

BEFORE THE
U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
BOARD OF CONTRACT APPEALS

In the Matter of:
GEORGE WILLIAM PACORI,
Respondent.

HUDBCA NO.:
93-C-D7
DOCKET NO.:
93-1923-DB(S)

BY: HON. JEAN S. COOPER,
Administrative Judge

DETERMINATION

Statement of the Case

By letter dated September 22, 1992,
Respondent George William Pacori was immediately
suspended from participation in federal nonprocurement
programs at the Department of Housing and Urban
Development, pending completion of an investigation and
any legal, debarment, or Program Fraud Civil Remedies
Act proceedings which may ensue.

The suspension was based upon alleged
irregularities in Pacori's activities as a loan officer
for CMK, Inc., doing business as Mortgage Capital
Investors, which I will now refer to as MCI, which was
an approved HUD-FHA lender when the events at issue

1 took place.

2 HUD charges Pacori with causing or allowing
3 the submission of false information to HUD, which
4 caused the approval of HUD-insured mortgages in two
5 loan transactions, which would not have been approved
6 if the true facts were known.

7 Pacori is charged with causing home
8 purchasers to falsely certify that information on the
9 HUD Form 92900 was complete and correct. He is also
10 charged with failing to ensure that the purchasers made
11 the required minimum investment in the property that
12 they purchased.

13 The government cites to 24 Code of Federal
14 Regulations, Sections 24.405(a)(2), referencing 24 Code
15 of Federal Regulation, Section 24.305(a), (b), (d) and
16 (f) to support the suspension.

17 Pacori made a timely request for a hearing on
18 the suspension action. This determination is issued as
19 a bench decision after the hearing, pursuant to 24 CFR,
20 Section 26.24(d), as agreed to by the parties and the
21 undersigned.

22 Findings of Fact

23 1. George William Pacori was a loan officer at
24 Mortgage Capital Investors in 1991. MCI was a HUD
25 approved mortgagee at that time. Pacori originated

1 loans for MCI, including loans insured by FHA. He was
2 trained as a loan officer by Kevin Keegan, the
3 President of MCI.

4 Pacori became a loan officer in approximately
5 1990. He is currently a real estate agent with United
6 Realty, Inc.

7 2. As a loan officer at MCI, it was Pacori's
8 duty to interview borrowers to collect complete
9 financial and personal information, and record it on a
10 residential loan application. The loan application,
11 usually a FNMA Form 1003, is to be filled out
12 completely by the loan officer, signed and dated by the
13 borrowers, and signed by the loan officer.

14 Borrowers are told to bring documentation
15 such as tax returns, W-2 forms, pay stubs, their Social
16 Security card and driver's license, to the first
17 interview with the loan officer. The necessary
18 documentation to support or verify the information on
19 the loan application is to be gathered by the mortgagee
20 and reviewed by the loan officer at least at MCI.

21 3. After all of the necessary supporting
22 documentation is collected by the mortgagee, and any
23 discrepancies in the documentation are resolved, the
24 loan processor types up a HUD Form 92900, which is an
25 application for mortgage insurance.

1 The loan officers at MCI were expected to go
2 over all of the information on the Form 92900 with the
3 borrowers to make sure that the information was true
4 and complete. Once that review was done, the loan
5 officer obtained the signatures of the borrowers
6 certifying that all of the information on the form is
7 true and correct.

8 The MCI loan processor who prepared the Form
9 92900 signs the lender certification at MCI that
10 states, among other things, the information on the form
11 is true, accurate and complete to the best of the
12 lender's knowledge and belief.

13 4. If a borrower or co-borrower earns any
14 income, as an employee, HUD FHA requires that a
15 verification of employment, W-2 form, and most recent
16 pay stub are gathered to support the employment
17 earnings information.

18 If a borrower or co-borrower earns income
19 through self-employment, HUD requires federal tax
20 returns for two years past and a profit and loss
21 statement for the current year to support the self-
22 employment earnings information. This is based on
23 Government's Exhibit 42.

