



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-08462
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nichole Noel, Esquire, Department Counsel  
For Applicant: Archibald Thomas, Esquire

March 9, 2011

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

On July 7, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). DOHA took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In an August 1, 2010, response, Applicant denied the nine allegations raised in the SOR and requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on October 8, 2010. The parties proposed a hearing date of December 14, 2010. A notice setting that date for the hearing was issued on November 5, 2010. I convened the hearing as scheduled.

Applicant gave testimony, introduced three witnesses, and offered two documents, which were accepted into the record without objection as exhibits (Ex.) A-B. He was given until December 29, 2010, to submit any additional documents. The Government introduced four documents, which were accepted into the record without

objection as Exs. 1-4. The transcript (Tr.) of the proceeding was received on December 22, 2010. On December 30, 2010, Department Counsel forwarded to me five additional documents timely submitted by Applicant. Those documents were received on January 4, 2011. Absent any objections, they were accepted into the record as Exs. C-G and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden of mitigating security concerns related to financial considerations. Clearance is denied.

### **Findings of Fact**

Applicant is a 55-year-old senior test engineer who has worked for the same government contractor for 21 years. Applicant formerly served in the U.S. Navy from 1978 until 1989, then as a reservist from 1989 until 2003 while working for his present employer. At work, he is a highly valued and trusted employee.<sup>1</sup> Applicant is married. He and his wife have one adult and three minor children. He has earned a master's degree in management.

Applicant bought his first rental property as an investment in 1997. Leading a simple lifestyle with no extravagances, Applicant and his wife accumulated four more properties over the next five years. He knew the area well, the local economy was solid, and the properties acquired were in good locations. Applicant and his wife self-managed and self-maintained the rental properties.<sup>2</sup> The investments were modestly lucrative. Applicant and his wife were not overly-burdened with their managerial duties. They encountered the usual problems of landlords with regard to tenants and building repair. What the couple did not know about real estate management was quickly learned on the job.<sup>3</sup> Any profits were reinvested in the properties' upkeep.<sup>4</sup>

Applicant was and remains a diligent landlord. He regularly met with his bank and mortgage holders about every two months to make sure his accounts were in order.<sup>5</sup> He consulted attorneys when complex issues arose.<sup>6</sup> At the same time, Applicant became involved in a local real estate investment group which regularly met to discuss current issues. With their personal needs met and their finances in good order, Applicant and his wife applied their real estate savvy and used their personal

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<sup>1</sup> Tr. 15-21, 23-27, 98-101.

<sup>2</sup> Tr. 34.

<sup>3</sup> Tr. 79-80.

<sup>4</sup> Even with good tenants, regular maintenance was an ongoing concern. Storm damage, for example, necessitated at least one new roof. A mold problem that started because of tenant neglect cost Applicant at least \$25,000 to remedy. While recoupment from a negligent tenant was an available option, it was often impossible to "to get that type of money out of them," so he would use leasing profits or the home equity lines of credit for repairs. See, e.g., Tr. 70.

<sup>5</sup> Tr. 81.

<sup>6</sup> Tr. 85.

savings to put down payments on three additional units, which were purchased between 2005 and 2006.<sup>7</sup>

Shortly after Applicant and his wife purchased their final units, the economy and the national real estate market began to sour. Mortgages became easier to acquire during the initial downturn. As a result, the quality of renters began to shrink as the market became flooded with apartments. Consequently, the asking rate for rents declined.<sup>8</sup> It was a surprise when such conditions affected Applicant's region, which has a traditionally stable economy. By the autumn of 2007, this trend was personally impacting Applicant. He noted that when things started to "go bad, they went bad in a hurry."<sup>9</sup> Applicant began making his mortgage payments on the rental properties from his own savings in the absence of sufficient income from the rentals. He soon found he could not afford to suddenly expend \$2,000 to \$3,000 of his savings per month toward the properties for long.<sup>10</sup> He funneled his own savings into the properties for several months before he realized that doing so was a financial "mistake."<sup>11</sup> In the end, Applicant acquired about \$80,000 in personal debt from trying to keep the real estate loans in good standing.<sup>12</sup>

