

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

In the Matter of:

JOHN A. CONLEY, and affiliate
CRAIG STREET ASSOCIATES

Respondents.

HUDALJ 93-1926-DB
Decided: April 1, 1993

Anthony C. Mengine, Esq.
For the Respondents

Bryan Parks Saddler, Esq.
For the Department

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arose pursuant to 24 C.F.R. § 24.100 *et seq.* as result of an action taken by the Assistant Secretary for Housing-Federal Housing of the U.S. Department of Housing and Urban Development ("HUD") on August 18, 1992, proposing to debar John A. Conley ("Respondent Conley") and affiliate Craig Street Associates ("Respondent Craig Street Associates").¹ If debarred, Respondents would be prohibited from participating 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. HUD proposed to debar Respondents for a period of five years from the date of a Limited Denial of Participation ("LDP") issued against them on June 15, 1992.

This action taken by HUD is based on Respondent Conley's conviction for violation of 18 U.S.C. § 1951(a).

¹Respondent Conley and Respondent Craig Street Associates will be referred to collectively as "Respondents."

Respondents requested a hearing on the proposed debarment by a letter dated October 30, 1992.² Because the proposed action is based solely on a conviction, the hearing in this matter is limited under 24 C.F.R. § 24.313(b)(2)(ii) to submission of documentary evidence and written briefs. An Order dated November 23, 1992, established a schedule for filing briefs. In compliance with that schedule, HUD filed its brief on December 21, 1992; Respondents filed their Reply Brief on January 22, 1993; and HUD filed a Response on February 9, 1993. Pursuant to an Order issued on February 22, 1993, Respondents filed a Response to HUD's Reply Brief on March 12, 1993.

This matter is now ripe for decision.

Findings of Fact

1. At all times material Respondent Conley has been the president of Respondent Craig Street Associates, which is the owner of an apartment project called William Moorehead Tower. In his capacity as president of Respondent Craig Street Associates, Respondent Conley entered into covered transactions, i.e. Housing Assistance Payments contracts. HUD Br. at 4; HUD Ex. D.³

2. On or about November 1, 1991, Respondent Conley, on behalf of Respondent Craig Street Associates, entered into an agreement with Arbors Management, which gave all management powers over William Moorehead Tower to Arbors Management. Since that date Respondent Conley has not had any role in the operation of William Moorehead Tower. Resp. Br. at 6-7; Resp. Res. at 4; Resp. Ex. D. The record does not establish that any ownership interests were conveyed.

3. Respondent Conley is a ■■■ year old African-American who is ■■■■. He obtained a law degree, taught social work at the University of Pittsburgh for twenty-two years, and served as the President of the Pittsburgh School Board for ten years. Resp. Br. at 4 and 6.

4. On April 9, 1992, pursuant to Respondent Conley's plea of guilty to count one ("Count 1") of a two count indictment, Respondent Conley was found guilty and

² Respondents had apparently received the letter proposing their debarment on October 2, 1992.

³ HUD's brief will be referred to as "HUD Br." followed by a page number; HUD's exhibits will be referred to as "HUD Ex." followed by the exhibit letter or number; Respondents' reply will be referred to as "Resp. Br." followed by page number; Respondents' exhibits will be referred to as "Resp. Ex." followed by the exhibit letter or number; HUD's response will be referred to "HUD Res." followed by a page number; and Respondents' response will be referred to as "Resp. Res."

convicted of violating 18 U.S.C. § 1951 by the U.S. District Court For the District of Connecticut. HUD Br. at 1; HUD Ex. A; HUD Ex. B.⁴

5. Commencing on or about May 16, 1991, Respondent Conley and three co-conspirators⁵ conspired to obtain property from ██████████ Greenblatt by using force or threatening to use violence. HUD Ex. A, Count 1, Para. 2.

6. On August 11, 1991, Respondent Conley and his three co-conspirators travelled to ██████████ and met with Greenblatt and Respondent Conley threatened to have Greenblatt killed if he did not agree to pay \$350,000 to Respondent Conley. HUD Ex. A, Count 1, Para. 3.

7. On September 3, 1991, Respondent Conley telephoned Greenblatt and Respondent Conley repeated his threat to have Greenblatt killed. HUD Ex. A, Count 1, Para. 4.

8. Respondent Conley and his co-conspirators devised a plan wherein , under the direction of Respondent Conley, the co-conspirators travelled to ██████████ ██████████, and, on September 4, 1991, the co-conspirators used violence and fear to obtain the property of Greenblatt by attempting to set fire to a vehicle belonging to Greenblatt. HUD Ex. A, Count 1, Para. 5.

9. Pursuant to Respondent Conley's guilty plea to Count 1, a Judgement In A Criminal Case was entered on April 9, 1992, which found Respondent Conley Guilty of Count 1, involving violation of 18 U.S.C. § 11951(a), and imposed a sentence. HUD Ex. B.⁶

10. Respondent Conley was sentenced to imprisonment for a period of 24 months, was fined \$10,000, was ordered to pay the costs of his supervision, and a special assessment of \$50. HUD Ex. B.

