

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

In the Matter of	:	
	:	
DONALD G. BETTIS,	:	HUDBCA No. 79-381-D31
	:	(Activity No. 79-642-DB)
Appellant	:	

Appearances:

For the Appellant : Pabst & Pabst
by John A. Pabst

For the Government : HUD Office of General Counsel
by Marylea W. Byrd

INTRODUCTION

Donald G. Bettis filed a timely appeal from a notice of suspension issued on March 9, 1979, by the Assistant Secretary for Housing following Mr. Bettis's conviction for violation of 18 U.S.C. §1012 (1970). The Assistant Secretary's notice was issued pursuant to the HUD regulation governing debarment and suspension, 24 C.F.R. Part 24 (1978) ("the regulation"). The appeal is being decided on the written record pursuant to Section 24.5(c) of the regulation. Briefs and supporting documents have been filed by the parties.

FINDINGS OF FACT

On November 28, 1978, a criminal information was filed in the United States District Court for the Southern District of Iowa, Criminal No. 78-282 charging Donald G. Bettis with violation of 18 U.S.C. 1012 (1970) by knowingly receiving unauthorized rental payments. Specifically, the information charged:

That on or about August 1, 1977 to on or about December 1, 1977, at Albia in the Southern District of Iowa, Donald G. Bettis, did knowingly receive unauthorized rental payments from Mrs. ██████████ Mason ██████████ East Benton Avenue, Albia, Iowa, in the sum of \$100.00 with the intent to unlawfully defeat the purposes of the Housing and Community Development Act of 1974, Federal Rent Assistance Program, U.S. Department of Housing and Urban Development. (Government Exhibit 2).

On January 26, 1979, Mr. Bettis appeared with counsel and plead guilty as charged. (Government Exhibit 3). Mr. Bettis was convicted on his guilty plea, and the Court fined him \$500.00, suspended sentence, and placed him on probation for one year. In addition, the Court ordered that he volunteer four hours of community service per week for a period of six months.

Thereafter, by letter dated May 11, 1979, the Assistant Secretary for Housing notified Mr. Bettis of his proposed debarment based on the conviction (Government Exhibit 2); as noted Bettis had filed a timely appeal. (Appellant Exhibit 1).

The Government bases its proposed debarment on Section 24.6 of the regulation which provides in pertinent part:

§ 24.6 Causes and conditions applicable to determination of debarment.

Subject to the following conditions, the Department may debar a contractor . . . in the public interest for any of the following causes:

(a) Causes. (1) Conviction for commission of a criminal offense . . . in the performance of such [public] contract or subcontract.

(9) Conviction . . . for the commission of the offense of . . . falsification . . . 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.

Appellant concedes that the facts underlying the conviction are substantially correct as stated in the Government's brief. The Government states at pages 1 and 2 of its Brief that:

Respondent's conviction was based on his activities as a landlord participating in the HUD Section 8, Rental Assistance program. While participating in the HUD program, Mr. Bettis required that some of his tenants pay him amounts in addition to their approved rental payments under the program. Such actions constitute the solicitation and receipt of kickbacks. The facts upon which the conviction was based involved Respondent's demand that Mrs. ██████ Mason, a ██████ year old welfare recipient pay an additional \$20.00 a month for a period of five (5) months. As a section 8 tenant, Mrs. Mason occupied an apartment with an approved contract rent of \$121.00 per month. Based on Mrs. Mason's income her share of the monthly rent was \$44.00. The balance of \$77.00 per month was paid by the local housing agency through (HUD).

Based on the record, the Government asserts that a three year period of debarment is warranted to protect the public interest. (Government Exhibit 4).

In contrast, counsel for appellant argues that only a minimum period of debarment is needed to protect the public interest. Counsel asserts that appellant has no formal training past high school and was "confronted with a stack of regulations . . . written in such language as to defy understanding even by an attorney." Counsel asserts that the cost of counsel to interpret the regulations would have excluded the value of the rental assistance Bettis was receiving. It is asserted that Bettis did not understand why he did not receive a greater subsidy and was not offered an adequate explanation by HUD. (Brief for Appellant).

Counsel argues further that while Bettis "never denied that his actions were incorrect," he apparently did not wish to cheat the Government because he had the "extra money" paid by check. It is also asserted that Mr. Bettis cooperated with HUD investigators.

DISCUSSION

Appellant is a "contractor" within the meaning of Section 24.4(f) of the regulation, which by its terms applies to "Individuals. . . that receive HUD funds indirectly through non-Federal sources. . ." 24 C.F.R. 24.4(f) (1978). Appellant's suspension on March 9, 1979, was adequately evidenced and thus properly initiated pursuant to Sections 24.12 and 24.13 of the regulation.

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 qualified as "responsible." 24 C.F.R. 24.0 (1978). In O'Brien v. Carney, 6 F. Supp. 761 (D. Mass. 1934), the Court defined the word "responsible" as a term of art. With respect to Government contractors, the term was defined by the Comptroller General, 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, fitness, capacity and ability successfully to fulfill the contract requirements (citations omitted), 34 Comp. Gen. 86 (1950). (Emphasis added.)

Appellant has plead guilty to, and been convicted of, a crime the essence of which is dishonesty. Standing alone, that conviction would strongly evidence a lack of integrity and fitness within the meaning of the term "responsible" in the regulation.


In the last analysis, the issue is accurately stated by the Government. The question presented is whether the appellant is presently responsible, that is, possesses the requisite honesty and integrity to participate in Government programs that expend public funds. The debarment of 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. Steuart & 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.C. Cir. 1964).

In view of the entire record in this matter, an eighteen month period is determined reasonable and adequate to protect the public interest. That period gives consideration to the three and one-half months appellant has already been suspended, the year and one-half that has passed since the prohibited conduct took place, and appellant's otherwise unblemished record.

DETERMINATION

Upon consideration of the public interest and entire record in this matter, it is hereby determined that the appellant, Donald G. Bettis, should be debarred for a period of eighteen months commencing June 29, 1979, and ending December 29, 1980.



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

Issued at Washington, D.C.
on June 29, 1979.