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

In the Matter of:	
RICHARD M. ALONSO,	HUDALJ 89-1335-DB
Respondent	

Richard M. Alonso, pro se

William L. Johncox, Esquire
For the Department

Before: Robert A. Andretta
Administrative Law Judge

INITIAL DETERMINATION

Jurisdiction and Procedure

This is a debarment proceeding under Section 3 of Executive Order 12549, "Debarment and Suspension" (51 FR 6370-71, February 21, 1986). It is conducted pursuant to the regulations of the Department of Housing and Urban Development ("HUD") that are codified at 24 CFR Parts 24 and 26 (See, 53 FR 19162, et seq, May 26, 1988), and jurisdiction is thereby obtained. On April 20, 1989, the Department sent written notice by certified mail to the Respondent, Richard M. Alonso, that "consideration is being given to debar [him] from participation in primary covered transactions and lower tier transactions (see 24 C.F.R., Section 24.110(a)(1)) as either a participant or principal at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts with HUD for a period of three years from [the notice date]." In addition, the Department's letter of notice informed Respondent that he would remain suspended from further participation in such transactions and contracts "...pending final determination of the issues in this matter...." HUD's action is based on Respondent's conviction following a plea of guilty to federal charges of violating 18 U.S.C. Section 371.

On May 2, 1989, Alonso filed a timely request for a hearing, and I issued a Notice of this proceeding to the parties on May 12, 1989. This Notice included an Order to the Department to show cause why the suspension of Respondent should not be vacated and invited Respondent to file a response to any such showing made by the Department. The government showed cause on May 16, 1989, why the suspension should not be lifted, Respondent made no response, and the suspension was therefore left in force.

In accordance with the Notice and Order of May 12, 1989, the Department timely filed its Brief In Support Of Debarment And Suspension on June 12, 1989, and Respondent filed his Respondent's Brief on July 13, 1989, which is within the time limits set in my Order To Show Cause of July 7, 1989. Thus, this case became ripe for decision on July 13, 1989. Since the proposed action is based solely on Respondent's conviction, the proceeding is limited to review of submitted documentary evidence and briefs pursuant to the Department's regulation codified at 24 CFR 24.313(b)(2)(ii). Therefore, I make the findings and conclusions that follow upon the record.

Findings of Fact

The government's brief in support of debarment states that Respondent is a "principal" as defined in 24 CFR Part 24. While there is no evidence of record to support a finding that Respondent was a principal of UTE, Respondent has failed to rebut this assertion. However, the government's Information leading to Alonso's conviction states that, during the period in which the events took place that led to Alonso's conviction, he was employed as a settlement officer at United Title and Escrow Company, Inc. (UTE), a real estate brokerage company incorporated and doing business in the District of Columbia. The Department's regulation codified at 24 CFR 24.105 defines principal for purposes of the debarment regulations and includes "closing agents" within the examples of persons who are principals because they "have a critical influence on or substantive control over" covered transactions. Therefore, taking the facts that are alleged in the Information to be true because admitted by the plea of guilty, I find that at all times material and pertinent to this debarment proceeding, Respondent's real estate closings were conducted while he was acting as a principal of UTE.

The facts upon which Alonso's conviction is based are recited in the Memorandum In Aid Of Sentencing that was prepared by the U.S. Attorney assigned to this case for presentation to the United States District Court for the District of Columbia. It states as follows, in pertinent part:

> From 1977 to 1983, Mr. Alonso was employed as a settlement officer at United Title and Escrow (UTE), a company jointly owned by George Thacker, Marvin Gitelson and another. Beginning in 1980 and continuing through the remainder of his employment at UTE, Mr. Alonso performed fraudulent property settlements for various real estate speculators, including Gitelson. Essentially, Mr. Alonso's role was to falsify the HUD-1 settlement statements as to the amount of cash paid by the purchaser and disburse the funds in accordance with the seller/speculator's instructions. On a number of occasions, Mr. Alonso closed real estate transactions despite the absence of purchasers, allowing the sellers to remove documents for signature which he notarized upon their return. In some instances, he knowingly notarized settlement documents that speculators had falsely signed in the names of so-called "straws" in order to conceal their interest in the transactions. To date [May 11, 1988], Mr. Alonso has identified some 82 real estate closings in which he prepared and submitted false and misleading settlement documents. All but 10 of these involved FHA-insured mortgages, with Mr. Alonso falsely certifying that the purchasers had made the required cash investment. As of December 8, 1988, 29 of those properties were in default or foreclosure with a combined loss to HUD of $1,524,540.00. [1]

[1]This amount of damage to HUD is diminished as the properties involved are resold.

