

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

In the Matter of:

DAVID F. GRACIANO,

Respondent.

HUDALJ 95-5069-DB
Decided: March 20, 1996

Steven A. Allen, Esquire
For the Respondents

Walter E. Warren, Esquire
For the Government

Before: Robert A. Andretta
Administrative Law Judge

SECOND INITIAL DETERMINATION

Amending Initial Determination of February 28, 1996

On February 28, 1996, I issued the Initial Determination in this case, in which I concluded that good cause exists to debar David F. Graciano from participating in covered transactions as a participant or 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 July 6, 1995. I also concluded that good cause existed to suspend Respondent from engaging in such activities during the pendency of this debarment proceeding. July 6, 1995, is the date of the letter from HUD's General Deputy Assistant Secretary that notified Respondent that consideration was being given to debarring him for three years and that he was immediately suspended pending the outcome of this proceeding.

On February 28, 1996, Respondent filed a Motion To Amend Period Of Debarment. Respondent argues that the date on which the period of debarment begins should be earlier than July 6, 1995. He proposes that the three-year period should commence on either April 17, 1995, the date on which he was originally suspended, or February 13, 1995, the date on which his limited denial of participation (LDP) was issued.¹

Respondent argues that he began serving the functional equivalent of a full debarment from participation in programs throughout the executive branch of the federal government and from procurement contracts with HUD on April 17, 1995. Since the same grounds supported HUD's request for debarment and suspension of April 17, 1995, Respondent argues that the period of debarment should relate back, at a minimum, to the date of suspension.

He further argues that consideration should be given to relating the period of debarment back to the commencement date of the LDP, February 13, 1995. He argues that the LDP was the functional equivalent of a debarment within the jurisdiction of the Baltimore field office, which includes all of the state of Maryland except Montgomery and Prince George's Counties.

On March 13, 1996, the government filed its Partial Opposition To Motion To Amend Period Of Debarment. Its position is that it does not oppose commencing the three-year period of debarment on April 17, 1995, the date of the letter of notice of the first suspension. It does, however, oppose commencing the three-year period on the earlier date of February 13, 1995, the date of the LDP.

Discussion

The record in this case shows that Respondent's company was headquartered in Pittsburgh, Pennsylvania, and that he was convicted for criminal acts associated with the company that were carried out in Pennsylvania, Maryland and Florida. There is a strong implication that such acts were also carried out in additional states. Respondent has been active in business well outside of the three named states, including marketing, or attempting to market, his services as far from his headquarters as Los Angeles, California.

¹ See Initial Determination, pp. 1-2.


An LDP from HUD programs cannot be taken as the equivalent of a nationwide debarment from participation in all federal programs and procurement. The LDP in this case was simply not the same sanction as the debarment, and it did not have effect on the multi-state business of the Respondent to the same extent as the debarment and suspension. Thus, the LDP did not protect the public interest in all the areas in which Respondent did business. Clearly, HUD and other federal programs in Prince George's and Montgomery Counties in Maryland, in Pennsylvania, Florida and California, and perhaps in other jurisdictions in which Graciano did business, remained at risk during the effective period of the LDP.

In contrast, the suspension that was commenced on April 17, 1995, was effective throughout the executive branch of the federal government and in all jurisdictions. The department has therefore stated that it does not oppose commencing the three-year period of debarment on this date. Moreover, it is common practice in debarment cases to uphold the period of debarment commencing with the related suspension, and no reason has been shown in this case to vary from that practice.

Conclusion and Determination

I conclude and determine that the Initial Determination in this case, issued on February 28, 1996, should be and is hereby amended at page 11, to indicate that good cause exists to debar David F. Graciano from participating in covered transactions as a participant or principle 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 commencing April 17, 1995. The remainder of the Initial Determination is unchanged.

This Second Initial Determination and the Initial Determination that it amends, as amended, are final unless one of the parties, within 15 days of receipt of this Second Initial Determination, appeals to the Secretary, and the Secretary or his designee, within forty days of the filing of any such appeal, commences a review in accordance with the regulation that is codified at 24 CFR 26.25. *See* 24 CFR 26.24(f).


ROBERT A. ANDRETTA
Administrative Law Judge