



**Board of Contract Appeals**

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

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In the Matter of:

**CHARLES "BUDDY" JONES,**

Respondent

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: HUDBCA No. 94-G-122-D1  
: Docket No. 94-0006-DB (LDP)  
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Charles "Buddy" Jones  
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For Respondent, Pro Se

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For the Government

DETERMINATION

February 17, 1999

By Administrative Judge Jean S. Cooper

Statement of the Case

By letter dated July 20, 1993, from Edwin I. Gardner, Manager of the Oklahoma Office of the U.S. Department of Housing and Urban Development (HUD), Charles "Buddy" Jones (Jones), Respondent in this case, was notified that a Limited Denial of Participation (LDP) had been imposed on him as a key employee of Sunbelt Properties, Inc. The LDP was based on Sunbelt's failure to acceptably perform a Real Estate Asset Management (REAM) contract for the management of HUD-owned properties in the Oklahoma City metropolitan area. Sunbelt's REAM contract was terminated for default six weeks after it started. Failure to honor contractual obligations or to proceed in accordance with contract specifications was cause for an LDP pursuant to 24 C.F.R. §24.705(a)(4) in 1993. Jones was prohibited from participating in HUD programs under the Assistant Secretary for Housing, Federal Housing Commissioner, within the jurisdiction of the HUD Oklahoma Office for a period of twelve months.

Jones made a timely request for an informal conference on the LDP. An informal conference was held on September 20, 1993. The LDP was affirmed on September 29, 1993, after consideration of the information presented at the informal conference. Jones timely appealed the affirmation of the LDP, and requested a

hearing before a hearing officer pursuant to 24 C.F.R. §24.713, the regulation applicable to a hearing on an LDP in 1993.

Jones' LDP case was docketed by the HUD Board of Contract Appeals on October 20, 1993, and assigned to Administrative Judge Timothy J. Greszko as the hearing officer. On January 14, 1994, Judge Greszko denied Jones' Motion for a Directed Verdict, in which Jones had argued that HUD had no authority to sanction him pursuant to 24 C.F.R., Part 24 because it only applied to non-procurement programs, and Jones was a key employee in a procurement program. Judge Greszko held as a matter of law that Jones was subject to an LDP pursuant to 24 C.F.R. §§110(d), 24.110(a)(1)(ii), 24.105(m), and 24.105(p), and that 24 C.F.R., Part 24 applied to both procurement and non-procurement contracts and contractors.

During a prehearing conference held on January 14, 1994, it was decided that Jones' case would be heard at a later date, after Sunbelt's contract appeal on the termination of its contract for default was heard and decided. The manager of the HUD Oklahoma Office agreed to immediately terminate Jones' LDP because of the delay in the hearing on the LDP, but Jones retained his right to contest the imposition of the LDP, and to appeal the ruling on the LDP after the hearing, including the applicability of 24 C.F.R., Part 24 to procurement contracts and contractors. By Order dated August 24, 1995, Jones' LDP case was stayed indefinitely, pending a determination of the issues in Sunbelt's contract appeal.

Government counsel assigned to both this case and Sunbelt's contract appeal was killed in the explosion of the Murrah Federal Building in Oklahoma City in 1995, as were a number of the employees who would be witnesses at a hearing on this case and the contract appeal. Many documentary exhibits relevant to this case and the contract appeal were destroyed in the explosion. On May 28, 1996, this case, the contract appeal of Sunbelt, and the LDP cases of John Powell Walker, Sunbelt's president, and Sunbelt were reassigned to Administrative Judge Jean S. Cooper after Judge Greszko died. Discovery was ordered to be completed on or before October 11, 1996, and all three cases would be heard together.

A consolidated hearing was held in this case, Sunbelt's contract appeal, and the LDPs of Walker and Sunbelt in Oklahoma City. This determination is issued pursuant to the version of 24 C.F.R., Part 24 in effect when this case was docketed. It is based on the record considered as a whole. The record includes documents in the contract Appeal File (AF), which were incorporated into the evidentiary record in this case, documentary evidence presented at the hearing, testimony, and pre and post-hearing briefs filed by the parties.

