

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGE

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In the Matter of .
THEODORE A. HUMMEL, . HUDALJ 84-929-DB
STEITZTOWN CONTRACTORS, INC., .
AND CORNERSTONE BUILDERS .
Respondents .
.

Theodore A. Hummel, pro se

Mitchel H. Kider, Esquire
For the Department

Before: ALAN W. HEIFETZ
Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arose as a result of a proposal by the Department of Housing and Urban Development ("the Department" or "HUD") to debar Theodore A. Hummel ("Respondent") and his affiliates from participating in all Departmental programs for a period of approximately four (4) years. 1/ HUD's action is based on Respondent's conviction following a plea of guilty of violating 18 U.S.C. §371. 2/ Respondent was duly notified of the proposed debarment and thereafter filed a timely request for a hearing. Because the proposed action is based on a conviction, the hearing was limited under Department Regulation 24 C.F.R. §24.5(c)(2) to submission of documentary evidence and written briefs. Upon the record submitted, I make the following findings and conclusions:

1/ The Department's proposal named Steitztown Contractors, Inc. ("Steitztown") and Cornerstone Builders ("Cornerstone") as Respondent's affiliates.

2/ HUD's Complaint erroneously stated that the debarment action was based upon Respondent's conviction under 18 U.S.C. §1010. In its Amended Complaint, the Department corrected this error, stating that Respondent's debarment was based upon his conviction under 18 U.S.C. §371 for conspiring to violate 18 U.S.C. §1010. According to the Department, the mistake was due to an erroneous Judgment and Probation Commitment Order filed by the United States District Court for the Middle District of Pennsylvania.

Findings of Fact

Respondent has been licensed as a real estate salesman since 1970 and has been licensed as a real estate broker since 1973 in the State of Pennsylvania. Since these dates, Respondent has actively pursued his profession. Furthermore, at all times material and pertinent to this debarment proceeding, Respondent's real estate sales transactions were conducted while acting as a principal of Cornerstone. 3/

On November 12, 1982, a Federal Grand Jury returned a twenty-two (22) count indictment charging Respondent with violations of 18 U.S.C. §§371, 1001, 1010 and 1012. The indictment alleged that Respondent unlawfully, knowingly and willfully conspired to make false statements to HUD in order to facilitate real estate sales. The Indictment alleged that such false statements were made for the purpose of either obtaining an advance of credit with the intent that such an advance would be offered to and accepted by the Department for the purpose of obtaining a mortgage insured by the Department or otherwise influencing the Department's actions.

According to the Indictment, as part of the conspiracy, Respondent sold residential housing to individual purchasers in a development commonly known as School Lane Meadows and intentionally understated and thereby misrepresented to the Department the actual purchase price required from these purchasers. The misrepresentations were recorded in supporting sales documents such as agreements of sale, settlement statements and certificates precluding side agreements.

Pursuant to a plea agreement, the Indictment against Respondent was dismissed and Respondent pleaded guilty to Count 1 of the 22 count indictment. Count 1 charged Respondent with making false statements to the Department in eight separate and overt acts, all in violation of 18 U.S.C. §1010. 4/

On March 18, 1983, Respondent was convicted on Count 1 in the United States District Court for the Middle District of Pennsylvania. On Count 1, Respondent received a suspended sentence and was placed on probation for a two-year period. In addition, Respondent was fined \$250.00. All other counts of the Indictment were dismissed.

3/ The Department's Amended Complaint at 1 states that Respondent is a principal of Cornerstone and Steitztown. Respondent has failed to rebut this assertion and his own submission of documents containing his signature on Cornerstone letterhead serves to buttress the inference that he is in fact a principal of Cornerstone. However, no evidence is contained in the record to support a finding that Respondent is a principal of Steitztown.

4/ See supra, n.2.

The evidence proffered by the Department in support of its proposal to debar Respondent and his affiliates from further participation in HUD programs consists, primarily, of Respondent's plea of guilty, conviction and subsequent admissions of making false statements contained in both his initial and supplemental responses to the Complaint. The Department's documentary evidence includes copies of Respondent's Judgment and Probation Commitment Order filed by the District Court, copies of Respondent's Plea Agreement, Statement and Order filed by the District Court and copies of the statements signed by Respondent in all eight overt acts covered by Count 1 in which Respondent falsely certified to HUD that the terms of the sales contracts were true and that he did not enter into any side agreements with buyers for additional money. While no separate evidence was required to support the proposed debarment of Cornerstone as it was the company under whose name Respondent conducted the pertinent real estate sales transactions, no evidence was submitted to support the proposed debarment of Steitztown.

