

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

. . . . .  
In the Matter of  
  
    ROBERT THOMPSON, SR. and  
    TOMROB, INC.  
  
        Respondents  
  
. . . . .

HUDALJ 88-1225-DB

Louis C. Damiani, Esquire  
    For the Respondents

William Johncox, 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 suspend Robert Thompson, Sr. and his affiliate, TomRob, Inc. ("Respondents") from further participation in HUD programs pending resolution of a Department of Labor ("DOL") debarment proceeding against Respondents. The Department's actions are based on Respondents' conviction for violation of 18 U.S.C. §§ 1001 and 1341 (1982). (HUD Exh. 5). The Department duly notified Respondents of the suspension, and Respondents filed a timely request for a hearing. Because the proposed action is based on a conviction, the hearing is limited under Departmental Regulation 24 C.F.R. § 24.13(b)(3) to submission of documentary evidence and written briefs. As the matter is ripe for decision, I make the following findings and conclusions based on the record submitted:

Findings of Fact

On September 30, 1987, Respondents entered into a plea agreement with the United States wherein they pleaded guilty to ten counts of mail fraud and making false statements to an agency of the United States in violation of 18 U.S.C. §§ 1341 and 1001, and two counts of making false statements to HUD in violation of 18 U.S.C. § 1001. (HUD Brief at 2-3; HUD Exhs. 3 and 4; Respondents' Brief at 9-10; Respondents' Exh. A). The Department

initiated a suspension action based on this conviction, on March 4, 1988. (HUD Exh. 1). The suspension is pending the resolution of a DOL debarment proceeding (Case No. 84-DBA-709) that was initiated on December 13, 1983. (HUD Exh. 1; See Respondents' Exh. B). On May 3, 1988, a DOL Administrative Law Judge dismissed as being abandoned Respondents' appeal of the decision to debar. (HUD Reply Brief and Motion to Dismiss Respondents' Appeal, Exh. 1). In his opinion, the DOL ALJ found that the matter in Case No. 84-DBA-79 had been pending for over four years. (HUD Reply Brief, Exh. 1 at 6). During this time, Respondents were "completely dilatory" in obtaining counsel. (*Id.*). Moreover, Respondents failed to comply with any of the DOL ALJ's Prehearing Orders. (*Id.*). This procedural history, stated the ALJ, "evidence[d] delay and contumacious conduct" on Respondents' part. (*Id.* at 8). Since Respondents had "such little regard for the orderly progression of their case," concluded the ALJ, there was little reason for DOL and the ALJ to expend time and money where it was unclear that Respondents would ever appear at their hearing. (*Id.*). Respondents are appealing this judgment. (*Id.*, Exh. 2). Pursuant to 29 C.F.R. § 6.33(b)(1), the DOL ALJ's decision in Case No. 84-DBA-79 will remain without effect until the Wage Appeals Board either declines to review the decision or issues an order affirming the decision. See, 29 C.F.R. § 6.33(b)(1) (1987).

#### Discussion and Conclusion

The Department argues that pursuant to 24 C.F.R. §§ 18 and 24.6(a), Respondents' convictions are cause for the suspension. (HUD Brief at 8). These regulations permit the Department to impose a suspension upon adequate evidence "to suspect the commission of an offense listed in § 24.6(a)." 24 C.F.R. § 18 (1987). A conviction for an offense indicating a lack of present responsibility, such as making false statements, is one of the causes listed in 24 C.F.R. § 6(a). HUD further argues that a suspension is necessary to protect the public interest, as the conviction indicates Respondents' lack of the honesty and integrity necessary in doing business with the Government. (HUD Brief at 9-11).

Respondents do not dispute that they are participants within the meaning of the Departmental regulations. Rather, Respondents argue that the imposition of the suspension is time-barred by the provisions of 24 C.F.R. § 17(b) because HUD had knowledge of the pending DOL debarment action prior to December 13, 1983, more than three years from the date of the HUD suspension notice. Respondents are incorrect in asserting that the suspension is time-barred. 24 C.F.R. § 17(b) states in pertinent part:

(b) . . . The notice of suspension shall be served within three years of --

- (1) A criminal conviction;
- (2) Completion of an investigation or audit which is a basis for suspension; or
- (3) HUD's discovery of the cause on which the suspension is based, whichever event is later (emphasis supplied).

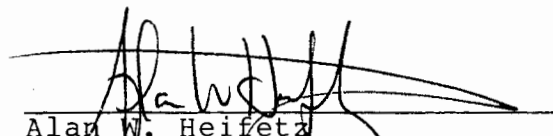
The latest event was the conviction, which occurred on September 30, 1987, well within the three-year time limit. (Respondents' Brief at 13-14).

Respondents argue additionally that HUD is precluded from taking any administrative action against them by the terms of Respondents' plea agreement. (Respondents' Brief at 10-13). Respondents support this vociferously argued assertion by the disingenuous submission of a copy of their plea agreement with the most important page missing. (See Respondents' Exh. A). The plea agreement states, on that missing page, the following:

It is the explicit understanding by all parties to this agreement that this agreement has been reached without regard to and does not preclude, any civil and administrative actions which may now be pending or which may arise from the subject matter of the above-mentioned 10-count Indictment or the two-count Information . . . . (See HUD Reply Brief and Motion to Dismiss Respondents' Appeal, Exh. 3)

It is obvious that the Department may bring an administrative action against Respondents, and that the conviction is adequate cause for the suspension. Accordingly, it is

ORDERED, that Respondents' suspensions are sustained and shall continue in full force and effect until March 4, 1989, or until resolution of Case No. 84-DBA-79 by the Department of Labor, whichever occurs sooner.

  
 Alan W. Heifetz  
 U.S. Department of Housing  
 and Urban Development  
 451 7th Street, S. W., Rm. 2156  
 Washington, D.C. 20410

Dated: August 4, 1988