Applicant then tried to decide which properties were best poised to be put on the market for sale.<sup>13</sup> Meanwhile, he tried to work with his lender, but his efforts were unsuccessful. By that time, the lenders were also suffering from the soured market.<sup>14</sup>

In April 2008, Applicant tried to sell at cost one property (Property "T") that he had purchased for about \$120,000.<sup>15</sup> He notes that "all I really wanted to do at [that] point is just get it off my back because the property that I'm hoping one day will feed me is now eating me. So let me sell it."<sup>16</sup> In three months, the unit failed to attract a visit from a prospective buyer despite its excellent condition and location. Over the next

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<sup>7</sup> Tr. 35-36, 82.

<sup>8</sup> Tr. 37-38.

<sup>9</sup> Tr. 87.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Tr. 89-90. The \$80,000 appears to consist of the expenditure of a \$40,000 cash reserve held by Applicant and the acquisition of about \$40,000 in actual loan debt. Applicant is in timely repayment on this balance and has an established plan to satisfy this debt. Tr. 91. Part of the \$80,000 debt is in the form of a loan from Applicant's 401k plan, taken in 2008. Tr. 96. He did not borrow from his IRA, which has a modest \$20,000 balance reserved for any future contingencies that might impact his family.

<sup>13</sup> Tr. 39.

<sup>14</sup> Tr. 43-44.

<sup>15</sup> Tr. 39.

<sup>16</sup> Tr. 40.

year, Applicant lowered the price to \$109,900, \$104,900, \$99,000, and then to \$90,000, but the reductions attracted no interest through March 30, 2009.<sup>17</sup> He tried to work with the lender, then he tried to forestall foreclosure, but the lender decided to foreclose.<sup>18</sup> It eventually sold at auction for only \$65,000.<sup>19</sup> He has not received a 1099 form for this sale, and there is no evidence what his ultimate liability may be for this property.<sup>20</sup>

While Applicant unsuccessfully tried to find new tenants as units became available, he similarly tried to sell other properties without success. For example, Property “R” sat on the market from at least April 2008 until about September 2009, with its listing price was lowered from \$115,000, \$109,900, \$104,900, and then to \$99,900. It then languished on the market unsold at \$85,000 for six months.<sup>21</sup> No potential buyers examined the unit, despite the attractive reductions in price.<sup>22</sup> Meanwhile, Applicant’s lender was again unwilling to work with him. Today, it faces foreclosure without “so much as a nibble.”<sup>23</sup> Property “B” faced a similarly grim listing history.<sup>24</sup> Based on his lack of success selling Property “T,” which was a superior property. He did not try to sell Property “P,” which was located near Property “T” in the same residential community.<sup>25</sup> In addition, the lender eventually would not agree to a short sale of Property “B.”<sup>26</sup>

Only Property “M,” noted at SOR allegation ¶ 1.f, eventually sold. Property M had been unoccupied for some time. Rather than find another renter in a tight rental market, Applicant put the unit directly on the market. It attracted the attention of the Department of Housing and Urban Development (HUD) as a potential HUD-1 property. This unit sold at a loss of only about \$1,500, which was paid by Applicant.<sup>27</sup> In the interim, he listed his unoccupied properties in the HUD Section 8 program. Through that program,

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<sup>17</sup> Ex. B (Property “T” listing record).

<sup>18</sup> *Id.*, Tr. 45.

<sup>19</sup> *Id.*

<sup>20</sup> Although purchased for \$120,000, there is insufficient evidence to determine the amount yet owed on the property. Consequently, any potential liability cannot be fairly surmised.

<sup>21</sup> Ex 4 (Property “R” listing record).

<sup>22</sup> Tr. 76.

