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In the Matter of: :  
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FRED LINNEMAN, : HUDBCA No. 96-C-115-D10  
: Docket No. 96-0033-DB (LDP)  
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Respondent :  
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Pro se

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FINDINGS OF FACT AND RECOMMENDED DECISION

May 14, 1996

Statement of the Case

By letter dated November 22, 1995, Fred Linneman, Respondent in this case, was notified that a Limited Denial of Participation (LDP) had been imposed upon him by the Director, Office of Housing, of the Washington State Office of the U.S. Department of Housing and Urban Development (HUD). The LDP denied Linneman's participation in HUD's Single Family Mortgage Insurance Program for a one-year period within the State of Washington.

Pursuant to new Departmental regulations effective August 25, 1995, Linneman was given the option to request an informal conference with HUD's Director of Housing in its Seattle Office to determine whether the LDP should be withdrawn or modified, or to immediately request a formal hearing and bypass the informal conference. By letter dated December 15, 1995, and received on January 11, 1996, Linneman requested a formal hearing pursuant to 24 C.F.R. Parts 24 and 26. Notice of assignment to the Board of Contract Appeals for a hearing was received on February 9, 1996.

HUD cites 24 C.F.R. 24.705(a) (2) and (4) as causes for the LDP. The facts cited as the basis for the LDP concern Linneman's alleged failure to adequately inspect a property that he appraised, or to report the existence of a crawlspace at that property, which was the source of severe termite infestation. The property is security for a mortgage insured by HUD. Linneman denies that he failed to adequately inspect the property, and he denies that there

was visible evidence of termite infestation in the crawlspace at the property when he inspected it. The Notice of LDP also makes reference to Linneman's removal from the HUD fee appraiser panel as a result of his failure to schedule more HUD training as an appraiser, after he produced two low-rated appraisal reports. It was ruled before the hearing that Linneman's failure to seek more training as a result of the two problematic appraisal reports was not a separate cause for the LDP, as written in the Notice of LDP.

Linneman requested a short delay in scheduling the hearing, to which the Government agreed, under 24 C.F.R. 24.314(6)(2)(iii). The hearing was held in Portland, Oregon on April 18, 1996. These findings of facts and recommended decision are based on the documentary administrative record provided pursuant to 24 C.F.R. {S24.314(b)(2)(i)(B), evidence admitted at the hearing, sworn testimony given at the hearing, and the briefs and oral arguments of the parties.

#### Findings of Fact

1. Linneman has been a residential real estate appraiser since approximately 1990. In March, 1994, he applied for the BUD fee appraiser panel in Spokane, Washington. At that time, appraisals of properties to be financed with a mortgage insured by HUD were performed by appraisers on HUD fee appraiser panels. HUD provided training to those appraisers selected for the fee appraiser panels, so that the fee appraisers would perform appraisals in accordance with HUD guidelines, including how to record the information gathered during an appraisal site inspection on the appraisal report, and how to value properties in accordance with BUD guidelines and requirements. Linneman was selected for the fee appraiser panel for a probationary period of one year and received BUD training on June 9, 1994. (Administrative Record; Resp. Exh. A; Govt. Exh. 5; Tr. 73.)

2. Between June 25, 1994 and August 7, 1994, Linneman did at least three appraisals for HUD. As of August 9, 1994, his appraisal assignments were curtailed "until further notice" by James L. Root, then Chief Appraiser for the HUD Office in Spokane, Washington, because Root was concerned about the property valuation methods being used by Linneman and description errors on two appraisal reports that Root reviewed as Chief Appraiser. Root had directed Linneman to make an appointment with him to discuss the reasons for these errors, and to schedule additional training, but Linneman did not do so. Linneman did no more appraisals for HUD after August 7, 1994. By late December, 1994, Linneman was removed from the fee appraiser panel after he failed to schedule a meeting with Root and the Chief of the Housing Development Branch of HUD's Spokane office by December 15, 1995, as directed in writing. (Administrative Record; Tr. 52-55.)

