

a respondent upon whom an LDP has been imposed. 24 C.F.R. § 24.1130 (b) (2004).

Statement of the Case

By letter dated March 7, 2005, Kathleen A. Naymola (“Naymola”), the Director of Community Planning and Development at HUD’s Newark Field Office and Edward T. DePaula (“DePaula”), Director, Office of Public Housing, Newark Field Office, imposed an LDP on Jackson for a period of twelve months. The letter stated that Jackson was subject to the LDP because while she was director of the City of Paterson, New Jersey Department of Community Development (“PDCD”), the PDCD “failed to comply with HUD regulations and contractual provisions governing the Section 8 Housing Voucher Program, the HOME Program and the Community Development Block Grant Program.” Specifically, HUD’s notice of the LDP advised Jackson that in “2003 and 2004 HUD performed several reviews ... and found ... approximately 35 material violations of HUD regulations.” The letter notifying Jackson of the notice also advised her that the PDCD “failed to provide HUD with timely and satisfactory responses to the reviews... [and] failed to prepare an acceptable corrective plan addressing numerous regulatory violations disclosed in a review performed by HUD’s Office of Public Housing.” HUD’s notice of LDP cited 24 C.F.R. §§ 1110 (a) (2), (4), (8), (9) (2004) as cause for the LDP.

The hearing of this matter was held in Paterson, New Jersey on July 11-12, 2005. The following findings of fact and recommended decision are based upon the official administrative record (“AR”), sworn testimony, exhibits admitted as evidence at the hearing, as well as the briefs submitted by the parties. Both parties submitted post-hearing briefs, which were received by the Board on September 12, 2005.

Findings of Fact

1. On July 1, 2002, Mayor Jose Torres (“Mayor Torres”) of the City of Paterson, New Jersey appointed Jackson director of the PDCD. (Tr. 262) Her responsibilities included “oversee[ing] the entire department ... manag[ing] staff ... provid[ing] assistance for the ongoing projects, and ... offer[ing] training and support for the staff, and report[ing] to the Mayor of the City of Paterson and the City Council.” (Tr. 264-265) The City of Paterson received funding in the form of grants from HUD for the PDCD. (Tr. 262) As director, Jackson could make, alter, and enforce individual work assignments within the PDCD. (Tr. 268) The seven divisions within the PDCD included “Administration, Economic Development, Housing Division, Section 8 division, Community Improvements, Office of Cultural Affairs, Planning and Zoning, which also incorporates the Board of Adjustment.” (Tr. 268) The number of PDCD employees totaled

between 110 and 115. *Id.* Each of the divisions had a division director who was appointed by the Mayor of the City of Paterson subject to the advice and consent of the Paterson City Council. (Tr. 276) Jackson served in that position during all times relevant to this matter until placed on administrative leave on December 22, 2004 for reasons unrelated to HUD's imposition of the LDP. (Tr. 279-280) The record does not reveal that Jackson was removed from her position because of violations of HUD regulations cited in the notice of LDP.

2. Shortly before Jackson's appointment, the Section 8 division for the PDCD had been the subject of a HUD Management Review during March and April of 2002, and by letter dated June 3, 2002, Carmen Valenti ("Valenti"), Director of Public Housing for HUD's New Jersey Office, advised the PDCD of HUD's findings. (Exh. G-1) Valenti's letter defined a finding as a "serious violation of law, regulation or administrative practice" *Id.* HUD's findings included: (1) discrepancies in participant's files; (2) the lack of an updated utility allowance schedule; (3) the leasing of allocated rental units at a rate of 86%, which was below the minimum of rate of 95%; (4) the lack of an updated administrative plan; (5) the failure to provide all required materials in briefing packets for program participants; (6) the failure to maintain the minimal 85% reporting rate for HUD's Multifamily Tenant Characteristic System ("MTCS"); and (7) a Section 8 Management Assessment Program ("SEMAP") score of 64%. (Exhs., G-1, G-2) A 60% SEMAP score was the minimal passing score. (Tr. 162)

