

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

MICHAEL DINO BOITO,

Respondent.

25-SG-0330-DB-004

September 3, 2025

**RULING ON GOVERNMENT’S MOTION TO DISMISS
AND RECOMMENDED DECISION**

This matter is before the Court pursuant to a referral from the Suspending Official in the United States Department of Housing and Urban Development (“HUD” or the “Government”) requesting a Recommended Decision regarding HUD’s suspension of Michael Dino Boito (“Respondent”), from procurement and nonprocurement actions. The proposed suspension is based on HUD’s claims that Respondent has participated or is likely to participate in covered transactions and was indicted in the Superior Court of the State of California, County of Los Angeles, on six counts related to originating and obtaining FHA-insured mortgage home loans from a mortgage lending intuition using false information.

PROCEDURAL HISTORY

On April 11, 2025, HUD issued the *Notice of Suspension* (“Notice”) to Respondent proposing immediate suspension.¹ Respondent submitted a *Request for Hearing* (“Request”) on April 17, 2025, to HUD, that included a blanket statement in response to the allegations contained in the *Notice*.

On April 22, 2025, the Suspending Official referred this suspension proceeding to this Court, the Office of Hearings and Appeals, for a *de novo* hearing in accordance with 2 C.F.R. § 180.750(b), and for a recommended decision. The referral was docketed, and the matter was scheduled for hearing in accordance with 2 C.F.R. § 180.745. The Court ordered Respondent to file an Answer, on or before May 12, 2025, that includes an admission or denial of each allegation in the *Notice*. However, Respondent has not filed an Answer.

HUD timely filed the *Government’s Motion to Dismiss Respondent’s Suspension Appeal* (“Government’s Motion”) pursuant to 24 C.F.R. § 26.16(g) on June 4, 2025. The same day, Respondent replied to the *Government’s Motion* via email stating that he was under the impression that he had to wait to present his evidence and could send evidence by the next day, if

¹ The *Notice* serves as the Complaint in this matter. See 24 C.F.R. § 26.13.

required. Respondent had 10 days to file a response to the *Government's Motion*. See 24 C.F.R. § 26.16(c). Respondent has not filed a response to the *Government's Motion*.

On June 26, 2025, the Court issued an *Order to Show Cause and Stay* giving Respondent a final opportunity to file a response to the claims set forth in the *Government's Motion*, an Answer to the *Complaint*, and a certification that Respondent timely exchanged exhibits and witness lists with the Government. To date, Respondent has not complied with any of the Court's *Orders*.

LEGAL FRAMEWORK

Suspension Proceedings. Suspension protects the public interest and the integrity of Federal programs by ensuring the Federal Government is conducting business only with responsible persons. See 2 C.F.R. § 180.125. Suspension is not punishment. Rather, it is an enforcement tool to address serious non-compliance. Id.

The Federal Government is empowered to suspend a person who has been or is expected to be a participant or principal in a covered transaction when that person has been indicted of an offense listed in 2 C.F.R. § 180.800 *and* immediate action is necessary to protect the public interest. See 2 C.F.R. §§ 180.150, 180.700. A covered transaction is defined broadly to mean “any transaction, regardless of type (except procurement contracts).” 2 C.F.R. § 180.970. A participant is defined as “any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.” 2 C.F.R. § 180.980.

A person may be suspended from participating in programs when that person has been indicted for an offense, such as embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice[.]” or “any other offense indicating a lack of business integrity or business honesty that seriously and directly affects [his] present responsibility[.]” 2 C.F.R. §§ 180.700(a), 180.800(a).

Suspension proceedings are fact-finding proceedings conducted pursuant to 24 C.F.R. Part 26 subpart A. See also 2 C.F.R. §§ 2424.747, 2424.952. An indictment constitutes adequate evidence for purposes of suspension actions, and a respondent is not entitled to an additional opportunity to fact-finding where the suspension is based on an indictment. See 2 C.F.R. §§ 180.705 and 180.735(a)(1).

