

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

)
)
In the Matter of:)
)
DAVID BONAMASE,) **Docket No.: 15-0054-DB**
)
Respondent.)
)
_____)

**ORDER GRANTING THE GOVERNMENT'S ORAL MOTION TO DISMISS
RESPONDENT'S REQUEST FOR A HEARING AND ORDER AFFIRMING
RESPONDENT'S PROPOSED DEBARMENT**

In a Notice of Proposed Debarment and Termination of Existing Suspension (Notice) dated February 6, 2015, Respondent was advised by the U.S. Department of Housing and Urban Development (HUD) of his proposed three-year debarment from participation in procurement and non-procurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government. Respondent's proposed debarment is based on his guilty plea and conviction for Willful Failure to Collect or Pay Over Tax.

In a letter dated February 23, 2015, Respondent requested a hearing on his proposed debarment. In an Order issued June 1, 2015, pursuant to Respondent's request, a hearing was scheduled for July 14, 2015. Because of Respondent's unavailability, the hearing was rescheduled twice, with the last hearing scheduled for December 1, 2015. The telephonic hearing was called as scheduled, but Respondent failed to appear, whereupon the government moved to dismiss Respondent's request for a hearing. Respondent had specifically requested, in a letter dated July 10, 2015 to the then-Docket Clerk, the last continuance as he anticipated being released on November 10, 2015.

In his February 23, 2015 letter to the Director of the Compliance Division contesting his proposed debarment, Respondent argued, *inter alia*, that he “never participated in any accounting work, did not sign, nor did he have authority to sign, company checks, and was not an owner or stockholder of A. Bonamase Contracting, Inc. (ABC), only a project engineer in the employ of ABC. Respondent acknowledged that he accepted a plea deal, but only because he could not afford the attorney fees. In his July 10, 2015, letter addressed to the Docket Clerk, Respondent continued to protest his innocence of the criminal charges, arguing that he never signed a contract on behalf of the company, ABC, and that “nobody . . . was advised that the project [at issue] was prevailing wage.”

At best at this time, Respondent’s arguments are an attempt to attack collaterally his conviction. In the first place, this tribunal has no authority or jurisdiction to entertain a collateral challenge to his conviction. Just as importantly, Respondent acknowledged in signing his Plea Agreement that he was, among other things, waiving his right to challenge collaterally his conviction with exceptions not here relevant. Further, Respondent agreed “to be permanently debarred from future involvement or participation, either directly or indirectly, in any federal government construction/project or other contract of engineering.” Respondent’s opposition to his proposed debarment, as described above, does not, therefore, provide “the debarring official with information in opposition to the proposed debarment,” as required by 2 C.F.R. §180.815. Respondent failed also to identify “specific facts that contradict the statements contained in the Notice of Proposed Debarment.” 2 C.F.R. §180.825(a)(1). Respondent, instead, relied on [a] general denial,” which, pursuant to the regulation, is insufficient to raise a genuine dispute over facts material to the debarment.” *Id.*

As recited in the Notice, Respondent was convicted in the United States District Court for the Northern District of Ohio of under-reporting taxable wages paid to the employees of ABC on quarterly federal tax returns for 2006 through 2009 in violation of 26 U.S.C. § 7202 (Willful Failure to Collect or Pay Over Tax). Respondent's guilty plea and conviction resulted in a sentence of 21 months' imprisonment, followed by three years of supervised release. In accordance with 2 C.F.R. §180.800(a)(1), a person may be debarred for conviction of a "criminal offense in connection with . . . performing a public or private agreement or transaction." Respondent's acts of underpaying or not collecting the required taxes fall squarely within the cited provision. Accordingly, because I have determined that Respondent's proposed debarment is based on a conviction, he "will not have an additional opportunity to challenge the facts." 2 C.F.R. § 180.830 (a)(1). Moreover, by virtue of Respondent's conviction "the standard of proof [preponderance of the evidence] is met" to "establish the cause for debarment." *See* 2 C.F.R § 180.850.

Because Respondent provided no information in support of his request for a hearing, not only is there no facts or evidence to support his opposition to his proposed debarment,¹ but there are no mitigating factors to consider. 2 C.F.R. §180.860 (identifying the "mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period.")

Accordingly, I find that the evidence presented by the government in this case supports the government's action to debar Respondent. Respondent's misdeeds show that he is not presently responsible and that the federal government's doing business with him would put the

¹ In the August 28, 2015 Order Setting Hearing and Submission Deadline, Respondent was specifically advised that "his failure to call the listed number [in the Order] to participate in the hearing on the scheduled date and time may result in the Debarring Official's issuing a Determination on the proposed debarment on the existing record."

government and its programs at risk. 2. C.F.R. § 180.125. The egregiousness of Respondent's conduct and his conviction warrant his debarment.

I conclude that Respondent's failure to appear (telephonically) at his scheduled hearing, and his failure to communicate with the debarring official since then, evidence his decision not to prosecute the appeal of his proposed debarment. Accordingly, based on the foregoing:

- (1) Respondent's proposed debarment is **AFFIRMED**; and
- (2) The Government's motion to dismiss Respondent's request for a hearing is **GRANTED**.

Respondent's three-year debarment is effective from the date of this Order with credit given for the period from March 1, 2013, the date of Respondent's suspension, to February 6, 2015, the date of the termination of Respondent's suspension.² Respondent's "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulations (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."

So ORDERED.

Dated: _____

12/17/15



Craig T. Clemmensen
Debarring Official

² Pursuant to 2 C.F.R § 180.865(b), "[i]f a suspension has preceded your debarment, the debarring official must consider the time you were suspended."

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of December, 2015, a true copy of the ORDER GRANTING THE GOVERNMENT'S ORAL MOTION TO DISMISS RESPONDENT'S REQUEST FOR A HEARING AND ORDER AFFIRMING RESPONDENT'S PROPOSED DEBARMENT was served in the manner indicated.



Tanya Domino
Debarment Docket Clerk
Departmental Enforcement Center-Operations

HAND-CARRIED

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

ELECTRONIC MAIL

David R. Scruggs, Esq.
Ana I. Fabregas, Esq.
Government Counsel

Nilda M. Gallegos
Enforcement Technician
U.S. Department of HUD
1250 Maryland Ave., SW, Suite 200
Washington, DC 20024
Email: nilda.m.gallegos@hud.gov

CERTIFIED MAIL

David Bonamase
[58622-060]
FCI Elkton
P.O. Box 10
Libson, OH 44432