



Board of Contract Appeals
 U.S. Department of Housing and Urban Development
 Washington, D.C. 20410-0001

In the Matter of:	:	
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TURNER L. LACEY,	:	HUDBCA Nos. 91-5906-D51
	:	91-5948-D72
Respondent.	:	
	:	

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For the Government

DETERMINATION BY ADMINISTRATIVE JUDGE TIMOTHY J. GRESZKO

November 6, 1991

Statement of the Case

By Notice of Limited Denial of Participation dated February 8, 1991, Kenneth G. Lange, Manager, St. Louis Office, U.S. Department of Housing and Urban Development ("Department," or "Government," or "HUD"), notified Turner L. Lacey ("Respondent") and his affiliate, Lacey Realty Company, Inc. ("LRCI"), that a twelve-month Limited Denial of Participation ("LDP") was being imposed on them. The notice stated that the LDP was being imposed because LRCI had failed to secure and produce certain files at the request of the Department. The notice stated that these failures constituted irregularities under the terms of Respondent's contracts with the Department, and a failure to proceed in accordance with contract specifications and HUD regulations. The notice concluded that cause existed to issue an LDP pursuant to 24 C.F.R. §§ 705(a)(2), (4), (5), and (9).

The LDP was affirmed by Lange by letter dated March 21, 1991, after an informal conference on the matter. Respondent timely filed an appeal from the affirmance of the LDP pursuant to 24 C.F.R. § 24.713.

The LDP was superseded by a suspension, which was imposed on Respondent by Arthur J. Hill, Assistant Secretary for Housing - Federal Housing Commissioner, by Notice of Suspension dated June 14, 1991. The notice stated that, pending the completion of an ongoing investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings which may ensue, Respondent and LRCI were prohibited from entering into any procurement contracts with HUD or any other Department or agency of the Executive Branch of Government, and from primary covered transactions and lower-tier covered transactions, as either participants or principals at HUD and throughout the Executive Branch of Government.

The suspension is based on allegations of serious irregularities in LRCI's performance of contracts with the Department, under which it managed two HUD-acquired multi-family projects in St. Louis, Missouri. The notice of suspension alleges that during a review by HUD officials of LRCI's activities under the contracts, numerous improprieties were uncovered, and that during the conduct of the review, LRCI's employees removed, hid, refused to produce and attempted to destroy documents required to be produced under the contract. The notice of suspension further states that: LRCI used invoices and purchase orders that had been signed in blank, and ordered and split purchases to stay within the \$500 small purchase limitation under the contracts; there was a lack of control over receipt of supplies and equipment; purchases were made without assurance that the purchase price was reasonable; LRCI failed to maintain proper documentation regarding tenant security deposits and failed to cooperate with HUD in the transfer of these accounts when LRCI's contract was cancelled; and, Respondent and LRCI are currently the subject of an investigation by HUD's Office of Inspector General and the U.S. Department of Justice for suspected violations of Federal law.

The notice of suspension concluded that these deficiencies show a failure to honor contract obligations, a failure to proceed in accordance with contract specifications, and a failure to follow HUD regulations and requirements, and that the deficiencies constitute adequate evidence of cause for the imposition of a suspension under 24 C.F.R. § 24.405(a).

Respondent's appeal of the suspension was orally made and accepted in a telephonic prehearing conference on July 3, 1991. A hearing was conducted in St. Louis, Missouri on July 31 and August 1, 1991. The LDP was dismissed at the hearing, upon joint motion of the parties, as moot. Both parties filed post-hearing

briefs. This decision is based on the entire record of these proceedings.

Findings of Fact

1. On December 12, 1989, HUD and LRCI executed contract No. [REDACTED] for the operation and management of a 152 unit multi-family housing project designated Plymouth Manor ("PM"), in St. Louis, Missouri. Respondent signed the contract on behalf of LRCI as its President. The contract term was 90 days with an option to extend the contract for 30 days. The contract was renewed thereafter, on a month-to-month basis. Under the terms of the contract, LRCI was responsible for leasing, rent collection, procurement of supplies, materials, equipment and services, and project maintenance. (Govt. Exh. 42).

