

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

In the Matter of:
HARRY L. DEPEW
Respondent

HUDALJ 90-1434-DB

Harry L. Depew, *pro se*

Michael D. Noonan, Esquire
For the Department

Before: William C. Cregar
Administrative Law Judge

INITIAL DECISION AND ORDER

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 Harry L. Depew ("Respondent") from participation in primary covered transactions and lower-tier covered transactions 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 an indefinite period from December 6, 1989. Respondent was also temporarily suspended on that date. HUD's action is based upon Respondent's conviction in the United States District Court for the Northern District of Oklahoma following his plea of guilty to violations of 18 U.S.C. Secs. 1001 and 2. The conviction was based upon an indictment which charged him with falsely representing in writing to HUD that buyers in four separate transactions had made earnest money deposits in certain specified amounts to be applied towards down payments on real estate, which statements were false. Relying upon these false statements, HUD insured mortgages on these properties which subsequently

defaulted. It is alleged that, as a result of Respondent's acts, there was an actual loss to the government of \$74,350 and a potential loss of \$275,000, the latter resulting from losses on other properties concerning which Respondent made similar false statements.

Respondent was notified of the proposed debarment by letter dated December 6, 1989, and on December 19, 1989, submitted his appeal. Because the proposed action is based upon a conviction, the hearing was limited under Department Regulation 24 C.F.R.

Sec. 24.313(b)(2)(ii) to submission of documentary evidence and written briefs. Accordingly, an Order was issued on February 7, 1990, setting forth dates for filing briefs and documentary evidence.

The Department's brief in support of debarment was timely filed on March 9, 1990. Respondent's reply brief was due on or before April 9, 1990. Since by April 17, 1990, Respondent had failed to file a reply brief, he was, on that date, ordered to show cause by May 1, 1990, why a summary decision should not be issued in favor of the government. The Order to Show Cause also stated that failure to respond to the Order in a timely fashion would constitute consent to such a summary decision.

Petitioner has failed to respond to the Order to Show Cause and has, therefore, consented to the entry of the following:

ORDER

Respondent having failed to prosecute the appeal, it is

ORDERED, that Respondent, Harry L. Depew, be debarred for an indefinite period from December 6, 1989, the date of the initial suspension.

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WILLIAM C. CREGAR
Administrative Law Judge

Dated: May 10, 1990