24 The loan officer and all of the lenders'
25 other employees who review the documentation to support

1 a loan application may rely on this documentation to
2 the extent that other information does not contradict
3 it, and that the documentation appears to be reliable.
4 The lender is to collect all information directly from
5 the borrower, except verifications of employment,
6 deposits, rent and a credit report.

7 On the lender's certification the lender
8 certifies that he has received this information only
9 from these sources. Exceptions are to be listed on the
10 certification by the lender.

11 I will note for the record that neither of
12 the Form 92900's had any exceptions listed.

13 5. Pacori was the loan officer for a mortgage
14 loan on a property located at [REDACTED] Amlong Avenue,
15 [REDACTED], [REDACTED]. [REDACTED] Aviles purchased the
16 Amlong Avenue property, financing the purchase with a
17 mortgage insured against nonpayment by HUD FHA.

18 The residential loan applications, signed by
19 Pacori and Aviles, states that Aviles was the owner of
20 Home Improvement Services in [REDACTED], [REDACTED],
21 and that he earned \$[REDACTED] in gross monthly income.
22 It also states that Aviles had \$[REDACTED] in an account in
23 Sovran Bank, that he owned a van and a car, and that he
24 had made a cash deposit of \$[REDACTED] towards the purchase
25 of the property with Remax Metro, Exhibit G-19.

1 6. The HUD Form 92900 application for Aviles'
2 mortgage insurance states the same information as to
3 his gross monthly income and the fact that his source
4 of income was from ownership of a company called "Home
5 Improvements". The HUD Form 92900 is signed by Aviles,
6 and the lender certification is signed by [REDACTED]
7 [REDACTED], the loan processor who processed the Aviles
8 loan and prepared the HUD Form 92900 for signature.
9 Exhibit G-14.

10 7. Because Aviles' loan was processed as though
11 all of his income was earned from self-employment, the
12 supporting documentation on which the MCI underwriter
13 relied to approve the loan was federal tax returns for
14 tax years 1989 and 1990, and a profit and loss
15 statement for 1991 for the year to date. Each of these
16 documents bears a signature of Aviles. These are
17 Exhibit G-4, G-5 and G-8.

18 In addition, the loan file developed for
19 Aviles contains two sources of funds letters that
20 purport to explain the source of funds that Aviles
21 would use to close the loan. One is signed by [REDACTED]
22 Aviles. It states that his brother had borrowed \$5,000
23 from him and later repaid it, plus \$800 interest. The
24 other is a statement made with a signature that
25 purports to be that of [REDACTED] Aviles, stating that he is

1 the brother of [REDACTED] Aviles, who repaid borrowed funds
2 to Aviles, corroborating [REDACTED] Aviles' statement.

3 Both statements were written in English by
4 [REDACTED] Placeres who testified that he performed
5 translation services for Pacori on an as needed basis.
6 The two exhibits referred to are G-3 and G-15.

7 8. Placeres is fluent in both English and
8 Spanish. Pacori's clients were predominantly Spanish-
9 speakers. Pacori speaks Spanish, as well as English.
10 According to Placeres, Pacori would give Placeres the
11 name of the person to be called, the telephone number,
12 and what information was needed from the person called.

13 Placeres also testified that he would write
14 in English what he was told on the telephone in
15 Spanish, and would inform the person who gave the
16 information that they would need to come to Pacori's
17 office to sign the statement. He testified that he did
18 not ask clarifying questions, read back the statement
19 in Spanish, or otherwise verify the statements for
20 accuracy.

21 Placeres testified that he never saw any of
22 the persons whose statements he wrote in English. He
23 had no independent recollection of the conversations he
24 had that resulted in the source of funds statements in
25 the Aviles loan file. Placeres' testimony was neither

1 corroborated nor rebutted.

