

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

In the Matter of:

ANDREW CALHOUN and
ANGEL CONSTRUCTION COMPANY,

Appellants

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:
: HUDBCA No. 82-676-D14
: (Activity No. 808-DB)
:
:
:

Mr. Andrew C. Calhoun



For the Appellants, pro se

Joan J. Saloschin, Esquire
Office of General Counsel
Department of Housing and
Urban Development
Washington, D. C. 20410

For the Government

DETERMINATION

Statement of the Case

This is a case concerning the proposed debarment of Andrew Calhoun and Angel Construction Company, Appellants. The Department of Housing and Urban Development proposed that Appellants be debarred for a period of three years from August 26, 1981, based on their alleged unexcused failure to fully perform on 17 contracts for the repair of properties purchased through the Department's Property Investment Program ("PIP").

Appellants did not request a hearing on the proposed debarment because they did not receive the notice of their right to a hearing. On September 30, 1981, the Department issued a Final Determination debarring Appellants for three years. On December 4, 1981, Appellants requested a hearing and, on January 22, 1982, the Department withdrew its Final Determination because Appellants had not received the original notice of proposed debarment.

A hearing was held on April 27, 1982 to determine whether Appellants should be debarred. An initial determination with findings of fact was issued on the record at the end of the hearing because all of the essential facts had been either stipulated to or admitted. This written determination incorporates those findings.

Findings of Fact

- 1.) Andrew Calhoun, doing business as Angel Construction Company, entered into 17 contracts with the Department of Housing and Urban Development between September, 1978 and February, 1979 for the purchase and repair of single-family dwellings located in the Detroit area. The contracts were awarded through the HUD Property Investment Program ("PIP"). Each of the contracts required Angel Construction to rehabilitate the property in question according to the contract repair specifications within 90 days and to have those repairs approved by HUD unless a written request for an extension of time to perform was granted. (Joint Exhibit #1; G #3.)
- 2.) Calhoun did not complete the required repairs under any of the contracts within 90 days or obtain an extension, and had still not completed them at the time of the hearing (Stipulation).
- 3.) Calhoun did not request any inspections of the completed repairs, as required by the contracts (Stipulation).
- 4.) The contract specifications were performable (Stipulation).
- 5.) The Government inspection reports, which show that most of the repairs required on the subject properties had not been performed, are accurate (Stipulation; G #1).
- 6.) An Affidavit of Non-Occupancy by Purchaser Intending to Make Repairs for Purposes of Resale was executed as part of each of the contracts. The Affidavits each stated that Angel Construction would not rent or allow any other person to occupy the property in question as a dwelling without first obtaining a valid Certificate of Approval from the Buildings and Safety Department of the City of Detroit. (Joint Exhibit #1.)
- 7.) The Buildings and Safety Department of the City of Detroit had not issued Certificates of Approval for any of the properties subject to the 17 contracts (G #5).
- 8.) A Government inspector found that nine (9) of the 17 properties were occupied in the spring of 1979 (G #3; Tr. 27-31).

- 9.) Calhoun received two letters from the HUD Detroit Area Office which demanded that he prepare status reports on each of the contract properties for which a final inspection was not requested within the 90-day period set forth in each of the contracts. The second letter was sent when Calhoun failed to respond to the first letter and further advised that HUD would invoke a Temporary Denial of Participation against both Appellants if Calhoun failed to respond within five days. (Stipulation; G #1, 2.) Calhoun did not respond to either letter (Tr. 51).
- 10.) A Temporary Denial of Participation ("TDP") was invoked against Appellants on June 26, 1979. Appellants did not contest the sanction. Subsequently, after the expiration of the one-year TDP, the HUD Area Office applied a Conditional Participation sanction against Appellants. Both the TDP and the Conditional Participation sanction were imposed for Appellants' failure to complete the 17 contracts or make a report to HUD on the progress of work on the contracts. Appellants have been subject to these HUD sanctions continuously from June 26, 1979 to the present. (Tr. 16.)
- 11.) Calhoun gave no coherent explanation for his failure to request extensions of time in which to perform the contracts or his failure to respond to HUD's requests for a status report on the repairs. His only explanation for the failure to apply for even a single City Certificate of Approval for the occupied properties was "added expense". He failed to either appreciate the threat to the safety of his tenants implicit in the substantially unrepaired condition of some of the properties or of the legitimate concerns of both HUD and the City of Detroit in this regard. Although he collected rent from a number of the tenants, he used the rent proceeds to do minor scattered repairs on a number of the properties and never seriously considered either completing one house at a time or bringing himself into compliance with the contract provisions and city ordinance requiring certificates for occupancy.

DECISION

The purpose of debarment is to assure the Government that it only does business with responsible contractors and grantees. 24 C.F.R. §24.0. Appellants are "contractors or grantees" within the meaning of the regulation applicable to debarment, 24 C.F.R. §24.4(f), and the Government has brought this action against them for violations of contract provisions alleged to be so serious as to justify debarment. 24 C.F.R. §24.6(a)(3).


There is no doubt that Appellants failed in every respect to comply with even the most direct and simple requirements of the 17 contracts in question. Contract clauses that offered some relief were ignored and basic safety requirements were not given

a second thought. I find that the contract violations are serious and warrant debarment. No mitigating factors were presented that in any way minimize the necessity for a period of debarment to protect the public interest. Appellants must show that they are presently responsible contractors to avoid the sanction. Roemer v. Hoffman, 419 F. Supp. 130 (D.D.C. 1976). I find that Appellants are not presently responsible, based on a course of conduct continuing to the present.

The Department proposed a period of debarment of three years. Although Appellants were not temporarily suspended pending determination of debarment, they have been effectively prevented from participation in Departmental programs in the Detroit area since June 26, 1979 by virtue of the TDP and the Conditional Participation sanction. Debarment is not to be used for punitive purposes, 24 C.F.R. §24.5(a). I find that the purpose of debarment is satisfied by crediting Appellants with the duration of those sanctions already imposed for the same reasons as this proposed debarment and debarring them from the date of the hearing on April 27, 1982 up to and including June 27, 1983, a total period of three years.

CONCLUSION

Andrew Calhoun and Angel Construction Company are debarred from April 27, 1982 up to and including June 27, 1983.



Jean S. Cooper
Administrative Judge
HUD Board of Contract Appeals

Date: June 30, 1982.