

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

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In the Matter of :
LORI M. ELLIS : HUDALJ 88-1230-DB
Respondent :
.

Lori M. Ellis, pro se

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 debar Lori M. Ellis ("Respondent") from further participation in HUD programs for a period of three (3) years. The Department's action is based on Respondent's conviction for violation 18 U.S.C. § 666(a) and § 1001. The Department duly notified Respondent of the proposed debarment, and Respondent filed a timely request for a hearing. Because the proposed action is based on a conviction, the hearing was limited under Departmental Regulation 24 C.F.R. § 24.13(a)(3) to submission of documentary evidence and written briefs. This matter being ripe for decision, I now make the following findings and conclusions based on the record submitted:

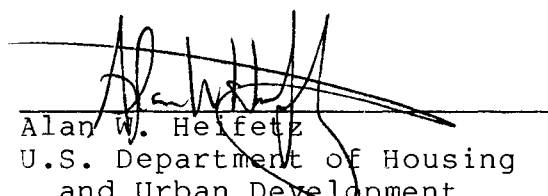
Findings and Conclusions

Respondent was employed as an administrative assistant to the Willison Housing Authority, a local organization and governmental agency which received Federal subsidies from the United States Department of Housing and Urban Development and the United States Department of Agriculture. (HUD Brief at 2; HUD Ex. 3)

On September 9, 1987, Respondent was convicted of one count of embezzling Federal funds belonging to the Willison Housing Authority in violation of 18 U.S.C. § 666(a), and four counts of making false statements to the government while employed by the Housing Authority in violation of 18 U.S.C. § 1001. (HUD Brief at 3). The Department relies on the cause stated in 24 C.F.R.

§§ 24.6(a)(2) and (a)(13) as regulatory authority for the proposed Debarment. (Id. at 4-5). These regulations provide for debarment upon conviction of a crime indicating a lack of business integrity or honesty, such as embezzlement or false statements, or any other cause of such a serious nature as to affect present responsibility. 24 C.F.R. §§ 24.6(a)(2) and (a)(13).

Debarment is a sanction which may be invoked by HUD as a measure for protecting the public by ensuring that only those qualified as "responsible" are allowed to participate in HUD programs. 24 C.F.R. § 24.1 (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 in government contract law which speaks to the projected business risk of a person doing business with HUD, 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. (1959). The concept of responsibility is manifestly relevant to an administrative assistant at a government agency who is convicted of embezzling Federal funds and making false statements to the government. Respondent does not dispute that she is a "participant" within the meaning of 24 C.F.R. § 24.4(u). In fact, Respondent does not object to the proposed debarment.¹ (Respondent's Brief at 1). Therefore, I conclude and determine, upon consideration of the entire record in this matter, that good cause exists to debar Respondent, Lori M. Ellis, from doing business with HUD for a period of three years from March 23, 1988, to March 22, 1991.


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

Dated: July 11, 1988

¹ Respondent requests a "statement" that the debarment will not affect her subsidized loan. (Respondent's Brief at 1). Apparently Respondent has such a statement from Counsel for the Department. (Id.). Since the matter is not in issue, I decline to reach it by way of a declaratory judgment.