

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

In the Matter of:

RICHARD G. BELIN,

Respondent.

HUDALJ 94-0058-DB

Decided: July 29, 1994

Richard G. Belin, *pro se*

Michael D. Noonan, Esquire
For the Government

Before: Robert A. Andretta
Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arose pursuant to 24 CFR Part 24, Subpart G. On April 7, 1994, Michael B. Janis, the General Deputy Assistant Secretary of the U.S. Department of Housing and Urban Development ("HUD"), notified Respondent Richard G. Belin that, to protect the public interest, consideration was being given to debar him from further participation in primary covered transactions and lower tier covered transactions as either a participant or principle at HUD and throughout the federal government, and from participating in procurement contracts with HUD for a period of three years from the notice date. In addition, pending final determination of the debarment, Respondent was temporarily suspended from further participation in such transactions and contracts.

The basis of the suspension and proposal of debarment was that Respondent had been convicted in the United States District Court for the District of South Carolina, Florence Division, for violation of Title 18, Sections 1951 and 1952, United States Code. Since Respondent had participated in a covered transaction, and was reasonably

expected to participate in covered transactions in the future, he was deemed to be a participant and a principle, as defined in Title 24, Code of Federal regulations, Sections 24.105(m) and (p). On May 1, 1994, Respondent exercised his right to appeal the Deputy Assistant Secretary's decision by filing an appeal with HUD.

Because HUD's action is based solely on a conviction, the hearing in this case is limited by 24 CFR 24.31(b)(2)(ii) to submission of documentary evidence and written briefs. On May 26, 1994 I issued a Notice Of Hearing And Order which established a schedule for the filing of briefs. In compliance with that Order, HUD filed its Government's Brief In Support Of Suspension And Debarment ("Government's Brief") on June 24, 1994. Respondent filed his Rebuttal To Government's Brief ("Respondent's Rebuttal"), along with a Motion For Extension Of Time And Stay ("Motion") on July 6, 1994. On July 12, 1994, the government filed its Response To Respondent's Rebuttal ... And Motion ("Government's Response").

Findings of Fact

On November 4, 1992, Respondent was indicted in the United States District Court for the District of South Carolina, Florence Division, and charged with violation of 18 U.S.C. §§ 1951 and 2.¹ On December 10, 1993, Respondent was found guilty as charged in the indictment, after a plea of not guilty.²

The conviction was because Belin "did obstruct, delay, and affect commerce and the movement of articles and commodities in commerce by extortion and attempts so to do in that he attempted to obtain property from one Robert H. Sharp with the latter's consent induced by wrongful use of actual and threatened fear of economic harm ..."
Indictment. Belin represented himself to be an agent and representative of the Florence, South Carolina Housing Authority, an agency which receives funds from HUD pursuant to a contractual agreement. He also represented himself to be a person who has substantial control over and influence with the Board of Directors of the Housing Authority.

A company owned by Robert H. Sharp submitted bids worth \$400,000 on construction contracts to the Housing Authority, and Belin improperly tried to obtain \$12,500 from Sharp. Respondent threatened Sharp by stating to him that Sharp's company would not be awarded the contracts if he did not pay the sum of \$12,500.

¹ *Indictment*, District Court of the United States, District of South Carolina, Florence Division, Criminal No. 4:92-538, November 4, 1992.

² *Judgment in a Criminal Case*, United States District Court, District of South Carolina, Florence Division, December 10, 1993.

Respondent also stated to Sharp that his company would receive the contracts if he did pay Belin the stated sum of money. *Indictment.* As a result of Respondent's conviction, he was sentenced to 10 months in prison and two years of probation after completion of the prison time. *Judgment.*

Discussion

Jurisdiction

HUD's regulations define the scope of HUD's authority to sanction persons under 24 CFR Part 24 as follows:

These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as covered transactions.

24 CFR 24.110(a). The term "participant" is defined at 24 CFR 24.105(m) as:

[A]ny 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.

The Department's regulations refer to a principle as "a person who has critical influence on or substantive control over a covered transaction, whether or not employed by the participant." 24 CFR 24.105(p).

The Housing Authority holds an Annual Contributions Contract with HUD. According to the terms and conditions of this contractual arrangement with HUD, the Housing Authority receives funds from the department. These funds are used by the Housing Authority for many HUD-approved purposes, including the paying of contractors who perform construction work at Housing Authority projects. The Housing Authority is therefore a participant as defined by 24 CFR 24.105(m).

When Belin demanded that Sharp pay him \$12,500 to be awarded the contract and stated to Sharp that failure to pay that amount to him would result in Sharps' company's not being awarded the contract, Belin acted on behalf of and represented

himself to be an agent of and representative of the Housing Authority. He also represented himself to be a person who has critical influence on and substantial control over a covered transaction of the Housing Authority; *i.e.*, the awarding of the contracts. Therefore, Respondent Belin is a participant and a principle under HUD's regulations.

Cause for Debarment

The basis for the proposal to debar Respondent is his conviction for knowingly, willfully and deliberately threatening Mr. Sharp by demanding that Sharp pay to Respondent the sum of \$12,500 for his company to be awarded the contract or, if Sharp did not pay, for it not to be awarded the contract. It was for these criminal acts that Respondent was convicted of violating 18 U.S.C. §§ 1951 and 2. *Indictment; Judgment.*

HUD's regulations that are codified at 24 CFR 24.305 provide that debarment may be imposed for, among other things:

(a) Conviction of or civil judgement for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

* * * * *

(3) Commission of embezzlement, theft ... bribery;

* * * * *

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

Respondent's conviction is cause for his debarment under 24 CFR 24.305(a)(1), (a)(3) and (d).