Findings of Fact

1. In 1993, Jones was hired by Sunbelt's President, John Powell Walker, to help prepare Sunbelt's bid for a REAM service contract for HUD's Oklahoma City office. He had an oral contract of employment in which Sunbelt agreed to pay him a salary and benefits, and to withhold money for taxes on his earnings. If Sunbelt was awarded the contract, Jones would be the supervisor for the contract. Jones was identified as a key person in the Sunbelt bid and he signed the bid on behalf of the company. (AF Tab 2.1, Tr. 829-831, 847, 881.)

2. Jones was an experienced contractor, having worked on 10-15 Federal contracts in the past, including a HUD area management broker contract that Sunbelt had when Jones was employed at Sunbelt from 1985 to 1993. He also had experience in the construction industry. (AF Tab 2.1; Tr. 829.)

3. On May 5, 1993, Sunbelt was awarded the REAM contract, and performance was to begin on June 1, 1993. The contract specifications were listed on a grid of work items, with contract exhibits that further described certain performance tasks. These tasks had to be performed in a limited time period, and time was of the essence throughout performance of the service contract so that the properties in the contract inventory could be sold as soon as possible. At the time of award, there were about 450 HUD-owned properties in the contract inventory. (AF Tab 2.1; Tr. 114.)

4. On May 7, 1993, HUD held an orientation meeting with Jones and Walker to review the required contract services, including the time frames for performing the services, and the authority of various HUD contracting officials. Jones and Walker requested a print-out of the contract inventory as of May 7, 1993, so that Sunbelt could set up a computer program that it intended to use in its performance of the contract. The computer program was not required by the contract or necessary for performance. Jones and Walker intended it to make Sunbelt "work smart," with essentially no employees assigned to work on the contract other than Jones and Walker, and subcontractors who would be obtained as needed. The print-out of the contract inventory was not used to check property conditions in advance of the contract start date. It was used only to input property data into the computer program. (AF Tab 3.7; Tr. 366-368, 909-910.)

5. Jones was to formulate a lawn maintenance plan for Sunbelt prior to contract execution. He and Mark Estes, the computer programming consultant hired by Sunbelt to design the computer program, worked out a plan of performance that could not be implemented because the properties needed more services with larger equipment than Jones anticipated. Jones did not even do a spot-check of the properties listed on the May 7 print-out from

HUD to determine whether his performance plan was appropriate. Jones ultimately used an "ad hoc process" of responding to problems as they came up. (Tr. 840-843.)

6. The contract required Sunbelt to ensure that grass and shrubbery were cut in a professional-looking manner, with clippings removed, and maintained in a "presentable condition at all times." Lawn maintenance was to be done twice a month, approximately every 14 days, and all clippings, debris, leaves and cuttings were to be cleared. The contract also required that Sunbelt provide, at its own expense, "competent, full-time supervision of the work while it is actually in progress." The contract stated that there would be no additional compensation for oversized lots or excessive grass growth or debris removed. (AF Tab 2.1.)

7. Jones made an agreement with Stephen Pruitt, a lawn maintenance contractor, that Pruitt could leave clippings and shrubbery cuttings on properties until the next time he serviced them, in clear violation of the contract. Jones also provided for no on-site supervision of lawn work, designating Pruitt as his own supervisor. Jones was the inspector for Sunbelt of the lawn maintenance work, and he was or should have been aware that lawn maintenance was never performed satisfactorily. Some properties were not cut for six weeks, and there were even some that were so overgrown that municipal fines were levied on HUD because of these conditions. The HUD Government Technical Representative (GTR), Trish Nix, sent Rapid Reply letters to Jones' attention to schedule those properties for lawn maintenance services, but he ignored them. Nix was unable to persuade Jones to get lawn services done on certain properties, for which Jones offered no explanation, or excuse. The failure of lawn maintenance was egregious. As of July 7, 1993, some lawns still had not been cut at all. Jones admitted that the properties in the contract inventory were not cut and cleared until around July 12, 1993, six weeks into the contract. (AF Tab 4.20; Exhs. G-13. G-14; Tr. 783, 818-819, 838, 906-908, 927-928.)

