

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
Washington, D. C.

---

In the Matter of:

JULIUS A. REED  
d/b/a/ Chick Reed  
Demolition Company,

Appellant

---

:  
:  
: Docket No. 78-298-D37  
: (No. 75-351-DB)  
:  
:  
:  
:  
:

Randolph D. Phifer, Esquire  
400 Renaissance Center  
Suite 3300  
Detroit, Michigan 48243

For the Appellant

Gerald S. Robinson, Esquire  
Office of General Counsel  
Department of Housing and  
Urban Development  
Washington, D. C. 20410

For the Government

DETERMINATION  
Statement of the Case

On September 3, 1975, Appellant was suspended from participation in programs of the Department of Housing and Urban Development for failure to fulfill specifications in purchase orders for demolition of certain properties. The suspension was upheld after a hearing and a Final Determination by the Secretary. Thereafter, Appellant pleaded guilty to a charge of violation of 18 U.S.C. §1012, and on August 15, 1977, HUD informed appellant of its intent to debar him from participation in Departmental programs based on his plea. Appellant failed to request a hearing on the proposed debarment, and a Final Determination was subsequently issued that debarred him from

May 26, 1976 until May 25, 1979. On March 16, 1978, Appellant's attorney filed a request for reinstatement pursuant to 24 C.F.R. §24.11(c). A hearing was held in Detroit, Michigan on August 18, 1978 to determine whether Appellant's debarment should be terminated.

#### APPLICABLE REGULATIONS

The regulation applicable to reinstatement provides in pertinent part:

24.11(c). Grounds. Except as otherwise provided by statute, a party may be reinstated subject to this §24.11 upon the submission of an application, supported by documentary evidence, setting forth appropriate grounds for the granting of relief such as newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which the debarment was imposed.

#### Findings of Fact

The purpose of debarment is to assure the Government that "awards be made only to responsible contractors..." and "shall be used for the purpose of protecting the public and...not for punitive purposes." 24 CFR §24.0, 24.5(a). The test for debarment is present responsibility but a prior performance failure may be grounds for a present finding of non-responsibility. Schlesinger v. Gates, 249 F. 2d 111 (D.C. Cir. 1957), 37 Comp. Gen. 756 (1958). One of the grounds for debarment is conviction for commission of a criminal offense. 24 CFR 24.6(a)(1).

Reinstatement, as set forth in the regulation, is a form of reconsideration, based on evidence that either the causes for debarment have been eliminated or the facts on which the debarment determination were based have either changed through correction of error or were false. As written, it is not a vehicle designed to accommodate a repentant contractor.

Appellant admits that no newly discovered material evidence exists to warrant reconsideration of the debarment determination (Transcript of Hearing, at 32). Likewise, there has been no reversal of his conviction and Appellant does not contend that a bona fide change of ownership or management of Chick Reed Demolition Company has occurred. Rather, Appellant rests his case for reinstatement on the contentions that a) he is now a responsible contractor who understands what he did wrong, and therefore a continuation of his debarment is not in the interest of the government or the public, and b) he has attempted to correct the deficiencies of his performance but has been prevented from doing so by HUD officials, who will not permit him to return to the properties until the expiration of his debarment.

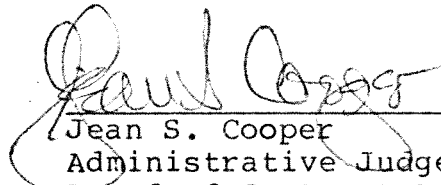
The cause of Appellant's debarment was conviction for violation of 18 U.S.C. §1012. Appellant pleaded guilty to intent to defraud HUD by knowingly receiving payment for demolition of a property under a HUD purchase order that was in excess of the amount owed him. (Joint Exhibit 6). It appears that the fraud charge arose out of the improper demolition of properties which was the basis for Appellant's suspension. However, although the suspension and debarment may be based on a common set of underlying facts, the ground for each action was different.

Appellant contends he would eliminate the cause for his debarment if he were permitted to correct the demolition deficiencies that were the subject of his suspension. First of all, it is questionable whether this could be accomplished in light of the fact that the hearing officer found "almost an entire house is buried..." on two of the sites. (Initial Determination of Michael F. Burke, dated February 18, 1976, at 5). Second, the acts in question occurred over three years ago. At this point, no restitution or correction of work deficiencies, even if possible, could eliminate either the monetary loss or cost of administration of the reclamation program to HUD. The economic impact on the Government and public is not just actual loss of funds but cost to the public of conducting a program. Preuit v. U.S., 382 F. 2d 277 (9th Cir. 1967); U.S. v. Markham, 537 F. 2d 187 (5th Cir. 1976). Third, the debarment is based on conviction of fraud, not improper demolition of properties. It is doubtful that correction of work site deficiencies would extend to expunge the fraud so as to bring appellant within the language of §24.11(c). I find it would not.

The reinstatement provision is narrowly drafted to correct errors of fact and law that formed the framework for a debarment determination. It does not provide for a form of "parole" in which personal rehabilitation is ground for reinstatement. While it may well benefit the government to take into consideration such a factor, the HUD regulation is not so written. The jurisdiction of the hearing officer is delimited by the language of the regulation. Despite Appellant's compelling argument that he no longer poses a business risk to the government because he is now a responsible contractor, the regulatory provision for reinstatement does not encompass such a ground for reinstatement when the ground for debarment is not lack of responsibility, but fraud. The debarment must, therefore, stand.

DETERMINATION

For the foregoing reasons, Appellant's request for reinstatement is DENIED.

  
\_\_\_\_\_  
Jean S. Cooper  
Administrative Judge  
Board of Contract Appeals

Issued at  
Washington, D. C.  
October 23, 1978