

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

In the Matter of:

DEBORAH ELIZABETH WILSON,

Respondent.

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DOCKET NO.: DEC. 17001-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice of Proposed Debarment dated February 22, 2017 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent DEBORAH ELIZABETH WILSON 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 a three-year period from the date of final determination of this proposed action. The Notice advised Respondent also that her proposed debarment was in accordance with the regulations at 2 C.F.R. parts 180 and 2424 and was based on her conviction in the Oakland County Circuit Court for home invasion in violation of applicable Michigan law. The Notice recited that Respondent's conviction was cause for debarment pursuant to 2 C.F.R. § 180.800(d).

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on June 13, 2017,¹ before the Debarring Official's Designee, Mortimer F. Coward. Respondent appeared *pro se*. Rebecca H. Shank, Esq. appeared on behalf of HUD.

SUMMARY

I have decided, pursuant to 2 C.F.R. § 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 eighteen

¹ Because Respondent submitted an unsigned document for consideration by the Debarring Official, the record was left open for Respondent to submit a signed copy or any other supporting documentation. Respondent submitted the signed copy on June 21, 2017, and there being no response from the Government, the record closed June 29, 2017.

months from the date 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 February 22, 2017.
- (2) A letter dated March 24, 2017 from Respondent, along with several attachments, addressed to the Director of the Compliance Division contesting her proposed debarment.
- (3) HUD's Pre-Hearing Brief in Support of a Three-Year Debarment filed May 16, 2017 (including all exhibits and attachments thereto).

GOVERNMENT REPRESENTATIVE'S ARGUMENTS

The Government representative states that Respondent was employed as the Executive Director of the Ferndale Housing Commission from 1987 to December 2015. During her tenure with the Commission, Respondent, through artifice, unlawfully entered tenants' apartments in their absence to steal their prescription drugs, replacing those drugs with generic drugs. Respondent subsequently was charged with, and convicted of, two counts of home invasion for which she was sentenced to one day in jail, three years' probation and 90 days' community service. Respondent later violated the terms of her probation - failing blood alcohol tests - and was sentenced to one to 15 years' imprisonment.²

HUD representative notes that Respondent was a participant in a covered transaction because she held the position of Executive Director of the Commission which received HUD funding. The funding the commission received under the Rental Housing Program and the Housing Choice Voucher Program satisfied the definition of "covered transaction" pursuant to 2 C.F.R. § 180.970. Thus, the commission too was a participant in a covered transaction and Respondent, as the Executive Director of the Commission, was an agent or representative of a participant in a covered

² HUD representative notes that, around the same time of Respondent's criminal matter, HUD issued a report (Housing Management Review) on the Ferndale Housing Commission. The report, among other things, noted that Respondent used the Commission's credit card to pay non-Commission-related travel expenses of \$18,334.45 while also using 540 hours of official time for non-Commission-related business. At the hearing, Respondent challenged the accuracy of the report and her lack of opportunity contemporaneously to refute its basis and findings and at the time of the report's preparation. Because the Notice of Proposed Debarment makes no mention of the report as a basis for proposing Respondent's debarment, the report will play no role in today's decision. As held in *In re. Padula*, 79-2 B. C. A. (CCH) p. 13, 934 because "the Department failed to amend its statement of charges, debarment can only be based on the matters set forth in the [Notice]." (Emphasis added) See also 2 C.F.R. § 180.805, especially paragraph (b), which requires the debarring official if he proposes to debar a respondent to inform him through the Notice of Proposed Debarment "(b) Of the reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based." In short, the failure of the Notice to allege the offenses cited in the report deprives this tribunal of subject matter jurisdiction.

transaction. Respondent was a principal in a covered transaction also because in her position as Executive Director, she had "management or supervisory responsibility related to a covered transaction." 2 C.F.R. § 180.995(a).

Accordingly, as a participant or principal in a covered transaction, Respondent is subject to the debarment regulations. See 2 C. F. R § 180.150. Based on the foregoing and Respondent's conviction, and what counsel characterizes as Respondent's "callous disregard for the tenants' well-being," which "demonstrates a lack of business integrity or honesty that seriously and directly affects her present responsibility," there is "sufficient evidence" to support Respondent's debarment under 2 C.F.R. §§ 180.800(a)(3)³ and (a)(4).