2. On October 31, 1990, HUD and LRCI executed a purchase order for the operation and management of a 180 unit multi-family housing project designated Portland Towers ("PT"), in St. Louis, Missouri. (Contract No. [REDACTED] and the purchase order shall hereinafter be referred to as "the contracts"). Respondent signed the purchase order on behalf of LRCI as its President. Under the terms of the contracts, LRCI was responsible for leasing, rent collection, procurement of supplies, materials, equipment and services, and project maintenance. The contract term was 90 days, renewable thereafter on a month-to month basis. (Govt. Exh. 41).

3. The contracts contained identical provisions, including the following clauses in relevant part:

SECTION G

ARTICLE 3 - ADMINISTRATIVE SUPERVISION

A. The Contractor agrees to abide by all instructions relative to the management, rental, maintenance and sale of the properties comprising the project issued from time to time by the Government.

* * * * *

C. All project personal property belonging to the Secretary shall at all times be under the custody and control of the Contractor who accepts full responsibilities (sic) therefor. Inventories of such property shall be given to the Government in writing at such intervals as may be agreed upon between the parties hereto

ARTICLE 6 - PROCUREMENT OF SUPPLIES, MATERIALS,
EQUIPMENT & SERVICES OTHER THAN PERSONAL

A. The Contractor will be required to make day-to-day purchases for repairs, maintenance and supplies of \$500 or less for any single purchase or series of related purchases as directed by the Government. Purchases of \$500 or less may be made without receiving competitive quotations, provided the price paid is reasonable and a basis exists upon which to determine the reasonableness of price. Such purchases are to be distributed among all qualified contractors or suppliers. All other purchases by the Contractor shall be made on a competitive basis to the maximum practicable extent and the Contractor shall maintain records of such solicitations and purchases. (emphasis supplied).

B. The Contractor may be authorized to make day-to-day purchase (sic) up to \$500 as to any one purchase or series of related purchases under the special letter of authorization issued by the Government.

* * * * *

K. The contractor shall maintain such records as are required by the Government and shall give such specific answers to questions upon which information is desired from time to time relative to the operation of the project and shall furnish such additional supporting data as may be required. The Government and its authorized representative shall have the right of entry and free access to the project and the right to examine the books and other data of the contractor regarding the project. It shall be understood that the books and other records maintained by the contractor under this contract are the property of the Government and shall be made available to the Contracting Officer for review at any reasonable time upon demand and upon contract termination shall be surrendered to the Contracting Office for disposition.

ARTICLE 11 - SECURITY DEPOSITS

E. Disposition of Security Deposit. In the event this contract is terminated . . . the contractor shall provide to HUD, upon termination . . . (1) a complete accounting of the security deposit funds together with (2) a bank and cashier's check drawn on the Security Deposit Bank Account payable to HUD in the amount of all security deposits, including earned interest thereon or in the alternative, at the election of the government, an assignment of account by substituting the new management firm for the former on the signature cards of the security deposit bank account, (3) an

identification list of tenants and their individual security deposit amounts. this transaction shall take place at termination of the contract or at the time of sales closing

The contracts also incorporated by reference the Changes clause (alternate I), FAR 42.243-01, and in Section J (List of Attachments), the following HUD Handbooks: Handbook 4310.26, Purchasing Procedures Handbook for the Acquired Property Program Project Managers and Area Management Brokers; Handbook 4305.3, Accounting Handbook for Acquired Properties; Handbook 4045.1, Fiscal Administrative Handbook for Acquired Properties; and the HUD Property Management System - Chief Property Officer and Property Manager Procedures Manual.

HUD Handbook 4310.26 contains, in chapters 2 and 3, specific and detailed requirements for the maintenance of data by the contractor to support small purchases, including the maintenance of a purchase order log. HUD Handbook 4305.3 contains, in chapter 9, specific and detailed requirements for the maintenance of data to support expenditures for supplies and equipment. (Govt. Exhs. 41, 42).

