

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

In the Matter of:

M. Brett Young and
Allied Housing Group, Ltd.,

Respondents.

HUDALJ 96-0036-DB(LDP)
Decided: September 13, 1996

M. Brett Young, *pro se*
For the Respondent

Sherri R. Smith, Esquire
For the Department

Before: CONSTANCE T. O'BRYANT
Administrative Law Judge

RECOMMENDED DECISION

Statement of the Case

This proceeding arose pursuant to 24 C.F.R. § 24.700 *et seq.* as a result of action taken by the Director, Office of Public Housing, U. S. Department of Housing and Urban Development ("the Department" or "HUD"). On January 10, 1996, HUD imposed upon M. Brett Young and Allied Housing Group Ltd. ("Respondents") and all affiliates, a twelve-month Limited Denial of Participation ("LDP") in all housing programs administered by the Assistant Secretary for Public and Indian Housing throughout the jurisdiction of the Department's office in St. Louis, Missouri.

After an informal conference and affirmation of the LDP by the St. Louis HUD office, Respondents appealed and requested a hearing (*see* 24 C.F.R. § 24.713). A hearing was held on June 4, 1996 in St. Louis, Missouri. At the close of the hearing, the parties were directed to file briefs. Both briefs have been filed and the matter is ripe for decision.

Findings of Fact

1. By letter dated July 8, 1992, the Allied Housing Group, Ltd. also referred to as Allied Housing Group, Inc. ("Allied"), a not-for-profit community development agency based in St. Louis, Missouri, requested participation in HUD's Lease and Sale of Acquired Family Properties for the Homeless, and Direct Purchase of HUD REO properties. According to Allied's Agency Data Sheet, which was attached to that request, Allied was incorporated on January 8, 1990, by Rosemary B. Jackson, Marlyne Brett Young and David Young. It opened for business in February 1991. GX-A26(b)(2)¹.

2. M. Brett Young was Allied's Executive Director (GX-A26(b)((8); GX-A26(d)(6)(7)(9)(12); GX-A26 (e)(6)(14)), and took all the action complained of in the LDP.

3. Allied's initial plan was two-fold: (1) to provide transitional housing for women who had become homeless due to spousal abuse, and (2) to purchase houses from HUD for resale to women who were head of household with low and moderate incomes. GX-A26(b)(2).

4. In February 1995, Respondents began participating in HUD's Single Family Property Disposition Direct Sale/Lease Program ("the direct sale program") administered by HUD's Office of Housing, the Community Planning and Development Division ("CPD"), the Single Family Production/REO Branch and the Property Disposition staff. GX-A26(b). RX-4. From February 1995 to July 1995 Respondents entered into numerous contracts to purchase property under the direct sales program. Tr. 47.

5. The purpose of HUD's Single Family Property Disposition Program is to reduce the inventory of acquired properties in a manner that expands homeownership opportunities, strengthens neighborhoods and communities, and ensures a maximum return to the mortgage insurance fund. GX-A1(a).

6. The direct sale program involves sales of HUD acquired properties at a discount to preapproved program participants, including private nonprofit organizations. GX-A1(a). The direct sale is a sale to a selected purchaser to the exclusion of all others without resorting to advertising for bids. Only applicants preapproved by CPD are

¹The following abbreviations are used in this decision: "Tr." refers to the hearing transcript; "GX" and "RX" refer, respectively, to the Government's and the Respondents' exhibits.

eligible. After closing on the property, the buyer may make any necessary repairs to the property and then proceed to sell the property to a consumer. Tr. 34-40, RX-4.

7. Respondents were preapproved for participation in the direct sales program by the CPD staff. Through the program, Respondents were able to buy HUD properties at a discount and then resell them to qualified home buyers. *Id.*

8. Financing for a direct sale from HUD is the responsibility of the purchaser. GX-A1(b). Tr.47.

9. HUD's policy with regard to the sale of acquired properties directly to non-profit organizations, as stated in its "Full Offer Procedure," provides, *inter alia*, that applicants are expected to close the sale no later than 30 to 60 days from the date of acceptance of the contract and that earnest money deposits and closing extension fees may be collected by HUD, if necessary, to assure compliance with the sales contract. GX-A1(a) and (b), Tr. 47.

10. Consistent with the provisions discussed above, the standard sales contract for the purchase of direct sale property by Respondents included at Item 9 the provision that: "Time is of the essence as to closing. The sale shall close not later than 60 days from Seller's acceptance of contract . . ." GX-A27, GX-A25(b)(3); Tr. 59.

11. The Notice of Contract Acceptance sent by HUD to Respondents as to each property specified that closing must occur within the time stated in Item 9 of the Sales Contract, or subsequent extensions approved by HUD. GX-A27 (*see* ¶1 of each Notice).