On May 11, 1988, Respondent entered into an agreement with the government to cooperate with it and to plead guilty to a one-count Information. The government agreed in turn not to seek a prison term and to advise the sentencing judge of the extent and value of Respondent's cooperation. On October 13, 1988, Alonso pleaded guilty to a one-count Information for conspiracy to defraud the United States in violation of Title 18, United States Code, Section 371, as a result of his participation in a scheme to illegally obtain FHA-insured loans. [2] The one-count Information describes the conspiracy entered into between Respondent and the other co-conspirators, the means and methods used by the co-conspirators in seeking to achieve the goal of the conspiracy, and the overt acts of the conspiracy. This description is repeated in the Department's Brief. Respondent plead guilty to the Information and filed his response Brief in this proceeding without denyiny the governemnt's allegations. Therefore, the allegations are taken to be true and it is unnecessary to repeat them here. Thus, I find that Respondent participated in a covered transaction under HUD's nonprocurement programs as a principal and that, while doing so, he acted to defraud the government. Therefore, the debarment regulations that are codified at 24 CFR Part 24 are applicable to him.

Under these regulations, the Department may debar a participant or principal on the basis of a conviction alone; there is no need for further proof of the Department's allegations. See, 24 CFR 24.305. On December 15, 1988, Respondent was convicted on the one-count Information. He was sentenced to three years, of which 90 days would be served in a community correctional center and the balance would be suspended. In lieu of the suspended portion of the imprisonment, Respondent was placed on probation for a period of two years. Alonso was also required to pay a fine of $10,000 within four months of the conviction.

Discussion

Part 24 of Title 24 of the Code of Federal Regulations was promulgated to protect the public interest from acts such as those perpetrated by Respondent, including by deterence of other parties from committing such acts. Thus, debarment of participants like Respondent serves the purposes of exclusion of the irresponsible parties from HUD programs and dissuasion of others from like conduct. 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.

It is the Department's position that Respondent should be debarred for a three-year period from the time of the initial suspension. It argues that a conviction for conspiring to make false statements to HUD to obtain mortgage insurance is more than sufficient evidence to support the sanction sought. The Department further argues that Respondent's conviction provides a compelling inference that he lacks the requisite "present responsibility" to do business with HUD. Finally, the Department urges against Respondent's arguments which point out the age of the crime and tend to understate its importance:

> The "wrong" that was done by me took place in 1983, a good 5-1/2 years ago. I was a minor participant, most importantly an UNKNOWING participant, in a scheme created and planned by others. I pleaded guilty to

[2] Information 88-0379, United States of America v. Richard M. Alonso, United States District Court for the District of Columbia, December 23, 1988.

> this minor infraction and have since served my sentence and paid in full the fine assessed against me by the court.

In response, the Department points out that Alonso "...himself, not the other co-conspirators, procured the false and fraudulent statements. [sic] and it was he that submitted the false and fraudulent FHA-mortgage [sic] insurance settlement document to HUD." Moreover, I note that it was only Respondent, and not the other co-conspirators, against whom the U.S. Attorney decided to present an Information of criminal conduct. Finally, the Department argues that Alonso's argument against his own culpability, after having been convicted on a guilty plea, fails to show the requisite remorse which would serve to militate against a long-term debarment.

I agree with the Department's counsel that Alonso appears to continue in his failure to accept personal responsibility. In his Brief he states that he conducted the fraudulent settlements "with no intent to defraud HUD/FHA...," that this is the way "they did some of their deals and I unfortunately happened to be doing the settlement," and, finally, that he was "not aware of what was going on 'behind the scene'." Respondent must understand that what was going on was not being done out of his view by others; he was doing it. He is responsible. He plead guilty and was convicted, and it is he who is being debarred because of his own conduct.

Nonetheless, Respondent's arguments in favor of a reduced period of debarment are persuasive. He has submitted a number of unrebutted (albeit undocumented or otherwise substantiated) reasons why the proposed period of three years should be diminished. Despite the seriousness of the offense underlying Respondent's conviction, this was the first time he was involved in criminal or debarment proceedings during thirty years of employment. He claims to have been raised to respect law and order and that he still does so. He also states that, "Because of the events of the past year and a half I now have a greater and perhaps fuller understanding of my role as far as duty, responsibility, trustworthiness, etc. that is required of me and persons entrusted by HUD/FHA to do work for them in whatever capacity called for." He states that "by my signature hereto I state and declare that..." he will continue to conduct settlements with a "full sense of responsibility and trustworthiness to HUD/FHA..."

Respondent has been suspended from participating in Departmental programs since April 20, 1989. Since the government does not claim otherwise, I assume he has been faithfully executing the terms of his probation, and that he has paid the fine and served the sentence imposed by the court as he has stated he has done. In view of these factors, Respondent's statements as recited above, and the Department's failure to show a necessity for a three-year debarment, I find that protection of the public interest will be served by a two-year period of debarment from the date of Respondent's suspension.

Conclusion and Order

Upon consideration of the need to protect the public interest and of the record in this matter, I conclude and determine that good cause exists to debar Respondent, Richard M. Alonso, from doing business with HUD, and throughout the Executive Branch of the Federal Government, for a period of two years commencing with April 20, 1989. Accordingly, it is

SO ORDERED,

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Robert A. Andretta

Administrative Law Judge
U.S. Department of Housing
and Urban Development
451 7th Street, S.W., Suite 2156
Washington, D.C. 20410

Dated: August 1, 1989