

In the Matter of:

ABRAHAM RODRIGUEZ, JR., : HUDBCA No. 95-G-150-D27
Docket No. 95-5064-DB (LDP)

Respondent

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DETERMINATION

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1 The next decision that I will issue, is in
2 The Matter of Abraham Rodriguez. Jr., Respondent,
3 HUDBCA Number 95-G-150-D-27, Docket Number
4 95-5064DB (LPD)

5 DETERMINATION

6 Statement of the case.

7 By letter dated April 17, 1995, Abraham
8 Rodriguez, Jr., Respondent, was notified that a Limited
9 Denial of Participation (LDP) had been imposed upon him
10 by the San Antonio Office of the Department of Housing
11 and Urban Development. The LDP was imposed for a
12 period of one year, covering 57 South Texas counties
13 within the jurisdiction of the HUD San Antonio Office.
14 It applied to Respondent's participation as a principal
15 or participant in all public housing programs of HUD

16 within the geographical region. The Notice of LDP was
17 signed by Luz Solis Day, Director of the Office of
18 Public Housing in HUD's San Antonio Office.

19 The reasons stated for the LDP were that
20 Respondent, as Executive Director of the Laredo Public
21 Housing Authority (LHA) (1) violated the requirements
22 of Federal selection preferences in placing people in
23 low rent housing units; (2) Failed to reveal a
24 conflict of interest to the Board of Commissioners of
25 the LHA when he was present and gave a presentation to
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1 the Board in support of a contract with SER Jobs for
2 Progress of Southwest Texas, Inc.; (3) permitted the
3 use of LHA staff and equipment for non-Authority
4 business during office hours; (4) continued to apply
5 for and approve requests for payments of per diem in
6 violation of Texas law; and (5) ordered that a check
7 for payment of Section 8 benefits be made out to the
8 wife of the LHA maintenance supervisor, which resulted
9 in a false statement being made to HUD under
10 Respondent's direction.

11 Respondent requested the opportunity to
12 contest the LDP at an informal conference. An informal
13 conference was held on May 26, 1995. On June 27, 1995,
14 Luz Solis Day affirmed the imposition of the LDP on
15 Respondent for a full year. Thereafter, Respondent
16 Rodriguez made a timely request for a hearing on the
17 propriety of the LDP. As of the date of the request
18 for the hearing de novo, the only two issues still

19 cited by HUD as the basis for Rodriguez's LDP were the
20 conflict of interest charge and the violation of
21 selection preferences charge. All of the others had
22 been dropped.

23 A de novo hearing was held on October 31
24 through November 2, 1995, in Laredo, Texas, to
25 determine whether there is adequate evidence to support
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1 the LDP, and whether the LDP is necessary. Respondent
2 Rodriguez had filed a motion for summary judgement on
3 the conflict of interest charge, which was denied on
4 October 4, 1995. Respondent and the Government have
5 agreed to the issuance of a bench decision, pursuant to
6 24 Code of Federal Regulation, Section 26.24(d). This
7 bench decision is based on the record considered as a
8 whole, together with the legal arguments and briefs of
9 counsel for the parties.

10 FINDINGS OF FACT

11 1. The Public Housing Authority of the City
12 of Laredo, LHA, is a recipient of Federal financial
13 grants from the U. S. Department of Housing and Urban
14 Development, including CIAP comprehensive funds and the
15 Public Housing Drug Elimination Program, P-H-D-E-P,
16 pronounced "Pee-Dep." The LHA also receives financial
17 assistance from HUD for its Section 8 Program and for
18 its low rent program.

19 2. Abraham Rodriguez, Jr. had been the
20 Executive Director of the LHA for about 15 years, since

21 1981. He is presently on a leave of absence pending
22 resolution of this LDP action. As Executive Director,
23 Rodriguez is responsible for overall operation of the
24 LHA. He is familiar with, and has received training
25 in, the Federal laws, regulations, and program

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1 requirements that apply to programs of the LHA.

2 Rodriguez also acts as Contracting Officer for any
3 contracts, grants, or sub-grants awarded by the LHA.

4 It is Rodriguez's duty to insure that the LHA complies
5 with both program requirements and procurement and
6 conflict of interest requirements imposed by HUD on the
7 LHA.

