

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

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In the Matter of :
 JOE GALLEGOS, et al. : Docket No. 82-847-DB
 Respondents :
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Joe Gallegos, pro se
Joan J. Saloschin, Esquire
 For the Department
Before: ALAN W. HEIFETZ
 Administrative Law Judge

INITIAL DETERMINATION
Statement of the Case

This proceeding arose as a result of a proposal by the Department of Housing and Urban Development (HUD) to debar Joe Gallegos (Respondent) and his affiliate, Consolidated Engineers-Architects of Texas, Inc., from participation in HUD programs for a period of three years from the date of the notice of proposed debarment, July 23, 1982. The action was based on allegations that Respondent entered pleas of nolo contendere and was convicted of charges of forgery on May 5, 1980, in Maverick County, Texas, and on November 3, 1981, in Starr County, Texas. Respondent filed a timely request for a hearing and, because the proposed action was based on convictions, the hearing was limited under Departmental Regulation, 24 C.F.R. §24.5(c)(2), to the submission of documentary evidence and written briefs.

The Department filed a brief in support of debarment with documentary evidence appended. Respondent, after having reviewed that brief, submitted a letter admitting the facts as alleged but requesting leniency in any sanction proposed. Based on the record submitted, I make the following findings and conclusions:

Findings of Fact

Between May 1974 and May 1976, Respondent committed ten distinct forgeries in the course of performing engineering and

surveying work in Maverick and Starr Counties, Texas. The work was done in association with Consolidated Engineers-Architects of Texas, Inc., of which Respondent was vice president, or by Respondent under the name of Environmental Planning Consultants, and pursuant to contracts to which Consolidated Engineers-Architects of Texas, Inc. succeeded. In brief, the forgeries consisted of signing the name and affixing the seal of a registered professional engineer on documents without the authorization of that engineer, and pertaining to work in which the engineer had not participated. More specifically, the criminal complaint upon which the May 5, 1980, conviction in Maverick County was based charged:

... Joe Gallegos, defendant did then and there with the intent to defraud and harm another, knowingly and intentionally forge the signature of J. S. Martinez and affix the seal of the said J. S. Martinez, Registered Professional Engineer No. 16963, State of Texas, to a drawing or plat of Unit 13, Vista Hermosa Addition to the City of Eagle Pass, Maverick County, Texas, so that it purported to be the act of the said J. S. Martinez who did not authorize such act.

Similarly, the criminal complaint upon which the November 3, 1981, conviction in Starr County charged that:

... Joe Gallegos, defendant did then and there with the intent to defraud and harm another, knowingly and intentionally forge the signature of J. S. Martinez and affix the seal of the said J. S. Martinez, Registered Professional Engineer No. [REDACTED], State of Texas, to an agreement between Owner and Engineer/Architect for Professional Services, to-wit the City of Roma, Starr County, Texas and Consolidated Engineers-Architects and which agreement also contains an addendum No. 1 bearing the seal and name of the said J. S. Martinez, so that it purported to be the act of the said J. S. Martinez who did not authorize such act.

Respondent pleaded nolo contendere to both forgery charges. Pursuant to his conviction in Maverick County, he received a \$300 fine. In Starr County, he was sentenced to a one-year probation term pursuant to an order deferring adjudication, but under a Texas law which requires a judge utilizing the deferral mechanism to hear the evidence and find that it "substantiates the defendant's guilt." Texas Code of Criminal Procedure, Article 42.13, Section 3(d)(a).

Discussion

Departmental regulations at 24 C.F.R. 24.6(a)(9) provide that HUD may debar a contractor or grantee in the public interest for conviction of forgery. The evidence establishes, and Respondent does not deny that he was twice convicted of forgery on the basis of pleas of nolo contendere. Such convictions are

sufficient to establish cause for debarment under the regulations. Willie J. Hope, Docket No. 80-712-DB (Final Determination by the Secretary, May 4, 1981). Moreover, there is no dispute that Respondent and his named affiliate are "contractors or grantees" under the definition set forth in 24 C.F.R. §24.4(f).

Respondent's only contention is that the fact of the convictions does not warrant the conclusions urged by the Department that he is "lacking in business responsibility," that he "cannot be trusted to participate in HUD programs" and that his continued participation in those programs would constitute "direct harm to the public." Respondent concludes, "I have been in business for over 20 years and have yet to receive a complaint from any of my clients." I find the argument less than persuasive.

It has long been held that forgery with intent to defraud is a crime involving moral turpitude. See, Generally, Jordan v. DeGeorge, 341 U.S. 223 (1951) and cases cited therein. Moral turpitude has been defined as an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. Jordan, Supra. The facts underlying Respondent's convictions as alleged by the Department are uncontested and a finding of lack of present responsibility may be based on past acts. Roemer v. Hoffman, 419 F. Supp. 130 (D.D.C. 1976). The circumstances presented in this case compel such a finding.

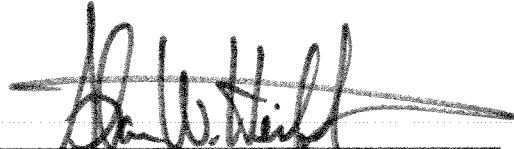
It is up to Respondent and not to the Department to come forth with any evidence in mitigation. Lack of complaint from clients participating in HUD programs is certainly no testimony to Respondent's character nor evidence of mitigating circumstances. Their silence may be attributable to a number of factors other than any satisfaction with Respondent's integrity and responsibility as a contractor or grantee. Accordingly, I find that the requested three-year period of debarment is appropriate and necessary to insure that the seriousness with which HUD views Respondent's conduct will not be misconstrued by Respondent, or others aware of his conduct, and that HUD and the public will be protected.

Conclusion

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause exists to debar Respondent, Joe Gallegos, and his affiliate, Consolidated Engineers-Architects of Texas, Inc., from doing business with HUD for a period of three years from July 23, 1982, the date this action was initiated, through July 23, 1985.

ORDER

ORDERED, that Respondent and his affiliate, Consolidated Engineers-Architects of Texas, Inc., be debarred from doing business with HUD for a period of three years commencing July 23, 1982 and terminating July 23, 1985.



Alan W. Heifetz
Chief Administrative Law Judge
U.S. Department of Housing and
Urban Development
451 7th Street, S.W., Room 2156
Washington, D.C. 20410

January 12, 1983

NOTICE

Pursuant to 24 C.F.R. §24.8(b), within ten days of receipt of this determination, any party may submit a written request for discretionary review of these findings by the Secretary or his designee.