4. Management Review Reports for PT were prepared by Tommy O. Major, Realty Specialist, HUD St. Louis Office, on July 18, 1990 and September 17, 1990. These reports rated LRCI's performance in five general areas, including maintenance and security, financial management, leasing and occupancy, tenant/management relations, and general management practices. LRCI's overall rating was satisfactory in each report, with a below average rating in financial management. The below average rating was based, inter alia, on a determination that Respondent's accounting and bookkeeping practices needed improvement. (Transcript ("Tr."), p. 326; Resp. Exh. 9).

5. Between January 4 and 18, 1991, Betty A. Millard, HUD Regional Contracting Officer, and Ron Bertalotto, Management Analyst, HUD St. Louis Office, conducted a review of the contracting and procurement activities of the Property and Single Family Loan Management Branch of the HUD St. Louis Office. The purpose of the review was to: (a) assess the degree to which the contracting activities were complying with applicable laws and policies; (b) determine the measures necessary to strengthen internal controls; and (c) recommend areas in need of improvement. Respondent's operations at PT and PM were included in the review. The results of the review revealed serious flaws in contracting procedures utilized at PM and PT as well as serious failures on the part of HUD's St. Louis Office staff. The findings were so serious that a follow-up review was conducted between February 7-9, 1991, to obtain additional information as to the practices followed at PM and PT. (Govt. Exhs. 3 and 24).

6. Subsequent to the review, Report No. VII-91-1 dated February 13, 1991 and an undated report were prepared by the Department. The reports contained numerous negative findings with respect to LRCI's procurement-related practices at PM and PT, including, but not limited to, the following: (a) improper use of purchase orders (prepared after receipt of invoice); (b) preparation and submittal of invoice transmittals for supplies not received; (c) failure to rotate suppliers for small purchases; (d) inadequate planning to procure goods and services and to maximize competition; (e) apparent ordering or splitting of purchases to stay under the \$500 purchase limitation of the contract; (f) expenditure of HUD funds for a tenant obligation (telephone service); (g) payment of invoices from a firm of questionable existence; (h) purchases made without assuring price reasonableness; management agent entered into contracts that exceeded purchase authority; (i) purchases made for services of questionable necessity for project operations; (j) documents removed from files at PM and either hidden or destroyed. (Govt. Exhs. 3, 24).

7. Respondent made tens of thousands of dollars of purchases under both contracts in apparent contravention of Article 6A of the contract, which limited Respondent's purchasing authority for day-to-day repairs, maintenance, and supplies to \$500 or less for any single purchase or series of related purchases. However, this practice was approved by George Armbruster, a Government Technical Representative ("GTR") in the HUD St. Louis Office, by letter dated March 20, 1990. Armbruster wrote this letter in response to Lacey's complaint that the \$500 purchase order limitation in the contracts was so unreasonably low as to render it difficult to provide adequate service at the projects. (Tr. pp. 87, 92-93, 105-106, 410-412; Resp. Exh. 3).

8. During the course of the first review, in January, 1991, Bertalotto observed in the PM files a blank purchase order which had been signed by Charles Rosene, of Rosene Supply Company. He also observed a number of blank vendor invoices in the Construction Coordination and Design Company file at PM. During that review, he made copies of these documents, and when he returned to PM for a second review in February, 1991, the blank invoices and signed purchase order were no longer in the files. Bertalotto asked LRCI's on-site manager, Leslie Anderson, if she knew of the whereabouts of these documents. She did not know where the documents were located. During his search for these documents and certain other files, Bertalotto was led to a locked vacant unit by another employee of LRCI. This unit was used as a ladies room and as an office. The records which had been previously observed and copied by Bertalotto were found in that room in a white trash bag on a desk, along with a number of other project-related documents and some personal effects belonging to Anderson, which she had been storing in a trash bag in that office. A number of pages that had been removed by Anderson from

