

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

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In the Matter of:

CICERO C. JARRARD,

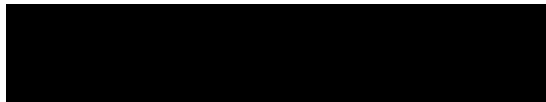
Respondent

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HUDBCA No. 84-854-D20  
(Docket No. 84-927-DB)

Mr. Cicero C. Jarrard

  
Mark M. Eisenstadt, 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 December 30, 1983, Assistant Secretary Maurice L. Barksdale notified, Cicero Clifford Jarrard ("Jarrard" or "Respondent"), that his debarment from participation in HUD programs for a period of four years was under consideration by the Department. The notice cited Jarrard's conviction in the United States District Court for the Middle District of Georgia, Macon Division, for violations of 18 U.S.C. §§371 and 1001 as cause for imposition of the sanction pursuant to 24 C.F.R. §24.6. The notice also advised him that the letter would serve as the Department's complaint in the action and that Jarrard was entitled to submit documentary evidence and a written brief in accordance with 24 C.F.R. §24.5(c)(2) upon timely request, which was duly made. Jarrard has been suspended from participation in HUD programs pending resolution of the case.

On February 9, 1984, the Government filed an Amended Complaint clarifying and identifying with greater specificity the

causes upon which it was relying by citing subparagraphs (a) (4) and (6) of 24 C.F.R. §24.6. The Government relies upon Jarrard's conviction based on a guilty plea to a charge of conspiracy in connection with a false statement stemming from his acceptance of bribes and assistance in preparing false documents as grounds for the proposed debarment

Jarrard's request for a ninety-day extension of time for filing his brief was granted, and on June 13, 1984, he filed a Motion for Dismissal or Reduction of Disbarment. In this pleading he contends that as a "clerk" with the Georgia Residential Finance Authority ("GRFA"), which was the actual contractor with HUD, he does not qualify as a contractor or grantee; that other individuals were primarily culpable; and that his involvement and culpability as a low level employee was minimal. He cites the absence of action against other higher level GRFA employees, and alleges that his subsequent conduct has been exemplary and that he regrets his past actions. In a subsequently filed amendment to his brief, he ratified his prior defenses and cited, in addition, the inconvenience imposed by the Government's delay in acting against him, his cooperation with the Government investigators, including his admission of wrongdoing, and his rehabilitation while in prison, including favorable work reports from his supervisors, as evidence of his present responsibility.

This Determination is made on the basis of the written record, including Jarrard's evidence submitted in extenuation and mitigation.

#### Findings of Fact

On October 4, 1983, Jarrard entered a plea of guilty to a single count indictment charging him with false statements to public housing agency in violation of 18 U.S.C. §371 and 18 U.S.C. §1001 before the United States District Court for the Middle District of Georgia, Macon Division. He was sentenced upon his conviction to three years of incarceration for the charge, which allowed a maximum sentence of five years or \$10,000 fine or both. (Govt. Exh. B.)

The indictment charged Jarrard with a conspiracy from approximately March 1, 1979, through January 1, 1982, with various identified and unknown persons to submit, cause to be submitted, and assist in the submission of false statements, documents, and information to both the GRFA, a Public Housing Agency as defined in the United States Housing Act of 1937, and the United States Department of Housing and Urban Development ("HUD"). These submissions were alleged to have influenced HUD's approval of rental assistance payments pursuant to the Section 8 Housing Assistance Payments Program of HUD, a program 100 percent funded by Federal funds.

The indictment recited that from January 1, 1979 through January 1, 1983, Jarrard was the Area Administrator of the GRFA responsible for the supervision of the Section 8 Housing Assistance Program at Warner Robins and Fort Valley, Georgia. In that capacity Jarrard supervised the expenditures and application of federal funds in the Section 8 Program.

While serving as Area Administrator, Jarrard helped [REDACTED] Jackson, a landlord, prepare and submit to GRFA false applications and other documents relating to tenant eligibility under the Section 8 Program. Jackson owned rental property and participated in the Section 8 Program at Warner Robins and Fort Valley, Georgia. The submitted documents allowed Jackson to receive unauthorized rental assistance payments on behalf of tenants who were not eligible for assistance under the Section 8 Program.

