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

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| **In the Matter of:** | * | |
| **JOHN R. KOCH,** | * | **DOCKET NO. 07-3394-DB** |
| **Respondent.** | * | |

## DEBARRING OFFICIAL'S DETERMINATION

### Introduction

By Notice dated November 28, 2006 ("Notice"), the Department of Housing and Urban Development ("HUD") notified the Respondent, JOHN R. KOCH, that HUD was proposing the Respondent's 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 the date of the final determination of the proposed debarment action. The November 28, 2006, Notice further advised the Respondent that the proposed debarment was based on a civil judgment entered against him in the United States District Court for the District of Nebraska for violations of the Fair Housing Act (FHA) (42 U.S.C. 3601 *et seq.)*.

The judgment was based on a complaint filed by the United States of America as plaintiff that Respondent had engaged in an illegal pattern or practice of housing discrimination over a ten-year period in that Respondent had "subjected numerous female tenants and prospective female tenants of rental properties owned or managed by [Respondent] to severe, pervasive, and unwelcome verbal and physical sexual advances." At trial, the jury found against Respondent and awarded the aggrieved women $16,967 in actual damages and $49,185 in punitive damages. Additionally, the District Court imposed a civil penalty of $40,000 against Respondent and, among other things, enjoined him from discriminating on the basis of sex in violation of the FHA.

A telephonic hearing on Respondent's proposed debarment was held in Washington, DC on April 27, 2007, before the Debarring Official's Designee, Mortimer F. Coward. Respondent did not participate nor testify but was represented by his attorney, Ryan M. Hoffman, Esq. Travis Farris, Esq. appeared on behalf of HUD.

## Summary

I have decided, pursuant to 24 C.F.R. part 24, to debar Respondent from future participation in procurement and non-procurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government, for a period of three years from the date of this Determination. My decision is based on the administrative record in this matter, which includes the following information:

(1) The Notice of Proposed Debarment dated November 28, 2006, issued by HUD to Respondent.
(2) Respondent's letter of December 27, 2006, addressed to the Debarment Docket Clerk requesting a hearing.
(3) The Government's Brief in Support of a Five-Year Debarment (including all attachments and exhibits thereto, especially the District Court's Memorandum and Order on Defendant's Motion for Judgment as a Matter of Law) filed February, 2007.
(4) Respondent's Brief in Opposition of Five Year Debarment, filed April 16, 2007.
(5) The tape recording of the April 27, 2007, telephonic hearing.

As noted above, HUD proposed Respondent's debarment for a period of five years from the date of this final Determination based upon a civil judgment against Respondent following a jury trial in the U.S. District Court for the District of Nebraska. The complaint filed against Respondent alleged, *inter alia*, that "since at least 1996 through the present, the [Respondent] has subjected numerous female tenants and prospective female tenants of the rental properties owned and/or managed by [Respondent] . . . to severe, pervasive, and unwelcome verbal and physical sexual advances." The jury found that with respect to some of the complaining witnesses, Respondent "engaged in a pattern or practice of sexual harassment" and that Respondent's actions showed "malice or reckless indifference" to the rights of the women under the Fair Housing Act. In its verdict, the jury awarded both actual and punitive damages to the wronged women.

## HUD's Arguments

HUD contends that Respondent's "egregious violations" of the Fair Housing Act, as found by the jury, provide a sufficient basis for his debarment. These violations, HUD argues, not only "spanned a period of approximately nine years," but, as the District Court characterized Respondent's misconduct, were "self-gratifying, debasing, and pitiless acts of sexual indulgence . . . on the financially strapped women who rented or sought to rent houses from him." Further, HUD argues that the malice and reckless indifference to the rights of the women by the Respondent, as specifically found by the jury, is a "serious and compelling circumstance" that demonstrates Respondent's lack of present responsibility. In its plea for Respondent's debarment, HUD contends that because Respondent used tenancies partly financed by "Federal payments to take advantage of low income women," HUD cannot be assured that "its funds are being spent properly or that the public is being adequately protected." In its final argument, HUD asserts that the injunctive relief obtained by the government, though prohibiting Respondent from continuing to manage his properties, does not prevent him from owning

additional properties or visiting his rental properties. Additionally, HUD argued at the hearing that the injunction is not responsive to HUD's concern that Respondent, based on his actions, is not presently responsible. Moreover, Respondent's payment of damages to the women violated by his actions hardly makes them whole. Thus, HUD concludes that "Respondent's further participation in a government subsidized program presents an unacceptable risk to that program and the people the program is intended to benefit." Accordingly, HUD urges the Debarring Official to impose a five-year debarment on Respondent.

## Respondent's Arguments

In Respondent's appeal of HUD's action to debar him, Respondent makes plain that he is not contesting that cause for debarment exists based on the District Court's findings that he violated the Fair Housing Act. Respondent argues, however, that the period of debarment should not exceed three years, as contemplated in the relevant regulation[1]. A longer period of debarment, i.e., five years, is punishment which, in the Respondent's view, the debarment process is not intended to inflict. As Respondent sees it, his past actions are not necessarily indicative of his present responsibility to conduct business with HUD. Further, the actions on which HUD is proposing Respondent's debarment last happened in 2001. Respondent also argues that since March 2005, the Omaha Housing Authority (OHA), the entity from whom he received Section 8 rental payments paid on behalf of eligible tenants, has ceased doing business with him. Respondent contends that OHA's actions, while not a formal suspension, "have had the same effect and purpose that a suspension through HUD would have served." Respondent therefore asserts that, consistent with the regulation,[2] the "suspension" must be considered in "determining the period of debarment."[3] Respondent also raises the argument that the injunction, which enjoins him from participating in the management of rental properties covered by the Fair Housing Act, and which is effective until March 29, 2015, "offers the same protections that the debarment seeks and for a longer period." Consequently, the Respondent argues that the "safeguard procedures contained in the injunction conform to the safeguards necessary to protect the public from further injury. Thus, [Respondent] does not pose a threat to the public and <u>any debarment would be a punishment</u>."[4] (Emphasis added.) In this regard, Respondent also considers as further punishment the effect of a debarment in this matter to the extent it excludes Respondent from participation in other federal programs.

## Findings of Fact

1. Respondent was a landlord who owned and rented properties to recipients of Section 8 assistance.
2. Respondent used his position as a landlord to pressure female tenants and prospective female tenants to engage in sex acts in return for the tenants' receiving or being promised favorable rental terms.

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[1] See 24 CFR 24.865(a)
[2] See 24 CFR 24.865(b)
[3] *Id.*
[4] *Cf.* Respondent's brief at 5. Respondent "requests that the debarment not exceed three (3) years."

3. The United States government filed a civil suit against Respondent for discriminating against his female renters in violation of the Fair Housing Act.
4. Respondent was found liable by a jury of engaging in a pattern or practice of sexual harassment in violation of the Fair Housing Act.
5. Respondent's illegal conduct continued over a period of almost ten years.
6. The jury specifically answered in the affirmative the question of whether Respondent, by his conduct, denied the women on whose behalf the United States filed the discrimination suit rights guaranteed by the Fair Housing Act.
7. The jury also answered affirmatively to the question whether the denial by Respondent of the rights guaranteed the aggrieved women by the Fair Housing Act raised an issue of general public importance.
8. Respondent was ordered to pay actual and punitive damages to the wronged women in addition to a civil penalty.
9. Respondent also was enjoined from discriminating against any person on the basis of sex in violation of the Fair Housing Act and, among other things, was prohibited from participating in the management of any residential rental properties subject to the Fair Housing Act.
10. Respondent's participation in the Section 8 program, that is, his receipt of HAP contract payments for eligible tenants, effectively ended in March 2005.

## Conclusions

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

1. Respondent was a participant in a covered transaction as defined in 24 CFR part 24.
2. Respondent does not challenge the fact that there exists a legal basis for his debarment.
3. Respondent's actions recited in the federal lawsuit raise grave doubt with respect to his business integrity and personal honesty.
4. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
5. HUD has a duty to ensure that recipients of its assistance enjoy the full protection of all applicable federal laws.
6. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs fail to act with honesty and integrity.
7. Respondent has made full payment of all damages and penalties imposed on him in the civil suit.
8. Respondent had no prior record with HUD involving wrongdoing or violation of laws covering HUD's programs.
9. The injunction enjoining Respondent from engaging in certain actions and conduct, while it may be an effective prophylactic with respect to Respondent's future conduct as a landlord, does not *ipso facto* bar Respondent from participating in and thus enjoying the benefits of HUD's programs.

10. Debarment is not punishment *per se*, but is intended to assure HUD that a participant in its programs who has acted irresponsibly is disqualified from continued participation during which time he/she can prove his worthiness, i.e., present responsibility, and again become eligible to be a participant when the period of debarment ends.[5]
11. The civil judgment against Respondent provides the basis for debarment under 24 CFR 800(a).

**DETERMINATION**

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined to debar Respondent for three years commencing on the date of this Determination. In accordance with 24 CFR 24.870(b)(iv), 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: 5/21/07

Henry S. Czauski

Henry S. Czauski
Debarring Official
Departmental Enforcement Center

[5] See 24 CFR 24.875 and 880 relating to factors to be considered in a reconsideration.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of May, 2007, a true copy of the DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.

Tammie M. Parshall

Tammie M. Parshall
Debarment Docket Clerk

**HAND-CARRIED**
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