

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

In the Matter of: :
 :
LEONARD J. ALSTEEN, : Docket No. 79-667-DB
 :
 Appellant :
_____ :
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For the Government

DETERMINATION

Statement of the Case

By letter dated August 9, 1979, Leonard J. Alsteen, appellant herein, was notified that the Department of Housing and Urban Development, hereinafter HUD, intended to debar him and his affiliates from participating in Departmental programs for a period of three years, based on his conviction in 79-Cr.-40 in the United States District Court for the Eastern District of Wisconsin for making a false statement to HUD in violation of 18 U.S.C. §1012. Appellant had previously been suspended from participating in Departmental programs on April 17, 1979, following his indictment. Appellant filed a timely request for a hearing pursuant to 24 C.F.R. §24.7.

In cases of proposed debarment based on a conviction, a hearing is limited to submission of written briefs and documentary evidence. 24 C.F.R. §24.5 (c)(2). Submissions have been filed on behalf of appellant and the Government in support of their respective positions.

Applicable Regulations

The Departmental regulations applicable to debarment, 24 C.F.R., Part 24, provide in pertinent part as follows:

§24.4 Definitions. (f). "Contractors or grantees."
"... all participants, or contractors with participants in programs where HUD is the guarantor or insurer"

§24.6 Causes and conditions applicable to determination of debarment. Subject to the following conditions, the Department may debar a contractor or grantee in the public interest for any of the following causes:

(a) Causes. (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.

Findings of Fact

1. On March 7, 1979, a grand jury returned an indictment in the U. S. District Court for the Eastern District of Wisconsin charging appellant in 79-Cr.-40 with three felony counts of making false statements of material facts to HUD in 1976, in violation of 18 U.S.C. §1010. At the time of the alleged offense in 1976, appellant was the president of Alsteen Construction Company, which was a subcontractor on FHA project, No. [REDACTED], Woodridge Garden Apartments, Appleton, Wisconsin.

2. On May 1, 1979, appellant pled guilty to one misdemeanor count of making a false statement to HUD in November 1976, in violation of 18 U.S.C. §1012, a lesser included offense under count 1 of the indictment, which had charged a felony. Appellant was sentenced to pay a fine of \$500 within 60 days, and he did so. The maximum penalty for the offense to which appellant had pled guilty is a fine of \$1,000 and imprisonment for one year.

3. It is uncontradicted that the offenses for which the appellant was indicted occurred in November and December 1976, some three and one-half years ago. The offenses alleged that appellant submitted payrolls to HUD which falsely reported the work classification and hours worked by two employees and in doing so violated the Davis-Bacon Act, 40 U.S.C. §276(a), requiring minimum prevailing wages for carpentry work and the Work Hours and Safety Standards Act, 40 U.S.C. §328, requiring overtime compensation for hours worked in excess of eight hours per day.

4. Appellant maintains, and it is unrebutted by the Government, that this was his first participation in a Government project wherein he was required to file reports and further that the two workers in question, [REDACTED] Ledvina and [REDACTED] Zimmer, came to him and suggested that they be allowed to work nine hours a day, Monday through Thursday, and four hours a day on Friday, "since they were young men who lived out of town and wanted to leave early on Friday to enjoy the long weekend." (See appellant's affidavit, p. 2, Ex. D to appellant's brief.) Appellant permitted the two men to do this. ^{1/} Appellant maintains without contradiction that the two workers stated that they did not want any additional money for working these hours rather than working eight-hour days, five days a week. Suffice it to say, appellant, by paying these employees the same amount for these hours as for an eight-hour day, was not paying them overtime pay to which they were entitled and, further, appellant falsely represented to HUD that they were working hours different than the hours they were actually working.

5. Appellant denies the work classification violation claiming that for some hours the two employees did carpentry work and for other hours they did general laborers' work and should be paid differently. According to the unrebutted assertion of appellant, the discrepancy came to light when a HUD investigator discovered it during a routine inspection of appellant's records.

6. There is no evidence that appellant has ever violated the law before or after the events of November and December, 1976, which led to his conviction.

^{1/} This is, of course, no defense to a violation of the Davis-Bacon Act, 40 U.S.C. §276 a-2 (b).

Conclusions of Law

1. Appellant is a "contractor" under 24 C.F.R. §24.4 (f) and is subject to being debarred. Further, Alsteen Construction Company and appellant are affiliates. 24 C.F.R. §24.4 (d).

2. Appellant's conviction in U. S. District Court for the Eastern District of Wisconsin for making a false statement to HUD in violation of 18 U.S.C. §1012 constitutes a ground for debarment under 24 C.F.R. §24.6 (a)(1).

3. A person should not necessarily be debarred if grounds for debarment exist but should be debarred only if it is "in the best interest of the Government." 24 C.F.R. §24.6 (b)(1). The sanction of debarment is used not for punitive purposes, but rather for the purpose of protecting the public. 24 C.F.R. §24.5 (a). The purpose of debarment is to assure the Government that "awards will be made only to responsible contractors" 24 C.F.R. §24.0.

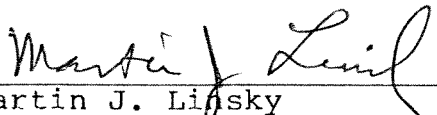
4. Appellant's conviction is one which reflects directly on his responsibility as a contractor. The crime of filing false statements with HUD cannot be condoned or minimized and requires the imposition of the sanction of debarment in order to protect the public.

5. The Hearing Officer has taken into consideration appellant's otherwise good record as well as his reputation in the community, as evidenced by letters from [REDACTED] Boxtel, Jr., and [REDACTED] Boxtel, Sr. In addition, the Hearing Officer has taken into consideration that appellant has been suspended from participation in Departmental programs since April 17, 1979, a period of time in excess of thirteen months. This suspension was proper. 24 C.F.R. §24.13 (c).

6. In light of the foregoing it is ordered that appellant be debarred for a period of one month from May 30, 1980 to June 30, 1980.

ORDER

Upon consideration of the public interest and the entire record in this matter, it is hereby determined that appellant, Leonard J. Alsteen, and his affiliate, Alsteen Construction Company, shall be, and hereby are, debarred for a period of one month commencing on May 30, 1980, and ending June 30, 1980.



Martin J. Lipsky
Chief Administrative Law Judge

Issued at Washington, D. C.
on May 30, 1980