2 The record is devoid of any information about
3 whether these statements were gone over in Spanish
4 before the borrowers signed them.

5 9. In fact, ██████ Aviles did not have a brother
6 named ██████, and the source of funds that he used to
7 close the loan was not from repayment of a loan that he
8 had made. Aviles admitted that he borrowed some money
9 to close the loan. Aviles told ██████ Quintanilla who
10 testified that Aviles told him that he had borrowed the
11 money from his employer. I credit this testimony even
12 though it is hearsay.

13 I find that the information in the two
14 sources of funds letters was false, and that both MCI
15 and HUD relied on that documentation in approving the
16 loan for insurance. There is no evidence in the record
17 that Pacori knew it was false, or should have known.

18 10. The tax returns submitted to support the
19 Aviles loan application were also false, in that they
20 were not copies of federal tax returns that Aviles had
21 filed with the IRS for tax years 1989 and 1990. Aviles
22 did not file a federal tax return in 1989, for reasons
23 not explained, and the 1990 federal tax return that he
24 did file is radically different than the one used to
25 support his loan application.

1 Aviles claimed that he never saw either of
2 the tax returns, or the profit and loss statement
3 submitted with his loan, despite the fact that his
4 signature appears on each of these documents.

5 11. Aviles did not own a business called Home
6 Improvement Service or Home Improvements. Aviles did
7 roofing work for Darvish Construction Company, Inc. of
8 [REDACTED]. Darvish paid him a salary and
9 filed W-2 forms showing the monies it had paid Aviles.
10 Aviles would bring along some of his acquaintances to
11 do the roofing work with him and he would pay those
12 individuals for their work out of the money paid him by
13 Darvish. The W-2 form is Government's Exhibit 7.

14 12. Based upon the 1990 federal tax return that
15 was filed by Aviles, I find that the gross monthly
16 income listed on the HUD Form 92900 was inflated
17 although it was supported by the fabricated tax return
18 submitted to support Aviles' loan application. It is
19 likely that Aviles' gross monthly income listed on the
20 HUD Form 92900 was false.

21 13. [REDACTED]n Pomojambo was the real estate agent
22 who brought Aviles to Pacori at MCI for a home loan.
23 [REDACTED] Quintanilla who worked for Pomojambo as a
24 driver, courier, public relations representative, and
25 general office assistant, also testified in this case.

1 Quintanilla was responsible for Aviles coming
2 to Pomojambo, and he received a bonus for that.
3 Pomojambo used Quintanilla to communicate with Aviles,
4 to make photocopies of the papers that would be used to
5 support Aviles' loan, to fill out a portion of a
6 confidential credit loan information sheet for Aviles,
7 and to bring Aviles' documents and credit information
8 sheet to Pacori at MCI.

9 Pomojambo filled out the remainder of the
10 credit information sheet, but the top part of it was
11 filled out by Quintanilla.

12 14. Aviles and his companion, [REDACTED],
13 were prequalified together for a loan by Kevin Keegan,
14 President of MCI. I find that Keegan based his
15 prequalification decision on the credit information
16 sheet which was provided to MCI by Pomojambo.
17 Furthermore, I find that the prequalification was
18 requested by Pomojambo. Ultimately, Aviles was the
19 only borrower on the loan, and the loan papers were
20 drawn up with his documentation only.

21 15. Aviles was dissatisfied with the
22 circumstances surrounding the purchase of his property
23 because Quintanilla had told him that he would only
24 need \$5,000 to close the loan, but he found out when
25 Pomojambo prepared an estimated purchasers closing cost

1 sheet for him, that he would need more money to close.
2 And this is supported by Exhibit R-1. He apparently
3 wanted to withdraw from the sale.

4 Quintanilla testified that Pomojambo directed
5 him to tell Aviles that he would lose his \$1300
6 downpayment if he did not honor the sale contract, and
7 that Aviles would "get in trouble" if he told anyone
8 that he had to borrow additional funds to close the
9 loan, because such borrowing is not allowed.