8 3. Rodriguez is also active in professional
9 organizations and community affairs. He serves on the
10 Board of the Laredo Independent School District, and
11 has a continuing interest in education.

12 4. Rodriguez had been a member of the Board
13 of SER Jobs for Progress of Southwest Texas, Inc.,
14 (SER) since SER was incorporated in 1990. Rodriguez
15 was Chairman of the Board of SER until he resigned
16 after the imposition of the LDP. SER is a non-profit
17 educational corporation that provides educational
18 programs for adults and youth. Rodriguez received no
19 compensation for his work for SER, nor was he
20 reimbursed by SER for his expenses on its behalf.
21 Rodriguez has never been an employee of SER, nor have
22 any of his immediate family members.

23 5. The LHA is within the jurisdiction of the

24 HUD San Antonio Office for purposes of administering
25 and overseeing HUD programs and grants. Luz Solis Day

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1 is the Director of the Office Of Public Housing of the
2 HUD San Antonio Office. As part of a national review
3 of comprehensive grant programs, and upon a request
4 from Day, the LHA was scheduled for an audit. The
5 audit included reviews of the CIAP and PHDEP grant
6 procedures, travel, hiring practices, and tenant
7 placements. The auditor in charge was Michael Hall of
8 the HUD Office of Inspector General in San Antonio.
9 Hall was assisted by Lorenzo Garcia in performing the
10 audit.

11 6. Hall went on site at the LHA in early
12 June, 1994, after reviewing office files in HUD's San
13 Antonio Office, interviewing HUD staff about problems
14 or concerns with the LHA, and reviewing complaints made
15 to HUD about the LHA. The LHA had been reviewed by HUD
16 in 1989 on its tenant selection methods and also on its
17 Section 8 and CLAP programs. Both reviews found
18 deficiencies in the way that the LHA dealt with tenant
19 placement and selection. A 1991 coordinated review by
20 HUD still had unresolved findings concerning the
21 adequacies of the LHA'S waiting list for its housing
22 programs as late as February 1994.

23 Hall focused on certain aspects of tenant
24 placements, while Garcia reviewed the grant programs,

25 including the PHDEP grants. Hall did not focus on the

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1 tenant placement problem until the last week that he
2 was on site at the LHA.

3 Violations of the Requirements of Tenant Placement

4 7. Hall was looking at issues of tenant
5 eligibility in both the low rent and Section 8 programs
6 of the LHA. Carmen Contreras, Occupancy Supervisor at
7 the LHA since 1990, contacted Hall, and gave him a file
8 on Alicia Salinas, an applicant for low rent elderly
9 housing. Contreras told Hall that Salinas was the aunt
10 of Rumaldita Dovalina, Administrative Assistant to
11 Rodriguez, and that she had been housed in violation of
12 HUD and LHA tenant placement requirements. This is Mr.
13 Hall's recollection. Ms. Contreras testified that she
14 found out about the relationship between Ms. Dovalina
15 and Salinas from Mr. Hall. I need not resolve how
16 Contreras found out about the relationship.

17 8. Hall took the current tenant master list
18 for the LHA and ran a statistical sample from the list.
19 He looked at the first ten files in the statistical
20 sample. He found notations in two of these ten files
21 that tenants were housed per instructions from Abraham
22 Rodriguez.

23 9. Hall interviewed Carmen Contreras to
24 determine if it was usual for management of the LHA to
25 request that certain people be housed. Hall

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1 characterized Contreras' response as hesitant, but she

2 did admit to him that it did happen. Hall asked
3 Contreras to give him a list of applicants that she was
4 directed to house without regard to HUD's tenant
5 placement requirements. Contreras also gave Hall the
6 files applicable to these alleged "skip overs" in
7 tenant placement.

8 Hall considered those files that contained
9 notations in them of Contreras being told to house
10 certain applicants, and then counted on the waiting
11 list how many applicants had been "skipped over" to
12 place the applicants that were housed out of turn.

