

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
BOARD OF CONTRACT APPEALS
WASHINGTON, D. C.

In the Matter of:

ALONZO GUY STRAIN d/b/a
AL STRAIN & COMPANY,

Appellants

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HUDBCA No. 79-360-D16
(Activity No. 79-624-DB)

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For the Appellant

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For the Government

DETERMINATION

Statement of the Case

By letter dated November 13, 1978, Alonzo Guy Strain, "Appellant" herein, was notified by the Department of Housing and Urban Development that it intended to debar him, Al Strain & Company, and his affiliates, for a period of five years pursuant to 24 C.F.R., Part 24, based on the conviction of Appellant on twenty counts of alleged violations of 18 U.S.C. §1012, 2, and 641. Appellant was temporarily suspended pending determination of debarment. The notification letter informed Appellant that he had ten days from receipt of notification to request a hearing pursuant to 24 C.F.R. §24.7 and §24.5 (c)(2). (Government Exhibit A).

A letter dated December 12, 1978, received on December 21, 1978 by HUD, from Appellant's attorney was treated as a request for hearing by HUD (Gov't. Ex. C). The Government waived the 10-day time limitation for requesting a hearing (Government Brief, at 1). Thereafter, by letter dated January 8, 1979, Appellant's attorney wrote HUD, stating that the letter of December 12, 1978 was not a formal request for hearing. Rather, it was intended to convince the Assistant Secretary for Housing that a five-year period of debarment was too harsh and unnecessary due to mitigating circumstances outlined in the December 12, 1978 letter. (Gov't. Ex. E). The matter was referred for hearing on a written record before Administrative Judge B. Paul Cotter, Jr.^{1/}

Judge Cotter acknowledged the docketing of the case by letter dated January 16, 1979. He ordered the Government to file a brief and documentation in support of its position by February 20, 1979 and Appellant to file same by March 27, 1979. (Gov't. Ex. D). Briefs and documentary evidence were filed on behalf of both Appellant and the Government. On April 20, 1980, the case was reassigned to Administrative Judge Jean S. Cooper. This determination is based on the written record as established by Appellant and the Government.

Applicable Regulation

The departmental regulation applicable to debarment, 24 C.F.R., Part 24, provides in pertinent part as follows:

§24.4 Definitions ... (f) "Contractors or grantees." Individuals ... and public or private organizations that are direct recipients of HUD funds or that receive HUD funds indirectly through non-Federal sources ...

* * *

§24.6 Causes and conditions applicable to determination of debarment. Subject to the following conditions, the Department may debar a contractor or grantee in the public interest for any of the following causes:

(a) Causes. (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.

^{1/} In cases of proposed debarment based on a criminal conviction, a hearing is limited by regulation to submission of briefs and documentary evidence on a written record. 24 C.F.R. §24.5 (c)(2).

(6) Making or procuring to be made any false statement for the purpose of influencing in any way the action of the Department.

(9) ... conviction for the commission of the offense of embezzlement, theft, forgery, bribery, falsification or destruction of records, ... or conviction for any other offense indicating a lack of business integrity or honesty, which seriously and directly affects the question of present responsibility.

Findings of Fact

On November 29, 1972, Alonzo Guy Strain, doing business as Al Strain & Company, entered into Broker's Management Contract No. [REDACTED] with the Department of Housing and Urban Development to provide management services for Prince Hal Valley Apartments, which were owned by HUD (Gov't. Ex. H). Management services included collecting rents, collecting and maintaining tenant deposit accounts, making monthly accounting reports to HUD, and obtaining or providing services necessary for the maintenance and management of the project. Appellant received monthly payment for performing these contractual services. (Gov't. Ex. H).

Between February 8, 1975 and May 8, 1976, Al Strain & Company filed monthly reports with HUD relating to the Prince Hal Village Apartments, signed by Appellant (Govt. Ex. A, G, F, and B). The FHA forms titled "Broker's Summary Account" and "Cash Reconciliation" filed each month by Appellant contained false information as to "Collections Reported but not Deposited." (Gov't Ex. B, F, G). He claims that when he discovered that his employees were stealing rental collections and covering up the embezzled funds with false reports to HUD, he requested that an audit be performed by the local HUD insuring office (App. Ex. A). Appellant had been relying on his employees who were responsible for keeping the company records. (App. Ex. A and B).