Respondent has at all times admitted that he entered into side agreements with the eight buyers listed in Count 1 and thereby misrepresented the actual sales prices to HUD. However, Respondent states in his initial response to the Complaint that his actions caused no ultimate harm to the buyers, the Department or the lender. In support of his attempt to mitigate his criminal conviction, Respondent has submitted various correspondence relating to the pertinent sales transactions. This correspondence includes exchanges among Respondent, a Congressional Representative and a U.S. Senator, HUD officials and Respondent's customers relating to then pending federal legislation 5/ which, when passed, raised the Section 235 program mortgage ceiling from \$38,000 to \$47,500. 6/ Respondent thereby asserts that he based his actions, in part, on the belief that the mortgage ceiling would be raised by the time the pertinent transactions were completed. Furthermore, Respondent asserts that the correspondence demonstrates his good faith efforts both

5/ The federal legislation referred to above is the Housing and Community Development Act of 1980.

6/ As stated in the Department's Brief at 4, under the Section 235 program, HUD provides FHA mortgage insurance to eligible mortgagors, as well as a direct housing subsidy in the form of an interest rate reduction which lowers the mortgagors' monthly payments. 24 C.F.R. §235. See also B. Jacobs, K. Harney, C. Edson and B. Lane, Guide To Federal Housing Programs (1982). Income limits determine the eligibility of home buyers, and there are additional limits placed upon the mortgage amounts and sales price of the home. The ceiling placed upon the sales price of a Section 235 home is 120 percent of the mortgage amount. 24 C.F.R. §235.320. The purposes of these cost limitations are to hold down the subsidy cost to the government and assure that the mortgagors will be able to handle the expenses of maintaining the home.

to actively seek informed guidance on the legislation's passage and subsequent implementation at the Department level and to apprise customers of developments in the Section 235 mortgage ceiling increase provision. Respondent also submitted copies, to serve as exemplars, of the "Applications for Home Ownership Assistance Under Section 235 of the National Housing Act" and the "Firm Commitments for Mortgage Insurance under the National Housing Act" purportedly signed by the Department in all eight sales transactions pertinent to this debarment proceeding. In his supplemental response, Respondent particularly asserts that Section H of these documents indicates that the Department knowingly approved sales prices above the 120 percent limit tied to the stated mortgage amount and that, consequently, buyers paid no more than what they originally agreed to pay. Respondent also states that during 14 years in the real estate business, he has never before engaged in any improper conduct warranting debarment. Respondent states that he is devoted to his family, is active in community affairs and has received many awards for his accomplishments. Finally, Respondent states that even when faced with financial problems which led to bankruptcy, he has voluntarily taken on additional repair and financing costs related to home purchases pertinent to this debarment proceeding.

Discussion

Debarment is a sanction which may be invoked by HUD as a measure for protecting the public by insuring that only those qualified as "responsible" be allowed to participate in HUD programs. 24 C.F.R. §24.0; *Stanko Packing Co. v. Bergland*, 489 F.Supp. 947, 949 (D.D.C. 1980); *Roemer v. Hoffman*, 419 F.Supp. 130, 131 (D.D.C. 1976). "Responsibility" is a term of art in government contract law which speaks to the projected business risk of a contractor or grantee, including his integrity, honesty, and ability to perform. See *Roemer v. Hoffman*, *supra*; 49 Comp. Gen. 139 (1969); 39 Comp. Gen. 468 (1959). The primary test for debarment is present responsibility, although a finding of a present lack of responsibility can be based on past acts. *Schlesinger v. Gates*, 249 F.2d 111 (D.C. Cir. 1957); *Roemer v. Hoffman*, *supra*. Integrity is central to a contractor's responsibility in performing a business duty toward the government. 39 Comp. Gen. 468 (1959).

The concept of responsibility is manifestly relevant to a real estate salesman and broker who knowingly makes false statements to misrepresent the actual sales price of properties in order to benefit from the advantages HUD was providing to mortgage assistance applicants based on established sales price limitations.