13 10. Hall concluded that, of the files given
14 to him by Contreras, eleven were examples of tenant
15 placements in violation of Federal preferences and HUD
16 tenant placement requirements. He had initially viewed
17 Contreras' charges with skepticism, but he decided that
18 her charges were borne out by a comparison to the
19 waiting list. Hall did not interview the persons
20 housed out of turn. He also did not interview
21 Rodriguez, despite the fact that in the files that he
22 relied upon he found notes written by Contreras that
23 Rodriguez has either directed her to house the
24 applicant, or that it was okay with Rodriguez for
25 Contreras to place the applicant in housing.

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1 11. Hall recommended to Luz Day that an LDP
2 be imposed on Rodriguez, in part because of tenant
3 placements which Hall believed had been directed by

4 Rodriguez in violation of HUD and LHA tenant placement
5 requirements. Eight tenant placements were included as
6 the basis of the LDP of Rodriguez. These were for
7 Jesus Gaona, Raul Sanchez, Armando Molina, Victor
8 Hinojosa, Juan Gonzalez, Patricia Trevino, Maximo
9 Benavides, and Virginia Jarero.

10 12. I find that all of these individuals were
11 placed in low rent housing in violation of HUD and LHA
12 tenant placement requirements. The application for
13 housing for Jesus Gaona shows no Federal preference
14 that would entitle Gaona to preferred treatment on the
15 waiting list. Gaona's name was never placed on the
16 waiting list at all, and he was placed in housing on
17 the same day that he applied. His application was
18 taken by Dora Espinosa, who filled it out but did not
19 sign it. Espinosa works under Contreras. Contreras
20 signed Espinosa's name for her on Gaona's application.
21 Contreras also wrote on the application, "Okay, Mr. Rod
22 to house him". Gaona was certain that Contreras, not
23 Espinosa, had taken his application. Gaona had worked
24 for the LHA as a carpenter, and he had asked Rodriguez
25 if housing were available. Rodriguez told Gaona to

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1 fill out an application, according to Gaona, but Gaona
2 denied asking for Rodriguez's help in getting housing,
3 or that Rodriguez had made him any promises. Gaona
4 believed that he had waited eight to nine months for a
5 housing assignment, but I credit the application form,
6 which shows a same day placement. Gaona was assigned

7 housing by Contreras, and Contreras offered no
8 explanation for why Gaona was not placed on the waiting
9 list, or why he was placed in housing the same day that
10 he applied, other than her written note concerning
11 Rodriguez's, "Okay to house".

12 13. Contreras claimed that she made notes
13 about placements in files when those placements were
14 directed in violation of tenant placement requirements,
15 or when Rodriguez, "okayed" a placement. Contreras
16 further stated that she made these notations at the
17 time when the directive or okay was received to protect
18 herself because she knew that such placements were
19 improper. It was such notes that had caused Michael
20 Hall to go into this area at the end of the audit of
21 the LHA, and Hall found Contreras' notes, without
22 Contreras' knowledge or direction, in two files in the
23 statistical example over which Contreras had no
24 control.

25 I find that Contreras was placing these

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1 notations in files for the purpose she stated, and
2 that it is more likely than not that she did not place
3 them in files to frame Abraham Rodriguez.

4 Similar notations by Contreras, either
5 written on the applications themselves, or attached by
6 post-it notes, are found in the files for Molina, Juan
7 Gonzalez, Patricia Trevino, Victor Hinojosa, Maximo
8 Benavides, and Virginia Jarero. The notations are as
9 cryptic and brief as "per Rod", to an extensive note in

10 the file for Gonzalez that reads, "talked to Mr.
11 Rodriguez, and asked him if he approved in helping Juan
12 Manual Gonzalez. He said to help him."

13 14. All of the eight applicants who were
14 housed in violation of HUD and LHA tenant requirements
15 because of skip-overs of the waiting list, deny any
16 knowledge of wrongdoing or any knowledge of favoritism
17 extended to them by Rodriguez or anyone else at the
18 LHA. Some of them waited one to two years before they
19 were placed in housing, and can see no special
20 treatment. Others were housed in a matter of days or
21 weeks after they applied, despite the long waiting list
22 for every size unit, with many applicants on the list
23 with Federal preferences.