In reviewing the mitigating and aggravating factors pursuant to 2 C.F.R. § 180.860, counsel argues, *inter alia*, that Respondent's repeated actions in switching the affected tenants' drugs could have had lethal consequences for the unsuspecting elderly tenants. Counsel argues also that Respondent's later actions resulting in violation of her conditions of probation demonstrate that she had not accepted responsibility for her misconduct. Counsel notes that, as pronounced by the judge in a later proceeding regarding Respondent's probation violation, she was a "danger to the community."

Government representative argues that Respondent's criminal conduct along with her later actions that violated her conditions of probation demonstrates by a preponderance of the evidence her lack of present responsibility. Accordingly, counsel concludes that there is cause for a three-year debarment.

RESPONDENT'S ARGUMENTS

Respondent testified that she never denied removing pills from two apartments in 2015 and is "pained by [her] actions" and the public shame she suffered. According to Respondent, she became addicted to prescription pain pills and sought treatment for opioid use by going into therapy and rehab. Respondent's misdeeds and abuse of drugs, as she testified, occurred during a time when

³ As indicated above, Respondent was convicted of home invasion. Because "home invasion" is not one of the offenses listed in 2 C.F.R. § 180.800(a)(3), Respondent will not be considered for debarment under this section. Further, because the Notice did not indicate that Respondent was subject to debarment under 2 C.F.R § 180.800(a)(4), Respondent will not be debarred also, if at all, under this section. The Notice proposed Respondent's debarment under 2 C.F.R. §180.800(d) only. *See generally Gonzales v. Freeman*, cited in *Padula, supra*, opining that debarment "directs the power and prestige of government at a particular person, and may have a serious impact on that person. Such debarment cannot be left to administrative improvisation on a case-by-case basis. The government power must be exercised in accordance with accepted legal norms. Considerations of basic fairness require administrative regulations establishing standards for debarment and procedures which will include notice of specific charges."

she was being treated for breast cancer. Respondent testified also that she began drinking during this time, which led to her driving drunk and violating her probation.

Respondent notes that she has paid the court-ordered restitution and does not believe that she represents a danger to society. Further, debarment seems like additional punishment to her criminal punishment,⁴ especially because she has no intention of running an agency again; however, she would like to help agencies develop policies.

Respondent submitted several commendatory letters from friends and associates who lauded her outstanding work over the several decades as an executive director. Commenters especially remarked on her valuable contributions as a professional in the assisted housing industry, lecturing, participating in forums, developing solutions to improve the lives of program participants, etc. Respondent also submitted a report from her analyst who treated her during her recovery from drug and alcohol addiction. The report notes the emotional challenges Respondent faced during the period when her misconduct occurred as she battled breast cancer and taking care of her mother who eventually passed. Respondent's therapist observed that Respondent did not "minimize her criminal behavior but took full responsibility for her behavior with an extreme amount of guilt and shame." Further, Respondent's therapist states that in her "professional opinion, [Respondent] displays all the signs and symptoms of complete sobriety," and she is "confident in [Respondent's] ability to maintain complete sobriety."

FINDINGS OF FACT

1. Respondent was, at all relevant times, the Executive Director of a housing commission which entered into an Annual Contributions Contract with HUD through which the commission received federal funding under the Housing Choice Voucher Program and the Low Rent Public Housing Program.
2. Respondent, through guile, persuaded tenants to leave their apartment, thus affording her the opportunity to enter the tenants' unattended apartment.
3. Respondent took advantage of the tenants' absence from their unit to engage in a scheme in which she took the tenants' prescribed medication replacing it with over-the-counter pills.

⁴ Respondent also rebutted the allegations in the report that the government cited in its brief and raised at the hearing. For the reasons stated in n. 1 *supra*, it is unnecessary to address Respondent's rebuttal here.

4. During the relevant time period, Respondent was an alcoholic, faced serious medical and emotional challenges, and was addicted to prescription pain pills.
5. Respondent has undergone and continues to seek professional help for her addiction.
6. Respondent's therapist, in expressing her professional opinion of Respondent's present condition, states that she "is confident of [Respondent's] ability to maintain complete sobriety."
7. Respondent was charged with home invasion and sentenced to one day in jail and placed on three years' probation.
8. Respondent subsequently was sentenced to one to 15 years in prison for violating the terms of her probation.

