

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

In the Matter of:

SHARON S. CONROY

Respondent.

HUDALJ 93-1914-DB

Decided: March 19, 1993

Alan H. Kraus, Esq.
For Respondent

Robin E. McMillan, Esq.
For Department

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arose pursuant to 24 C.F.R. 24.100 *et seq.* as a result of an action taken by the General Deputy Assistant Secretary for Public and Indian Housing of the U.S. Department of Housing and Urban Development ("HUD") on October 9, 1992, proposing to debar Sharon S. Conroy ("Respondent"). If debarred, Respondent would be prohibited from participating in 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 from participating in procurement contracts with HUD.

This action was taken by HUD based on Respondent's having been found guilty in the Chardon Municipal Court, Geauga County, Ohio, for violation of § 2913.21(c) of the Ohio Revised Code. HUD proposed to debar Respondent for a period of three years beginning October 9, 1992. Respondent was also suspended, effective October 9, 1992, pending the outcome of any hearing on the proposed debarment.

Respondent appealed the proposed debarment by a letter dated October 28,

1992. Because the action is based solely on a conviction, the consideration of the appeal herein is limited under 24 C.F.R. § 24.313(b)(2)(ii) to submission of documentary evidence and written briefs. An Order dated November 17, 1992, established a schedule for filing

briefs. In compliance with that schedule HUD filed its brief on December 16, 1992, Respondent filed her reply on January 18, 1993, and HUD filed its response on February 4, 1993.

This matter is now ripe for decision.

Findings of Fact

1. Respondent was Executive Director of the Geauga Metropolitan Housing Authority ("GMHA") from on or about March of 1987 through July of 1991. Respondent, as Executive Director of GMHA from March of 1987 through July of 1991, was both a participant and principal in covered transactions under HUD regulations at 24 C.F.R. § 24.105(m) and (p); and 24 C.F.R. § 24.110(a). Respondent may be reasonably expected to participate in covered transactions in the future. HUD Br. at 2 and HUD Ex.1.¹

2. On or about June 26, 1992, Respondent was charged with misuse of a credit card in violation of § 2913.21(c) of the Ohio Revised Code. HUD Ex. 2; Resp. Br. at 1. This is a first degree misdemeanor under Ohio law. HUD Br. at 2; HUD Ex. 1 and 2.²

3. Respondent was charged with charging several personal items on GMHA's credit card on June 14, 1989. These items included a scarf, a blouse and a book. HUD Br. at 2; HUD Ex. 2. The value of the items improperly charged amounted to less than \$100. Resp. Br. at 2 and 3. Respondent, herself, discovered her error regarding the misuse of the GMHA credit card and immediately reimbursed GMHA for the personal items purchased using the GMHA credit card. Resp. Br. at 2; Resp. Ex. A at 5.

¹HUD's brief will be referred to as "HUD Br." followed by a page number; HUD's exhibits will be referred to as "HUD Ex." followed by the exhibit number; Respondent's reply brief will be referred to as "Resp. Br." followed by a page number; Respondent's exhibits will be referred to as "Resp. Ex." followed by the exhibit number; and HUD's response will be referred to as "HUD Resp." followed by a page number.

² In making findings of fact in this case I rely primarily on the facts set forth in various briefs and responses filed by the parties, which are not disputed. Because of the rambling nature of the "Judgement Entry", HUD Ex.1, I can rely upon it only for nature of the guilty finding and the plea, but not for the precise facts of the misconduct.

4. On August 13, 1992, Respondent entered a plea of "No contest with a consent to a finding of Guilty". HUD Ex. 1; HUD Br. at 2.

5. The Chardon Municipal Court, Geauga County, Ohio, accepted Respondent's plea, made a finding of guilty and entered a judgement sentencing her. HUD Ex. 1.

Discussion and Conclusions of Law

1. Respondent is Subject to Debarment Under 24 C.F.R. Part 24

Respondent, as Executive Director of GMHA from 1987 through 1991, is both a participant and principal in covered transactions under HUD regulations. 24 C.F.R. § 24.105(m) and (p); 24 C.F.R. sec. 24.110(a). Further, Respondent may reasonably be expected to participate in covered transactions in the future.

2. Respondent's Conviction Constitutes Cause For Debarment

Pursuant to HUD's regulations, debarment may be imposed for the following causes:

(a) Conviction of or civil judgement for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

* * *

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

* * *

(d) Any other cause of so serious or compelling a nature that it

affects the present responsibility of a person.

24 C.F.R. § 24.305(a)(1), (3), (4) and (d).

HUD regulations provide that cause for debarment must be established by a preponderance of the evidence, a standard met by proof of conviction. 24 C.F.R. § 24.313(b)(3).

Respondent entered a plea of "No contest with a consent to a finding of Guilty" for misuse of the GMHA credit card in violation of section 2913.21(c) of the Ohio Revised Code, a first degree misdemeanor under Ohio law. The Chardon Municipal Court, Geauga County, Ohio, accepted Respondent's plea, made a finding of guilty and entered a judgement sentencing her.