10 I credit Quintanilla's testimony in this
11 regard, even though it was not corroborated. It was
12 not refuted. Both Pomojambo and Aviles were very
13 unreliable witnesses. I find that Pomojambo's
14 testimony was so fraught with untruths that it amounted
15 to willful perjury.

16 Aviles' testimony was so disjointed and
17 internally contradictory, that I cannot credit it as
18 probative, except where it was specifically
19 corroborated by other credible witnesses.

20 16. Quintanilla delivered papers in sealed
21 envelopes to MCI for Pacori in connection with the
22 Aviles loan between three and four times. The papers
23 were given to Quintanilla by Pomojambo. Quintanilla
24 photocopied them at Pomojambo's direction. Quintanilla
25 knew that Pomojambo collected federal tax returns to

1 deliver in this manner because Quintanilla saw them on
2 Pomojambo's desk and he also made photocopies of
3 federal tax returns. Quintanilla has no specific
4 recollection of Aviles' tax returns, or which ones he
5 copied to bring to Pacori's office for Aviles.

6 17. I find that Pomojambo knew of the false
7 documents, and may well have been the source of them in
8 Aviles' case. His utter lack of credibility, his
9 vociferous denials of having ever seen a federal tax
10 return for his customers, or a profit and loss
11 statement, and his specious denial that he did not
12 accompany Aviles to Pacori's office were all
13 indications of his guilty knowledge when his testimony
14 was refuted and impeached by more credible witnesses.
15 He would not even glance at the federal tax returns or
16 fabricated profit and loss statements for Aviles when
17 directed to do so at the hearing, and I draw a negative
18 inference from that conduct.

19 18. Although the documents submitted to support
20 Aviles' loan were fabricated for that purpose and
21 contained false information, there is no probative
22 evidence in the record that Pacori either knew or
23 should have known this.

24 19. Pacori was the loan officer for a mortgage
25 loan on a condominium apartment located in [REDACTED]

1 [REDACTED], Arlington, Virginia. [REDACTED] Daza
2 purchased the apartment, financing the purchase with a
3 mortgage insured against nonpayment by HUD FHA. The
4 FNMA 1003 residential loan application is signed by
5 Pacori and both Dazas.

6 [REDACTED] Daza testified that he met with Pacori
7 four times during the period when he applied for his
8 loan and mortgage insurance.

9 20. The FNMA Form 1003 for the Dazas is not
10 complete. It lacks critical information that is
11 required on the form and also that is needed to develop
12 the necessary documentation and verifications to
13 support the loan package. There is no income
14 information at all recorded on the form for either of
15 the Dazas.

16 The form states where the Dazas were living,
17 but not whether they owned or rented. Rent would need
18 to be verified. The form states that [REDACTED] Daza was
19 the owner of a business called Catering Services that
20 was apparently being operated out of his apartment in
21 the Barcroft Apartment complex, where he then lived,
22 because that is the address given for the business. No
23 other employment is listed on the FNMA Form 1003 for
24 [REDACTED] Daza.

25 The FNMA Form 1003 states that [REDACTED] Daza

1 owned a business called Babysitting Services, and was
2 operating it out of the same apartment. In addition,
3 the form states that the Dazas made a cash deposit of
4 \$2,000 that was given to Century 21-Camelot Properties,
5 and that they had a bank account with First Virginia
6 Bank with an approximate balance of \$[REDACTED].

7 Although Pacori checked on the FNMA Form 1003
8 that both Dazas were Hispanic females, which they are
9 not, I find that this was a clerical error because
10 Pacori did meet [REDACTED] Daza a number of times, [REDACTED]
11 Daza is clearly a male, and Pacori was given both the
12 driver's license with photo and Social Security card
13 for [REDACTED] Daza, of which photocopies appeared in the
14 lender's loan file for the Dazas. And that's Exhibit
15 R-3.