24 15. Rodriguez denied that he ever directed
25 Contreras to house any applicant in violation of LHA

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1 and HUD tenant placement requirements. He may have
2 asked Contreras to help people, but he never meant that
3 to be a directive or an excuse to avoid restrictions of
4 the waiting list. He denies that Contreras ever
5 checked with him whether it was okay to house certain
6 applicants, or whether he knew that any applicant was
7 being housed without regard to the waiting list, or HUD
8 or LHA tenant placement requirements. Rodriguez
9 believes that Contreras put the notations on certain
10 files to get revenge on him for a low job performance
11 rating that he gave her in 1993.

12 Belia Flores, who assisted Contreras in
13 taking applications occasionally, denied any knowledge
14 of the note that Contreras had placed in the Molina
15 file that Flores had told Contreras that Rodriguez
16 okayed the placement. In that file, a local judge was
17 a relative of the applicant, and had written a letter
18 to Rodriguez to find housing. I make no finding on
19 whether Flores did tell Contreras that, or if she
20 forgot, or is protecting herself. I need not make such
21 a finding.

22 Although Contreras was very upset about her
23 1993 performance appraisal, I cannot find that this
24 resulted in her placing false notations about Rodriguez
25 in application files to get revenge on him. I find

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1 that Contreras was making contemporaneous recordations
2 of what she believed Rodriguez was telling her, whether
3 he intended his statements to Contreras to be
4 interpreted that way or not.

5 Contreras was afraid of losing her job, and
6 wanted to please Rodriguez and the Board of
7 Commissioners. Contreras volunteered to place an
8 applicant the next day in a vacancy in elderly housing
9 when approached by a Board member, Roxanna Guerra.
10 Contreras interpreted even vaguely worded requests to
11 help as directives to do something, even if it meant
12 violating LILA and HUD placement requirements, because
13 she was desperate to keep her job in the face of
14 mounting criticism and unhappiness with her general

15 performance.

16 16. Rodriguez wrote a note to Contreras in
17 connection with the application of Victor Hinojosa. It
18 states, "Carmen, get a unit assigned anywhere for this
19 family as soon as possible. A. Rodriguez. Victor
20 Hinojosa, 3 or 4 bedroom." Rodriguez does not deny
21 writing the note to Contreras. He denies that he meant
22 for Contreras to take it literally. The Hinojosa
23 family was housed six weeks after they made their
24 application for housing. Contreras housed them in a
25 four bedroom unit by skipping over many other

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1 applicants on the waiting list for such a unit.

2 Contreras also noted on the Hinojosa application that,
3 "Applicant lives in Mexico and would like to move to
4 U.S.A.", although the LHA is not supposed to place
5 applicants in LHA housing that do not live in Laredo.

6 Rodriguez denied that he ever saw or
7 referred to the waiting list for low rent housing when
8 he wrote the note about the Hinojosas to Contreras, or
9 when he may have verbally asked her to help applicants.

10 I find that even if Rodriguez had not actually seen the
11 waiting list, he knew generally where vacancies were,
12 how many there were in each LHA property, and that the
13 waiting list was long for all sizes of units, because
14 he had to make reports on these matters to the Board of
15 Commissioners of the LHA on a monthly basis.

16 Rodriguez also had to sign the leases and
17 contracts when applicants were housed, and he had

18 reason to know that Contreras was placing at least some
19 applicants he had asked her to help very rapidly after
20 they had applied for housing, even if he did not intend
21 that Contreras ignore the waiting list. Letters from
22 the Mayor of Laredo, a local judge, or an LHA Board
23 member also were not to be treated as directives to
24 place an applicant in violation of program
25 requirements, and yet they were found in many of the

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1 files of persons who were housed out of turn.

2 If the waiting list were being properly
3 utilized in tenant placement, Contreras would not have
4 been able to help anyone, other than by putting their
5 name on the waiting list in proper sequence, by
6 recording any Federal preferences to which they were
7 entitled, and by offering them a unit of a proper size
8 when one became available. It was her job to do this,
9 and any deviation from this process was in violation of
10 LHA and HUD tenant placement requirements. A reference
11 or request for help from Rodriguez, any other LHA
12 employee, or a relative, or a Board member, or an
13 influential member of the community could not, and
14 should not, have been taken into any consideration at
15 all in housing applicants.

