

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

In the Matter of:

JANELLE THOMPSON,

Respondent.

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DOCKET 15-0074-DB

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DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice of Proposed Debarment dated October 9, 2014 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent JANELLE THOMPSON that HUD was proposing her 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 the date of final determination of the proposed action. The Notice advised Respondent that her proposed debarment was in compliance with 2 C.F.R. parts 180 and 2424 and was based upon her conviction in the United States District Court for the Central District of California for violation of 18 U.S.C. § 1012 (Defrauding the Department of Housing and Urban Development), and that her conviction provided cause for her debarment under 2 C.F.R. §§ 180.800(a) (1), (a)(3), and (a) (4).

A hearing on Respondent's proposed debarment was held in Washington, D.C. on September 15, 2015, before the Debarring Official's Designee, Mortimer F. Coward, Esq. Pamela L. Ashley, Esq. appeared on behalf of Respondent. 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 the date of issuance of this Determination. My decision is based on the administrative record in this matter, which includes the following information:

1. The Notice of Proposed Debarment dated April 17, 2015.
2. A letter dated May 13, 2015 from Respondent addressed to the Director of the Compliance Division opposing the proposed debarment and requesting a hearing on the matter.
3. Respondent's Pre-Hearing Brief filed August 31, 2015 (including all exhibits thereto).
3. The Government's Pre-Hearing Brief in Support of a Three-Year Debarment filed July 31, 2015 (including all exhibits and attachments thereto).
4. Respondent's post-hearing submissions.

GOVERNMENT COUNSEL'S ARGUMENTS

Government counsel states that Respondent was a participant in HUD's Housing Choice Voucher Program (HCVP) administered by the Housing Authority of the City of San Buenaventura (HACSB) who executed a Housing Assistance Payment (HAP) Contract with HACSB. In September 2011, Respondent executed HUD Form 52517 Request for Tenancy Approval listing Peggy Thompson as the tenant in a house owned by Respondent. Peggy Thompson is Respondent's mother. Among other things, the Form 52517 requires the owner to certify that the owner is not the child of the tenant "unless the PHA has determined that approving leasing of the unit would provide reasonable accommodation for a family member who is a person with disabilities." Nonetheless, Respondent signed the form attesting that she was not related to her tenant. Respondent also executed a residential lease, Section 8 Landlord Certificate and Request for Tenancy Approval/Basic Information, listing Peggy Thompson as the tenant who would be renting her home through the HCVP. Accordingly, the certification was false because Peggy Thompson was Respondent's mother. Respondent's false certification to HACSB resulted in her receiving monthly rental subsidy payments from 2005 to 2012 to subsidize her mother's rent.

Counsel argues that Respondent is a "participant" within the meaning of 2 C.F.R. § 180.980 by virtue of her receipt of rental subsidy payments under the Section 8 program, which is a covered transaction pursuant to 2 C.F.R. § 180.210. Accordingly, as a participant in a covered transaction, Respondent is subject to debarment as a person who was or may reasonably be expected to be involved in covered transactions. 2 C.F.R. §§ 180.120(a) and 2424(a). Counsel notes that

Respondent falsely certified that she was not the child of a member of the family renting the unit. In fact, Respondent rented her house to her mother for whom she had not requested a reasonable accommodation waiver when Respondent executed the certificate on the Request for Tenancy Approval. Respondent's false certification, which allowed her to receive rental subsidy payments, was an act of fraud, which provides cause for her debarment under 2 C.F.R. § 180.800(a)(1). Further, Respondent is subject to debarment pursuant to 2 C.F.R. § 180.800(a)(3), which expressly lists the making of false statements as a cause for debarment. Additionally, cause for debarment also is to be found, according to counsel, in 2 C.F.R. § 180.800(a)(4) because Respondent's misconduct demonstrates a lack of business integrity and business honesty.¹

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 occurred over a seven-year period, during which time she received \$69,427.50 in rental subsidy payments to which she was not entitled. Respondent planned, initiated and carried out the fraudulent activities in 2005 when she bought the house and completed paperwork with the HACSB to qualify her home to receive rental subsidy payments along with completing the false certification.

As counsel sees it, Respondent's argument that her guilty plea evidences her acceptance of responsibility and remorse for her misconduct is misplaced.

¹ Respondent was convicted of only one offense, that is, defrauding HUD. Respondent was not **convicted** of making false statements as required by 2 C.F.R. § 180.800(a)(3) nor of any **other** offense, as required by 2 C.F.R. § 180.800(a)(4). Accordingly, the only regulation that will be considered in adjudicating this matter is 2 C.F.R. § 180.800(a)(1).