Although cause for debarment must be established by a preponderance of the evidence, where the debarment is based upon a conviction, the evidentiary standard is deemed to be met. 24 CFR 24.313(b)(3). The Government, by submitting documentary evidence of Respondent's conviction in the form of a copy each of the *Indictment* and *Judgment*, has met its burden of demonstrating cause for Respondent's debarment. Under the regulation found at 24 CFR 313(b)(4), the burden then shifts to the respondent to show mitigating circumstances. Further, because Respondent's criminal conviction is cause for his debarment, it is also cause for his suspension. 24 CFR

24.405(a)(2).

Responsibility and the Public Interest

It is the policy of the federal government to do business only with responsible persons. 24 CFR 24.115(a). The debarment process protects governmental interests not safeguarded by other laws. It is not intended as a punishment. *Id.* at 24.115(b); *See also Joseph Constr. v. Veterans Admin.*, 595 F.Supp. 448, 452 (N.D. Ill. 1984). Government and public interests are safeguarded by precluding persons who are not responsible from participating in government programs. *See Agan v. Pierce*, 576 F. Supp. 257 (N.D. Ga. 1983); *Stanko Packing Co., Inc. v. Bergland*, 489 F. Supp., 947, 948-49 (D.D.C. 1980).

The term "responsibility" as used in the regulations governing suspension and debarment, is a term of art which includes the honesty and integrity of the participant. 48 Comp. Gen. 769 (1969); *see also Roemer v. Hoffman*, 419 F. Supp. 130 (D.D.C. 1976).

Although the judicially-imposed test for debarment is present responsibility, it is well established that a finding of past irresponsibility establishes a lack of present responsibility. *Schlesinger v. Gates*, 249 F.2d 111 (D.C. Cir. 1957), *cert. denied*, 355 U.S. 939(1958). The charge for which Respondent Belin was convicted is very serious and is indicative of his lack of present responsibility, honesty and integrity and demonstrates that Respondent poses a risk to the integrity of HUD programs.

Deterrence

Again, since it is the responsibility of the federal government to protect the public interest, HUD should do business only with responsible persons. 24 CFR 24.115(a). The deterrent effect of debarment and suspension is an important reason for HUD to carry out its mandate of protecting the public interest by suspending and debaring those persons found to be presently irresponsible. *See, In the Matter of Rudolph J. Hymer*, HUDALJ 90-1552-DB (Mar. 14, 1991); *In the Matter of Dennis I. Ackerman*, HUDALJ 87-1201-DB (Feb.26, 1988); *In the Matter of Theodore A. Hummell*, HUDALJ 84-929-DB (June 1, 1984).

If Respondent were to escape debarment or suspension in this case, he as well as others could perceive HUD to condone his actions, and they may be led to believe that HUD's lack of forceful action means that HUD itself does not consider Respondent's prior actions to be serious. Respondent's criminal actions are indeed serious, and it is imperative that a strong message be sent to Respondent and the public that extortion in

government programs will not be tolerated. For these reasons, the suspension pending the outcome of debarment proceedings and the debarment itself are deemed to constitute an appropriate governmental response, and they will be upheld in the order issued below.

Motion To Stay

Respondent moves that this case be stayed pending the outcome of an appeal of his conviction that lies before the Fourth Circuit Court of Appeals. He further argues that since he is incarcerated it is "virtually impossible and improbable that [he] will be bidding or engaging in any business ..." with HUD or the Housing Authority.

The government has suspended Respondent and proposes his debarment based upon the uncontested fact of his having been convicted of extortion with regard to a HUD program. This uncontested fact meets the burden of proof imposed upon the government that is codified at 24 CFR 24.313(b)(3). The regulation found at 24 CFR 24.305(a) provides that debarment and suspension may be imposed based upon the bare fact of conviction. There is no stay based upon appeal provided for in these regulations.

If Respondent's conviction is reversed on appeal he may request the General Deputy Assistant Secretary to reverse the debarment. Meanwhile, Respondent has not shown good cause for staying the proceeding, lifting the suspension, or disallowing the debarment. Therefore, the Motion For Extension Of Time And Stay are **DENIED**.

Conclusion and Order

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that cause exists for the three-year debarment of Respondent Richard G. Belin and his suspension pending the finalization of this determination.

So **ORDERED**.

ROBERT A. ANDRETTA
Administrative Law Judge

Dated: July 29, 1994.

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DETERMINATION AND ORDER issued by ROBERT A. ANDRETTA, Administrative Law Judge, HUDALJ 94-0058-DB, were sent to the following parties on this 29th day of July, 1994, in the manner indicated:

Chief Docket Clerk

REGULAR MAIL:

Richard G. Belin
#8891-071
FPC Butner
P. O. Box 2000
Butner, NC 27509-2000

INTER OFFICE MESSENGER:

Michael Noonan, Esquire
U.S. Department of Housing
and Urban Development
451 7th Street, S.W., Room 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., Room 10251
Washington, D.C. 20410

Phillip Murray, Director
Participation and Compliance Division
U.S. Department of Housing
and Urban Development
451 7th Street, S.W., Room 9166

Washington, D.C. 20410