The on-site manager for Prince Hal Apartments was Esther Jackson, who later pleaded guilty to charges of embezzlement. Esther Jackson prepared checks to pay the invoices of regular vendors but withheld the checks and subtracted the check amounts from the monthly accounting reports filed with HUD. She also substituted her personal checks for cash collected. Three other employees of Appellant, Robert H. Dixon, Earl Pendarvis, and Joyce Bivens were also embezzling project funds but later repaid HUD some of the stolen money. (App. Ex. A). Appellant presented evidence that he aided the Government in attempting to collect the stolen funds from his employees (App. Ex. D).

On February 1, 1978, Appellant was indicted on twenty counts of alleged violations of 18 U.S.C. §1012, 2, and 641 (Gov't. Ex. F). Esther Jackson was indicted on five counts of alleged violations of the same statutes (Gov't. Ex. F). Jackson entered a plea of guilty and testified against Appellant at his trial. On June 20, 1978, Appellant was found guilty on all twenty counts of the indictment. He was sentenced to 60 days service at Volunteers of America, fined \$5,000, put on probation for five years, and ordered to attend group counselling sessions under the direction of a U. S. Probation Officer. (Gov't. Ex. B). Appellant's real estate license was suspended for 30 days by the Texas Real Estate Commission (App. Ex. C). At present, he is a licensed real estate broker and is self-employed. He submitted numerous letters of business character reference on his behalf.

The Government contends that \$15,634.27 in embezzled funds have still not been repaid. The Government seeks a five-year period of debarment and some repayment by Appellant of the embezzled funds.

Discussion

Debarment is not a penalty but a sanction to protect the Government and the public from doing business with contractors and grantees who are not responsible. 24 C.F.R. §24.0, 24.5. Appellants are clearly "contractors or grantees" within the meaning of the regulation applicable to debarment because they are area management brokers who received HUD funds for performance of a HUD contract. 24 C.F.R. §24.4 (f). The term "responsible" as applied to contractors has been defined to include integrity and honesty of a contractor as well as the ability to perform a contract. 34 Comp. Gen. 86 (1954); 49 Comp. Gen. 132 (1969). The test for debarment is present responsibility, although a finding of present lack of responsibility may be based on past acts. Schlesinger v. Gates, 249 F.2d. 111 (D. C. Cir. 1957).

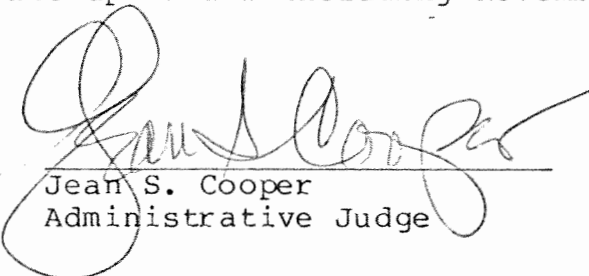
The debarment regulation provides that conviction for the criminal offenses of embezzlement, theft, and falsification of records are grounds for debarment, per se, 24 C.F.R. §24.6 (a)(9). Appellant was convicted on twenty counts of theft, embezzlement, and falsification of records, which are most serious business crimes. Although he has offered evidence that he attempted to recoup the stolen money from his employees, Appellant's contention that he was an innocent victim of dishonest employees is refuted by the twenty-count conviction. More significantly, Appellant has not yet repaid the \$15,634.27 still missing as a result of embezzlement. As the owner of Al Strain & Company, he has a responsibility to reimburse the

Government for the theft, whether or not he was a party to it, because he was responsible for the the acts of his company. The unpaid debt of Al Strain & Company to HUD is present and clear evidence that Appellant is not a responsible contractor. The fact that the debt arose out of criminal activity of the basest nature is serious and compelling evidence of past and present lack of business integrity. The character references submitted by Appellant in no way overcome the evidence of present lack of responsibility.

I therefore find that Appellant and Al Strain & Company are not responsible contractors and a period of debarment is warranted to protect the interests of the Government and the public. Appellant has been suspended from departmental programs since November 13, 1978. The Department has proposed a five-year period of debarment. Appellant will be given credit for the eighteen-month suspension already served. A period of debarment from this date up to and including November 13, 1983 is appropriate in light of all of the evidence in this case.

CONCLUSION

For the foregoing reasons and based on the record considered as a whole, Appellant and Al Strain & Company shall be debarred from all programs of the Department of Housing and Urban Development from this date up to and including November 13, 1983.



Jean S. Cooper
Administrative Judge

Issued at Washington, D. C.
June 4, 1980