

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

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In the Matter of .
RAYMOND FARRONI . HUDALJ 87-1160-DB
RAY FARRONI BUILDING AND .
REMODELING .
HOLLY HOUSING DEVELOPMENT CO. .
PINELAND DEVELOPMENT CO. .
Respondents .
.

John Lee Madden, Esquire
For the Respondents

Dane Narode, 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 Raymond Farroni and his affiliates, Ray Farroni-Building and Remodeling, Holly Housing Development Company and Pineland Development Company (collectively referred to as "the Respondents"), from further participation in HUD programs for a period of three years from the date of the Respondents' suspension, December 4, 1986. The Department's actions are based upon Mr. Farroni's conviction in the United States Court for the District of New Jersey for bribery of a public official, in violation of 18 U.S.C. § 201(f) (1982). (Respondents' Brief at 1; Ex. 2). The Department duly notified the Respondents of the proposed debarment, and the Respondents filed a request for hearing, which was limited to submission of documentary evidence and briefs, pursuant to 24 C.F.R. § 24.5(c)(2) (1987).

Upon the record submitted, I make the following findings and conclusions:

Findings of Fact

Raymond Farroni was a self-employed construction contractor. (Department's Brief at 1). Mr. Farroni owned and

operated Ray Farroni-Building and Remodeling and was a partner in Holly Housing Development Company and Pineland Development Company. (Department's Brief at 1-2).

At some point prior to December 12, 1984, the United States Attorney in Newark, New Jersey, filed an Information against Mr. Farroni. (Ex. 3). This Information charged that from between January 1982 and July 27, 1983, Mr. Farroni gave to officials of a HUD-funded program \$15,000 in cash and home improvements to ensure that Ray Farroni-Building and Remodeling was awarded the repair work contract on the Burlington County Home Weatherization Program. (Ex. 3). The Information further alleged that Ray Farroni-Building and Remodeling received the \$300,000 contract on the recommendation of one of the beneficiaries of Mr. Farroni's alleged kickback. (Ex. 3).

On December 31, 1984, Mr. Farroni entered into a plea agreement. (Ex. A). Thereafter, Mr. Farroni cooperated with the U.S. Attorney's office and testified on behalf of the Government in a criminal proceeding brought against an individual involved in the same kickback scheme. (Ex. F). Mr. Farroni pled guilty to the charges on September 11, 1986, at which time Mr. Farroni was sentenced to two years imprisonment and three years probation upon release and fined \$10,000. (Ex. 2). Mr. Farroni's prison sentence was reduced to time served on November 14, 1984. (Ex. E).

On December 4, 1986, the Department notified Mr. Farroni that pending resolution of the subject matter of the Information, he was suspended from further participation in HUD programs. (Ex. B). Included in this suspension were his affiliates, Ray Farroni-Building and Remodeling, Holly Housing Development Company and Pineland Development Company. (Ex. B).

Discussion

As authority for the proposed debarment, the Department relies upon 24 C.F.R. § 24.7(a)(9) (1987), which provides in pertinent part: "[T]he Department may debar a contractor or grantee in the public interest for . . . conviction for the commission of the offense of . . . bribery" 24 C.F.R. § 24.7(a)(9) (1987).

The Respondents do not deny that Mr. Farroni was a contractor or grantee within the meaning of the regulation, that Mr. Farroni was convicted of the offense of bribery, or that Ray Farroni-Building and Remodeling, Holly Housing Development Company and Pineland Development Company are Mr. Farroni's affiliates within the meaning of 24 C.F.R. § 24.3(d) (1987). (Respondents' Brief at 4). Rather, the Respondents contend that factors exist which mitigate against the imposition of the proposed debarment. (Respondents' Brief at 4).

First, the Respondents contend that Mr. Farroni was led to believe that kickbacks were necessary in order to secure the job. (Respondents' Brief at 4). In essence, the Respondents argue that Mr. Farroni was not irresponsible, but rather simply foolish. (Respondents' Brief at 6). Second, the Respondents argue that no harm befell the Government because Mr. Farroni satisfied the terms of the contract. (Respondents' Brief at 6-7). Finally, the Respondents contend that Mr. Farroni atoned for his transgression by cooperating with the U.S. Attorney in the related criminal prosecution. (Respondents' Brief at 6).

HUD regulations require that all mitigating factors be considered in the decision whether to debar a contractor or grantee. 24 C.F.R. § 24.6(b)(1) (1987). However, the debarment regulations implement the Department's policy of protecting the public interest by insuring that only those qualified as "responsible" be allowed to participate in HUD programs. 24 C.F.R. § 24.0 (1987); 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 which in the instant context speaks to the projected business risk of a contractor or grantee, including his integrity, honesty and ability to perform. See Roemer v. Hoffman, supra.

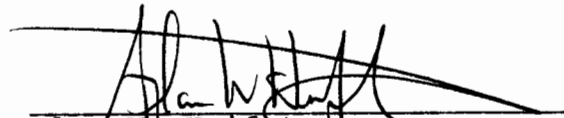
The factors offered by Respondents fail to mitigate the imposition of the proposed debarment. While Mr. Farroni may have been foolish, he was convicted of the felony crime of bribery, which by its very nature involves moral turpitude. To argue that he was induced to commit crime by "figures representing authority, social stature and intellectual attainment" is neither reassuring of responsible conduct in the future, nor indicative of that type of judgment necessary to choose appropriate exemplars.

That the terms of the contract were completed indicates only technical proficiency, not responsibility. Lack of responsibility increases business risk to the detriment of the public interest. The harm to HUD is made all the more severe by the fact that the kickback scheme involved a HUD-funded project. Furthermore, the mere fact that Mr. Farroni cooperated with the Government pursuant to a plea agreement does not necessarily "bespeak his sincerity and contrition," but rather may only indicate his interest in avoiding more severe criminal penalties. None of these factors constitutes evidence that Mr. Farroni is presently responsible. The fact remains that Mr. Farroni was convicted of bribery in connection with a HUD-funded project, as he fully admits, and the record contains no evidence which would tend to show that the Government would be protected from a recurrence of this violation.

Under the circumstances, I conclude that the requested three-year period of debarment is appropriate and necessary to insure that the seriousness with which the Department views Mr. Farroni's conduct will not be misconstrued and that HUD and the public will be protected.

Conclusion and Order

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause exists to debar Raymond Farroni, and his affiliates, Ray Farroni-Building and Remodeling, Holly Housing Development Company, and Pineland Development Company, from doing business with HUD for a period of three years from December 4, 1986, the date Mr. Farroni and his affiliates were suspended, through December 4, 1989.



Alan W. Heifetz
Chief Administrative Law Judge

Dated: October 9, 1987