

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
BOARD OF CONTRACT APPEALS

Washington, D. C.

In the Matter of:

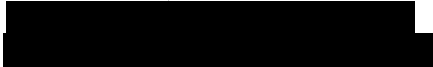
GEORGE O. MORGAN,

Appellant

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HUDBCA NO. 80-470-D21¹⁸
(Activity No. 79-681-DB)

Mr. George O. Morgan



Appellant, Pro se

Edward Eitches, Esquire
Steven Horowitz, Esquire
Office of General Counsel
Department of Housing and
Urban Development
Washington, D. C. 20410

For the Government

DETERMINATION

Statement of the Case

By letter dated November 5, 1979, the Department of Housing and Urban Development notified George O. Morgan, Appellant herein, that it intended to debar him from participation in Departmental programs for a period of four years pursuant to 24 C.F.R., Part 24. The ground for debarment is the conviction of Appellant for violation of 18 U.S.C. §§1010 and 2. Appellant filed a timely request for a hearing on the proposed debarment.

In cases of proposed debarment based on a criminal conviction, hearings are limited by regulation to submission of written briefs and documentary evidence. 24 C.F.R. §24.5(c)(2). Written submissions have been filed on behalf of both Appellant and the Government.

APPLICABLE REGULATION

The Departmental regulation applicable to debarment of contractors and grantees, 24 C.F.R., Part 24, provides in pertinent part:

§24.4 Definitions.

(f) "Contractors or grantees." Individuals ... that are direct recipients of HUD funds or that receive HUD funds indirectly through non-Federal sources including ... all participants, or contractors with participants, in programs where HUD is the guarantor or insurer; and Federally assisted construction contractors.

§24.6 Causes and conditions applicable to determination of debarment.

Subject to the following conditions, the Department may debar a contractor or grantee in the public interest for any of the following causes:

(a) Causes. (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.

Findings of Fact

In 1974, Appellant was associated with Weatherproofers of Akron, Akron, Ohio. In that capacity, he induced his customers to apply for Federal Housing Administration insurance against losses on loans obtained for repair or improvement of existing housing structures (Gov't. Ex. C). Under the FHA program, the repairs or improvements must substantially protect or improve basic livability or utility of the structure. 24 U.S.C. §200.165.

The manner in which applications for the FHA insurance must be made is outlined in the Departmental regulation governing the program. The loan application must be initiated by the borrower, who gives the credit application directly to the lender 24 C.F.R. §200.169. The borrower's contractor (or dealer) who will be making the actual repairs or improvements cannot participate in the insurance application 24 C.F.R. §201(f)(1).

In November 1974, Appellant aided and counseled [REDACTED] Smoot, a customer of his, to submit an application for FHA insurance of a property improvement loan that contained information which Appellant knew to be false. Specifically, Appellant counseled Ms. Smoot to omit information concerning substantial debts she had that would have affected FHA's decision to underwrite her loan. (Gov't. Ex. A). In another transaction, Appellant aided, counseled, and caused another customer, [REDACTED] Walker, to falsely state to FHA that the proceeds of a home improvement loan would only be used to improve the property, when, in fact, Appellant knew that Mr. Walker intended to use a substantial portion of the loan for other purposes unrelated to the FHA home improvement program (Gov't. Ex. A). He also counseled and caused [REDACTED] Mull to make false statement on her FHA application similar to those made by Walker. (Gov't. Ex. A).

Appellant was indicted on seven counts of alleged violations of 18 U.S.C. §§1010 and 2. The indictment involved the Smoot, Walker and Mull applications for FHA insurance (Gov't. Ex. A). On March 15, 1979, Appellant entered a plea of guilty to counts three, six and seven of the indictment, which constituted violations of 18 U.S.C. §§1010 and 2. (Gov't. Ex. B). Appellant was sentenced to two years imprisonment on each count, the sentences to run concurrently (Gov't. Ex. B).

DISCUSSION

Conviction for commission of a criminal offense in obtaining a contract is a ground for debarment, per se. 24 C.F.R. §24.6(a)(1). The purpose of debarment is to assure the Government and the public "that awards may be made only to responsible contractors and grantees" who "can demonstrate that Government funds will be properly utilized." 24 C.F.R. §24.0. Debarment "shall be used for the purpose of protecting the public and not for punitive purposes." 24 C.F.R. §24.5(a). "Responsibility" is a term of art in Government contract law and has been defined to mean honesty and integrity as much as ability to actually complete a contract. 34 Comp. Gen. 86 (1954); 39 Comp. Gen. 468 (1959); 49 Comp. Gen. 139 (1969).

In the instant case, Appellant has been convicted for aiding, abetting and causing his customers to make applications for the FHA home improvement loan program that contained false statements both as to financial credit information and the intended uses of the loan proceeds. Such conduct shows a serious lack of responsibility warranting imposition of a period of debarment. Appellant was a contractor with

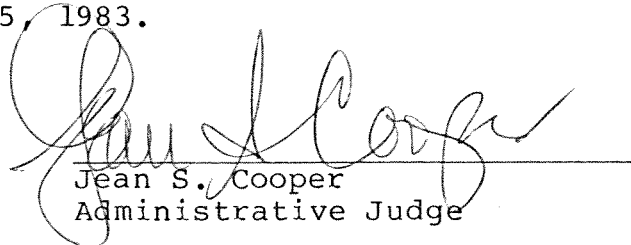
participants in programs where HUD was the guarantor or insurer. Therefore he is a "contractor or grantee" within the meaning of the regulation applicable to debarment and is subject to its strictures and sanctions. 24. C.F.R. §24.4(f).

Appellant argues, in mitigation of the proposed debarment, that his conviction was "one episode of an otherwise successful history of 30 years with HUD and other government agencies." (Appellant's Brief, at 1). He further states that he has generated "literally millions of dollars worth of government insured or indemnified business" and "not one cent has ever been lost" as a result of his enterprise (App. Brief at 2). I do not find Appellant's points persuasive. The acts for which he was convicted were not isolated or minor. They show a pattern and practice of doing business with the Government based on fraud. The Government was led to believe in both the Walker and Mull transactions that the loans were exclusively for home improvement. In both cases, this was not the case and the Government was placed in the position of guaranteeing loans to pay off personal debts in no way related to Government programs. Appellant's active role in these false representations indicates a callous disregard for the purposes and finances of a Government agency. Furthermore, such schemes erode public confidence in the Government program itself through manipulation by fraudulent applications. Nowhere in Appellant's brief does he acknowledge that what he did was wrong or that it had a serious detrimental effect on HUD programs. Appellant has failed to demonstrate that he has the present responsibility necessary for HUD to do business with him, directly or indirectly.

I find that a period of debarment from this date up to and including November 5, 1983 is warranted in the best interests of the Government and the public.

DETERMINATION

Based on the record considered as a whole and for the foregoing reasons, Appellant shall be debarred from this date up to and including November 5, 1983.



Jean S. Cooper
Administrative Judge

Issued at Washington, D. C.
February 27, 1980.