12. Requests for extension of time to close on a contract must be made by the purchaser and made prior to the expiration of the 60-day closing period. Tr. 48, GX-A1(a), p. 9.

13. Approval of requests for extension of time to close on a direct sale contract is usually given by HUD where mortgage approval is imminent but delay is caused by an unforeseen hardship on the part of the purchaser (e.g. death in the family, or illness creating large medical expenditure), or where HUD is at fault (Tr. 56-7; 294). Where given, the extension is usually approved in 15-day increments. Tr. 57, GX-A1(a).

14. By agreeing to participate in the direct sale program, Respondents agreed to abide by the rules and regulations governing the direct sale program. GX-A26(b), Tr. 59-64.

15. On April 24, 1995 Respondents contracted with HUD for the purchase of property located at 11665 Fox Hall Lane, Florissant, Missouri. The sales contract was accepted on April 27, 1995. GX-A27 pp. 5-8. Unless an extension of the closing date was granted, closing on the property should have occurred on or before June 26, 1995. RX-4. In April 1995, Allied began discussions with Kimberly Boyer with regard to qualifying her to purchase the 11665 Fox Hall Lane property. GX-A26(c)(2)(3)(4). On July 24, 1995 Ms. Boyer paid Mr. Young \$500 earnest money deposit on the property. Tr. 110-112; GX-A26(c)(11).

16. Prompted by concern that Respondents had failed to close on a number of properties under contract with HUD within the 60-day period, the Acting Chief, Single Family Production and REO Branch, St. Louis, Missouri office, met with Mr. Young on behalf of Allied on April 28, 1995 and informed him that if the next property that Allied had contracted with HUD did not close, HUD would require Allied to put up \$500 earnest money deposit on each property it contracted to purchase from HUD. Mr. Young's response was that he was having trouble obtaining mortgage financing on the properties. GX-A20; Tr. 45-6, 290².

17. On June 12, 1995, Allied applied to HUD for an extension of time to close on the 11665 Fox Hall Lane property (*see* ¶15 above). That request was denied on June 19, 1995 after HUD received information from the mortgage company used by Allied showing significant workup still needed to complete the loan. Tr. 41-44; RX-4. In light of Respondents' history, HUD officials were not persuaded that Respondents would close on this property. Tr. 291-92. On June 22, 1995, after receiving notification from the mortgage company that mortgage financing had been denied, HUD cancelled the contract with Allied on the 11665 Fox Hall Lane property. GX-A26(b)(7). Closing did not occur. GX-A26(b)(7), RX-4, Tr. 53-55.

18. Respondents' failure to close on contracts with HUD caused HUD to lose money. At a meeting with HUD on July 12, 1995, Respondents were informed that they had caused HUD to hold several houses off the market for extended periods of time, which had cost HUD some \$12,000 up to that date. Tr. 53-55, GX-A23; GX-A26(b)(7). As a result, HUD instituted the requirement that Respondents submit \$500 earnest money deposit with each offer to purchase HUD REO properties. In addition, HUD required Respondents to submit earnest money deposits for pending contracts and required that

²This meeting occurred after the acceptance of the sales contract for the 11665 Fox Hall Lane property which occurred on April 27th, but before the acceptance of the other three contracts at issue in this case.

earnest money deposits be made with each offer to purchase until Respondents established a tract record for timely closing on REO properties - i.e., Allied would have to close 5 consecutive REO properties within the 60-day time limit in order for the earnest money requirement to be dropped. GX-A23; GX-A26(b)(3), Tr. 54-55.

19. After the July 12, 1995 meeting, Respondents failed to close on at least three other properties they had contracted to purchase from HUD and then to resell to prospective buyers. To wit:

(a). On May 22, 1995, Respondents contracted with HUD to purchase property at 11973 Red Barn St. Louis, Mo. 63033. HUD accepted the sales contract on June 1, 1995. GX-A27 pp. 9-12. The last day Allied could close on the property was July 30, 1995. Closing did not occur. RX-4. On June 3, 1995, Respondents had entered into a Residential Real Estate Sale Contract on this property with Lisa A. and Wendell Mobley. GX-A26(e)(9). On June 5, 1995, Mr. Young acting on behalf of Allied accepted \$500 earnest money deposit from the Mobleys. Tr. 210-224; GX-A26(d)(6). Although Respondents did not close on the property, they never refunded the \$500 deposit to the Mobleys. Tr. 220-224; RX-4.

