

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

In the Matter of: BOB McHANN, Respondent	HUDALJ 91-1672-DB Decided: October 9, 1991
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Bob L. McHann, *pro se*

Lisa K. Wright, Esquire
For the Department

Before: ALAN W. HEIFETZ
Chief Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

On March 29, 1991, the Acting Assistant Secretary for Housing-Federal Housing Commissioner of the U.S. Department of Housing and Urban Development ("the Department" or "HUD") proposed to debar Bob L. McHann ("Respondent") pursuant to 24 C.F.R. § 24.305(a), (b), (d), and (f). The proposed debarment is based on Respondent's conviction for violation of 18 U.S.C. § 1012. This action would exclude him from primary covered transactions and lower-tier covered transactions, as either a participant or principal at HUD and throughout the Executive Branch of the Federal Government, and it would prohibit him from participating in procurement contracts with HUD. Pending the outcome of any hearing on the debarment, HUD also suspended Respondent from participating in such transactions and contracts, effective March 29, 1991. HUD proposes to debar Respondent for three years from the commencement of this suspension.

By letter to HUD's Office of Program Enforcement, dated May 3, 1991,

Respondent requested a hearing on the suspension and proposed debarment. Because the action is based solely upon a conviction, 24 C.F.R. § 24.313(b)(2)(ii) limits the hearing to submission of documentary evidence and written briefs. An Order dated May 14, 1991, established a schedule for the filing of briefs. On June 12, 1991, the Department timely filed its brief. Pursuant to an Order dated July 17, 1991, granting his Motion for Extension of Time, Respondent timely submitted his answer on July 31, 1991. As the Department failed to submit a response to Respondent's Reply Brief, this matter is ripe for decision.

Findings of Fact

1. In May 1986, Bob McHann was a real estate attorney doing business primarily in Hinds County, Mississippi. See Government's Brief in Support of Suspension and Debarment ("Department's Brief") at unnumbered page 2.

2. On or about May 29, 1986, Respondent, as the closing attorney for an FHA-insured property, prepared a settlement statement for HUD connected with the closing of the property. The statement contained false information concerning the down payment made by the borrower/mortgagor. See *id.*

3. On November 6, 1990, Respondent was charged in the United States District Court for the Southern District of Mississippi with violating 18 U.S.C. §§ 1012 and 2. Specifically, the information charged that Respondent, "knowingly and willfully with intent to defraud, [did] make and cause to be made a false, fictitious and fraudulent report to the U.S. Department of Housing and Urban Development, that is, a settlement statement in connection with a loan closing reflecting that borrower, Jerry J. Brocato, paid \$6428.53 for a downpayment." See *id.*

4. Based on his guilty plea, on November 9, 1990, Respondent was convicted of violating 18 U.S.C. § 1012, fined \$500.00, and ordered to pay a special assessment of \$25.00. See *id.* and Respondent's Reply Brief at unnumbered page 3.

Discussion

As a real estate attorney engaged in HUD-insured mortgage transactions, Respondent McHann is considered to be a participant and principal in covered transactions. 24 C.F.R. §§ 24.105(m), 24.105(p), 24.110(a)(1). Accordingly, Respondent is subject to HUD's debarment regulations.

Debarment is a serious action taken to protect the Federal Government and the public interest. See 24 C.F.R. § 24.115(b). To impose this sanction, the government must show by a preponderance of the evidence that there is cause for debarment. This

standard of proof may be met by basing the debarment on a conviction for fraud in connection with performing a transaction, or making false statements. See 24 C.F.R. § 24.305(a)(1), (3).

Having shown that Respondent was convicted of fraud and making false statements to HUD, the Department has satisfied its burden that cause for debarment exists. See 24 C.F.R. § 24.313(b)(3). The inquiry, however, is not complete, because the existence of a cause for debarment does not necessarily require that a respondent be debarred. The government must also demonstrate that debarment is necessary to protect the public interest. *Id.* § 24.115(a), (b) and (d). Debarment is not intended as punishment; rather, by precluding persons who are not "responsible" from conducting business with the federal Government, it is intended to protect governmental interests not safeguarded by other laws. See 24 C.F.R. § 24.115(a). See also *Joseph Constr. Co. v. Veterans Admin.*, 595 F. Supp. 448, 452 (N.D. Ill. 1984); *Agan v. Pierce*, 576 F. Supp. 257 (N.D. Ga. 1983); *Stanko Packing Co., Inc. v. Bergland*, 489 F. Supp. 947, 948-49 (D.D.C. 1980).

The Department bases its debarment entirely on a single incident, occurring five years ago, when Respondent, a real estate attorney, made a false statement on a settlement form for an FHA-insured property. HUD argues that this incident was an intentional and flagrant violation of the law, but offers no evidence of the circumstances surrounding the transaction.

Respondent has admitted his wrongdoing, both in the United States District Court for the Southern District of Mississippi and in his Answer in this proceeding. However, he believes his actions do not warrant debarment. Initially, he argues that by not imposing the maximum sanction on Respondent, the District Court did not find his violation to be flagrant. In mitigation, McHann offers evidence of his cooperation with the United States Attorney and the HUD investigator during the inquiry into the violation. Furthermore he asserts that he has initiated new closing procedures designed to better protect the government and the public. Neither Respondent's Answer nor the attached affidavit from a title insurance company that does business with Respondent provides any details about these new closing procedures, except that both refer to a procedure requiring that certified funds be brought to closing by the purchaser. However, because the Government did not respond to McHann's evidence in mitigation, I am constrained to credit it.

The debarment regulations provide that a debarment "generally should not exceed three years." 24 C.F.R. § 24.320(a)(1). However, where, as here, the cause has not been shown to be flagrant and the Respondent has demonstrated mitigating factors, a period of debarment less than three years is warranted. The duration of a debarment

should be the minimum necessary to demonstrate that the Government takes conduct like Respondent's seriously and insures that risk to its mortgage insurance programs is minimized by assuring that settlement attorneys act with the highest degree of integrity. In this case, a one year period of debarment will achieve those ends¹.

Conclusion and Determination

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that cause exists to debar Bob L. McHann from further participation in covered transactions and lower tier covered transactions for twelve months from the date of his suspension on March 29, 1991.

ALAN W. HEIFETZ
Chief Administrative Law Judge

Dated: October 9, 1991

¹ The period of any suspension imposed prior to the debarment must be taken into account. 24 C.F.R. § 24.300. Accordingly, Respondent McHann has been effectively debarred since March 29, 1991.

CERTIFICATE OF SERVICE

I hereby certify that copies of this ORDER issued by ALAN W. HEIFETZ, Chief Administrative Law Judge, HUDALJ 91-1672-DB, were sent to the following parties on this 9th day of October, 1991, in the manner indicated:

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