the PM purchase order journal were also found in the trash bag. Anderson had removed these pages from the journal during a re-write of the journal to make it more legible. Anderson did not know of any requirement to maintain the purchase order journal intact. The documents in the trash bag were placed there by Robert Stewart, an employee of LRCI, because he had been instructed by Lacey to clean up certain desks and offices, and because Stewart did not otherwise know what to do with the documents. (Tr. pp. 171-174, 176-177, 179, 185, 190, 209, 417, 421, 476-479, 481-482, 564-565, 568; Govt. Exhs. 38, 39).

9. During performance of the contracts, Lacey informed his employees that they would be required to reimburse LRCI for interest assessed against LRCI under the Prompt Payment Act for late payments to vendors. As a result, and unbeknownst to Lacey, his employees worked out a procedure to speed up the payment process by allowing vendors to sign invoices in blank, to be completed and dated by LRCI's employees upon receipt of goods or the completion of services. This procedure had been in place for several weeks at the time of the performance review. (Tr. pp. 424-425, 472-475).

10. During the course of the review, a question arose as to the whereabouts of 18 refrigerators which had been purchased for units at PM. A report was written by Robert Zinna, of the HUD St. Louis Office, who participated in the search for the refrigerators. The report indicates that the refrigerators in question were purchased sporadically between January, 1990 and February, 1991. The refrigerators were all purchased from Ozark Hardware, St. Louis, Missouri, at the following prices: fourteen at \$468; three at \$368; and one at \$490. No appliance inventory existed. A reconstructed inventory was prepared by Respondent and presented to HUD on February 8, 1991, which reflected sixteen new refrigerators, their serial numbers, and their location by apartment. The report indicates, among other things, that only six of the newer appliances serial numbers matched the numbers on the Ozark invoices billed to HUD. The report also states that in checking prices at St. Louis area dealerships, similar GE refrigerators were quoted at prices ranging from \$279 - \$299. The report further indicates that HUD was informed by GE that of the 16 serial numbers shown on the agent's inventory sheet, ten of the refrigerators were manufactured in 1990, three in 1983, and three in 1979.

Lacey, Stewart and Anderson all testified that the missing refrigerators had been found, and that Bob Zinna simply refused to believe that a number of refrigerators were new because the refrigerators had been poorly maintained by certain tenants. Stewart also testified that all of the refrigerators were purchased from Ozark because Ozark provided the quickest service, and that no other appliance vendors were considered for these purchases. I find, however, based upon a preponderance of the

credible evidence, that a number of these refrigerators were not found, particularly because of the high degree of corroborating detail provided in the Government's report on the review of major appliance purchases at PM. ((Tr. pp. 65-67, 329, 429, 438-439, 484, 563; Govt. Exh. 44).

11. Another issue arose during the course of the review with respect to the adequacy of Respondent's controls over the receipt of supplies and equipment. Millard, Bertalotto, and Majors inspected the supply room at PM, in the company of Anderson and Stewart. Millard observed a shelf with some supplies on it, but was of the opinion that the supplies on hand did not reflect the magnitude of supplies that had been purchased. During another inspection John Wickstrom, a Housing Program Specialist in the HUD Kansas City Office, attempted to locate six rain suits at PM, which had been purchased at Ozark Hardware on January 20, 1991, and received at PM. The rain suits could not be located, and had possibly been shipped to PT.

LRCI did not maintain records showing receipt of supplies and equipment and did not maintain equipment records, such as a perpetual inventory, to reflect the serial number and location of equipment. Lacey was not aware of any contractual requirement to maintain records of this nature, and had not done so in his 14 years of experience. Stewart maintained "personal records" showing receipt of supplies and equipment, but claimed that these records were destroyed in a flood in January, 1991. The flood was not reported to the HUD St. Louis Office, and no flood damage was observed during the performance review. The HUD St. Louis Office did not ask LRCI to produce such supply and equipment records prior to the 1991 performance review. (Tr. pp. 92, 224-225, 227, 236-238, 241-242, 245, 250, 326, 329, 461-462, 471, 484-485, 565; Govt. Exh. 6).