CONCLUSIONS

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

1. Respondent is subject to the debarment regulations based on her position as the Executive Director of a housing commission which received federal funds under an ACC, a covered transaction. Thus, she has been or may reasonably be expected to be a participant or principal in a covered transaction. See 2 C.F.R. §§ 180.120(a), 180.210, 180.970, 180.980 and 180.995.
2. Respondent's conviction for home invasion provides cause for her debarment pursuant to 2 C.F.R. § 180.800(d). ("Any other cause of so serious or compelling a nature that it affects your present responsibility.")
3. HUD has established the cause for Respondent's debarment, i.e., Respondent's actions that led to her criminal conviction, and the requisite standard of proof therefor has been met pursuant to 2 C.F.R. § 180.850.
4. The courts have repeatedly held that "[d]ebarments and suspensions are serious sanctions that should only be utilized for the purpose of protecting the public interest and may not be used as punishment." *In the Matter of Lisa Burns*, 2011 HUD ALJ LEXIS 24 (December 29, 2011). Nothing in HUD's actions in this matter, notwithstanding Respondent's suggestion of punitive action by HUD in bringing this action, demonstrates that HUD ignored this injunction.

5. Similarly, Respondent's debarment serves to protect the public interest, although her misconduct may have occurred in years past. Further, Respondent, though arguing that to debar her would be tantamount to additional punishment has failed to show that her "debarment under the circumstances of this case does not reflect the Government's desire to protect the public interest." *Burns, supra*. Also, as the courts have held, the test for determining whether a proposed sanction is warranted is present responsibility, which may be inferred from past acts. *Schlesinger v. Gates*, 249 F.2d. 111, (D.C.Cir.1957).
6. Pursuant to 2 C.F.R. § 180.860, the Debarring Official may consider the aggravating and mitigating factors present in each case. As mitigating factors, I have considered, among others, that Respondent performed creditably in her position for approximately twenty-eight years⁵ until her addiction apparently drove her into irresponsible and criminal conduct. I have considered also that Respondent sought counseling and went into rehab in an effort to overcome her addiction and, according to her therapist, has maintained her sobriety. A further mitigating factor is Respondent's full acceptance of responsibility for her misdeeds.
7. As aggravating factors, I have considered, *inter alia*, the egregiousness of Respondent's misconduct and the harm to which Respondent exposed the affected tenants by filching their prescription medication. Respondent also is solely responsible, notwithstanding her addiction, for the planning, initiation, and carrying out of the scheme to purloin the tenants' medication.
8. In considering whether to debar a respondent, and what period of debarment is appropriate, in addition to the mitigating and aggravating factors, 2 C.F.R. § 180.125(c), in pertinent part, provides that "An 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 purpose of punishment." In offering guidance on how long a debarment may last, 2 C.F.R. § 180.865(a) states that "your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three

⁵ The Government indicates in its brief that Respondent held the Executive Director position in the housing commission from 1987 to December 2015. See HUD's Pre-Hearing Brief in Support of a Three-Year Debarment at 2. The allegations in the management review of the Commission raise some concerns; however, because, as noted before, the charges laid against Respondent in the Notice of Proposed Debarment did not include these allegations, they will, at best, be given *sub rosa* consideration in addressing the mitigating factors. It should be noted also that Respondent filed a detailed rebuttal in response to the Government's incorporating the findings of the review in its brief.

years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.”

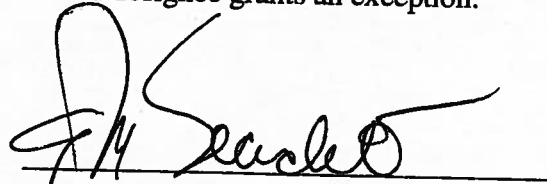
9. The seriousness of Respondent’s wrongdoing cannot be overstated; however, the mitigating factors along with Respondent’s demonstrated attempt to chart a new course persuade me that a lengthy period of debarment would be more punitive than ameliorative in this case. Nonetheless, a period of debarment is necessary, not only for the protection of the public interest but to ensure that Respondent can continue to conform her conduct for a lengthy and consistent time to the standards of a person who is presently responsible. Sufficient time has not passed since Respondent indulged in her unfortunate behavior to assure me that Respondent is presently responsible. A short period of debarment offers Respondent the opportunity to demonstrate that she is fully recovered and presently responsible. Accordingly, under the circumstances present in this case a period of debarment for eighteen months is warranted. *See also* 2 C.F.R. § 180.845(a).
10. 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 C.F.R. § 180.125.
11. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act responsibly.

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 for a period of eighteen months from the date 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: _____


8-1-17



James M. Beaudette
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 2017, a true copy of the DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.


Tanya Domino
Debarment Docket Clerk

HAND CARRIED

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

HAND CARRIED AND ELECTRONIC MAIL

Rebecca H. Shank
Government Representative

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