(b). On May 30, 1995, Respondents contracted to purchase property at 5937 Brand Ave. St. Louis, Mo. 63135. HUD accepted the contract on June 1, 1995. GX-A27, pp. 13-16. The last day Allied could close was July 30, 1995. Closing did not occur. RX-4. Allied entered into an Agreement of Intent to Purchase the 5937 Brand Ave. property with Karen Beckun³. GX-A26(f)(3)(11). Respondents received from Ms. Beckun \$500 earnest money deposit which they never refunded. Tr. 197-202.

(c). On June 20, 1995, Respondents contracted to purchase property at 4328 Grundy, Bridgeton, Mo. The sales contract was accepted by HUD on June 20, 1995. GX-A27 pp.1-4. The contract between Allied and HUD expired without closing on August 19, 1995. RX-4. On July 10, 1995, Respondents signed a Residential Real Estate Sale Contract on this property with Pamela Wyatt. On that same date, Ms. Wyatt gave Respondents a check for \$500 earnest money deposit payable to HUD. Respondents never refunded Ms. Wyatt's \$500. Tr. 170-175; RX-1.

20. Mr. Young attempted to obtain mortgage financing for each of the four prospective buyers, but was unsuccessful in doing so within the time frame allowed.

³By the date of trial Ms. Beckun had married. Her married name is Bailey. Tr. 97.

Tr. 139, 140; GX-A26(c)(11).

21. Respondents retained the \$500 deposits from Ms. Boyer, the Mobleys, and Ms. Bailey. They turned over to HUD the \$500 deposit received from Pamela Wyatt. RX-3; RX-4.

22. On January 10, 1996, Allied was officially notified that due to irregularities in its operation, HUD was suspending it from further participation in the program. It asserted cause for an LDP under the following subsections of 24 CFR § 24.705(a):

* * *

(2) Irregularities in a participant's or contractor's past performance in a HUD program;

* * *

(4) Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

* * *

(7) Falsely certifying in connection with any HUD program, whether or not the certification was made directly to HUD;

* * *

(10) Making or procuring to be made any false statement for the purpose of influencing in any way an action of the Department.

Subsidiary Findings and Discussion

An LDP is a type of debarment. The purpose of all debarments imposed by agencies of the Federal government, including debarments, suspensions, and LDPs imposed by HUD, is to protect the public interest by precluding persons who are not "responsible" from conducting business with the Federal government. 24 C.F.R. § 24.115(a). *See also Agan v. Pierce*, 576 F. Supp. 257, 261 (N.D. Ga. 1983); *Stanko Packing Co., Inc. v. Bergland*, 489 F.Supp. 947, 948-49 (D.D.C. 1980). The debarment process is not intended to punish; rather, it is designed to protect governmental interests not safeguarded by other laws. *Joseph Constr. Co. v. Veterans Admin.*, 595 F. Supp.

448, 452 (N.D. Ill. 1984). In other words, the purpose of debarment is remedial, not punitive. *See* 24 C.F.R. § 24.115.

In the context of debarment proceedings, "responsibility" is a term of art that encompasses integrity, honesty, and the general ability to conduct business lawfully. *See* 24 C.F.R. § 24.305; *Gonzales v. Freeman*, 334 F. 2d 570, 573 & n.4, 576-77 (D.C. Cir. 1964). Determining "responsibility" requires an assessment of the current risk that the government will be injured in the future by doing business with a respondent. *See Shane Meat Co., Inc. v. U.S. Dep't of Defense*, 800 F.2d 334, 338 (3d Cir. 1986). That assessment may be based on past acts. *See Agan*, 576 F. Supp. 257; *Delta Rocky Mountain Petroleum, Inc. v. U.S. Dep't of Defense*, 726 F. Supp 278 (D. Colo. 1989).

The complaint alleges that there were serious irregularities in Respondents' business conduct. Specifically, HUD states that Respondents entered into numerous contracts with HUD to purchase property for resale to women with low and moderate incomes, but closed on none of them. HUD also states that Respondents, during their participation in the program, obtained earnest money deposits from four prospective homebuyers, failed to close on the properties, and failed to refund their deposits.

The uncontroverted evidence shows that Respondents completed and delivered sales contracts to HUD on the four properties listed in the LDP; that HUD accepted the contracts and sent a notice of acceptance for each property to Respondents; that no extensions of the closing date were granted; and that closing on the four properties never occurred. Further, the evidence shows that Respondents entered into agreements with Ms. Boyer, Beckun, Wyatt and the Mobleys, to sell to them properties purchased from HUD, and accepted from each of these prospective homebuyers \$500 earnest money deposit. Nevertheless, Respondents argue that they did not act irresponsibly during their participation in the program and ask that the LDP be rescinded.