3. Jackson's appointment as director of the PDCD coincided with the departure of various technical staff members. (Tr. 286) Gary Melchiano ("Melchiano"), the present acting director of the PDCD, testified that the loss of personnel included "two planners ... the director of housing ... the director of the finance department for the [Community Development Block Grant] program, [and] program monitors." (Tr. 458) Jackson did not have the authority to hire and remove PDCD employees. (Tr. 283, 287) Jackson testified, "[t]here were delays in remedying the situation or providing solutions or even hiring technical staff, but as soon as the problem was cited, we tried to deal with it." (Tr. 286)

4. Jackson was aware of the findings of HUD's 2002 monitoring of the PDCD's Section 8 program and understood that she was responsible for overseeing the PDCD's response. (Tr. 277) Jackson wanted to immediately address HUD's findings, but due to the lack of technical staff, she "couldn't deal with the technical aspects of the corrective action." (Tr. 285, 288) Adele Hicks ("Hicks") was the director of the Section 8 Program when Jackson became director of the PDCD. *Id.* According to Jackson, Hicks' ability to respond to HUD's 2002 review was "difficult ... because she did not have the cooperation of staff that she needed, nor did she have the staff trained enough to do the work properly." (Tr. 296) Joyce Hunt ("Hunt"), the PDCD's supervisor for human

resources, corroborated Jackson's testimony as to Hicks' difficulties in managing certain Section 8 division staff members, but Hunt also explained that the situation improved as a result of the departure of those employees by termination or resignation. (Tr. 484-485) The Section 8 division had approximately 20 employees. (Tr. 269)

5. Jackson described conditions in the Section 8 division in which "the files were just everywhere on the floor, and we decided to spend some time doing quality control of the files" (Tr. 290-291) Jackson characterized some of the work she and her staff performed as not technical, but rather, the expending of "[man hours]. ... just trying to reorganize the office and reorganize files and develop these kind of things like briefing packages" (Tr. 291)

6. As to the overall condition of the PDCD before Jackson's appointment, Melchiano testified that there "were problems in Community Development ... prior to her coming onboard. ... to think as soon as she came onboard, everything went wrong is unfair to her. ... that all of these problems in housing or staffing developed overnight, I think, is a misconception." (Tr. 387-388)

7. Jackson sought to obtain technical assistance for training staff "in all areas of Section 8 ... regulations, family, self sufficiency, reasonable rents." (Tr. 290) Jackson conducted "training. ... tried to update the computer system. ... [and] ordered new supplies." (Tr. 460) Barbara McLennon ("McLennon"), Housing Supervisor for the PDCD, credits Jackson with having "boosted morale to the point where we wanted to come to work." Id.

8. After Jackson's appointment, she began discussions with Janice Talley ("Talley"), a licensed planner with H2M Associates ("H2M") who was then working on the Urban Enterprise Zone Program for the City of Paterson, to discuss the PDCD's loss of directors and planners and how H2M could assist the PDCD. (Tr. 505-506) Jackson's authority to obtain outside technical assistance was limited in that contracting with consultants required the approval of the mayor and expenditures over \$2,500 required city council approval. (Tr. 305)

9. Additional clerical personnel and caseworkers for the Section 8 program were hired in early 2003. (Tr. 499)

10. By letter dated May 15, 2003, Naymola advised Jackson of the results of HUD's monitoring of the Community Development Block Grant ("CBDG") program for the City of Paterson, NJ. (AR, Tab J) HUD's findings were as follows: (1) lack of documentation of the public benefit requirements for special economic development activities; (2) lack of procedures for determining the percentage of low and moderate income persons in activity service areas; (3)

lack of documentation for national objective compliance for demolition projects; (4) lack of documentation for standards for determining affordable rents, the adopting of such rents, and making such information public; (5) lack of procedures to require that at least 51% of the jobs created by assisted businesses were made available to or are held by low and moderate income persons; (6) lack of records for the receipt and expenditure of program income from grant program transactions; (7) lack of monitoring of subrecipients' activities; (8) lack of a detailed description of work in agreements with subrecipients; and (9) lack of records of environmental review of projects. Id.

