

UNITED STATES OF AMERICA

Before The

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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In the Matter of:

STEVEN H. CLAYTON,

Respondent

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Docket No. 80-718-DB

DETERMINATION

Statement of the Case

By letter dated July 29, 1980, Steven H. Clayton (hereinafter respondent) was advised that the Department of Housing and Urban Development (hereinafter HUD) proposed to debar him, Jaydee Realty, Inc., Spring Realty, and his affiliates, from further participation in HUD programs for a period of five years commencing on May 19, 1980, because of respondent's conviction in the United States District Court for the Southern District of Ohio of five counts of filing false statements with the Government in violation of 18 U.S.C. §1001. The July 29, 1980, letter from the Honorable Lawrence B. Simons, then Assistant Secretary for Housing-Federal Housing Commissioner, also suspended respondent and his affiliates from further participation in HUD programs pending final action.

On August 5, 1980, respondent filed a request for a hearing in this matter, and on August 26, 1980, the undersigned was appointed to serve as Hearing Officer. On September 11, 1980, the undersigned sent a letter to respondent advising him that in cases of proposed debarment based on a criminal conviction a hearing is limited to submission of written briefs and documentary evidence. 24 C.F.R. §24.5(c)(2). This letter directed HUD to file its brief by October 17, 1980 and the respondent to file his brief by November 21, 1980.

The Department timely filed its brief together with documentary exhibits. On November 7, 1980, respondent requested that he be granted a 60-day extension of time within which to file his brief since he was awaiting the results of a hearing held before the Ohio Real Estate Commission. Respondent's request was granted and he was directed to file his brief by January 23, 1981. On January 23, 1981, respondent's brief, together with documentary evidence, was received by the undersigned.

Applicable Regulation

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

§24.4 Definitons..

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(f) "Contractors or grantees." Individuals ... and ... private organizations that are direct recipients of HUD funds or that receive HUD funds indirectly through non-Federal sources including, but not limited to ... real estate agents and brokers ... and ... all participants ... in programs where HUD is the guarantor or insurer ....

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§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.

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(9) ... [C]onviction for any other offense indicating a lack of business integrity or honesty, which seriously and directly affects the question of present responsibility.

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Findings of Fact

1. On March 12, 1980, a Grand Jury returned a twenty-one count indictment in the United States District Court for the Southern District of Ohio charging respondent and his father, [REDACTED] [REDACTED], with violations of 18 U.S.C. §1001. 18 U.S.C. §1001 makes it a crime to make any false or fictitious statement in connection with any matter within the jurisdiction of any department or agency of the United States and carries a maximum penalty of a \$10,000 fine and imprisonment for five years.

2. On March 28, 1980, respondent pled guilty to five of the counts in the indictment; namely, counts 10, 13, 17, 18, and 20. At his sentencing on May 19, 1980, respondent was committed to the custody of the Attorney General to serve a term of imprisonment of two years under the provisions of 18 U.S.C. §3651, respondent was ordered confined in a half-way house for a period of three months and the execution of the balance of the sentence was suspended and respondent was placed on probation for a period of twenty-one months thereafter; in addition, respondent was ordered to pay a fine in the amount of \$5,000 on Count 10. Respondent was placed on probation for a period of two years on each of the other four counts to which he pled guilty to run concurrent with the sentence imposed on count 10. The remaining counts in the indictment were dismissed. The nature of the respondent's incarceration in the half-way house permitted him to go to work each day but he was required to spend each night in the half-way house.

3. The conduct which led to the respondent's indictment and conviction was as follows: respondent, a real estate broker, and his father, in order to purchase some properties for investment purposes, filed false statements with both the Veterans Administration and HUD. The statements were filed so that these properties, which HUD had foreclosed on, could be purchased by respondent and his father for investment purposes, although HUD had directed that the properties, prior to being offered to investors, be made available for sale to owner/occupants. The statements submitted to the Veterans Administration and to HUD falsely represented the employment and net worth of persons who were falsely alleged to be the prospective owner/occupants of various of the properties. The false statements were made during the late 1970's.

Conclusions of Law

1. Respondent is a "contractor or grantee" under 24 C.F.R. §24.4(f) and is subject to being debarred.

2. Respondent's conviction constitutes a ground for debarment under 24 C.F.R. §24.6.

3. Debarment is warranted in this case because it is "in the best interest of the Government." 24 C.F.R. §24.6(b)(1). Debarment is necessary in order to protect the public. 24 C.F.R. §24.5(a). A five-year period of debarment is required because of the seriousness of the offenses of which the respondent was convicted.

Discussion

Respondent was convicted of crimes which directly bear on his integrity and responsibility. The making of false statements to the Government in order to make money mandates debarment. The Government presented evidence 1/ which proves respondent's indictment and conviction. The respondent admits that he was indicted and convicted.

Respondent, in his brief, states in mitigation that he truthfully testified before a Grand Jury investigating others involved in similar misconduct. In addition, he submitted as an exhibit to his brief a copy of part of the documentary record 2/ of a hearing before the Ohio Real Estate Commission inquiring into whether respondent's real estate broker's license should be revoked or suspended based on his criminal conviction heretofore mentioned.

The final action of the Ohio Real Estate Commission was to suspend respondent's real estate broker's license for one hundred and eighty days to commence on November 28, 1980. The Hearing Officer, James F. Hunt, in his Report and Recommendation, found as a matter of fact that respondent, who had been associated with his father in business since 1969, participated in the

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1/ Government Exhibits A & B, the indictment and certificate of conviction.

2/ The record consists of a letter forwarding the Hearing Officer's Report and Recommendation to respondent, a copy of the Hearing Officer's Report and Recommendation, and final action by the Ohio Real Estate Commission.

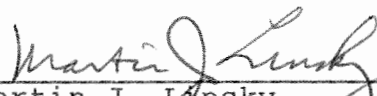
heretofore mentioned crimes on orders from his father under threat of being discharged. This is, of course, no defense to the crimes to which respondent pled guilty. <sup>3/</sup> I have noted that respondent's real estate broker's license has been suspended for only six months but nevertheless determined that a five-year debarment is necessary in this case. Debarment is a means of discouraging fraud in connection with Federally monitored activities. Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979); Jacquet v. Westerfield, 569 F.2d 1339 (5th Cir. 1978); Silverman v. CFTC, 562 F.2d 432, 439 (7th Cir. 1977).

Order

It is ordered that respondent be debarred from participation in HUD programs for a period of five years beginning May 19, 1980 and ending May 18, 1985. Department funds shall not be expended for financial assistance to respondent nor to any concern, corporation, partnership, or association in which he has a substantial interest; bids on proposals shall not be solicited from him; and subcontracts with him will not be approved unless it is determined to be in the best interest of the Government.

The parties are directed to 24 C.F.R. §24.8(b) which provides, inter alia, that any party may request in writing within ten days of receipt of this determination a review by the Secretary or his designee.

Issued at Washington, D. C.  
on February 17, 1981



Martin J. Linsky  
Administrative Law Judge  
1875 Connecticut Avenue, N.W.  
Suite 1170  
Washington, D. C. 20009

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<sup>3/</sup> According to the Hearing Officer's Report, respondent's father has not contested the revocation of his real estate license, has retired, and has turned over the family business to respondent.