

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

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In the Matter of .  
WILLIAM F. MCDEVITT, JR. AND . HUDALJ 86-1078-DB  
BEAVER REALTY, INC. .  
Respondents .  
. . . . .

William F. McDevitt, Jr., pro se

Helen Honorow, 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 William F. McDevitt, Jr. and Beaver Realty, Inc. 1/ ("Respondents") from participating in all Departmental programs for a period of five (5) years. HUD's action is based on Respondent McDevitt's conviction of violating 18 U.S.C. §§ 371, 1001 and 2. Respondents were 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:

Findings of Fact

Respondent William F. McDevitt, Jr. was engaged in the business of buying and reselling residential properties in Camden, New Jersey. Between July 1981 and April 1982, Respondent McDevitt and Beaver Realty, Inc. were involved in buying vacant

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1/ Respondent McDevitt stated in his Answer that Beaver Realty, Inc. no longer exists. However, because Respondent presented no evidence supporting this contention, Beaver Realty, Inc. remains a party to this proceeding.

houses in Camden and reselling them to buyers who would obtain HUD-FHA mortgage insurance pursuant to the Single Family Mortgage Insurance Program created by 12 U.S.C. § 1703. Respondent McDevitt also acted as a commissioned sales agent for owners of houses that were sold to buyers who would obtain HUD-FHA mortgage insurance.

In September 1985 a Federal Grand Jury returned a 10-count indictment charging Respondent McDevitt with violations of 18 U.S.C. §§ 371, 1001 and 2. The indictment alleged that from July 1981 to April 1982 Respondent McDevitt had knowingly and wilfully combined, conspired, confederated and agreed with others to defraud the United States and HUD by obstructing the proper functioning of HUD's mortgage-insurance program through dishonest means and to make and use false writings and documents containing false entries in connection with that program. In particular, Counts 2 through 7 of the indictment pertained to Respondent's actions as a real estate broker and owner of Beaver Realty, Inc. Counts 2 and 4 alleged that Respondent caused to be made and used false Verification of Employment forms which were submitted to HUD in two separate cases. Count 3 alleged that Respondent caused to be made and used a false "character and credit statement" which was submitted to HUD in another case. Count 5 charged Respondent with causing the submission of an application for a HUD/FHA insured mortgage which falsely stated the prospective mortgagor's employment status. Finally, Counts 6 and 7 charged Respondent with causing to be made and used Internal Revenue Service Form W-2 Wage and Tax Statements. In all six instances, the false writings and documents used were needed in order to induce HUD to issue mortgage insurance in cases in which it otherwise would not have.

Following a jury trial in February 1986, Respondent McDevitt was convicted as charged in Counts 1 through 7 of the indictment and acquitted on Counts 8, 9 and 10. On April 4, 1986, Respondent McDevitt was sentenced to a total term sentence of five years in prison and fined \$70,000.00. He is currently serving his sentence in the Allenwood Federal Prison in Montgomery, Pennsylvania.

Respondent McDevitt has been suspended from participation in HUD programs since December 4, 1985.

#### 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 broker who is convicted of conspiring to commit offenses against and defraud the United States, and of knowingly and wilfully making and causing false writings and documents to be submitted to HUD.

Respondent McDevitt does not dispute that he and his affiliate, Beaver Realty, Inc., are contractors or grantees within the meaning of 24 C.F.R. § 24.4(f). Nor do they dispute that the conviction precipitating this debarment action is governed by the regulatory authority relied upon by the Department. 2/ Rather, Respondent McDevitt asserts that the conviction upon which this action is founded should be considered null and void as it is based upon perjury, improper government disclosure, HUD cover-up and unconstitutional methods used by the United States Justice Department. Respondent McDevitt further notes that he is in the process of appealing the conviction and requests that rather than proceed with the debarment HUD extend his temporary suspension pending resolution of that appeal.

Respondent McDevitt's request for continued suspension is improper. Respondent's suspension was a temporary action that remained in force pending resolution of his outstanding

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2/ The Department relies upon the cause stated in 24 C.F.R. § 24.6(a)(4)(5) and (6) as regulatory authority for the proposed debarment. Under that provision, HUD may debar a "contractor or grantee" for any of the following causes:

- (4) Any other cause of such serious compelling nature affecting responsibility, as may be determined by the appropriate Assistant Secretary, to warrant debarment.  
\* \* \*
- (5) Violation of any laws, regulation, or procedure relating to the application for financial assistance, insurance, or guarantee or to the performance of obligations incurred pursuant to a grant of financial assistance, or conditional or final commitment to insure or guarantee.  
\* \* \*
- (6) Making or procuring to be made any false statement for the purpose of influencing in any way the action of the Department.

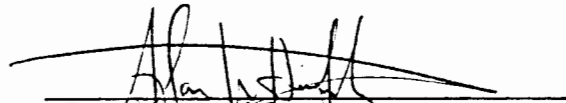
indictment. Once Respondent's indictment resulted in the conviction that provided the grounds for this debarment action, the justification for a mere temporary action was eliminated and resolution of the proposal for more severe action became imperative. 24 C.F.R. § 24.16. Respondent's request for continued suspension, therefore, is denied.

Respondent McDevitt's assertion regarding the underlying merits of his conviction do not affect the propriety of the debarment. The validity of Respondents' conviction may not be collaterally attacked in this proceeding. 3/ See Washburn v. Shapiro, 409 F.Supp 3, 22 (S.D. Fla. 1976) and cases cited therein. See also, Temp Trucking and Transfer Corp. v. Dickson, 405 F.Supp. 506 (E.D.N.Y. 1975).

Debarment is not a penalty but a way for the government to execute its statutory obligations effectively to protect the public Gozaes v. Freeman, 344 F.2d 570 (D.C. Cir. 1964). Respondent McDevitt's present lack of responsibility, honesty and integrity are demonstrated by the facts underlying his conviction. His conviction demonstrates that he presents a business risk with which the public should not have to contend and this risk makes debarment appropriate and necessary in this case. In view of his failure to demonstrate mitigating circumstances justifying a debarment of a lesser duration, I find that protection of the public and the government's interest will be served by a five-year debarment from the date of Respondent's suspension. Should Respondent's appeal prove successful, he may seek reinstatement to HUD's programs pursuant to 24 C.F.R. § 24.11.

#### Conclusion

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause exists to debar Respondents William F. McDevitt, Jr. and Beaver Realty, Inc. from doing business with HUD for a period of five (5) years from December 4, 1985 to December 4, 1990.



Alan W. 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: November 26, 1986

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3/ In his brief, Respondent makes 10 "discovery" requests. Not only are these requests untimely, but also, three merely seek "explanations" of certain irrelevant actions alleged to have been taken by HUD and none provides any basis for concluding that they may yield relevant evidence. Accordingly, the requests are denied.