

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

In the Matter of:

ALESIA R. WATSON

Respondent.

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DOCKET NO: DEC 18-17082-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice of Proposed Debarment dated July 2, 2018 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent ALESIA R. WATSON that HUD was proposing her debarment and continuation of suspension 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 June 15, 2017, the date of her suspension. 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 for violation of 18 U.S.C. Sec. 641 (Theft of Federal Funds). In the United States District Court of the District of New Jersey, the Notice continued that Respondent's conviction for using Ocean City, (New Jersey) Housing Authority funds for purchase of gift cards for her personal use and other non-Housing Authority purposes provided cause for her debarment pursuant to 2 C.F.R. §§ 180.800(a)(1) and (3).

A hearing on Respondent's proposed debarment was held in Washington, D.C. on November 13, 2018 before the Debarring Official's Designee, Mortimer F. Coward, Esq. Respondent appeared *pro se*. Stanley E. Field, 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 her suspension, June 15, 2017. My decision is based on the administrative record in this matter, which includes the following information:

- (1) The Notice of Proposed Debarment and Continuation of Suspension dated July 2, 2018.
- (2) The Department's Pre-Hearing Brief in Support of a Three-Year Debarment of the Respondent, filed September 28, 2019 (including all exhibits and attachments thereto).
- (3) Respondent's Submission [sic] of a Three-Year Debarment filed November 2, 2018.

GOVERNMENT COUNSEL'S ARGUMENTS

Government counsel states that Respondent's misconduct occurred over a period beginning in December 2013 to on or about March 2015. During this period Respondent was the Executive Director of the Ocean City Housing Authority ("OCHA"). Respondent used federal funds, allocated by HUD to the housing authority, to purchase the gift cards referenced earlier. Counsel notes that the Information charged Respondent, *inter alia*, with "knowingly convert[ing] to her own use . . . federal funds received from [HUD]. . . to which she was not entitled." Respondent pleaded guilty to the Information and was convicted and placed on three years' probation and ordered to pay restitution of \$8,050.00 to HUD.

Counsel argues that Respondent, by virtue of her former position as the Executive Director of an entity, OCHA, that received HUD funds, is subject to the Department's regulation because she "has been. . . a participant or principal in a covered transaction," citing 2 C.F.R. §§ 180.150 and

180.980. Further, counsel notes that Respondent's conviction for Theft and Embezzlement provides cause for her debarment pursuant to 2 C.F.R. §§ 180.800(a)(1) and (3).¹

Counsel concludes by rejecting Respondent's claim that she did not act with the intent to defraud HUD or the residents of OCHA. Counsel notes that HUD has not addressed that issue. Counsel adds, however, that Respondent has been a defendant in civil actions related to her delinquency in paying her personal debts. Counsel sees Respondent's failure to pay her bills timely as further demonstrating her "irresponsibility," evident in the crimes for which she was convicted. Accordingly, counsel urges the debarring official to impose a three-year debarment.

RESPONDENT'S ARGUMENTS

In her testimony at the hearing and in her written submission, Respondent expressed regret and took responsibility for her actions at issue here. In her filing, Respondent explained that her actions were in connection with a program approved by the OCHA Commissioners to purchase Christmas gifts for employees, but she "did not act with the intent to defraud HUD or residents of OCHA." Additionally, according to Respondent, she gave charge cards to people in the community, though admitting that she "used one or two" for herself. Respondent testified that she knew what she did was wrong and started repaying the purloined funds even before HUD discovered her crime. In total, Respondent repaid HUD \$8,075.00. Respondent testified that she spoke to the OCHA commissioners when her misdeeds became known.² She was advised that the Board would wait to see what HUD would do. Also, her attorney advised her not to contact HUD.

¹ Pursuant to 2 C.F.R. § 180.800(a) "A federal agency may debar a person for (a) Conviction of or civil judgment for (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; [and] (3) Commission of theft, embezzlement, [etc.]."

² Respondent requested and was given time to request and obtain letters of support from the then-Commissioners familiar with the matter at issue. Respondent explained that it would take time to find the Commissioners and secure letters. As of this writing, only one Commissioner has submitted the requested letter and the record is now closed.

In mitigation of her misconduct, Respondent offered that, at the time she committed the unlawful acts, she “had a lot going on, [her] son was on drugs and [she] lost her grandmother.” Respondent also adds that OCHA Board resolutions reflect the high quality of her work during her tenure as the Executive Director. Her misconduct, Respondent asserts, “does not speak her true character in its entirety.” Respondent further notes that all “judgements have been satisfied and bad debts have been cleared.”

