

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

In the Matter of:

WILLIAM P. SCRUGGS,
Respondent.

HUDALJ 90-1459-DB
Issued: April 1, 1991

J. Clifton Wilkerson, Esq.
For the Respondent

John J. Cahill, Esq.
For the Government

Before: Robert A. Andretta
Administrative Law Judge

INITIAL DETERMINATION

Jurisdiction and Procedure

This proceeding arose as a result of a proposal by the Department of Housing and Urban Development ("the Department" or "HUD") to debar the Respondent, William P. Scruggs, from further participation in primary covered transactions and lower tier covered transactions as either a participant or principal at HUD and throughout the Executive Branch of the federal government, and from participating in procurement contracts with HUD, for a five-year period from the date of HUD's notice letter, January 29, 1990. In addition, the Department immediately suspended Respondent from further transactions and contracts, as described above, pending the outcome of the proposed debarment. Such suspension and debarment action is authorized by the regulations of the Department that are codified at Title 24, Code of Federal Regulations, Part 24, and jurisdiction is thereby obtained. On February 20, 1990, Respondent, through counsel, made a timely request for a hearing, which is the basis for this proceeding.

The Department's action was based upon its allegations regarding Respondent's actions while he was Vice Chairman of the Board of Commissioners of the Housing Authority of the City of Passaic, New Jersey, ("the Authority"), a municipal corporation created pursuant to the New Jersey Local Housing Authorities Law, N.J.S.A. 55:14A-1 *et*

seq. The Department charges that Respondent failed to exercise proper, necessary, and diligent control with respect to the activities of the Passaic Housing Authority and its staff so as to adversely affect his present responsibility and the integrity of HUD programs. The alleged failures of Respondent to exercise his authority as Vice Chairman is claimed by the Department in its Complaint to have resulted in:

1. Payment of excessive, unreasonable and unauthorized compensation to Housing Authority personnel;
2. The failure of the Housing Authority to comply with its Comprehensive Improvement Assistance Program ("CIAP") budget, the excessive "drawdown" by the Housing Authority of CIAP funds and the submission by the Housing Authority of inaccurate and/or misleading reports with respect to CIAP funds;
3. The failure of the Housing Authority to properly allocate salary and other employee compensation among the various Housing Authority programs;
4. Payments by the Housing Authority to certain employees for compensation for unused vacation time, unused administrative leave and supplemental compensatory time which were not authorized or allowable under the State Civil Service laws;
5. The incurring by the Housing Authority of unreasonable, excessive and/or unsupported travel expenses;
6. The failure to comply with federal requirements in the procurement of legal services, the failure of the Housing Authority to obtain HUD approval for legal services procurement and payments as required, the payment of unreasonable legal fees and misrepresentation to HUD by Housing Authority personnel with respect to applications to HUD for approval of fees;

7. The failure to maintain proper records and the maintenance of inaccurate records in connection with the disposal of nonexpendable Housing Authority equipment;
8. The disposition of Housing Authority assets without an indication of market value and without compliance with Federal Property Management Standards; and
9. The maintenance of unreliable and deficient internal controls of the activities of the Housing Authority.

In accordance with my Notice of Hearing and Order of March 8, 1990, the Government filed its Complaint on April 9, 1990. It makes, in greater detail, the allegations that are enumerated above. The Government states that Respondent's negligence and actions seriously effected the integrity of the public housing program in that they resulted in the improper diversion of hundreds of thousands of dollars appropriated by Congress for the assistance of low-income people. The Government maintains that Respondent's actions constituted a wilful failure to perform in accordance with the provisions of the Authority's Annual Contributions Contract ("ACC") with HUD as well as applicable statutory provisions over a period of years. It states that Respondent's actions also show a lack of business integrity and honesty which is so serious and compelling in nature as to effect the present responsibility of Respondent, and that such conduct is cause for suspension and debarment under the regulations that are codified at 24 CFR 24.305(b), (d), and (f).

