

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

In the Matter of:

MICHAEL A. HARTMAN,
ABLEBUILT CONSTRUCTION
COMPANY, INC.,
a/k/a ABLEBUILT HOMES, INC.
AND HARTMAN & HARTMAN,

Respondents.

HUDALJ 90-1455-DB

INITIAL DETERMINATION

Statement of the Case

This proceeding arose pursuant to 24 C.F.R. sec. 24.100 *et seq.* as a result of action taken by the Department of Housing and Urban Development ("the Department" or "HUD") on January 4, 1990, suspending Michael A. Hartman (Respondent M. Hartman) and his named affiliates, Ablebuilt Construction Company, Inc., a/k/a Ablebuilt Homes, Inc. (Respondent Ablebuilt), and the partnership of Hartman and Hartman (Respondent Hartman and Hartman) from participating in covered transactions as either principals or participants at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts with HUD. The Department based the suspension upon Respondent M. Hartman's indictment by a Federal grand jury in the Western District of Pennsylvania charging violations of 18 U.S.C. secs. 371, 1962(c) and 26 U.S.C. sec. 7206(1). After the Department took the suspension action, Respondents M. Hartman and Ablebuilt were convicted of some of the charges in the indictment, whereupon the Department proposed to debar the Respondents for three years from the original date of suspension. Respondents have appealed.

Since this action is based upon evidence of a conviction, section 24.413 of 24 C.F.R. dictates that my review of this matter is limited to consideration of the documentary evidence and the written briefs which have been submitted by the parties.

Discussion

The purpose of debarment is to protect the public interest by precluding people who are not "responsible" from conducting business with the Federal Government. See, 24 C.F.R. sec. 24.115(a) See also, *Stanko Packing Co. v. Bergland*, 489 F. Supp. 947,949 (D.D.C. 1980); *Roemer v. Hoffman*, 419 F. Supp. 130, 131 (D.D.C. 1976) In government contract law, "responsibility" is a term of art which encompasses integrity, honesty, and business performance ability. Determining "responsibility" requires an assessment of the present risk that the Government will be injured in the future by doing business with a respondent. That assessment may be based upon past acts. *Schlesinger v. Gates*, 249 F.2d 111 (D.C. Cir. 1957); *Roemer, supra*.

Respondents M. Hartman and Ablebuilt do not deny that they have participated as "principals" in "covered transactions" within the meaning of and subject to HUD regulations. (24 C.F.R. sec. 24.100 *et seq.*) Likewise, they do not deny that a principal may be debarred from further participation in covered transactions based on conviction of or civil judgment for

[c]ommission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice;...

24 C.F.R. sec. 24.305(a)(3). Respondents M. Hartman and Ablebuilt also do not quarrel with the evidence showing they have been convicted of bribery, falsifying corporate income tax returns and racketeering.¹ These convictions clearly demonstrate a lack of integrity and

¹Respondent M. Hartman was convicted of Count One of the indictment which reads in part:

From on or about July 17, 1984 and continuing thereafter up to and including August 10, 1988, in the Western District of Pennsylvania, and elsewhere, BENJAMIN H. WOODS and MICHAEL A. HARTMAN, defendants herein, did unlawfully, willfully, and knowingly conspire, combine, confederate and agree together and with each other and with other persons known and unknown to the grand jury, to defraud the United States, by impeding, impairing, obstructing and defeating the lawful government functions of the Internal Revenue Service of the Treasury Department in the ascertainment, computation, assessment and collection of the revenue, to wit, income taxes.

honesty which puts the Government at risk if it does business with Respondent M. Hartman. Accordingly, there is cause for debarment of Respondent M. Hartman and his affiliates.