Respondents assert that their failure to close on the properties resulted from their inability to obtain financing from a mortgage company. Respondents assert that HUD was aware, as early as April 28, 1995, that Respondents were having "processing problems with its Lender", and were seeking a new lender. Thus, they argue that it was almost impossible for them to close within the 60 days.

Although the evidence supports finding that Respondents could not timely obtain financing to purchase the properties they sought to purchase from HUD, their inability to find financial backing is not a defense to the LDP proposed by HUD. Obtaining financing for the purchase of the properties was Allied's responsibility. The fact of Respondents' inability to obtain financing is an indication of their unreliability, and of the

risk of injury to the Government from continuing to do business with them. Indeed, as pointed out in HUD's letter confirming discussions on July 12, 1995, doing business with Respondents caused HUD to lose at least \$12,000 in the short span of a few months from February 1995 to July 1995. It also caused HUD to keep off the market for significant periods of time property that could have been sold to meet the needs of other qualified homebuyers. GX-A26(b)(5)).

Respondents also assert that HUD unreasonably denied a request for extension of time to close in a case where closing was imminent, "in an effort to drive Respondents out of business". Respondents' brief. There is no evidence that HUD tried to drive Respondents out of business. And, the only evidence of a request made by Respondents for extension of time to close was as to the 11665 Fox Hall Lane property. Tr. 180, RX-3, pp. 2-4. As to that property, the 60-day period for closing would have expired on or about June 27, 1995. Testimony shows that HUD denied the request for extension on June 19, 1995 after the mortgage financing company listed what was still required by it to process the mortgage application. Based upon what still needed to be done, HUD did not have faith that Respondents would be able to close the contract even after a reasonable extension. Indeed, three days after HUD's denial of the request, the mortgage financing company notified HUD that it had denied the loan application. GX-A26(b)(7)(8). Tr. 290-92; 296. Thus, Respondents have failed to provide evidence which shows that closing was imminent as to the Fox Hall Lane property and that HUD's action in denying the request was unreasonable. Finally, there is no evidence that Allied requested and was denied an extension of the closing date as to any other property.

Respondents make some assertions of fact which are not based on any testimony or documentary evidence.⁴ The unsupported assertions have not been considered in making this recommended decision. However, even if the assertions of fact were accepted as true, they would not alter the recommended decision reached in this case. Respondents' failure to complete the transactions and to refund the earnest money deposits, based on the difficulties they acknowledge, would be enough to establish irregularities sufficient to sustain the LDP.

⁴Respondents assert that they spent a lot of money (\$8,800) in implementing its housing program, including fees and cost paid on the four properties in question. Respondents also assert that they could not return the earnest money deposits to the prospective buyers because the money was seized by the State in an action initiated by HUD and the State. There is no evidence of record to support either contention.

Respondents failed, repeatedly, to fulfill their contractual and programmatic obligations to HUD. Tr. 80, 183, 222, 233-35. Respondents entered into numerous⁵ contracts with HUD to purchase property and close the deal on none. Their failure to complete the sales cost HUD up to \$12,000 within its first six months of participation in the program. These failures were sufficient to establish a failure to honor their contractual obligations to HUD, 24 C.F.R. § 24.705(a)(4), as well as to establish "irregularit[y] in . . . past performance in a HUD program." 24 C.F.R. § 24.705(a)(2).

I find that HUD has proven cause for suspension under 24 CFR 24.705(a)(2) irregularities in a participant's or contractor's past performance in a HUD program, and 24 CFR 24.705(a)(4) failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations.

HUD has not made clear its theory that Respondents made false certification (24 CFR 24.705(a)(7)) or made false statement (24 CFR 24.705(a)(10)). In any event, I do not find sufficient evidence that Respondents falsely certified in connection with a HUD program, or that Respondents made or procured to be made any false statement for the purpose of influencing in any way an action of the Department. Further, I do not find sufficient evidence to support the Government's claim in the complaint that Respondents used a "ploy" or "guise" to facilitate the purchase of HUD properties for prospective homebuyers.

However, each and every charge alleged by the Government need not be proven to support an LDP suspension. Accordingly, I conclude that adequate evidence of cause as set forth in 24 CFR 24.705 has been presented, and that a limited denial of participation for one year is warranted.

Upon careful consideration of the record, I conclude that HUD's Director, Office of Public Housing, St. Louis, Missouri, exercised sound discretion in the best interests of the Government when he issued the LDP against Respondents and affiliates on January 10, 1996. Accordingly, I recommend that the LDP be affirmed.

⁵Evidence offered by Respondents shows the number to be 12 separate contracts. RX-4.

CONSTANCE T. O'BRYANT
Administrative Law Judge