

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
Washington, D.C.

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<b>In the Matter of</b>	*	
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<b>DOROTHY N. OGUNDU,</b>	*	<b>Docket No. 17-0011-DB</b>
	*	
<b>Respondent.</b>	*	
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DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice of Proposed Debarment dated November 17, 2016 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent DOROTHY N. OGUNDU that HUD was proposing her debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a period of five years from April 16, 2014, the date of her suspension. The Notice further advised Respondent that her proposed debarment was in accordance with the procedures set forth in 2 CFR parts 180 and 2424. In addition, the Notice informed Respondent that her proposed debarment was based upon her conviction in the Supreme Court of the State of New York for violation of New York Penal Law §§ 155.40(01) (Grand Larceny in the Second Degree), 170.10(02) (Forgery in the Second Degree), 175.10 (Falsifying Business Records in the First Degree), and 175.35 (Offering a False Instrument in the First Degree).

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on May 23, 2017, before the Debarring Official's Designee, Mortimer F. Coward. Respondent appeared *pro se*. Ross Fisher, Esq. appeared on behalf of HUD.

SUMMARY

I have decided, pursuant to 2 CFR part 180, to debar Respondent from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government, for a period of four years from the date of her suspension, April 16, 2014. My decision is

based on the administrative record in this matter, which includes the following information:

1. The Notice of Proposed Debarment dated November 17, 2016.
2. A letter from Respondent dated December 9, 2016, addressed to the Director of the Compliance Division, requesting a hearing and noting her opposition to the proposed debarment.
3. The Government's Pre-Hearing Brief in Support of Five-Year Debarment of Dorothy N. Ogundu filed February 21, 2017 (including all exhibits and attachments thereto).
4. Respondent's post-hearing submissions (various documents filed electronically over an extended period).

#### GOVERNMENT COUNSEL'S ARGUMENTS

Respondent was the principal of a non-profit company, Angeldocs, which received grant funds from New York state and New York city agencies and HUD. Respondent was indicted in November 2013 on 31 counts that alleged, among other things, that Respondent stole some of the grant funds by filing fraudulent requests for reimbursement and making false statements to the agencies administering the grants. Respondent used Angeldocs as a conduit for her theft of the funds. Respondent received a total of \$373,000.00 in stolen government funds, including \$80,000.00 in HUD funds. The HUD funds were used not for the stated purpose, but to make mortgage and utilities payments on a commercial building owned by Respondent.

Respondent was found guilty in a jury trial of 29 counts involving grand larceny, forgery, and falsifying business records. Respondent was convicted and sentenced to a prison term of one to three years and ordered to pay \$375.00 in court fees. Respondent's proposed debarment is based on the conviction described here.

Counsel argues that Respondent is a participant or principal in a covered transaction by virtue of her position in Angeldocs and its receipt of federal funds. See definitions in 2 CFR §§ 180.200 ("covered transaction"), 180.980 ("principal") and 180.995 ("participant"). As such, Respondent's position in her company and her receipt of federal funds brings her within the ambit of the debarment regulations. In that regard, the offenses for which Respondent was indicted and convicted were perpetrated in connection with Respondent's performing or obtaining public agreements or transactions, that is, the

federal, state, and local agreements awarding funds for public-use projects. Respondent, however, as her conviction demonstrates, stole some of the government funds for her personal use. Counsel notes also that the offenses for which Respondent was convicted are covered under 2 C.F.R. § 180.800((a)(3), thus providing further cause for her debarment.

In reviewing the aggravating and mitigating factors in 2 C.F.R. § 180.160, counsel notes that not only did Respondent's misdeeds cause a loss of \$373,000.00 to the governments affected, but the intended beneficiaries were harmed by Respondent's diversion of the funds for her personal use. Other aggravating factors cited by the Government include the pattern and frequency of Respondent's planned misdeeds over a seven-year period and her failure to show remorse or accept responsibility for her transgressions.

Counsel concludes that Respondent's conviction for the offenses listed above shows that she lacks present responsibility to do business with the federal government. Accordingly, the public interest warrants a debarment of five years.

