

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
BOARD OF CONTRACT APPEALS  
Washington, D.C. 20410

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In the Matter of: :  
 : HUDBCA Docket No. 79-390-D33  
ONOFRIO VINCENT BERTOLINI, : (Docket No. 79-647-DB)  
 :  
Appellant :  
\_\_\_\_\_ :  
 :

Mr. Onofrio V. Bertolino  
[REDACTED]

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

DETERMINATION  
STATEMENT OF THE CASE

By letter dated April 10, 1979, Onofrio Vincent Bertolini, Appellant herein, was notified that the Department of Housing and Urban Development intended to debar him from participation in Departmental programs for a period of five years for conviction of violation of 18 U.S.C. §371. Appellant filed a timely request for a hearing on the proposed debarment.

In cases of proposed debarment based on conviction of a criminal offense committed in the course of obtaining a contract from the Department of Housing and Urban Development, a hearing is limited by regulation to submission of briefs and documentary evidence. 24 C.F.R. §24.5(c)(2). Written submissions have been filed on behalf of Appellant and the Government.

### Findings of Fact

Appellant is an architect who was engaged in two contracts for architectural services with the Lodi Housing Authority, Lodi, New Jersey. The Housing Authority managed public housing programs under an annual contribution contract with the Department of Housing and Urban Development. In 1972 and again in 1975, Appellant provided the architectural designs for a modernization program for the DeVries Park Housing Project. In exchange for award of these contracts to Appellant, he agreed to transfer kickbacks to the Director and other officials of the Lodi Housing Authority. (Gov't Ex. II B). He also conspired with a construction contractor to make the kickbacks (Gov't. Ex. #B).

In early 1977, a Grand Jury began an investigation of the Lodi Housing Authority. Appellant cooperated with the Grand Jury investigation and acknowledged his complicity in the kickback scheme. (App. Ex. #2). In June 1977, Appellant was indicted for conspiracy to defraud the Department of Housing and Urban Development under 18 U.S.C. §371 (Gov't Ex. #B) and thereafter was convicted based on a plea of guilty on December 11, 1978. He was sentenced to serve 120 days in jail, two years probation, and pay a fine of \$2,500. (Gov't Ex. #D). Not only did Appellant come forward to aid in the investigation but he testified on behalf of the Government at the trial of the Lodi Housing Authority officials. (App. Ex. #2, Letter from Assistant U.S. Attorney James A. Plaisted). Appellant has been active in professional and civic associations throughout his career (App. Ex. #1). Numerous letters of character reference were also submitted on his behalf (App. Ex. #3-10).

### Discussion

The departmental regulation applicable to debarment provides that conviction of commission of a criminal offense involving the Department of Housing and Urban Development is a ground, per se, for debarment. 24 C.F.R. §24.6(a)(1). Appellant was convicted of violation of 18 U.S.C. §371, a very serious offense of conspiring to defraud the Government. Therefore, ground for debarment has been established.

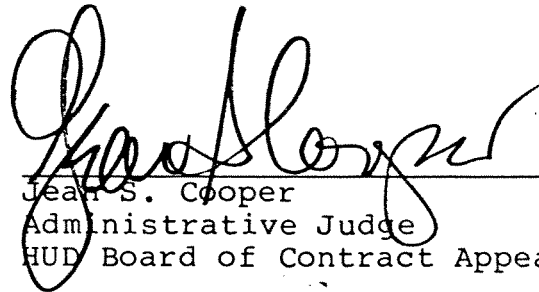
The purpose of debarment is to assure the Government that "awards be made only to responsible contractors..." and "shall be used for the purpose of protecting the public ..." 24 C.F.R. §24.0, 24.5(a). Appellant is a "contractor or or grantee" within the meaning of the departmental regulation because he is an architect receiving HUD funds indirectly through a non-Federal source, the Lodi Housing Authority. 24 C.F.R. §24.4(f). A "responsible" contractor is defined as one having integrity 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 can be based on past acts. Schlesinger v. Gates, 249 F. 2d 111 (D.C. Cir. 1957). Indications of Appellant's responsibility are contradictory. Appellant's proposed debarment is based on criminal activities from 1972 to 1975. The Government's brief admits Appellant's cooperation and assistance in the prosecution of the housing officials who required kickbacks as a prerequisite for award of public contracts. Appellant's early cooperation with the Government indicates recognition of the serious nature of his acts. However, Appellant was more than a casual participant in the kickback scheme. By conspiring with others to make kickbacks in exchange for awards of contracts, he supported and furthered corruption of a Government program. He also deliberately diverted Government funds by using part of his contract awards to pay the kickbacks (Gov't Ex. #2).

Clearly, it is not in the public interest for the Government to transact business with individual contractors who have undermined a public program through criminal activity. HUD had every right to expect that the funds it provided for housing improvement would not be used for corrupt purposes or to enrich public officials. Appellant's actions were the very essence of irresponsibility within the meaning of the regulation applicable to debarment. He should have reported the kickback scheme to the Department of Justice in 1972. Instead, he became a part of it, waiting five years until the criminal investigation had already begun to come forward with information.

Appellant has been suspended from participation in HUD programs since April 10, 1979. In light of Appellant's recognition of the egregious nature of his acts and the service he rendered the Government during the investigation and prosecution of the others involved in the kickback scheme, the public interest would in no way be served by debarring Appellant for five years. However, because Appellant was deeply involved in the corruption of a public program for a substantial period of time, a period of debarment up to and including April 10, 1981 is reasonable and in the best interest of the Government and the public.

CONCLUSION

Based on the record considered as a whole, Appellant shall be debarred from participation in programs of the Department of Housing and Urban Development up to and including April 10, 1981.



Jean S. Cooper  
Administrative Judge  
HUD Board of Contract Appeals

November 13, 1979  
Washington, D.C.