections 24.400 and 24.405.

11 Respondents initially denied each charge in
12 the Government's complaint. Subsequently, on May 5,
13 1993, during a pre-hearing conference, Respondents'
14 answer to the Government's complaint was corrected and
15 amended. As amended and corrected, they admitted that
16 the alleged irregularities occurred, except they deny
17 that they denied HUD auditors access to project records
18 or provided misleading information concerning certain
19 alleged improper payment, and they deny that a payment of
20 \$1,800 in project funds for bookkeeping services was
21 inadequately documented. They also deny that no payment
22 had been made on the note and deed of trust, but they
23 admit that complete payment had not been made on the note
24 and deed of trust when project funds were disbursed to
25 make payment on subordinate liens without prior written

1 approval of the Secretary of HUD.

2 Respondents have raised affirmative defenses,
3 in the nature of mitigating circumstances, to the
4 enumerated causes for debarment, stating that they were
5 unaware of any of the contractual and program
6 requirements that they violated, that they committed any
7 violations unintentionally, and that they should not be
8 debarred because they are presently responsible.

9 The parties have agreed to issuance of a bench
10 decision pursuant to 24 C. F. R. Section 26.24(d), and
11 this decision is rendered as a bench decision based on
12 the record considered as a whole.

13 FINDINGS OF FACT

14 1.) LIHC, Inc., formerly known as Condominium
15 Associates West, Inc. (CAWI), is a Texas Corporation.

16 2.) Mark Beck is President and Director of
17 LIHC, Inc., and is General Partner of Regency LIHC, Ltd.,
18 a Texas Limited Partnership. He also holds a Texas real
19 estate broker's license, and is a property manager.

20 3.) Regency Place Apartments, FHA Project
21 Number [REDACTED], is a housing project consisting of 100
22 units originally built as a new construction project for
23 low to moderate income tenants. It is assisted under a
24 Section 8 Housing Assistance Payments (HAP) contract for
25 20 of the units. The original purchase of Regency Place

1 Apartments was financed by a Deed of Trust insured under
2 Section 221(d)(4) of the National Housing Act. (Exhibit
3 G-14.)

4 4.) Regency Place Apartments is subject to a
5 Regulatory Agreement for Insured Multi-Family Housing
6 Projects, executed between Royal Arms, Ltd., a limited
7 partnership, and the Secretary of HUD on or about March
8 31, 1978, binding the owners, their successors, heirs and
9 assigns by its terms. It is recorded, and is a public
10 record. (Exhibit G-15.)

11 5.) The Regulatory Agreement was incorporated
12 into the Deed of Trust. (Exhibit G-14, Sub-exhibit A.)

13 6.) In 1984, Royal Arms, Ltd. sold the
14 Regency Place Apartments to Regency II, Ltd., of which
15 [REDACTED] Cope was General Partner of Regency II, Ltd.
16 Regency II, Ltd., with Cope as General Partner, was
17 approved by HUD as the new owner of the project, upon
18 acceptance and approval of a transfer of physical assets
19 application.

20 7.) Regency II, Ltd. defaulted on payments
21 due on the Note and Deed of Trust for Regency Place
22 Apartments.

23 8.) By letter dated June 6, 1988, from
24 [REDACTED] Evans, Chief of HUD's Loan Management Branch, to
25 [REDACTED] Cope as General Partner of Regency II, Ltd.,

1 HUD notified Regency II, Ltd. that it was in default of
2 the Regulatory Agreement. (Exhibit G-17.)

3 9.) On November 11, 1988, Cope transferred
4 ownership of Regency Place Apartments to [REDACTED] Beckham,
5 Trustee.

6 10.) Papers dated November 11, 1988, indicate
7 that Beckham transferred ownership of Regency Place
8 Apartments to CAWI. The deed recording this transaction
9 was not filed in the county records until February 14,
10 1989. Mark Beck had no connection with CAWI on November
11 11, 1988. He became its President in January, 1989.
12 (Exhibit G-1.)

