

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

In the Matter of:

JACOB WEINGARTEN,

Respondent

HUDALJ 93-2050-DB(S)

Decided: March 21, 1994

M. Hatcher Norris, Esquire
For the Respondent

Robin E. McMillan, Esquire
For the Department

Before: Samuel A. Chaitovitz
Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arose pursuant to 24 C.F.R. § 24.100 *et seq.* On April 27, 1993, Associate General Deputy Assistant Secretary for Housing-Federal Housing Commissioner of the U.S. Department of Housing and Urban Development ("HUD") James E. Schoenberg suspended Jacob Weingarten ("Respondent"). This action is based on Respondent's being charged in a Criminal Information with violations of Connecticut General Statutes, §§ 53a-122(a)(2), 53a-119(2), 53a-121(b), and 53a-8. Respondent is prohibited from participating 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. This suspension remains in effect pending resolution of the information, and any legal, debarment, or Program Fraud Civil Remedies proceedings that may ensue.

Respondent requested a hearing on the suspension on June 2, 1993. Because the

suspension is based solely on being charged in an information, the hearing in this matter is limited under 24 C.F.R. §§ 24.313(b)(2)(ii) and 24.413 to submission of documentary evidence and written briefs. An Order dated June 11, 1993, established a schedule for briefs. In compliance HUD filed its brief on June 30, 1993 ("Brief"). Respondent filed his response on July 22, 1993 ("Response"). Attached to the Response was an Amended Information charging Respondent with Larceny in the First Degree by Defrauding a Public Community (Response Exhibit 1). On July 30, 1993, HUD filed a reply to Respondent Weingarten's Response ("Reply") together with a Motion for Consideration of Reply. Because Respondent made no objection, the Motion for Consideration of Reply was granted on December 2, 1993.

There have been no further filings in this matter and, therefore, it is now ripe for decision.

Findings of Fact

1. Respondent Weingarten is an independent accountant and did work for Winthrop Health Care Center ("Winthrop"). Response p. 2 and Declaration of Jacob Weingarten para. 1; and Brief p. 2. Respondent owns no interest in Winthrop. Response p. 2.

2. Respondent provided independent accounting services to Windsor Castle Health Care, Inc. ("Windsor") and Bridgeport Health Care Center, Inc. ("Bridgeport"). Response-Declaration of Jacob Weingarten para. 1.

3. Respondent provided his clients quarterly compiled Balance Sheets as well as related Statements of Income. The client is free to do with them as it pleases. Response-Declaration of Jacob Weingarten para. 2.

4. Windsor submitted an application for HUD/FHA mortgage insurance (FHA Project No. 017-43063) and Bridgeport submitted an application for HUD/FHA mortgage insurance (FHA Project No. 017-43059) under § 232 of the National Housing Act, 12 U.S.C. § 1715w. Brief-Ex. 2 para 2.

5. In connection with the above HUD/FHA mortgage insurance applications, Respondent signed the compiled Balance Sheets of Windsor and Bridgeport as well as the related Statements of Income. Respondent signed the compilations for the firm Burg and Weingarten, CPA, P.C. Brief Ex. 2 para 6.

6. Respondent received no separate and distinct fee for the preparation of the Balance Sheets and Statements of Income and they were not prepared in connection with the applications of Windsor and Bridgeport. The subject Balance Sheets and Statements

of Income were prepared in the general course of business by Weingarten as independent accountant for Windsor and Bridgeport and they could utilize the documents in their possession as they saw fit. Response p. 3.

7. An Amended Information dated May 26, 1993, was filed in the Superior Court of the State of Connecticut, Hartford Judicial District, Docket No. CR93-434854. The Amended Information accuses Respondent of "LARCENY IN THE FIRST DEGREE BY DEFRAUDING A PUBLIC COMMUNITY". The Amended Information charges,

JACOB WEINGARTEN by one scheme and course of conduct, did with intent to defraud, aid in the preparing and filing for reimbursement of four (4) false cost reports for fiscal year ending 9/30/86; fiscal year ending 9/30/87; fiscal year ending 9/30/88; and fiscal year ending 9/30/89 with the Department of Income Maintenance in conjunction with the State Medicaid program, Title XIX of the Social Security Act, as amended. Said false cost reports overstated expenses of the Winthrop Health Care Center, Inc. of New Haven by falsely representing four (4) leases as arms length leases in (sic) when in fact they are non-arms length leases in violation of § 17-311-52 of the Regulations of the State of Connecticut and which involved an amount of money in excess of ten thousand dollars (\$10,000) in violation of §§ 53a-122(a)(2); 53-199(2); 53-121(b); and 53a-8 of the Connecticut General Statutes.

Response-Exhibit 1.

3. Respondent specifically denies any knowledge of the claimed overstated expenses and any knowing failure to disclose "non arms length" transactions to the Connecticut Department of Income Maintenance. Response p. 2.

Discussion and Conclusions of Law

1. Respondent is subject to suspension under 24 C.F.R. Part 24

24 C.F.R. § 24.105(m) defines "participant" as follows:

(m) Participant. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another

participant.