3. On August 7, 1994, Linneman appraised a property located at 518 Berkshire Street, Richland, Washington that was going to be purchased with a mortgage insured by the Federal Housing Administration of HUD. Linneman's appraisal report for the Berkshire property states that there is no crawlspace in the property and that there is no termite infestation in the

foundation. The floor plans of the basement and main floor of the property, included by Linneman in an addendum to the appraisal report, do not show the existence of a crawlspace under the dining room. In addition, there is no mention of the crawlspace throughout the lengthy descriptions and explanatory texts of either the appraisal report or the addendum prepared by Linneman for the Berkshire property. In fact, the property had a crawl space which was infested with termites. (Administrative Record; Rep. Exh. B.)

4. On November 11, 1994, Root assigned Judy Brager, a review appraiser, to perform an administrative field review of Linneman's appraisal of the Berkshire property. An administrative field review is not used by HUD to change the appraisal done by the fee appraiser. Field reviews are a quality control measure used by HUD to monitor the degree of acceptability of the work of fee appraisers such as Linneman. They are also used to communicate with fee appraisers about ways to improve their work in the future. A review appraiser does an on-site review of the appraised property, and then assesses the quality of the appraisal report of the fee appraiser, by describing deficiencies and errors that the review appraiser observed in the way that the fee appraiser valued the property and filled out the appraisal report. The field review is not a reperformance of the appraisal, and the review appraiser uses the appraisal report of the fee appraiser as a guide in doing the on-site inspection of the property. (Administrative Record; Tr. 77-80, 82.)

5. Brager rated Linneman's appraisal report for the Berkshire property as unacceptable for reasons unrelated to Linneman's failure to note the existence of the crawlspace or the termite infestation. There is no evidence that she was aware of either condition. (Administrative Record.)

6. By letter from the mortgage lender dated April 18, 1995, HUD was notified that the Berkshire property was infested with termites, and that the infestation was so serious that, in the opinion of the lender, it should have been detected by Linneman when he did the appraisal inspection of the property. Color photographs of the termite damage, taken by the property owners on April 17, 1995, were attached to the April 18, 1995, letter, as was a complaint letter from the homeowners, and Linneman's appraisal report dated August 7, 1994. (Administrative Record.)

7. The photographs illustrate the locations of the termite infestation and damage as of April, 1995. There is a crawlspace, entered by a window in the basement, that lies under the dining room. The exhaust pipe from a clothes dryer was also vented directly into the crawlspace. Inside the crawlspace, there were long vertical termite shelter tubes on the wall immediately to the left of the window entry to the crawlspace, and at least four short shelter tubes to the interior right of the window entry. The photographs show damaged wood along the inside window sill and frame of the crawlspace, and under the framing of the vent grate on the building exterior where the air from the crawlspace and dryer exited the building. The photographs also show wall and ceiling

cracks in the kitchen and dining room caused by the termites, and places on the kitchen header beam and wall that the owners had patched with spackle to keep the termites from swarming out of the infested areas into the house. (Administrative Record.)

8. Based upon Linneman's testimony, which was generally credible, I find that Linneman did a "head and shoulders" inspection of the crawlspace by standing on a stool and leaning over the dryer. He used a flashlight to look inside. He was able to gain entry to the crawlspace because the owner-seller had pretty much disassembled the dryer vent pipe and metal work for him so that the window to the crawlspace could be opened. Linneman stated that he did not see any termite shelter tubes, sawdust, wood borings, wings, unusual amounts of debris, rotted wood or other indications of termites when he looked in the crawlspace. He had a recollection that there was a lot of duct work hanging down in the crawlspace, which made it difficult to see. Linneman stated that he did not include the crawlspace in his addendum floor plan of the basement because it was "predominantly" a "basement-type" foundation, not a crawlspace. He typed "NO" after the printed word "crawlspace" in the pre-printed report form description list of characteristics of the foundation because the foundation was "predominantly" a basement. Linneman did not verify how to indicate the crawlspace on the Berkshire appraisal report form before he marked it as he did. (Tr. 139-144, 146-151, 191-192, 195.)