⁴ Count two of the indictment was dismissed. HUD Ex. B.

⁵ The three co-conspirators were ██████████ Kahn, ██████████ Sanders, and ██████████ Shakir, a/k/a/ ██████████ Cicero. HUD Ex. A, Count 1.

⁶ Respondent Conley, although admitting the violation of 18 U.S.C. § 1951(a), argues that he did not stipulate to the facts set forth in count 1 of the indictment. Resp. Br. at 2. Then although he admits certain allegations of the indictment, he contends he never personally threatened Greenblatt, and Respondent Conley states he had no knowledge of the September 4, 1991 events when the co-conspirators used violence to obtain property from Greenblatt. Resp. Br at 2-3. Respondent Conley's arguments are rejected. Respondent Conley pleaded guilty to count 1; he did not plead *no lo contendere* or no contest. Based on Respondent Conley's guilt plea with respect to count 1 of the indictment, he was found guilty of count 1. HUD Ex. B. He cannot now collaterally attack the conviction and the underlying facts set forth in count 1 of the indictment upon which the conviction was based. *Cf. In the Matter of William F. McDevitt*, HUDALJ 86-1078-DB (November 26, 1986).

Discussion and Conclusions of Law

1. Respondents are subject to Debarment Under 24 C.F.R. Part 24

Respondent Conley is subject to debarment because, in his capacity as president of Craig Street Associates, he has entered into Housing Assistant Payments contracts and is, therefore, considered a "participant" and "principal" in "covered transactions". 24 C.F.R. § 24.105(m) and (p); and 24 C.F.R. § 24.110(a)(1). *See also John Orr*, HUDALJ 92-1861-DB (November 18, 1992).

Respondent Craig Street Associates is an "affiliate" of Respondent Conley within the meaning of 24 C.F.R. § 24.105(b) because Respondent Conley is its president, and that title indicates Respondent Conley has the power to control Respondent Craig Street Associates. A debarment action may include any specifically named affiliate of a participant. 24 C.F.R. § 24.325(a)(2). Accordingly, Respondent Craig Street Associates is subject to debarment.

2. Respondent's Conviction Constitutes Cause For Debarment

Pursuant to HUD's regulations, debarment may be imposed for the following causes:

(a) Conviction of or civil judgement for:

* * *

(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.

24 C.F.R. § 24.305(a)(4)).

HUD regulations provide that cause for debarment must be established by a preponderance of the evidence, a standard met by proof of conviction. 24 C.F.R. § 24.313(b)(3).

Respondent Conley entered a plea of "Guilty", and was accordingly adjudged guilty, of violating 18 U.S.C § 1951(a). This judgement was entered in the U.S. District Court for the District of Connecticut. Respondent Conley was convicted of unlawfully, willfully and knowingly conspiring to obstruct, delay and affect commerce by extortion. This conviction demonstrates a lack of integrity and prudent business judgement that seriously and directly affects his present responsibility under 24 C.F.R. § 24.305(a)(4) and is cause for debarment.

In light of the foregoing, I conclude HUD has satisfied its burden of establishing that cause for debarment of Respondent exists under 24 C.F.R. § 24.305(a)(4) and § 24.313(b)(3).

3. A Five Year Period of Debarment is Warranted

The existence of cause does not necessarily require that a respondent be debarred. Debarment is a discretionary action and it must be determined whether a respondent's conduct is serious, whether debarment is necessary to protect the public interest, and whether there are mitigating factors. See 24 C.F.R. § 24.115(a), (b), and (d). The respondent has the burden of proof for establishing mitigating circumstances. *Id.* at § 24.313(b)(4). The period of debarment must be commensurate with the seriousness of the cause(s) and, if suspension precedes debarment, the suspension period shall be considered in determining the debarment period. *Id.* at § 24.320(a). The period of debarment for causes such as those present in this case generally should not exceed three years. *Id.* at § 24.320(a)(1).

The debarment process is not intended as a punishment, rather, it protects governmental interests not safeguarded by other laws. *Id.* at § 24.115(b); See also *Joseph Constr. v. Veterans Admin.*, 595 F. Supp. 448, 452 (N.D. Ill. 1984). These governmental and public interests are safeguarded by precluding persons who are not "responsible" from conducting business with the Federal Government. See 24 C.F.R. § 24.115(a).

"Responsibility" is a term of art which encompasses business integrity and honesty. *Id.* at § 24.304; see also *Gonzalez v. Freeman*, 334 F.2d 570, 573 & n.4, 576-77 (D.C. Cir. 1964). Determining "responsibility" requires an assessment of the risk that the government will be injured in the future by doing business with a respondent. See *Shane Meat co. v. U.S. Dep't of Defense*, 800 F. 2d 334, 338 (3rd Cir. 1986). That assessment may be based on past acts, including a previous criminal conviction. See *Agan v. Pierce*, 576 F. Supp. 257, 261 (N.D. Ga. 1983); *Delta Rocky Mountain Petroleum Inc. v. U.S. Dep't of Defense*, 726 F. Supp. 278 (D. Colo. 1989).

