

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

In the Matter of:	:	
	:	
	:	
SAM LIGON and	:	
SAM LIGON REALTY, INC.,	:	HUDBCA No. 83-799-D29
	:	
Appellants	:	
	:	

Edward F. Pelteson, Esquire
Edward F. Pelteson Co., L.P.A
16 East Broad Street
Columbus, Ohio 43215

For the Appellants

Marylea W. Byrd, Esquire
Office of General Counsel
U. S. Department of Housing and
Urban Development
Washington, D. C. 20410

For the Government

DETERMINATION

Statement of the Case

By letter dated April 13, 1983, the U.S. Department of Housing and Urban Development ("HUD") notified Sam Ligon ("Ligon") that the Department proposed to debar him and his known affiliate, Sam Ligon Realty, Inc. ("Appellants"), from further participation in HUD programs for a period of three years based on Ligon's conviction for attempted forgery in violation of Sections 2923.02 and 2913.31, Revised Code of the State of Ohio. Ligon was advised that he and Sam Ligon Realty, Inc. would be temporarily suspended from participation in HUD programs pending final determination of debarment.

By letter dated April 19, 1983, counsel for Appellants requested an opportunity to submit documentary evidence and written briefs on the proposed debarment in accordance with 24 C.F.R. §24.5(c)(2) and §24.7. A brief and documentary evidence were submitted by the Government. A brief but no documentary evidence was submitted on behalf of the Appellants. Appellants

contend that they should not be debarred based on Ligon's conviction for attempted forgery because attempted forgery is a misdemeanor in the State of Ohio, and a misdemeanor conviction is not evidence of moral turpitude under Ohio State law. Furthermore, Appellants contend that they should not be debarred without the opportunity for an oral hearing to determine whether they are presently responsible.

Findings of Fact

1. Sam Ligon ("Ligon") is a licensed real estate broker doing business as Sam Ligon Realty, Inc. in Columbus, Ohio (App. Brief, p. 1).

2. In 1981, Ligon served as the real estate broker for the sale of a property located at [REDACTED] Pembroke Avenue, Columbus, Ohio. Because the mortgage on the property was to be insured by HUD-FHA, HUD required a Housing Code Certification Inspection letter for that property. The Housing Code Certification is normally requested and obtained by the real estate broker. (Gov't. Exh. 3.)

3. The housing code certification inspection required by HUD was to be performed by employees of the City of Columbus Department of Development, and the certification letter, was to be signed by them (Gov't. Exh. 2).

4. On July 14, 1981, a Housing Code Certification Inspection letter dated June 26, 1981, relating to the property located at [REDACTED] Pembroke Avenue was submitted to HUD. The Certification letter was not issued by the City of Columbus, although it bore the purported signatures of a city inspector and city code enforcement supervisor. The City of Columbus Department of Development notified HUD on August 5, 1981, that the signature of the supervisor was a forgery and that the named inspector was not employed in that capacity by the Department of Development. (Gov't. Exhs. 2, 3.)

5. On November 25, 1981, Ligon was charged in a two-count bill of information with Attempted Uttering or Possessing a Housing Code Certification Inspection letter for the Pembroke Avenue property, in violation of Sections 2913.31 and 2923.02 of the Revised Code of Ohio (Gov't. Exh. 4).

6. On December 3, 1981, Ligon entered a plea of nolo contendere to the charge of Attempted Forgery. Based on the plea, Ligon was convicted of the offense, which is a misdemeanor in the State of Ohio. He was sentenced to three months incarceration, and fined one thousand dollars. Subsequently, on February 5, 1982, Ligon's sentence of incarceration was suspended, conditioned on payment of the fine and court costs within 30 days. (Gov't. Exhs. 5, 6.)

7. By letter dated April 13, 1983, HUD notified Ligon that it proposed to debar Appellants for three years, based on Ligon's conviction. The notice also cited a prior Temporary Denial of Participation (TDP) of Appellants in 1980 as support for a finding of lack of present responsibility and the necessity of a three-year duration of debarment. Appellants had been subjected to the TDP for providing false information to HUD in connection with the sale of a property to be financed with a HUD-insured mortgage. (Gov't. Exh. 9.)

Discussion

The purpose of debarment is to assure the Government that it only does business with responsible contractors or grantees. 24 C.F.R. §24.0. "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. 1965). Debarment is not penal in nature and is to be used to protect the public. 24 C.F.R. §24.

Sam Ligon is a "contractor or grantee" within the meaning of the departmental regulation applicable to debarment because he is a real estate broker who contracted with participants in a program in which HUD was the insurer through the HUD-FHA mortgage insurance program. HUD has also proposed the debarment of Sam Ligon Realty, Inc. as an affiliate of Ligon.

The debarment regulation, 24 C.F.R. §24.4(d), defines "affiliates" as follows:

"Affiliates." Business concerns are affiliate of each other when either directly or indirectly one concern or individual formulates, directs, or controls the other concern; or has the power to formulate, direct, or control the other concern; or has the responsibility and authority either to prevent in the first instance, or promptly to correct the offensive conduct of the other concern. * * *

Ligon directed and controlled the operation of Sam Ligon Realty, Inc., which is essentially an alter ego corporation. Appellants have neither denied the status of Sam Ligon Realty, Inc. as an affiliate nor Ligon's status as a principal. Therefore, I find that Sam Ligon Realty, Inc. is an affiliate of Ligon. I further find that the relationship between Ligon and the corporation was

so close that if the debarment of Ligon is warranted and necessary, it would also be so for the corporation.