<sup>23</sup> *Id.*

<sup>24</sup> Tr. 43-44.

<sup>25</sup> Tr. 73.

<sup>26</sup> Tr. 74.

<sup>27</sup> Tr. 45-46; Ex. F (Settlement statement, dated Sep. 24, 2009).

Property “B” and Property “P” participated from about late 2007 until late 2009, until there was no further interest in the properties.<sup>28</sup>

Today, Applicant’s unit and two rental properties remain in good standing, with the rental units housed with reliable renters.<sup>29</sup> He is in “limbo” with regard to those properties in foreclosure, since the lenders appear stalled in their progress resolving them (Properties “P,” “B,” and “R”). As for Applicant’s other debt, which was mostly incurred in trying to save the properties at issue, he is using an established budget and calculated plan to satisfy this debt.

Applicant and his wife regularly review their needs and update their budget. They anticipate their expenses and needs. They are current on their regular bills. They have prioritized their debts and actively look for “things to knock off the list.”<sup>30</sup> A recent \$10,000 tax refund was directly applied to this debt. Applicant has been successfully seeking overtime and working out of town to accrue sufficient overtime to occasionally double his take-home pay.<sup>31</sup> Their credit card debt has been reduced to about \$5,000 and payments are timely. They have no car loans. While they have depleted all but \$6,000 of their emergency funds addressing their debt, their remaining rental properties are relatively lucrative and financially self-sufficient.<sup>32</sup> He is on good terms with those long-term tenants, who pay reasonable rents given current market conditions.<sup>33</sup> Overall, Applicant and his wife are living within the means provided by their salaries, which are \$120,000 and \$33,000, respectively. Applicant’s wife, a former stay-at-home mother, recently returned to the workforce and is applying her net income toward their debt.<sup>34</sup>

The debts alleged in the SOR are as follows:<sup>35</sup>

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<sup>28</sup> Tr. 88. Under Section 8, the landlord is paid a reduced rent for an eligible tenant, in part, by the Government. Here, for example, Applicant was paid about \$950 a month for Property “B,” which previously was renting for about \$1,300 a month. Tr. 88-89.

<sup>29</sup> Tr. 78.

<sup>30</sup> *Id.*

<sup>31</sup> Tr. 91-92.

<sup>32</sup> The \$6,000 is specifically reserved for any major or health-related type emergencies.

<sup>33</sup> Tr. 94.

<sup>34</sup> Tr. 95. Because Applicant’s wife’s return to work was precipitated by their recent financial difficulties and since her entire income is being devoted to their debt, her income is not considered as part of Applicant’s income for budgeting purposes.

<sup>35</sup> The mortgage-related debts noted at SOR allegations ¶¶ 1.d-1.i note differing lenders, but ultimately they were all held by the same lender. See Tr. 47.

1.a – Collection for utility account (\$66) – Paid. This account for a rental property became delinquent through simple oversight. Applicant paid the balance in August 2010, shortly after learning of its existence.<sup>36</sup>

1.b – Medical collection account (\$505) – Paid. Previously unaware of this outstanding balance, this account has been paid in full.<sup>37</sup>

1.c – Medical collection account (\$400) – Paid. This account also has been paid.<sup>38</sup>

1.d – Home equity line of credit (past due 120 days or more for \$42,596) on Property “P.”<sup>39</sup> – Unresolved. This home equity line of credit was taken for the upkeep on a rental property.<sup>40</sup> After becoming past due on this account, Applicant tried to recommence payment on the account by submitting a check for \$1,025 in September 2009. Noting that the check was not for the full amount due, the creditor returned the check and has not since accepted any form of payment on the account.<sup>41</sup> At the time, the creditor indicated that the property was in foreclosure, although it has yet to be sold or auctioned by the mortgagor.<sup>42</sup> Consequently, Applicant’s actual debt, if any, cannot yet be calculated.

