

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:

WILBERT T. ALEXANDER and  
ALEXANDER REALTY COMPANY,

Appellants

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: HUDBCA No. 81-648-D47  
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Mr. Wilbert T. Alexander  
Alexander Realty Company  
325 E. Pike Street  
Pontiac, Michigan 48058

For the Appellants, Pro Se

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Urban Development  
Office of the Area Counsel  
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Detroit, Michigan 48226

For the Government

DETERMINATION

Statement of the Case

By letter dated August 26, 1981, Wilbert T. Alexander and Alexander Realty Company, Appellants herein, were notified that the Department of Housing and Urban Development intended to debar them for a period of one year from the date of that letter, pursuant to 24 C.F.R., Part 24, based on alleged violations of four contracts.

Appellants made a timely request for a hearing on the proposed debarment. A hearing was held in Detroit, Michigan to determine whether the debarment of Appellants is warranted.

Findings of Fact

Wilbert T. Alexander is a real estate broker doing business as Alexander Realty Company in Pontiac, Michigan (Tr. 47). Between September 11 and November 21, 1978, he entered into four separate contracts with the Department of Housing and Urban Development ("HUD") to purchase and repair four HUD-owned properties through HUD's Property Investment Program ("PIP"). Each contract contained repair specifications for the rehabilitation of the purchased

property. HUD guaranteed that it would insure the mortgage for the resale of each property purchased through PIP after the property was repaired in accordance with the contract specifications and the repairs were approved by HUD. Each of the contracts required that the repairs be completed within 90 days from the date of sale closing, unless written request for an extension of time in which to perform was granted by HUD. (Government Exhibits 1-4.)

Alexander failed to complete the repairs required by the contract specifications within 90 days. He made a request for an extension of time in which to perform the contracts but that request was denied by the HUD Area Manager as untimely because the request was made only after HUD had imposed a Temporary Denial of Participation ("TDP") against Alexander for failure to comply with the four contracts. (Tr. 18.) The repairs required by the contracts remain incomplete three years later (Tr. 17, 47; Govt. Exh. 5-8).

Alexander had an opportunity to conduct a pre-bid site investigation and to review the repair specifications for each of the properties before he made a bid for the purchase and repairs (Tr. 11, 48). He assumed that he could perform all of the repairs himself and that the proceeds from another repair contract would have provided an adequate financial pool to cover the cost of the required repairs (Tr. 48, 56). However, Alexander did not bother to calculate the cost of performance of the repairs. The result was that he bid blindly. He subsequently found that the required re-roofing of just one of the properties he purchased would have cost more than the entire amount of money he counted on to cover the repairs on all four of the properties. (Tr. 59-60.) He ran out of money before he had barely begun to make the required repairs on the four PIP properties (Tr. 51, 56, 59, 62). Alexander still occasionally works on the properties but knows that he will not be able to complete the required repairs because he lacks the necessary funds (Tr. 51).

Alexander presently rents three of the four properties and has a rent-free tenant in the fourth (Tr. 49, 68). He receives \$650.00 per month from his tenants (Tr. 68). Even though the properties are occupied, Alexander has never obtained a City Certificate of Approval for any of the properties, in violation of the Affidavit of Non-Occupancy signed by him for each of the four properties at the time he entered into each of the contracts of sale. (G-9; Tr. 41-43, 49).

Alexander Realty is still doing business on a sporadic basis and Alexander mainly does odd jobs to support himself (Tr. 54). The only evidence offered by Alexander in mitigation of his failure to perform the four contracts in question was that he bid blindly and ran out of money (Tr. 53). Alexander claims that prior to his involvement in the PIP program he did well selling HUD properties and wishes to resume that work (Tr. 56). He has effectively been prevented from doing that work since July 13, 1979, the date on which the HUD Detroit Area Office issued a TDP against him, followed

by a conditional participation sanction on July 3, 1980, based on Alexander's failure to complete the contract repairs (Tr. 18).

I find that Wilbert T. Alexander has failed to perform the requirements of each of the four PIP contracts he entered into with the Secretary of HUD. I can find no evidence that these performance failures were caused by events beyond his control which were not reasonably foreseeable. The performance failures are solely attributable to Alexander's failure to price the cost of the required repairs before he bid on the contracts or to otherwise evaluate in any way whether he could actually perform the repair requirements of the contracts once he purchased the houses.

All of the four contracts in question state at Paragraph 1 that,

If the Purchaser fails to complete the specified rehabilitation work within the time herein allowed, the Seller may preclude buyers further participation in this program, unless the Seller has, at his discretion, approved an extension of time requested by the buyer. (G #1-4.)

It is Alexander's position that HUD has exceeded the express terms of Paragraph 1 of the four contracts by imposing sanctions for violation of the contracts that go beyond exclusion from future participation in the PIP program. He contends that the proposed debarment would violate the contracts in question.