#### RESPONDENT'S ARGUMENTS

Respondent testified at the hearing that the trial court in the underlying criminal matter did not "find any money going into her pocket." To the contrary, "money came out of her pocket" and she has resisted attempts to "honor [her] for [her]work in the community" and "did not take a salary in over five years" so that her "salary could be distributed to other persons in the organization." The 'HUD agent' who investigated the case described the building at issue in the criminal matter as "upgraded." In fact, according to Respondent, she gave the down payment for the purchase of the building, but at "the last minute [Mayor] Bloomberg decided that he would not give' the promised city funding for the purchase of the building.

Respondent further testified that she gave over \$200,000.00 of her own money to purchase the disputed property – a fact known by the organization's Director of Finance and others; however, she does not own the building. Respondent concluded her testimony by noting that she refused a plea deal because it is "better to take punishment than to lie." Also, that while incarcerated she continued to use her medical skills as a doctor "healing" people.

In her submission, Respondent stated that her conviction is on appeal. For that reason, Respondent requested a stay of these proceedings while her appeal is before the

appellate court. Respondent argued in her submission that her conviction was as a result of ineffective assistance of her attorney in the criminal matter. Respondent argued that, after reviewing the “details and documentation,” she is “confident . . . [HUD] will find that there was not malicious wrongdoing in the procurement of the funds from” HUD. Respondent asserted, too, that the evidence was insufficient to prove her guilt and the trial was tainted by “procedural misconduct.”

#### FINDINGS OF FACT

1. Respondent was a principal officer in Angeldocs, an organization that received federal, state, and local government funds.
2. Respondent was indicted on 31 counts that alleged she made, *inter alia*, fraudulent requests for reimbursement from agencies from which Angeldocs had received government funds, expropriation of some of the funds for her personal use and making false statements to the affected government agencies.
3. Respondent was convicted on 29 counts involving forgery, grand larceny, falsifying business records, and offering a false instrument for filing and sentenced to one to three years in prison and ordered to pay a fine of \$375.00.
4. There is no evidence in the record that Respondent has a history of prior wrongdoing.
5. There is no evidence that Respondent has taken responsibility for her actions.

#### CONCLUSIONS

Based on the above Findings of Fact, I have made the following conclusions:

1. As a principal officer in Angeldocs with control over government funds, Respondent is subject to the debarment regulations as a “person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction.” 2 CFR § 180.120(a). *See also* 2 C.F.R. § 180.970(a)(6) and 2 CFR § 2424.995.
2. Respondent’s conviction for grand larceny, falsifying business records, forgery, and offering a false instrument provides cause for her debarment pursuant to 2 CFR §§ 180.800(a)(1) and (a)(3)
3. The debarment regulations make no provision for a respondent to challenge her criminal conviction in this forum. Thus, Respondent’s attempt to dispute in this

proceeding the underlying facts related to her criminal conviction is unavailing. *See In the matter of Wayne D. Turner*, HUDBCA No. 91-5903-D49, 1993 HUD BCA LEXIS 6 (a respondent convicted of a criminal offense may not “collaterally attack his conviction in [a debarment] proceeding.”)

4. The courts have held that debarment is a sanction that may be invoked by HUD as a measure of protecting the public by ensuring only those qualified as “responsible” are allowed to participate in HUD’s programs. *In re. Buckeye Terminix Co., Inc.*, citing *Stanko Packing Co. v. Bergland*, 489 F. Supp. 947, 949 (D.D.C. 1980) and *Roemer v. Hoffman*, 419 F. Supp. 130, 131 (D.D.C. 1976).
5. The regulation at 2 CFR § 180.125(a) provides that “[t]o protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.” Thus, it is well established that lack of present responsibility can be based upon past acts. *See In re Buckeye Terminix Co., Inc.*, HUDALJ 89-1402-DB (August 31, 1990), holding that “Responsibility encompasses the projected risk of a person doing business with HUD. This includes his integrity, honesty, 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.” (Citations omitted)
6. The regulations provide at 2 CFR 180.150 that “[g]iven a cause that justifies an exclusion under this part, a Federal agency may exclude any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction.” In the instant matter, the cause that justifies Respondent’s exclusion is her criminal conviction. *See* 2 CFR § 180.800. As previously determined, Respondent’s past position as a principal officer in Angeldocs means that she has been and may reasonably be expected to be a participant or principal in a covered transaction. *See* ¶ 1, *supra*.
7. HUD has met its burden of proof because of Respondent’s conviction. *See* 2 C.F.R. § 180.850(b), which provides that “[i]f the proposed debarment is based upon a conviction . . . , the standard of proof [i.e., a preponderance of the evidence] is met.”
8. The foregoing discussion clearly establishes the basis and cause for the imposition of a debarment in the usual case. The regulations, however, also provide, in pertinent part, at 2 CFR § 180.845(a) that “the official need not debar you even if a

cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating and aggravating factors set forth at § 180.860.”

9. Pursuant to 2 CFR § 180.860, the following mitigating factors were considered in imposing an appropriate period of debarment. The numerous citations and awards from all levels of government, the U.S. Congress, the New York State Assembly, and the New York City Council, bestowed on Respondent over the past several years. The very favorable published articles and stories on Respondent’s and her organization’s achievements and public service. The relative leniency of Respondent’s sentence, especially in light of the seriousness of the offenses charged. The fact that the court did not order Respondent to make restitution of the funds that were expropriated also was considered as a mitigating factor. As aggravating factors, I considered Respondent’s role in carrying out the wrongdoing and the financial loss suffered by HUD and the other governmental agencies and Respondent’s failing to take responsibility for her actions in this matter.
10. In the instant case, the “evidence of mitigation . . . [is] not sufficiently persuasive to negate the need for the imposition of a sanction.” *In the Matter of James Webb*, HUDBCA No. 92-G-7709-D60, 1992 HUD BCA LEXIS 11. In *Webb*, HUD proposed debarring the respondent for three years based on his conviction for making a false statement. Webb pleaded guilty and was convicted and sentenced to two years’ imprisonment (all but four months of the sentence was suspended) and placed on probation for three years and fined \$550.00. While noting that the evidence in mitigation was not sufficiently persuasive, the Administrative Judge determined that the record “did not support the period of debarment proposed,” concluding that “the public interest would not be served by excluding Webb . . . for a three-year period.” In arriving at his decision, the AJ found that, based on the “aberrational nature of Webb’s misconduct, the passage of time since the commission of the offense, and Webb’s evidence of responsible behavior since the misconduct . . . a three-year debarment is not necessary to protect the public interest . . . [and] a six-month debarment will afford HUD and the public ample protection from Webb’s misconduct.” Additionally, the AJ specifically noted that “particularly when coupled with other evidence of mitigation the passage of time can diminish the presumption of lack of present responsibility which flows from a conviction.” *Id.*

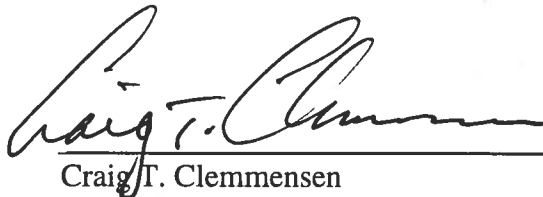
11. As previously discussed, among other things, Respondent was sentenced to one to three years in prison and her offenses were committed over a period ending five years ago. In a weighing of the mitigating and aggravating factors, and in light of *Webb*, a five-year debarment under these circumstances arguably may be “punitive.” See 2 CFR § 180.125(a)(1) (“A Federal agency may not exclude a person or a commodity for the purposes of punishment.”).
12. Nonetheless, a period of debarment is warranted to ensure that Respondent has had time to consider her misdeeds and to conform her behavior to that of a person who is presently responsible.
13. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
14. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honesty and integrity.

#### DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 CFR §§ 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for a period of four years from the date of her suspension, April 16, 2014. Respondent’s “debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.”

Dated: \_\_\_\_\_

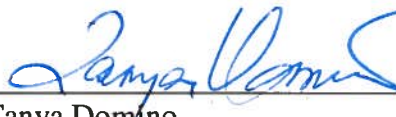
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Craig T. Clemmensen  
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 2018, a true copy of the DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.



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Tanya Domino  
Paralegal/Debarment Docket Clerk

**HAND CARRIED**

Mortimer F. Coward, Esq.  
Debarring Official's Designee

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