1.e – Mortgage account (past due \$15,159 in foreclosure status on an original total loan balance of \$146,000) for Property “B.”<sup>43</sup> – Unresolved. In foreclosure. See above. To date, it has yet to be sold or auctioned by the mortgagor. Consequently, Applicant’s actual debt, if any, cannot yet be calculated.

1.f – Mortgage account (past due \$7,854 in foreclosure status on an original total loan balance of \$76,658) for Property “M.”<sup>44</sup> Satisfied. This property was sold through a short sale to HUD as a HUD-1 property.<sup>45</sup> See above.

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<sup>36</sup> Tr. 28-29; Ex. A (Account history).

<sup>37</sup> Tr. 32; Ex. C (Receipt, dated Dec. 10, 2010).

<sup>38</sup> Tr. 32-33; Ex. D (Receipt, dated Dec. 13, 2010).

<sup>39</sup> Tr. 72.

<sup>40</sup> Tr. 41-42, 70. Through a tenant’s negligence, the unit developed a major problem with mold that required extensive repairs and cleaning.

<sup>41</sup> Tr. 71-72.

<sup>42</sup> Tr. 72. In noting this fact, Applicant referenced a recent business news report stating that the lender had announced that “there was going to be a moratorium on foreclosures for a period of time through the end of the calendar year.” Tr. 72-73.

<sup>43</sup> Tr. 74.

<sup>44</sup> *Id.*

<sup>45</sup> Tr. 75.

1.g – Mortgage account (past due \$43,570 in foreclosure status on an original total loan balance of \$143,000) for Property “R.”<sup>46</sup> – Unresolved. In foreclosure. See above. To date, it has yet to be sold or auctioned by the mortgagor.<sup>47</sup> Consequently, Applicant’s actual debt, if any, cannot yet be calculated.

1.h – Mortgage account (past due \$30,907 in foreclosure status on an original total loan balance of \$135,000) for Property “T.”<sup>48</sup> Resolved. This property was foreclosed upon and sold by the mortgagor. No deficiency judgment was found against Applicant. He received a 1099-C form cancelling the debt of \$77,994.79 on the property, which had a fair market value of \$85,774.<sup>49</sup>

1.i – \$110,000 deficiency balance owed to a bank on an unidentified property in foreclosure. Duplicate account entry. Applicant and Department Counsel tried to reconcile this SOR entry, derived from past interviews with Applicant. Applicant denies having had a mortgage with the entity listed. It appears to be a duplicate entry for one of the properties above, but identified as a separate debt due to the emergence of this mortgagor’s name. The evidence indicates that it is a duplicate of Property “M,” noted at ¶ 1.f, above, which had an original total loan balance of approximately \$76,600.<sup>50</sup>

Overall, Applicant describes himself as a conservative and cautious investor.<sup>51</sup> He notes that he did not enter the real estate market without first studying both real estate and his locality. Once invested, he stresses that he discussed management issues with peers and professionals. Like others in his community, he did not foresee the impact the real estate market or general economic downturn would have on his community or region, which is known as an area of conservative growth. Given his recent experience and his familial needs, he has no desire to speculate further. Should any future problems arise with his remaining properties, he is content to sell them as soon as practicable.<sup>52</sup> Before the downturn in real estate impacted him, Applicant had no financial issues and only demonstrated a responsible use of credit. He is making progress addressing his debt. He is prepared to similarly address any resultant debt from those foreclosure properties not yet auctioned.

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<sup>46</sup> Tr. 75.

<sup>47</sup> Tr. 72. In noting this fact, Applicant referenced a recent business news report stating that the lender had announced that “there was going to be a moratorium on foreclosures for a period of time through the end of the calendar year.” Tr. 72-73.

<sup>48</sup> Tr. 48.

<sup>49</sup> Tr. 48-50; Ex. G (1099-C Form, 2009).

<sup>50</sup> Tr. 49-56,

<sup>51</sup> Tr. 60.