13 11.) In January, 1989, Mark Beck, as President
14 of CAWI, later to be known as LIHC, Inc., executed
15 documents entitled "All-Inclusive Deed of Trust and
16 Security Agreement" and "All-Inclusive Promissory Note
17 Secured by Deed of Trust" conveying Regency Place
18 Apartments. The All-Inclusive Deed of Trust and Security
19 Agreement makes specific reference to the Regulatory
20 Agreement at pages 17 and 18 of that document. Beck also
21 executed a warranty deed "effective November 11, 1988"
22 from CAWI to Regency LIHC, Ltd.. Beck was the General
23 Partner of Regency LIHC, Ltd. at that time. This
24 warranty deed was not recorded until May 21, 1992. The
25 documents are all dated November 11, 1988, but they were

1 backdated for reasons related to tax benefits for limited
2 partnership investors. (Exhibits G-2, 3 and 4.)

3 12.) The Regulatory Agreement, applicable to
4 all owners, heirs and assigns of Regency Place
5 Apartments, requires prior written approval of the
6 Secretary of HUD to convey, transfer, or encumber the
7 property. This approval process is known as the approval
8 of the Transfer of Physical Assets (TPA). The TPA
9 procedures are set out in HUD Handbook 4350.1, Chapter
10 13. The Application for Transfer of Physical Assets,
11 Form HUD 92266, requires specific information and actions
12 necessary for the approval of a TPA by HUD. (Exhibits G-
13 15 and 11-A.)

14 13.) No TPA approval was requested or given
15 for the transfer and conveyance of ownership of Regency
16 Place Apartments from Regency II, Ltd., by [REDACTED] Cope,
17 to [REDACTED] Beckham, or by Beckham to CAWI. Those
18 transactions constituted actions that required TPA
19 approval by HUD. (Exhibits 11-A, G-15.)

20 14.) To date, no TPA approval has been given
21 for the transfer of ownership of Regency Place. Beck
22 made a few early attempts to obtain the TPA application,
23 but it was not available. A TPA application is to be
24 made in advance of a transfer of physical assets, and the
25 HUD-approved owner is to make the application, which

1 would have been [REDACTED] Cope for Regency II, Ltd.

2 15.) Neither CAWI, nor LIHC, Inc., nor Regency
3 LIHC, Ltd., nor Mark Beck personally, has made full
4 payment due on the Note and Deed of Trust for Regency
5 Place Apartments at any time since November 11, 1988.
6 The Regulatory Agreement requires that the owners make
7 promptly all payments due under the note and mortgage.
8 (Exhibit

9 G-15.)

10 16.) On or about January 12, 1989, Beck
11 attended a meeting with HUD representatives, including
12 [REDACTED] Moulton, during which he represented himself as the
13 management agent for Regency Place Apartments to Moulton.
14 He was accompanied by an accountant, [REDACTED] Mangum. The
15 purpose of the meeting, which had been requested by
16 [REDACTED] Cope, not Beck, was to discuss a work-out for the
17 project. Beck's need to get approval as management agent
18 was also discussed. Beck's recollection of this meeting
19 is unreliable.

20 17.) Beck did not notify HUD that he had
21 actually acquired ownership of Regency Place Apartments
22 through either CAWI or Regency LIHC, Ltd. until April 12,
23 1989. At a meeting with HUD employees on that date, Beck
24 gave HUD a copy of Regency LIHC, Ltd.'s application for
25 a Texas Low Income Housing Credit, known as the "Blue

1 Book." In that application, specific reference is made
2 to the Regulatory Agreement, and its strictures against
3 secondary financing and disposition of property. The
4 purpose of the second meeting was to continue discussion
5 of a possible work-out, and the need for approval of Beck
6 as management agent, and also as approved owner. I
7 credit [REDACTED] Moulton's testimony about this meeting.

8 18.) Regency Place Apartments has not had
9 surplus cash, as defined in Paragraph 16(f) of the
10 Regulatory Agreement, at any time since November 11,
11 1988, nor did it have surplus cash when Regency II, Ltd.
12 owned it. Payments using project funds that are not
13 surplus cash may not be made except for project expenses.
14 (Exhibit

15 G-15.)

16 19.) Due to the troubled financial status of
17 Regency Place Apartments, HUD had required monthly
18 accounting reports from Cope when Regency II, Ltd. was
19 the project owner, but apparently never received any.
20 This requirement was imposed pursuant to Paragraph 12(f)
21 of the Regulatory Agreement. [REDACTED] Moulton told Beck
22 that he would also have to file monthly accounting
23 reports. Beck admits that these monthly accounting
24 reports were filed only sporadically, and those that were
25 filed were not filed on time. He attributes these

1 failures to his accountant, [REDACTED] Mangum, but admits that
2 he, Beck, filed the completed reports at his convenience,
3 after he received them.