8. Jones was Sunbelt's man in the field, doing inspections, posting warning signs, putting up and removing lockboxes from properties, doing minor repairs, and light clean-up tasks. Jones also handled the paperwork for new assignments from HUD, and he logged that assignment information into the computer. He was the official contact person for the contract, and the person to whom Nix would direct telephone calls when she needed to speak with someone at Sunbelt about the contract. (AF Tab 3.8; Tr. 51, 641, 902, 926, 994.)

9. Jones created a serious communication problem with Nix almost from contract inception, by not having Sunbelt pick up its mail from HUD every day, as required by the contract, by refusing to deliver completed inspection forms directly to Nix, and by

ignoring or responding belatedly to urgent telephone messages and Rapid Reply letters from Nix about the contract. Jones would sometimes look through Sunbelt's mail at HUD, and leave it in the mail box because he did not consider it important. Jones said that he was not returning Nix's calls because she left work at 3:30 p.m., but he had her FAX number and could have answered her that way. Nix became so frustrated with Jones ignoring her directives and calls that she asked the contracting officer to send out warning letters to Sunbelt. (AF Tab 2.1, 4.8, 4.11; Exh. G-19, Tr. 306-312, 864-866, 914-915.)

10. The contract provides that Sunbelt had to perform initial inspections and fill out a Form 9516A for each property newly assigned, and for other properties as directed by the contracting officer. Jones performed all initial inspections for Sunbelt. The contracting officer directed Sunbelt in writing on May 27, 1993, before contract inception, that Form 9516A would be necessary for every property in Sunbelt's contract inventory, not just newly assigned ones. Jones acknowledged that Sunbelt was obligated to inspect every property in the inventory within 15 days from contract inception. However, he did not think that a detailed initial inspection and Form 9516A were "necessary" for properties already in the inventory because the prior contractor had done such inspections when those properties had entered the contract inventory. Jones visited every property, but he never took a Form 9516A with him for any property already in the contract inventory. His "inspection" of those properties was limited to cursory observations that he jotted down on a yellow pad. He did not look at the old Form 9516As that were already in most of the property files to see what changes had occurred and what work was still required. Jones knew that HUD was requiring Sunbelt to fill out these forms for every property, not only from the contracting officer's directive, but from continuing Rapid Reply letters from Nix on the matter. Jones never completed a Form 9516A for any property that was already in the contract inventory when Sunbelt started the contract. (AF Tab 2.1; Exh. G-20; Tr. 316, 861-862, 919-921, 929-931.)

11. Sunbelt was required by the contract to post warning signs on every property in the contract inventory within 48 hours of assignment, with Sunbelt's name, address, and telephone number on the signs so that Sunbelt could be promptly reached in an emergency. Jones was to post the warning signs for Sunbelt. HUD had initially run out of signs to give to Jones, but the problem was corrected within a few days. Jones failed to post warning signs on at least 14 properties newly assigned to Sunbelt. A number of properties had outdated signs with the name and telephone number of the prior contractor, which were never replaced with signs for Sunbelt. The prior REAM contractor received numerous calls based on the outdated signs, and expressed concern that its reputation was being hurt by Sunbelt's poor maintenance of the properties. Jones admitted that he knew

that the required warning signs had not been properly posted, as required by the contract, but he "never gave it a thought." Although HUD inspection reports documented this deficiency, Jones never saw the HUD inspection reports. (AF Tabs 2.1, 3.20; Exh. G-4; Tr. 862-864-913.)

12. The contract required Sunbelt to assume responsibility for keys and lockboxes within 48 hours of assignment and ongoing. Jones would perform this contract requirement for Sunbelt. The purpose of the lock boxes was to provide access to the properties to appraisers, repair contractors, real estate brokers, and inspectors. Sunbelt disputed whether it had to assume the cost of the keys. Jones did not place keys and lockboxes on the properties in a timely manner, and appraisers were not able to gain entrance to some newly assigned properties in the contract inventory for the purpose of performing appraisals. As a result, appraisers were not able to perform appraisals on at least 21 properties in the contract inventory. The lockbox problem was not remedied until around July 12, according to Jones. (AF Tabs 2.1, 3.12; Exhs. G-7, G-8, Tr. 838.)