12. Wickstrom raised a number of questions during the performance review with respect to the reasonableness of prices obtained by Respondent on certain project related-purchases. In addition to the issues surrounding the refrigerator purchases, Wickstrom questioned a \$489.96 expenditure for the purchase of a video cassette recorder ("VCR") by Respondent in November, 1990, and concluded that the price was unreasonable because substantially similar equipment could have been purchased in Kansas City for \$360 - \$380. Wickstrom also questioned the magnitude of the purchases made at Ozark Hardware and concluded that there was no indication in Respondent's files that any comparison shopping had been done on major equipment purchases.

Lacey testified that he had obtained quotes from a number of suppliers at the beginning of the contract performance period, and that he periodically checked with vendors to determine if the quoted prices were still in effect. Lacey also testified that he personally maintained the records of such quotes, but that the

FBI had seized all of these records. Stewart, however, testified that the 18 refrigerators were purchased from Ozark Hardware because Ozark was the only vendor who would timely deliver refrigerators and because he did not have the time to check with anyone else. Anderson also testified that paint was typically purchased from one source.

Although the FBI's seizure of LRCI's records renders it more difficult for Respondent to defend against this charge, this circumstance does not render a defense impossible. LRCI could have presented other evidence in corroboration of its position, e.g., the testimony of vendors. LRCI also could have attempted to obtain such documents through the discovery process, and if that failed, requested the Board to issue a subpoena for the production of these documents. Having failed to do so, I will not accord substantial weight to uncorroborated testimony. Moreover, the testimony of LRCI's employees is conflicting on this issue. I find, accordingly, that there is adequate evidence that LRCI made purchases under the contracts without seeking assurances that the prices were reasonable, and without sufficient rotation of vendors, in violation of the terms of the contracts. (Tr. pp. 278, 281, 284, 401, 405, 407, 430, 437, 571; Govt. Exhs. 1-3, 11-13).

13. The Plymouth Towers contract performance period ended on February 16, 1991. Although Respondent was required under the contract to turn over the security deposits to HUD within 5 days of the termination of the contract, the security deposits were turned over to HUD in May, 1991, almost 2 1/2 months later. Respondent did not turn over these accounts in more timely fashion because these records had been seized by the FBI. (Tr. pp. 336-337; 425-426; Resp. Exh. 8).

14. Harvey Henderson served as the Chief Property Officer in the HUD St. Louis Office for ten years and was rated highly successful for each of those years. Henderson was removed from his position as Chief Property Officer on January 23, 1991. Henderson has filed suit against the Department, in the United States District Court, seeking reinstatement to his former position. It is Henderson's opinion that the instant sanction was part of a "witch-hunt" to assure that Lacey, an African American, did not obtain the contract for the management of a new and prestigious multi-family project in St. Louis called the LaCledde Town project, which he described as a "prize plum for anyone to manage." Henderson characterized the sanction as part of a "hatchet job on Turner Lacey." Henderson based his opinion, in part, upon the fact that an investigation of this sort had not been previously conducted in the HUD St. Louis Office. Henderson wrote a memorandum dated January 14, 1991, to Arthur D. Pearrow, Director, Housing Management Division, HUD St. Louis Office, alleging that the nursing service at Portland Towers would not deal with a black project manager. Henderson also

wrote a memorandum dated January 18, 1991 to Kenneth Lange, Manager, HUD St. Louis Office, which alleges, in the strongest of terms, that the procurement review in question was motivated solely by a desire to keep a black project manager from obtaining the management contract for LaClede Town Apartments. Henderson did not receive any unsatisfactory reports on Respondent's performance during the life of the contracts. It was Henderson's opinion that a cure notice should have been issued in lieu of imposing the sanction at issue. (Tr. pp. 522-525, 530-540; Resp. Exhs. 6, 7, 9).