On May 3, 1990, Respondent filed his Answer to the Complaint in which he denies the allegations made against him in the Complaint and states that he was unaware of the irregularities asserted to have been committed by the Authority staff. A hearing was conducted in New York City on October 30-31, 1990. In accordance with an oral Order at the hearing, the Respondent and the Government timely filed their post-hearing briefs on February 5, 1991, and, thus, this case became ripe for determination on this last-named date.

Findings of Fact

The Department of Housing and Urban Development provides federal assistance to local housing authorities to maintain decent, safe, and sanitary housing for families of low income. 42 U.S.C. Sec. 1437, *et seq.* Assistance includes, among other things, operating subsidies under Section 1437g and Comprehensive Improvement Assistance Payments under Section 1437l.

Congress has authorized HUD to enter into contracts with public housing agencies ("PHAs") which may contain any terms and conditions necessary to ensure the low income character of the projects involved. 42 U.S.C. Section 1437d(a). Such contracts are known as Annual Contributions Contracts ("ACCs"). A congressional requirement is that every contract for annual contributions shall provide, *inter alia*, that the PHA shall comply with HUD procedures and requirements to ensure sound management and operation of the project. 42 U.S.C. Section 1437d(c)(4). Upon an occurrence of a substantial breach of the contract by the public housing authority, HUD is entitled to take possession of the public housing authority's assets. 42 U.S.C. Section 1437d(g)(1).

A. Payment Of Excessive, Unreasonable And Unauthorized Compensation

Under Section 101 of the ACC in this case, the Passaic Housing Authority agreed to administer its project in an efficient and economic manner. (T 166; S 13B).¹ Under Section 201 of the ACC, the Authority agreed to operate each project at all times "in such manner as to promote serviceability, efficiency, economy and stability" (T 166). The Authority also agreed in Section 307(A) to limit compensation of personnel to amounts comparable to pertinent local practice. (T 167). Finally, under Section 407(H) of the ACC, the Authority agreed that it would not incur operating expenditures which would be unreasonable or in excess of budgeted amounts approved by HUD.

An audit report prepared by HUD's Inspector General's Office revealed that excessive compensation was paid to various Authority employees holding multiple job titles (S 1 at 4-6). In one year, Paul Marguglio, the Authority's Executive Director, received \$161,675 in salary for the positions of Executive Director, Modernization Officer, Contracting Officer, and Purchasing Agent. (T 26-27; S 1 at 4). This amount is nearly twice the annual salary budgeted for his basic position of Executive Director. (S 1 at 4). Donald Pleri, the Authority's Deputy Executive Director, received \$111,505 in one year for acting as Deputy, Modernization Specialist, and Public Agency Compliance

¹Capital letter T stands for the transcript of the hearing, and the number refers to the transcript page. The Secretary's exhibits are cited with a Capital S and an exhibit number, and the Respondent's exhibits are cited with a Capital R and an exhibit number. In some cases, a page number follows an exhibit number and the word "at."

Officer. (T 26; S 1 at 4-5). Other employees, including relatives of Marguglio, also held multiple positions and received salaries in excess of amounts approved by HUD. (T 26; S 1 at 4-5). The Authority's Board of Commissioners, of which the Respondent served as Vice Chairman, approved resolutions authorizing these payments. (T 26-33; S 2A-F).

The Board of Commissioners also approved resolutions authorizing the payment of unreasonable bonuses to Authority employees. (T 34; S 1 at 6; S 3). The Commissioners approved the payment of compensatory overtime for Authority employees in cases where they were not entitled. (T 35-36; S 4A-C). In 1988, for example, Marguglio received an additional \$47,115 as a result of this practice. (S 1 at 7). The Commissioners also approved payments to certain employees to compensate them for unused vacation time in violation of the ACC and state civil service laws (T 37-39; S 1 at 20; S 4D). Between 1986 and 1988, the Housing Authority paid Marguglio's wife \$95,000 even though she only worked one day. (T 232; S 1 at 21).

