

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

In the Matter of:	:	
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	:	
ROSS PROCK and	:	HUDBCA Nos. 81-608-D22
JEANNE PROCK,	:	81-609-D23
	:	
Petitioners	:	
	:	

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DECISION ON MOTION TO REOPEN CASE AND
SET ASIDE SETTLEMENT AGREEMENT

The Petitioners, Ross Prock and Jeanne Prock, who were Appellants in the above-captioned debarment actions, by their counsel, Patrick C. Clary, filed a Motion To Reopen Case and Set Aside Settlement Agreement on April 20, 1983, addressed to the undersigned who was originally assigned to hear the debarment actions. The motion is based on the affidavit of Ross Prock and other documents contained in the files of the above-captioned cases. In substance, the Petitioners base their request for relief upon the assertion that they were compelled to enter into the settlement agreement by financial constraints imposed by ongoing litigation and false allegations of a party to that litigation. Those allegations, they assert, have since been withdrawn, repudiated, or abandoned. The Petitioners assert further that as a result of the resolution of that litigation by a settlement and guilty pleas of principals, circumstances have significantly and substantially changed, so that the premises upon which the settlement agreement was entered are no longer valid.

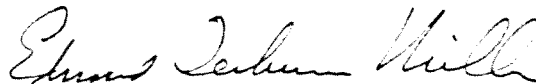
The Government has responded to the motion by letter dated May 5, 1983, which contends that the settlement agreement is a binding contract between the executing parties and is not within the jurisdiction of the hearing officer appointed to hear the appeal from the proposed debarment. The Government's position is predicated on the fact that as a result of the settlement agreement and a joint motion to dismiss the pending cases with prejudice, the undersigned dismissed the cases with prejudice on June 29, 1982. The Government contends that the dismissal with prejudice has the same effect and finality as a decision on the merits and bars any subsequent actions on the same cause of action under the authority of Toole Constr. Co., HUDBCA 79-439-C49 (July 10, 1981).

In further support of its position, the Government cites the position taken by the undersigned in correspondence dated April 14, 1983, in William R. Absalom, HUDBCA 82-746-D45, which transmitted a request for reconsideration to the Secretary as an appeal pursuant to 24 C.F.R. §24.8(b), noting that "[t]here is no express authority for such reconsideration by the Hearing Officer after issuance of his Determination which shall be final unless the Secretary undertakes discretionary review as provided by that Section." Administrative Judge Jean S. Cooper's action in correspondence dated September 15, 1982 in Norman D. Wilhelm, HUDBCA 82-679-D15, also cited by the Government, involves fundamentally distinguishable circumstances.

In determining the extent of my jurisdiction for the limited purpose of ruling upon this motion, cf. FTC v. Ernstthal, 607 F. 2d 488 (D.C. Cir. 1979), I take cognizance of the fact that the settlement agreement in question was not before me and was not approved by or incorporated in my order of dismissal. As a Hearing Officer of limited jurisdiction appointed pursuant to 24 C.F.R. Part 24, my powers cannot exceed those expressly conferred and those deemed necessary to effect jurisdiction. There is no affirmative grant of authority in those regulations to grant the relief requested. Therefore, I conclude that my order dismissing HUDBCA Nos. 81-608-D22 and 81-609-D23 with prejudice on June 25, 1982, was a final determination which terminated my jurisdiction over the proposed debarment of these Petitioners. 24 C.F.R. §24.8(b). Cf. Toole Constr. Co., supra.

I must, therefore, dismiss the motion petitioning for relief from the settlement agreement and for reinstatement of the appeal for lack of jurisdiction. However, since more than a year has passed since that final determination which effected the

Procks' debarment, relief might be available upon appropriate request addressed to the Assistant Secretary who invoked the initial proceedings in accordance with 24 C.F.R. §24.11.



EDWARD TERHUNE MILLER
Administrative Judge

Dated: This 9th day of September, 1983.