

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

In the Matter of:

RONALD H. HUNT

Respondent.

HUDALJ 91-1683-DB

Date: October 17, 1991

Richard K. Hawkins, Esquire
For the Respondent

Andrea Q. Bernardo, Esquire
For the Department

Before: PAUL G. STREB
Administrative Law Judge

INITIAL DETERMINATION

STATEMENT OF THE CASE

Ronald H. Hunt ("the Respondent") has appealed the proposal of the Federal Housing Commissioner ("the Commissioner"), U.S. Department of Housing and Urban Development ("the Department" or "HUD") to debar him pursuant to 24 C.F.R. Part 24. The Commissioner proposed that Respondent be debarred for 3 years from participating in federal nonprocurement transactions covered by 24 C.F.R. Sec. 24.110(a)(1), e.g., loan and insurance transactions, at HUD and throughout the Executive Branch of the federal government, and from participating in procurement contracts with HUD.

The Commissioner's March 21, 1991 complaint proposing the debarment was based on Respondent's conviction for making false statements in violation of 18 U.S.C. Sec. 1001. The Commissioner proposed that the period of debarment commence on December 26, 1990, the date on which he had suspended Respondent pending the outcome of the criminal matter and of any debarment proceedings that might ensue.¹

¹The validity of the suspension is not at issue in the present matter.

On April 9, 1991, Respondent filed his appeal and answer to the complaint.² An Order dated June 18, 1991, established a schedule for the filing of briefs and documentary evidence.³ The Department filed its brief on July 19, 1991; Respondent did not file a brief. On October 7, 1991, the Department filed a motion to dismiss this matter for lack of prosecution.

MOTION TO DISMISS

In its Motion to Dismiss, the Department contends that this matter should be dismissed for lack of prosecution because this tribunal ordered Respondent to file his brief not later than August 23, 1991, and he failed to file a brief. The Motion is DENIED.

Pursuant to HUD regulations, Respondent had a right to submit a brief and documentary evidence concerning his proposed debarment. 24 C.F.R. Sec. 24.313(b)(2)(ii). However, neither the regulations nor the June 18 Order required him to do so. That Order set forth a schedule for the filing of briefs and the close of the record; the Order was not intended to mandate the filing of briefs. The Department has the burden to establish cause for a proposed debarment. *Id.* Sec. 24.313(b)(4). Respondent's decision not to file a brief does not have the effect of relieving the Department of that burden.

FINDINGS OF FACT

Ronald H. Hunt has actively participated in HUD programs. Answer to Complaint. He was charged in a federal criminal information with violating 18 U.S.C. Sec. 1001 by making false statements in two HUD Settlement Statements in connection with applications for federally insured mortgages. Department's Ex. 1.

Count one of the information alleged that in September 1986, Respondent stated that the contract sales price for the investment purchase of a single family home, located at [REDACTED] Bramwell Road, Richmond, Virginia was \$44,080, whereas in fact, as he knew, the contract sales price was \$38,500. Count two alleged that in April 1986, Respondent stated that loan proceeds would be disbursed to [REDACTED] Black as the seller of a single family home, located at [REDACTED] Pelham Drive, Richmond, Virginia, whereas in fact, as he knew, [REDACTED] Black had been a "straw purchaser" on behalf of Respondent and did not receive the loan proceeds. Department's Ex. 1

Respondent pleaded guilty and he was convicted on both counts. On December 18, 1990, he was sentenced to prison for 1 year and 1 day, with all but 90 days suspended, to be followed by two concurrent terms of 3 years' probation during which he would perform

²In his answer to the complaint, Respondent requested that he be permitted to exclude certain transactions from any debarment, to continue transactions in existence, and to renew and extend transactions in existence. Such relief is not within the scope of my authority in this proceeding. It is properly a matter for the Secretary of HUD or his designee. See 24 C.F.R. Secs. 24.215, .220.

³Because the action is based solely upon a conviction, the hearing in this case is limited under 24 C.F.R. Sec. 24.313(b)(2)(ii) to submission of documentary evidence and written briefs.

350 hours of community service and pay a \$10,000 fine. Department's Ex. 2.