16 Despite these requirements, letters of
17 referral from the Mayor, from a local judge, from LHA
18 Board members, or friends or relatives did result in
19 faster placements of applicants in LHA low rent

20 housing. Contreras housed people, but Rodriguez signed
21 the contracts and leases that made the housing
22 official.

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1 CONFLICT OF INTEREST

2 17. The PHDEP program is governed by HUD
3 regulations that require a grantee to insure that grant
4 funds are administered in accordance with applicable
5 laws and regulations, including 24 CFR Section 85.36.
6 That regulation provides, in pertinent part, at Section
7 85.36 (b) (3),: " No employee, officer or agent of the
8 grantee or subgrantee shall participate in selection,
9 or in the award or administration of a contract
10 supported by Federal funds if a conflict of interest,
11 real or apparent, would be involved. Such a conflict
12 would arise when: (i) The employee, officer, or agent
13 of an ... (iv) organization which employs, or is about
14 to employ, any of the above, has a financial or other
15 interest in the firm selected for award."

16 18. The LHA Authority Policies and
17 Procedures in effect since 1991 states that 24 CFR,
18 Section 85.36 applies to all LHA officials. It forbids
19 the participation in the selection, award, or
20 administration of a contract supported by Federal
21 funds, if a conflict of interest, real or apparent
22 would be involved. The conflict is defined as

23 applicable to a "financial or other interest" in the
24 firm selected for award in the LHA Policy Manual.

25 19. The LHA entered into an Inter-agency
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1 Agreement with SER on September 1, 1991, for literacy,
2 educational, and training programs to be run by SER for
3 the benefit of LHA residents. Rodriguez signed the
4 Agreement on behalf of the LHA. He was a member of the
5 Board of SER at the time that he signed the Agreement.
6 Little evidence was offered about the circumstances of
7 the 1991 Agreement, but based upon the OIG's audit
8 report dated June 30, 1995, I find that it was awarded
9 in a sole-source, not a competitive, procurement.
10 Sole-source procurements are permissible under certain
11 circumstances outlined in the LHA's Policies and
12 Procedures Manual procurement policy chapter, including
13 that the item or service is available only from a
14 single source. Laredo Junior College had offered many
15 of the agreement services at no charge to the LHA in a
16 letter dated August 5, 1991.

17 In the LHA/SER Agreement, services were paid
18 for with HUD grant funds which exceeded \$25,000. It is
19 unknown if HUD approved the award in advance, or
20 whether there was a written justification. There is
21 too little evidence in the record to make a finding of
22 fact on this 1991 procurement.

23 20. In July, 1993, the LHA received a HUD
24 grant of \$250,000 under PHDEP for essentially the same
25 type educational services as SER rendered under the

1 1991 Agreement. Francisco Gonzalez was the LHA Drug
2 Elimination Program Coordinator who had primary
3 responsibility for the administration of the PHDEP
4 grant. Initially, Gonzalez explored whether the LHA
5 could provide GED educational programs for Lila
6 residents on its own. He contacted many organizations,
7 including SER, to explore that possibility in 1993. By
8 1994, Gonzalez concluded that an outside source would
9 have to provide the educational services under the
10 grant. According to Gonzalez, Rodriguez asked Gonzalez
11 to set up a meeting between SER and the LHA to discuss
12 grant services that could be provided by SER.

13 Gonzalez recalled that he attended the
14 February 17, 1994 meeting, together with Rodriguez and
15 Laura Morgan for the LHA. The meeting was held at SER.
16 SER Executive Director, Efrain Sanchez, attended for
17 SER, as did the SER Education Director. Rodriguez
18 denies that he attended the meeting, or that he even
19 told Gonzalez to schedule it. Sanchez also did not
20 recall Rodriguez at the meeting.

21 21. I credit the recollection of Francisco
22 Gonzalez that Rodriguez asked him to schedule the
23 meeting with SER, and that he also attended it.
24 Gonzalez has no reason to be less than candid about
25 that fact, and both Rodriguez and Sanchez had motive to

1 not recall Rodriguez's actions, because it would call

2 into question whether Rodriguez participated improperly
3 in a procurement process. There was no procurement in
4 process at the time of the February meeting. The
5 purpose of the meeting was to determine what services
6 might be available and most useful when a procurement
7 was conducted. There was reference made at the meeting
8 to a written agreement, as noted in Gonzalez's personal
9 calendar.