The Commissioners authorized Marguglio to obtain a credit card for travel expenses and a \$7,500 expense account with no restrictions. (T 41-42; S 1 at 8, 26). Marguglio's credit card charges exceeded \$21,000 during a three-year period, and no supporting documentation was maintained. (S 1 at 26). Federal housing funds were used to purchase a retirement annuity with \$10,000 annual payments for Marguglio. (T 42-44; S 1 at 7-8; S 6A-B). The Commissioners also provided Marguglio and other Authority employees with automobiles for their personal use without restriction. (T 44-46; S 1 at 34; S 7).

B. Unauthorized Payments For Legal Services

Section 306(B) of the ACC provides that the Authority will not enter into any contract for professional services, if the procurement is expected to be in excess of \$10,000 and is to be awarded without competition, or only one bid or offer is received in response to a solicitation for proposals, without the prior written approval of HUD. Under Section 315, the Authority agreed not to enter into any agreement for legal services without the prior written consent of HUD if the agreement provides for an initial term in excess of two years or contains a renewal provision.

Notwithstanding the above-stated restrictions on contracts for professional services, the Authority approved the retention, with life tenure, of August Michaelis as counsel for the Authority without gaining authorization from HUD. (T 57; S 1 at 29-31; S 11). The Authority did not solicit competitive proposals prior to retaining Michaelis, as required by Section 306(B) of the ACC, and paid him in excess of \$420,000 between 1986 and 1988, an amount which I notice is at least double what would have been paid to a top law firm for the services he is credited with performing. (T 54, 125, 177-86).

Michaelis also pursued baseless claims to receive some of these fees. (T 177). For example, in a case where the amount in controversy was \$108,000, the Authority paid Michaelis over \$111,000 and was prepared to pay an additional \$30,000-40,000 for an appeal. (T 178-79).

C. Failure To Comply With Federal Property Disposition Standards

Section 308(C) of the ACC requires the Authority to agree not to sell or exchange any of its personal property for less than market value. The HUD regulations that are codified at 24 CFR 85.32(d)(2) requires the Authority to inventory its property at least once every two years.

In 1988, the Authority disposed of five automobiles, which had cost the Authority \$65,600 when purchased in 1884 and 1986, for \$5. (T 48-51; S 1 at 33-34; S 9A-B). Computer equipment was given to Authority employees for their personal use. (T 52-54; S 1 at 35; S 10). No inventory of Housing Authority property was performed. (T 51).

D. Unreasonable And Unauthorized Travel Expenses

HUD Handbook 7401.7 requires entities such as the Housing Authority in this case to adopt travel regulations which provide only for reasonable travel necessary to enable it to operate its programs economically and efficiently. Under Section 307(C) of its ACC, the Passaic Authority is required to maintain complete records with respect to employees' travel expenses.

Nonetheless, the Commissioners approved a travel policy which allowed a traveller to be compensated for expenses incurred in travelling two days before and two days after the scheduled business of the trip. It also failed to limit the number of attenders at conferences and did not provide for maximum *per diem* limits on lodging and subsistence expenses. (T 46-48; S 1 at 25-26; S 8). As a result, for example, in one instance, six commissioners and the Housing Authority's counsel attended a conference in Scottsdale, Arizona, at a cost of approximately \$15,000. (S 1 at 25).

E. Failure To Ensure Compliance With The CIAP Budget, Excessive Drawdown Of CIAP Funds, And Permitting Submission Of Inaccurate Or Misleading Reports

HUD Handbook 7485.1 Rev. 3 provides that CIAP funds may only be shown as obligated when CIAP contracts are awarded. The Authority submitted reports to HUD

showing that \$3,377,190 was obligated when in fact only \$1,955,050 was obligated. (S 1 at 15-16). Funds not actually obligated are required to be returned to HUD but, in this case, they were not. (T 60).