Because the type of conduct engaged in by Respondent Conley, which is the cause of his proposed debarment, justifies a period of debarment that generally should not exceed three years, 24 C.F.R. § 24.320(a)(1), HUD has the burden of proving Respondent Conley's conduct was such as to justify increasing the standard three year debarment period and Respondent Conley has the burden of establishing sufficient mitigating circumstances to justify shortening the three year debarment period.

HUD argues that the gravity of Respondent Conley's misconduct justifies a five year debarment. HUD Br. at 8; HUD Res. at 2.

Respondents argue that the debarment period should be shortened because Respondent Conley has many personal achievements, has made many contributions to

society and has inspired many young people. Respondents point out that, in addition to his service on the Pittsburgh School Board, Respondent Conley engaged in the development of housing for the elderly handicapped. He also organized a variety of non-profit companies in furtherance of charitable goals. Resp. Br. at 4-5. Respondents also point out that Respondent Conley relinquished management of William Moorehead Tower and fully cooperated with the government in its investigation and obtaining a conviction in the criminal proceeding and that this was Respondent Conley's first criminal conviction. Resp. Br. at 7-8.

In support of the argument for shortening the debarment period Respondents submitted a letter from [REDACTED] Walker, Executive Officer, for the Pittsburgh Public Schools, who praises Respondent Conley's community service and service to the public schools. Walker stated, with respect to Respondent Conley,

His trustworthiness is unquestionable. He has a reputation for keeping and carrying out his word. I feel certain that in the future this pattern that he has established for a lifetime will prevail in any type of contractual, monetary, and any acts of confidence that the opportunity presents, which includes dealing with government monetary situations.

Resp. Ex. A.

Respondent Conley also points to the Sentencing Hearing in which Judge Alan J. Nevas departed from the federal sentencing guidelines and reduced Respondent Conley's sentence to twenty-four months. Judge Nevas relied upon Respondent Conley's accomplishments, achievements, and public record. Resp. Ex. C.

Respondents also rely on *In the Matter of James E. McFredrick*, HUDBCA 92-6-7585-D52 (October 7, 1992), arguing that in an extortion conviction case a three year debarment was imposed. HUD Br. at 5.

HUD argues that Respondent Conley's race, age and handicap are irrelevant in determining the appropriate period for debarment. HUD also argues that Respondent Conley's laudatory letters and past public achievements fail to shed light on Respondent Conley's business practices. See *In the Matter of Charles Lindberg George*, HUDALJ 92-1769-DB (July 28, 1992).

In the subject case I find that Respondent Conley's race, age and handicap are irrelevant in determining the appropriate period of debarment. I do find that Respondent Conley's achievements and public record are impressive and were so recognized by Judge Nevas. Similarly the letters submitted on his behalf, Resp. Ex. A and Resp. Ex. B, do have bearing upon Respondent Conley's honesty and integrity.

Although Respondent Conley cooperated with the government in its investigation and obtaining a conviction, Resp. Br. 7, there is no showing at precisely what stage in the proceeding Respondent Conley started cooperating. It might very well have been after Respondent Conley was apprehended. HUD Resp. at 3-4. I find Respondent Conley's cooperation with the authorities in the criminal matter is not persuasive with respect to shortening the debarment period.

When I balance Respondent Conley's achievements and public record against the nature of the conduct that led to his conviction, I am constrained to feel a five year period of debarment is appropriate. Respondent Conley engaged in extortion to obtain property by threatening death and resorting to physical violence. This threat of death and the use of violence demonstrate a basic lack of honesty and integrity. Respondent Conley's criminal conduct, even when balanced against the mitigating factors he produced, are so egregious as to raise grave doubts as to his responsibility. *See In the Matter of John Orr*, HUDALJ 92-1861-DB (November 10, 1992). Respondents' reliance upon *In the matter of James E. McFrederick*, HUDBCA 92-6-7585-D52 (October 7, 1992), to support a shorter debarment period is misplaced. That case found a three year debarment period was appropriate for a person convicted of extortion, but the extortion did not involve threats of bodily harm or the use of violence and HUD only proposed a three year debarment period.

Accordingly, in order to protect the public interest, a five year period of debarment is appropriate and necessary in order to permit Respondent Conley to demonstrate "responsibility".

Conclusion and Determination

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that cause exists to debar John A. Conley and affiliate Craig Street associates from participation in primary covered transactions and lower-tier transactions as either principals or participants at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts with HUD for a five year period from the date of their suspension on June 15, 1992.



SAMUEL A. CHAITOVITZ
Administrative Law Judge