

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

In the Matter of:	:	
	:	
JOHN MANDANICI, JR.,	:	HUDBCA No. 84-829-D1
Appellant	:	Docket No. 83-905-DB
	:	
	:	

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For the Appellant

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For the Government

DETERMINATION

Statement of the Case

Following the indictment of John Mandanici, Jr. ("Appellant") on four counts of violating 18 U.S.C. §§1001, 1014, HUD sought to notify Appellant by certified mail dated November 22, 1982 of his temporary suspension from participation in HUD programs. The Notice of Suspension was returned to HUD, unclaimed. On June 17, 1983, Appellant was convicted on three counts of violating 18 U.S.C. §1001.

By letter dated August 11, 1983, HUD attempted to notify Appellant that it intended to debar him for three years based on his conviction. Notification of the initiation of debarment proceedings against Appellant was sent to him by certified mail, but was returned to HUD, unclaimed. A final determination of a three-year debarment of Appellant was entered by Philip Abrams, Assistant Secretary for Housing, on September 21, 1983 pursuant to 24 C.F.R. §24.7(b)(1). Appellant received the final determination. This final determination was later rescinded at Appellant's request following his assertions that he had not

received notice of the initiation of debarment proceedings against him.

The hearing in the present case was limited to the submission of documentary evidence and written briefs in accordance with 24 C.F.R. §24.5(c).

Findings of Fact

1. Appellant was a party to a Housing Assistance Payments Contract with the Housing Authority of the City of Bridgeport, Connecticut (Housing Authority). As such, he received funds supplied to the Housing Authority pursuant to an Annual Contributions Contract between the Housing Authority and HUD. (App. Exh. B.)

2. Appellant was indicted on four counts of violating Title 18 of the United States Code. On June 17, 1983, Appellant was convicted on three of these counts for willfully and knowingly making false statements as to material facts within the jurisdiction of HUD, in violation of 18 U.S.C. §1001. (Govt. Exhs. E, G.)

3. The false statements made by Appellant included overestimates of (1) the cost of undertaking specific repairs which he agreed to make in order to "rehabilitate" a property at [REDACTED] Central Avenue, Bridgeport, Connecticut; and (2) the total cost of the repairs to be made to this property by Appellant. Appellant also represented that the property at [REDACTED] Central Avenue had been rehabilitated in accordance with the terms of an Agreement to Enter into Housing Assistance Payments Contract with the Housing Authority when he knew that this was not true. (Govt. Exhs. B, E.)

4. Upon his conviction, Appellant was placed on three years probation and fined twenty thousand dollars (\$20,000), the amount by which the court in Appellant's trial found Appellant had overstated his costs in connection with the repairs actually undertaken (App. Exh. Tr. at 5, 46-47).

5. Except for the convictions noted above, Appellant has no criminal record (App. Exh. Tr. at 48).

6. Appellant presented a petition signed by 51 tenants of the subsidized housing at [REDACTED] Central Avenue which stated in part, "(W)e are very HAPPY in our apartment building and WE DO NOT WANT TO LEAVE(.) Compared with other subsidized housing we believe that John C. Mandanici, Jr. is providing us with VERY GOOD HOUSING." (Emphasis not supplied.) An independent investigation requested by the trial judge made a similar finding. (App. Exhs. E, Tr. at 47.)

7. Appellant submitted evidence in the form of letters from James C. Grantham, Section 8 Program Coordinator for the Housing Authority of Bridgeport, and John A. Ore of Donadeo Realty and Management, Inc. of Bridgeport, both dated June 15, 1983 to the effect that the rentals provided by Appellant were at a rate below that of comparable facilities in top renting condition. Mr. Grantham's letter also noted a lack of available rental housing in the Bridgeport area. (App. Exhs. C, D.)

Discussion

As a party to a Housing Assistance Payments Contract with the Housing Authority of the City of Bridgeport, Appellant is a recipient of funds provided to the Housing Authority by HUD. Therefore, Appellant is a "contractor or grantee" within the meaning of 24 C.F.R. §24.4(f).