Discussion

Under applicable HUD regulations, the suspending official may suspend a person for any of the causes listed in 24 C.F.R. § 24.405. See 24 C.F.R. § 24.400(a). A suspension is a serious action to be imposed only when: (1) there exists adequate evidence of one or more of the causes set out in 24 C.F.R. § 24.405; and (2) immediate action is necessary to protect the public interest. See 24 C.F.R. § 24.400(b).

There is no disputable issue that Lacey is a contractor of this Department, and LRCI, his affiliate, are participants in covered transactions of this Department as defined in 24 C.F.R. §§ 24.105(m) and (p). See also 24 C.F.R. § 24.110 (ii)(C). As such, Lacey and LRCI are subject to the imposition of sanctions such as suspension.

Section 24.405 of Title 24, Code of Federal Regulations, provides in relevant part that:

(a) Suspension may be imposed in accordance with the provisions of §§ 24.400 through 24.414 upon adequate evidence:

(1) To suspect the commission of an offense listed in §24.305(a); or

(2) That a cause for debarment under 24 C.F.R. § 24.305 may exist.

Section 24.305 of Title 24, Code of Federal Regulations, provides in relevant part that:

Debarment may be imposed in accordance with the provisions of §§ 24.300 through 24.314 for:

(a) Conviction or civil judgement for:

(1) Commission of fraud or a criminal offense in connection with . . . performing a public . . . agreement or transaction;

* * * * *

(3) Commission of embezzlement, theft, forgery, bribery, falsification of records, destruction of records, making false statements

* * * * *

(f) In addition to the causes set forth above, HUD may debar a person from participating in any programs or activities of the Department for material violation of a statutory or regulatory provision or program requirement applicable to a public agreement or transaction

Under the holding in Horne Brothers v. Laird, et al., 463 F.2d 1268 (D.C. Cir 1972), it is only necessary for the Government to show adequate evidence to uphold a suspension. The Court in that case defined "adequate evidence" in the following manner:

The "adequate evidence" showing need not be the kind necessary for successful criminal prosecution or formal debarment. The matter may be likened to the probable cause necessary for an arrest, a search warrant, or a preliminary hearing. This is less than must be shown at the trial, but it must be more than uncorroborated suspicion or accusation.

See also 24 C.F.R. § 24.105(a), which defines "adequate evidence" as "information sufficient to support the reasonable belief that a particular act or omission has occurred."

Much of the Government's case against Lacey is not well-founded. For example, the Government explicitly authorized and condoned the bid splitting at issue, and it is with small dignity indeed that the Government raises this and a number of other issues in this case. With respect to the security deposit issue, it is not surprising that Lacey was reluctant to turn over the security deposit account to HUD after his security deposit records had been seized by the FBI. The seizure of these records would have rendered it difficult, if not impossible, for Lacey to perform the accounting required by the contract. There is also no evidence that Respondent improperly utilized or absconded with any of the funds in the security deposit account.

In a similar vein, the allegation that LRCI's employees were regularly destroying records and regularly utilizing blank invoices which had been improperly signed by vendors is not substantiated. The evidence introduced by the Government in support of these assertions is scant, and the explanations of

Respondent's employees for these occurrences is both plausible and credible. It does not appear on this evidence that these practices were widespread, intentional, or ongoing.

Notwithstanding these findings, there are troublesome aspects to this case. There is uncontroverted documentary evidence and testimony demonstrating that Lacey engaged in sorely inadequate record-keeping and inventory practices over an extensive period of time. Lacey had little, if any knowledge of the record-keeping requirements of the contracts, and freely admitted that he was only vaguely aware of these requirements of the contract. Moreover, no employee of LRCI demonstrated any substantial knowledge of these requirements. In light of the vast amount of personal property to be accounted for under the contracts, this is a critical requirement of the contract. While it appears on this record that the HUD St. Louis Office was not particularly vigilant in pointing out these problems to Respondent in the past, I do not find HUD's lack of vigilance to be completely mitigating, particularly because of the rudimentary and fundamental nature of these requirements. Simply stated, a contract of this nature cannot be adequately performed without great attention to record-keeping. Moreover, the record-keeping problem was not amenable to a "quick fix" through the issuance of a cure-notice under the contract, as the resolution of the problem would require both an effort to become familiar with the requirements, and substantial implementation efforts as well.

