

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
Washington, D.C.

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**In the Matter of:**

**NICHOLAS DIONISOPOULOS,**

**Respondent.**

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**DOCKET 15-0050-DB**

**DEBARRING OFFICIAL'S DETERMINATION**

**INTRODUCTION**

By Notice of Proposed Debarment dated January 20, 2014 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent NICHOLAS DIONISOPOULOS that HUD was proposing his debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for three years from September 10, 2014, the date of his suspension. The Notice advised Respondent that his proposed debarment was in compliance with 2 C.F.R. parts 180 and 2424 and was based upon his conviction in the Cuyahoga County Court for attempted theft. The Notice further advised Respondent that his conviction was evidence of serious irresponsibility and provided cause for his debarment under 2 C.F.R. §§ 180.800(a) (1) and (a) (3).

A hearing on Respondent's proposed debarment was held in Washington, D.C. on March 15, 2016<sup>1</sup>, before the Debarring Official's Designee, Mortimer F. Coward, Esq. Respondent appeared *pro se*. David R. Scruggs, Esq. appeared on behalf of HUD.

### SUMMARY

I have decided, pursuant to 2 C.F.R. part 180, to debar Respondent from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government for a period of three years from September 10, 2014. My decision is based on the administrative record in this matter, which includes the following information:

1. The Notice of Proposed Debarment dated January 20, 2015.
2. A letter dated January 31, 2015 from Respondent, addressed to the Director of the Compliance Division, opposing the proposed debarment and requesting a hearing on the matter.
3. The Government's Pre-Hearing Brief in Support of a Three-Year Debarment filed May 1, 2015 (including all exhibits and attachments thereto).

### GOVERNMENT COUNSEL'S ARGUMENTS

Government counsel states that Respondent along with his wife owned and managed 72 housing units that received rental assistance payments from HUD through the Housing Choice Voucher Program (HCVP) administered by the Cuyahoga Metropolitan Housing Authority (CMHA). Respondent executed a one-year lease,

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<sup>1</sup> This matter was continued four times at the instance of Respondent. The record closed May 6, 2016.

expiring on August 18, 2012, on one of his units with a prospective tenant who held an HCVP voucher. As part of the leasing process, Respondent executed the CMHA Landlord Certification form, which included language stating that it is the responsibility of the landlord immediately to notify the CMHA when a unit becomes vacant. Respondent also executed a Landlord Fraud Letter acknowledging that "requiring extra ('side') payments in excess of the family's share of the rent is an example of fraud." Additionally, Respondent executed a Housing Assistance Payments (HAP) contract with CMHA, which provided for housing assistance payments to the owner only while the family lived in the unit.

As a result of an investigation by CMHA police, it was determined that the tenant had moved out of the unit and had sublet it to her brother and later a neighbor. The investigation also revealed that Respondent knew that the tenant had vacated the unit. In a sting operation conducted by the CMHA and the HUD Office of the Inspector General, Respondent was informed by the tenant that she had moved out and wanted his permission to allow her brother to stay in the unit for \$400.00 a month. Respondent inquired of the tenant whether he would continue receiving the HCVP payment. Assured by the tenant that he would continue receiving the HCVP money, Respondent agreed to the deal. Later, Respondent met with an undercover police officer posing as the tenant's brother and accepted \$380.00 in marked money from the undercover officer. Respondent was arrested as he drove off and the marked money was recovered from him. On November 3, 2014, Respondent pleaded guilty to one count of attempted theft and was convicted and ordered to pay a fine of \$500.00 and court costs.

Counsel argues that Respondent is subject to the debarment regulations because he participated in covered transactions in the past and may reasonably be expected to participate in covered transactions in the future. Counsel notes that the annual funding CMHA receives from HUD is a covered transaction pursuant to 2 C.F.R. §§ 180.210 and 180.970, thus CMHA is a participant in a covered transaction. Respondent's entering into a HAP contract with CMHA, a contract for the payment of rental subsidies, also made him a participant in a non-procurement covered transaction. Counsel adds that Respondent is also a principal in a covered transaction by virtue of his ability to exercise control over how CMHA disbursed HCVP payments to him, citing 2 C.F.R. § 180.995.

Counsel next argues that Respondent's conviction for attempted theft provides cause for his debarment pursuant to 2 C.F.R. § 180.800(a) (1). This regulation provides for exclusion of a person convicted for the commission of a criminal offense in connection with obtaining a public or private agreement or transaction. Here, in violation of the express terms of the HCVP contract, Respondent continued to collect rental subsidy payments after he knew the family covered by the contract had moved out.

In reviewing the aggravating and mitigating factors in 2 C.F.R. § 180.860 as they apply to Respondent's conduct, counsel notes that Respondent's wrongdoing caused considerable harm to the integrity of the HCVP. The \$3,960.00 in payments he received to which he was not entitled deprived a deserving family of assistance from those payments. Respondent planned, initiated and carried out the wrongdoing when he instructed the tenant not to report to CMHA that she had vacated the unit. Further, counsel argues that Respondent has not accepted responsibility for his misconduct nor expressed remorse for his actions.

Counsel concludes that Respondent's conviction for attempted theft demonstrates that he cannot be trusted and lacks present responsibility to do business with the government. Respondent's conviction provides cause for his debarment and the public interest warrants a three-year debarment.

### RESPONDENT'S ARGUMENTS

Respondent testified that he was not aware that the tenant was renting to her brother; that the tenant called him and told him that she wanted him to meet her brother and asked Respondent to rent to her brother; that the tenant had called him to come to the property to get money; and that he (Respondent) thought the tenant was going to give him money that she owed him for rent. According to Respondent, he never thought that it was a set-up and the tenant conspired with the police to set him up. Also according to Respondent, he was not the one who sublet the unit and he had no idea what his tenant and her brother were doing. Respondent added that he has lost all his tenants, his ordeal has cost him a lot of money, and he never had any problem with this Section 8 program before the offense with which he was charged.