Respondent's cooperation with the government is more readily explainable not as an expression of remorse for her misconduct but rather as her interest in avoiding more severe penalties. Counsel also adds that Respondent's criticism of the tactics used by HUD OIG agents investigating her case cannot be appropriately raised before this tribunal. Other aggravating factors raised by counsel include the lack of evidence that Respondent has paid the \$69,427.50 in restitution to the HACSB, Respondent's repeated violations of the HCVP in her seven-year participation in the program, and Respondent's falsifying of the HCVP certification over the seven-year period.

Counsel concludes that based on Respondent's egregious conduct, her lack of present responsibility as evidenced by her criminal conviction, and the aggravating factors mentioned above, the public interest warrants a three-year debarment.

RESPONDENT'S ARGUMENTS

As background in her brief, and through counsel at the hearing, Respondent explained that she purchased the property in October 2005, for which soon thereafter she would be receiving rental subsidy payments, so that her disabled mother and grandmother could live in a safe home that was close to Respondent's job. According to Respondent, during the seven-year period the total of subsidy payments she received was \$63,056.00, not \$69,427.50, the amount the court ordered her to pay as restitution to the housing authority. Respondent also claimed that as of August 2015 she has made restitution of \$35,794.50.² Respondent also purchased another home for

² Respondent filed several documents in her post-hearing submissions, but did not include any documentary evidence of her payment of \$35,794.50. Nevertheless, because of her forthrightness in her testimony at the

which she received rental subsidy payments until the lease was terminated. There were no compliance issues associated with the second property.

Counsel notes that under the terms of Respondent's plea agreement, she was required to resign from the Los Angeles Sheriff's Department, but was fired before she could do so. Additionally, Respondent is prohibited from seeking employment with any law enforcement agency in the United States for ten years. Further, under the plea agreement Respondent had to agree immediately not to participate permanently in any federally subsidized housing program. According to counsel, the legal disabilities described here plus the proposed debarment have limited Respondent's employment opportunities.

Counsel argues that the fact of Respondent's "conviction does not mean that debarment is compulsory." Counsel refers to the several positions Respondent held, both before and after her indictment, including deputy sheriff, lead security officer for a WNBA team, and as a collector for an athletic drug testing company, as affording opportunities for a dishonest person to seek personal gain. Respondent, however, did not use these positions for her enrichment and her trustworthiness and integrity were validated and attested to by respected professionals and executives. In sum, Respondent is responsible and does not pose a risk to the public.

Counsel challenges the government's reliance on the cases cited in its brief in support of Respondent's debarment, arguing that none of the Respondents in those cases were permanently barred from participating in any federally subsidized housing

hearing, I considered her partial payment of the amount she was ordered to make in restitution as a mitigating factor in imposing a period of debarment.

program. Counsel continues that “debaring Respondent in this instance would be redundant as she already by virtue of the terms of her Plea Agreement is prohibited from participating in any covered transaction.” Counsel adds that the “permanent prohibition extends well beyond the primary consideration underlying the duration of debarment to the shortest amount of time necessary to ensure the risk to the government is minimized,” citing *In re Richard Duane Widler*, HUDALJ 91-1766-DB (June 18, 1992). Further, to debar Respondent from participating in any federal program is “inconsistent with the purpose of the statute which is to protect the public and not for the purpose of debarment.”

In mitigation, counsel argues that both Respondent’s mother and grandmother were persons with disabilities, thus the reasonable accommodation exception would have applied to them had Respondent invoked it. (The exception allows a landlord receiving tenant subsidy payments to rent the unit covered by the Request for Tenancy Approval to a family member.) Counsel argues that Respondent is not raising this point to absolve her of responsibility for not declaring that her tenant was her mother, but to distinguish her actions from the respondents’ actions in the cases cited by the government.

In each of the cases cited by the Government, the respondents committed offenses that could not be excused under the relevant documents covering the respective properties. Here, however, there was an exception that had Respondent used it, her actions would not have been subject to a criminal penalty. Counsel also notes, as further mitigating factors pursuant to 2 C.F.R. § 180.860, that there was no pattern or history of wrongdoing as evidenced by Respondent’s clean record in the

other property she rented. Moreover, Respondent's plan to move her mother and grandmother into a safe home began more than seven years before execution of the lease at issue here. Further, Respondent has accepted full responsibility for her actions and has paid back more than half of the amount she received from the housing authority.

Counsel concludes that, because of the legal disabilities that Respondent now suffers (e.g., her ten-year disqualification from working in law enforcement, permanent disqualification from participation in any federally subsidized housing program, etc.) debarring her for three years, and two years after she is no longer receiving subsidy payments and has repaid more than half of the amount of subsidy payments received, would be punitive and contrary to the intent of the regulation. The record, counsel asserts, demonstrates that Respondent is presently responsible and she should not be debarred.

FINDINGS OF FACT.

1. Respondent was at all relevant times the owner of a property leased to a tenant who received rental assistance under the Section 8 program.
2. The tenant to whom Respondent leased the property was her mother.
3. As a requirement to participate in the Section 8 program, Respondent completed HUD Form 52517-Request for Tenancy Approval in which she certified, among other things, that she was not a child of the lessee.
4. The Form 52517 allowed an exception to the prohibition of an owner's renting to a child or other classes of relatives if the PHA "determined that approving

leasing of the unit would provide reasonable accommodation for a family member who is a person with disabilities.”

5. Respondent did not apply for an exception to the prohibition nor did the PHA (HACSB) grant one.
6. Respondent received from HASCBS rental subsidy payments of \$69,427.50³ on behalf of her mother from 2005 to 2012.
7. Respondent was indicted on nine counts for her misconduct in this matter.
8. Respondent pleaded guilty to four counts relating to Defrauding the Department of Housing and Urban Development and was convicted and sentenced to two years’ probation and ordered to pay restitution of \$69,427.50 to HACSB.
9. Respondent has taken responsibility and expressed remorse for her wrongdoing.

CONCLUSION

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

1. As a recipient of funds from 205 to 2012 from the Section 8 program, which is a covered transaction pursuant 2 C.F.R. §§ 180.200 and 180.970, Respondent was a *participant* (as defined in 2 C.F.R. § 180.980) in a covered transaction and, thus, subject to the debarment regulations. *See* 2 C.F.R. §§ 180.120(a) and 2424(a).

³ Respondent disputes the accuracy of this figure, which is the amount of the court-ordered restitution.

2. Respondent's conviction for defrauding HUD provides cause for her debarment under 2 C.F.R. §§ 180.180(a)(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. HUD has met its burden of proof that cause for Respondent's debarment exists by virtue of Respondent's criminal conviction. *See* 2 C.F.R. § 180.850(b) ("If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met." And 2 C.F.R § 180.855 ("The Federal agency has the burden to prove that a cause for debarment exists."))
4. The regulations provide that, even though a cause for debarment exists, the debarring 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 wrongdoing by Respondent, Respondent's payment of over half of the restitution ordered by the court, her taking responsibility and showing remorse for her actions, her decade-long career as a law enforcement officer and the commendations and praise she received for her many achievements and professionalism. I considered, though in the circumstances it could not be weighted heavily, that had Respondent applied for the exception discussed above and based on her testimony of her mother's disability, there was a likelihood that the housing authority could have granted the exception. I also considered that Respondent is prohibited for ten years from engaging in her chosen profession and permanently from participating in any federal housing

program. Respondent's continued employment to provide security for high-profile persons and events, in spite of her conviction, also was viewed favorably. As aggravating factors, I considered that Respondent, especially because of her law enforcement background, should have been more conscious of the seriousness of her actions in executing a false certification. Respondent had numerous opportunities over the years of executing the certification to take advantage of the exception.

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 defrauding HUD 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). The period of exclusion, however, as held in *In Re Richard Duane Widler*, HUDALJ 92-1766-DB, HUD ALJ LEXIS 59 (June 18, 1992), “should be the minimum necessary to insure that the risk” to [the] government “doing business [with a debarred person] is minimized.” In this case, Respondent has had but three years to demonstrate that she does not present a risk to the government were the government to do business with her. In the circumstances of this case, three years does not provide sufficient time to conclude that Respondent is presently responsible.⁴

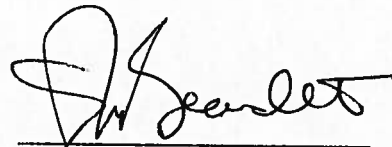
9. In light of the seriousness of Respondent’s actions, and with due consideration of the aggravating and mitigating factors, the government would be at risk were it to do business with Respondent now.
10. Accordingly, for all the foregoing reasons discussed here, Respondent’s exclusion is necessary to protect the public interest.
11. Respondent’s actions that led to her criminal conviction raise doubts with respect to her 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.

⁴ Pursuant to 2 C.F.R. § 180.875, “a debarred person . . . may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must put your request in writing and support it with documentation.”

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 JANELLE THOMPSON for a period of three years from the date of issuance of this Determination. 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."

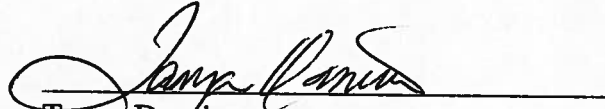
Dated: 11/30/15



Craig T. Clemmensen
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November 2015, a true copy of the DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.



Tanya Domino
Debarment Docket Clerk
Departmental Enforcement Center-
Operations

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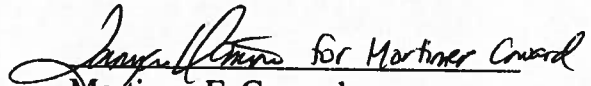
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CONCURRENCE:

In the Matter of: JANELLE THOMPSON - DOCKET NO. 15-0074-DB

Dated: November 30, 2015

 for Mortimer Coward
Mortimer F. Coward
Debarring Official's Designee