13. The contract also required Sunbelt to replace missing or inoperative lockboxes, and to remove the lockbox and key within 48 hours after notification that a property was scheduled to close. Within 48 hours prior to closing, Sunbelt was also to issue keys to the purchaser. Jones would perform this contract requirement for Sunbelt. As of July 1, 1993, Jones refused to remove some lockboxes, as required by the contract, because Sunbelt was not given notice to remove them until after the closing had taken place. Jones was directed by Walker to take this position because Walker was concerned about Sunbelt's liability after a property was no longer in the contract inventory. The problem with lockbox removal was primarily caused by the lack of timely notice to Sunbelt of impending closings, which was under HUD's control. Nonetheless, it was not entirely reasonable to refuse to enter a property after closing when both HUD and the new homeowners were asking Sunbelt to come on to a property to remove a lockbox. However, in the first month of the contract when Jones was still willing to remove lockboxes when timely notice of closing was not received, there were delays of as long as 3-1/2 weeks for the removal to take place, which was unreasonable. (AF Tab 2.1; Exh. G-12; Tr. 193-201, 857-861.)

14. The contract required Sunbelt to inspect completed repairs to ensure that repairs were satisfactory, and to complete a Form 9519 inspection report within 24 hours of notification by the repair contractor that the work was done. This requirement applied to all repairs, whether Sunbelt or the prior contractor had contracted for the service. Sunbelt also had a contractual duty to get repairs completed promptly so that properties could be sold, to actively monitor the progress of repair work, and to identify and resolve repair problems. Jones was Sunbelt's

inspector, and he failed to monitor and check repairs, even when Nix sent numerous Rapid Reply letters to determine the status of repairs. Jones did not respond to Nix, despite her increasing exasperation with Sunbelt's failure to make progress on repairs. Although Walker, not Jones, contracted for needed repairs, and Jones was not responsible for checking files to see what repairs needed to be done, Jones identified the need for repairs during his inspections, and whether repairs were acceptably completed. He was responsible for this contract failure as much as Walker. (Exh. G-17; Tr. 276-286, 957-963.)

15. Jones also failed to make sure through his inspections that Sunbelt was complying with its contractual duty to remove and dispose of interior and exterior trash and debris, and to leave a property "broom clean" within 10 days of assignment, and thereafter as conditions warranted. Clothing, debris, and broken glass were left at one property, and truck parts at another. Jones did not get these problems remedied even after Nix sent Rapid Reply letters about the need to remove these items. Likewise, if Jones were doing a careful job of inspecting the properties, he would have been aware that Sunbelt was not securing properties to prevent unauthorized entry and damage by the elements, as required by the contract. At three properties, Sunbelt ignored directives from Nix to correct serious security deficiencies. Jones gave no explanation to HUD for the continuing failure of Sunbelt to comply with the contract requirements for cleaning properties and making them secure, other than to say that Walker would deal with those problems unless Jones could easily correct them himself. (AF Tab 2.1; Exhs. G-9, G-10; Tr. 996.)

16. Jones admitted that Sunbelt did not perform most of the contract services until July 12, 1993, six weeks into the contract, although he understood that time was of the essence to get the properties ready for sale, and that the first weeks of contract performance were critically important. (Tr. 838, 918.)

