

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: :  
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ROBERT FLETCHER LANCE : HUDBCA No. 82-709-D31  
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Washington, D. C. 20410

DETERMINATION

Statement of the Case

By letter dated April 8, 1982, Philip Abrams, General Deputy Assistant Secretary for Housing and Urban Development ("Appellant") that the Department of Housing and Urban Development ("HUD") proposed "to debar [him], and [his] known affiliates Robert F. Lance & Associates or Lance & Associates, and any other affiliates from further participation in HUD programs for a period of three years." The letter stated that his conviction in the United States District Court for the Middle District of Tennessee for the violation of 18 U.S.C. §1012 was cause for debarment under 24 C.F.R. §24.6. Pending final determination of the issues involved in the proposed debarment, Appellant was advised that he and his affiliates would be temporarily suspended from further participation in HUD programs. By letter dated April 13, 1982, counsel for Appellant requested an opportunity to submit documentary evidence and written briefs in accordance with 24 C.F.R. §24.5(c)(2) and §24.7. No separate appeal was taken and no appearance entered on behalf of any affiliate.

Statement of Facts

1. Robert F. Lance was President and authorized agent of Robert F. Lance & Associates, Inc., a real estate company and a participant in a HUD program involving the insurance of home mortgages. (Appellant's Exhibits A and D).
2. On May 11, 1977, [REDACTED] Hall and his fiancée, [REDACTED] Billings, executed a sales contract for the purchase of property owned by Appellant at [REDACTED] Lone Rock Drive, Memphis, Tennessee. The contract provided for a purchase price of \$24,500, a deposit of \$700.00, and settlement costs of \$1,485.85 to be paid by Hall and Billings. The purchase was to be financed with a HUD-insured mortgage; the Diversified Mortgage Company was to be the mortgagee. (Appellant's Exhibit D).
3. On June 4, 1977, a settlement statement was executed by Hall, Billings and the Appellant certifying that \$700.00 had been paid as a down payment toward the purchase of the subject property, and that \$1,485.85 had been paid for closing costs by Hall and Billings to Appellant, the seller of the property. (Government's Brief, Exhibit C.) In fact, neither Hall nor Billings had paid Appellant any money for a down payment or for closing costs at that time. (Appellant's Exhibit D).
4. Appellant admits signing the settlement statement and attesting to the receipt of payments from Hall and Billings for the down payment and closing costs for the subject property. Appellant also admits representing that the buyers were not indebted to him for said payments. Appellant further admits knowing that these representations were false when made. (Appellant's Brief, p. 1, 3; Government's Exhibits B and D.)
5. On January 25, 1982, the United States Attorney filed an Information in the United States District Court for the Western District of Tennessee charging Appellant with making, with intent to defraud, a false statement or report to the Department of Housing and Urban Development, Federal Housing Administration, which was used by the Federal Housing Administration for the approval of mortgage insurance to Clarence David Hall and Vicky Marie Billings in violation of 18 U.S.C §1012. (Government's Exhibit B.)
6. On February 19, 1982, Appellant pleaded guilty to the charge of violating 18 U.S.C. §1012 (Making a False Statement to HUD). (Government's Exhibit D.)
7. On or about March 4, 1982, the Court imposed a fine of one thousand dollars and placed Appellant on probation for a period of six months. (Government's Exhibit D.)

Discussion

The conviction of the Appellant is a cause for debarment pursuant to 24 C.F.R. §24.6 which states in pertinent part:

... the Department may debar a contractor or grantee in the public interest for any of the following causes:

(a) Causes. (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.

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(6) Making or procuring to be made any false statement for the purpose of influencing in any way the action of the Department.

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(9) ... [C]onviction for any other offense indicating a lack of business integrity or honesty, which seriously and directly affects the question of present responsibility.

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The basic issue before me is whether the Appellant so lacks present responsibility as to warrant his debarment from participation in HUD programs for a period of three years. "Responsibility" is a term of art in Government contract law, defined to include not only the ability to successfully perform a contract, but also the honesty and integrity of the contractor. Roemer v. Hoffman, 419 F. Supp. 130 (D.D.C. 1976); 49 Comp. Gen. 139 (1969); 39 Comp. Gen. 468 (1959). The test for whether debarment is warranted is the present responsibility of the contractor or grantee. A finding of present lack of responsibility, however, can be based upon past acts. Roemer v. Hoffman, *supra*; Schlesinger v. Gates, 249 F. 2d 111 (D.C. Cir. 1959). However, in proposing a debarment, the agency should exercise discretion in considering all pertinent evidence and mitigating factors so as to obviate any need for the Department to pursue the debarment if the contractor is found to be presently responsible.

