

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

United States Department of
Housing and Urban Development,

Plaintiff,

v.

Charles Smallhouse and
Nancy Smallhouse,

Defendants.

HUDALJ 93-2044-PF

Decided: May 17, 1994

Jon P. Harward, Esq.
For the Defendants

Dane M. Narode, Esq.
For the Government

Before: Paul G. Streb
Administrative Law Judge

INITIAL DECISION

JURISDICTION

The United States Department of Housing and Urban Development ("HUD" or "Government") seeks an assessment and a civil penalty against Charles and Nancy Smallhouse ("Defendants"), pursuant to the Program Fraud Civil Remedies Act of 1986 ("PFCRA"), 31 U.S.C. §§ 3801-3812, and the implementing regulations, 24 C.F.R. Part 28. HUD alleges that in June 1986, Defendants knowingly and willfully participated in a scheme to defraud HUD by making false statements in documents used to obtain FHA-insured mortgages on five residential properties; upon their default, HUD was required to pay the lender's mortgage insurance claims.

Defendants contend that this tribunal lacks jurisdiction over the case because the PFCRA was not in effect when their alleged conduct occurred. On November 17, 1993, I granted the Government's motion to stay this proceeding pending a determination of the same

jurisdictional issue in the matter of *HUD v. Start*, HUDALJ No. 93-2038-PF. On March 25, 1994, I issued an Initial Decision dismissing *Start* for lack of jurisdiction; I ruled that the PFCRA did not apply to the conduct in which Mr. Start had allegedly engaged prior to its enactment. On April 11, 1994, I issued an Order requiring the Government to show cause why the instant case should not be dismissed for lack of jurisdiction.

In its response to the Order, the Government stated that it had sought *en banc* reconsideration of the Initial Decision in *Start*; it requested that the instant case not be dismissed pending a final determination of the jurisdictional issue in the *Start* case. The Government's request for *en banc* reconsideration of *Start* has been denied, and the Initial Decision in that case has become final.

For the reasons set forth in *HUD v. Start*, HUDALJ No. 93-2038-PF (Initial Decision, March 25, 1994), I find that the PFCRA does not apply to the conduct in which the Defendants are alleged to have engaged. That conduct occurred in June 1986, which was prior to the PFCRA's effective date (October 21, 1986), and Congress did not intend the PFCRA to be applied retroactively. Therefore, this tribunal lacks jurisdiction over this matter.

DECISION AND ORDER

This matter is DISMISSED for lack of jurisdiction.

RECONSIDERATION, SECRETARIAL REVIEW, AND FINALITY

Within twenty (20) days after receipt of this decision, any party may file a motion for reconsideration of this decision in accordance with 24 C.F.R. § 28.75.

Within thirty (30) days after issuance of this decision, the Defendants may file an appeal with the Secretary of HUD in accordance with 24 C.F.R. § 28.77. If a motion for reconsideration is filed, the Defendants may file an appeal with the Secretary within 30 days after the disposition of the motion. 31 U.S.C. § 3803(i)(2)(A); 24 C.F.R. § 28.77.

Unless this decision is timely appealed to the Secretary of HUD, or a motion for reconsideration is timely filed, this decision shall constitute the final decision of the Secretary of HUD and be binding on the parties 30 days after its issuance. 31 U.S.C. § 3803(i)(1); 24 C.F.R. § 28.73(d).

/s/

PAUL G. STREB
Administrative Law Judge