11. By letter dated June 26, 2003, Valenti sent Jackson the results of HUD's May 2003 "Rental Integrity Monitoring (RIM) Review of the PDCD's Section 8 Housing Choice Voucher Program. (AR, Tab A) The RIM review listed the following five findings: (1) the PDCD had no payment standard schedule for each Fair Market Rent (FMR) area in its jurisdiction; (2) the PDCD had not obtained written third party verification of income of applicants and participants in the Section 8 program; (3) the PDCD did not have an updated administrative plan; (4) the PDCD had not maintained the minimum MTCS reporting rate of 85%; and (5) evidence of citizenship or eligible immigration status from applicants or participants in the Section 8 program was not available. Id. Jackson directed Hicks to respond to HUD's RIM review. (Exh., R-25, Tr. 299)

12. By letter dated August 14, 2003, which was signed by Jackson, the PDCD responded to Naymola's May 15, 2003 letter regarding HUD's monitoring of the CDBG program. (Exh., R-1, Tr. 48-51) The response addressed each finding with proposed corrective actions. Id. Jackson's letter concluded with the following:

The Department has undergone substantial changes since the May monitoring [v]isit. Essential staff has be[en] hired to assist with the conditions cited in the report. Unfortunately, this [a]dministration inherited the substantial problems and the task to remedy the situation is difficult. The consultants retained to prepare critical reports served as trainers and support personnel. A Human Resource person has been hired to develop on going [sic] staff development training sessions for ALL CDBG staff members. Finally, ALL CDBG STAFF MEMBERS participated in staff training to become familiar with the CDBG program, rules, and regulations. It is the City's intent to ensure the CDBG program is in compliance with all HUD regulations. (capitalization and emphasis in original)

Id. Janice Talley of H2M was involved in preparing the PDCD's response. (Tr. 507, 512) On October 7, 2003, Jackson sent HUD a second letter related to HUD's May 2003 monitoring of the PDCD's CDBG program. (Exh., R-8)

13. By letter dated October 27, 2003, DePaula acknowledged receipt of Jackson's response to HUD's May 2003 RIM review. (AR, Tab C, Tr. 139) DePaula's letter advised Jackson that three of the five findings were resolved. Id. The two findings that remained open were the lack of an administrative plan, finding number three, and MTCS reporting, finding number four. Id.

14. Hicks resigned as director of the Section 8 program in February of 2004. (Exh. R-25, Tr. 282) Mayor Torres appointed John Carluccio ("Carluccio") to replace Hicks in April of 2004. (Tr. 283)

15. By March of 2004, Jackson and her staff had developed a plan for reorganization of the Section 8 division, but she conceded that discrepancies still existed with the files. (Tr. 290-291, 294) Jackson had attempted since her appointment to resolve problems with the files by expending "manhours," but she then determined "[w]e did need technical help ... we needed to just stop doing what we were doing and reorganize the entire division." (Tr. 291-292)

16. Jackson learned from HUD in March 2004 that the MTCS computer file data had not been updated since 2001. (Exh., R-25, Tr. 292-294, 321) HUD had directed that the PDCD bring MTCS reporting up to date within 30 days. (Exhs., R-13, R-20) She concluded that the problem with MTCS reporting was more than a failure to report at the minimum rate of 85%, and that the problem was the lack of any reporting at all. (Tr. 318-319) Jackson then sought to create a data division as part of the reorganization plan. (Tr. 314)

17. The City of Paterson used an existing purchase order with RDE Support Systems ("RDE") to update MTCS files. (Exh. R-21, Tr. 294) Jackson testified that "we had some reserve funds ... and so I called RDE Support Systems in to bring our MTCS system up to date." (Tr. 293-294) In July of 2004, RDE completed the updating of files for the period from 2001 through 2003. (Exh., R-21).