16 21. The HUD Form 92900, on which the decision to
17 approve the Dazas' loan for HUD FHA mortgage insurance
18 was made, contains the same information as the FNMA
19 Form 1003 that [REDACTED] Daza was the owner of a business
20 named Catering Services and that [REDACTED] Daza was the
21 owner of a business named Babysitting Services.

22 The Form 92900 states that [REDACTED] Daza earned
23 monthly gross pay of \$[REDACTED] from his business and
24 that [REDACTED] Daza earned \$[REDACTED] in monthly gross pay
25 from her business. This is Exhibit G-37.

1 22. The income information for the Dazas on the
2 HUD Form 92900 was supported in the loan file by
3 federal income tax returns for tax years 1989 and 1990,
4 and by two profit and loss statements, one for each of
5 the Dazas. These documents are signed by the Dazas.
6 Reference is made on the Form 1040 for each of the tax
7 years that a Schedule C for business income was
8 attached, but the Schedule C's were not produced in
9 evidence for either tax year, and I cannot make a
10 finding as to whether the lender was given copies of
11 the Schedule C's. For reference, these are Exhibits G-
12 27, 28, 31 and 32.

13 23. The Daza file also contains a source of funds
14 statement, written in English by Placeres, but with the
15 apparent signature of [REDACTED] Daza. The statement
16 explains that [REDACTED] o Daza's aunt wired him money for
17 repayment of a loan that he had made to his aunt nine
18 months prior. This is Exhibit G-33.

19 There is corroborating documentary evidence
20 of a wire transfer from a bank in La Paz, Bolivia from
21 [REDACTED] Daza to First American Bank of Virginia for
22 [REDACTED] Daza in the amount of \$ [REDACTED]. This is Exhibit
23 R-2.

24 24. [REDACTED] o Daza denies that he ever saw or signed
25 the FNMA Form 1003 residential loan application, the

1 HUD Form 92900, either of the tax returns used to
2 support the loan, the profit and loss statement for
3 1991, or the source of funds statement. I do not
4 credit his testimony in this regard.

5 Signature samples were collected from [REDACTED]
6 Daza at the hearing, and the signatures on the loan
7 documents and supporting documents appear to all
8 contain the true signature of [REDACTED] Daza. This is
9 Board Exhibit 1. I conclude that [REDACTED] Daza lied about
10 his signature or awareness of any of the loan documents
11 because he wanted to distance himself from any
12 association with a problematic loan. He is now in the
13 process of selling the apartment.

14 25. The documentation supporting the Daza loan
15 and information on both the FNMA Form 1003 and HUD Form
16 92900 for the Dazas is false in certain important
17 respects. [REDACTED] Daza did not own a business called
18 Catering Services, nor is he a caterer. He works in
19 the catering department of the Ramada Renaissance Hotel
20 as a banquet server.

21 In 1990 he worked at the Sheraton Crystal
22 City Hotel. He described that work as a "houseman" in
23 the housekeeping department of the hotel. His
24 testimony in regard to his employment with the hotels
25 is borne out in part by a W-2 form from the Sheraton

1 Crystal City Hotel for tax year 1990. I credit his
2 testimony that he presently works at the Ramada
3 Renaissance Hotel, and did so in 1991. That
4 information is corroborated by a Confidential
5 Purchaser's Financial Statement prepared at Century 21-
6 Camelot Properties, Inc. in October 1991.

7 Daza admits to signing this statement.
8 Indeed, it is the only document that he admits to
9 signing. And that financial statement is Exhibit G-41.

10 26. The tax returns submitted to support the Daza
11 loan were not copies of the federal tax returns filed
12 for tax years 1989 or 1990 by the Dazas. In 1989, the
13 Dazas filed a short form 1040A tax return. Attached to
14 it are four W-2 forms, all for ██████ Daza, with various
15 employers in 1989.