ANALYSIS AND CONCLUSIONS

A proposed debarment will be sustained if the Respondent is covered by the debarment regulations, if there is cause for debarment, and if debarment is necessary to protect the public interest and the federal government's interest in doing business with responsible persons. 24 C.F.R. Secs. 24.110, .115, .300. The Department bears the burden of proof in this case by a preponderance of the evidence, except that Respondent has the burden to establish mitigating circumstances. *Id.* Secs. 24.313(b)(3) and (4).

Jurisdiction

The debarment regulations apply to all persons who have participated, are currently participating, or may reasonably be expected to participate in transactions under federal nonprocurement programs. *Id.* Sec. 24.110(a). Because Respondent participated in the HUD-insured mortgage transactions that were the subject of his conviction, he is covered by the regulations. *See id.* Secs. 24.105 (m) and (p), 24.110(a)(1).

Cause For Debarment

The regulations set forth various acts and omissions that constitute cause for debarment. *Id.* Sec. 24.305. The Commissioner asserted in his complaint that Respondent's conviction constituted cause for debarment under sections 24.305(a)(3) and (d). The former section provides that debarment may be based, *inter alia*, on a conviction for "making false statements." Respondent's conviction for making false statements during HUD-insured mortgage transactions clearly constitutes cause for debarment under that section. *See id.* Sec. 24.313(b)(3).

Section 24.305(d) provides that debarment may be based on "[a]ny other cause of so serious or compelling a nature that it affects the present responsibility of a person" (emphasis added). The plain meaning of that section is that it pertains to causes for debarment other than those enumerated in the sections that precede it -- sections 24.305(a), (b), and (c). Thus, because a conviction for making false statements is specifically covered in section 24.305(a)(3), it cannot also be covered by section 24.305(d). The Commissioner did not assert any reason for the debarment other than Respondent's conviction. Accordingly, I conclude that section 24.305(d) was not properly invoked as a basis for Respondent's debarment.

Public And Governmental Interest

The final issue for consideration is whether Respondent's debarment for 3 years, commencing December 26, 1990, is necessary to protect the public interest and the federal government's interest in doing business with responsible persons. The debarment process is not punitive in nature. *Id.* Sec. 24.115(b). Rather, it protects public and governmental interests by precluding persons who are not "responsible" from conducting business with the federal government. *See id.* Secs. 24.115(a) and (b); *Delta Rocky Mountain Petroleum, Inc.*

v. *U.S. Dep't of Defense*, 726 F. Supp. 278, 280 (D. Colo. 1989).

"Responsibility" is a term of art which encompasses business integrity and honesty. *See, e.g., Delta Rocky Mountain Petroleum*, 726 F. Supp. at 280. Determining "responsibility" requires an assessment of the current risk that the government will be injured in the future by doing business with a respondent. *See Shane Meat Co., Inc. v. U.S. Dep't of Defense*, 800 F.2d 334, 338 (3d Cir. 1986). That assessment may be based on past acts, including a previous criminal conviction. *See, e.g., Agan v. Pierce*, 576 F. Supp. 257, 261 (N.D. Ga. 1983).

Although Respondent's offenses occurred approximately 5 years ago, they are, in my judgment, sufficiently serious that they affect his present responsibility. He repeatedly made false statements in connection with applications for federally insured mortgages. Those offenses show that Respondent is not a person of honesty and integrity. The seriousness of the offenses is evident from the fact that he was imprisoned for 90 days and fined \$10,000. Respondent offered no evidence to show that there were mitigating factors or that he has been rehabilitated. Thus, there is an inference that his dishonest conduct might well continue in the future.

The 3-year period of the proposed debarment is commensurate with the seriousness of Respondent's offenses; it is consistent with regulatory guidelines; and it properly includes the time during which he was suspended. *See* 24 C.F.R. Secs. 24.320(a) and (a)(1). I conclude that Respondent's debarment is necessary to protect the public interest and the federal government's interest in doing business with responsible persons.

DETERMINATION

The Commissioner's proposal to debar Respondent for a period of 3 years commencing December 26, 1990, from participating in federal nonprocurement transactions covered by 24 C.F.R. Sec. 24.110(a)(1) at HUD and throughout the Executive Branch of the federal government, and from participating in procurement contracts with HUD is **AFFIRMED**.



PAUL G. STREB
Administrative Law Judge

Dated: October 17, 1991.