18. The City Council of Paterson, by a resolution dated July 15, 2004, authorized the city to enter into consulting contracts with H2M and Nelrod Company ("Nelrod"). (Exh., R-15) H2M then began work on updating the administrative plan. (Exh., R-21) Nelrod assisted the PDCD in establishing criteria for rent reasonableness. (Tr. 393-396) Jackson had recommended the selection of H2M. (Tr. 400, 407-408) Jackson also had recommended that the City of Paterson contract with Paulhus and Associates, a nationally recognized

firm, to address Section 8 issues, but that firm was not selected. (Tr. 298, 486-487)

19. Shortly before the City of Paterson awarded consulting contracts to H2M and Nelrod, HUD conducted two reviews of the PDCD's Section 8 program. By separate letters, which were both dated June 1, 2004 and addressed to Jackson, HUD provided the results of its review to determine compliance with the previous June 2003 RIM review ("RIM re-review") and its Section 8 management review for 2004. (AR, tabs D, E)

20. HUD's June 1, 2004 letter to the PDCD provided the results of the RIM re-review and listed its administrative findings of systemic errors, which were defined as a "serious violation of a statute, regulation, handbook or adopted policy that are caused by mistakes in procedures." (AR, Tab D, p. 3) The RIM re-review consisted of HUD's review of thirteen randomly selected files. *Id.* The systemic administrative findings were: (1) that all thirteen files lacked documentation for rent reasonableness; (2) that eight out of thirteen files revealed problems with incomplete or missing data; (3) that five out of thirteen files lacked the correct utility chart; and (4) failure to correct previous RIM findings in four of the nine files reviewed. (AR, Tab D, pp. 4-7)

21. With regard to rent reasonableness, HUD's review was limited to determining whether there were documents to support the reasonableness of the rent, but there was no finding that any rents paid were unreasonable. (Tr. 108-112)

22. By letter dated June 1, 2004, DePaula advised Jackson of the findings of HUD's May 2004 management review of the PDCD's Section 8 division. (AR, Tab E) The management review made eleven findings, which included the following: (1) lack of timely selection of applicants; (2) lack of third party written verification of income of applicants and participants; (3) lack of complete documentation in seven out of 22 files; (4) lack of rent reasonableness documentation in tenant files; (5) incorrect utility allowance schedule used to compute tenant's rent; (6) failure to timely submit HUD forms; (7) a lease-up rate in excess of 100%; (8) failure to update the Section 8 Family Self-Sufficiency ("FSS") program; (9) failure to provide Housing Choice Voucher briefing packets to participants; (10) failure to maintain an acceptable MTCS reporting rate of 85%; and (11) a SEMAP score of 46%, which represented a "troubled designation." *Id.* HUD's management review consisted of reviewing 22 randomly selected files out of more than 1,000 Section 8 files. (Tr. 181-182) A schedule determined the number of files selected at random. (Tr. 244-245) HUD's 2004 review did not make any allegation of fraud in the administration of the Section 8 Program. (Tr. 145, 147-148, 150)

23. HUD's Section 8 Management Review directed the PDCD to prepare a corrective action plan ("CAP"). (AR, Tab E, p. 17) H2M provided Jackson with a proposal for preparing a CAP and began working on the CAP after the Paterson City Council passed its resolution on July 15, 2004 to award H2M a consulting contract. (Exhs., R-11, R-15, R-21, p. 3)

24. By letter dated August 10, 2004 and signed by Jackson, the PDCD forwarded the CAP to HUD. (Exh., R-12) Jackson acknowledged "the delay in submitting this response" *Id.* She explained further that "administrative and City Council approval was required in order to secure technical assistance." *Id.* The CAP set forth time lines to begin accomplishing some tasks starting on August 30, 2004. *Id.* James Callaway ("Callaway"), a public housing revitalization specialist with HUD, testified that even though the CAP Jackson submitted was late, it was "within a reasonable time" (Tr. 223)

25. By letter dated September 13, 2004, which was addressed to Mayor Torres, Diane Johnson ("Johnson"), Field Office Director for HUD's Newark Field Office, advised him of the results of HUD's program monitoring of the Home Investment Partnerships ("HOME") program for the City of Paterson during July 19-22, 2004. (AR, Tab K) Jackson received a copy of the letter. *Id.* Johnson's letter identified seven findings that included the following: (1) the failure to report project completion for 59 completed projects into the integrated disbursement information system ("IDIS") computer records; (2) lack of information sufficient to determine compliance regarding two projects; (3) failure to timely complete a community housing development organization ("CHDO") project; (4) failure to provide underwriting to insure that the least amount of HOME funding was provided; (5) failure to properly document rental housing affordability; (6) failure to monitor CHDO projects; and (7) failure to perform inspections of rental units. *Id.*