4 20.) Paragraph 12(e) of the Regulatory
5 Agreement requires that the project provide annual
6 financial reports to HUD. No annual financial report has
7 been received for Regency Place Apartments for the fiscal
8 years ending December 31, 1988, 1990, or 1991 or 1992.
9 No annual financial report has been filed for the
10 project. An annual report was filed for fiscal year
11 1989, but Beck decided it was not worth it after that,
12 because he had become frustrated with HUD's interference
13 with his methods of running the project, as embodied in
14 a HUD audit.

15 21.) In the fall of 1989, HUD's Office of
16 Inspector General (OIG) performed an audit of Regency
17 Place Apartments, at the request of [REDACTED] Moulton. The
18 audit report, dated April 5, 1990, made a series of
19 findings that Respondents were violating the terms of the
20 Regulatory Agreement. The OIG found improper use of *use*
21 \$89,348.67 in project funds by Mark Beck for owner
22 expenses and other business ventures that were not
23 ordinary expenses of the project, in violation of
24 Paragraphs 8(b), 8(e) and 12(g) of the Regulatory
25 Agreement. Respondents did not have HUD approval for

1 making such payments with project funds. Respondents do
2 not deny this finding, but state that they were unaware
3 of the requirements of the Regulatory Agreement that
4 forbade such a use of project funds. These improper
5 payments included payments to other projects owned or
6 managed by Beck that were unrelated to Regency Place,
7 payments to workmen and contractors for work performed on
8 other projects, payment of a second deed of trust related
9 to a Limited Partnership Investment, payment of
10 commissions to real estate brokers for selling
11 partnership shares. None were reasonably related to, or
12 constituted project expenses.

13 22.) The OIG auditors found that Beck had
14 expended \$23,180.37 for unapproved management fees to
15 himself. Beck has never been approved as the management
16 agent for Regency Place, and payment of the fees for his
17 services was not permitted. This is in violation of
18 program requirements found in HUD Handbook 4381.5 REV-1.
19 (Exhibit G-20.) Respondents do not deny this finding,
20 but state that they were unaware of the program
21 requirements applicable to an approval of management
22 fees. I find that Beck should have become aware fully of
23 this when [REDACTED] Redic gave him the Handbook containing
24 the requirements on August 1, 1991. He was orally told
25 of HUD's need to approve him as management agent as early

1 as January 12, 1989.

2 23.) The OIG auditors found that Beck and
3 LIHC, Inc. had spend \$3,041.98 of project funds on
4 unsupported items, meaning there was no proof that these
5 funds were spent to cover allowable project expenses.
6 Respondents do not deny this finding, but state that they
7 acted in good faith in spending the funds. This was in
8 the nature of a disallowance of a payment because the
9 nexus to project expenses could not be proven, as
10 required by Paragraph 8(b) of the Regulatory Agreement.

11 24.) The OIG auditors found that Respondents
12 spent \$1,800 for questionable accounting and bookkeeping
13 services. The payments were made to [REDACTED] Mangum for
14 monthly bookkeeping services, but there was no invoice
15 for the work. The auditors found that the work performed
16 by Mangum was inaccurate and not in the form required by
17 HUD Handbooks, but the problematic reports were not
18 produced. I can only find that there was no invoice, but
19 the work was performed for which payment was made,
20 whether done properly or not.

21 25.) Respondents did not deny access to HUD
22 auditors to project records. There is some evidence,
23 however, that Beck withheld copies of checks made out to
24 [REDACTED] Samuel, but these were eventually produced through
25 access to bank records.

1 26.) Two subordinate liens encumbered the
2 project in the amount of \$600,000. One of the
3 subordinate liens was created pursuant to the "All-
4 Inclusive Deed of Trust and Security Agreement," executed
5 by Beck on behalf of LIHC, Inc. The Regulatory Agreement
6 requires prior written approval of the Secretary of HUD
7 to encumber the project with a subordinate lien, and no
8 approval was obtained to make payments on the subordinate
9 liens before such payments were made with project funds.
10 This is forbidden by Paragraphs 8(a) and (b) of the
11 Regulatory Agreement. Beck stopped making these payments
12 with project funds after receipt of the Draft Audit
13 Report.

