

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

In the Matter of:

RONALD N. TOTARO,

Petitioner

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:
: HUDBCA No. 82-715-D36
: (Activity No. 82-829-DB)
:
:

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For the Appellant

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Department of Housing and
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Washington, D. C. 20410

For the Government

DETERMINATION

Statement of the Case

By letter dated April 13, 1982, Ronald N. Totaro was notified by the Department of Housing and Urban Development that he and his affiliates were suspended from participation in departmental programs, based on an indictment charging Totaro with alleged violations of 18 U.S.C. §1341, 1343, and 2. Subsequently, by letter dated July 19, 1982, the Department amended its notice of suspension to include a second indictment by another Federal Grand Jury as an additional ground for the suspension.

A hearing on a suspension based on an indictment is limited by regulation to submission of written briefs and documentary evidence. 24 C.F.R. §24.5(c)(2). Written submissions have been made on behalf of both Totaro and the Government in support of their respective positions on the suspension action.

Findings of Fact

1. On February 2, 1982, A Grand Jury, convened in the United States District Court for the Western District of New York, returned a four-count indictment against Ronald Totaro, charging him with violations of 18 U.S.C. §§1341, 1343 and 2. Those alleged violations are based on charges that Totaro fraudulently obtained money from individuals by falsely promising them mortgage commitments, sent fraudulent documents through the U.S. Postal Service, and transmitted false and fraudulent communications by wire and telephone services in foreign commerce. (Gov't Exh. B.)

2. On April 15, 1982, a second Grand Jury, also convened in the Western District of New York, returned an indictment against Totaro, charging him with attempting to obtain mortgage financing from a savings and loan institution by fraud, making false statements to obtain a loan, and using the U.S. Postal Service to transmit fraudulent documents, in violation of 18 U.S.C. §§1341 and 1014 (Gov't. Exh. D).

3. Totaro entered a plea of not guilty for each of the counts in both of the indictments against him (App. Brief, ¶3).

4. On August 8, 1982, counts 3 and 4 of the indictment of February 2, 1982 were dismissed on the motion of the Government (App. Brief, ¶4).

5. American Realty Credit Corporation is a HUD-approved mortgagee. Totaro is an officer of American Realty Credit Corporation with authorization to submit mortgage insurance applications to HUD-FHA on behalf of the corporation (Gov't. Exh. E).

6. The notice of suspension states that American Realty Credit Corporation is not subject to the suspension as an affiliate of Totaro because it is not in the best interests of the Government to suspend the corporation (Gov't. Exh. C).

Discussion

The departmental regulation applicable to suspension of HUD contractors and grantees provides that a suspension must be based upon adequate evidence that there is reason to suspect that a cause for suspension exists. 24 C.F.R. §§24.12 and 24.13(a)(1). An outstanding indictment of a contractor or grantee is, by regulation, adequate evidence of criminal conduct that may be the basis for imposition of a suspension. 24. C.F.R §24.13(c).

There is clear evidence that Appellant is a "contractor or grantee" within the scope of the regulation because he is an officer of a HUD-approved mortgagee that receives HUD funds both directly and indirectly. 24 C.F.R §24.4(f). Furthermore, his two indictments for alleged false statements, fraud, and mail fraud fall within four separate grounds for suspension, 24 C.F.R

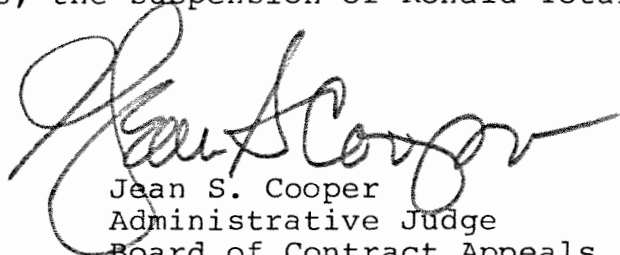
§§24.13(a)(1)(i) and (iii), and (a)(2)(i) and (ii). Inasmuch as prosecutive action was initiated by the return of the two indictments, the suspension, although temporary, may continue until the legal proceedings against Appellant are completed. 24 C.F.R. §24.14(a).

Two counts of the indictment returned on February 2, 1982 were subsequently dismissed on the Government's own motion. However, that fact does not call into question either the sufficiency of the counts that were not dismissed or the second separate indictment. There is no evidence that the remaining indictment counts were falsely obtained by the Government. Therefore, I find no basis on which to hold the Government to a greater showing of cause for the suspension than the fact that the two indictments still stand, as amended.

The Government has a right to protect itself by only doing business with responsible contractors and grantees. 24 C.F.R. §24.0. A suspension based upon an indictment returned by a properly convened Grand Jury is adequate evidence that a cause for suspension exists. There is no evidence in the record before me that the Government's action has been excessive under the circumstances or that it is not justified as a temporary measure to protect the best interests of the Government.

CONCLUSION

For the foregoing reasons, the suspension of Ronald Totaro will not be vacated.


Jean S. Cooper
Administrative Judge
Board of Contract Appeals

Date: November 3, 1982.