



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:

RUMALDITA DOVALINA,

Respondent

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: HUDBCA No. 95-A-152-D28  
: Docket No. 95-5062-DB(LDP)  
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For the Government

DETERMINATION



1 Day, Director of HUD's Office of Public Housing in San  
2 Antonio.

3 The reason stated for the LDP were, among  
4 other grounds, that Dovalina had violated HUD  
5 regulations and program requirements, and requirements  
6 of the Laredo Public Housing Authority, the LHA, by  
7 instructing members of the LHA staff to place a  
8 relative of Dovalina's husband, [REDACTED] Salinas, in  
9 an LHA housing unit, while there was several others  
10 ahead of Salinas on the waiting list.

11 By doing this, the notice of LDP charged that  
12 Dovalina violated the provisions of 24 Code of Federal  
13 Regulations, Section 900.211, which establishes  
14 admission preferences for public housing tenants. The  
15 LDP notice further charged that Dovalina violated the  
16 selection polices and preference system established by  
17 the LHA as to the Federal Selection Policies and  
18 Preference System.

19 Dovalina was LDP'd as a principle of the LHA,  
20 because she is the Administrative Assistant to the  
21 Executive Director, and was held, as a principal, to  
22 knowledge that the LHA was not complying with such  
23 requirements since 1989. Additionally, Dovalina was  
24 held to knowledge of the LHA response that it would  
25 prevent such further violations of housing placements

1 in the future. Dovalina was charged with violating  
2 preference requirements by housing Alicia Salinas.

3 An informal hearing was held on May 17, 1995.  
4 By decision dated June 13, 1995, Dovalina's LDP was  
5 terminated, effective June 12, 1995, but it was not  
6 voided from its inception.

7 Dovalina requested a hearing de novo to  
8 determine whether the LDP was properly imposed on her,  
9 and whether is should have been terminated from its  
10 inception. Dovalina contends that she is not a  
11 principle of the LHA, and therefore is not subject to  
12 an LDP. She also contends that she did not direct any  
13 LHA employee to place Alicia Salinas in a housing unit  
14 in violation of HUD or LHA tenant housing program  
15 requirements. She also denies that she housed Salinas,  
16 or that she was aware of the LHA's prior violations of  
17 tenant placement requirements, or that it had promised  
18 to prevent such violations in the future.

19 FINDING OF FACT

20 1. Dovalina, known as Romy, has been an  
21 employee of the LHA for seven and a half years. She is  
22 presently Administrative Assistant to the Executive  
23 Director. She was appointed to that position in  
24 February 1994. She started at the LHA as an Assistant  
25 Project Manager and was soon certified as a Project

1 Manager. Her knowledge of Federal requirements for  
2 tenant placement and waiting list preferences was  
3 gained in that position, which she held for a brief  
4 period.

5 She was a finance clerk in the LHA Finance  
6 Department from 1990 to 1994. In February 1994, the  
7 Executive Director of the LHA was Abraham Rodriguez  
8 when Dovalina became the Administrative Assistant.

9 2. On August 24, 1994, Dovalina escorted  
10 [REDACTED] Salinas to the office where the LHA takes lower  
11 rent housing applications. The Occupancy Supervisor in  
12 charge of that office is Carmen Contreras. Salinas had  
13 previously gone to see Contreras about making an  
14 application to live in low rent public housing, but  
15 Contreras discouraged Salinas from applying because the  
16 waiting list was so long.

17 Salinas told Dovalina of her difficulty in  
18 making an application. Salinas is related to Dovalina  
19 by marriage. Selinas is the aunt of Dovalina's  
20 husband.

21 3. Dovalina ask Contreras to take Salinas'  
22 housing application. Contreras assigned Ruben  
23 Rodriguez, an Assistant Project Manager supervised by  
24 Contreras, to take Salinas' application.

25 4. Ruben Rodriguez took Salinas'

1 application. He did not discuss it with Dovalina or  
2 with anyone else except Salinas. Rubin Rodriguez noted  
3 on the application that Salinas lived in a very old  
4 home in bad condition. Substandard housing is a  
5 Federal preference, once verified, that entitles an  
6 applicant to priority over applicants on the waiting  
7 list without a Federal preference. In addition,  
8 Salinas was classified as elderly for purposes of  
9 housing her, based upon a birth or baptismal  
10 certificate she provided.

11 5. Salinas had obtained a letter from the  
12 Mayor of Laredo, addressed to Abraham Rodriguez, the  
13 LHA Executive Director, asking that help in housing  
14 Salinas would be appreciated. The letter from the  
15 Mayor is dated August 24, 1994. Dovalina made sure  
16 that Contreras was presented with the letter from the  
17 Mayor on Salinas' behalf. Dovalina did not direct  
18 Contreras to house Salinas in violation of Federal  
19 housing requirements or LHA requirements. Dovalina,  
20 rather, made sure that Salinas' application was taken  
21 and noted.