26. Approximately twelve to thirteen boxes of the PDCD's files related to the HOME program were under the control of the FBI during HUD's July 2004 monitoring. (AR, Tr. 420) The FBI removed those files as part of an investigation sometime during the period from 1999 to 2000 and the PDCD's copies of those files were destroyed while stored in a basement that flooded. (Tr. 53-54, 420, 432, 456) McLennon testified that during HUD's monitoring of the HOME program, she informed HUD personnel that the ability of her department to respond to their monitoring was affected by the removal of those files because "we didn't have the files, so we couldn't give [HUD] a response." (Tr. 455) Jackson responded to Johnson's September 13, 2004 letter but HUD did not find that response acceptable. (Tr. 448, 451)

27. HUD's letter dated October 8, 2004 to Carluccio, the PDCD's Section 8 director, stated that because "your agency is 'SEMAP Troubled,' the

CAP submitted is not acceptable.” (AR, Tab H, Tr. 168) Jackson did not receive a copy of the letter. Id. Callaway did not object to the proposed actions in the CAP that Jackson had submitted, but he was concerned with the proposed time frames for accomplishing those actions. (Tr. 232) He also acknowledged that some of the dates proposed in the CAP for completing certain tasks had already passed when HUD responded to the CAP seven weeks after Jackson had sent it to HUD (Tr. 168-169, 232)

28. By letter dated October 28, 2004, HUD responded to Jackson’s October 7, 2003 letter regarding HUD’s May 2003 monitoring of the PDCD’s CDBG program. (Exh., R-8)

29. HUD received a second CAP from the PDCD in November of 2004 that HUD deemed acceptable. (Tr. 211-212)

30. By letter dated December 13, 2004, Jackson responded to HUD’s October 28, 2004 letter regarding HUD’s May 2003 monitoring of the CDBG program. (Exh., R-2) Jackson’s letter explained that certain CDBG program files could not be reviewed because those files had “been retained by the FBI in connection with their investigation of former PDCD personnel and practices.” Id.

31. The FBI returned the files related to the CDBG and HOME programs to the PDCD in January of 2005. (Exh. R-25, p. 3, Tr. 420)

32. Correction of errors in the IDIS computer records could not be completed until the FBI returned the PDCD’s files. (Tr. 419-420, 432) There were 261 errors in the IDIS system that involved not only the HOME program, but also, the CDBG program, and those errors were present in the system before 2002. (Tr. 419, 430-431) McLennon testified that the process of correcting IDIS computer records was still not complete. (Tr. 419)

33. In April of 2005, HUD had not yet received an acceptable response to Johnson’s September 13, 2004 letter regarding HUD’s monitoring of the HOME program, and HUD sent representatives from Dennison Associates (“Dennison”) to assist the City of Paterson in preparing a response. (Exh., R-9, Tr. 432) Dennison was a HUD contractor. (Tr. 449) By letter dated May 31, 2005, Mayor Torres responded to the findings in Johnson’s letter. (Exh, R-9, pp. 8-11) McLennon testified that HUD was “satisfied” with the PDCD’s response to Johnson’s letter, but HUD was “still reviewing” the response. (Tr. 429)

34. Melchiano testified with regard to HUD’s May 2003 monitoring of the CDBG that “a lot of these findings have been closed out, and ... there’s a few things that are still open” (Tr. 374-375)

35. Callaway testified that as of July 2005, only three of the eleven findings in HUD's 2004 management review of the Section 8 program had been resolved by the PDCD. (Tr. 215) Those three findings were updating the FSS program, discrepancies in the files, and rent reasonableness. *Id.* Callaway also characterized the amount of time taken to resolve those findings as "somewhat abnormal, not necessarily the norm." (Tr. 225) HUD's funding of the PDCD's Section 8 program did not change after HUD's reviews of the program during 2003 and 2004. (Exh., R-25, Tr. 231)