In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. Id. As requested by the Suspending Official, this Court then recommends whether suspension is appropriate.

Motion to Dismiss. Pursuant to 24 C.F.R. § 26.16(a), this Court is authorized to rule on motions and other procedural matters. See 24 C.F.R. § 26.2(c)(7). If a party fails to prosecute or defend an action, the hearing officer may dismiss the action or may issue an initial decision against the non-prosecuting or defending party. Id. § 26.4(d). Dismissal of a suspension or debarment proceeding is appropriate where a respondent abandons his appeal. It is not enough for a respondent to simply request a hearing; a respondent must actively prosecute his appeal by making substantive filings and meeting litigation deadlines. See In re Gobioff, HUDALJ 21-JM-

0228-DB-007 (Nov. 15, 2021) (dismissing debarment appeal where respondent requested a hearing but failed to substantively respond to NOPD or file an Answer); In re Douglas, HUDALJ 93-1991-DB(LDP) (June 9, 1993) (dismissing Respondent's appeal of a limited denial of participation when Respondent failed to file an Answer to the Complaint); see also 24 C.F.R. § 26.16(c) (Failure to file a timely response to a motion may constitute a party's consent to the granting of the motion).²

DISCUSSION

HUD moves for dismissal on three grounds. Specifically, HUD claims (1) Respondent abandoned his appeal of the suspension by failing to file an Answer or meet other litigation deadlines established by this Court, (2) Respondent's only filing in this matter does not dispute any of the material facts that form the foundation of his suspension, and (3) Respondent is not entitled to fact-finding before this Court because his suspension is based on a criminal indictment.

Suspension is a serious sanction that should only be utilized for the purposes of protecting the public interest and may not be used as punishment. See 2 C.F.R. § 180.125(a). Federal agencies may suspend those who transact with the Government to protect the fiscal integrity of government programs. Suspension has been found to be warranted when: a participant is indicted for an offense listed under § 180.800(a) or serious offenses that indicate a lack of business integrity and honesty. 2 C.F.R § 180.700(a); See In re Jackson, HUDBCA 95-A-106-D5 (June 7, 1995) (affirming debarment that supersedes suspension for respondent who was indicted and convicted of attempted bribe in the third degree); In re Lagrue, HUDBCA 95-G-141-D25 (Mar. 5, 1996) (affirming suspension of respondent based on an indictment for knowingly approving loans based on false statements to false borrowers and violating wire fraud statutes); In re Lipari, HUDALJ 92-1879-DB(S) (Nov. 17, 1992) (affirming suspension based on indictment for conspiracy, extortion, and tax evasion).

In determining whether suspension is an appropriate sanction, "the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result." 2 C.F.R. § 180.705(a). This Court, for the reasons discussed below, finds that suspension is warranted under the circumstances.

I. Respondent abandoned his suspension appeal.

HUD claims that Respondent requested a hearing to appeal his suspension, but has not participated in the proceeding. HUD goes on to state that Respondent failed to provide the required information in the *Request* in accordance with 2 C.F.R. § 180.730(a)(2)-(4) or contest any specific material facts contained in the *Notice*. When a respondent files a request for hearing and does not answer the charges against him or actively participate in the proceedings, although given more than one opportunity, he consents to entry of Orders against him. See 24 C.F.R. § 26.16(c); Gobioff, HUDALJ 21-JM-0228-DB-007, at 2-3. Moreover, allegations are deemed admitted when not specifically denied in an Answer. 24 C.F.R. § 26.14(c).

² HUD decisions cited herein are available at: <https://www.hud.gov/stat/oha-debarment>.

On April 17, 2025, Respondent timely requested a hearing regarding the allegations contained in the *Notice*. In his *Request for Hearing*, Respondent generally denied HUD's basis for suspending him but did not identify any specific facts that are in dispute. Respondent also claimed he had evidence to support his position but did not provide it with his *Request for Hearing*.