14 27.) The HAP contract applicable to the 20
15 units receiving Section 8 rental subsidies is
16 incorporated by reference into the Regulatory Agreement
17 for Regency Place Apartments. Pursuant to the HAP
18 contract, the tenant security deposits collected by the
19 project are to be deposited in a segregated bank account.
20 Respondents admit that they failed to deposit tenant
21 security deposits into a separate account. No further
22 proof was offered at the hearing on this issue, other
23 than the HAP contract. This finding is based on the
24 pleadings only. (Exhibit G-16.)

25 28.) HUD requires that owners of HUD-insured

1 projects obtain a fidelity bond to protect the project
2 and HUD from employee dishonesty. HUD Handbook 4381.5
3 requires that the management agent for the project
4 certify that such a fidelity bond has been obtained.
5 This certification is obtained on the Management
6 Certification for Owner-Managed Projects, as well as
7 other certifications signed by Beck. Beck, as management
8 agent for the project, failed to obtain a fidelity bond
9 against employee dishonesty. He made attempts to obtain
10 such a bond after the HUD OIG auditors included it in the
11 Draft Audit Report, but none of the companies he called
12 gave him a price quote for a policy, and he made no
13 further attempts to obtain a fidelity bond. (Exhibits G-
14 20, G-21, G-7 and G-24 at page 23.)

15 29.) Beck continued to testify under oath at
16 the hearing that he never heard of the Regulatory
17 Agreement prior to this proceeding. I find that it was
18 discussed at meetings with HUD personnel, including [REDACTED]
19 Moulton, [REDACTED] Redic, [REDACTED] Stark and [REDACTED] Kirby, as
20 well as HUD Auditor [REDACTED] Fortier. The Draft Audit report
21 quoted the Regulatory Agreement at length. Beck received
22 that draft and wrote a reply to it. I find, as a fact,
23 that Beck was on clear notice of the existence and
24 importance of the Regulatory Agreement as early as
25 January 12, 1989, if not before, by references to it in

1 the conveying documents and "Blue Book."

2 30.) Beck has continued to manage Regency
3 Place in essentially the same way from January, 1989 to
4 the present. Based primarily upon the testimony of [REDACTED]
5 Quenzer, I find that Beck has continued to use project
6 funds to pay expenses of another project, Hemingway
7 House, which is expressly forbidden by the Regulatory
8 Agreement, a fact of which Beck was on notice, in
9 writing, upon receipt of the Draft Audit Report.

10 31.) None of the audit findings have been
11 resolved by Beck or his partnership. Only \$15,000 of the
12 improperly-disbursed funds have been replaced in the
13 project operating account, using limited partners' annual
14 share payments without their permission. No serious
15 attempt to replenish the project account has been made at
16 any time by Beck, from his own funds, or from the
17 improper sources who received the project funds, or other
18 sources.

19 32.) Beck has made physical and occupancy
20 improvements in Regency Place. He repainted, recarpeted,
21 put in new appliances, repaired the swimming pool, and
22 made other repairs. Occupancy has increased from 60% to
23 97%, and his tenants are apparently pleased with the
24 physical improvements at the project.

25 33.) Beck was the subject of an LDP imposed on

1 October 4, 1991. He claims he had no knowledge of it,
2 but I find this is not so - the notice was received in
3 his office and signed for by his secretary. In any
4 event, he continued to participate in HUD housing
5 programs as management agent of the project, and did not
6 change his operations. This continued to be true after
7 he was temporarily suspended by letter dated October 7,
8 1992.

9 34.) Beck shows little understanding of any
10 HUD requirements or contractual obligations imposed on
11 him. He has never read the Regulatory Agreement to this
12 day. He has taken the actions he has taken since about
13 the fall of 1989 because he was "frustrated" with HUD.

14 DISCUSSION

15 In order to protect the public interest, it is
16 the policy of the Federal Government to conduct business
17 only with responsible persons and entities. Debarment
18 and suspension are appropriate measures to implement this
19 policy. 24 C.F.R. Section 115(a).

