

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

In The Matter of:

TRACY W. HUMBLE and
WHITNEY FINANCIAL
SERVICES, INC.,

Respondents.

HUDALJ 90-1450-DB

Tracy W. Humble, *pro se*

Marylea W. Byrd, 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 (1989) (*See* 53 FR 19162, *et seq.*, May 26, 1988), and jurisdiction is thereby obtained. On January 2, 1990, the Department sent written notice by certified mail to Respondent Tracy W. Humble that "consideration is being given to debar [him] and [his] affiliate, Whitney Financial Services, Inc., from further participation in primary covered transactions and lower tier covered transactions (see 24 C.F.R., Section 24.110(a)(1)) 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 October 10, 1989, on which date the Respondents had been suspended from such participation. In addition, the Department's letter of notice informed Respondent Humble that they 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 upon Respondent Humble's conviction in the United States District Court, Eastern District of Louisiana, for violation of Title 18, Section 215(a), United States Code.

On January 29, 1990, Humble filed a timely request for a hearing, and I issued a Notice of this proceeding to the parties on February 23, 1990. In accordance with this Notice and Order, the Department timely filed its Government's Brief In Support Of Debarment on March 26, 1990, and Respondent Humble timely filed his and his affiliate's Reply To Government's Brief on April 11, 1990. Thus, this case became ripe for decision on this last-named date. Since the proposed action is based solely on Respondent Humble's conviction, this proceeding is limited to review of submitted documentary evidence and briefs by the Department's regulation that is codified at 24 CFR 24.313(b)(2)(ii). Therefore, I make the findings and reach the conclusions that follow solely upon the written record.

Findings of Fact

Respondent Humble was indicted for violation of 18 U.S.C. Sec. 215(a). The indictment was based upon his involvement and participation in underwriting HUD/FHA-insured mortgages for clients of his consulting company, Respondent Whitney Financial Services, Inc. Respondent was convicted on two counts of violating 18 U.S.C. Sec. 215(a), and was sentenced to two years' incarceration and payment of a fine of \$10,000 for the first count. For the second count, Humble was placed on probation for a period of five years from December 22, 1989, and was required, as conditions of the probation, to pay the fine at the rate of \$200 per month and to perform 300 hours of community services during the first two years of the probation.

The indictment and subsequent conviction arose from Respondent Humble's participation in a scheme to obtain HUD/FHA financing for developments known as Aubrey Place Subdivision in Marerro, Louisiana and Elm Park Subdivision in Gretna, Louisiana. Through his company, Whitney Financial Services, Inc., Humble provided consulting services to H.E.W., Inc. and G & N Enterprises, including recommendations for the sale of the Aubrey Place Subdivision from H.E.W. to G & N.

At the time these activities were being conducted, Humble was a loan officer for Cameron Brown Mortgage Company, an HUD-approved mortgagee. As such, he was responsible for obtaining a \$1.2 million line of credit to G & N to enable it to purchase and develop Aubrey Place. He was also the loan officer for a \$1.2 million refinancing with HUD/FHA-insured loans of Elm Park for G & N Enterprises. Through Whitney, Humble received \$64,200 in fees from H.E.W. for the Aubrey Place loan and \$11,000 from G & N for the Elm Park refinancing.

Applicable Law

As a loan officer for an HUD/FHA-approved mortgagee, and as the owner of Whitney Financial Services, which provided consulting and real estate services in connection with HUD/FHA-insured mortgage loans, Respondent has participated in a covered transaction under HUD's nonprocurement programs and is a principal as defined in 24 CFR 24.105(p)(2), (11), and (13), thus making 24 CFR Part 24, the regulations governing suspension and debarment from conducting business with the

federal government, applicable to him. Moreover, for purpose of debarment, affiliates are defined at 24 CFR 24.105(b) where such definition makes clear that Whitney is an affiliate of Humble due to ownership and control.

The regulation that is codified at 24 CFR 24.305(a) permits the Department to suspend or debar a participant or principal from doing business with it when it is learned that the individual has been convicted or has had a civil judgment entered against him for a number of reasons, including:

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

Respondent Humble's conviction for improperly receiving commissions for procuring HUD/FHA-insured mortgage loans is cause for his and his affiliate's debarment under these regulations.