The indictment cited three overt acts in furtherance of the conspiracy. They were Jarrard's approval on or about March 12, 1979, of the application of tenant eligibility of Cheryl Ann Clark for Section 8 assistance, knowing it to be false in material respects; Respondent's meeting on that date with Jackson, Clark, and [REDACTED] Sullivan in Warner Robins, Georgia, and acceptance of Sullivan's application for tenant eligibility, knowing it to be false in material respects; and Jarrard's meeting with those persons on or about May 1, 1980, in Macon, Georgia. (Govt. Exh. C.) Jarrard's guilty plea establishes these facts recited in the indictment, which are uncontroverted.

In addition, the evidence submitted by the Government includes the report of investigation by the HUD Office of Inspector General (Govt. Exh. D). Jarrard has not disputed the contents of that report, and I accept them where relevant as generally reliable, although the document is unsworn. The report records that in the course of this investigation, Jarrard admitted that he had accepted bribes in varying amounts of approximately \$150 to \$200 monthly from Jackson during the three-year period beginning in early 1979. The bribes compensated Jarrard for helping Jackson prepare Section 8 documents in order to insure that he would receive maximum amount of rental assistance on behalf of tenants residing in properties he owned. Jarrard admitted assisting Jackson, who could not read, in the preparation of false documents certifying the eligibility of tenants. He also admitted accepting false documents obtained by Jackson from other sources, on behalf of individuals Jackson wanted approved for rental assistance.

The investigation disclosed that Jarrard was also corruptly involved with two other landlords who had also received unauthorized payments on behalf of tenants. With regard to those landlords, the Inspector General's investigation disclosed that in one case Jarrard prepared a false application on behalf of the

tenant, thus allowing for \$1,620 in unauthorized payments to be made to the landlord and an unauthorized utility allowance of \$45 to be paid to the tenant. In the other case, Jarrard required the tenant to pay an additional \$45 per month in excess of the Section 8 contract rent, for a total of \$1,132 in unauthorized payments to that landlord.

In cooperating with the Government's investigation on May 4-5, 1982, Jarrard identified some twenty-eight tenant files and supplied particulars regarding false information contained in those files. Separate investigations of fourteen of Jackson's tenants confirmed the use of false applications and employment verifications resulting in unauthorized rental assistance payments totaling \$33,720 paid to Jackson, and unauthorized utility allowances totaling \$2,502.50 paid to six of Jackson's tenants. I find that the investigation establishes that the scope of Jarrard's knowingly corrupt activity as a public servant was extensive, pervasive, and protracted and that it was profitable to Jarrard and very costly to the Government while it lasted. The investigative report indicated that Jarrard's allegations of wrongdoing by others at this time were not substantiated after further investigation.

#### Discussion

As an employee of the GRFA, a state agency directly involved with the administration of the Section 8 housing assistance program funded entirely with HUD funds, Jarrard is a "contractor or grantee" within the definition of 24 C.F.R. 24.4(f). See Charles Sampson, HUD Docket No. 80-729-DB (May 12, 1981).

The evidence shows that Jarrard was involved over a period of approximately three years in a corrupt conspiracy to defraud the GRFA, which was assisted with HUD funds. He knowingly, actively, and repeatedly assisted in the submission and processing false certifications of tenant eligibility under the Section 8 Program. The landlord identified in the conspiracy indictment received very substantial payments to which he was not entitled. Jarrard violated his public trust by receiving a substantial but variable flow of income from bribes while he was serving in a public capacity as an Area Manager of the GRFA. The character and scope of these activities establish a total and fundamental lack of honesty, integrity and business responsibility on Jarrard's part at the time of their occurrence. His involvement with repeated false statements which were intended to, and did, influence action of the Department is a serious and compelling manifestation of irresponsibility and constitutes cause for debarment under 24 C.F.R. §§24.6(a)(4) and (6), as the Government has alleged.