#### DISCUSSION

The purpose of debarment is to assure the Government that it will only do business with responsible contractors and grantees. 24 C.F.R. §24.0. Debarment, as well as the temporary denial of participation and conditional participation sanctions, are measures to exclude irresponsible contractors from participation in Departmental programs. However, such sanctions are to be used for the purpose of protecting the public and are not for punitive purposes. 24 C.F.R. §24.5(a).

The Department may debar a contractor or grantee in the public interest for violation of contract provisions regarded by the Department to be so serious as to justify debarment. Such contract violations include both willful failure to perform in accordance with contract specifications and time limits, and a record of failure to perform in accordance with the terms of one or more contracts, provided that the failure to perform was not caused by events beyond the contractor's control which were not reasonably foreseeable. 24 C.F.R. §24.6(a)(3)(i) and (ii). Wilbert Alexander, through his own negligence, bid on contracts for the purchase and repair of four HUD-owned properties that he should have known he would be unable to perform. Not only did Alexander fail to perform the repairs within the time limits set forth in the contract, he also failed to obtain a timely extension of the period for performance.

The purpose of the PIP program was to provide safe, habitable low-cost housing to the public as rapidly as possible. The 90-day time period for performance was not a capricious requirement. It was the key contract provision that would expedite the repairs. None of the properties were to be inhabited unless a City Certificate of Approval had been obtained. That requirement guaranteed that the properties had been repaired to meet minimum safety requirements before they were inhabited. Alexander has tenants in every one of his PIP properties and has failed to obtain City Certificates for any of them. Therefore, he has not only violated the timeliness requirements of his contracts but has jeopardized the health and safety of his tenants. Had Alexander not bid on the contracts, the properties purchased by him would have been available for purchase by investors who could have performed the contracts and helped HUD achieve the policy goals of the PIP program.

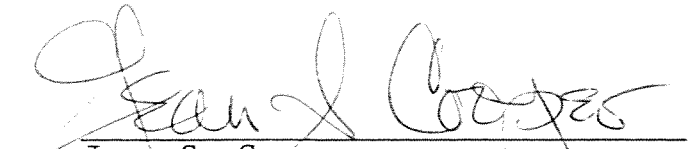
I find that Wilbert T. Alexander has established a record of failure to perform on contracts awarded him by the Department. That failure was due to his own negligence and extreme lack of responsibility in bidding on the contracts at all. I can find no circumstances that mitigate in any way Alexander's total disregard for his obligations as a Government contractor. Therefore, cause for debarment has been established and imposition of a period of debarment is warranted to protect the public interest.

Alexander has contended that Paragraph 1 of each of the contracts limited his liability, in case of non-performance, to his exclusion from further participation in the PIP program. He argues that debarment, as well as the sanctions previously invoked against him, were in excess of those allowed by the contracts. The Departmental regulation applicable to debarment, TDP's and conditional participation does not in any way limit the Department's right to protect itself from contractors presently lacking responsibility, so long as grounds for the sanctions have been established and it is determined that it is in the best interest of the public and the Government to apply such sanctions. 24 C.F.R., Part 24. Most Government contracts for construction and supply services contain Default clauses that allow the Government to terminate for default. However, if the default is so serious as to imperil the Government's contracting mission, or if a series of contract defaults establish a pattern of lack of business responsibility, the Government is not estopped from resorting to more sweeping sanctions merely because the contracts in question expressly provided the Government with the right to terminate for default. Likewise, the provision in the instant contracts that failure to perform would result in further exclusion from the PIP program does not preclude the Government for resorting to more stringent sanctions in addition to that provided in the contracts themselves. Therefore, I do not find that the Government exceeded its authority in applying sanctions to Alexander that went beyond exclusion from the PIP program.

The Government has proposed a period of debarment of one year from the date of the letter notifying Alexander of its intent to debar him. A period of debarment up to and including August 26, 1982 was the extent of the sanction proposed. Although the record in this case would certainly support a substantially longer period of debarment than that, I consider myself constrained by the notice of proposed debarment because Alexander's request for a hearing was made in the context of a notice that his debarment would last only until August 26, 1982. To enlarge the period of debarment on the ground that the hearing record warrants it would have a chilling effect on the right to request a hearing pursuant to 24 C.F.R. §24.7. Inasmuch as debarment is a prospective sanction, it can only be applied from the date of this decision. However, the Government has been protected in the interim by the lesser sanctions imposed on Alexander by the HUD Area Office. Therefore, I find that a period of debarment up to and including August 26, 1982 is warranted and necessary in the best interest of the Government and the public.

CONCLUSION

For the foregoing reasons, Wilbert T. Alexander and Alexander Realty Company shall be debarred from this date up to and including August 26, 1982.

  
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Jean S. Cooper  
Administrative Judge  
HUD Board of Contract Appeals

Date: February 18, 1982.