

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

MARK DRUVA

Respondent.

HUDALJ 91-1716-DB(S)
Decided: December 19, 1991

Georjan D. Overman, Esquire
For the Government

Charles H. Torres, Esquire
For the Respondent

Before: THOMAS C. HEINZ
Administrative Law Judge

INITIAL DECISION

Statement of the Case

This proceeding arose pursuant to 24 C.F.R. Sec. 24.100 *et seq.* as a result of action taken by the Assistant Secretary for Housing of the Department of Housing and Urban Development ("the Department" or "HUD" or "the Government") on June 24, 1991, in a letter suspending Respondent, Mark Druva ("Respondent"), from participating in covered transactions as either a participant or a principal at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts at HUD. The suspension was based on Respondent's indictment by a Federal Grand Jury and is to remain in effect pending resolution of the indictment. Respondent has appealed the June 24, 1991, action by the Department and requested a hearing. Pursuant to 24 C.F.R. Sec. 24.313(b)(2)(ii), the hearing is limited to the submission of written briefs and documentary evidence.

Findings of Fact

1. Respondent is a former staff appraiser for U.S. Mortgage Company in Denver, Colorado, who appraised properties subject to HUD's housing insurance programs. (Government's Exhibit 1, hereinafter "GX.1.")

2. On May 22, 1991, a grand jury for the United States District Court for the District of Colorado charged Respondent in a 123-count indictment with multiple violations of 18 U.S.C. Secs. 1341, 1010, and 2(a). These sections of the United States Code prohibit mail fraud, making false statements to HUD and aiding and abetting others in the commission of crimes. (GX.1)

Subsidiary Findings and Discussion

Respondent is subject to the suspension provisions of HUD regulations because he has exercised critical influence on or substantive control over a "covered transaction," that is, his appraisals of residential real estate subject to Government mortgage insurance made him a "principal" who "participated" in covered transactions within the meaning of the regulations. 24 C.F.R. Secs. 24.105(m), 24.105(p), 24.110(a).

A principal may be suspended from further participation in covered transactions based on adequate evidence to suspect that the principal has committed fraud or made false statements. 24 C.F.R. Secs. 24.405(a), 24.305(a)(1) and (3). Respondent has been indicted on multiple counts of fraud and making false statements to HUD. (GX.1) An indictment constitutes "adequate evidence" for purposes of a suspension action. 24 C.F.R. Sec. 24.405(b). Accordingly, cause exists to suspend Respondent.

It is the policy of the Federal Government to do business only with responsible persons. 24 C.F.R. Sec. 24.115(a). HUD is authorized to impose suspensions to protect the public interest. 24 C.F.R. Sec. 24.115(b). Charges of mail fraud and making false statements demonstrate a lack of business honesty and integrity that pose a clear and immediate risk to the Government. As stated by the United States Court of Appeals for the Fourth Circuit in *James A. Merritt and Sons v. Marsh*, 791 F.2d 328 (4th Cir. 1986) at 330:

A decision to issue an indictment is made by a deliberative public body acting as an arm of the judiciary, operating under constitutional and other legal constraints. The Constitution does not require the government to wait for the outcome of the criminal proceedings before implementing an administrative suspension when a contractor has been accused of fraud after the grand jury's investigation and deliberative process The formalities attendant to issuing an indictment carry sufficient indicia of reliability to allow the government to act to protect itself against future dealing with someone accused of fraud.

Respondent's immediate suspension was in the public interest. The suspension will continue only until resolution of the subject matter of the indictment. If the indictment is dismissed or Respondent is found not guilty, then the suspension will be lifted. Meanwhile, the Government is protected from exposure to further potential harm.

Respondent complains that the indictment "is invalid on its face and was not the product of an unbiased Grand Jury." (Brief, p. 1.) Although Respondent's page and a half brief filed herein has attached to it copies of seven lengthy motions filed in United States District Court seeking to dismiss the indictment against him, Respondent has not explained in this forum how the indictment is "invalid on its face." Moreover, the indictment does not appear invalid on its face, notwithstanding Respondent's conclusory statement to the contrary.

Respondent also contends that his discovery rights in this proceeding as conferred by HUD's regulations have been quashed arbitrarily and capriciously, thereby depriving him of any realistic opportunity to defend himself, in violation of his due process rights under the U.S. Constitution. These contentions were addressed in a Memorandum and Order issued herein on August 26, 1991, and need not be discussed again.

Conclusion and Determination

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause exists to suspend Respondent Mark Druva from participating in covered transactions as either a participant or a principal at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts at HUD pending resolution of the subject matter of the indictment against Respondent handed down by a Grand Jury for the United States District Court for the District of Colorado on May 22, 1991.

THOMAS C. HEINZ
Administrative Law Judge

Dated: December 19, 1991