22 7. According to Dovalina, she asked  
23 Contreras to do whatever she could for Salinas.  
24 According to Contreras, Dovalina told Contreras that  
25 Abraham Rodriguez said, "It was okay to house Salinas".

1 Contreras put a post-it note on page 2 of Salinas'  
2 application to that effect, and also wrote on the first  
3 page, "As per Romy Dovalina". Contreras did not verify  
4 or document whether Salinas' housing was, in fact,  
5 substandard.

6 8. Contreras housed [REDACTED] Salinas on  
7 September 1, 1994, only a week after Salinas had  
8 applied for housing. Dovalina does not house anyone.  
9 That is Contreras' job.

10 9. Dovalina denies that she made any  
11 reference to Abraham Rodriguez when she briefly spoke  
12 with Contreras about Salinas' application. Dovalina  
13 did not reveal her relationship to Salinas to  
14 Contreras.

15 10. Contreras stated that she believed that  
16 Abraham Rodriguez had already okayed her housing  
17 Salinas outside the waiting list, and she did not  
18 verify that with Rodriguez. She also did not verify  
19 whether Salinas, in fact, lived in substandard housing.  
20 Contreras believed that Dovalina was her supervisor,  
21 and if Dovalina told her something, she would not  
22 question it. She also stated in testimony that  
23 Rodriguez was not available when Dovalina came to see  
24 her.

25 11. Dovalina was not, in fact, Contreras'

1 supervisor. According to her position description, she  
2 has no supervisory functions in the true sense.  
3 Dovalina was widely viewed as Rodriguez's second in  
4 command because she was efficient and because she  
5 relayed directives from Rodriguez. Her job description  
6 makes clear that she had little actual authority to  
7 direct anyone to do anything on her own. She was to  
8 assist Rodriguez in relaying directives from him. Her  
9 position description describes her job tasks as  
10 primarily repetitive. She also had personnel relations  
11 functions to make operations to go more smoothly at the  
12 LHA.

13 12. Dovalina's position description does not  
14 designate her as a key employee. It also does not  
15 require that she be familiar with any laws, program  
16 requirements or regulations that might apply to Housing  
17 Authority programs. She also has no duties that relate  
18 to actual program functions or paper work in Federally  
19 controlled programs of the LHA. She has no primary  
20 administrative or supervisory duties.

21 I find that Exhibit G-31, one version of an  
22 organizational chart, does not truly reflect Dovalina's  
23 authority in the LHA. I rely upon her position  
24 description.

25



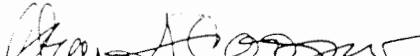
DISCUSSION

1  
2 Two parts of the only charge still being  
3 relied upon by HUD to support Dovalina's 45 day LDP,  
4 concerns the application for housing of [REDACTED] Salinas.  
5 Dovalina neither directed Contreras to house Salinas in  
6 violation of tenant placement requirements, nor did she  
7 actually house her. Those are the two key actions  
8 charged that underlie Dovalina's LDP. Neither  
9 occurred. The only issue remaining is whether Dovalina  
10 is subject to an LDP, in any event, as a principal. If  
11 Dovalina is not a principal of a participant, or a  
12 participant or contractor, she is not subject to any  
13 sanction by HUD. 24 C.F.R. Section 24.105(p) defines  
14 principal as an officer, director, owner, partner, key  
15 employee, or other person within a participant with  
16 primary management or supervisory responsibilities, or  
17 a person who has substantive control over a covered  
18 transaction, whether or not employed by the  
19 participant.

20 The regulation also lists examples of persons  
21 who have critical control over a covered transaction.  
22 Not only is an administrative assistant to an executive  
23 director of a public housing authority not listed as an  
24 example, the examples given are of persons or entities  
25 who have direct program responsibilities, or deal with

1 paperwork in HUD programs, so that they can actually  
2 effect the transaction. Dovalina had no such duties.  
3 I do not find that she temporarily assumed critical  
4 control over the Salinas application for housing by her  
5 limited action, even if I credit all of Contreras'  
6 testimony as to what Dovalina did and said in that  
7 regard. Critical control never passed from Contreras,  
8 and if Contreras interpreted Dovalina's comments to be  
9 an indirect order from Rodriguez, then critical control  
10 would have flowed from Contreras to Rodriguez.

11 Thus, I find that Dovalina is not subject to  
12 an LDP because she is not a principal of the LHA. The  
13 LDP was improperly imposed upon her as a matter of law.  
14 Indeed, it was imposed and amended by Luz Day, without  
15 Day ever seeing Dovalina's position description. Day  
16 assumed Dovalina was a key employee because she was  
17 efficient and effective. That may be a key employee in  
18 a generic sense of one you can rely on, but it is not  
19 what is meant by the definition of a principal in the  
20 applicable regulation.

21 The LDP of Rumaldita Dovalina shall be deemed  
22 to be void, ab initio, as having been imposed not in  
23 accordance with law.  11/30/95

24 JUDGE COOPER: Everybody, please contain your  
25 reactions until court is over.