

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

In the Matter of:

GERALD BLESSEY,

Respondent

HUDALJ 90-1416-DB

Gerald Blessey, Esquire, pro se

Michael D. Noonan, Esquire  
For the Department

Before: ALAN W. HEIFETZ  
Chief Administrative Law Judge

**INITIAL DETERMINATION**

**Statement of the Case**

Gerald Blessey ("Respondent") appeals a Suspension imposed by Audrey E. Scott, General Deputy Assistant Secretary of the U.S. Department of Housing and Urban Development ("the Department" or "HUD") pursuant to 24 CFR 24.405(b)(1989). Respondent was suspended based on two indictments returned against him by a Federal Grand Jury convened for the U.S. District Court, Southern District of

Mississippi, Southern Division, charging that he violated 18 U.S.C. sections 1951 (a) and (b)(2), 371, 2, and 1341.

By Letter dated October 26, 1989, the General Deputy Assistant Secretary notified Respondent that he was suspended from further participation in HUD programs pending resolution of the indictment and any legal, debarment or Program Fraud Civil Remedies Act proceedings which may ensue. Because the suspension action is based on an indictment, the hearing was limited to submission of documentary evidence and written briefs. See 24 CFR 24.313(b)(2)(ii).

## Findings of Fact

1. As Mayor of Biloxi, Mississippi, Respondent is a "person within a participant with primary management or supervisory responsibilities" or "a person who has a critical influence on or substantive control over a covered transaction...", and is, therefore, a principal under 24 CFR 24.105(p).

2. On May 2, 1989, the Grand Jury returned two indictments charging that Respondent violated 18 U.S.C. sections 1951 (a) and (b)(2), 371, 2, and 1341. Specifically, Respondent was charged with conspiring: (1) to defraud HUD in regard to its Community Development Block Grant Program and its Special Projects Grant Program (Criminal Action No. S89-00011(G)) ("Indictment One"); and (2) to commit extortion (Criminal Action No. S89-00012(G)) ("Indictment Two").

3. The trial regarding Indictment One resulted in a mistrial on September 1, 1989, but there is no evidence that the indictment has been withdrawn. According to the indictment, the City of Biloxi, through Respondent, received a Special Projects Grant from the Secretary's Discretionary Fund in the amount of \$500,000.00 to assist in the construction of the Point Cadet Development Project for specified infrastructure construction costs which were deemed urgent. The indictment charged, inter alia, that it was part of the conspiracy to: list infrastructure expenditures in its description of intended uses of the grant which could be approved under HUD regulations, but not to include an allocation for payment of "soft costs"; advance, without authorization from HUD, \$160,000.00 of the monies from the Special Project Grant to the project developers to pay "soft" costs, including architectural costs and attorney fees; falsely represent that HUD officials had authorized such expenditures to the City; and provide false testimony by Ms. █████ Capers before the grand jury concerning the circumstances surrounding the requested authorization for the \$160,000.00 expenditures.

4. On March 22, 1990, a trial jury acquitted Respondent of Counts I and II of Indictment Two, and on April 6, 1990, the district court judge ordered the dismissal of Count III. Therefore, all counts of Indictment Two have been resolved in Respondent's favor.

## Discussion

Suspension may be imposed only when there exists adequate evidence of one or more of the causes set out in section 24.405 and immediate action is necessary to protect the public interest. The Department agrees that Indictment Two is no longer outstanding, and it relies solely on Indictment One as cause for the suspension action. Pursuant to 24 CFR 24.405(a), the Department may suspend a principal if there is adequate evidence (1) to suspect the commission of an offense listed in section 24.305(a); or (2) that a cause for debarment under section 24.305 may exist. Section 24.405(b) specifically provides that an "[i]ndictment shall constitute adequate evidence for purposes of suspension actions." See *also* 24 CFR 24.313(b)(3).