20 The term "responsible," as used in the context
21 of suspension and debarment, is a term of art which
22 includes both the ability to perform a contract
23 satisfactorily and the honesty and integrity of the
24 participant. 48 Comp. Gen. 769 (1969). Even if cause

1 for debarment is established by a preponderance of the
2 evidence, existence of a cause alone does not
3 automatically require that a debarment be imposed. The
4 test for whether a debarment is warranted is present
5 responsibility, although a lack of present responsibility
6 may be inferred from past acts. Schlesinger v. Gates,
7 249 F.2d 111 (D.C. Cir. 1957); Stanko Packing Co. v.
8 Bergland, 489 F.Supp. 9247, 949 (D.D.C. 1980.). In
9 deciding whether to debar a person, all pertinent
10 information must be assessed, including the seriousness
11 of the alleged acts or omissions, and any mitigating
12 circumstances. 24 C.F.R, Sections 24.115(d), 24.314(a)
13 and 24.320(a). A debarment shall be used only to protect
14 the public interest and not for purposes of punishment.

15 24.C.F.R, Section 24.115(b).

16 The Government may only debar participants,
17 principals and their affiliates, as defined at 24 C.F.R.
18 Section 24.105. I find that, as the General Partner of
19 Regency LIHC, Ltd., which is the owner of public record
20 of a housing project with a mortgage insured by HUD and
21 that receives Section 8 rental subsidies, Respondent Mark
22 Beck is both a principal and a participant, as defined at

23 24 C.F.R. Section 24.105 (m) and (p). He has submitted

1 a proposal to participate in a covered transaction in the
2 past, and may reasonably be expected to do so in the
3 future, if permitted. He is also a management agent and
4 a real estate broker, both included within the definition
5 of "principal." Therefore, he is subject to debarment,
6 if cause for debarment is established. LIHC, Inc. is his
7 "affiliate," as defined at 24 C.F.R. Section 24.105(b),
8 because he has the power to control it as its sole
9 officer and employee. It, too, is subject to debarment.

10 The Government cites 24 C.F.R. Section
11 24.305(b) as the first cause for Beck's debarment. To
12 establish cause for debarment pursuant to 24 C.F.R.,
13 Section 24.305(b), the Government must prove by a
14 preponderance of the evidence that Beck was responsible
15 for, in pertinent part:

16 Violation of the terms of a public agreement
17 or transaction so serious as to affect the integrity of
18 an agency program, such as:

19 (1) A willful failure to perform in
20 accordance with the terms of one or more public
21 agreements or transactions; or

22 (2) A history of failure to perform or of
23 unsatisfactory performance of one or more public
24 agreements or transactions.

25 The record in this case establishes, by a

1 preponderance of the evidence, that Beck, as the General
2 Partner of Regency LIHC, Ltd., failed to perform almost
3 all of the most important requirements of the Regulatory
4 Agreement applicable to Regency Place Apartments. Even
5 though he was not a signatory to the Regulatory
6 Agreement, it is binding on him as successor owner and
7 assign of the signatories to the Regulatory Agreement
8 signed by the original owners. The Regulatory Agreement
9 is a document of public record, recorded in the county
10 department of records, and the copy of it in evidence
11 contains the recordation number on the bottom of each
12 page.

13 Beck does not deny the vast majority of the
14 actions that the Government has cited as violations of
15 the Regulatory Agreement. Rather, he states that because
16 he did not sign it, he is not bound by it, that he never
17 saw it, and did not "know about it" until the Government
18 proposed his debarment for wholesale violations of it, as
19 well as violations of program requirements contained in
20 various HUD Handbooks applicable to ownership and
21 management of a Federally-insured project. To this day,
22 Beck believes that he ran Regency Place in a commendable
23 manner, and believes that HUD should thank him rather
24 than debar him, notwithstanding any violations of the
25 Regulatory Agreement or program requirements that may

1 have occurred.

2 The record in this case establishes a bizarre
3 course of conduct by Beck. He was unaware of any program
4 requirements applicable to ownership or management of a
5 publicly-insured and assisted project when Regency Place
6 Apartments was conveyed to CAWI through a "flip sale,"
7 and he, as CAWI's president, immediately transferred
8 control and ownership of Regency Place Apartments to
9 Regency LIHC, Ltd., of which he was the General Partner.
10 From that point forward, Beck viewed himself as the owner
11 of Regency Place. He also designated himself as the
12 management agent of Regency Place. He made no inquiries
13 of HUD, or anyone else, about any obligations he would
14 have, or procedures he would have to follow as either an
15 owner of public record or a management agent of the
16 project.