10 22. On or after March 30, 1994, Efrain
11 Sanchez delivered to Gonzalez a document entitled
12 Agreement for Educational Services to LHA Residents.
13 It was signed by Sanchez and had a blank for Rodriguez
14 to sign in behalf of the LHA. Gonzalez presented the
15 document to Rodriguez for his signature. Gonzalez was
16 unaware of procurement requirements that the grant
17 award would have to be awarded in a competitive
18 procurement. Rodriguez told Gonzalez that an RFP, or
19 Request for Proposal, was needed, and that Rodriguez
20 could not sign the contract sent over by Sanchez.

21 23. Gonzalez and Laura Morgan wrote up an
22 RFP, and advertised it in the local paper. A pre-bid
23 conference was held by Gonzalez to answer questions
24 about the RFP. According to Gonzalez, Rodriguez
25 reminded him to call SER to see if it was going to send

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1 a representative to that meeting. Gonzalez called SER.
2 Sanchez attended the pre-bid conference for SER. He
3 was the only attendee.

4 24. In 1993, the LHA had received informal

5 written offers of free assistance and services that
6 would provide some, if not all, of the RFP services.
7 Those informal offers pre-dated the RFP. They were
8 from the Laredo Junior College and from the Laredo
9 Independent School District. When Gonzalez mentioned
10 the Junior College letter to Rodriguez, Rodriguez told
11 him that he didn't know how good their services would
12 be. Gonzalez interpreted this comment to mean that
13 Rodriguez did not want him to pursue the Junior College
14 as a potential source of educational services.
15 Gonzalez did not contact either the Junior College or
16 the School District to try and interest them in making
17 a proposal in response to the RFP.

18 25. The only proposal received in response
19 to the RFP was from SER. After the SER proposal was
20 received, but before the contract was awarded, Gonzalez
21 asked SER to start hiring personnel and buying books.
22 Efrain Sanchez refused to do so in advance of a
23 contract award, and he complained to Rodriguez about
24 Gonzalez's request. At no time was Gonzalez ever aware
25 of Rodriguez's connection with SER.

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1 26. Shortly before the Board of
2 Commissioners' meeting of the LHA scheduled for
3 presentation and vote on SER's contract proposal,
4 Rodriguez contacted the General Counsel of the LHA,
5 Ricardo de Anda, to seek his legal advice on any
6 conflict of interest that Rodriguez would have in
7 presenting the SER proposal to the Board. De Anda gave

8 his opinion that Rodriguez had no disqualifying
9 conflict of interest because he received no pay or
10 reimbursement from SER for his duties as SER's Board
11 Chairman, and that he also had no legal duty under
12 Texas law to reveal to the Board his relationship to
13 SER. Rodriguez followed de Anda's advice.

14 27. At the Board meeting, Rodriguez
15 presented the SER proposal, but made no recommendation
16 on it. Questions on the proposal were answered by
17 Gonzalez and Efrain Sanchez. There were three Board
18 members present, one of whom was a salaried employee of
19 SER, a fact known to both de Anda and Rodriguez.
20 Rodriguez is Secretary to the Board and cannot vote.
21 All other Board members voted, and approved the SER
22 proposal. No references were made to the possibility
23 of obtaining free services, although not identical,
24 from the Junior College or from the School District.

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1 28. The contract was awarded to SER, and an
2 agreement was signed on November 1, 1994, by Rodriguez
3 for the LHA and Sanchez for SER.

4 29. SER was paid for services rendered under
5 the 1994 agreement at least up to January 1995, using
6 grant funds from HUD. The grant will expire at the end
7 of 1995.

8 30. On September 7, 1995, the LHA agreed to
9 reimburse HUD approximately \$43,161 for grant monies
10 from PHDEP and CLAP that it had spent on the 1991 and

11 1994 agreements with SER. By that time, Rodriguez was
12 already on leave from the LHA because of the LDP
13 imposed upon him.

14 31. Based on the subsequent letter from the
15 Junior College, which is now called the Community
16 College, I find that they were not willing or able to
17 offer services comparable to those of SER when the
18 services would have to be performed. The Laredo School
19 Board was limited by law in what it could offer, and it
20 could only offer services to individuals between the
21 ages of 17 and 21, which would not have served the
22 purposes of the grant.

