

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

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In the Matter of:	:	
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EDWARD LOUIS CHARLES,	:	HUDBCA No. 79-378-D29
	:	(Activity No. 79-640-DB)
Appellant	:	
	:	

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Appearances:

For the Appellant :	Edward L. Charles, <u>Pro se</u>
For the Government:	Marylea W. Byrd, Esquire

DETERMINATION

By letter dated September 27, 1978, the Assistant Secretary for Housing suspended Edward Louis Charles (hereinafter "appellant" or "Charles") from participating in Department ("HUD") programs pursuant to 24 C.F.R. Part 24 (1979), the HUD regulation governing the debarment and suspension of contractors. The suspension was based upon an indictment returned in the United States District Court for the Central District of California of an indictment charging appellant with violations of 18 U.S.C. §2(b), 1001 and 1010 (1970).

Thereafter, by letter dated January 15, 1979, the Assistant Secretary for Housing informed Charles that based on his April 24, 1978 conviction, the Assistant Secretary was proposing to debar Charles from participating in HUD programs for five years. Charles filed a timely appeal from the proposed debarment.

On April 30, 1979, the Government filed a Motion for Oral Hearing under the regulation governing suspension and debarment, 24 C.F.R. Part 24 (1979). Hearing on a debarment based on an indictment or conviction is limited to written submissions by section 24.5(c) of the regulation. The Government's motion reported that Charles' conviction was based on transactions with the Veterans Administration and that his conduct and transactions with this Department did not result in a criminal conviction. Consequently, the motion was granted and a hearing was held in Los Angeles, California.

#### Findings of Fact

The September, 1977 grand jury for the United States District Court for the Central District of California returned an indictment against appellant in Criminal Number 78-0112 charging in 20 counts that Charles had made false statements to both the Veterans Administration and HUD in violation of 18 U.S.C. 2(b), 1001 and 1010. (Government Exhibit No. 5). On April 24, 1978, Charles appeared with counsel and plead guilty to making false statements to the Veterans Administration as charged in Counts Seven, Eight, and Nine of the indictment. Appellant was convicted on his plea, given a suspended sentence, and placed on probation for a period of three years. As a special condition of his probation, appellant was ordered to perform public service for a period of 12 hours each month. (Government Exhibit No. 6).

At the hearing the Government presented evidence that appellant had submitted false information to HUD concerning the application of [REDACTED] Landin for FHA mortgage insurance. The information was contained in a Request for Verification of Employment and an application for mortgagor approval and commitment for mortgage insurance under section 221(d)(2) of the National Housing Act (FHA Form No. 2900-1, Rev. 10/71). (Government Exhibits Nos. 1 and 2). The Government also submitted evidence that false information had been submitted to HUD in connection with the application of [REDACTED] Garcia for FHA insurance. Again, the information was contained in a request for verification of employment for [REDACTED] Garcia and a mortgagee application for mortgagor approval and commitment for mortgage insurance under the National Housing Act. (Government Exhibits Nos. 3 and 4). An FBI agent testified for the Government that he interviewed the people involved, all of whom said that they did not know where the information in the forms originated. (Tr. pages 9-12). The agent further testified that all parties involved in the

document containing the false information dealt only with appellant and that the agent had found that six properties involving the appellant "were either sold by the Veterans Administration or purchased with FHA insurance loans ...." (Tr. 20).

At the time these transactions took place from December 1973 through March 1975, appellant was employed by Williams Realty as a real estate salesman. The agent testified that the purchasers involved stated that they were asked to sign the forms in question in blank. (Tr. 23-24).

Appellant testified that it was his employer, Mr. Williams, who had the papers signed and charged that Williams put up money necessary to purchase the properties. However, appellant admitted that he was aware of the false information submitted to HUD on the job verifications and that he knew of the practice from the time he started in the real estate business in 1973. (Tr. 26).

Charles testified that he never had any contact with the law in similar circumstances nor that as of June 12, 1979, had California taken away his real estate license. Appellant was involved in civic activities as Second Vice President of the Pacoima Chamber of Commerce and as a member of the Board of Directors of the Pacoima Property Owners Association (Tr. 30-31).

