

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

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In the Matter of :
ARNOLD K. LITMAN, and :
AKL ENTERPRISES, SIGNAL :
PROPERTIES, INC., SIXTH :
STREET PROPERTIES, GNH :
ASSOCIATES, THE SECOND :
DEVELOPMENT CO., INC., :
affiliates, :
Respondents :
. :

HUDALJ 89-1361-DB

Arnold K. Litman, pro se
Marylea W. Byrd, Esquire
For the Department
Before: William C. Cregar
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") dated May 18, 1989, to debar Arnold K. Litman, and his affiliates, from further participation in primary covered transactions and lower tier covered transactions as either participants or principals 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 that date. 24 C.F.R. Sec. 24.110 (a) (1). The Department's actions are based upon Respondent Litman's conviction in the United States District Court for the District of Columbia for violating 18 U.S.C. Secs. 1001, 1012, and 2. Respondents were also temporarily suspended on May 18, 1989, pending final determination of the issues in this matter. They have not appealed the temporary suspension, but have appealed the proposed debarment. Because the proposed action is based upon a conviction, the hearing was limited under Departmental regulation to submission of documentary evidence and written briefs. 53 Fed. Reg. 19,187 (1988) to be codified as 24 C.F.R. Sec. 24 (b) (2) (ii).

Findings of Fact

Respondent Litman was a principal in various entities engaging in real estate sales in the District of Columbia, among them, AKL Enterprises, Signal Properties, Inc., Sixth Street Properties, GNH Associates and the Second Development Co., Inc.

After pleading guilty, Respondent was convicted in the United States District Court for the District of Columbia on February 15, 1989, of "False statements, HUD Transactions, causing an act to be done in violation of 18 U.S.C. 1001, 1012, 2, an offense which occurred on or about March 1, 1983 to on or about June 15, 1984." (Govt. Ex. 3) He was sentenced to be committed to the custody of the Attorney General for nine months on each of the counts, which were to run concurrently. He was also ordered to serve his sentences in a Community Correctional Center and to pay a \$5,000 fine.

Respondent Litman was convicted upon charges that on six separate occasions between March 1, 1983 and June 15, 1984, he induced individuals to purchase real estate in the District of Columbia by promising that they would receive credit for some or all of their down payment and settlement costs from the loan proceeds. This scheme was referred to by the Respondent as the "buyer credit concept" and involved falsification by the Respondent of HUD settlement statements. He falsely certified entries on these statements that cash was paid by the borrower when, in fact, it was not. The statements were sent to HUD and FHA mortgage insurance commitments were issued based upon the false information. Respondent was convicted of making the falsifications "knowingly, wilfully, and with intent to defraud." (Govt. Ex. 2)

Discussion

The Department relies upon the causes stated in 24 C.F.R. Sec. 24.305 (a) (3) and (4). These regulations provide for debarment upon conviction of a crime involving falsification, false statements, and for any other offense indicating a lack of business integrity and which directly affects the responsibility of a person.¹ HUD also contends that a three year debarment is necessary to protect the public interest and to deter misconduct by other participants in HUD programs.

¹ A similar prohibition was contained in HUD regulations in existence at the time of these transactions. 42 Fed. Reg. 5306, January 27, 1977, codified in 24 C.F.R. Sec. 24.6 (a) (4), (6).

Mr. Litman admits having committed the violations. He contends that at the time he committed the offenses he did not know he was violating the law; that he ceased using the "buyer credit concept" when he learned it was illegal; the offenses occurred five to eight years ago; he cooperated with the U.S. Attorney's Office; he did not receive the maximum sentence authorized by law; he and his family have suffered severely as a result of his actions; he has already been punished by the criminal justice system; he has made restitution to third parties; and, accordingly, the government's proposed debarment only serves as further punishment and is unjustified and an abuse of its discretion. He also contends that the Statute of Limitations has run on this action, and that the proposed debarment breaches the terms of the agreement by which he agreed to plead guilty.

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; 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 used in government contract law. It encompasses the projected business risk of a person doing business with HUD. This includes his integrity, honesty, and ability to perform. The primary test for debarment is present responsibility although a finding of present lack of responsibility can be based upon past acts. Schlesinger v. Gates, 249 F.2d 111 (D.C. Cir. 1957); Roemer, supra. The debarment sanction may also be justified on the basis of its deterrent effect on those who do business with the government.

Respondent has not overcome the government's demonstration that he is not presently responsible. Mr. Litman's statement that he honestly believed that he could lawfully falsify HUD settlement statements, is patently incredible. If he honestly believed this, he poses a risk resulting from a lack of competence. Even if such a statement were worthy of belief, I am bound by the finding of the District Court that Respondent's false statements were made, ". . . knowingly, willfully, and with intent to defraud." The application of the principle of collateral estoppel precludes the relitigation of issues litigated and decided in a prior proceeding. See generally, 4 Davis, Administrative Law Treatise, Sec. 21.7 (2d Ed. 1983). This being the case, the record supports the conclusion that HUD

would be substantially at risk in continuing to deal with the Respondent and his affiliates.²

I have considered Mr. Litman's other arguments in mitigation. His cooperation with authorities, punishment at the hands of the criminal justice system, restitution to third parties, and the sufferings of his family do not eliminate the risk posed by an individual who, by contending in this proceeding that he honestly believed he was complying with the law when he submitted false statements to an agency of the Federal government, continues to refuse to acknowledge the total extent of his guilt.

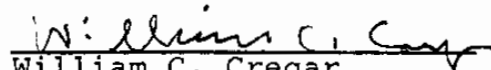
Respondent Litman has identified no Statute of Limitation barring the government from bringing this action, nor has he submitted evidence in support of his contention that this action violates his plea agreement with the U.S. Attorney. Accordingly, these contentions are unsupported and without merit.

Based upon the record in this case I conclude that a debarment for a period of three years from the imposition of the temporary suspension is appropriate and necessary to insure that the seriousness with which the Department views the Respondent's misconduct will not be misconstrued and that the public trust and fisc will not be subjected to future risk.

² Even if believable, Respondent's statement that he did not know that what he was doing was illegal does not mitigate his misconduct. He claims that one year after stopping his illegal activities, these transactions "made the news". He then contacted an attorney who advised him to remain silent which he did for the next three years until he was contacted by the U.S. Attorney. (Resp. Ex. 1, pp. 4, 5). Reporting what he had done when he learned these transactions were illegal would have gone a long way towards demonstrating his present responsibility. In fact, he only cooperated after he was caught. In addition to demonstrating that there is a continued risk in dealing with the Respondent, this supports the government's contention that deterrence of others is an appropriate reason for taking a debarment action. Those who deal with the government should be encouraged to do more than merely cease their illegal activities upon learning they are illegal. Reporting the illegal acts immediately would permit the government the opportunity to attempt to remedy any resulting harm before it is too late to do so.

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 Arnold K. Litman, and his affiliates, AKL Enterprises, Signal Properties, Inc., Sixth Street Properties, GNH Associates, and The Second Development Co., Inc. from further participation in primary covered transactions and lower tier covered transactions as either participants or principals 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 May 18, 1989.


William C. Cregar
Administrative Law Judge

Dated: October 3, 1989