

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

In the Matter of:

DANNY K. SMITH

Respondent.

HUDALJ 94-0055-DB

Decided: August 22, 1994

Danny K. Smith, *Pro Se*

Walter E. Warren, Esquire
For the Department

Before: Samuel A. Chaitovitz
Administrative Law Judge

INITIAL DETERMINATION AND ORDER

This proceeding arose pursuant to 24 C.F.R. § 24.100 *et seq.* as a result of action taken by the Assistant Secretary for Housing-Federal Housing Commissioner of the United States Department of Housing and Urban Development ("HUD") on March 28, 1994 to debar Respondent and his affiliate, Hearthside Corporation, from further participation in primary covered transactions and lower tier-covered transactions as either participants or principals at HUD and throughout the Executive Branch of the Federal Government for a period of three years from September 2, 1992. The action was based on Respondent Smith's conviction in the United States District Court for Eastern District Of Virginia for violation of 18 U.S.C. §§ 1014 and 2. Respondent Smith requested a hearing regarding the debarment.

Section 24.313(b)(2)(ii) of the HUD's regulations (24 C.F.R. §24.313(b)(2)(ii)) provides that where, as here, a debarment is based upon a conviction, the hearing is limited to submission of documentary evidence and written briefs. On May 25, 1994, HUD was ordered to file a brief stating the grounds for the action on or before June 27, 1994, and Respondent Smith was ordered to file his brief in opposition stating the grounds of any defenses and mitigating circumstances on or before July 27, 1994. HUD has filed its brief, but Respondent Smith has not.

On August 10, 1994, HUD moved for dismissal of this action based on

Respondent Smith's failure to file a brief, as ordered. Respondent Smith has not filed a response to HUD's motion. By failing to respond to HUD's motion, Respondent Smith has consented to the granting of the motion. See 24 C.F.R. § 26.13(c).

Respondent Smith's failure to obey the Order of May 25, 1994, constitutes grounds for issuance of a determination against him. See 24 C.F.R. § 26.3. Furthermore, HUD's brief sets forth the grounds for the debarment, with supporting documents. The allegations in the brief must be deemed admitted because Respondent has not specifically denied them. See 24 C.F.R. § 26.11.

Respondent is a "participant" within the meaning of 24 C.F.R. § 24.105. Respondent Smith's conviction in the U.S. District Court, for the Eastern District of Virginia, for making false statements to a bank for the purpose of influencing an official of the Federal Government in violation of 18 U.S.C. §§ 1014, 2 constitutes adequate cause to debar him. See 24 C.F.R. §§ 24.305(a), 405(a), and 405(b).

Accordingly, I find and determine that good cause existed to debar Respondent Smith from further participation 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 for a period of three years from September 2, 1992.

In light of the foregoing and Respondent Smith's failure to file a reply brief, as ordered, it is **ORDERED** that this matter is hereby *DISMISSED with prejudice*.

SAMUEL A. CHAITOVITZ
Administrative Law Judge

CERTIFICATION OF SERVICE

I hereby certify that copies of this INITIAL DETERMINATION AND ORDER issued by SAMUEL A CHAITOVITZ, Administrative Law Judge, in HUDALJ 94-0055-DB, were sent to the following parties on this 22nd day of August, 1994, in the manner indicated:

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