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

In the Matter of:	*	
JANELLE THOMPSON,	*	**Docket No. 18-0002-DB**
Respondent.	*	

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice of Proposed Extension of Debarment dated September 8, 2017 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent JANELLE THOMPSON that HUD was proposing extending her debarment (currently scheduled to end on November 29, 2018) from participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for an indefinite period. The Notice further advised Respondent that the proposed extension of her current debarment was in accordance with the procedures set forth in 2 CFR parts 180 and 2424. In addition, the Notice informed Respondent that her proposed debarment was based upon her conviction for defrauding HUD.

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on March 9, 2018[1], before the Debarring Official's Designee, Mortimer F. Coward, Esq. Respondent appeared *pro se.* Debra K. Lumpkins, Esq. appeared on behalf of HUD.

SUMMARY

I have decided, pursuant to 2 CFR 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 expiration of her current debarment. My decision is based on the administrative record in this matter, which includes the following information:

[1] The record was kept open for post-hearing submissions, particularly to afford Respondent the opportunity to submit evidence relating to action taken by her or initiated by any government agency to ensure payment of the judgment. As of this writing, Respondent has submitted no more documentary evidence for inclusion in the record.

1. The Notice of Proposed Extension of Debarment dated September 8, 2017.
2. A letter from Respondent addressed to the then-Director of the Compliance Division, received October 11, 2017, requesting a hearing on the proposed extension of her debarment and challenging the proposed action.
3. The Government's Pre-Hearing Brief in Support of Indefinite Extension of Debarment, filed January 19, 2018 (including all exhibits and attachments thereto).
4. Respondent's post-hearing submission (various documents) filed April 10, 2018.
5. Government's Response to Respondent's Post-Hearing Submission filed May 1, 2018.

GOVERNMENT COUNSEL'S ARGUMENTS

The instant case, as Government counsel summarizes it, arises from Respondent's failure to satisfy a debt of $108, 324.00 owed HUD. The debt represents the total of the penalties and assessments for which Respondent and her mother[2] were found liable in a Program Fraud Civil Remedies Act (PFCRA) case brought by HUD. The judgment in the PFCRA case was filed on April 11, 2017. To date Respondent has not made a payment on the debt. Despite entreaties from HUD, counsel alleges, Respondent continues to refuse to make any arrangements to settle the judgment. Because of Respondent's obstinacy, HUD seeks in this action to extend indefinitely[3] the three-year debarment that Respondent is currently serving.

Government counsel takes issue with Respondent's claim that she has appealed the PFCRA judgment, noting that Respondent did not follow the required steps to perfect her appeal. Specifically, Respondent filed by fax with the Office of Hearings and Appeals (OHA) a request for assistance in prosecuting her appeal. Because OHA no longer had jurisdiction of the matter, Respondent was advised that her fax would be forwarded to the Secretarial Review Office. Additionally, Respondent was provided a copy of the applicable regulations in filing an appeal. However, because Respondent did not follow the procedure for filing her appeal, HUD demanded that she begin making payment of the debt.

Respondent advised government counsel, responding to the Government's demand, that she had "submitted [her] intent to appeal" through the ALJ who heard the PFCRA case. Subsequently, Respondent again inquired of OHA with respect to the status of her appeal and was advised to contact the secretarial review docket clerk. As a consequence of Respondent's missteps in not following the requirements of the appeal process, the time for filing her appeal passed, leaving Respondent without any administrative remedies.

Counsel notes, in justifying the proposed action to extend Respondent's existing term of debarment, that the proposed extension is based on Respondent's failure to pay a debt,[4] i.e., the judgment debt, while the current three-year debarment is based on

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[2] Respondent's mother is not a respondent in this debarment action.
[3] Pursuant to 2 C.F.R. §180 885(a), the "debarring official may extend a debarment for an additional period, if that official determines that an extension is necessary to protect the public interest."
[4] 2 C.F.R. §180.800(c)(3) provides in part that cause for debarment exists for "[f]ailure to pay a single substantial debt . . . owed to any Federal agency."

Respondent's conviction for defrauding HUD.[5] Counsel adds, citing cases, that "failure to pay debts[6] raises serious concerns about a participant's present responsibility." In that regard, counsel raises the issue of Respondent's failure, as determined by the administrative judge in the PFCRA matter, to disclose all her income in a 2011 bankruptcy proceeding in which her debts were discharged. Counsel cites also the PFCRA judge's observation that "Respondent, Janelle Thompson, has engaged in dishonesty with another governmental agency."[7]

In further support of the proposal to extend Respondent's term of debarment indefinitely, counsel argues that Respondent's failure to make any payments is inexcusable and willful. Counsel notes that the ALJ, after considering all the relevant factors set forth in the PFCRA, determined that Respondent had the ability to pay the debt. Additionally, Respondent has offered no information or specific facts to contradict the statements in the Notice, as required by 2 C.F.R. §180.125. Counsel concludes that Respondent's refusal to pay the debt owed HUD and her "false avowals" regarding her appeal of the PFCRA decision show that she lacks present responsibility to do business with the federal government. Additionally, counsel reviews the aggravating and mitigating factors, noting the dominance of the aggravating factors. Accordingly, the public interest warrants the extension of her debarment.

RESPONDENT'S ARGUMENTS

Respondent argues that debarring her for an indefinite period "does not seem necessary" in light of the fact that she along with her mother "have both been permanently barred from participating in any federally subsidized housing program." Indefinite debarment, Respondent noted, "is not conducive to [her] becoming gainfully employed," which the Government "needs [her to do]in order to get paid."

Respondent takes issue with Government counsel's reference to her omitting mention in the bankruptcy proceedings of her 2010 tax filing. Respondent argues that the omission was an oversight, not a dishonest act, and had "no bearing on [her being] granted bankruptcy." Further, she has entered into a payment plan with the IRS and paid over $100,000.00 pursuant to an agreement arising out of the bankruptcy proceeding. With

[5] The Government's bifurcation of the bases for the three-year debarment as opposed to the proposed extension of the debarment attempts to clarify the differences in the causes supporting the two charges. The September 8, 2017 Notice states that the proposed extension is based on Respondent's "convict[ion] for defrauding HUD" - - the basis of the current three-year debarment. See *infra* for a discussion of the problems wrought by the September 8, 2017 Notice.

[6] The relevant regulation at 2 C.F.R.§ 180.800(c)(3) does not specifically define the term "debt." Consequently, we assume, without deciding, that a court-ordered payment of penalties and fees that is not honored is subsumed under the term "debt" as used in the regulation. Neither party raised this assumption as an issue and its resolution, if indeed it is an issue, will not be pursued here.

[7] Clearly, a finding or ruling by an administrative law judge is entitled to due deference in this forum. Nonetheless, without more, it is unclear whether the issue of Respondent's alleged failure to disclose all her income in a bankruptcy matter, a matter that is undoubtedly within the jurisdiction of the bankruptcy court, but apparently was neither referred to nor decided by the bankruptcy court, or any other cognizable authority, should be a factor in determining Respondent's fate in the instant matter. Similarly, it is unclear with which other "governmental agency" Respondent "engaged in dishonesty." Neither a reading of the ALJ's decision nor the Government's prehearing brief, which cites the ALJ's decision approvingly, is helpful in illuminating this issue. In any event, it is unnecessary to determine which agency the ALJ was referring to as "another governmental agency" if only because the answer may not affect the outcome of this case.

respect to the Government's charge that she filed a false tax return, Respondent states that she acted in reliance on the advice of her professional tax preparer.[8] Respondent adds that she has tried to do right despite a difficult situation.

Background

The history of Respondent's misconduct is instructive in assessing Respondent's claim that the extension of her current debarment is punitive, thus in violation of 2 C.F.R. § 180.125(c).

Respondent was convicted of defrauding HUD by her receipt of fraudulent Section 8 rent subsidy payments. Respondent's conviction resulted in her being placed on probation for two years along with making restitution of almost $79,000. HUD later proposed Respondent's debarment based on her conviction for her fraudulent actions, as described above.

An informal hearing on Respondent's proposed debarment was held on September 15, 2015, culminating in Respondent's debarment for three years. (That three-year debarment terminates on November 29, 2018.) As stated, the instant matter, that is, the proposed indefinite extension of Respondent's three-year debarment, also is organically related to, and is based on, the fraudulent acts referenced above. The September 8, 2017 Notice of Proposed Extension of Debarment specifically recites that Respondent was "convicted for defrauding HUD." The April 17, 2015 Notice of Proposed Debarment also states that Respondent's proposed debarment "is based upon [her] `conviction . . . [for] defrauding HUD."

The September 8, 2017 Notice also goes on to remind Respondent that her "conviction indicates a lack of business integrity or business honesty that seriously and directly affects [her] present responsibility." The Notice continues that Respondent "violated the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, **namely obtaining fraudulent Section 8 rent subsidy payments from the Housing Authority of the City of Bonaventura.**" (Emphasis added) As is evident, the cited language above from the September 8, 2017 Notice is drawn almost verbatim from 2 C.F.R. §180.800(a)(4) and §180.800(b).

More pointedly, however, it may not be an easily dismissible argument that the explicit references to Respondent's misconduct, i.e., defrauding HUD, and her conviction therefor, as a basis for the proposed indefinite extension of Respondent's current three-year debarment are inconsistent with 2 C.F.R. §180.885(b).[9] Admittedly, the September 8, 2017 Notice, in addition to citing the regulatory language quoted above as a basis for Respondent's debarment, adds that Respondent has "<u>also</u> failed to pay substantial debts owed HUD," referring to the $108, 324 outstanding judgment. (Emphasis added.)

Respondent's challenge to the proposed extension of her debarment focuses, then, on the fact that each of the three referenced actions was/is based on the same criminal wrongdoing. The short answer to Respondent's challenge, in the first place, is that there is

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[8] There is no evidence in the record that Respondent was charged with filing a "false" tax return. The allusions to Respondent's alleged misconduct regarding her tax filing, and based on her response, while they do indicate that her tax filing was a contested matter, are inconclusive on the issue of actionable culpability.

[9] 2 C.F.R. § 180.885(b) states that "the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment was based."

no legal prohibition regarding an agency's taking administrative action against a respondent for the same conduct that was sanctioned in his/her criminal proceeding. That indisputable fact is fairly reflected in the very regulations that are cited in the Notice as the basis for the action now proposed against Respondent.[10] Accordingly, the only issue before me for resolution today is the narrow one related to Respondent's claim of punitiveness.

As alluded to above, the relevant regulation, by its very terms, rejects the exclusion of "a person . . . for the purpose of punishment." 2 C.F.R § 180.125(c). In this regard, it is helpful also to note that courts, faced with the question before me today, have held that "administrative and criminal sanctions in connection with the same offenses serve different purposes and are addressed to different ends." *U.S. v. Lindwall*, 1 F.Supp. 2d 249 (S.D.N.Y. 1998). Criminal sanctions are purposely punitive. Administrative sanctions, on the other hand, such as a debarment, not only are not considered punitive,[11] but, as the regulation provides, serve to "protect the public interest [and to] ensure the integrity of Federal programs by conducting business only with responsible persons." 2 C.F.R. § 180.125(a).

The mere recitation of the applicable regulations, standing alone, while helpful in illuminating the issues, does not, however, determine in an individual case whether the sanctions proposed are punitive. Such a mechanistic approach is neither fair to a respondent nor helpful in arriving at a just decision. As discussed above, the amount cast as the unpaid debt in this action springs from the judgment in the PFCRA case. The Administrative Judge, after an evidentiary hearing, determined that Respondent should pay HUD $108,324.00, representing penalties and assessments for her fraudulent acts. Also, as discussed above, Respondent, as a consequence of her dilatoriness, failed to perfect her appeal of the judgment. That judgment is final and now unappealable. More importantly, this tribunal has no power to alter that judgment nor to question its fairness, as Respondent implicitly urges.

Although the judgment, considered in isolation, gives no support to Respondent's claim of punitiveness, that hardly settles the issue of whether all the exactions or deprivations suffered by Respondent can be held to be "punitive" in violation of 2 C.F.R. §180.125(c). Notwithstanding the earlier observation that, for example, the criminal punishment and debarment serve different ends, the fact is Respondent is "punished" more than once for her misdeeds related to the same offense. For ease of reference, we recount here the impositions exacted from Respondent for her misdeeds. Respondent was (1) convicted of a criminal offense, (2) required to make restitution of $69,000.00, (3) placed on probation, (4) banned from seeking employment in law enforcement for ten years, (5) then disbarred for three years, (6) found liable in an administrative hearing for the same fraudulent conduct addressed in the criminal trial and the earlier debarment proceeding, (7) ordered to pay HUD $102,000.00 in penalties, and (8) now in this matter facing an

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[10] See 2 C.F.R § 180.800. In passing, it is well to note that Respondent's position, to the extent it may implicitly challenge the legitimacy of HUD's action here based on the cited regulations, must fail. Respondent's position is untenable because it is well settled that an administrative tribunal is without power to invalidate an agency's regulations. *See, e.g., In the Matter of Edward D. Kortman*, HUDBCA No. 87-1786-G121, 1987 HUD Appeals LEXIS 39*9 (April 9, 1987) (an administrative judge is "without authority to consider or decide [whether Departmental regulations are unconstitutional] in [an] administrative proceeding.")

[11] "[A]n indefinite debarment does not establish a punitive intent and a proposed debarment does not constitute punishment." *In re. Winn*, 1995 HUD Appeals LEXIS 30 (June 9, 1995)

indefinite debarment.[12] Accordingly, it is against this background that we determine whether Respondent's arguments have merit and what is a fair outcome in this matter.

Discussion

As a procedural matter, in determining what, if any, period of debarment should be imposed, we consider whether the proposed period of debarment was based on an appropriate application or on an overbroad reading of 2 C.F.R. § 180.885. As previously mentioned, the Notice of Proposed Debarment recites, as a basis for Respondent's debarment, the misconduct for which she is currently debarred. The Notice then, almost as an incidental factor, adds that the unpaid debt also is a cause for Respondent's debarment. As one reads the September 8, 2017 Notice, it arguably impels the conclusion that Respondent's proposed indefinite debarment is based less on the fact of the unpaid debt than on Respondent's "violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, namely obtaining fraudulent Section 8 rent subsidy payments."

In sum, arguably the deprivation Respondent suffered (a three-year debarment) for her "original sin," i.e., her fraudulent receipt of rent subsidies, is being "enhanced," notwithstanding that the present charge relates to an unpaid debt. Support for this position flows from the statement in the September 8, 2017 Notice that "[e[xtension of your debarment is based upon 2 C.F.R. § 180.800(a)(1), 180.800(a)(3), 180.800(a)(4), 180.800(c)(3) and 180.800(d). The only section that covers Respondent's failure to pay her debt is 180.800(c)(3). The inclusion of the other sections is at best an overreach and at worst a "retrying" of the current debarment. The inclusion of these inapplicable sections suggests that the extension of the current debarment flows almost solely from Respondent's previous bad acts, not from her failure to satisfy the debt at issue here.

The September 8, 2017 Notice also refers to Respondent's "conviction for defrauding HUD." *See also* the Proposed Notice of Debarment dated April 17, 2015 and the Determination dated November 30, 2015. The latter two documents make it abundantly clear that Respondent's current three-year debarment was based on her conviction for defrauding HUD. Consequently, the recitation of the same misdeeds as cause for Respondent's proposed indefinite debarment is problematic, considering the

[12] As we seek to determine whether the collective impositions may be considered punitive or not, we refer to a memo from the Counsel to the President, subject "Legal Principles for all Administrative Actions," dated May 10, 2018 and Deputy Attorney General Rod Rosenstein's Remarks to the New York City Bar on May 9, 2018 (available at: https://www.justice.gov/opa/speech/deputy-attorney-general-rod-rosenstein-delivers-remarks-new-york-city-bar-white-collar) . While these two pronouncements are not necessarily controlling authorities, they offer useful guidance in the case at bar. The May 10, 2018 Memo, in discussing the need for agency action to be consistent with due process, cites the concurring opinion of Justice Gorsuch in *Sessions v. Dimaya*, 138 S. Ct., 1200, 1229 (2018) that "[t]oday's 'civil' penalties include confiscatory rather than compensatory fines, forfeiture provisions that allow homes to be taken, [and] remedies that strip persons of their professional licenses and livelihoods, ... The Memo further cautions that "[w]e must always keep in mind the financial and reputational harm that a regulatory and enforcement action by the federal government can cause to a regulated individual or business." In his remarks, the Deputy Attorney General announced a new Department of Justice policy that seeks to discourage imposition of "multiple penalties for the same conduct," which he referred to as "piling on." While the Deputy Attorney General's remarks covered corporate misconduct, it is nonetheless a useful reference point in addressing the issues raised in this matter.

restrictive language in 2 C.F.R. § 180.885.[13] Certainly, the proposed indefinite debarment notice does add the fact of Respondent's failure to pay the debt referenced earlier. In short, based on this record, it is unclear, and thus difficult to determine in a fair and satisfactory manner, how much weight was given to the two factors discussed above versus the weight given to the failure to pay the debt factor. As discussed above, this raises due process implications which cannot be ignored.[14]

The practical effect of the blurring of the lines between an apparent "retrial" of the current three-year debarment, without regard to its legal propriety, as opposed to the mere use of the "facts and circumstances upon which the initial debarment action was based" is that Respondent was disadvantaged in preparing a proper defense.[15] Accordingly, a decision today to debar or not, and, if debarment is warranted, what period of debarment is appropriate, would necessarily be guided by these considerations.

FINDINGS OF FACT

1. Respondent currently is serving a debarment based on her conviction for fraud in connection with her rental of property implicated in the instant matter.
2. Respondent's current debarment expires on November 29, 2018.
3. Subsequent to the imposition of the debarment, HUD brought suit against Respondent under the PFCRA.
4. The PFCRA court concluded on summary judgment that Respondent had made 26 false claims in connection with her rental property.
5. In a separate proceeding, the PFCRA court awarded HUD $108,324.00 in penalties.
6. To date, Respondent has not made any payment on the judgment debt.
7. Respondent disputes her ability to pay the debt primarily because of the existing debarment and the limitations it causes on possible employment opportunities.
8. Respondent was unsuccessful in her attempt to appeal the PFCRA judgment.

CONCLUSIONS

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[13] There is no doubting the plain meaning of the regulation at issue here, 2 C.F.R.§180.885(b). By "restrictive language" we refer to the provision in the regulation, previously acknowledged, that allows for an extension of a debarment if it is "necessary to protect the public interest." There is no gainsaying that fact. Equally true is that a debarment can be extended, though not solely, "on the basis of the facts and circumstances upon which the initial debarment action was taken." The inquiry here is a very narrow one and its answer will determine what outcome is fair and justifiable.

[14] *See* n.11 *supra*.

[15] For clarification, it is well to emphasize that the conclusion here is not in derogation of, nor does it ignore, the plain meaning of 2 C.F.R.§180.885(b). The conclusion, in fact, evidences its fealty to the cited regulation by not treating a respondent's past transgression as a more critical element than the respondent's current misdeeds in determining a suitable punishment. If that were so, we could have the incongruous result of a respondent being punished more severely for a present charge that is immeasurably less serious than the "original sin." Nothing in the regulation suggests that this is the result intended by the drafters of 2 CFR § 180.885(b). As intimated above, if this course were pursued, it would raise troubling due process issues. *See, for example*, the Government's Pre-Hearing Brief at 16, addressing as an aggravating factor in this matter Respondent's Prior History of Wrongdoing. The Government states there that "[b]ecause the criminal case was concluded by a plea agreement, the Court did not have the information that in addition to the underlying seven-year fraud, Respondent did not disclose all her income when she filed a bankruptcy in 2011." Assuming *arguendo* the truth of this assertion, the issue is the appropriateness of using an allegation that has not been adjudged or proven to magnify a respondent's "punishment" in another case.

Based on the above Findings of Fact, along with the Background and Discussion, I have made the following conclusions:

1. As determined in *In the Matter of Janelle Thompson*, Docket No. 15-0074-DB, decided November 29, 2015, Respondent is subject to the debarment regulations as a "person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction." 2 CFR § 180.120(a). *See also* 2 C.F.R. § 180.970(a)(6) and 2 CFR § 2424.995.
2. Respondent's failure to pay the substantial debt (in excess of $108, 000) owed HUD provides cause for debarment pursuant to 2 CFR § 180.800(c)(3).
3. The debarment regulations make no provision for a respondent to challenge, in this forum, a decision of an administrative tribunal. Thus, Respondent's attempt to dispute in this proceeding the underlying findings of the PFCRA court related to her ability to pay the judgment debt, and implicitly her criminal conviction, is unavailing. *See In the matter of Wayne D. Turner*, HUDBCA No. 91-5903-D49, 1993 HUD BCA LEXIS 6 (a respondent convicted of a criminal offense may not "collaterally attack his conviction in [a debarment] proceeding.")
4. The courts have held that debarment is a sanction that may be invoked by HUD as a measure of protecting the public by ensuring only those qualified as "responsible" are allowed to participate in HUD programs. *In re. Buckeye Terminix Co., Inc., citing Stanko Packing Co. v. Bergland*, 489 F. Supp. 947, 949 (D.D.C. 1980) and *Roemer v. Hoffman*, 419 F. Supp. 130, 131 (D.D.C. 1976).
5. The regulation at 2 CFR § 180.125(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." Thus, it is well established that lack of present responsibility can be based upon past acts. *See In re Buckeye Terminix Co., Inc.*, HUDALJ 89-1402-DB (August 31, 1990) , holding that "Responsibility encompasses the projected risk of a person doing business with HUD. This includes his integrity, honesty, and ability to perform. The primary test for debarment is present responsibility although a finding of present lack of responsibility can be based upon past acts." (Citations omitted)
6. The regulations provide at 2 CFR §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." In the instant matter, the cause that justifies Respondent's exclusion is her failure to pay the judgment debt which I have determined is a "substantial debt." *See* 2 CFR § 180.800(c)(3). As previously determined, Respondent's past participation in a HUD program means that she has been and may reasonably be expected to be a participant or principal in a covered transaction. *See* ¶ 1, *supra.*
7. HUD has met its burden of proof based on the PFCRA court's judgment. See 2 C.F.R. § 180.850(b), which provides that "[i]f the proposed debarment is based upon a . . . civil judgment, the standard of proof [i.e., a preponderance of the evidence] is met."
8. The foregoing discussion clearly establishes the basis and cause for the imposition of a debarment in the usual case. The regulations, however, also

provide in pertinent part at 2 CFR § 180.845(a) that "the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at 2 CFR § 180.860."

9. Pursuant to 2 CFR § 180.860, the following mitigating factors were considered in imposing an appropriate period of debarment: Respondent's attempt, though unsuccessful, to appeal the judgment.[16] Respondent's satisfying other financial obligations resulting from her original misdeeds. A recognition that Respondent is hobbled in her search for a well-paying job, arguably because of her original misconduct, that would be helpful to her in meeting her legal obligations. These mitigating factors, such as they are, do not overcome legitimate aggravating factors raised by Government counsel with respect to Respondent's past actions.
10. In the instant case, the "evidence of mitigation . . . [is] not sufficiently persuasive to negate the need for the imposition of a sanction." *In the Matter of James Webb*, HUDBCA No. 92-G-7709-D60, 1992 HUD BCA LEXIS 11. In *Webb*, HUD proposed debarring the respondent for three years based on his conviction for making a false statement. Webb pleaded guilty and was convicted and sentenced to two years' imprisonment (all but four months of the sentence was suspended) and placed on probation for three years and fined $550.00. While noting that the evidence in mitigation was not sufficiently persuasive, the Administrative Judge nonetheless concluded that the record "did not support the period of debarment proposed," and determined that "the public interest would not be served by excluding Webb . . . for a three-year period."
11. Similarly, based on the foregoing discussion and conclusions, not only would the public interest not be served by debarring Respondent for an indefinite period, but the indefinite period itself has an unmistakable tint of punishment, which is prohibited by 2 C.F.R. § 180.125(c).
12. As a related comment, it cannot be ignored that if Respondent is to be debarred, it is because of her inability to pay the judgment debt. Stated differently, if Respondent were able to pay the debt, regardless of her past indiscretions, she would not now be facing debarment. The PFCRA judgment was less about establishing Respondent's wrongdoing, that had previously been done in the criminal matter and the first debarment action, than in assessing fees and penalties for the wrongdoing.
13. Accordingly, the relevant regulation notwithstanding, Respondent is, for all practical purposes, being "punished" not for her misconduct but for her impecuniousness. Moreover, it is not readily apparent how an indefinite period of debarment, with all its attendant disabilities, especially regarding employment, would put Respondent in a better position to pay her debt as opposed to a defined period of debarment. For that reason, the better view, and the one that gives the government a more realistic opportunity to collect on the debt, is a fixed period of debarment.

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[16] I find that the Government's assertion that Respondent "falsely stated that the [PFCRA] Judgment was under appeal" is overstated in light of the facts. Respondent was clearly dilatory in her attempt to file the secretarial appeal. The record, however, is clear that Respondent made several attempts to perfect the appeal. The record also is clear that Respondent's inability to file timely her appeal is more associated with her failure to follow specific filing instructions given by certain HUD offices to her rather than to her intentionally lying about the status of her appeal. In any event, Respondent's appeal was, at best, inchoate and never came before the appropriate authority.

14. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
15. 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 CFR §§ 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for a period of three years from the date of expiration of her current Determination, i.e., November 29, 2018. Respondent's "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: 12/4/18

Craig T. Clemmensen
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of December, 2018, a true copy of the DEBARRING OFFICIAL'S DETERMINATION in Docket Number 18-0002-DB was served in the manner indicated.

Tanya L. Domino
Debarment Docket Clerk
Departmental Enforcement Center-

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

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