16 The 1989 tax return shows that the Dazas had
17 combined earnings from wages, salaries, and tips of
18 \$7,552.74, which was also their adjusted gross income
19 for that year. Exhibit G-29.

20 For tax year 1990, the Dazas filed a joint
21 return on IRS Form 1040, which included a Schedule C
22 profit and loss statement for ██████ Daza, a Schedule SE
23 self-employment tax form for ██████ Daza and a Form 2106
24 employee business expense form, also for ██████ Daza.
25 The name of the business is listed on the Schedule C as

1 [REDACTED] Daza, with no business address given, and the
2 nature of business is listed as "services".

3 A Form 2441 for child and dependent care
4 expenses is attached to the Form 1040 in the name of
5 both Dazas. Attached to the Form 1040 for the Dazas
6 for tax year 1990 are various W-2 forms, including ones
7 for [REDACTED] Daza from the Sheraton Crystal City Hotel,
8 Community Maintenance Corporation, and from United
9 States Service Industries, and ones for [REDACTED] Daza from
10 Hardy's of Arlington, and one from [REDACTED] Kamerson,
11 which appears to represent payment for housecleaning
12 services. Exhibit G-30.

13 27. The Dazas received the majority of their
14 income from [REDACTED] Daza running a child care service
15 approved by the Virginia Department of Human Social
16 Services, and from [REDACTED] Daza working at the Ramada
17 Renaissance in 1991. The record is devoid of oral or
18 documentary evidence as to whether [REDACTED] Daza was in
19 any way self-employed in 1991, either as a caterer or
20 giving "services", when he applied for his loan in
21 1991. The only employment that he listed or told his
22 real estate agent, [REDACTED] Crevoisier, of when he signed
23 the Purchaser's Financial Statement was his employment
24 with the Ramada Renaissance and his former employment
25 with the Sheraton.

1 ██████████ Daza is listed on that same form as
2 "employed" by the Department of Human Social Services,
3 but I find, inasmuch as there are no W-2's for ██████████
4 Daza showing she was an employee performing child care
5 services for the state, I conclude that she was
6 actually licensed by the state to provide those
7 services as a private business. And this is all based
8 on Exhibit G-41.

9 29. ██████████ Daza testified at the hearing that he
10 told Pacori that he worked in the catering department
11 at the Ramada Renaissance Hotel, and that he never told
12 Pacori he had any income from a business that he owned,
13 despite the fact that he had filed a business profit
14 and loss statement with the IRS for tax year 1990,
15 showing a minor income from that business.

16 Daza's testimony was repeated emphatically by
17 him during direct, cross, and redirect examination. He
18 did not waiver from this assertion. Daza's assertion
19 was not rebutted by other witnesses, nor was it
20 seriously impeached in this record.

21 If Daza did in fact tell Pacori this
22 information, Pacori knew or should have known that the
23 FNMA Form 1003 contained false information, the HUD
24 Form 92900 contained false information, and that the
25 income tax returns were at least suspect if they had no

1 W-2's attached for employee earnings shown. Daza also
2 testified that his aunt wired him his own funds from
3 Bolivia, and that she was not repaying a loan. And
4 this is in contradiction to the source of funds
5 statement that contains his signature.

6 30. ██████ Daza did not tell the truth in all
7 respects at the hearing, and I find his denial of
8 having signed any of the loan documents to be
9 particularly lacking in honesty. He seems to have not
10 only a good grasp of what was happening during the
11 hearing, but he also appeared to have based his
12 testimony, some of it truthful and some of it clearly
13 false, on what he believed could hurt him.

14 Nonetheless, he did tell ██████ Crevoisier of
15 his true employment, she did record it on an official
16 form that Daza signed, and I cannot account for the
17 sudden shift in information and documentation between
18 the time when the Dazas told their information to
19 Crevoisier and to Pacori. Crevoisier was a credible
20 witness, and she denied any knowledge of the source of
21 the false information in the Dazas' loan package. Mrs.
22 Daza did not testify, nor did Pacori.