On cross-examination appellant testified that he had worked in the real estate business for approximately 8 to 10 years and was experienced in the requirements of both the Veterans Administration and the FHA. However, he claimed that the purchasers involved were his employer's clients and that he was the listing sales person (Tr. 32-33). Nevertheless, he admitted that "something ... was going on ... and I participated in it ...." and that he never advised anyone of the requirements of the governing regulations with which he was familiar. Charles also acknowledged that one of the properties involved had gone to foreclosure. (Tr. 34).

Nevertheless, appellant testified that he did not feel that the five-year period of debarment proposed by the Assistant Secretary was justified because the transactions resulted in the sale of boarded-up properties. He requested that he be given consideration for the length of time that he was suspended (Tr. 35-36).

The relevant portion of the debarment regulation, section 24.6, provides in pertinent part:

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.

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

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- (b) Conditions.

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(2) The existence of a cause set forth in paragraph (a)(1)(2) of this section shall be established by criminal conviction by a court of competent jurisdiction at the discretion of the appropriate official....

Section 24.4(f) of the regulation defines a "contractor" to include real estate agents. Appellant is thus a contractor within the meaning of the regulation.

#### Discussion

The regulation implements the Department's policy of protecting the public interest by insuring the proper expenditure of public funds. That policy is effected by authorizing the participation in Department programs of those contractors found to be "responsible." 24 C.F.R. 24.0 (1977). In O'Brien v. Carney, 6 F. Supp. 761 (D. Mass. 1934), the Court defined the word "responsible" as a term of art. Citing O'Brien, the Comptroller applied the term to Government contractors as follows:

... the word "responsible" imports something more than pecuniary ability, and in the selection of the lowest responsible bidder, public officers are required to consider not only the financial resources of the bidder, but also his integrity [and] fitness ... successfully to fulfill the contract requirements. (Citations omitted), 34 Comp. Gen. 86 (1950). (Emphasis added).

The crime for which Charles was convicted is the strongest evidence of a lack of integrity, i.e., a lack of "responsibility" on his part. It has been established beyond a reasonable doubt that appellant falsified documents submitted to the Veterans Administration in connection with the purchase of two properties in violation of 18 U.S.C. §§2(b) and 1001 (1970). The regulation has made conviction for such actions an independent ground for debarment under 24 C.F.R. 24.6(a)(1). In addition, appellant, at the least, failed to disclose similar fraudulent activity by his employer in connection with FHA mortgage insurance applications during the same period of time. Charles engaged in a course of conduct over an extended period of time that violated a criminal statute and demonstrated a willful and criminal disregard for the public interest and this Department's laws and regulations.

Little evidence has been offered in mitigation of appellant's conduct. Appellant did evidence some remorse at the hearing and testified under oath that he would not be guilty of such conduct again. There is no evidence of record that Charles has performed any other prohibited conduct before or since the operative events occurred.

However, at the time the events occurred, Charles was of legal age and fully accountable for his conduct. Moreover, the length of time the scheme operated and its employment in several transactions emphasize the seriousness of Charles' conduct. Accordingly, I find that Charles is not responsible within the meaning of the regulation.

The public interest in HUD programs has been severely damaged, not only by appellant's fraudulent conduct, but also by the loss of funds caused by foreclosure on at least one of the properties involved. The debarment of the appellant here is not a penalty or punishment, but rather it is a sanction imposed to insure that HUD effectively executes its statutorily mandated missions. Cf. L. P. Stewart & Bro., Inc. v. Bowles, 322 U.S. 398 (1944); Copper Plumbing & Heating Co. v. Campbell, 290 F. 2d 368, (D.C. Cir. 1961); Gonzalez v. Freeman, 334 F. 2d 570 (D. Cir. 1964). In light of the terms of the regulation and the record in this matter, the imposition of a substantial period of debarment is in the public interest.

In view of the entire record in this matter, a two-year period of debarment is determined adequate to protect the public interest. That period takes into consideration the 18 months that have elapsed since appellant was first suspended from doing business with this Department and appellant's otherwise clean record before, and in the five years since, the proscribed activities took place.

DETERMINATION

Upon consideration of the public interest and the entire record in this matter, it is hereby determined that appellant, Edward Louis Charles, shall be, and he hereby is, debarred for a period of two years commencing May 8, 1980, and ending May 8, 1982.



B. Paul Cotter, Jr.  
Administrative Judge  
HUD Board of Contract Appeals

Issued at Washington, D. C.  
on May 8, 1980