

UNITED STATES OF AMERICA

before the

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

In the Matter of:

WILLIAM A. LEIGH
MADDEN, INC.

Respondent

Docket No. 80-736-DB

INITIAL DETERMINATION

Statement of Case

By letter dated July 22, 1980, the Honorable Laurence B. Simons, then Assistant Secretary for Housing - Federal Housing Commissioner, wrote to William A. Leigh notifying him that he, Madden, Inc., and his affiliates were being temporarily suspended from participation in HUD programs based on his being named a defendant in two separate indictments returned in U.S. District Court for the Southern District of Ohio.

William A. Leigh, in a letter dated December 12, 1980, requested the opportunity to discuss with Secretary Simons the temporary suspension of Madden, Inc. This letter was treated as an appeal from the suspension and the undersigned Administrative Law Judge was appointed as hearing officer on December 18, 1980.

By letter dated January 5, 1981, Mr. Leigh was advised that hearings in connection with suspensions based on indictments were limited to the submission of briefs and documentary evidence. The Government was directed to file its brief by February 5, 1981, and Mr. Leigh was directed to file his brief by March 5, 1981. The Government timely filed its brief. Prior to the date his brief was due, Mr. Leigh and I spoke over the telephone and he requested an oral hearing in connection with the suspension of Madden, Inc. An oral hearing was held on March 27, 1981. Joan Saloschin, Esq. represented the Government, and Mr. Leigh represented himself and Madden, Inc. On April 24, 1981, Mr. Leigh filed a written submission.

Findings of Fact

1. In March, 1980, a federal grand jury returned two separate indictments in U.S. District Court for the Southern District of Ohio naming William A. Leigh as a defendant.
2. In the first of the two indictments, William A. Leigh was charged with one count of conspiracy in violation of 18 U.S.C. § 371 and seven counts of mail fraud in violation of 18 U.S.C. § 1341. Mr. Leigh and a person named Ronald L. Robinson were each named as defendants and the indictment states that Mr. Leigh and Mr. Robinson, doing business as a joint venture called Madden, Inc., and L. B. Robinson, Inc., unlawfully conspired to defraud and to obtain money and property from the State of Ohio by means of false and fraudulent pretense and representations in 1975 and 1976. More specifically, it was alleged in the indictment that in connection with a contract to rebuild the Banneker Science Building at Central State University (which had been damaged in a tornado), and with intent to defraud, Mr. Leigh and Mr. Robinson overcharged the State of Ohio by approximately \$23,500.
3. In the second indictment, William A. Leigh was charged with two counts of income tax evasion for the years 1975 and 1976.
4. During the times alleged in the indictment that the offenses took place, William A. Leigh was President of Madden, Inc.

Conclusions of Law

1. William A. Leigh is a "contractor or grantee" within the meaning of 24 C.F.R. § 24.4(f) and, therefore, subject to being debarred.
2. Madden, Inc., is an "affiliate" of William A. Leigh within the meaning of 24 C.F.R. § 24.4(d).
3. Cause exists under 24 C.F.R. § 24.13(c), namely, the return of a criminal indictment, to warrant the suspension of William A. Leigh and Madden, Inc.
4. The suspension of William A. Leigh, Madden, Inc., and Mr. Leigh's other affiliates is affirmed, and the suspensions remain in full force and effect.

Discussion

At the hearing of March 27, 1981, it was disclosed that William A. Leigh and his co-defendant, Ronald L. Robinson, were found guilty following a five-week trial on the first indictment which charged them with conspiracy and mail fraud. Mr. Leigh is

still pending sentence and feels that he will ultimately be vindicated.

His reason for requesting a hearing was to protest the suspension of Madden, Inc. Madden, Inc., was named in the indictment and is a company which William A. Leigh was President of at the time the offenses alleged in the indictment were committed.

Madden, Inc., is subject to suspension if it is an affiliate of William A. Leigh. "Affiliates" is defined in 24 C.F.R. § 24.4(d), as follows:

"Business concerns are affiliate of each other when either directly or indirectly one concern or individual formulates, directs, or controls the other concern; or has the power to formulate, direct, or control the other concern; or has the responsibility and authority either to prevent in the first instance, or promptly to correct, the offensive conduct of the other concern. Business concerns are also affiliates of each other when a third party is similarly situated with respect to both concerns."

William A. Leigh had been President of Madden, Inc., but claims he no longer controls Madden, Inc. He takes the position that Madden, Inc. should be reinstated. However, to reinstate Madden, Inc., a family business, on the grounds that it is not an affiliate of Mr. Leigh, would be to favor form over substance and illusion over reality. In support of his position, Mr. Leigh introduced into evidence a copy of the minutes of a Board of Directors' meeting which show that as of February 25, 1980, a new slate of officers was installed. The newly elected officers were selected to serve for twelve months. Although more than twelve months have gone by since that meeting, that was the last meeting of the Board of Directors. The members of the Board of Directors present at the meeting were Mr. Leigh and two of his sons. The new officers were the three sons of Mr. Leigh, i.e., one son as President/Treasurer, a second son as Vice President/Secretary, and a third son as 2nd Vice President. It is stated in the minutes that Mr. Leigh "will be available as a consultant whenever needed." Mr. Leigh also appeared as the representative of Madden, Inc., at the hearing on March 27, 1981. No one else has ever appeared in connection with this case on behalf of Madden, Inc., other than Mr. Leigh. Considering the above, it is clear to me that Madden, Inc. was and is an affiliate of Mr. Leigh and should remain suspended.

I can sympathize with Mr. Leigh's position that by suspending Madden, Inc., others associated with Madden, Inc., may suffer, and three of those people are his sons. However, his sons are perfectly free to either stay with Madden, Inc., and not do


business with HUD, or form another company which is not an affiliate of Mr. Leigh's, and then they can do business even with HUD.

Mr. Leigh also objected to the fairness of his being suspended when Ronald L. Robinson, his co-defendant, who was also indicted, has not been suspended and who, in fact, has successfully bid on a HUD project subsequent to his indictment. Mr. Robinson's case is not before me, and, therefore, I should not comment on it. However, counsel for the Government at the hearing heard the representations of Mr. Leigh regarding his co-defendant and she is directed, if she has not already done so, to bring those representations to the attention of the appropriate officials in the Department for such action as they deem appropriate. It is noted that Mr. Leigh stated that he and Mr. Robinson were treated differently and the only "difference" between them, according to Mr. Leigh is that he is black and Mr. Robinson is white. Needless to say, Mr. Leigh's case will be treated on its merits without consideration of race, and Mr. Robinson should be similarly treated.

Order

It is hereby ordered that William A. Leigh and his affiliates, to include Madden, Inc., remain suspended.

Issued at Washington, D.C.
on May 19, 1981



Martin J. Linsky
Chief Administrative Law Judge
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