23 I, therefore find the testimony of ██████ Daza
24 that he told Pacori of his employment at a hotel as an
25 employee to be probative. Inasmuch as Pacori spoke

1 Spanish, I cannot find that a language barrier created
2 a misunderstanding that led to the inclusion of false
3 employment and earnings information on the HUD Form
4 929200.

5 While I do not know whether Daza was, in
6 fact, telling the truth in this regard, I must credit
7 the testimony for purposes of this hearing because it
8 was not rebutted, and because Daza had clearly told the
9 real estate agent the true facts only four days before
10 Pacori recorded false information on the FNMA Form
11 1003.

12 The fact that no earnings information was
13 recorded by Pacori on that form raises questions about
14 the initial meeting of Pacori with the Dazas, and the
15 record raises more questions than it answers in this
16 regard.

17 31. Pacori is presently the subject of a
18 continuing investigation by the HUD Office of Inspector
19 General. The agent assigned to conduct the
20 investigation testified that the scope of the
21 investigation will be enlarged to examine more
22 completely other loan originations in which Pacori was
23 the loan officer.

24 Pacori is, at present, the only person being
25 investigated who had a connection with the Daza and

1 Aviles loans.

2 Discussion

3 HUD has suspended Pacori pending completion
4 of the HUD IG investigation presently ongoing, and any
5 legal or debarment proceedings as may ensue. A
6 suspension is a serious action, only to be imposed
7 where there exists adequate evidence of one or more
8 causes for suspension and when immediate action is
9 necessary to protect the public interest. 24 CFR
10 24.400.

11 A cause for suspension is established if
12 there is adequate evidence to suspect the commission of
13 an offense listed in 24 CFR 24.305(a), or that cause
14 for debarment under Section 24.305 may exist.

15 HUD has cited to 24 CFR Sections 305(a), (b),
16 (d) and (f) to support Pacori's suspension. HUD
17 contends that there's adequate evidence to suspect that
18 Pacori committed fraud or a criminal offense in
19 connection with performing a public transaction, which
20 was the origination of HUD FHA insured mortgage loans.

21 HUD also contends that it has produced
22 adequate evidence that Pacori falsified records and
23 made false statements, both being crimes for which a
24 conviction or civil judgment would be a cause for
25 debarment.

1 Pacori has not been either convicted or
2 indicted for any such offenses, but the applicable
3 suspension regulation, 24 CFR 24.405(a)(1), requires
4 only adequate evidence to suspect the commission of an
5 offense listed in Section 24.305(a). It is on the
6 offenses in Section 24.305(a) that HUD focuses its main
7 charges.

8 However, HUD also cites to violation of a
9 public agreement or transaction so serious as to affect
10 the integrity of an agency program, including the
11 history of failure to perform in one or more public
12 transactions, or a willful violation of a regulatory
13 requirement applicable to a public transaction, as
14 another ground to support Pacori's suspension under 24
15 CFR 24.305(b).

16 Additionally, HUD incorrectly cites to 24 CFR
17 24.305(d), which lists no cause remotely similar to
18 those with which Pacori is charged.

19 Finally, HUD cites 24 CFR 24.305(f), which
20 includes any material violation of a program
21 requirement applicable to a public agreement or
22 transaction as a ground for debarment.

23 Adequate evidence in the context of a
24 suspension is a very low standard of proof compared to
25 the standard required to establish probable cause prior

1 to issuance of a criminal warrant. Horne Bros, Inc. v.
2 Laird, 463 F.2d 1268, 1271 (D.C. Cir. 1972). HUD's
3 debarment and suspension regulation defines adequate
4 evidence as information sufficient to support the
5 reasonable belief that a particular act or omission has
6 occurred. 24 CFR 24.105(a).