24 C.F.R. § 24.105(p) defines "principal" as follows:

(p) Principal. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

* * *

(13) Accountants, consultants, investment bankers, architects, engineers, attorneys and others in a business relationship with participants in connection with a covered transaction under a HUD program;

* * *

24 C.F.R. § 24.110(a)(1)(C)(ii) described a lower tier covered transaction as:

* * *

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of the amount, under which a person will have a critical influence on or a substantive control over the covered transaction. Such persons are:

* * *

(11) Accountants, . . . and others in a business relationship with participants in connection with a covered transaction under a HUD program;

* * *

HUD states that Respondent, as an independent accountant for Bridgeport and Windsor, has a business relationship with applicants seeking HUD/FHA mortgage insurance. Brief p. 3. HUD also contends that Respondent's previous professional experience in the preparation of financial reports and the provision of accounting services

to nursing homes indicates he may reasonably be expected to participate in covered transactions in the future. Brief p. 3. In light of the foregoing, HUD argues that Respondent is both a participant and principal under 24 C.F.R. § 24.105(m) and (p). Brief p. 3-4.

Respondent states that he received no distinct fee for the preparation of balance sheets and statements of income and they were not prepared in connection with the applications of Windsor and Bridgeport. Response p. 3 Respondent notes that the balance sheets and income statements were prepared in the general course of Respondent's business as an independent accountant and the clients could use them as the clients saw fit and that his business relationships with Windsor and Bridgeport were not sufficient to characterize the Respondent as a participant. Response p. 3. In light of the foregoing Respondent argues that he is not a principal within the meaning of 24 C.F.R. § 24.105(m) merely because he has a business relationship with Windsor and Bridgeport. Response p. 3. Respondent argues further that the mere allegation in the Brief that Respondent may reasonably be expected to participate in covered transactions in the future is insufficient to establish that Respondent is a principal within the meaning of 24 C.F.R. § 24.105(p). Response p. 4.

In providing the balance sheets and income statements to Windsor and Bridgeport as an independent accountant, Respondent should reasonably have foreseen that these financial documents would be used to apply for HUD/FHA mortgage insurance. Use in applying for HUD/FHA mortgage insurance, and other uses of these financial documents, should have been anticipated by Respondent as an ordinary and reasonably foreseen use of these financial documents. Accordingly I conclude that Respondent had business relationships with Windsor and Bridgeport in connection with a covered transactions, the applications for HUD/FHA mortgage insurance, and therefore was a "principal" within the meaning of 24 C.F.R. § 24.105(p)(13). Further, because of Respondent's work as an independent accountant, of the type described above, for Windsor and Bridgeport and other nursing homes, not solely because he is a CPA, I conclude that he is a person who may be expected to enter into a covered transaction and therefore is a "participant" within the meaning of 24 C.F.R. § 24.105(m).

2. Respondent's Information provides cause for suspension.

24 C.F.R. § 25.105(h) provides " . . . An information . . . charging a criminal offense shall be given the same effect as an indictment." 24 C.F.R. § 24.405 provides that suspension may be imposed on suspicion that an offense listed at 24 C.F.R. § 24.305(a) has been committed and that an indictment shall constitute adequate evidence for purposes of suspension actions.

The offenses listed at 24 C.F.R. § 24.305(a), include the following:

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person; and

Respondent is charged with Larceny in the First Degree by Defrauding a Public Community. This offense indicates a serious lack of business honesty and integrity in the preparation and filing four false cost reports with state agencies on behalf of Winthrop by falsely representing four leases as arms length leases when in fact they were non-arms length leases.

Respondent's lack of business honesty and integrity place HUD and the public at serious risk in dealing with Respondent until the charges have been resolved. A suspension is a serious matter and is imposed when immediate action is necessary. Again noting the serious risk to HUD and the public in dealing with Respondent, and that Respondent could attempt to deal with HUD at any time, I conclude immediate action is necessary.

Conclusion and Determination

Accordingly, I find and determine that good cause existed on April 27, 1993 to suspend Respondent from further participation in primary covered transactions and lower tier-covered transactions as either a participant or principal at HUD and in any procurement contracts with HUD pending resolution of an information issued against him and any legal, debarment, or Program Fraud Civil Remedies Act proceedings which may ensue.

Samuel A. Chaitovitz
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DECISION AND ORDER issued by SAMUEL A. CHAITOVITZ, Administrative Law Judge, in HUDALJ 93-2050-DB(S), were sent to the following parties on this 21st day of March, 1994, in the manner indicated:

Chief Docket Clerk

REGULAR MAIL:

M. Hatcher Norris, Esquire
Butler Norris & Gold
254 Prospect Avenue
Hartford, CT 06106-2041

INTER OFFICE MESSENGER:

Robin E. McMillan, Esquire
U.S. Department of Housing
and Urban Development
451 7th Street, S.W., #10251
Washington, D.C. 20410

Nilda Gallegos, Docket Clerk
for Debarments and Suspensions
U.S. Department of Housing
and Urban Development
451 7th Street, S.W., #10251
Washington, D.C. 20410

Phillip A. Murray, Acting Director
Participation and Compliance Division
U.S. Department of Housing
and Urban Development
451 7th Street, S.W., # 9166
Washington, D.C. 20410