Discussion

In his Reply To Government's Brief, Respondent Humble charges that the government has misstated several facts relevant to his case. He claims that the information in his response expands the information available "so that there will be no doubt of [his] integrity ..." Respondent states, for example, that, while the government claims he was responsible for obtaining the \$1.2 million line of credit for G & N to enable it to purchase and develop Aubrey Place, the responsible parties were actually the members of a construction loan committee in the home office of Cameron Brown Bank of Charlotte, N.C. He states that his commissions earned on the loan for Elm Park were based upon consultation services outlined in written contracts between G & N and Whitney that were "approved" by HUD's New Orleans office. Respondent claims that he was the victim of the same false information as was the HUD office for which other parties were convicted but for which he himself was not charged.

Under the regulations as described above, the Department may debar a participant or principal, and any affiliates, on the basis of a conviction alone; there is no need for further proof of the Department's allegations. Moreover, it is inappropriate for this forum to reconsider facts already decided by the U.S. District Court. The debarment regulations found at 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 deterrence of other parties from committing such acts. Thus, debarment of participants like Respondents serves the purposes of exclusion of 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 Humble'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 date of the initial suspension. It argues that a conviction for receiving commissions for procuring loans on properties financed with HUD/FHA-insured mortgages is sufficient evidence to support the sanction sought and that the seriousness of Humble's actions is indicated by the stiffness of the sentence. The Department argues persuasively that Humble's conviction demonstrates a lack of honesty and integrity (*See* 24 CFR 24.305(a)(4)) in degradation of the Department's need to depend upon principals and participants who are honest in their dealings with the government.

I agree with the Department's counsel that Humble appears to continue in his failure to accept personal responsibility for and recognition of the seriousness of his dual role and that such failures on his part indicate a continuing lack of responsibility. Humble's allegation that he was misled by the false positions of the committee bear no weight. Respondent must understand that conducting business in his dual role is a clear and obvious conflict of interest, and that it was not being done out of his view by others; he was doing it. He is responsible. He was tried for it and was convicted, and it is he and his company that are being debarred for his own conduct.

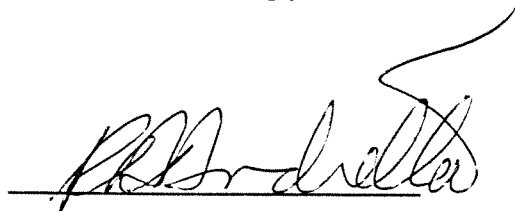
Nonetheless, Respondent's arguments in favor of a reduced period of debarment are also persuasive. He has submitted a number of unrebutted (albeit undocumented or otherwise substantiated) reasons why the proposed period of three years should be reduced. Despite the seriousness of the offense underlying Respondent's conviction, this was the first time he was involved in criminal or debarment proceedings during a long history of involvement in mortgage business. It is also worth noting that the Department has not denied Humble's claims that his contracts were approved by HUD employees and, more significantly, that he voluntarily complied with an HUD employee's request "to refrain from any decision making activity of importance regarding business with HUD until this matter [is] resolved."

Respondent Humble has been suspended from participating in Departmental programs since October 10, 1989. Since the government does not claim otherwise, I assume he has been faithfully executing the terms of his probation and that he is serving the sentence of confinement imposed by the court as he has stated he is doing. In view of these factors, Respondent's statements as recited above, and the Department's failure to show why a debarment must be for at least three years, I find that protection of the public interest will be served by a two-year period of debarment.

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 the Respondents, Tracy W. Humble and his affiliate, Whitney Financial Services, Inc., from doing business with HUD, and throughout the Executive Branch of the Federal Government, for a period of two years commencing with October 10, 1989. Accordingly, it is

So ORDERED.

A handwritten signature in black ink, appearing to read "R. A. Andretta", written over a horizontal line. The signature is cursive and includes a large, sweeping flourish that extends upwards and to the right.

Robert A. Andretta
Administrative Law Judge

Dated: April 17, 1990.