9. Linneman had been given a copy of the HUD Single Family Valuation Guide at the HUD training session he attended. The Guide clearly states at page 30 that the appraiser is to enter "yes" or "no" to indicate the existence of a crawlspace on the Appraisal Report, and if the crawlspace is partial, to include the percentage of floor area. The appraiser is not required to elect between indicating whether the foundation is predominately either a basement or crawlspace. Seven separate foundation characteristics are to be separately described on the appraisal report, including a crawlspace, basement, slab, dampness, settlement, sump pump, and infestation. The Guide describes how to inspect a crawlspace, and the conditions to look for in a crawlspace. It states that a termite report should be made a valuation condition requirement if there is any evidence of infestation. The Guide also states that if there is any evidence of any type of insects or insect damage, the appraiser must require an insect infestation inspection. (Govt. Exhs. 4 and 5.)

10. On April 21, 1995, Gene Chafe, General Manager of Senske Pest Control, provided a written report to the property owners, identifying all of the locations and extent of the termite infestation and damage at the Berkshire property. Previously, Rkin Pest Control had come to the property, and identified the source of the termites as the crawlspace. Chafe's Pest Control Report Findings and Recommendations indicate that "subterranean termites in the form of winged alates, workers and shelter tubing" were located in the crawlspace of the structure. Chafe found that the source of the infestation "appeared to emanate" from the original rear foundation wall of the structure, now the interior

wall of the crawlspace, through the original exterior basement window frame and sill plate into the adjoining sub-flooring, rear wall frame and into the kitchen support header. Chafe found termite damage to the rear basement window framing, rear sill plate, rear structure frame, adjoining sub-flooring, kitchen wall, ceiling wallboard, and kitchen header. Senske Pest Control treated the property on May 2, 1995. (Govt. Exh. 3.)

11. Chafe did not testify at the hearing, but he did provide a separate written expert opinion, dated April 5, 1996, at the request of HUD. According to Chafe's opinion letter, the owners of the Berkshire property had assumed that the house was "cleared" (free of termites) because the appraiser had not called for a wood infestation report. Chafe had concerns about the ability of Linneman to identify evidence of wood infestation and subsequent damage because, in Chafe's opinion:

...this infestation had been active for at a minimum, of one to two years. In fact, the shelter tubing in the crawlspace was some of the thickest I'd seen in my career. Clearly, somebody had overlooked the evidence in the crawlspace area of this structure or wasn't qualified to conduct a wood infestation inspection. (Govt. Exh. 6).

12. Linneman's expert witness at the hearing, Lonnie Anderson, had never been to the Berkshire property, and he had not seen the photographs of either the crawlspace or the damage to the structure before he began his testimony. In Anderson's expert opinion, it is possible for shelter tubes of 18 to 24 inches to be built by western subterranean termites very quickly, in as little as a few days to two weeks. Be also stated that it is possible to see a site with active infestation, but with no visible evidence of it for a great deal of time, and then mud tunnels (shelter tubing) can appear "in a matter of days." Anderson agreed with Chafe's opinion that very broad and thick shelter tubes take longer to build than a narrow "pencil lead type of tube." In Anderson's opinion, the shelter tubes shown in the photographs taken in April, 1995, would have been visible in August, 1994, when Linneman inspected the property, even if they were not as large then. (Tr. 210-210-212, 214, 221, 227, 231, 232, 234, 235, 240-245.)

13. Based upon the expert testimony of Anderson, the expert written opinion of Chafe, and the photographic evidence showing extensive and thick shelter tubes in the crawlspace, I find that observable evidence of termite infestation was present in the crawlspace of the Berkshire property when Linneman inspected it on August 7, 1994, even if it was not as dramatic as that illustrated by the photographs taken eight months later.