Respondent states that she is eligible for “early termination” of her sentence in the underlying criminal matter. She further notes, at the time of her writing, that her application for early termination was being processed and would be submitted to the sentencing judge early in the current year.³ Respondent concludes that “after the review of all complete documents [her debarment] should not be for three years.”

FINDINGS OF FACT

1. Respondent served as the Executive Director of OCHA during the period at issue in this matter - - December 2013 to March 2015.
2. Respondent was authorized by the OCHA Board to donate gift cards to residents at Christmas.
3. The OCHA Board did not authorize Respondent to self-donate any of the gift cards or otherwise use OCHA funds for her own benefit.
4. Respondent, without approval or authority, converted OCHA funds to her use and benefit in connection with the gift-card program.

³ It is unclear whether the court acted favorably, or what action was taken, with respect to the application. The record was kept open to afford Respondent the opportunity to submit a copy of the application. As of this writing, no copy of the application exists in the record.

5. Respondent was charged with the commission of several offenses, later pleaded guilty and was convicted of theft of government funds.
6. Respondent was sentenced to three years' probation for her misconduct and ordered to pay restitution to HUD of \$8,050.00, which has been paid.
7. Respondent has expressed her regret and remorse for her illegal acts.

CONCLUSIONS

1. Respondent, as an Executive Director of a housing authority, OCHA, during the period when she committed the offenses at issue here, 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 C.F.R. § 180.120(a). *See also* 2 C.F.R. §§ 180.150, 180.970, and 180.980.
2. Respondent's conviction for theft of government funds provides the basis for her debarment pursuant to 2 C.F.R. §§ 180.800(a)(1) and (a)(3).
3. The regulations at 2 C.F.R. §§ 180.850(a) and (b) provide that "(a) [i]n any debarment action, the Federal agency must establish the cause for debarment by a preponderance of the evidence," and "(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met." Accordingly, no further proof of Respondent's wrongdoing has to be adduced here to support a decision to debar her.
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). Also, 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. 2d111, (D.C. Cir. 1957).

5. Pursuant to 2 C.F.R. § 180.860, the Debarring Official may consider the aggravating and mitigation factors present in each case. With respect to the mitigating factors, I considered the fact that Respondent had a successful career at OCHA, but for her transgressions described here; Respondent's repayment of the funds that were misappropriated; her personal challenges, during the time that she committed the unlawful acts, that she overcame; and her sincere expressions of regret and acceptance of responsibility for her misconduct. As aggravating factors, I considered the fact that Respondent's illegal actions occurred over a 15-month period, were planned and initiated by her, and resulted in OCHA's residents suffering a deprivation rather than the help that the OCHA Board intended.
6. 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 years. However, if circumstances warrant, the debarring official may impose a longer period of debarment."
7. The seriousness of Respondent's wrongdoing cannot be overstated. For that reason, a period of debarment is necessary, not only for the protection of the public interest but to ensure that

Respondent can conform her conduct for an appropriate time to the standards of a person who is presently responsible.

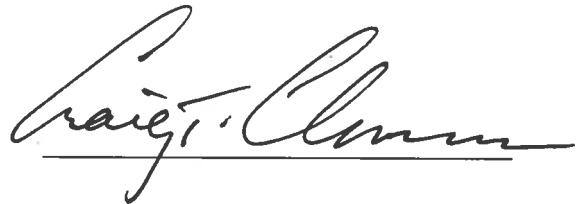
8. In applying the standards and the test enunciated in *Schlesinger, supra*, a balancing of the interests implicated in that decision and in the regulations is necessary. Respondent's misconduct ended in 2015. Thus, Respondent has had almost four years to prove that she is presently responsible. On the other hand, Respondent committed a serious act, as described above. In the usual case, the seriousness of Respondent's misconduct would result in debarment, as proposed here by the government. In determining a fair result, we are guided also by the proscription in 2 C.F.R. § 180.125(b) that a "Federal agency may not exclude a person . . . for the purpose of punishment."
9. Nonetheless, 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.
10. 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 three years from the date of her suspension, June 15, 2017. 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: 5/31/19



Craig T. Clemmensen
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of May, 2019, a true copy of the DEBARRING OFFICIAL'S DETERMINATION in Docket Number DEC-18-17082-DB was served in the manner indicated.



Tanya L. Domino
Debarment Docket Clerk

HAND CARRIED

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

ELECTRONIC MAIL AND CERTIFIED MAIL RETURN RECEIPT

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ELECTRONIC MAIL AND HAND CARRIED

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