

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

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**In the Matter of:**

**PEDRO MIQUEO,**

**Respondent.**

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**DOCKET NO.: DEC. 2017-18132-DB**

**DEBARRING OFFICIAL'S DETERMINATION**

**INTRODUCTION**

By Notice of Proposed Debarment dated August 22, 2017 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent PEDRO MIQUEO that HUD was proposing his 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 five-year period from the date of the final determination of the proposed action. The Notice advised Respondent also that his proposed debarment was in accordance with the regulations at 2 C.F.R. parts 180 and 2424 and was based on his conviction in the Superior Court of California for violation of California Health and Safety Code § 11366.5(a). Specifically, Respondent owned a multifamily property receiving HUD assistance, which he made available for the unlawful manufacture, storage, or distribution of a controlled substance. The Notice further advised Respondent that his conviction provided cause for his debarment pursuant to 2 C.F.R. §§ 180.800(a) and (d).

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on November 28, 2017 before the Debarring Official's Designee, Mortimer F. Coward. Kirk S. Rimmer, Esq. appeared on behalf of *Respondent*. 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 three years 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 August 22, 2017.
- (2) A letter dated September 19, 2017 (with attachments), submitted on Respondent's behalf by his attorney, addressed to the Director of the Compliance Division, objecting to the proposed debarment and requesting a hearing.
- (3) HUD's Pre-Hearing Brief in Support of Five-Year Debarment filed October 6, 2017 (including all exhibits and attachments thereto).
- (4) Respondent's Pre-Hearing Brief filed October 31, 2017 (including all exhibits).

### GOVERNMENT COUNSEL'S ARGUMENTS

Government counsel states that Respondent was a resident and owner (or constructive owner)<sup>1</sup> of a multifamily project in which several of the units were covered by a Housing Assistance Payments (HAP) contract. Respondent used one of the units that he owned and controlled to engage in illegal drug activity. As a result of his illegal activity, Respondent was charged with violating § 11366.5(a) of the California Health and Safety Code to which he pleaded no contest. Following his conviction, Respondent was sentenced to three years' probation and forfeited cash and assets of \$1,000,000.00.

Counsel argues that Respondent is a participant in a covered transaction by virtue of his receipt of HUD funds in connection with the subject property. See 2 C.F.R. §§ 180.150, 180.970(a), and 180.980. Accordingly, as a participant Respondent is subject to the debarment regulations. Specifically, the unchallenged evidence that led to Respondent's conviction shows his significant involvement in illegal drug activity. The evidence is conclusive that Respondent's drug dealing created an environment that had the potential to endanger the well-being and safety of his tenants.

The seriousness with which Respondent's conduct must be viewed, counsel notes, can be gauged from the relevant language in various statutory and regulatory authorities that evinces a clear intolerance of drug use or trafficking in federally assisted housing. See, for example, 42 U.S.C. Sec.

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<sup>1</sup> The Government notes in its brief that the subject property has been transferred several times among Respondent and his family, entities connected to the family, and a family trust, which currently is the owner of record.

1437a(a)(5)(C)(b)(1) and 24 C.F.R. § 880.101 stating the purpose of the Section 8 program to provide “decent, safe, and sanitary” housing to families; 42 U.S.C. Sec.11901 providing for housing that is “free from illegal drugs.” See also, 42 U.S.C. sec. 13661 denying admission to assisted housing if a member of the household uses drugs; and 24 C.F.R. § 5.858 allowing for a provision to terminate a lease if drug-related activity is engaged in by a tenant or other person in or near the leased unit.

In reviewing the aggravating and mitigating factors in 2 C.F.R. 180.860 as they apply to the instant case, counsel observes, *inter alia*, that Respondent’s drug trafficking, which occurred over an extended period of time, had the potential to endanger the tenants in his property. Counsel notes also that Respondent’s forfeiting \$1,000,000.00 to the state is indicative of the serious nature of his offense.

Accordingly, based on the facts adduced in the criminal proceeding and Respondent’s conviction itself, counsel concludes that “Respondent has demonstrated a lack of business integrity or honesty that seriously and directly affects his present responsibility,” citing 2 C.F.R. §§ 180.800(a)(4) and 180.800(d), and Respondent’s debarment for five years is warranted.

### RESPONDENT’S ARGUMENTS

In Respondent’s pre-trial brief, and at the hearing, Respondent, through counsel, raised certain procedural objections relating to his timely receipt of HUD’s pre-hearing brief and exhibits. After the parties were heard on this issue, the Debarring Official’s Designee ruled that no prejudice to Respondent was shown and the hearing would proceed.

At the hearing and in his brief, Respondent, through counsel, emphasized that, notwithstanding the implications in the Government’s arguments, the subject property was well managed, receiving an “Above Average” score, as detailed in the May 26, 2017 letter to the property owner along with the accompanying Management and Occupancy Review. See Resp. Brief, Ex. 4.<sup>2</sup> In this regard, counsel for Respondent noted that currently there are 101 tenants, including 15 elderly tenants, occupying 44 HUD-assisted units who will be impacted if Respondent’s proposed debarment is affirmed, that is, these tenants may be unable to afford market

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<sup>2</sup> Respondent notes also that, per the Physical Inspection Summary Report of February 24, 2014, the property received a score of 96a. See Resp. Pre-trial Brief, Ex. 5.