17 From January, 1989, and up to the present,
18 Back proceeded in ways clearly forbidden by the
19 Regulatory Agreement. Neither CAWI nor Regency LIHC,
20 Ltd. had been approved by HUD pursuant to the Transfer of
21 Physical Assets process as the owner of Regency Place.
22 The procedure was required to be followed in advance of
23 any conveyance of Regency Place. The HUD-approved owner
24 of Regency Place, to this day, is Regency II, Ltd., of
25 which Richard Cope is the General Partner. HUD has been

1 placed in the unusual position of having to deal with
2 Beck, despite the fact that it at all times recognized
3 Cope's partnership as the approved owner, because Beck
4 was in actual physical control of Regency Place, and was
5 operating it, using the project fund account. Beck also
6 was never approved as the management agent for the
7 project, another procedure both he and Cope ignored
8 before Beck started actually operating as the management
9 agent.

10 Beck had reason to know of the existence of
11 the Regulatory Agreement from the time that he signed the
12 legal documents that conveyed Regency Place to his
13 corporation, and then to his partnership. First, the
14 Regulatory Agreement is a recorded instrument applicable
15 to all owners, successors and assigns, who all have
16 constructive knowledge of it as a public document binding
17 on the property. A proper search of public records going
18 back to the inception of the project would have revealed
19 it. More important, there were references to the
20 Regulatory Agreement in the All-Inclusive Deed of Trust
21 and Security Agreement, one of the conveying instruments
22 signed by Back as President of CAWI. Those references
23 concern major obligations of the owner to the Secretary
24 of HUD and to the project, as set out in the Regulatory
25 Agreement, and are cited in Paragraphs 11 and 12 of the

1 All-Inclusive Deed of Trust. Furthermore, in the first
2 month that Beck's partnership had actual control of
3 Regency Place, he signed the "Blue Book" for the limited
4 partnership offering, that referred to the applicability
5 of the Regulatory Agreement at page 13, a page that
6 discussed over-arching concerns of the owner, such as
7 risk of foreclosure, deferred interest, and HUD approval
8 for transfer of property and rent regulation.
9 Nonetheless, Beck apparently looked past all of these
10 references and made no inquiries about the Regulatory
11 Agreement. This, alone, is conduct that is lacking in
12 responsibility, but the situation rapidly worsened.

13 The Regulatory Agreement makes very clear that
14 the project funds may only be used to pay for reasonable
15 operating expenses of the project and necessary repairs,
16 except when the project is in a surplus cash position,
17 which Regency Place never was. Because Beck was
18 operating without any reference to the Regulatory
19 Agreement, he immediately started to disburse project
20 funds to pay the expenses of other projects that he owned
21 or managed, to pay the monthly payments on an inferior
22 trust instrument solely related to the limited
23 partnership offering, to pay commissions to real estate
24 brokers for selling limited partnership shares, and other
25 similar forbidden payments, totalling \$89,348.67 when an

1 audit was done in the fall of 1989. Furthermore, I find
2 that many of these types of payments continued even after
3 Beck was told that they were in direct violation of the
4 Regulatory Agreement in the Draft Audit Report. I base
5 this on his own testimony that he only ceased paying the
6 real estate commissions and the second trust after he
7 received the Draft Audit Report. I also base it on the
8 testimony of [REDACTED] Quenzer, an accountant who prepared
9 partnership income tax returns for Beck, who stated that
10 he saw many payments made with Regency Place project
11 funds to Hemingway House for capital improvements to
12 Hemingway House, another project in which Beck had an
13 ownership and management interest. Beck told Quenzer to
14 treat those payments as a loan to be paid back to Regency
15 Place, but Quenzer saw no written proof of a loan, and
16 never saw any repayment by Hemingway House to Regency
17 Place Apartments. These payments appear to be in
18 addition to those unearthed by the HUD auditors in 1989.
19 I note that project funds cannot be "loaned" under the
20 terms of the Regulatory Agreement, but this was not a
21 loan. It was a giveaway.

22 Only about \$15,000 was ever replaced in the
23 project fund account for these unallowable expenditures,
24 and that was done in an informal, incomplete manner by
25 Beck taking some annual limited partnership payments and