Budgets submitted by the Authority failed to properly allocate salaries among the different Housing Authority programs. (T 62-63; S 1 at 18-19). Assets were overstated and costs were incurred without supporting documentation. (S 1 at 37).

F. The Proposed Debarment, HUD's Takeover Of The Housing Authority, And Resulting Criminal Charges

As a result of the findings contained in the Inspector General's audit report on the Passaic Housing Authority, HUD's Assistant Secretary for Public Housing issued letters of suspension and proposed debarment to the Respondent, the Chairman of the Board of Commissioners, and others. (T 115-16, 120). HUD also declared a substantial breach under the ACC and obtained an Order from the United States District Court for the District of New Jersey allowing it to take over the assets of the Housing Authority. (T 122).

Additionally, several employees of the Authority have pleaded guilty to federal criminal felony charges in connection with the events described above. (T 64). These charges included the payment of kick backs by Michaelis to Marguglio, lying to Congress, lying to HUD officials about the multiple job positions, and destroying Housing Authority records. (T 99, 186-187, 189, 192-93, 195).

Applicable Law

The government is required by the regulation codified at 24 CFR 24.115 to conduct business only with responsible persons. To accomplish this mandate, the government may take action to debar persons from participating in covered transactions for various causes. 24 CFR 24.305. The subsections of that regulation that are applicable to this case permit debarment for the stated reasons and are quoted here in pertinent part:

(b) Violation of the terms of a public agreement or transaction so serious as to effect the integrity of an agency program, such as:

(1) A wilful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A wilful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

* * * * *

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

* * * * *

(f) ... [M]aterial violation of a statutory or regulatory provision or program requirement applicable to a public agreement or transaction

The agency proposing debarment has the burden of proving cause for debarment by a preponderance of the evidence. 24 CFR 24.313(b)(4); 26.24(a). If the agency meets this requirement, the Respondent has the burden of proving mitigating circumstances. 24 CFR 24.313(b)(4).

Discussion

Clearly, the applicable federal statutes and regulations as well as the ACC and HUD handbooks were violated by the Housing Authority of the City of Passaic. The testimony of witnesses, including Respondent, and the Inspector General's audit report, clearly reveal that the Authority paid excessive, unreasonable, and unauthorized compensation to Authority employees. This occurred because the Respondent and other members of the Board of Commissioners allowed employees, including the Executive Director, to hold multiple job titles and gave these employees improper multiple salaries. The Respondent also authorized excessive and unreasonable bonuses and payments for compensatory overtime and unused vacation leave to selected Authority employees. All of these payments were substantial violations of Sections 101, 210, 307, and 407 of the ACC.

The retention of August Michaelis as the Authority's counsel for life and the Authority's payment of Michaelis's excessive and unreasonable fees violated Sections 306 and 315 of the ACC. The Authority's disposition of cars and computer equipment violated Section 308(C) of the ACC.

The Authority reported to HUD that \$3,277,190 in CIAP funds had been obligated when in fact less than \$1,955,050 was actually obligated. The excess funds should have been returned to HUD, but they were not. Such incorrect reporting of monetary obligation and retention of misreported funds violates the requirements of HUD Handbook 7485.1 Rev. 3. The Authority's extravagant travel policies, payment of unsupported travel charges, and failure to maintain travel records all constituted violations of HUD requirements.

These activities were all "violation[s] of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program" within the meaning of the regulation that is codified at 24 CFR 24.305(b). They are also "material violation[s] of statutory or regulatory provision or program requirements applicable to a public agreement or transaction ..." as provided against in 24 CFR 24.305(f).