<sup>52</sup> Tr. 94.

## Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>53</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. <sup>54</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>55</sup> Any reasonable doubt about whether an applicant should be allowed access

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<sup>53</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>54</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>55</sup> *Id.*



to sensitive information must be resolved in favor of protecting such sensitive information.<sup>56</sup>

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

## Analysis

### Guideline F - Financial Considerations

Under Guideline F, “failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.”<sup>57</sup> It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”<sup>58</sup> Applicant owned several rental real estate properties when the slide in the national economy hit his region particularly hard. Unable to find quality tenants and with his properties’ values greatly diminished, his lender moved to foreclose on five of his eight investment properties. To date, his liability, if any, for three of those properties remains unknown. Such facts are sufficient to raise Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The debt related to the three foreclosed properties remains unresolved due to the lenders current lack of motivation to speedily move to post-foreclosure auction. As a result, the debt has yet to be defined.<sup>59</sup> Moreover, while the three properties facing foreclosure may have been contemporaneously acquired, the real estate market is inherently volatile. Even the soundest investments face some degree of vulnerability given fluctuating market conditions. While exceptionally dramatic economic downturns may be infrequent, there are no guaranties that they will never recur. This remains true for those units Applicant still owns. Although he was diligent in his analysis of the local market, his selection of purchases, and his actions after a major recession impacted his investments, there is insufficient evidence to raise Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent,

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<sup>56</sup> *Id.*

<sup>57</sup> AG ¶ 18.

<sup>58</sup> *Id.*

<sup>59</sup> At best, a cumulative past due amount slightly in excess of \$100,000 can be calculated on the three properties.

or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment).

The recent real estate downturn, while not unprecedented, went beyond the typical ebb and flow of investment valuation. Applicant's reaction to his business downturn was active and responsible. He never contemplated walking away from his obligations. Instead, he tried to work with his lenders, tried to find new renters, and attempted to sell his investments at steeply discounted prices. He listed his properties for Section 8 habitation. He tried to make payments on his home equity loan for one property, but his payment was returned. He expended \$80,000 trying to keep current on his mortgage and home equity line obligations. Today, he is actively and successfully working to satisfy the resultant debt acquired. To the extent the decline in renters and home values adversely affected Applicant's real estate management business, and in light of his diligence to ameliorate associated problems, FC MC AG ¶ 20(b) (the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances) applies in part.

Applicant has not received formal financial counseling, obviating application of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control).

Applicant has satisfied the three relatively minor debts noted in the SOR at allegations ¶¶ 1.a-1.c, which appear to have been mostly the result of simple oversight. Remaining are the six alleged debts noted at SOR allegations ¶¶ 1.d-1.i. The evidence and supposition that the debt alleged at SOR allegation ¶ 1.i was erroneously attributed to Applicant by adjudicators based on his descriptions of his mortgages is persuasive. It does not correlate with any of Applicant's properties, and it is reasonable to conclude that the reference to such a debt was simply deduced from a previously admitted description of his mortgages. Moreover, Applicant provided sufficient evidence to show that Property M (SOR allegation ¶ 1.f) was sold through a HUD-1 sale, while Property T (SOR allegation ¶ 1.h) was auctioned and a 1099-C issued to Applicant.

Remaining are the properties noted at SOR allegations ¶ 1.d, ¶ 1.e, and ¶ 1.g. As noted previously, Applicant diligently worked to find renters for his properties. When this attempt proved to be fruitless, he listed the properties for Section 8 use, tried to work with his lenders, and sought to sell his properties at significant discounts. He depleted his available resources and incurred significant debt trying to keep the properties from going into foreclosure. He worked continuously to try to resolve his financial issues before the properties went to foreclosure. Given his diligence, his strategies, and his demonstrated commitment to honor his debts, FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. None of the other FC MCs apply.

