

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
BOARD OF CONTRACT APPEALS

Washington, D. C.

In the Matter of:

JOHN R. MORRIS,

Appellant

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: HUDBCA No. 84-836-D8
: (Docket No. 83-915-DB)
:
:
:

John R. Morris, Sr.

 Appellant, Pro se

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

For the Government

DETERMINATION

Statement of the Case

By letter dated October 4, 1983, John R. Morris, Sr. ("Appellant") was notified by the U. S. Department of Housing and Urban Development (HUD) that it intended to debar him from participation in Departmental programs for a period of one year from the date of his temporary suspension on February 17, 1983, based on his conviction in the Circuit Court of Marion County, West Virginia for petit larceny and being an accessory to petit larceny. The temporary suspension remained in effect pending determination of debarment.

Appellant made a timely request to submit documentary evidence and a written brief pursuant to 24 C.F.R. §24.5(c)(2) in opposition to the proposed debarment. On October 31, 1983, the above case was docketed, and Appellant was ordered to file a response to the written submission of the Government within 30 days from receipt of the Government's submission. The Notice of Docketing and Order was received on Appellant's behalf by the Deputy at the county jail where Appellant was incarcerated on a work-release program. The Government filed its brief and documentary evidence on November 30, 1983. It stated in its

submission that a copy of the Indictment against Appellant would be filed for the record upon receipt. The Certificate of Service filed by the Government indicated that a copy of its submission was served on Appellant by Certified Mail, Return Receipt Requested, on November 30, 1983. Appellant has failed to file a response, as ordered, at any time or to show cause for that failure. The Government has failed to file a copy of the Indictment in accordance with the representation in its brief of November 30, 1983. The only evidence filed by the Government in support of the proposed debarment is a copy of the sentencing order against Appellant.

Findings of Fact

1. Appellant was convicted of a one count of petit larceny and one count of being an accessory to petit larceny in the Circuit Court of Marion County, West Virginia. He was sentenced on March 17, 1983 to serve one year on each count concurrently in the Marion County jail on a work release program. (Govt. Exh. B.)
2. The Government recited in its brief, but offered no evidence in support of the fact, that Appellant was employed as a "maintenance man" by the Marion County Housing Authority.

Discussion

Pursuant to the regulation applicable to debarment, HUD may debar a contractor or grantee for causes enumerated in the regulation at 24 C.F.R. §24.6(a). One of the enumerated causes for debarment is "... conviction for the commission of the offense of ... theft, ... receiving stolen property, ... or conviction for any other offense indicating a lack of business integrity or honesty, which seriously and directly affects the question of present responsibility." 24 C.F.R. §24.6(a)(9). Inasmuch as Appellant was convicted of petit larceny, a form of theft, cause for debarment has been established if Appellant is a contractor or grantee within the scope of the regulation.

The regulation defines "contractors or grantees" as:

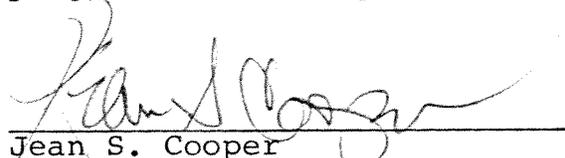
Individuals, state and local governments and public or private organizations that are direct recipients of HUD funds or that receive HUD funds indirectly through non-Federal sources including, but not limited to, borrowers, builders, mortgagees, real estate agents and brokers, area management brokers, management and marketing agents, or those in a business relationship with such recipients including, but not limited to, consultants, architects, engineers and attorneys; all participants, or contractors with participants, in programs where HUD is the

guarantor or insurer; and Federally assisted construction contractors. 24 C.F.R. §24.4(f).

The Government stated, without evidence to substantiate the allegation, that Appellant is employed as a maintenance man by the Marion County Housing Authority. It argued that Appellant is therefore a "contractor or grantee" because he receives HUD funds indirectly through the Housing Authority, presumably as wages. No evidence was offered that the Housing Authority receives HUD funds or that it paid HUD funds, either directly or indirectly, to Appellant. I therefore find that the Government has failed to carry its burden of proof that Appellant is a "contractor or grantee" subject to debarment by HUD. Even assuming, arguendo, that the Government had offered evidentiary proof of Appellant's employment and payment of HUD funds by the Housing Authority to Appellant for his wages, I would have serious reservations that those facts, standing alone, would establish that a maintenance man is a "contractor or grantee" subject to debarment or any other sanction contemplated by 24 C.F.R., Part 24.

CONCLUSION

For the foregoing reasons, JOHN R. MORRIS shall not be debarred from participation in the programs of the Department.



Jean S. Cooper
Administrative Judge
Board of Contract Appeals

Issued at Washington, D. C.
April 5, 1984.