The Appellant in his brief states that he understands the illegality of his action and that "he was not justified in signing the settlement statement." The Appellant further states that "he has learned his lesson, and is not a threat to the public, and should not be debarred for three (3) years." While

Appellant does not dispute the authority of the Department to debar him under applicable agency regulations, Appellant asserts that the public's interest will not be served by his debarment. Appellant relies upon 24 C.F.R. §24.6(b)(1) to support this contention. This regulation states in pertinent part:

The existence of any of the causes set forth in paragraph (a) of this section does not necessarily require that a contractor or grantee be excluded from departmental programs. In each instance, ... the decision to debar shall be made within the discretion of the Department and shall be rendered in the best interest of the Government. Likewise, all mitigating factors may be considered in determining the seriousness of the offense, failure or inadequacy of performance, and in deciding whether the Administrative Sanction is warranted.

While debarment is not penal in nature, it is a means by which the Government can effectuate its statutory obligation to protect the public. The purpose of HUD debarments is to protect the public interest by ensuring that the Department only does business with contractors and grantees who are responsible. 24 C.F.R. §24.0 and 24.5(a). See L.P. Steuart & Bros. v. Bowles, 322 U.S. 398 (1944); Gonzales v. Freeman, 344 F. 2d 570 (D.C. Cir. 1964).

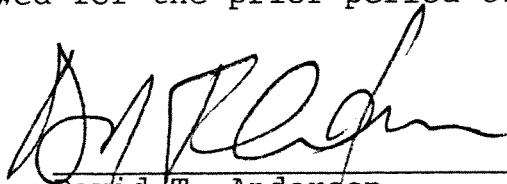
Appellant was convicted of an offense which occurred in 1977 for which he received a notably lenient sentence. This was his only conviction of a criminal nature, and, until his conviction, Appellant asserts that he had never, to his knowledge, been suspected of or investigated for any criminal offense. Appellant has submitted with his brief several letters of recommendation attesting to his reputation and character in the community before and after the incident. (Appellant's Brief, Exhibits E, F, G, and H.) These letters were written by "four (4) prominent real estate businessmen in the Nashville Community" on his behalf in conjunction with Appellant's effort to obtain an unspecified loan from the William C. Holland Company, Inc., of Nashville, Tennessee in February of 1982.

The four letters from banking and business executives, submitted by Appellant relate to Appellant's financial reliability and past business dealings. The letters addressed to Mr. William C. Holland contain no reference to the reasons for Appellant's debarment, and give no indication that the writers knew at the time of the correspondence that the letters would be used as mitigating evidence in a debarment proceeding or for any other legal proceeding. The letters are mere statements attesting to Appellant's past business relationships with these individuals. Although I do not dispute the sincerity or the truthfulness of the individuals who wrote those letters on behalf

of the Appellant, I find these letters substantially lacking in probative value relating to the issue of Appellant's present responsibility, his current possession of the ability to successfully complete contracts, and his possession of the moral integrity and honesty to continue his participation in departmental programs. No reference is made in any of these letters to Appellant's prior irresponsible conduct, which is the subject of this proceeding, or to any improved conduct of Appellant since June of 1977. I find that such evidence lacks sufficient credibility to warrant foregoing the proposed administrative sanction and neither presents nor addresses the issue of present responsibility.

#### Conclusion

Appellant, while acknowledging the wrongfulness of his past conduct, argues that the incident, the subject of this debarment proceeding, occurred over five years ago, and since that time he has acted responsibly. The Government in its Brief does not refute Appellant's arguments concerning his conduct since his illegal act of June, 1977 and offers nothing more in support of its position than the facts leading to the conviction. Nevertheless, the record before me supports the conclusion that the Appellant lacks present responsibility, and it also substantiates the imposition of an administrative sanction. However, I am persuaded, as apparently was the U.S. District Court in placing the Appellant on a period of probation for a six month period ending on or about September 4, 1982, that the gravity of Appellant's crime must be viewed in terms of its significance and consequence. I thus conclude that Appellant's past wrongful conduct and lack of responsibility warrants a two year debarment to protect the public. Consequently, it is my determination that Appellant be debarred from this date through April 8, 1984, credit being allowed for the prior period of suspension.



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David T. Anderson  
Administrative Judge

Dated this 27th day of May, 1983.