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LEGAL ISSUES PRESENTED

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3 (1) Whether Abraham Rodriguez directed the
4 LHA's staff to house certain applicants by ignoring
5 preferences, and date and time of application, in
6 violation of the LHA tenant selection policies and
7 preference system, and contrary to HUD regulations, as
8 charged in the Government's complaint; and

9 (2) Whether Rodriguez participated in the
10 selection or award of the SER contracts when he
11 knowingly had an interest in said contracts, as charged
12 in the Government's complaint.

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DISCUSSION

The imposition of a Limited Denial of Participation is controlled by 24CFR, Sub-Part G. An LDP, like a debarment or suspension, is only to be imposed to assure the Government that it is doing business with responsible participants. Responsibility is a term of art, connoting both the ability to perform acceptably and the integrity of the participant. No sanction may be imposed for purposes of punishment, including an LDP. Only participants and principals, as defined in 24 CFR, Section 24.105 (in) and (p) may be subject to an LDP.

Rodriguez, as Executive Director of the LHA,

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is a principal, as defined in 24 CFR, Section 24.105(p). He is subject to the sanction of an LDP if grounds for the LDP are established by adequate evidence, and the LDP is necessary to protect the Government and the public interest. An LDP is a limited sanction, both as to duration and scope. The issue for me to determine is whether Rodriguez's LDP should have been imposed at all, and whether it should have been terminated or reduced after the informal conference.

Adequate evidence is a minimal standard of proof, and it is all that is required to support an LDP. It is defined in the regulations applicable to an LDP as "information sufficient to support the reasonable belief that a particular act or admission

16 had occurred." 24 CFR, Section, 24.105(a).

17 HUD charges, in essence, that Rodriguez
18 violated HUD regulations and procedures in the
19 performance of obligations incurred pursuant to a grant
20 of financial assistance, and that he materially
21 violated program requirements and regulatory provisions
22 applicable to a public agreement or transaction, both
23 of which are grounds for an LDP pursuant to 24 CFR,
24 Section 24.705(a) (4) and (a)(8). However, in
25 considering this LDP, I must look at the precise nature

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1 of the charges still outstanding to support the LDP.

2 I conclude that Rodriguez did direct Carmen
3 Contreras to house Victor Hinojosa as soon as possible
4 in writing, and there would have been no reason at all
5 to give such a directive if it were not for the purpose
6 of having Contreras act outside the strictures of the
7 requirements and preferences for tenant housing. I
8 cannot give Rodriguez the benefit of the doubt that he
9 did not mean for Contreras to carry out his directive
10 in this fashion, simply because he did not also write
11 down that she should ignore the waiting list in so
12 doing. That meaning was implicit in the written
13 directive because there was no reason for Rodriguez to
14 have written the note at all if he intended merely that
15 Contreras house the Hinojosas when their name came up
16 on the waiting list. This transaction is clear to me.
17 I do not find it ambiguous. Contreras did what she was

18 directed by Rodriguez to do in his written note to her.

19 Contreras read a lot of meaning into oral
20 communications from Rodriguez, all of which he denies,
21 that are less clear. I need not conclude that
22 Rodriguez directed, or suggested, or implied to
23 Contreras that she house applicants in violation of LHA
24 and HUD program requirements based on oral directives,
25 because the Hinojosa situation is sufficient on it's

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1 own to support the LDP charge. I do not construe an
2 oral "Okay" to be tantamount to a directive, in any
3 event, and therefore, some of the transactions relied
4 upon by the Government do not meet the level of the
5 directive cited in the complaint. The practice of
6 placing applicants in housing on a "who you know
7 basis", which clearly happened at the LHA, is
8 inexcusable, and erodes public confidence in the low
9 rent housing program. I hold Abraham Rodriguez
10 responsible, at least in part, for this deplorable
11 practice.