The issues surrounding the missing refrigerators are also quite serious. The evidence indicates a number of possibilities ranging from inadequate record keeping, at best, to fraud, at worst. Moreover, the evidence shows that Lacey had little, if any notion where major appliances were being distributed in the apartment units which LRCI serviced under the contracts. The evidence also lends credence to the Government's allegation that Respondent was not obtaining supplies and equipment at reasonable prices. In this respect, Stewart admitted that he did not take price into consideration when the refrigerators in question were purchased. Stewart stated that his selection of a refrigerator vendor was influenced primarily by availability and delivery. Stewart also admitted that he did not have time to shop around for refrigerators.

I do not find, as Respondent argues, that these issues involve minor matters of contract administration that should have been addressed through the issuance of a cure notice. These issues go to the very heart of the property management contracts in question. Respondent's explanations for his record-keeping and inventory problems lacked detail and substance, conflicted with the explanations proffered by his employees, and, to an extent, attributed minimal importance to these responsibilities. Under the circumstances, little weight can be attributed to these explanations.

Respondent's affirmative defense that the sanction was improperly imposed on the basis of race is also not persuasive. This Board does not have jurisdiction under the Department's regulations to determine if Respondent has been the victim of unlawful discriminatory acts committed by Departmental employees. Such actions must be brought in other forums. However, these matters may be considered in evaluating the actions of Government employees in the administration of a contract. See Orlando Williams d/b/a Orlando Williams Janitorial Service, 84-1 BCA ¶ 16,983, citing Kalvar Corporation, Inc. v. United States, 211 Ct.Cl. 192, 543 F.2d 1298 (1976). Respondent bears the burden of proving that the Department's motives in imposing the sanction were improper. In order to carry this burden, Respondent's evidence would have to be sufficient to demonstrate that the Department had a specific intent to injure him. Kalvar Corporation v. United States, *supra*.

The evidence submitted by Respondent in support of this defense is deeply disturbing, as it tends to show that the HUD St. Louis Office may in fact be in the middle of serious race-relations problems. This evidence, however, falls short of establishing an intent to injure. While Respondent's key witness in this area, Harvey Henderson, was both credible and forceful, his conclusions are drawn on inferences which flow from the circumstances. These inferences are not necessarily more likely inferences than others which can be drawn from the same facts. In addition, a number of Government employees who were involved in both the administration of the contracts and the performance review testified at the proceeding and were subject to rigorous cross examination. As a whole, their testimony was also credible, and demonstrated sincere attempts to act in manner that was in the best interests of the Government under the circumstances. Consequently, Respondent's affirmative defense fails for lack of evidence.

The record before me establishes that the Department has shown adequate cause for the suspension of Respondent, and that the suspension has been properly imposed in the public interest. Lacey made a positive impression during the hearing. By all appearances, Lacey is a credible, competent, and capable business person, and the suspension should be terminated if no evidence of criminal wrong-doing is revealed by the investigation and if Lacey can demonstrate adequate capability to comply with the record-keeping requirements and purchase limitations of HUD property management contracts.

Conclusion

For the foregoing reasons, it is my determination that the suspension of Respondent and his affiliate, LRCI, is warranted.

24 C.F.R. § 24.415 states:

(a) suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

Consequently, the suspension of Lacey and LRCI shall terminate on February 8, 1992, credit being given for the period of time from which the LDP was imposed, provided HUD or the U.S. Department of Justice do not initiate further legal or administrative proceedings against Lacey or LRCI.


Timothy J. Greszko
Administrative Judge