Respondent Scruggs shares the responsibility for these violations. Public Housing Authorities in New Jersey are organized under the Local Housing Authorities Law, N.J.S.A. Section 55:13A-1, *et seq.* (T 158). Under the statute, the powers of each housing authority are vested in the commissioners. N.J.S.A. Section 55:14A-6 provides that:

[T]he authority shall select a chairman and a vice-chairman from among its commissioners, and it may employ a secretary (who shall be executive director), technical experts and such other officers agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation.

(T 158-59). Also under subsection 6, for any legal services that it may require, an authority may call upon any chief law officer of the municipality or may employ its own legal counsel and legal staff.

Respondent admitted in his Answer To The Complaint that he had primary management and supervisory responsibilities with respect to the operations of the Housing Authority. He also admitted that he was responsible for exercising proper, necessary and diligent control and oversight with respect to the activities of the Authority and its staff. He shared with the other commissioners responsibility for determining policy with respect to employee compensation, the disposition of Authority assets, the maintenance of proper records and controls, and the payment of legal fees, and he acknowledged all of this in his Answer. Respondent also acknowledged in his Answer that the commissioners were responsible for ensuring that Authority expenditures were reasonable and necessary, and that the Authority was complying with HUD regulations and the ACC.

Respondent failed to discharge his duties in a responsible manner. His own testimony demonstrates that he conducted himself as Vice-Chairman of the Board of Commissioners of the Housing Authority in an irresponsible way. He claimed, for example, with regard to checks that he signed, that it was not his job to ask whether a particular check was proper, but only to sign the checks that were put before him. (T 237). This level of naivete does not comport with Respondent's other activities

In his own affairs, Respondent has been successful in several different businesses. (T 232). He owned a liquor business. (T 232). He had an interest in a supermarket. (T 233). He has had substantial interests in real estate. (T 233, 255). However, in connection with his duties as Vice Chairman, Respondent claims not to have known that the Board of Commissioners could hire and fire the Executive Director and the Authority's counsel. (T 234-35, 241-42). He claims not to know who did any of the hiring at the Authority, who staffed particular positions, or how many employees worked for the Authority. (T 238, 240). And, yet, he signed the checks, and he signed the resolutions creating positions, hiring personnel, authorizing extra salaries, and disposing of equipment.

Respondent testified that he never inquired regarding how much Marguglio and Michaelis were paid, even though it was his duty to determine their compensation. (T 245). He claims that he was unaware that employees were receiving multiple salaries, but he voted for and signed the resolutions approving them. (T 240-241). Similarly, he professed ignorance of bonuses paid to Marguglio and others, but his signature is on resolutions approving the payments. (T 242).

Respondent did not know what the term "ACC" means. (T 244). He could not estimate the amount of federal funding that the Authority received yearly. (T 237). He never once reviewed any of the books and records of the Authority. (T 246). He did not clearly recall whether he had ever requested advice from counsel. (T 242-43). Respondent never so much as read the Inspector General's audit report; not even after some of its more shocking revelations were reported in the press. (T 238-40).

All of these failings taken together reveal the most telling incompetence if not wilful mismanagement. Such incompetence is a betrayal of the public trust just as surely as are instances of malfeasance. The government cannot tolerate such incompetence and mismanagement in its financial programs and not only has the right, but the responsibility, to protect the public interest from it.²

²In *The Matter of Arnold K. Litman, et al*, (HUDALJ 89-1361-DB, decided October 3, 1989) the Respondent claimed that he honestly believed he was doing right while acting in violation of the regulations.

Respondent has put forward two lines of defense. First, he argues that the employees of the Authority kept him and the other commissioners in the dark, or "duped" them into approving the resolutions described in the findings. He claims that such duping of the commissioners was possible because the resolutions were not objectionable on their face and it was reasonable to follow the advice of the Executive Director and the Authority's counsel. His second line of defense is that the other commissioners also approved the resolutions and policies that the government complains of.