36. H2M is currently providing assistance to the PDCD with updating IDIS records. (Tr. 422) Melchiano testified that the City of Paterson continues to maintain a consulting contract with H2M and credits that firm with bringing "us back to where we are today and in a satisfactory manner with HUD." (Tr. 399)

Recommended Decision

The decision to impose an LDP is "discretionary and in the best interests of the government." 24 C.F.R. § 24.1100 (2004). Underlying the Government's authority not to do business with a person is the requirement that agencies only do business with "responsible" persons and entities. 24 C.F.R. 24.110 (a)(2004). The term "responsible," as used in the context of administrative sanctions such as LDPs, debarments and suspensions, is a term of art that includes not only the ability to perform a contract satisfactorily, but also, the honesty and integrity of the participant. William D. Muir and Metro Community Development Corp., 00-2 BCA ¶ 31,140, HUDBCA No. 97-A-121-D15 (citing 48 Comp. Gen. 769 (1969)). Present responsibility is the test for determining whether a proposed sanction is warranted, but present responsibility can be inferred from past acts. *Id.* (citing Schlesinger v. Gates, 249 F.2d 11 (D.C. Cir. 1957); Stanko Packing Co. v. Bergland, 487 F. Supp. 947, 949 (D.D.C. 1980)). The purpose of an administrative sanction is to protect the public interest and not for the purpose of punishment. 24 C.F.R. § 24.110 (c).

The Government bears the evidentiary burden of demonstrating, by adequate evidence that cause for Respondent's LDP exists. 24 C.F.R. § 24.1110 (a) (2004). "Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission occurred." 24 C.F.R. § 24.900 (2004). "HUD may impute the fraudulent, criminal, or other improper conduct of any organization to an individual ... if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct." 24 C.F.R. § 24.1145 (b) (2004).

Jackson was a principal and participant as those terms are defined in the Department's regulations by virtue of her position as a director of the PDCD. 24 C.F.R. §§ 24.980, 24.995 (2004). During Jackson's tenure, HUD conducted

reviews of the PDCD's CDBG, HOME, and Section 8 programs and made findings as to violations of HUD regulations regarding the administration of those programs. (Finding of Fact ("F.F.") nos. 10, 11, 20, 22, 25) The "failure ... to proceed in accordance with ... HUD regulations" is cause for an LDP under 24 C.F.R. § 1110 (a) (4) (2004). As director of the PDCD, Jackson was responsible for supervising the division directors to insure that the staff personnel in those divisions of the PDCD complied with HUD regulations. (F.F. no. 3) There is no dispute as to Jackson's authority as director of the PDCD or HUD's findings regarding the CDBG, HOME, and Section 8 programs.

However, while the PDCD failed to proceed in compliance with HUD regulations and while Jackson as director of the PDCD knew or had reason to know of those violations, it is my determination that HUD's imposition of the LDP on Jackson was not justified in light of the mitigating factors in this matter. Even if adequate evidence supports imposition of an LDP, mitigating factors may preclude imposing it on a Respondent. CKJ Realty & Management, Clinton Williams, Jr., HUDBCA No. 98-A-111-D8 (December 16, 1998); August Lenhart, HUDBCA No. 98-B-108-D5 (December 4, 1998). I find that HUD's imposing an LDP on Jackson was not warranted under the circumstances of this case because: (1) there was no evidence that Jackson planned, initiated, or carried out the violations of HUD regulations; (2) Jackson attempted to take remedial measures to address those violations of HUD regulations; and (3) Jackson did not have adequate time or sufficient resources to resolve those violations of HUD regulations. 24 C.F.R. § 24.860 (f), (l), (r) (2004).