17. Jones encountered potentially dangerous problems in the field twice in one day on July 9, 1993, caused primarily by HUD's failure to assure that timely and accurate closing information was provided to Sunbelt. Sunbelt was to cease all contract performance on a property as of closing, and Sunbelt personnel would technically be trespassing on private property if they entered a property after closing without permission from the owner. Jones tended to work a long day that began at daybreak. He went to a property before 6 a.m. on July 9 to see the condition of the property. He noted that the lockbox was still on the house but there was no key in the lockbox. The property appeared to Jones to be unoccupied, as it had been two weeks before. Jones started checking windows in the back of the house and tried to raise one. In fact, the house had been sold and the new owner, who was awakened by Jones, pointed a gun at Jones'

head. Later that same day, in mid-afternoon, Jones went to another property, believing that it was still in the contract inventory, and started pulling on windows and doors to check them. The house had been sold, and a neighbor called the police to arrest Jones, because it appeared that Jones was trying to unlawfully break into the property. (Tr. 832-835.)

18. The SAMS property inventory printouts that HUD gave to Sunbelt purported to list all of the properties in the contract inventory on a given day and the status of each property. HUD closing agents were to notify Sunbelt when a property was about to close so that Sunbelt could remove lockboxes, give keys to the property to the new owner, and cease contract performance on the property. There was a serious failure with the notice system and Sunbelt was not receiving notice of when properties closed, a fact well-known to Nix. Since HUD also lacked current information on property closings, it could not give Sunbelt the requisite notice. At one point, as many as 34 properties that had already been sold were still listed on the SAMS inventory for the contract. This problem necessitated that Jones and Sunbelt's subcontractors exercise caution and discretion in entering properties. However, there was no proof that mislisting of certain properties on the SAMS inventory and the lack of notice of closings caused the myriad performance failures of Sunbelt on the contract. (AF Tabs 2.1, 2.5, 2.6, 2.7, 2.8, 5 and 6; Exhs. G-1, G-23; Tr. 424-427, 449-460, 832-837, 857-861, 884, 950-951.)

19. Sunbelt failed to perform almost every contract requirement in a timely and acceptable manner during the first six weeks of the contract, and was unable to correct its recurring performance failures or give reasons that would excuse its failures under the terms of the contract. The contract was terminated for default on July 12, 1993. (AF Tabs 1.1, 4.22, 4.23; Exh. G-13; Tr. 406, 408.)

20. Some of the specific failures of performance that resulted in the termination for default of Sunbelt's contract were attributable in whole or in part to Walker, not Jones, but Jones was responsible along with Walker for the lawn maintenance failures, the communication failures, the inspection failures, the failure to file required forms with HUD, the failure to post warning signs, and the failure to have keys placed in lockboxes. (Tr. G-25, 937-938, 946, 991.)

21. Jones believes that he did everything possible to fulfill the contract obligations, working 15 hour days, and he has never been paid by Sunbelt for his work on the contract. He is not presently employed by Sunbelt, but he would not rule out working for Sunbelt again in the future. He works for himself, and does not have a current real estate broker license. (Tr. 848, 880, 882-883, 993-994.)



Discussion

A Limited Denial of Participation (LDP) is an administrative sanction that allows HUD, as a Federal agency, to refuse to do business with a person or entity that is not "responsible." 24 C.F.R. §24.115(a). The term "responsible" as used in the context of HUD administrative sanctions such as suspension, and debarment, and LDP, is a term of art which includes not only the ability to perform a contract satisfactorily, but the honesty and integrity of the participant as well. 48 Comp. Gen. 769 (1969). The test for whether an administrative sanction is warranted is present responsibility, although lack of present responsibility may be inferred from past acts. Schlesinger v. Gates, 249 F. 2d 11 (D.C. Cir. 1957); Stanko Packing Co. v. Bergland, 489 F. Supp. 947, 949 (D.D.C. 1980). These administrative sanctions are to protect the public interest and are not to be used for purposes of punishment. 24 C.F.R. §24.115(b).

