

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

In the Matter of: :
 :
GEORGE COLLATOS, : HUDBCA No. 83-761-D6
 :
Appellant :
 :
 :
 :
 :

Mr. George Collatos



Joseph Hurley, Esquire
Office of General Counsel
U. S. Department of Housing
and Urban Development
Washington, D. C. 20410

DETERMINATION

Statement of the Case

By letter dated July 8, 1982, Assistant Secretary for Community Planning and Development, Stephen J. Bollinger, on behalf of the Department of Housing and Urban Development ("HUD") notified the Appellant, George Collatos, that consideration was being given to debar him from participation in HUD programs for a period of five years from the date of the notice. The notice advised the Appellant further that cause for the debarment under consideration was his plea of guilty on March 17, 1982, in the United States District Court for the District of Massachusetts to charges of knowingly, willfully and unlawfully attempting to commit extortion in violation of Title 18, United States Code, Section 1951. The Appellant was also advised that he was suspended from participation in HUD programs in accordance with 24 C.F.R. §24.13 pending the appeal and determination of the proposed debarment. (Govt. Exh. A.)

Since the Appellant did not make a timely request for a hearing on the proposed debarment, a Final Determination was issued, debarring the Appellant for five years, until July 8, 1987 (Govt. Exh. B). Appellant was advised of this action by letter dated August 16, 1982. By letter dated September 25, 1982, Appellant filed a request for a hearing, explaining that because of his incarceration, he had not received some of his mail, including the notice of the proposed debarment, in a timely manner (Govt. Exh. C). As a result, the Assistant Secretary rescinded the Final Determination and granted the Appellant's request for a hearing (Govt. Exh. D). Such a hearing is limited by 24 C.F.R. §24.5(c)(2) to the submission of documentary evidence and briefs.

Findings of Fact

1. On March 17, 1982, the Appellant George Collatos entered a plea of guilty to the offense of "... knowingly, willfully and unlawfully attempting to commit extortion ... in violation of Title 18, United States Code, Section 1951" as recorded in the Judgment and Probation/Commitment Order of the United States District Court for the District of Massachusetts, Docket No. 81-00365-01. Pursuant to the judgment that was entered, the Appellant was sentenced to imprisonment for a period of three years, beginning on April 7, 1982. (Govt. Exh. H.)

2. At all times relevant, the Appellant was an employee and public official of the City of Boston employed by the Boston Redevelopment Authority (Govt. Exhs. G, H; App. Exh., transmittal letter, and "Defendant's Version of the Offense").

3. The Boston Redevelopment Authority is an agency of the City of Boston, Massachusetts, and receives funds for community development and economic development activities from the City of Boston, which, in turn, receives Community Development Block Grants and Urban Development Action Grants for such purposes from HUD (Govt. Exh. I).

4. Appellant's conduct underlying the Appellant's plea of guilty and consequent conviction involved an attempted extortion by Collatos of agents of the Lawrence Ready Mix Concrete Corp. ("Ready Mix"), a purveyor of concrete to construction contractors in Massachusetts and Rhode Island. Appellant received \$12,500 in marked currency which he had demanded from ██████████ Clark, treasurer and half-owner of Ready Mix. Clark paid the money to Collatos to procure the elimination of obstructions by the Boston Building Department to Ready Mix's construction of a "batching" plant in Dorchester, Massachusetts. That Department controlled the issuance of building permits and enforcement of building code and zoning regulation in Boston. The Government's submissions reveal that this partial payment of a demand for at least \$25,000 was the product of a "shake-down" involving threats of physical

and economic injury to Ready Mix which had occurred in a series of meetings between Appellant and Clark from April until October 21, 1981. In the course of these meetings a variety of representations in furtherance of the extortion and demands for pay-off funds were made or insinuated by the Appellant. The Appellant contends that no such threats of violence or injury were involved, and cites the results of a polygraph examination which he took with respect to certain crucial conflicts between the Government's and the Appellant's versions of the facts, especially as to the alleged threats of violence.

5. The Government's case is based in significant part upon the detailed and sworn affidavit of [REDACTED] Burchette, Special Agent of the Federal Bureau of Investigation, dated October 21, 1981 and filed in support of the criminal complaint. Burchette relied upon tapes of conversations between Appellant and Clark who ultimately made the cash payment on behalf of Ready Mix. (Govt. Exh. F.) The indictment to which the Appellant pleaded guilty reflects the same essential facts in substantial detail (Govt. Exh. G).

