

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

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In the Matter of:

JOHN C. RAFFERTY, JR.
and WILLIAM E. LEE,

HUDALJ 89-1372-DB

Respondents

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Roger K. Davidson, Esq.,
For the Respondents

Marylea W. Byrd, Esq.,
For the Department

Before: Robert A. Andretta
Administrative Law Judge

INITIAL DETERMINATION

Jurisdiction and Procedures

This proceeding arose as a result of an action taken on June 14, 1989, by the Department of Housing and Urban Development ("the Department" or "HUD") to suspend John C. Rafferty, Jr. and William E. Lee from participation in primary covered transactions and lower tier covered transactions either as participants or principals at HUD and throughout the Executive Branch of the federal government, and from participating in procurement contracts with HUD. See 24 CFR 24.110(a)(1), 53 Fed. Reg. 19184 (May 26, 1988). The suspensions were based upon the Department's having been informed that a Federal Grand Jury, convened for the State of Ohio, Cuyahoga County, had returned indictments charging the respondents with grand theft and falsification. Under the regulations codified at 24 CFR 24.405(b), such indictments are considered adequate evidence of irresponsibility and are cause for suspension pending resolution of the subject matter of the indictments and any legal, debarment or Program Fraud Civil Remedies Act proceedings which may ensue.

On July 10, 1989, Respondents filed their Answer And Request To Submit Evidence, including a motion to dismiss the suspension, which I take to be a timely-filed request for hearing pursuant to 24 CFR 24.412. Pursuant to the regulation codified at 24 CFR 24.413, such hearings are conducted in accordance with the procedures codified at 24 CFR Part 26, and jurisdiction in this case is thereby obtained.

I issued a pre-hearing Order on August 2, 1989, informing the parties that since the action taken by the Department was based upon indictments, this proceeding is limited to the opportunity to submit documentary evidence and written briefs for my consideration. See 24 CFR 313(b)(2)(ii). This Order also provided a schedule for the submission of pleadings by the parties. The Government's Brief In Support Of Suspension was timely filed on September 5, 1989, and Respondents' Response Brief followed on October 13, 1989. Respondents requested immediate termination of their suspensions because the Cuyahoga County Court of Common Pleas had dismissed their indictments on September 28, 1989.

Also on October 13, 1989, the Department filed its Government's Reply To Respondents' Response Brief in which it admitted that the indictments had been dismissed, but asserted that the indictments had been superseded by 11 additional indictments, based upon the same set of circumstances, and charging the respondents with grand theft, forgery, and falsification. The Department provided copies of the indictments, and requested a stay of proceedings for ten days to permit it time to amend its suspensions of the respondents. I granted this request, and on November 1, 1989, the amended notices of suspension were filed for the record. Respondents' attorney requested three weeks' time within which to respond to the amended notices, and I granted the request by phone on November 9, 1989. Nothing was heard from the respondents, and, therefore, I issued an Order To Show Cause on December 8, 1989, giving the respondents until December 26, 1989, to either respond to the amended notices of debarment or show cause why a summary decision should not be entered in favor of the government.

On December 11, 1989, a letter from the respondents' attorney, dated December 6, 1989, was received for filing. It states, in pertinent part:

After much consideration and further proceedings in the criminal case, it appears that there are no additional matters to raise than are set forth in my original response. I would appreciate if that response could be utilized as my response to the amended notices.

Thus, this case became ripe for decision on December 11, 1989.

Findings of Fact

In January of 1989, an Ohio Grand Jury convened for Cuyahoga County returned indictments of four parties, including the two

respondents in this case, charging them with making false statements and grand theft. These indictments were superseded by 11 new indictments issued in May of 1989, which charge the respondents with forgery, uttering, grand theft, falsification, and bribery.

As to the facts underlying the indictments, the government claims, and I find, that Respondents Rafferty and Lee were partners in the ownership of property in Cleveland, Ohio, known as the Alhambra Apartment Building. Respondents purchased the property from HUD for approximately \$10,000 and, in 1983, entered into a contract with the Cuyahoga Housing Authority to participate in the Section 8 Moderate Rehabilitation Program. Their Section 8 subsidies were based upon the project acquisition and rehabilitation costs. The government asserts that Respondents submitted fake land sales contracts and payment schedules to the Housing Authority. As a result of these actions, Respondents received approximately \$66,000 in subsidies which they were not entitled to receive. When the falsified costs were discovered, the Housing Authority deducted the overpayments from later payments to the respondents.

In response, Respondents state that "no bogus land sale contracts were submitted to Housing Authorities." They also state that they did not receive subsidies which they were not entitled to receive. To document their argument, they filed Respondents' Exhibit A, a copy of a document styled "Mutual Release And Settlement Agreement." This undated document appears to be executed by the Respondents and a staff attorney for the Cuyahoga Metropolitan Housing Authority, and does no more than indicate settlement of a civil case between the Housing Authority and the respondents.

Discussion

Respondents' bald statement that they did not submit bogus land contracts is without documentation or any other support. In contrast, the government's allegation is based upon the findings of a grand jury. Even if Respondents did defend themselves against this charge, this is not the forum for determination of the validity of the indictments. As government counsel points out, HUD's suspension regulations provide that: "Indictment shall constitute adequate evidence [that a cause for debarment may exist] for purposes of suspension action." 24 CFR 24.405(b).

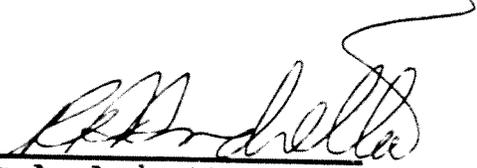
Respondents' submission of the settlement agreement between them and the Housing Authority likewise fails to provide a defense or mitigating circumstances. The Housing Authority recovered its losses by deductions from later payments. Presumably, it no longer had a practical reason for litigation of the civil case. At any rate, the settlement agreement has no bearing here, where the concern is whether Respondents have

evidenced that they do not conduct their business with the government responsibly. Respondents' indictments are adequate evidence of a serious violation of the laws of the United States and a lack of business integrity to support a suspension pursuant to 24 CFR Part 24.

Conclusion and Order

Upon consideration of the public interest and the record in this matter, I conclude and determine that good cause exists to suspend the respondents, John C. Rafferty, Jr. and William E. Lee, from primary covered transactions and lower tier covered transactions, as either participants or principals, at HUD and throughout the Executive Branch of the federal government, and from participating in procurement contracts with HUD, pending resolution of the subject matter of the indictments and any legal, debarment or Program Fraud Civil Remedies Act proceedings which may ensue. Accordingly, it is

SO ORDERED, by



Robert A. Andretta
Administrative Law Judge
U.S. Department of Housing
and Urban Development
451 7th Street, S.W., Suite 2158
Washington, D.C. 20410

Dated: December 14, 1989