Respondents have posed a number of arguments in mitigation. The thrust of the arguments on behalf of the corporate Respondent is that by the time Respondents M. Hartman and Ablebuilt were indicted, Respondent M. Hartman had severed all business ties with the corporation; hence it should not be debarred. Respondent Hartman and Hartman argues that it should not be debarred because it is a partnership consisting of Respondent M. Hartman and his brother, Gary C. Hartman, who was not indicted or convicted of any wrongdoing. Further, the partnership contends it provides housing under various HUD programs for low-income people who may be displaced by debarment of the partnership. In other words, Respondent Ablebuilt and Respondent Hartman and Hartman argue that their debarment will only sanction the "innocent" who should not suffer because of Respondent M. Hartman's activities. Finally, Respondents argue that no action should be taken pending decisions of the United States Court of Appeals for the

Respondents M. Hartman and Ablebuilt were convicted of Count Three of the Indictment which reads in part:

From on or about January 3, 1983 continuing to on or about January 9, 1987, within the Western District of Pennsylvania, BENJAMIN H. WOODS, MICHAEL A. HARTMAN, ABLEBUILT CONSTRUCTION COMPANY, INC., Joseph J. Wozniak, and other persons known and unknown to the grand jury, ...did knowingly and willfully conduct and participate, directly and indirectly, in...a pattern of racketeering...

Respondent M. Hartman was also convicted of Count Twenty-nine of the indictment which alleged in part:

That...MICHAEL A. HARTMAN,...did willfully make and subscribe a U.S. Corporate Income Tax Return, Form 1120, for ABLEBUILT HOMES, INC. for calendar year 1985, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said Form 1120 for calendar year 1985 he did not believe to be true and correct as to every material matter in that the said Form 1040 [sic] for calendar year 1985 stated on Schedule A - Cost of Goods Sold that the total cost of goods sold was \$2,200,501.82, whereas, as he then and there well knew and believed, the total cost of goods sold was less than \$2,200,501.82.

Respondent M. Hartman was sentenced to prison for three years and three months and fined \$30,050.00. Upon release from prison he will be on probation for three years and according to the sentencing order, shall "not engage in business with any governmental body."

Respondent Ablebuilt was fined \$20,200.00.

Third Circuit on appeals filed by Respondent M. Hartman and Respondent Ablebuilt. These arguments are without merit.

The Department alleged in its Complaint filed May 21, 1990, that at the time Respondent M. Hartman and Respondent Ablebuilt engaged in the acts of which they stand convicted, Respondent Ablebuilt and Respondent Hartman and Hartman were "affiliates" of Respondent M. Hartman within the meaning of the regulations, 24 C.F.R. sec. 24.105(b):

Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

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The Complaint also alleged that both the corporation and the partnership continue to be affiliates of Respondent M. Hartman. These allegations were not specifically denied in Respondents' Answer to the Complaint. In fact, the Answer in effect admitted the Complaint allegations regarding the partnership by stating, "Hartman and Hartman is owned by Michael A. Hartman and his brother, Gary C. Hartman."

As for the corporation, although Respondents requested in a letter dated February 2, 1990, an opportunity to submit documentary evidence and briefs in support of several allegations, including an allegation that Respondent M. Hartman has severed all business connections with Respondent Ablebuilt, no evidence has been submitted by Respondents. Moreover, their Answer abandoned the argument that Respondent Ablebuilt and Respondent M. Hartman are no longer affiliated. According to 24 C.F.R. sec. 26.11, Complaint allegations not specifically denied in the Answer are deemed admitted. Therefore, based on the evidence before me, I must conclude that Respondent Ablebuilt and Respondent Hartman and Hartman were and continue to be affiliates of Respondent M. Hartman for purposes of any debarment imposed upon Respondent M. Hartman.

Respondents complain that if Respondent Hartman and Hartman is debarred, an innocent party will be harmed, namely, Gary C. Hartman, brother of Respondent M. Hartman and co-owner of the partnership. Even if we concede for purposes of argument that Gary C. Hartman was indeed innocent of any wrongdoing, the unfortunate possibility that he and others may be injured by debarment of the partnership cannot determine whether or not Respondent Hartman and Hartman is debarred. The purpose of a debarment proceeding is to protect the public interest. That purpose takes precedence over the personal, parochial interests of private parties who may be adversely affected by debarment of a party from conducting business with the Government. See, 24 C.F.R. sec. 24.115. In any event, claims of "innocence" by the partnership in this case cannot be credited. Like Respondent M. Hartman and Respondent Ablebuilt, the partnership has been a "participant" in "covered transactions" within the meaning of the regulations. (24 C.F.R. secs. 24.105(m) and 24.110(a)(1)). As such, pursuant to 24 C.F.R. sec. 24.325(b) (1), Respondent M. Hartman's criminal conduct must be imputed to the partnership:

Conduct imputed to participant. The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, *partner*, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant,....(emphasis added)

The jury found that Respondent M. Hartman acted for or on behalf of Respondent Hartman and Hartman when he bribed Benjamin H. Woods, a city councilman for the City

of Pittsburgh.² Accordingly, there is cause to debar Respondent Hartman and Hartman

²Count Three, Racketeering Act Two reads in part:

On or about the dates stated for Racketeering Act Two (a) through Two (c), MICHAEL A. HARTMAN, ABLEBUILT CONSTRUCTION COMPANY, INC., and Hartman and Hartman offered, conferred and agreed to confer upon BENJAMIN H. WOODS a

as well as the other Respondents. Furthermore, since Respondent M. Hartman apparently retains an ownership and managerial interest in the partnership, that is, he remains affiliated with the partnership, it is appropriate to debar the partnership on that basis alone, quite apart from the fact Respondent M. Hartman's criminal conduct benefited the partnership.

As for the argument that low-income tenants of the Respondent partnership could be displaced by debarment of the partnership, 24 C.F.R. secs. 24.220 and 24.215 provide that Department officials may decide to grant exceptions to debarment orders in appropriate circumstances after careful review of all relevant facts. However, no such review has been made in this case by Department officials; hence there is no decision regarding exceptions ripe for my review. Respondent Hartman and Hartman should consider applying for exceptions to the appropriate debarring official.

Respondents have requested no action be taken in this matter until the appellate court has acted on the appeals taken from the convictions of Respondent M. Hartman and Respondent Ablebuilt. As noted above, the purpose of this proceeding is to protect the public interest. That interest must be protected pending the resolution of any appellate litigation. If the convictions are reversed, Respondents may request the debarring official to reverse the debarment decision pursuant to 24 C.F.R. sec. 24.320.

In sum, Respondents have failed to carry their burden to prove any mitigating circumstances 24 C.F.R. 24.313(b)(4).

pecuniary benefit, namely cash...as consideration for an exercise of discretion, that is, assisting MICHAEL A. HARTMAN and Hartman and Hartman in obtaining a contract on terms favorable to MICHAEL A. HARTMAN and Hartman and Hartman with the Urban Redevelopment Authority, the said BENJAMIN H. WOODS acting as a public servant, that is, a member of City Council.

Count Three, Racketeering Act Six reads in part:

On or about the dates stated for Racketeering Act Six (a) through Six (b), BENJAMIN H. WOODS solicited, accepted and agreed to accept from MICHAEL A. HARTMAN, ABLEBUILT CONSTRUCTION COMPANY, INC., and Hartman and Hartman a benefit, that is cash...as consideration for an exercise of discretion, that is, assisting MICHAEL A. HARTMAN and Hartman and Hartman in obtaining a contract on terms favorable to MICHAEL A. HARTMAN and Hartman and Hartman with the Urban Redevelopment Authority, the said BENJAMIN H. WOODS acting as a public servant, that is, a member of City Council.

The regulations provide that a period of a debarment must be

commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

24 C.F.R. sec. 24.320(a). Where a conviction is the cause for the debarment, the period of debarment "generally should not exceed three years" *Id.* However, the regulations authorize a longer period "[w]here circumstances warrant." *Id.* at sec. 24.320(a)(1). The Department has requested debarment for three years from the date of suspension, January 4, 1990, and Respondents have not established any creditable mitigating circumstances. Therefore, debarment for three years is appropriate.

Conclusion and Determination

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause exists to debar Respondent Michael A. Hartman, Respondent Hartman and Hartman, and Respondent Ablebuilt Construction Company, Inc., from further participation in primary covered transactions and lower tier covered transactions (See, 24 C.F.R. sec. 24.110(a)(1)) as either participants or principals at HUD and throughout the Executive Branch of the federal Government and from participating in procurement contracts with HUD for a period of three years from January 4, 1990.

THOMAS C. HEINZ
Administrative Law Judge

Dated: August 6, 1990.