The burden for mitigation in these proceedings is placed squarely on Applicant. This case is not one of an individual living beyond his means or failing to understand basic personal finance. With significant experience in real estate acquisition, Applicant

bought several investment units in a well-tested, stable region. For nearly a decade, his efforts proved to be fruitful. When a major economic downturn impacted those investments, Applicant immediately poised himself to ameliorate his situation, using the methods described above. Little more could have been done, given the unique facts of this case. With foreclosure an inevitability, he was able to sell one property through HUD. Another property was sold by the bank at auction, which effectively cancelled one debt. He is currently in limbo awaiting for his lender to similarly dispose of the remaining properties. Once that is done, Applicant credibly states that he is prepared to satisfy any resultant balances that may be owed, using the same methods he is currently using to satisfy the debt incurred in trying to save the properties.

The AG does not require that all of one's delinquent debts must be paid. It only requires that an applicant establish a reasonable plan to resolve the debts, and that the applicant has taken meaningful actions to implement the plan. Here, Applicant has shown that he has worked diligently and proactively throughout. Rather than seek bankruptcy, he actively and immediately sought to eliminate his debt personally. He plans to use the same successful strategy he is now using to satisfy the debt he incurred trying to save his rental properties. The problem is, Applicant is currently held in limbo, while his lender tarries in auctioning the properties, an action that would give him some indication of the full extent of his debt. At present, the most that can be surmised is a cumulative past-due balance of more than \$100,000 on three properties, two of which had mortgages amounting to a sum of about \$289,000 (SOR allegations ¶¶ 1.e and 1.g.). The enormity of the potential debt and its present uncertainty confound efforts to determine whether Applicant's plan is reasonable or realistic. Consequently, I am compelled to conclude that security concerns remain unmitigated.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes reasonable behavior in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors. Applicant is a mature professional who devoted 25 years to military service. He is well-educated and has a master's degree in management. Applicant is a trusted and valued employee. He has a highly supportive wife, with whom he is raising four children.

When Applicant first decided to venture into real estate investment, he was in his 40s and knew his locality's reputation for stability. He understood the basics of real estate investment and of management, his area of expertise. He knew the area and he chose his first properties guardedly. After nearly a decade of serving as landlord and property manager, he bought three more units. Applicant managed his units diligently,

regularly meeting with his lenders, bankers, and a local real estate investors group. He tended to his properties appropriately while he continued to live within his means. Then, when adverse economic conditions suddenly impacted his region, he was proactive.

When vacancies began occurring, Applicant quickly moved to find new tenants. As the locality became more of a renter's market, he sought out other avenues of securing tenants by listing some of the properties as Section 8 housing. When real estate prices began to plummet, he held on to his units, hoping to ride out the dip. He expended \$80,000 of his own resources to make his loan payments. After he used nearly all of his savings and available credit, he tried to sell his properties. Despite several reductions in price, the properties generated no interest and they remained unsold. His lenders would no longer accept any payments from him, refused a request for short-sale, and otherwise provided no assistance to him. While he ultimately sold one unit to HUD, the rest went to foreclosure. To date, one was sold at auction and his debt for that property cancelled. Three units remain in limbo, awaiting auction by the lender. Applicant's liability, if any, on those properties remains undetermined.

Applicant is a highly credible and honorable man with a track record for industry and diligence. He is responsibly addressing the debt incurred in trying to save his real estate investments from foreclosure. Through no fault of his own, however, Applicant's ultimate liability on the three properties has yet to be calculated because the properties have yet to be auctioned for resale. Only knowing that his past-due amounts exceed \$100,000, the time is premature to assess whether his approach for reasonably addressing his present debt can or would be a responsible and realistic approach to addressing his ultimate liability, whatever it is. Lacking finite terms regarding his ultimate debt, whether he has exhibited responsible behavior, as contemplated by FC MC ¶ 20(b), cannot be discerned. Given these considerations, there is presently insufficient evidence to mitigate Guideline F security concerns. Clearance is denied.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.i:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge