

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

In the Matter of:

EVELISSE HERNANDEZ,

Respondent.

25-AF-0274-DB-002

May 30, 2025

**ORDER GRANTING GOVERNMENT’S MOTION FOR RECOMMENDED
JUDGMENT ON THE PLEADINGS**

This matter is before the Court pursuant to a referral from the Debarring Official in the United States Department of Housing and Urban Development (“HUD” or the “Government”) requesting a Recommended Decision regarding HUD’s proposed debarment of Evelisse Hernandez (“Respondent”), from procurement and nonprocurement transactions. The proposed debarment is based on HUD’s claims that Respondent has participated in HUD programs as a licensed mortgage loan officer, and has pleaded guilty to, and was convicted of one count of Bank Fraud and Aiding and Abetting and one count of Aggravated Identity Theft in the United States District Court for the Middle District of Florida.

This Recommended Decision under 2 C.F.R. Parts 180 and 2424 recommends Respondent’s debarment for a three-year period based upon Respondent’s conviction and finds that action is necessary to protect the public interest.

PROCEDURAL HISTORY

On December 19, 2024, HUD issued a notice to Respondent proposing debarment. Respondent did not respond to the notice, and as a result, Respondent’s debarment became final on January 31, 2025. However, Respondent submitted a request for a hearing dated February 4, 2025, via email, stating that she had not received the notice. HUD rescinded the final determination dated January 31, 2025, and issued a substantively identical *Notice of Proposed Debarment* (“Notice”) to Respondent on February 11, 2025, proposing a three-year period of debarment.

Respondent submitted a *Request for Hearing* on March 12, 2025, to HUD, that included a one-paragraph response to the allegations contained in the *Notice*.

On March 18, 2025, the Debarring Official referred this debarment proceeding to this Court, the Office of Hearings and Appeals, for a *de novo* hearing in accordance with 2 C.F.R. § 180.845(c), and for a recommended decision. The referral was docketed and the matter was scheduled for hearing in accordance with 2 C.F.R. § 180.840. The Court ordered Respondent to

file an Answer on or before April 9, 2025, to include an admission or denial of each allegation in the *Notice*, which serves as the Complaint in this matter. See 24 C.F.R. § 26.13. However, Respondent has not filed an Answer.

HUD filed the *Government's Motion for Recommended Judgment on the Pleadings* ("Government's Motion") pursuant to 24 C.F.R. § 26.16(a) on May 16, 2025. Respondent has not filed a response to the *Government's Motion*.

LEGAL FRAMEWORK

Debarment Proceedings. Debarment 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. Debarment is not punishment. Rather, it is an enforcement tool to address serious non-compliance. Id.

The Federal Government is empowered to debar a person who has been or is expected to be a participant or principal in a covered transaction when that person has been convicted of an offense listed in 2 C.F.R. § 180.800(a). See 2 C.F.R. §§ 180.150, 180.800. A covered transaction is defined broadly to mean "any transaction, regardless of type (except procurement contracts)." 2 C.F.R. § 180.970. A principal is a person who has a critical influence on, or substantive control over, a covered transaction, including loan officers and real estate agents and brokers. 2 C.F.R. § 2424.995(a), (j).

A person may be debarred from participating in programs when there is a conviction for the "commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction," or for the "commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, violating Federal criminal tax laws, receiving stolen property, making false claims, or obstruction of justice." 2 C.F.R. §§ 180.150, 180.800(a)(1), (3). A conviction includes any "judgment or any determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea." 2 C.F.R. §§ 180.920(a).

Debarment proceedings are fact-finding proceedings conducted pursuant to 24 C.F.R. Part 26 subpart A. See 2 C.F.R. §§ 2424.842, 2424.952; 24 C.F.R. § 26.1. A conviction constitutes adequate evidence for purposes of debarment actions, and a respondent is not entitled to an additional opportunity to fact-finding where the debarment is based on a conviction. See 2 C.F.R. §§ 180.850(b), 180.830(a)(1).

Judgment on the Pleadings. 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). After the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings. Fed. R. Civ. P. 12(c).¹

¹ The procedural rules in 24 C.F.R. Part 26 do not set forth a standard for the granting of a motion for judgment on the pleadings, so the FRCP and case law interpreting the rules provide guidance. See In re Nationwide Home Loans, Inc., HUDOHA 23-AF-0071- MR-004, p.5 (June 7, 2023) (citing Salvador Alvarez, HUDALJ 04-025-PF, p.4 (June 23, 2005)).

Judgment on the pleadings is “appropriately granted when, at the close of the pleadings, no material issue of fact remains to be resolved, and the movant is clearly entitled to judgment as a matter of law.” Ams. for Fair Treatment v. U.S. Postal Serv., 663 F. Supp. 3d 39, 49-50 (D.D.C. 2023) (quoting McNamara v. Picken, 866 F.Supp.2d 10, 14 (D.D.C. 2012)). A “genuine” issue exists when “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Additionally, a fact is not “material” unless it affects the outcome of the suit. Id.

A motion for judgment on the pleadings is analyzed under the same standards that apply to a Rule 12(b)(6) motion. Zimmerman v. Corbett, 873 F.3d 414, 417 (3d Cir. 2017). The Court “accept[s] as true all allegations in plaintiff’s complaint as well as all reasonable inferences that can be drawn from them, and construes them in a light most favorable to the non-movant.” Tatis v. Allied Interstate, LLC, 882 F.3d 422, 426 (3d Cir. 2018) (quoting Sheridan v. NGK Metals Corp., 609 F.3d 239, 262 (3d Cir. 2010)).

HUD, as the moving party, bears the burden of demonstrating the absence of any material issues of fact. See Anderson, 477 U.S. at 256. Here, “[a] tribunal may consider the facts alleged in the complaint, documents attached to the complaint as exhibits or incorporated by reference, and matters about which the tribunal may take judicial notice” to resolve a motion for judgment on the pleadings. See United States v. All Assets Held at Bank Julius, 251 F.Supp.3d 82, 89 (D.D.C. 2017) (citations omitted).

This Court has considered all factual issues raised by the parties and finds the material facts are not genuinely in dispute.²

FACTS NOT IN DISPUTE

Respondent was employed as a loan officer by a mortgage lender prior to her indictment. From at least January 2018 through June 2019, Respondent and others knowingly and willfully engaged in a scheme and ploy to defraud a financial institution, and to obtain money, funds, credits, assets, and other property owned by, or under the custody and control of the financial institution by means of materially false and fraudulent pretenses, representations, and promises.

Specifically, Respondent prepared and submitted mortgage loan applications to the mortgage lender on behalf of several unqualified borrowers while having actual knowledge that the borrowers’ income was insufficient and would not qualify for the mortgage loan. To enhance the probability of approval, Respondent created and added fraudulent documentation to borrowers’ loan applications that falsely inflated borrowers’ income.

On May 18, 2022, Respondent was indicted based on the information above. Respondent signed a plea agreement pleading guilty to one count of Bank Fraud and one count of Aggravated Identity Theft on January 12, 2023, in the U.S. District Court for the Middle District of Florida.

² In her March 12, 2025 *Request for Hearing*, Respondent conceded that she worked for a mortgage company and was convicted of Federal charges, but asserted that the conviction stemmed from her coworkers “committing fraud prior to me obtaining a loan officer license.” She also stated that, at her sentencing, the Federal judge indicated she had been penalized sufficiently and should be able to work again to support herself and her family. Beyond these cursory statements, Respondent has not further challenged HUD’s allegations, nor has she submitted responses to the Complaint or the *Government’s Motion*.

Respondent acknowledged that the Federal Housing Administration (“FHA”) was the mortgage insurer for at least one loan subject to her criminal actions. On April 17, 2024, the court entered a criminal judgment sentencing Respondent to a period of probation for a term of two years. Respondent was also ordered to pay \$131,792.00 in restitution to a mortgage company and \$129,904.86 in restitution to the FHA.

DISCUSSION

HUD moves for a recommended judgment on the pleadings on the basis that there are no material facts in dispute and that Respondent is not entitled to a hearing. Specifically, HUD claims there is no genuine dispute that Respondent was charged with, pleaded guilty to, and was convicted of Bank Fraud and Aggravated Identity Theft in the U.S. District Court for the Middle District of Florida. HUD further claims that Respondent is subject to government-wide debarment because of her convictions for fraud (2 C.F.R. § 180.800(a)(1)) and theft (2 C.F.R. § 180.800(a)(3)).

Debarment 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(c). Federal agencies may debar those who transact with the Government to protect the fiscal integrity of government programs. See id. § 180.125(a). Debarment is warranted when a participant is convicted of fraud or theft. 2 C.F.R. § 180.800(a)(1), (3); *In re Joseph A. Strauss, The Phoenix Associates, Ltd.*, HUDBCA 95-G-113-D11, p.5 (May 19, 1995) (imposing five-year debarment after respondent pleaded guilty to and was convicted of conspiracy to conceal material fact and concealing material fact); *In re Philip D. Winn, et al.*, HUDBCA 95-G-108-D6, p.4-6 (June 9, 1995) (imposing four-year debarment after respondent pleaded guilty to and was convicted of conspiring to bribe public officials to perform official acts and duties).³

The decision to debar Respondent from future procurement and non-procurement transactions with the Federal Government is within the discretion of the Debarring Official. See 2 C.F.R. § 180.845(a). In determining whether debarment is an appropriate sanction, “[t]he debarring official bases the decision on all information contained in the official record. The record includes . . . [a]ny further information and argument presented in support of, or in opposition to, the proposed debarment” Id. § 180.845(b). This Court, for the reasons discussed below, finds that HUD has shown by a preponderance of the evidence that debarment is warranted under the circumstances.

I. Respondent was Convicted of Bank Fraud and Aggravated Identity Theft.

HUD claims debarment is warranted because of Respondent’s criminal conviction. Federal regulations provide that a conviction or civil judgment for fraud and/or theft can be a cause for debarment. 2 C.F.R. § 180.800(a). The burden is on HUD to prove debarment is warranted. 2 C.F.R. § 180.855(a). But, when the proposed debarment is based upon a conviction, the standard of proof is met. 2 C.F.R. § 180.850(b).

Based on facts in the record, Respondent was charged with, pleaded guilty to, and was convicted of fraud and theft in regard to mortgage loan applications. By signing the plea

³ All HUD debarment decisions cited herein are available at <https://www.hud.gov/stat/oha/debarment>.

agreement, Respondent admitted to committing fraud and theft and was ultimately convicted. Both offenses are serious and warrant debarment under 2 C.F.R. § 180.800(a). Even though HUD provided copies of the true bill of indictment, and plea agreement, the conviction alone is adequate evidence to warrant debarment. Accordingly, the Court finds HUD has met its burden to prove that debarment is warranted because Respondent's proposed debarment is based on a conviction and Respondent is not entitled to fact-finding.

II. The Harm Caused by Respondent Requires Action to Protect the Public Interest.

HUD claims debarment is necessary because Respondent abused her employment position to the detriment of her employer, HUD's programs, and individuals. HUD also contends that Respondent's crimes are sophisticated, and Respondent poses an ongoing threat to the security and integrity of HUD programs. Criminal convictions that relate to "business integrity and honesty pose a clear and immediate threat to the government." See Yoel Movtady, HUDALJ 95-5054-DB(S), at p. 3 (Aug. 21, 1995) (sustaining suspension based on indictment of fraud and false statements to HUD).

Respondent's conviction is serious and speaks to her character and ability to participate in covered procurement and nonprocurement transactions with HUD. Her conduct was dishonest and involved fraudulent documents and identity theft which resulted in a criminal conviction. As a principal, Respondent's misconduct is a threat to the public interest and those Respondent conducts business with. Such misconduct reflects poorly on Respondent's business integrity and calls into question the risk of any potential involvement in future transactions with the Federal Government. Therefore, the Court finds that action is necessary to protect the public interest.

III. Respondent's Arguments Against Debarment are Unpersuasive.

Respondent claims that the conviction stemmed from a group of individuals who committed fraud prior to her obtaining a loan officer license and admits to working with said individuals. Respondent also states that the District Court Judge did not restrict her from working. Nonetheless, Respondent pleaded guilty to bank fraud and theft. The conviction alone warrants debarment.

Respondent also claims that the District Court Judge stated enough time has passed since the occurrences without incident, so Respondent has been sufficiently penalized. While that may hold true in the District Court, this matter is now before HUD, not to impose further punishment on Respondent, but to determine whether debarment is warranted to protect the public interest. See 2 C.F.R. § 180.125(c). The FHA was directly and significantly affected by Respondent's actions, for which Respondent was ordered to pay \$129,904.86 in restitution to the FHA. Respondent's arguments do not diminish the severity of the conviction and do not overcome HUD's rationale for excluding her from government transactions.

CONCLUSION AND ORDER

Based on the foregoing, the *Government's Motion for Recommended Judgment on the Pleadings* will be **GRANTED**.

The Court finds that HUD has met its burden to demonstrate that no genuine issues of material fact exist in this matter. The undisputed material facts demonstrate Respondent, who is Subject to federal Debarment Regulations, was charged with, pleaded guilty to, and was convicted of one count of Bank Fraud and one count of Aggravated Identity Theft in the United States District Court for the Middle District of Florida. Respondent has been an active principal in HUD housing programs, so action is necessary to protect the public interest. Respondent has not demonstrated a basis for challenging the established facts in the present proceeding, and Respondent's conviction is adequate evidence for purposes of the debarment. Because the proposed debarment is based on a conviction, Respondent is not entitled to fact-finding. In addition, Respondent's misconduct is serious and negatively affects the integrity of HUD's housing assistance programs. Accordingly, the Court recommends that Respondent's debarment from future procurement and non-procurement transactions with the Federal Government for a three-year period on this basis be affirmed.

This matter is returned to the Debarring Official for further action.

So **ORDERED**,



ALEXANDER FERNANDEZ-PONS
CN = ALEXANDER FERNANDEZ-PONS
C = US O = U.S. Government
OU = Department of Housing and
Urban Development, Office of the
Secretary
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Alexander Fernández-Pons
Administrative Law Judge