The applicable HUD regulations state that a debarment's purpose is the protection of the public interest, ensuring that the Department does not do business with contractors or grantees

that are not responsible. 24 C.F.R. §§24.0 and 24.5(a). "Responsibility" is a term of art in Government contract law that has been defined to include not only the ability to complete a contract successfully, but also the honesty and integrity of the contractor. Roemer v. Hoffman, 419 F. Supp. 130 (D.C. D.C. 1976); 49 Comp. Gen. 139 (1969); 39 Comp. Gen. 468 (1959); 34 Comp. Gen. 86 (1954). Although the test for debarment is the present responsibility of the contractor, present lack of responsibility can be inferred from past acts. Schlesinger v. Gates, 249 F. 2d 111 (D.C. Cir. 1957), cert. denied, 355 U.S. 939 (1958); Stanko Packing Company, Inc. v. Bergland, 489 F. Supp. 927, 949 (D. D.C. 1980); 46 Comp. Gen. 651, 658-59 (1967).

The principal issues related to this proposed debarment, therefore, are whether Jarrard's conduct establishes such a lack of present responsibility as to require his debarment, and if so, how long a debarment period is required to protect the public interest adequately. Under the debarment standard of present responsibility, a contractor or grantee may be excluded from HUD programs for a period based upon projected business risk. Roemer v. Hoffman, *supra*; Stanko Packing Company, Inc. v. Bergland, *supra*. Where a proposed debarment is based, as here, upon a conviction, evidence of the character of the offenses for which Respondent has been convicted as well as the circumstance surrounding the conviction must be evaluated in determining whether the Respondent lacks present responsibility. Any mitigating circumstances affecting responsibility must be considered in evaluating present responsibility. Roemer v. Hoffman, *supra*. Therefore, debarment is inappropriate if the affected participant can demonstrate that, notwithstanding any past nonresponsible conduct, he no longer constitutes a business risk. 24 C.F.R. §§24.0 and 24.6(b)(1).

As a consequence of Jarrard's conviction based on his plea of guilty to conspiracy in connection with false statements, there is clear cause for his debarment. The uncontroverted investigative report reveals the extended and pervasive scope of his irresponsible activities. The inference which may be drawn from these protracted irresponsible activities and the subsequent conviction for them compels the conclusion that Jarrard's lack of responsibility is continuing and that he will not be sufficiently responsible to conduct business dealings with HUD in the near future.

Jarrard has advanced several considerations to counter the inference from his past misconduct of a continuing lack of responsibility. He points out that he has been serving his three year sentence of incarceration and will be eligible for parole in April 1985. He contends that extended debarment would have a penal effect and would interfere with a possible source of livelihood which he might pursue. He cites highly favorable reports from his supervisors complementing his work and his attitude while in prison, as well as his use of counseling and

participation in Alcoholics Anonymous. He contends that these considerations demonstrate that he has been rehabilitated as a consequence of his prison experience and should be considered presently responsible.

Although these indications are positive in their effect, the tone of various pleadings and documents which Jarrard has filed in this case lead me to the conclusion that Jarrard does not fully appreciate the real significance of his activities as a detriment to the public interest. The nature of his past conduct creates a very compelling inference of continuing lack of responsibility. Jarrard obviously appreciates that if he were to commit such offenses as he has in the past, he would be exposed to the risk of being caught and punished. But I do not perceive a sense of genuine remorse or reform in his attitude or a basic sense of responsibility necessary to qualify for continued business dealings with the Government. His irresponsibility as a public official was too fundamental and too far reaching. There is not enough showing on this record to convince me that the Jarrard's lack of responsibility reflected in his past acts should not be inferred to be continuing. I therefore conclude that he is not presently responsible and that the proposed four year period of debarment is reasonable and necessary to protect the public interest. However, credit should be given for the period of his suspension in setting the term of the debarment.

#### Conclusion

Cicero C. Jarrard shall be debarred for further participation in HUD programs until December 30, 1987, credit being given for the period of his temporary suspension.



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EDWARD TERHUNE MILLER  
Administrative Judge

December 20, 1984