Respondent does not dispute either that he is a "contractor or grantee" within the meaning of 24 C.F.R. §24.4(f) or that Cornerstone is a known affiliate within the meaning of 24 C.F.R. §24.4(d). Nor does he dispute that the conviction precipitating this debarment action is governed by the regulatory authority

relied upon by the Department. 7/ Rather, Respondent argues that the existence of "cause" does not compel debarment where mitigating circumstances militate against imposition of the sanction. This is correct. However, I am not persuaded that it is in the best interest of either HUD or the public to conclude that debarment in this case is unwarranted. Respondent's contention that the Department knowingly authorized firm commitments at sales prices above the 120 percent ceiling and that he relied on Departmental advice regarding the eventual implementation of an increased ceiling amount do not alter the fact that Respondent fraudulently misrepresented the existence of unlawful side agreements to HUD. Respondent was under an obligation to deal honestly and forthrightly with the Department. This he failed to do.

Debarment is not a penalty but a way for the government to execute its statutory obligations effectively to protect the public. Gonzales v. Freeman, 344 F.2d 570 (D.C. Cir. 1964). The deterrent effect of debarment cannot be overlooked as a means to assure that end. If governmental regulations are to have any validity, adherence to their requirements must be assured. To ignore or to make light of their breach is to condone such action and to encourage its repetition. That the Department failed to notice a sales price figure in excess of permissible regulatory limits does not excuse Respondent's subsequent intentional misrepresentation to the Department that the terms of the sales contracts were correct and that there were no side agreements. Furthermore, that regulations may change in the face of dynamic legislative and agency based policy considerations does not excuse the knowing violation of their existing terms or undermine the original justification for their promulgation. Finally, Respondent is mistaken in his assertion that no one was harmed by

7/ The Department relies upon the cause stated in 24 C.F.R. §24.6(a) as regulatory authority for the proposed debarment. Under that provision, HUD may debar a "contractor or grantee" for any of the following causes:

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract ...
* * *
- (4) Any other cause of such serious compelling nature affecting responsibility, as may be determined by the appropriate Assistant Secretary, to warrant debarment.
* * *
- (6) Making or procuring to be made any false statement for the purpose of influencing in any way the action of the Department.
* * *
- (9) ... [C]onviction for any offense, indicating a lack of business integrity or honesty, which seriously and directly affects the question of present responsibility.

his fraudulent conduct. Sales price limitations tied to the 120 percent ceiling over the mortgage amount facilitate the Department's desire to channel assistance to those most in need of that assistance. By falsifying the figures upon which the Department bases its determinations, it is possible that Respondent's actions resulted in a denial of assistance to more needy buyers who would otherwise have received the financing wrongfully made available to Respondent's customers.

Accordingly, I conclude that debarment is appropriate and necessary in this case to insure that the seriousness with which HUD views Respondent's conduct will not be misconstrued by him, or by any others doing business with the Department, and that the public will thereby be protected.

The Department has sought to impose a four-year period of debarment based on Respondent's conviction. However, Respondent has suggested a number of un rebutted factors which appear to diminish the force of that conviction as an indication of his present responsibility. Despite the seriousness of the offense underlying Respondent's conviction, this was the first time Respondent was involved in a debarment proceeding during 14 years of engaging in real estate transactions often involving Departmental action. Furthermore, Respondent demonstrated his effort, albeit unsuccessful in its result, both accurately to anticipate changes in relevant legislation and regulations and to advise customers of his findings accordingly. Respondent also openly admits that he knew he was making fraudulent statements to the Department when he signed the forms stating the sales agreements were correct and that no side agreements had been entered into. While Respondent's financial problems affecting his personal life and business dealings do not excuse Respondent's criminal actions, the circumstances surrounding his bankruptcy shed light on Respondent's state of mind when he misled the Department. Finally, in addition to expressing remorse for his conduct, Respondent describes, in general, his active involvement with both his family and community and his other lawful and voluntary efforts to resolve customer complaints and purchase financing problems.

Respondent has been suspended from participating in Departmental programs since December 30, 1983. Respondent has been faithfully executing the terms of his probation. In view of the Department's failure to show the necessity of a four-year debarment period despite the foregoing evidence of mitigating factors, I find that protection of the public and the government's interest will be served by a two-year period of debarment from the date of Respondent's suspension.

Conclusion

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause exists to debar Respondent, Theodore A. Hummel and his affiliate,

Cornerstone Builders, from doing business with HUD for a period of two years from December 30, 1983 to December 30, 1985. The Department's proposal to debar Respondent's affiliate Steitztown Contractors, Inc. is dismissed pursuant to 24 C.F.R. §24.8(a), there having been no evidence presented in support thereof.



Alan V. Heifetz
Chief Administrative Law Judge
U.S. Department of Housing and
Urban Development
451 7th Street, S.W., Room 2156
Washington, D.C. 20410

Dated: June 1, 1984