7 I find no probative reliable evidence in the
8 record concerning the Aviles transaction to support
9 Pacori's suspension. There is no reliable evidence
10 that he knew or should have known that the loan
11 application taken by him and the supporting
12 documentation contained false information.

13 Although I find the way in which the source
14 of funds statements were produced to be truly peculiar,
15 and subject to all manner of abuse that a prudent
16 lender should avoid, I cannot find that if the process
17 occurred as described, that it violated a specific
18 program requirement so serious as to warrant an
19 immediate suspension to protect the public interest.
20 And I remind the parties that the suspension is based
21 on a charge that Mr. Pacori knew or should have known
22 of false information presented to influence the
23 approval of mortgage insurance.

24 Indeed, the record developed in this case
25 concerning the Aviles transaction points in directions

1 other than Pacori as the source of the fraud.
2 Furthermore, there is no evidence that Pacori caused
3 either Aviles or the Dazas to falsely certify on the
4 HUD Form 92900, or that he knew or should have known
5 that Aviles did not make the required investment in his
6 mortgage because he had borrowed funds to close.

7 This fact was probably concealed from Pacori,
8 based on the reliable testimony of ██████ Quintanilla.
9 However, the Daza transaction is different. There the
10 real estate agent recorded the true data, and I cannot
11 find on this record, that she orchestrated or assisted
12 in the presentation of false information to Pacori,
13 MCI, and ultimately HUD.

14 Although I am troubled by ██████ Daza as a
15 witness, his testimony that he told Pacori the true
16 data about his employment and earnings was repeated by
17 Daza without wavering, even upon cross-examination, and
18 it is unrebutted.

19 I therefore feel constrained to treat it as
20 probative and adequate for purposes of the suspension
21 hearing. It may be entitled to very little weight,
22 but there is no counterweighing evidence.

23 Respondent Pacori made an informed judgment
24 to refuse to testify as to the facts of this case
25 because he is a subject of an investigation that could

1 lead to a criminal indictment. In not testifying, he
2 knowingly weighed the risks of his failure to rebut
3 Daza's testimony himself, and he produced no other
4 witness to rebut it.

5 I am forced to apply the standard of proof
6 decreed in the regulation. It sets a very low
7 threshold, and I find that the government has produced
8 adequate evidence through the testimony of [REDACTED] Daza
9 to support a suspicion, and only a suspicion, that an
10 offense listed in 24 CFR 24.305(a) may have been
11 committed by Pacori and also that cause for debarment
12 may exist under 24 CFR 24.305(b) and (f).

13 This is minimally reliable evidence given by
14 a witness who also lied under oath in the same
15 proceeding, and it should be investigated with the
16 utmost caution by the HUD investigators.

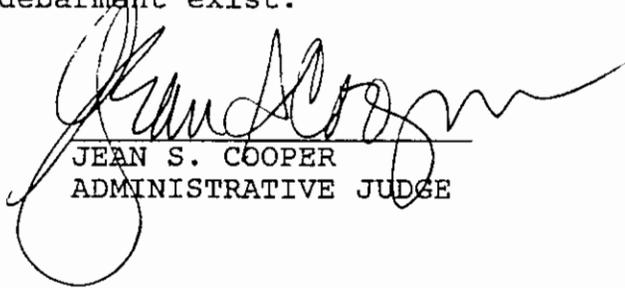
17 If the investigators find it to be false, HUD
18 should terminate the suspension because it is only on
19 this oral evidence that I am upholding the suspension
20 of George William Pacori.

21 However, if there is a chance that Pacori may
22 have participated in fraud, his immediate suspension is
23 certainly in the public interest, and Lucio Daza's
24 testimony establishes the possibility, though somewhat
25 remote, of that chance.

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CONCLUSION

In conclusion, the suspension of George William Pacori is supported by adequate evidence and immediate action is therefore necessary to protect the public interest so long as there is a possibility that the cited causes for debarment exist.


JEAN S. COOPER
ADMINISTRATIVE JUDGE

APRIL 1, 1993