The Government has failed to show that Jackson was responsible for the violations of HUD regulations referenced in HUD's notice of the LDP. A Respondent's difficulty or failure to comply with HUD regulations can be mitigated in light of Respondent's evidence "demonstrating the impact of the contravening programmatic and environmental factors..." August Lenhart, at 5. The record of this proceeding does not contain any allegations or evidence of fraud or any other improper conduct by Jackson that caused or perpetuated the violations of HUD regulations. (F.F. no. 22) Melchiano, Jackson's successor, gave credible testimony that it would be "unfair" to conclude that "everything went wrong" after her appointment. (F.F. no. 6)

Jackson encountered conditions in the PDCD's Section 8 program that she had not created. It is not disputed that these conditions violated HUD regulations as evidenced by HUD's findings in its 2002 management review. (F.F. no. 2) Jackson described the condition of the Section 8 division files as "everywhere on the floor" and that considerable employee time was spent simply trying to address problems with the conditions of the files. (F.F. no. 5) Hunt corroborated Jackson's testimony that managing the Section 8 program was difficult due to

problems with staff. (F.F. no. 4) The loss of technically trained staff before Jackson's appointment made the task of addressing certain technical issues more difficult. Id. Melchiano also corroborated Jackson's claims as to the loss of technical personnel before her appointment. (F.F. no. 3)

In the case of the HOME and CDBG programs, the FBI had removed files several years before Jackson's appointment. (F.F. nos. 12, 30-33) The PDCD was not able to respond fully to the findings in HUD's monitoring of the CDBG program in 2003 and HOME program in 2004 because of the absence of those files. (F.F. nos. 26, 30) The IDIS computer files related to the HOME and CDBG programs contained numerous errors, which existed before Jackson's appointment, and timely correction of those computer records was also affected by the FBI's removal of files. (F.F. no. 32)

Jackson dutifully attempted to take appropriate corrective action and remedial measures to address the violations of HUD regulations that she encountered at the PDCD. A Respondent's efforts to "chart a course of proper business conduct can be mitigating evidence." Richard Ira Hayley, and H & E Properties, Affiliate, HUDBCA No. 91-5364-D90, 1991 WL 167194, at *4 (September 4, 1991). Jackson took reasonable and responsible actions that included utilizing her existing staff to reorganize the office, do quality control of files, training of personnel, requesting the hiring of clerical personnel and caseworkers, trying to upgrade the computer systems, and ordering supplies. (F.F. nos. 5, 7, 9) Jackson did not have the authority to personally hire personnel nor execute contracts on behalf of the City of Paterson in order to better address the PDCD's shortcomings. It is evident that she had to rely on the mayor and the City Council to act on her requests. (F.F. nos. 3, 8) The process of hiring personnel for the PDCD was delayed, a factor which was clearly beyond Jackson's control. (F.F. no. 3) Jackson achieved some level of success in managing the PDCD in that McLennon gave credible testimony that Jackson had "boosted morale" and had improved the work environment such that employees wanted to "come to work." (F.F. no. 7)

Jackson was, however, successful in her effort to utilize H2M in resolving certain technical issues at the PDCD. The PDCD obtained the technical services of consulting contractors that included H2M as well as RDE and Nelrod to work on MTCS reporting, updating the administrative plan, and rent reasonableness criteria. (F.F. nos. 17, 18) Jackson recommended H2M to address technical problems within the PDCD, and H2M performed work in connection with responding to HUD's monitoring of the CDBG program, correcting IDIS computer records, updating the administrative plan for the Section 8 program, and developing the PDCD's CAP in response to HUD's 2004 management review of the Section 8 program. (F.F. nos. 12, 18, 23, 36) Melchiano credits H2M with

having brought the PDCD back to “a satisfactory manner with HUD.” (F.F. no. 36)

It is my view that Jackson did not have adequate time to address and resolve the various adverse findings HUD made in its reviews of the CDBG, HOME, and Section 8 programs. In Sellers v. Kemp, 749 F. Supp. 1001 (W.D. Mo. 1990), the plaintiff, an accountant and contractor, was debarred by HUD, but the court reversed the debarment and found mitigating circumstances in the fact that the plaintiff faced difficulties complying with HUD requirements in connection with the submission of an audit report. Id. The court found that the plaintiff was “sincerely trying to remedy the problems raised by HUD.” Id. at 1008. Even if Jackson was not successful in bringing the PDCD into compliance with HUD’s requirements, that failure “does not mean that [her] approach or efforts were unreasonable, that [she was] not a responsible participant in a HUD program, or that an administrative sanction is required.” August Lenhart, at 5. Jackson was director of the PDCD from July 1, 2002 to December 22, 2004. (F.F. no. 1) Throughout Jackson’s tenure, the PDCD responded to various HUD letters that were the result of HUD’s monitoring of the CDBG, HOME, and Section 8 programs. In spite of those efforts, the problems causing the PDCD’s noncompliance with HUD regulations were extant before Jackson’s directorship and continued beyond her tenure.

