

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

In the Matter of:

LUCIUS A. ASHBY,

Respondent.

HUDALJ 91-1671-DB

Tyrone L. Holt, Esquire
For the Respondent

Andrea Bernardo, Esquire
For the Department

Before: Robert A. Andretta
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 March 20, 1991, to debar Lucius A. Ashby ("Respondent") from participating in HUD programs for a period of three years. HUD's action is based upon Respondent Ashby's conviction by the State of Colorado in the District Court for the City and County of Denver for violation of Colorado Revised Statute 39-22-621(3)(b). On April 22, 1991, Respondent Ashby timely appealed the proposed debarment. Respondent and his affiliates had been suspended on March 8, 1990, from participation in Government programs based on Respondent's indictment. Respondent did not appeal that suspension. Also, on March 7, 1989, Respondent had been notified that the Department was considering debarring him for failure to maintain and produce for inspection documents that he was required to maintain and produce for inspection pursuant to a contract he had with HUD. That action was dismissed on April 16, 1991.

On January 10, 1991, Respondent Ashby pleaded guilty in the District Court for the City and County of Denver to one count of failing to truthfully account for and pay income taxes withheld from employees. As a result of this conviction, Respondent was placed on probation for four years and ordered to pay \$100 to the Victim Assistance Fund, \$100 to the Victim Compensation fund, \$30 court costs and \$20 per month

supervision fees. Respondent was also ordered to pay restitution in the amount of \$41,410.60.

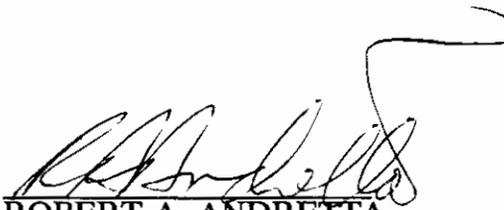
Because the proposed action by HUD is based upon a conviction, this proceeding is limited under the Department's regulations codified at 24 CFR 24.313(b)(2) to submission of documentary evidence and written briefs. Accordingly, I issued an Order on May 16, 1991. The Department was to file its brief in support of the proposed debarment by June 14, 1991, and did so on that date.

Respondent's reply brief was due on or before the thirtieth day from the filing of the Department's brief. By letter dated July 9, 1991, Jeanette E. Laffoon of Holt & Associates confirmed the filing deadline as July 15, 1991, and indicated that her office would file a response brief by that date. On July 15, 1991, counsel for Respondent requested an extension of time until July 18 in which to file Respondent's reply brief. That extension was granted orally on July 16, 1991.

Since by July 30, 1991, Respondent had failed to file his reply brief, he was ordered to file the brief or show cause by August 12, 1991, why he should not be found in default for failure to respond to the Government's brief in support of the proposed debarment. Respondent was also advised that failure to timely and adequately respond would be held to constitute Respondent's consent to entry of a default order. Respondent has failed to respond to the Order to Show Cause and has, therefore, consented to entry of the following:

CONCLUSION AND ORDER

The Department has shown a compelling inference in this case that Respondent Lucius A. Ashby lacks the requisite responsibility to deal with HUD by showing that Respondent has been convicted in the District Court for the State of Colorado for failure to truthfully account for and pay income taxes withheld from employees. Accordingly, Respondent Ashby is **ORDERED** debarred from participating in primary covered transactions and lower tier covered transactions as either a participant or a 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 March 20, 1991, the date of notice of this action.



ROBERT A. ANDRETTA
Administrative Law Judge

Dated: August 20, 1991