These two arguments are frivolous. Just as directors of corporations must exercise ordinary care, so too must a board of commissioners of a housing authority. Respondent's demonstrated ineptitude falls far short of that standard. Moreover, there was no evidence that the commissioners were deceived by the staff, and the fact that the commissioners were required to vote on and sign each resolution makes it highly improbable that they could have been deceived had they been exercising any care at all.

In not one instance brought forward in this case did the commissioners fail to approve the resolutions prepared for them by Michaelis and Marguglio. There is no evidence that Respondent ever questioned Marguglio or Michaelis as to the propriety of the resolutions he approved.

New Jersey law imposes a fiduciary duty of trust and responsibility on a housing authority commissioner. Whether by design or indifference, Respondent neglected and abused this trust and violated his responsibility to HUD and the citizens of Passaic.

The fact that other commissioners approved the resolutions does not relieve Respondent of his responsibility to exercise independent judgment. Moreover, Respondent had special authority to sign the payroll checks pursuant to which Marguglio and others received their excessive salaries and was in a position to know more about the affairs of the Housing Authority than any other commissioner.

Finally, there is no evidence that HUD's decision to debar Respondent was based upon any impermissible factor. He was not selected. The Chairman was also debarred and some of the staff face criminal action. HUD's debarment action against Respondent is properly based upon his responsibility for the waste of federal funds.

The deciding official stated that this in itself posed a risk to the government resulting from a lack of competence. In like manner, it was held in *The Matter of Washington Butler, Jr.* (HUDALJ 90-1466-DB(LDP), decided December 3, 1990) that the government has a responsibility to the public to limit the participation not only of dishonest people, but also of incompetent people.

Conclusion and Order

Debarment is a sanction which may be invoked by HUD as a measure for protecting the public interest by ensuring that only those qualified as "responsible" are allowed to participate in HUD programs. *Stanko Packing Co. v. Bergland*, 489 F. Supp. 947, 949 (D.D.C. 1980); *Roemer v. Hoffman*, 419 F. Supp. 130,131 (D.D.C. 1976). "Responsibility" is a term of art used in government contract law. It encompasses the projected business risk of a person doing business with the government. This includes that person's integrity and ability to perform. The primary test for debarment is present responsibility, although a finding of present lack of responsibility can be based upon past acts. *Schlesinger v. Gates*, 249 F.2d 111 (D.C. Cir 1957); *Roemer, supra*. The debarment sanction is also justified on the basis of its deterrent effect on those who would do business with the government.³

Upon consideration of the need to protect the public interest, I conclude and determine that good cause exists to debar Respondent as has been proposed by the government and as described in the first paragraph of this initial determination. Accordingly, the proposed debarment of William P. Scruggs is affirmed, and it is hereby

So ORDERED.

Robert A. Andretta
Administrative Law Judge

Dated: April 1, 1991.

³ See *Washington Butler, Jr., supra*.

CERTIFICATION OF SERVICE

I hereby certify that copies of this INITIAL DETERMINATION AND ORDER issued by ROBERT A. ANDRETTA, Administrative Law Judge, HUDALJ 90-1459-DB, were sent to the following parties on this 1st day of April, 1991, in the manner indicated:

Chief Docket Clerk

REGULAR MAIL:

Mr. William Scruggs
Housing Authority of the City of Passaic
333 Passaic Street
Passaic, NJ 07055

J. Clifton Wilkerson, Esquire
458 Central Avenue
East Orange, NJ 07018

John J. Cahill, Esquire
Regional Counsel Office
U.S. Department of Housing
and Urban Development
26 Federal Plaza
New York, New York 10278-0068

INTER OFFICE MESSENGER:

Bruce Weichmann, Acting Director
Participation and Compliance Division
U.S. Department of Housing
and Urban Development
451 7th Street, S.W., #10251
Washington, D.C. 20410

Barbara Black - Docket Clerk

U.S. Department of Housing
and Urban Development
451 7th Street, S. W., #10266
Washington, D.C. 20410