14. Linneman's recollection of the physical characteristics of the crawlspace are not fully accurate, based upon the photographic evidence, because there were no vent pipes hanging in the crawlspace that would have obstructed his view of the crawlspace wall. Be either did not do a thorough inspection of the crawlspace, or he did not know what he was looking at when he saw the shelter tubes. Because the shelter tubes are located on either side of the entry window to the crawlspace, I find it more likely

that Linneman did not enter the crawlspace with his head and shoulder to a sufficient depth to look with the flashlight on either side of the interior entry wall to see the shelter tubes. Shining the flashlight only on the opposite (far) wall of the crawlspace, or on the two side walls would not have revealed shelter tubes. Inasmuch as the sellers of the property had "cleaned up the property" to sell it, and had painted wood framing and walls, wood damage from termites would most likely not have been visible to Linneman when he did his inspection. It took until April, 1995, for the termites to swarm through cracks in the house walls, and Chafe had to peel back or remove wood framing and paint to reveal the damage done by the termites. (Administrative Record; Tr. 149-151.)

15. Because HUD relies on the knowledge and ability of its appraisers to recognize evidence of termites, rather than using experts in the field of pest control to identify evidence of infestation, it takes a certain risk that these non-experts will not be able to identify physical evidence of infestation that would be immediately apparent to an expert. According to Linneman, he knows what evidence indicates the presence of termites and he has sufficient experience to recognize evidence of termite infestation when he sees it. However, had Linneman done a careful and thorough inspection of the crawlspace, he should have realized that there was termite shelter tubing present. Based on his level of experience and the physical evidence that would have been both visible and recognizable to him, I find that Linneman failed in his duty as an appraiser for HUD to record this information and to require a professional termite inspection for the Berkshire property. (Govt. Exhs. 1 and 4; Tr. 139, 151-152, 181.)

#### Recommended Decision

A Limited Denial of Participation (LDP) is a discretionary sanction that is imposed in the best interest of the Government. 24 C.F.R. 24.700. HUD cites irregularities in Linneman's past performance in a HUD program ( 24 C.F.R. S24.705(a)(2)) and his failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations 24 C.F.R. 24.705(a)(4)) as causes for the LDP imposed on him. The standard of proof for an LDP is adequate evidence, defined as information sufficient to support the reasonable belief that a particular act or omission has occurred. 24 C.F.R. S 24.705(a) and 24.105.

Linneman is subject to an LDP because he was a fee appraiser, a position defined as a "principal" at 24 C.F.R. S24.105. An LDP may be imposed on Linneman, based on adequate evidence of a cause for an LDP, even though he is no longer a HUD fee appraiser. The current LDP regulations apply to all persons who have been participants or principals in HUD programs in the past, whether or not they will be again in the future. 24 C.F.R. S 24.110(a).

There is adequate evidence that there were serious irregularities in the way that Linneman appraised the Berkshire property. There is adequate evidence that he failed to thoroughly inspect the crawlspace at the property, or he would have observed

termite shelter tubes in the crawlspace. The insufficiency of the crawlspace inspection was compounded by the misleading, inaccurate, and unprofessional manner in which Linneman filled out the appraisal report so that it stated that there was no crawlspace, when, in fact, there was. Linneman's appraisal report misled the purchasers of the property. It also may have misled Judy Brager in what she should look for at the property when she reviewed Linneman's work. In any event, by the time of Brager's review, it was already too late for HUD to require a termite inspection as a condition of sale that would have protected both BUD and the new owners.

It was Linneman's responsibility to have identified the crawlspace on the appraisal report, and he failed in that regard. He also failed to carry out his responsibility to identify any evidence of pest infestation and to require a termite inspection, if indicated. He failed in both of those regards by not noting physical evidence that was visible when he did his appraisal inspection. As a result of these failures by Linneman, HUD now may have a less valuable property as security for the mortgage it insured, and it may even be liable to the purchasers for the costs of repair. HUD must be able to rely on the professionalism, knowledge and thoroughness of its fee appraisers. For these reasons, the LDP was necessary to protect the best interests of HUD.

The Limited Denial of Participation imposed on Fred Linneman on November 22, 1995, is supported by adequate evidence of serious irregularities in his past performance as a BUD fee appraiser in regard to his appraisal of the property at 518 Berkshire, and the cause for imposition of the LDP has not been resolved. In light of the seriousness of the irregularities, and what ensued as a result of them, it is my recommendation that the sanction remain in effect throughout the period for which it was imposed.

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Jean S. Cooper  
Administrative Judge