6. In mitigation, the Appellant has submitted a copy of a statement to the Court by his attorney in the criminal case and certain other materials, but no affidavit of his own. He asserts in his transmittal letter dated January 3, 1983, that he had no actual association with the Boston Building Department from which the permit to construct the batching plant was issued, and that his actions for which he was convicted were not job-related. He asserts further that he did not at any time intercede on behalf of Ready Mix with the Boston City government, and that he asked for money in the form of a consultant's fee, not as an extortion. He states that "In my request for this fee, I was asked challenging questions which, perhaps I answered improperly. I did this only to justify my fee in answer to the questions which were asked deceptively to entrap me." He denies that at any time he used a threat of violence, and has submitted the report of a polygraph examination that he took to confirm this and certain other claims he made with regard to allegations by the Government. He alleges that the high speed chase, which followed the attempt of the FBI agents to arrest him after the marked money had passed, resulted from his fear and the failure of the agents to identify themselves adequately. He has submitted material which indicates that Ready Mix's problems with the Boston Building Department were the product of political pressures and were improperly instigated by Ready Mix's economic competitors. He also has indicated in his transmittal letter and submitted material that Ready Mix was at fault because of defective building construction.

7. The Appellant asserts that he has never been in trouble with the law before, and that he and his family have been punished enough by the sentence in the criminal case and the consequences of it.

8. 18 U.S.C. §1951, Interference with commerce by threats or violence to which Appellant pleaded guilty, provides in relevant part:

(a) Whoever in any way or degree obstructs, delays or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both.

Discussion

The Government contends that Appellant's conviction for extortion is cause for debarment under 24 C.F.R. §§24.6(a)(4) and (9). These sections provide:

§24.6 Causes and conditions applicable to determination of debarment

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

(a) Causes:

* * *

(4) Any other cause of such serious compelling nature, affecting responsibility, as may be determined by the appropriate Assistant Secretary, to warrant debarment.

* * *

(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.

* * *

In view of the Appellant's conviction of attempted extortion, I find that sufficient cause exists under these regulations for the Department to seek the Appellant's debarment.

Under the regulations governing debarments, causes for debarment are applicable to "Contractors or grantees" which are defined by 24 C.F.R. §24.4(f) in relevant part as

Individuals, state or local governments, and public or private organizations that are direct recipients of HUD funds or that receive HUD funds indirectly through non-Federal sources including, but not limited to, ... those in a business relationship with such recipients....

Appellant has not contested that as an employee of the Boston Redevelopment Authority, which was the recipient through the City of Boston of HUD Community Development Block Grants and Urban Development Action Grants, he would fall within the ambit of the regulatory definition of "Contractors or grantees." It may be assumed, in the absence of proof to the contrary, that to some extent his salary was paid and his job-related activities financed directly or indirectly by use of HUD funds received by the City of Boston.

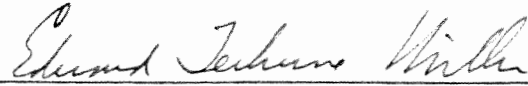
Involvement as a principal in an extortion scheme of any type, particularly one as protracted and contrived as this one and involving such substantial monetary sums, while employed as a public servant is an obvious and indisputable manifestation of a lack of responsibility required to do business with the Government. From such conduct may be inferred not only a present but a continuing lack of responsibility in the future. Schlesinger v. Gates, 249 F. 2d 111 (D.C. Cir. 1957), cert. denied, 355 U.S. 939 (1958); Stanko Packing Co. v. Bergland, 489 F. Supp. 947, 949 (D. D.C. 1980); 46 Comp. Gen. 651, 658-59 (1967). The offense to which the Appellant entered his plea is obviously of the most serious anti-social character, fraught with misrepresentations and a lack of integrity, including business integrity.

Here, the basic operative facts underlying the plea of guilty to extortion are well defined in both the original complaint supported by the detailed affidavit of the FBI agent who investigated the case and in the indictment to which the plea was entered.

I have considered what Appellant suggests are mitigating circumstances, but I have found them unpersuasive. See Roemer v. Hoffman, 419 F. Supp. 130 (D. D.C. 1976). Those facts which are in dispute in this record are not crucial to the question of responsibility which is before me. None of the evidence or arguments in mitigation ameliorate the essential gravamen of the offense. There is no evidence whatever that suggests that the Appellant is presently responsible. Indeed, one may infer to the contrary from his representations. I discern little if any remorse for or comprehension of the seriousness of his misconduct. As a result, I conclude that a period of debarment of five years is appropriate and necessary to protect the interest of the Government and the public. See L. P. Steuart & Bros., 322 U.S. 398 (1944); Gonzales v. Freeman, 344 F. 2d 570 (D.C. Cir. 1964).

Conclusion

The Appellant is debarred from further participation in HUD programs for a period of five years until July 7, 1987, credit being given for the period of temporary suspension after July 8, 1982.



EDWARD TERHUNE MILLER
Administrative Judge

Dated: This 13th day of September, 1983.