rents in that locale. Counsel also addressed the Government's suggestion that ownership of the property may not lie with Respondent but with a trust in which Respondent and his wife are the trustees, thereby questioning Respondent's receipt of funds under the HAP contract.<sup>3</sup>

Counsel also takes issue with some of the other facts cited by the Government in arguing for Respondent's debarment, including the Government's misstating of the location of the property involved in the criminal matter, the Government's reference to Respondent's conviction as resulting from a guilty plea although Respondent had pleaded *nolo contendere* to the criminal charge that led to his conviction. Additionally, counsel argued that the introduction of evidence of a *nolo contendere* plea is barred by Rule 410 of the Federal Rules of Evidence; the invoking of 2 C.F.R. 180.800(a) in the Notice as a basis for debarring Respondent although only 2 C.F.R. 180.800(a)(4) may "have any purported relevance"; the attribution to Respondent by the Government of a statement, belied by the record of the criminal proceedings, that the other property mentioned in the criminal matter "did not contain marijuana." Counsel observes that the record shows Respondent's stating only that "the premises contained approximately two pallets of olive oil, but making no mention of marijuana."<sup>4</sup>

With respect to the applicability of 2 C.F.R. 180.800(a)(4) as a basis for debarring Respondent, counsel argues that "the pleading of *nolo contendere* more than two years ago to a crime committed four years ago in a county in which the [subject] Property is not located has no bearing on [Respondent's] business integrity or business honesty in relationship to the Property," more so in light of HUD's acknowledgment that the property is being well managed. As counsel sees it, 2 C.F.R. § 180.800(d) also is unhelpful to HUD's case in light of the now more than two-year old *nolo contendere* plea and the commission of the criminal act four years ago in a county in which the property is not located. According to counsel, the plea and the crime have "no bearing on [Respondent's] business integrity or business honesty in relationship to the Property," which is well

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<sup>3</sup> Because resolution of that issue will have no bearing on the outcome of this proceeding, it is unnecessary to address it further.

<sup>4</sup> The matters addressed in this paragraph, it should be noted, played no role in the decision reached today. They are, nonetheless, treated here in the interest of transparency and to ensure all parties that have an interest in this proceeding are clear regarding the facts that were actually considered to support this decision. More to the point, the dispute between the parties over evidentiary matters or the applicability of evidentiary rules in the criminal matter to the instant proceeding is of little moment. It is the fact of Respondent's conviction that will decide Respondent's fate, not so much the criminal investigation nor the trial. This is so because this tribunal is without power to alter any decision or question any ruling on a matter decided by a court which may arise in a related administrative proceeding.

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In reviewing the mitigating factors in 2 C.F.R. § 180.860 as they apply to Respondent's actions in this matter, counsel asserts, among other things, that there was and is no harm to the property, which is well managed by a professional broker; Respondent recognizes the seriousness of his misconduct; and Respondent has paid all fines and administrative remedies related to his conviction and complied with the terms of his conviction.

### FINDINGS OF FACT

1. Respondent owned a multifamily building in which some of the units were occupied by tenants receiving assistance under a HAP Contract.
2. An investigation by law enforcement discovered evidence of illegal drug activity involving Respondent and the use of his property for the illegal activity.
3. Respondent was charged with one count which alleged that on or about November 19, 2013, he committed a felony under the California Health and Safety Code of management of a location used for unlawful manufacture or storage of a controlled substance.
4. Respondent pleaded no contest in March 2015 to the charge and was convicted.
5. Respondent was sentenced to a term of probation and forfeited \$1,000,000.00 in cash and assets.
6. Respondent's property received an above-average score in the Management and Occupancy Review performed in 2017.

### CONCLUSIONS

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

1. Respondent is subject to the debarment regulations based on his participation in the HAP Program. Thus, he 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. The activities detailed in the record in the criminal matter do not inspire confidence that Respondent is presently a "responsible person" or one with whom the Government should be doing business. See 2 C.F.R. § 180.125.
3. Respondent's conviction provides cause for his debarment pursuant to 2 C.F.R. § 180.800(d).

4. Respondent's criminal conviction provides the requisite proof to establish the cause for his debarment. 2 C.F.R. §180.850.
5. The courts have 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, 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.19).
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 considered the fact that Respondent's property has been well managed, Respondent's extended participation in the HAP program, and his recognition of the seriousness of his misconduct.
7. As aggravating factors, I considered, *inter alia*, the seriousness of Respondent's misconduct evidently driven by his cupidity and his apparent disregard for the safety of his tenants to the extent they were exposed to the inherent dangers associated with illegal drug activity.
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 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. 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 his conduct for an appropriate time to the standards of a person who is presently responsible.<sup>5</sup>

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<sup>5</sup> As noted, counsel argued that Respondent's criminal conduct occurred over four years ago. The passing of time, however, while a factor to be considered in a proper case, does not *ipso facto*, without more, act as a mitigating factor.

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 three years 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: \_\_\_\_\_

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Craig T. Clemmensen  
Debarring Official

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of February, 2018, a true copy of the DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.



Tanya Domino  
Debarment Docket Clerk  
Departmental Enforcement Center

**HAND CARRIED**

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

**HAND CARRIED AND ELECTRONIC MAIL**

Rebecca H. Shank  
Government Counsel

**ELECTRONIC MAIL AND CERTIFIED MAIL RETURN RECEIPT**

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**CERTIFIED MAIL RETURN RECEIPT AND FIRST-CLASS MAIL**

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