

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

---

In the Matter of:

ALBERT DEMETER, JR. and  
DEMETER CONSTRUCTION COMPANY

APPELLANT

---

:  
:  
:  
: HUDBCA No. 79-372-D25  
: (Activity No. 79-635-DB)  
:  
:  
:

George J. Koelzer, Esquire  
Evans, Koelzer, Marriott,  
Osborne & Kreizman, P.C.  
One Harding Road  
P. O. Box BB  
Red Bank, New Jersey 07701

For the Appellant

Robert C. Anderson, Esquire  
HUD Office of General Counsel  
Department of Housing and  
Urban Development  
Washington, D. C. 20410

For the Government

DETERMINATION

Statement of the Case

By letter dated January 15, 1979, Albert Demeter, Jr., "Appellant" herein, was notified by the Department of Housing and Urban Development that it intended to debar him for a period of five years, based on conviction for violation of 18 U.S.C. §371 (Government Exhibit A). Pending final determination on the proposed debarment, Appellant was suspended from participating in HUD programs. Appellant filed a timely request for a hearing on the proposed debarment pursuant to 24 C.F.R. §24.7 and 24.5(c)(2).

In cases of debarment based on a criminal conviction, hearings are limited to submission of written briefs and documentary evidence. 24 C.F.R. §24.5(c)(2). Parties were ordered to file such submissions on or before April 6, 1979.

The Government timely filed a brief and documentary evidence in support of its position but Appellant failed to respond to the order on submissions. Thereafter, on November 19, 1979, Administrative Judge B. Paul Cotter, Jr. issued an order directing Appellant to file a brief by December 10, 1979. Appellant filed a brief and documentary evidence, dated December 7, 1979, and received by the Board of Contract Appeals on December 11, 1979. The appeal was reassigned to the undersigned hearing officer on April 14, 1980.

This decision is based on the record as submitted by the Government and Appellant.

#### 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 ... that are direct recipients of HUD funds or that receive HUD funds indirectly through non-Federal sources including, but not limited to, ... area management brokers ... or those in a business relationship with such recipients ....

\* \* \*

§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.

#### Findings of Fact

At the time of the offense on which the proposed debarment is based, Appellant was a building contractor doing business as Demeter Construction Company in Monmouth County, New Jersey. A significant element of that business was the maintenance, repair and rehabilitation of HUD-owned properties through HUD Area Management Broker contracts (Gov't. Ex. B). The record establishes that Appellant is the principal owner of Demeter Construction Company and controls its operations.

Appellant was awarded contracts by HUD Area Management Broker (AMB) Melvin Kronengold through his company, M. Krone Associates, Inc., to perform repairs and other services on at least 86 HUD-owned properties (Gov't. Ex. C). Kronengold was the HUD Area Management Broker for Monmouth County, New Jersey (Gov't. Ex. C). Between August 1964 and August 1976, Kronengold collected kickbacks of at least 10% on every rehabilitation contract he awarded Appellant as a condition of accepting Appellant's bids (Gov't. Ex. C). Appellant also conspired and colluded with Kronengold to inflate the price of the contract amounts to the level of the next lowest bid and split the proceeds of the inflated bid prices with Kronengold. Appellant also induced other contractors to pay such kickbacks to Kronengold and to do personal favors for Kronengold in exchange for awards of HUD AMB contracts (Gov't. Ex. C).

In 1977, Appellant was indicted on eighteen counts of violations of the United States Code, including a charge of conspiring to defraud HUD by participating in the kickback and collusion scheme with Kronengold (Gov't. Ex. C). On November 30, 1977, Appellant entered a plea of guilty to Count 1 of the indictment, charging him with violation of 18 U.S.C. §371. He was fined \$1,000 and placed on probation for two years without supervision (Gov't. Ex. E). He agreed to cooperate with the United States Attorney in investigating and prosecuting others involved in the conspiracy (App. Ex. #1, Letter from Assistant U.S. Attorney James A. Plaisted, dated November 10, 1978.)