Respondent was found guilty of misusing her GMHA credit card by improperly charging personal items to the GMHA credit card, a first degree misdemeanor. She was convicted of a criminal offense in connection with a public transaction under 24 C.F.R. § 24.305(a)(1) and this is cause for debarment. Similarly, this conviction demonstrates a lack of integrity and prudent business judgement that seriously and directly affects her present responsibility under 24 C.F.R. § 24.305(a)(4) and is cause for debarment.³

In light of the foregoing, I conclude HUD has satisfied its burden of establishing that cause for debarment of Respondent exists under 24 C.F.R. § 24.305(a)(1) and (4) and § 24.313(b)(3).

3. A One Year Period of Debarment is Warranted

The existence of cause does not necessarily require that a respondent be debarred. Debarment is a discretionary action and it must be determined whether a respondent's conduct is serious, whether debarment is necessary to protect the public interest, and whether there are mitigating factors. See 24 C.F.R. 24.115(a), (b), and (d). The respondent has the burden of proof for establishing mitigating circumstances. *Id.* at 24.313(b)(4). The period of debarment must be commensurate with the seriousness of the cause(s) and, if suspension precedes debarment, the suspension period shall be considered in determining the debarment period. *Id.* at 24.320(a). The period of

³In its brief HUD set forth 24 C.F.R. § 24.305(a)(3) and (d) but did not contend that Respondent's conviction was covered by these provisions and did not set forth any argument to justify such a finding. In light of this, and because I find Respondent's conviction was grounds for debarment under 24 C.F.R. § 24.305(a)(1) and (4), I need not reach whether Respondent's conviction was grounds for debarment under 24 C.F.R. § 24.305(a)(3) and (d).

debarment for causes such as those present in this case generally should not exceed three years. *Id.* at 24.320(a)(1).

The debarment process is not intended as a punishment, rather, it protects governmental interests not safeguarded by other laws. *Id.* at 24.115(b); *See also Joseph Constr. v. Veterans Admin.*, 595 F. Supp. 448, 452 (N.D. Ill. 1984). These governmental and public interests are safeguarded by precluding persons who are not "responsible" from conducting business with the Federal Government. *See* 24 C.F.R. 24.115(a).

"Responsibility" is a term of art which encompasses business integrity and honesty. *Id.* at 24.304; *see also Gonzalez v. Freeman*, 334 F.2d 570, 573 & n.4, 576-77 (D.C. Cir. 1964). Determining "responsibility" requires an assessment of the risk that the government will be injured in the future by doing business with a respondent. *See Shane Meat co. v. U.S. Dep't of Defense*, 800 F. 2d 334, 338 (3rd Cir. 1986). That assessment may be based on past acts, including a previous criminal conviction. *See A gan v. Pierce*, 576 F. Supp. 257, 261 (N.D. Ga. 1983); *Delta Rocky Mountain Petroleum Inc. v. U.S. Dep't of Defense*, 726 F. Supp. 278 (D. Colo. 1989).

Because the type of conduct engaged in by Respondent, which is the cause of her debarment, justifies a period of debarment that generally should not exceed three years, 24 C.F.R. 24.320(a)(1), HUD has the burden of proving Respondent's conduct was such as to justify increasing the standard three year debarment period and Respondent has the burden of establishing sufficient mitigating circumstances to justify shortening the three year debarment period.

HUD urges a three year debarment period and does not urge increasing the standard period.

Respondent urges that the period be shortened, if not totally eliminated, because Respondent's misuse of the credit card involved charging personal items of less than \$100 and because Respondent, herself, discovered her error in using the credit card for these items, and she immediately reimbursed the housing authority for these items.

These mitigating circumstances convince me that the risk the government would be injured in the future by doing business with the Respondent has been reduced and is actually rather slight. I conclude that a one year period of debarment is sufficient to protect the public.

In light of all of the foregoing, I conclude that, although, Respondent engaged in conduct which justifies debarment, Respondent has proved sufficient mitigating

circumstances to justify a one year period of debarment.

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 Sharon S. Conroy from participation in primary covered transactions and lower-tier transactions as either a participant or principal at HUD and throughout the Executive Branch of the Federal Government and from participation in procurement contracts with HUD for a one year period from the date of her suspension on October 9, 1992.

SAMUEL A. CHAITOVITZ
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DETERMINATION issued by SAMUEL A. CHAITOVITZ, Administrative Law Judge, in HUDALJ 93-1914-DB, were sent to the following parties on this 19th day of March, 1993, in the manner indicated:

Chief Docket Clerk

REGULAR MAIL:

Alan H. Kraus, Esq.
526 Superior Avenue
1440 Leader Building
Cleveland, Ohio 44114

INTEROFFICE MESSENGER:

James L. Anderson, Director
Participation and Compliance Division
U.S. Department of Housing
and Urban Development
451 7th Street, S.W., #6284

Washington, D.C. 20410

Robin E. McMillan, Esquire
U.S. Department of Housing
and Urban Development
451 7th Street, S.W., #10251
Washington, D.C. 20410

Nilda Gallegos, Docket Clerk
for Debarments and Suspensions
U.S. Department of Housing
and Urban Development
451 7th Street, S.W., #10251
Washington, D.C. 20410