### FINDINGS OF FACT

1. Respondent was a landlord who owned several housing units and participated in the Housing Choice Voucher Program.
2. The HCVP was administered by the CMHA from which Respondent received rental subsidy payments for tenants who were voucher recipients.

3. Respondent executed a one-year lease expiring in August 2012 on one of his units with a tenant who received rental assistance under the HCVP.
4. Respondent also executed a Landlord Certification form which required him to notify the housing authority immediately when the unit became vacant.
5. Respondent executed, too, a Landlord Fraud Letter in which he acknowledged that requiring "side" payments from a tenant was an act of fraud.
6. The HAP contract with the CMHA provided, among other things, that the housing authority would not pay assistance to the owner of the unit for any month after the month when the tenant moves out.
7. In an investigation that began in September 2013 by the CMHA Police Department, it was determined that the tenant had moved out of the unit and sublet it to her brother and later to a neighbor.
8. The investigation also determined that Respondent knew, and the tenant confessed, that the tenant had vacated the unit in July 2013.
9. Respondent was arrested after a sting operation by the CMHA in which Respondent was heard making incriminating comments that showed his approval of the improper rental of the unit and his concern for his continuing receipt of the HCVP payments.
10. Respondent pleaded guilty to, and was convicted of, attempted theft and fined \$500.00.
11. Respondent has not expressed remorse for his actions nor taken responsibility for his wrongdoing.

## CONCLUSION

Based on the above Findings of Fact, I have made the following conclusions:

1. Respondent was a participant and principal, as defined in 2 C.F.R. §§ 180.980 and 180.995<sup>2</sup>, respectively, in covered transactions (2 C.F.R. §§ 180.200 and 180.970) by virtue of his receipt and control of HCVP funds from CMHA, a recipient of federal funds. See 2 C.F.R. § 180.980 (“*Participant* means any person who submitted a proposal for or who enters into a covered transaction, including an agent or representative of a participant.”)
2. The debarment regulations provide at 2 C.F.R. § 180.150 that “[g]iven a cause that justifies an exclusion under this part, a Federal agency may exclude any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction.” The cause that justifies Respondent’s exclusion is his conviction for attempted theft. Specifically, Respondent is subject to debarment pursuant to 2 C.F.R. § 180.800(a)(1) based on his conviction of a “criminal offense [attempted theft] in connection with obtaining, attempting to obtain [here HCVP funds], or performing a public or private agreement or transaction.”
3. As provided in 2 C.F.R. § 180.850(b), “[i]f the proposed debarment is based upon a conviction . . . the standard of proof is met.”

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<sup>2</sup> *Principal* is defined as “ (a) As an officer , director, agent, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or (b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who – (1) is in a position to handle Federal funds; (2) is in a position to influence or control the use of those funds; or, (3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.”

4. The regulations provide that, even though a cause for debarment exists, the debaring official may consider the Respondent's "acts or omissions and the mitigating and aggravating factors set forth at 2 C.F.R. § 180.860."
5. As mitigating factors, I considered the absence in the record of any previous conviction for wrongdoing by Respondent, and Respondent's payment of the court-ordered fine. As aggravating factors, I considered Respondent's lack of remorse and refusal to take responsibility for his criminal behavior, his cupidity, and his knowing violation of the provisions related to his participation in the HCVP.
6. The regulation at 2 C.F.R. § 180.125 paragraph (a) provides that "[t]o protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons." Paragraph (b) limits the application of the debarment regulations to "exclude from Federal programs persons who are not presently responsible." And paragraph (c) cautions that "[a]n exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment." Pursuant to 2 C.F.R. § 180.865 (a), a Respondent's "period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based."
7. There is no denying that attempted theft in connection with federal funds is a serious offense, which may subject a respondent convicted for its commission to exclusion. It is also well established that "a finding of present lack of



responsibility can be based upon past acts.” *Schlesinger v. Gates*, 249 F.2d 111 (D.C. Cir. 1957).

8. In weighing the aggravating and mitigating factors, the aggravating factors influence the period of debarment to be imposed in this case. *See* 2 C.F.R. §§ 180.845(a) and 180.865(a) and (b).
9. In light of Respondent’s criminal conduct, and especially the aggravating factors which are unaffected by the mitigating factors in the record, the government would be at risk were it to do business with Respondent in the foreseeable future.
10. Accordingly, for all the foregoing reasons discussed here, Respondent’s exclusion is necessary to protect the public interest.
11. Respondent’s actions that led to his criminal conviction raise doubts with respect to his business integrity and personal honesty.
12. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs. *See generally*, 2 CFR § 180.125.
13. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honesty and integrity.

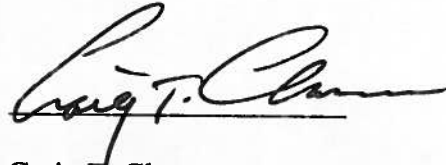
#### DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 C.F.R.

§§180.870(b)(2)(i) through (b)(2)(iv), to debar Respondent NICHOLAS

DIONISOPOULOS for a period of three years from September 10, 2014, the date of his suspension. Respondent's "Debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 C.F.R. Chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: 6/6/16



Craig T. Clemmensen  
Debarring Official

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6 day of June 2016, a true copy of the DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.



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Tanya Domino  
Debarment Docket Clerk  
Departmental Enforcement Center-  
Operations

**HAND-CARRIED**

Mortimer F. Coward, Esq.  
Debarring Official's Designee

**ELECTRONIC MAIL AND CERTIFIED**

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