12 The conflict of interest charge is less clear
13 cut. Under Texas law, a conflict, to be revealed or
14 disqualifying, must be a pecuniary one. Rodriguez did
15 not have a pecuniary conflict of interest, in that he
16 was not, and could not be, financially enriched by the
17 award of the LHA contracts to SER. However, the
18 conflict of interest, forbidden by 24 CFR, Section
19 85.36(b) (3) is not merely a financial one. It applies
20 to appearances of conflicts, as well as actual

21 conflicts, financial or otherwise.

22 I find that Rodriguez had an actual conflict
23 of interest, although not monetary, in the award of LHA
24 contracts to SER. And I further find that this
25 conflict existed simply because his loyalty to both

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1 institutions, plus the public, could all not be
2 satisfied in a neutral fashion. Under the Federal
3 regulation applicable in this case, to the extent that
4 it is stricter than Texas law, Rodriguez's interest in
5 the continuing success of SER was sufficient to set up
6 that conflict, so long as SER's continued success,
7 which even as a non-profit institution it did have
8 expenses to cover, was dependent in any way on LHA
9 contract awards in which Rodriguez would have had any
10 role.

11 As Contracting Officer, by definition, he
12 administered these contracts. There is at least an
13 appearance of conflict of interest, short of him
14 announcing his affiliation with SER and his removal of
15 himself as Contracting Officer, that SER would be
16 treated more gently than another grantee with no
17 connection with Rodriguez. The public cannot feel
18 comfortable with such a close relationship, even if
19 there is no personal enrichment.

20 Rodriguez received poor legal advice from de
21 Anda. It was responsible for Rodriguez to have sought
22 the advice from de Anda, however, because de Anda is

23 the LHA General Counsel, not Rodriguez's personal
24 lawyer. De Anda paid little attention to the wording
25 of 24CFR, Section 85.36(b) (3). His advice, unbeknownst

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1 to Rodriguez, was based on Texas law only. While I
2 think Rodriguez showed poor judgement in implementing
3 de Anda's advice as to whether he should reveal his
4 association with SER, I cannot find that Rodriguez
5 knowingly had a conflict of interest when he
6 participated in the Board meeting when the SER proposal
7 was presented, or before that, when he encouraged
8 Gonzalez to contact SER before the procurement was in
9 progress, or even when he encouraged Gonzalez to
10 inquire whether SER would be attending the prebid
11 meeting. These, again, might be exercises of poor
12 judgement, and illustrate Rodriguez's divided
13 loyalties, even if the LHA tenants would be benefited
14 from the SER services.

15 Finally, because I place great weight on the
16 fact that the Junior College did not submit a proposal
17 for consideration, and subsequently wrote that it could
18 not provide the services which SER was providing, I
19 cannot not find that there was a reasonable alternative
20 to the SER contract which would have been as convenient
21 for LHA residents to avail themselves of, or which had
22 as great a chance of success. Also, there was
23 testimony that the Junior College was prohibited from
24 giving GED tests because of some violations it
25 committed, and this would have severely limited the

1 services of the College in regard to the grant
2 services. I consider these mitigating circumstances of
3 Rodriguez's conflict of interest, which was not an
4 intentional conflict of interest, which was the basis
5 of the LDP.

6 Therefore, I find that the Government has
7 carried its burden as to imposition of the LDP on the
8 first charge, which means that the LDP was properly
9 imposed. Furthermore, I consider it of real
10 seriousness. It is not a mere technicality.
11 Therefore, the LDP shall remain in place until December
12 31, 1995, so that Rodriguez can re-think how he
13 communicates with his staff, and how he sees his duty
14 to help the public, so that there will no longer be
15 improper placements of applicants in low rent housing.
16 Because Rodriguez wanted to help people, he
17 communicated his wishes to help in a way that could
18 only be interpreted as favoritism and avoidance of
19 program requirements designed to promote fairness and
20 protection from influence. I have considered his
21 entire career in cutting short this sanction, and
22 because I could only make a clear finding on the one
23 transaction, the Hinojosa transaction.

24 I can only hope that in the future that there
25 will truly be evenhandedness, fairness, and

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1 impartiality in the way that housing assignments are
2 made at the Laredo Housing Authority, and that there

3 will not ever be again even an appearance of a conflict
4 of interest when grants and contracts are awarded.

5 We will be in adjournment.

6 (Whereupon, the hearing was concluded at 1:29
7 p.m., November 3, 1995.)

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