1 depositing them in the project operating fund account,
2 rather than in the limited partnership account. Beck did
3 this without the permission of the limited partners. He
4 has never seen fit to obtain repayment of Regency Place
5 funds from other projects he owned or managed that
6 benefited from Regency's funds, or to make any effort to
7 get these funds replaced. He did not seek a personal
8 loan, he did not seek a partnership loan, he did not seek
9 individual contributions, and he did not use any of his
10 own money to replace the improperly diverted funds of the
11 project. In fact, Beck has no personal investment in
12 Regency Place. He paid no money for the conveyance to
13 his partnership, and he takes a monthly salary of
14 approximately \$[REDACTED] for his work as management agent.
15 Although Quenzer testified that Beck has used his
16 personal funds in other projects, he apparently felt no
17 obligation to do so with Regency Place, even to correct
18 mistakes and misuses of project funds attributed solely
19 to him. Rather, he used the Regency Place operating
20 funds like an ATM machine for his other business
21 interests. This course of conduct was the height of
22 fiscal irresponsibility. It was a breach of his
23 fiduciary duty both to the project and to HUD as the
24 insurer, as well as to the limited partners who had every
25 right to expect that the project account would not be

1 bled dry for purposes unrelated to the needs of the
2 project, whose health was necessary for their investment
3 to be realized.

4 I agree with Government Counsel that this
5 wholesale misuse and bleeding of project funds is the
6 most serious violation of the Regulatory Agreement, when
7 considered in the context of present responsibility. It
8 raises serious concerns about not only the business
9 judgment but the integrity of Beck. Only by the most
10 tortured constructs could anyone convince themselves that
11 using project funds for other projects in any way
12 benefitted Regency Place. Clearly, it was harmed. Those
13 unreplaced and ill-spent funds would have been available
14 for needed repairs to Regency Place, and to cover the
15 project's necessary expenses. Instead, they have
16 enriched the coffers of other projects, and have been
17 used to pay, even today, legal expenses related to the
18 partnership and outside interests of Beck.

19 This is appalling. I find absolutely no
20 mitigation of the seriousness of this offense, or the
21 fact that it apparently has continued. This is no mere
22 example of unsatisfactory performance of the Regulatory
23 Agreement. It is willful failure to perform in accordance
24 with it, a fact clearly made known to Beck in the Draft
25 Audit Report, which he proceeded to utterly disregard,

1 except to cease any attempts to satisfy HUD's rightful
2 concerns because he became "frustrated." This response
3 to legitimate Government concerns that the controlling
4 legal document governing the operations of Regency Place
5 be followed is extraordinary. It is also irrational,
6 grossly irresponsible, and so lacking in business
7 judgment or business integrity that it is breath-taking.
8 I find it absolutely ludicrous for Beck to continue to
9 maintain that he never even heard of the Regulatory
10 Agreement, or realized its importance before this
11 proceeding. The Draft Audit Report quoted the Regulatory
12 Agreement chapter and verse, and made absolutely clear
13 how important violations of it were. Beck read it, wrote
14 a long response to it, but its contents apparently never
15 registered on his personal data screen. This is nothing
16 less than bizarre. No Government entity can afford the
17 risk of doing business with anyone so disconnected from
18 reality, who disregards all warnings, all directives, all
19 program requirements, all contractual obligations.

20 The fact that there are so many other
21 violations of the Regulatory Agreement established in
22 this case only heightens the seriousness of the cited
23 causes for debarment. The mortgage note is in default,
24 and only minimal monthly payments were made toward the
25 mortgage. Somehow, Beck thinks these payments reflect

1 well on him because his predecessor, Cope, paid nothing.
2 To compare one participant totally lacking in
3 responsibility to another, equally if not more
4 irresponsible, is not what this proceeding is about. It
5 is about protection of the public interest, and
6 protection of the Government's interests, both financial
7 and programmatic.

8 Violations of the Regulatory Agreement
9 constitute cause for debarment pursuant to
10 24 C.F.R Section 24.305(b). The Government has also
11 fully proved cause for debarment under 24 C.F.R. Section
12 24.305(f) which refers to violations of program
13 requirements. I find that program requirements for
14 ownership and management of a HUD-insured and assisted
15 housing project, as contained in HUD Handbooks given to
16 Beck and produced at the hearing, were also violated.
17 Beck testified that he had no Handbooks, which was
18 untrue. However, I assume he never bothered to look at
19 them.

20 The violations of the Regulatory Agreement and
21 program requirements were so serious as to affect the
22 integrity of HUD's program. The stonewalling, the
23 improper and irrational responses, the misuse of project
24 funds, the financial irresponsibility all add up to a
25 dreadful picture. In light of this, the fact that Beck

1 improved the physical condition of Regency Place and
2 improved occupancy is cold comfort, even if it does help
3 to fulfill HUD's mission of providing decent, safe and
4 sanitary housing to lower income people.