The Government contends that Ligon's plea of nolo contendere resulted in a conviction of a crime, establishing cause for Appellants' debarment pursuant to 24 C.F.R. §24.6(a)(1), (4), and (9). Appellants contend that it is inappropriate to debar them based on Ligon's plea of no contest to a charge of attempted forgery, a misdemeanor in Ohio. Under the laws of the State of Ohio, a misdemeanor does not constitute a crime of moral turpitude. Therefore, Appellants argue, Ligon's conviction does not provide a basis for debarment on the ground of lack of business integrity, honesty, and responsibility. Appellants assert that an oral hearing should be conducted to determine their business integrity, honesty and responsibility, particularly because the Government is also relying upon the prior TDP as evidence of lack of present responsibility.

The threshold issue before me is whether Appellants are entitled to an oral hearing pursuant to 24 C.F.R. §24.7. The stated basis of the proposed debarment is the conviction of Ligon, not the TDP. The TDP is cited by the Government as evidence related to present lack of responsibility and the appropriate duration of the debarment, not its basis. A hearing on a proposed debarment based on a conviction is limited to submission of documentary evidence and written briefs. '24 C.F.R. §24.5(c)(2). Those written submissions can and should address the issue of present responsibility. The issue of present responsibility is at the heart of every proposed debarment, whether based on a conviction or another ground. However, I have no regulatory authority to conduct an oral hearing in this case on the issue of present responsibility. The regulation does not allow an exception for orally hearing the issue of present responsibility in a case based on a conviction.

A conviction based upon a plea of nolo contendere establishes cause for debarment under the Departmental regulation applicable to debarment because the fact of the conviction, rather than the underlying plea, meets the regulatory requirement. Milton H. Girard, HUDBCA No. 81-730-D47 (May 23, 1983); Edward Venable, HUDBCA No. 77-232-D54 (June 30, 1980). See 24 C.F.R. §§24.6(a)(1) and (9). Furthermore, a conviction is sufficient basis for a temporary suspension pending determination of debarment. 24 C.F.R. §24.13(a)(2)(i).

Ligon's conviction was for attempted forgery. Attempted forgery, like forgery itself, is an offense indicating a lack of business integrity and honesty which directly affects the question of present responsibility. It is a ground for debarment under 24 C.F.R. §24.6(a)(9). The HUD regulation specifically included forgery and falsification of records as crimes that warrant debarment. It is immaterial that the State of Ohio does not treat misdemeanors as crimes of moral turpitude because a

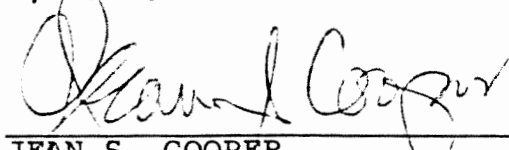
showing of lack of present responsibility does not require a technical showing of moral turpitude. I find that forgery and attempted forgery are precisely the types of criminal activity that should bar a contractor from the privilege of doing business with the Federal Government. The particular crimes were incident to a contractual relationship involving the Federal Government.

The record in this case is not limited to the mere fact of conviction. Although a plea of *nolo contendere* admits no facts that can be used as admissions in a subsequent civil litigation, Tseung Chu v. Cornell, 247 F. 2d 929 (9th Cir. 1975), the Government has submitted documentary evidence to establish the essential facts underlying Ligon's conviction. Those documents include the Housing Code Certification Report with the signatures which purport to be those of the City Inspector and Code Enforcement supervisor. They also include a memorandum of a report made by the City of Columbus to HUD, stating that the signature of the City Code Enforcement Supervisor was not that of the individual in question, and that the name listed on the certificate as a city inspector was not the name of any inspector employed by the City. The names referred to in the memorandum of report correspond to the names entered on the Housing Code Certification submitted in connection with the sale of the Pembroke Avenue property, for which Ligon was the real estate broker. Ligon has offered no documentary evidence to rebut the evidence submitted by the Government. I therefore find that the Government has established not only the fact of Ligon's conviction, but acts underlying it that indicate a lack of business integrity and honesty.

The Government submitted documentary evidence concerning a TDP that was imposed on Appellants in 1980 for making false representations in connection with the sale of a property to be financed by a HUD-insured mortgage. Although the acts underlying the TDP were not identical to those that were the subject of Ligon's conviction, they are of the same nature. Appellants' conduct in 1980 and in 1981 indicate an appalling disregard for honesty and involved attempts to subvert the law through submission of false information. The reasons for the TDP and the more recent conviction present a picture of a contractor with an inadequate appreciation or concern for veracity in doing business with the Government. Appellants apparently believed that it was expedient to provide false information in each case, and Ligon either did so or allowed it to be done. The past history of the TDP, together with the conviction for attempted forgery, leads me to the inevitable conclusion that Appellants are not presently responsible. Appellants have offered no evidence of present responsibility. Furthermore, I find the record devoid of any mitigating circumstances that might indicate that debarment is not warranted.

Conclusion

Based on the record considered as a whole, I find that a three-year sanction is warranted and necessary to protect the public interest. Appellants have been temporarily suspended since April 13, 1983 and will be given credit for that time. I find that a period of debarment from this date up to and including April 12, 1986 is necessary to protect the public and the best interests of the Government. For the foregoing reasons, Sam Ligon and Sam Ligon Realty, Inc. shall be debarred from this date up to and including April 12, 1986.



JEAN S. COOPER
Administrative Judge

DATED: January 4, 1984