The task of resolving HUD’s findings in connection with the CDBG and HOME programs extended beyond Jackson’s tenure as director of the PDCD. The FBI did not return to the PDCD files related to the HOME and CDBG programs until January 2005. (F.F. no. 31) Jackson, however, responded to various HUD monitoring reports and letters regarding both the CDBG and HOME programs to the extent possible under those circumstances before her departure in December of 2004. (F.F. nos. 12, 26, 28, 30) Melchiano testified with regard to the CDBG program, that there were still “a few things ... open.” (F.F. no. 34) In April of 2005, HUD sent Dennison, a consultant, to assist the PDCD in resolving HUD’s findings in connection with the HOME program. (F.F. no. 33) McLennon testified that the PDCD’s response to HUD’s monitoring of the HOME program was still under review by HUD. Id. Jackson did not have the opportunity to fully address HUD’s findings in connection with the CDBG and HOME programs due not only to the absence of files, but also, the fact that considerable effort was still needed after the return of those files to resolve HUD’s findings.

In the case of the Section 8 program, Jackson was unable to resolve all HUD findings before she left the PDCD. Jackson responded to HUD’s 2003 RIM review and was able to resolve all of those findings except for MTCS reporting and the administrative plan. (F.F. no. 13) Before the consultants RDE and H2M, were able to address those unresolved findings, HUD’s 2004 management review

found that the Section 8 program was troubled. (F.F. nos. 13, 15-18, 22) In response to that review, Jackson submitted a CAP on August 10, 2004, which was prepared by H2M, but she never had the opportunity to work with HUD to implement it. (F.F. nos. 24, 27) Although the notice of LDP characterized the CAP as unsatisfactory, I find that HUD never submitted evidence other than general statements that the time frames were unrealistic, and Callaway conceded that the CAP was, otherwise, acceptable. (F.F. no. 27) Presently, only three of the eleven findings from HUD's 2004 management review had been resolved. (F.F. no. 35) Callaway characterized the time that was being taken to resolve problems within the Section 8 program as "abnormal." *Id.* That abnormal situation Callaway described was not created by Jackson, but rather, was the result of the ongoing problems in that organization that existed before, during, and after her tenure. Consequently, the resolution of HUD's findings within the Section 8 program required a period of time and effort that extended beyond Jackson's departure from the PDCD.

Although there may have been a basis to establish adequate evidence for the LDP in this matter, under a close scrutiny of the circumstances presented here, mitigating circumstances compel the conclusion that this LDP was not warranted. The Government has failed to establish that the integrity of its programs were at risk due to the conduct of Jackson when the LDP was imposed in March of 2005, which was over two months after she had been removed from all management and oversight responsibilities as director of the PDCD. Having already been relieved of her responsibilities for reasons that are not before this Board, it would not appear that the imposition of the LDP was a necessary sanction to protect the public interest.

While the Government surely has a compelling interest in insuring that its Departmental programs function in a manner consistent with and in compliance with its regulations, the imposition of an administrative sanction under the circumstances presented here does little, if anything, to remedy the glaring deficiencies in a program greatly in need of administrative, technical, and specialized resources, which the record shows were either unavailable, difficult, or too time-consuming for Jackson to obtain. In any event, to impose such a serious and belated sanction might lead one to conclude that its purpose was punitive, especially in light of the preponderance of evidence establishing Jackson's good faith efforts to remedy a difficult and disorganized situation, which was clearly not of her own making.

For the foregoing reasons, I find that the LDP imposed upon Respondent was not warranted and should be voided *ab initio*.

H. Chuck Kullberg
Administrative Judge

October 13, 2005