Appellant contends that he was an honest contractor doing good work for HUD but he was "shaken down" by Kronengold as the price for obtaining HUD AMB contracts. He states that this is the only fraud against HUD in which he participated and that he has been punished for it enough. Appellant's brief characterizes the twelve-year conspiracy to defraud HUD as "one transgression" (App. Brief at 2). He also submitted letters of character reference which make no mention of Appellant's criminal conduct.

#### Discussion

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 ..." 24 C.F.R. §24.0, 24.5(a). "Responsibility" is a term of art in public contract law. A responsible contractor is defined as one having honesty and integrity as well as the ability to

perform a contract, 34 Comp. Gen. 86 (1954); 39 Comp. Gen. 468 (1959); 49 Comp. Gen. 139 (1969). Appellant is clearly a "contractor or grantee" within the meaning of the regulation because he was an individual receiving HUD funds indirectly through an area management broker with whom he was in a business relationship. 24 C.F.R. §24.4(f).

Appellant has argued that the only reason he participated in this conspiracy of corruption was because Kronengold "shook him down." Appellant played a key role in Kronengold's scheme to defraud HUD over a twelve-year period. Not only did he pay kickbacks in exchange for awards of HUD contracts but he indulged in collusive bidding and the solicitation of other contractors to participate in this corrupt and fraudulent system. Contract amounts were artificially inflated at great cost to HUD and the public. For twelve years, Appellant was unjustly enriched at public expense. His career as a HUD contractor has been fraught with corruption at almost every level of the bidding and award process. Therefore, Appellant's contention that he is being unduly punished for "one transgression" is wholly without merit and shows a callousness to the need for preserving the integrity of public contracts.

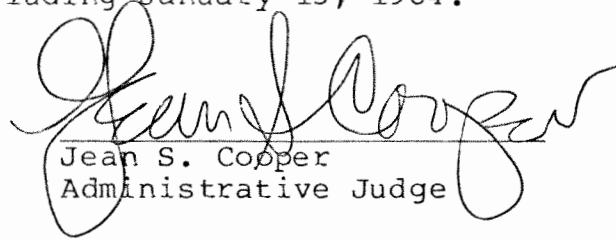
I find that the Government has established that Appellant is not a responsible contractor within the meaning of the regulation. The acts for which he was convicted show a total lack of honesty and integrity on the part of Appellant. The test for debarment is present responsibility but past acts can be the basis for a finding of present lack of responsibility. Schlesinger v. Gates, 249 F.2d 111 (D.C. Cir. 1957). Criminal activity, particularly on the scale and duration of Appellant's participation, is inimical to the concept of responsibility. I therefore find that a period of debarment is warranted in the public interest.

Debarment is not a penalty. It is a remedy in the nature of a sanction to assist the Government in effectively executing its statutory obligations. It is to be applied in the public interest. Gonzalez v. Freeman, 344 F.2d 570 (D.C. Cir. 1964). Appellant has been temporarily suspended based on his conviction since January 15, 1979. A temporary suspension pending resolution of a debarment action based on a criminal conviction is expressly authorized by regulation. 24 C.F.R. §24.13(c). The public and the Government have effectively been protected from Appellant for sixteen months and I therefore consider it appropriate to credit Appellant with the time he has been suspended in determining an appropriate period of debarment.

A five-year period of suspension and debarment is certainly warranted in the instant case because of the very serious nature of Appellant's lack of responsibility. I find that a period of debarment from this date up to and including January 15, 1984 is necessary to protect the best interests of the Government and the public.

CONCLUSION

For the foregoing reasons and based on the record considered as a whole, it is in the best interests of the Government and the public that Appellant and his affiliate, Demeter Construction Company, be debarred from participation in all programs of the Department of Housing and Urban Development from this date up to and including January 15, 1984.

  
Jean S. Copper  
Administrative Judge

Issued at Washington, D. C.  
April 17, 1980