Jones contends that he is not subject to an LDP because the REAM contract was Sunbelt's, not his, and he had no written contract of employment with Sunbelt. HUD participants and principals, as defined at 24 C.F.R. §§105(m) and (p), are subject to imposition of an LDP. Jones is a principal subject to an LDP because he was a key employee with primary management and supervisory duties as Sunbelt's contract supervisor on the REAM contract. 24 C.F.R. §24.105(p)(14) and (22). Jones is also a participant subject to sanction because he was an employee of Sunbelt on the REAM contract, which is a covered transaction under 24 C.F.R. §24.110(a)(1)(C), and by his own admission, Jones would be willing to work for Sunbelt again. 24 C.F.R. §24.105(m). In his activities on behalf of Sunbelt, Jones was not an independent contractor, a legal argument he belatedly raised at the hearing. He prepared and signed Sunbelt's bid on the contract, he was listed as a "key" employee of Sunbelt on the bid, and he was Sunbelt's official contact person for the contract. It is immaterial that Jones did not have a written employment contract with Sunbelt, or even that he was not paid by Sunbelt for his work when the contract was terminated. He took direction from Walker, Sunbelt's president, and his duties were those that Walker directed him to perform. Under the broad and inclusive definition of a principal at 24 C.F.R. §24.105(p), it does not matter whether Jones was an "employee" of Sunbelt, its "agent," or a person with primary supervisory responsibilities. Jones had critical influence and control over a covered transaction, the REAM contract, and the definition of principal expressly states that such a person is included within the definition "whether or not employed by the participant." 24 C.F.R. §24.105(p).

The reason for Jones' LDP was his failures as a key employee on Sunbelt's REAM contract. HUD cites 24 C.F.R. §24.705(a)(4) as cause for Jones' LDP. That regulation provides that failure to

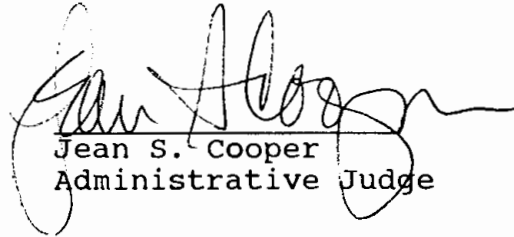
honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations is a cause for an LDP if it is based upon adequate evidence. Adequate evidence is likened to the probable cause necessary for an arrest, search warrant, or a preliminary hearing. Horne Bros. v. Laird, 463 F. 2d 1268, 1271 (D.C. Cir. 1972). It is not a rigorous level of proof.

In this case, HUD has established by convincing and compelling evidence, not merely adequate evidence, that Sunbelt failed on almost every level to acceptably and timely perform the REAM contract. I find that much, although not all, of Sunbelt's failure was attributable to Jones as the contract supervisor and the person who personally failed to perform many of the required contract services. I find that Jones, as a principal and participant on the REAM contract, failed to honor contractual obligations on behalf of Sunbelt, and he also failed, on behalf of Sunbelt, to proceed in accordance with contract specifications. The fact that Jones tried to do so many of the contract tasks himself may have partly caused the performance problems because more personnel assigned to contract performance would likely have resulted in more timely and acceptable performance. However, since Jones participated in the contract, starting with the preparation of Sunbelt's bid, he had an unusual amount of input and control over how the contract would be performed and at what cost. Therefore, staffing misjudgments made by Sunbelt on the contract are as attributable to Jones as to Walker, and the inevitable problems should have been anticipated by Jones, who had substantial prior experience working on Government contracts, including contracts similar to the REAM contract.

I find little mitigation in this record, considering the extent of Sunbelt's performance failures. The problems created or under the control of HUD, namely the error-filled SAMS reports and the lack of timely notice of closings, no doubt made performance of the contract somewhat more complicated, but there was insufficient proof that HUD's actions caused the default. Jones created a poor working relationship with the GTR from the onset of the contract by refusing to comply with her directives, failing to answer her messages in a timely manner, failing to make sure that the mail was collected, as required, and failing to complete and file inspection forms as required. His attitude reflected an unwillingness to get the contract performed unless it could be performed Sunbelt's way, which was often at odds and with the contract requirements. Such conduct is not responsible. Based upon the record in this case, I conclude that it was in the best interest of HUD and the public it serves that Jones' participation in certain HUD program was limited.

Conclusion

The LDP imposed on Jones was supported by adequate evidence, in accordance with law, and was in the best interest of both HUD and the public.



Jean S. Cooper  
Administrative Judge