In order to assure that the Government only does business with responsible parties, the Department is authorized to debar contractors or grantees which it does not find to be presently responsible. See 24 C.F.R. §24.0. The actions of Appellant upon which the Government seeks to establish a finding of non-responsibility concerns the making of false statements to Government housing officials in connection with the securing and maintaining of a Housing Assistance Payments Contract with the Housing Authority. Appellant overstated the cost of making agreed upon repairs and the total cost of all repairs to be undertaken by \$20,000. Appellant also told housing officials that repair work required in accordance with the Agreement To Enter into a Housing Assistance Payments Contract had been performed when he knew that this was not the case. The Government asserts that these actions constitute grounds for a finding of nonresponsibility of Appellant and justify debarment of Appellant for three years.

Causes for debarment under HUD regulations are listed in 24 C.F.R. §24.6(a). Among them are conviction for a criminal offense in connection with obtaining a public contract or in the performance of such contract, 24 C.F.R. §24.6(a)(1), and making a false statement for the purpose of influencing actions by HUD, 24 C.F.R. §24.6(a)(6). The actions for which Appellant was found to be in violation of 18 U.S.C. §1001 constitute cause for debarment under 24 C.F.R. §§24.6(a)(1) and (6). They involved the making of false statements to housing officials for the purpose of influencing HUD actions, and they were made in connection with Appellant's securing and performing a public contract for which he was criminally convicted.

The existence of cause for debarment does not mandate that such action be taken. See 24 C.F.R. § 24.6(b). However, recognizing that debarment determinations are to be made in the best interests of the Government, 24 C.F.R. §24.6(b), the

circumstances in the present case required debarment of Appellant.

It has long been recognized that "responsibility" is a term of art in Government contract law. See O'Brien v. Carney, 6 F. Supp. 761, 762 (D. Mass. 1934); The Mayer Company, Inc. and Carl A. Mayer, Jr., HUDBCA 81-544-D1 (Dec. 1, 1981). Considerations of the honesty and integrity of the contractor or grantee fall within the scope of the term "responsibility." Stanko Packing Company, Inc. v. Bergland, 489 F. Supp. 947 (D. D.C. 1980), and a lack of present responsibility may be inferred from the past acts of a party. Schlesinger v. Gates, 248 F. 2d 111 (D.C. Cir. 1957).

The actions of Appellant in making false statements to the Government in securing a Government contract indicate a lack of honesty and integrity in dealing with the Government. Absent significant mitigating circumstances, they must lead to a finding that Appellant poses a business risk to the Government and is not presently responsible.

Roemer v. Hoffman, 419 F. Supp. 130 (D. D.C. 1976) requires a consideration of mitigating factors offered by Appellant which go to the question of Appellant's present responsibility. These factors include the character of Appellant, the nature of the offense committed, the deterrent effect of any resulting suspension or conviction, and the amount of time which has passed since the offense. The factors in mitigation proffered by Appellant, however, aside from noting that he had no prior criminal record and that his convictions under 10 U.S.C. §1001 were for conduct of a nature which he characterized as less than fraudulent, address the nature of the housing market in Bridgeport, Connecticut and the quality and cost of the housing he has provided.

Considerations of the quality and cost of housing provided do not aid in a determination as to the present responsibility, honesty and integrity of Appellant. If anything, the nature of the evidence provided by Appellant in mitigation of the seriousness of his offense suggests a failure on the part of Appellant to recognize the significance of the crimes which he committed in connection with securing a contract to provide subsidized housing to the Government. It is therefore in the best interests of the Government to debar Appellant.

Debarment is to be imposed for a period commensurate with the probable duration of the period of non-responsibility of the contractor or grantee. In the present case, the three-year period of debarment sought by the Department is warranted because Appellant is still not aware of the serious impact that his false statements had on the administration of a Government-funded housing project. Funds that could have been otherwise used for their intended public purpose were diverted to Appellant on the basis of his false statements.

Conclusion

For the foregoing reasons, JOHN MANDANICI, JR. shall be debarred from this date up to and including September 21, 1986, credit being given from the date of the original final determination of debarment, September 21, 1983, when Mandanici first became aware that he was subjected to a sanction.



JEAN S. COOPER
Administrative Judge

Issued at Washington, D. C.
March 30, 1984