5 Beck's utter lack of business responsibility
6 and the lack of integrity with which he used and abused
7 project funds - something he did, not [REDACTED] Cope, not
8 an underling - convinces me that not only is debarment
9 warranted on the facts of this record, it is absolutely
10 necessary for the protection of HUD and for the
11 protection of the public interest.

12 I make no secret that I am appalled at what
13 happened during Beck's tenure in control of the project
14 operating account. I have not encountered a participant
15 in a Government program so unwilling to acknowledge or to
16 comply with reasonable contractual obligations and
17 program requirements since the case of Jimmy Dallas, Sr.,

18 HUDBCA No. 91-6922-D64 (January 27, 1992). In that case,
19 Dallas, too, was the owner-operator of publicly-assisted
20 housing subject to a Regulatory Agreement, and he, too,
21 operated outside the Agreement, stating that he never
22 read it. I debarred Dallas for five years, and found him
23 a distinct and present threat to any Governmental entity
24 that would have the ill-fortune to do business with him.

1 I note that Dallas, too, had happy tenants. In the
2 context of responsibility and the Government interest,
3 that is of little significance.

4 In this case, Respondents were immediately
5 suspended pending determination of debarment, and I find
6 that there was adequate evidence to support their
7 immediate suspension because of the evidence that grounds
8 for debarment existed, and that it was necessary to take
9 prompt action to protect the public fisc and the
10 Government from further exposure to Beck's financial
11 abuses at Regency Place. 24 C.F.R Sections 24.400(b) and
12 24.405(a)(2). HUD had the immediate need for protection,
13 to preserve its financial stake in Regency Place, whether
14 Beck was approved by it as an owner or manager or not.

15 Unfortunately, neither the public nor HUD has
16 received the protection that it had a reason to believe
17 was afforded by the suspension of Beck because Beck
18 continues to own and manage Regency Place, both without
19 HUD approval. By managing the project, he is in
20 violation of the suspension. Likewise, Beck maintains
21 that he never knew that a Limited Denial of Participation
22 had been imposed on him on October 4, 1991, by HUD's Fort
23 Worth Regional Administrator. Despite evidence that the
24 notice of the LDP had been received in Beck's office and
25 signed for by his secretary, he maintained at the hearing

1 that he had no knowledge of it. Clearly, he violated it
2 by continuing to participate in programs in which his
3 participation was forbidden for a year-long period. Beck
4 has continued with his way of operating, which involved
5 totally ignoring any programmatic obligations or
6 sanctions. He hears only what he wishes, he understands
7 only what he wishes, he does what he pleases. This is
8 further evidence of his lack of present responsibility.

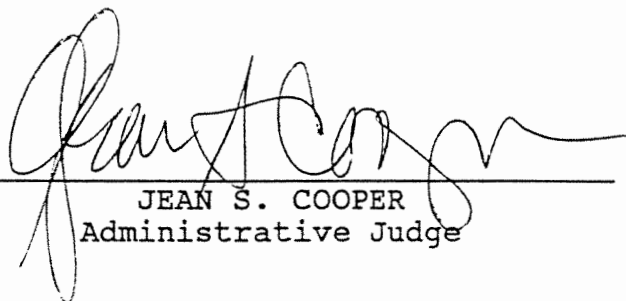
9 Nonetheless, as much as I believe the record
10 in this case warrants an indefinite period of debarment
11 of at least five years, the period proposed in the notice
12 of proposed debarment was for four years from imposition
13 of the LDP. It would be a denial of due process to
14 impose a longer period of debarment because Beck
15 requested a hearing, and the hearing record revealed even
16 more violations and offenses than those cited in the
17 notice. They may be causes for a separate action to give
18 HUD a longer period of protection, but they cannot be the
19 basis for lengthening the proposed period of debarment in
20 this one.

21 CONCLUSION

22 A period of debarment up to and including
23 October 4, 1995 is warranted by the evidence and
24 necessary to protect the public interest and the
25 interests of the Government. Both Mark Beck and his

1 named affiliate, LIHC, Inc., shall be debarred for this
2 period. The suspension imposed on Respondents was also
3 appropriate, necessary, and supported by adequate
4 evidence.

5 Submitted by and signed by Jean S. Cooper,
6 Administrative Judge, June 4, 1993.



JEAN S. COOPER
Administrative Judge