This Court issued a *Notice of Hearing and Order* on April 24, 2025, requiring Respondent to file an Answer, that includes an admission or denial of each allegation in the *Complaint*, by May 12, 2025. However, Respondent did not file an Answer.

On June 4, 2025, the same day HUD filed the *Government's Motion to Dismiss*, Respondent replied via email, "I was under the impression I have to wait to present my evidence. I am pro per. If I am required to send you discovery prior I can do so by tomorrow." Aside from these three-sentences, Respondent did not file a response or otherwise oppose the *Government's Motion*, and there is no indication that he provided his evidence to the Government.

On June 26, 2025, the Court issued an *Order to Show Cause* requiring Respondent to show cause as to why the *Government's Motion* should not be granted. Respondent was also ordered to file an Answer to the *Notice*, and to certify that he has complied with the Court's order to exchange exhibits and witness lists on or before July 10, 2025. Again, Respondent failed to comply.

Respondent has not specifically denied any of the allegations in the *Notice* or meaningfully participated in these proceedings. Respondent has effectively abandoned his suspension appeal by failing to respond to the allegations as required under 24 C.F.R. § 26.14(c), the *Notice of Hearing and Order*, and the *Order to Show Cause*. Accordingly, the Court finds Respondent is deemed to have admitted the factual allegations in the *Notice*.

II. Respondent failed to raise any material facts in dispute.

HUD claims there are no genuine disputes of material fact for this Court to determine based on Respondent's noncompliance. This Court is authorized to conduct additional fact-finding in a suspension matter "where disputed material facts are challenged." 2 C.F.R. § 2424.747. A general denial is insufficient to raise a genuine dispute over facts material to the suspension. 2 C.F.R. § 180.730.

As noted above, Respondent failed to file an Answer or address any of the allegations with specificity. Moreover, his inaction in this matter has resulted in the Court deeming the allegations to be admitted. Therefore, additional fact-finding is not warranted as Respondent failed to raise any genuine dispute as to the material facts contained in the *Notice*.

III. Respondent was indicted for six counts of theft and fraud.

HUD also claims Respondent is not entitled to challenge the facts because the suspension is based on an indictment for six counts of theft and fraud relating to Respondent's work in residential mortgages. HUD goes on to state that Respondent forfeited his opportunity for additional fact-finding by submitting a general denial of the information in the *Notice*.

Federal regulations provide that an indictment constitutes adequate evidence for purposes of suspension actions. See 2 C.F.R. § 180.705. Additionally, a respondent is not entitled to an additional opportunity to fact-finding where the suspension is based on an indictment or the evidence that they present only contains general denials of the information in the notice of administrative action. 2 C.F.R. § 180.735(a)(1)-(2).

Based on facts in the record, Respondent was indicted on two counts of mortgage fraud exceeding \$950 (using or facilitating the use of a misstatement, misrepresentation, or omission during the mortgage lending process), two counts of mortgage fraud exceeding \$950 (receiving proceeds of fraud), and two counts of grand theft. The offenses under 2 C.F.R. § 180.800(a) and the indictment are adequate evidence to warrant suspension. And, because Respondent only provided a general denial of the information in the *Notice*, he is not entitled to additional fact-finding related to his indictment.

CONCLUSION AND ORDER

Respondent has not demonstrated a basis for challenging the established facts in the present proceeding, and Respondent's indictment is adequate evidence for purposes of the suspension. Respondent has abandoned his appeal and did not raise any material facts in dispute. As the proposed suspension is based on the indictment, Respondent is not entitled to fact-finding. Accordingly, the Court recommends that Respondent's suspension from future procurement and non-procurement transactions with the Federal Government on this basis be affirmed.

Based on the foregoing, the *Government's Motion to Dismiss Respondent's Suspension Appeal* is **GRANTED**, and this matter is **REMANDED** to the Suspending Official for a decision in consideration of this Court's ruling and recommended decision.

So **ORDERED**,

A handwritten signature in black ink, appearing to read 'Sandra W. Gluvna', written over a horizontal line.

Sandra W. Gluvna
Administrative Judge