In his brief in opposition to the suspension, Respondent argues that Indictment One is no longer effective as a matter of law because "the seventy-day clock of the Speedy Trial Act began to run on September 1, 1989," and the "Government has not sought a new trial date." He further argues that the transcript of the trial demonstrates that there is not a preponderance of evidence to show that he lacks honesty, integrity and responsibility; that he did not personally benefit from the money in dispute; that he tried to follow HUD rules and procedures and relied on guidance and communication from government personnel; and, that no witness accused him of intentional wrongdoing or fraud. He argues that the indictment is not evidence, that the government had an opportunity to produce evidence during the trial, and that it failed to show that Respondent poses a threat to the public interest.<sup>1</sup>

Respondent's argument that the government's failure to set a new trial date violates the Speedy Trial Act of 1974, 18 U.S.C. section 3161(e), does not render Indictment One invalid on its face. Whether the Speedy Trial Act has been violated is an issue for the district court. That there *may* be procedural defects in any subsequent prosecution does not affect the substantive basis for the Indictment in the absence of its dismissal. That basis constitutes adequate evidence for Respondent's suspension.

Contrary to Respondent's assertions that the suspension action may not stand because the transcript<sup>2</sup> from the district court trial does not contain preponderant evidence that Respondent lacks present responsibility or poses a threat to the public interest, the standard of proof required to sustain a suspension is "adequate evidence", not "preponderant evidence." The indictment and its predicate, not the government's proof in a subsequent criminal trial, forms the basis for the suspension. Respondent did not refute the government's assertion that the indictment constitutes "adequate evidence" to support a suspension. Because the criminal proceeding resulted in a mistrial, there has been no verdict, nor any other resolution of the indictment. This forum cannot resolve the indictment by independently examining the record before the district court, nor may it otherwise relitigate the facts underlying the indictment. See *Gaye Flood*, HUDALJ 89-1395-DB, slip op. at 2-4 (1989); *Edythe (AVA) Kupchick and AVA Realty, Inc., Affiliate*, HUDALJ 88-1277-DB, slip op. at 5 (1989) (a conviction may not be collaterally attacked in a debarment proceeding). See also 53 Fed. Reg. 19161, 19169 (May 26, 1988) ("An indictment represents a determination by competent authority that probable cause exists to believe that the named defendant has committed

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<sup>1</sup>In response to the letter of suspension, Respondent alleges as an affirmative defense that the complaint, the indictment, and Titles 24 and 26 of the Code of Federal Regulation violate his First, Fifth, Sixth, Seventh and Fourteenth Amendments to the Constitution of the United States. Respondent, however, has not raised an issue of constitutional law cognizable in this forum.

<sup>2</sup>Respondent failed to comply with the Order dated June 22, 1990, requiring him to serve a copy of his proffered transcript and exhibits on government counsel by July 12, 1990, and file proof of such service for the record. Accordingly, the transcript and exhibits will be returned to him in accordance with the June 22, 1990, Order.

a criminal act; executive agencies are neither authorized nor positioned to question the factual support for the allegations contained therein.").

If there is adequate evidence of cause for suspension, a suspension may be invoked only when immediate action is necessary to protect the government's interest. 24 C.F.R. sec. 24.410(c). The government's interest is to assure that it conducts business only with responsible persons. "Responsibility" is a term of art which speaks to the projected business risk of a contractor, including his integrity, honesty and ability to perform. See *Roemer v. Hoffman*, 419 F. Supp. 130, 131 (D.D.C. 1976).

In the indictment on which the suspension action is based, Respondent was charged with, inter alia, conspiring to defraud the government and devising and intending to devise a scheme and artifice to defraud and obtain money from the government by false and fraudulent pretenses, representations and promises. The acts charged by the indictment are serious and flagrant, and implicate the Respondent's integrity, honesty and ability to perform. Because the indictment constitutes probable cause to believe that the acts alleged therein are true, immediate action is necessary to protect the government's interest to deal only with principals who are responsible.

Under the circumstances, I conclude that Respondent's suspension is based on adequate cause, is in the public interest, and should be sustained.

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Alan W. Heifetz  
Chief Administrative Law Judge

Dated: July 26, 1990