


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

In the Matter of:

FORESTINE BARNES,

Respondent

:
:
:
: HUDBCA No. 84-878-D35
: (Docket No. 84-950-DB)
:
:

Ms. Forestine Barnes


Susan Korytkowski, 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 November 17, 1983 from W. Calvert Brand, Acting Assistant Secretary for Housing, Forestine Barnes ("Respondent") was notified that the U.S. Department of Housing and Urban Development ("HUD" or "Department") was temporarily suspending her from participation in HUD programs. This suspension was based on Respondent's indictment for alleged violations of 18 U.S.C. §§1010 and 1012.

Following Respondent's conviction of a criminal offense, she was notified by letter dated May 15, 1984 from Maurice L. Barksdale, Assistant Secretary for Housing, that HUD was considering her debarment from further participation in HUD programs for a period of three years. Respondent filed a timely request for a hearing. Pursuant to 24 C.F.R. §24.5(c)(2), the hearing in this matter is limited to the submission of documentary evidence and written briefs.

Findings of Fact

On March 27, 1979, John Foster, Gerald Hall and Respondent submitted to the Douglas State Bank a "Credit Application for Property Improvement Loan" for a \$15,000 HUD-guaranteed Property Improvement Loan under Title I of the National Housing Act. On this application, they declared that the loan proceeds would be used solely for home improvements on Respondent's property located at [REDACTED] Brooklyn Street, Kansas City, Missouri (Govt. Exhs. C, D, E). Following the approval of the loan application and the release of the loan proceeds, none of the funds provided by this loan were used for work performed on the Respondent's property. Instead, these funds were used by John Foster for other purposes. (Govt. Exhs. C, D, E; Respondent's Letter to Assistant Secretary Barksdale, undated.)

A fourteen-count Superseding Indictment dated January 11, 1984 charged Respondent and various individuals with misrepresentations concerning the use of several property improvement loans, each of which was for an amount between \$13,700 and \$15,000. John Foster and Gerald Hall were named on twelve of these counts, two of which named Respondent; Foster alone was named on the other two (Govt. Exh. C). Following a jury trial, Respondent was convicted on March 12, 1984 on one count of making a false statement for the purpose of obtaining a HUD-guaranteed loan in violation of 18 U.S.C. §§1010 and 1012. She was acquitted on a second, similar charge. (Govt. Exh. C, E.)

Prior to her conviction, Respondent was employed in several positions with the Internal Revenue Service ranging from clerk to Revenue Officer trainee. (Resp. letter, and Statement of Rosanne Manley, Chief Steward for National Treasury Employers Union Chapter 35, both filed Jan. 10, 1985; letter of David J. Phillips dated March 23, 1984). Following her conviction, she received a suspended sentence and was placed on two years probation (Govt. Exh. E).

Discussion

HUD debarment regulations are applicable to agency contractors or grantees. 24 C.F.R. §24.0. The definition of "contractors or grantees" includes "all participants, or contractors with participants, in programs where HUD is the guarantor or insurer." 24 C.F.R. §24.4(f). Respondent signed an application for a HUD-guaranteed \$15,000 Property Improvement Loan for the purpose of obtaining funds for the improvement of her property at 5310 Brooklyn Street, Kansas City, Missouri. By her action, Respondent enabled John Foster to obtain the proceeds of this HUD-guaranteed loan for uses other than the declared purposes set forth on the loan application. Clearly, Respondent's role in obtaining the loan proceeds brings her within the ambit of this definition of contractor or grantee.

The Department asserts that Respondent's criminal conviction constitutes cause for debarment under 24 C.F.R. §24.6(a)(4), (5) and (6). These regulations state that cause for debarment may be established by:

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

(5) Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance, or guarantee or to the performance of obligations incurred pursuant to a grant of final commitment to insure or guarantee.

(6) Making or procuring to be made any false statement for the purpose of influencing in any way the action of the Department.

I conclude that Respondent's conviction for making false statements on an application for a HUD-guaranteed loan constitutes cause for debarment, clearly under 24 C.F.R. §24.6(a)(5) and (6), and, arguably under (4).

Debarment is not a punitive sanction. 24 C.F.R. §24.5(a). Rather, it is intended to insure that the Department only does business with persons or organizations that are presently responsible. 24 C.F.R. §24.0. A contractor's lack of present responsibility may be inferred from past acts. Schlesinger v. Gates, 249 F. 2d 111 (D.C. Cir. 1957), cert. denied, 355 U.S. 939 (1958). I find that Respondent's actions in assisting in the procurement of a HUD-guaranteed loan with John Foster and Gerald Hall for improper purposes is persuasive evidence of a lack of present responsibility.

Consideration of mitigating factors is required in evaluating a contractor's present responsibility. Roemer v. Hoffman, 419 F. Supp. 130 (D. D.C. 1976). Respondent has submitted as evidence of mitigation a copy of an undated letter which she sent to Maurice L. Barksdale, Assistant Secretary for Housing. The body of this letter reads as follows:

I was convicted of making false statements on a HUD loan. The conviction have [sic] been appealed. do [sic] to the fact that my attorney was incompetent and I have since been appointed a public defender, Mr. David J. Phillips. Also no evidence was submitted in court to prove I was aware the loan was a HUD loan. I was not aware the loan was a HUD loan. Attorney have [sic] filed appeal and copy is attached. For the above reasons I feel I should not be debarred [sic].

Another document submitted in mitigation by Respondent is a copy of a statement on her behalf from the public defender representing her in the appeal of her criminal conviction. In this statement, it is asserted that Respondent signed a loan application form for John Foster without knowing the type of loan sought or the intended purpose of the loan. The allegation in both of these letters that the Respondent was unaware that the loan application was for a HUD-insured loan, even if true, does not persuade me that the Respondent is a responsible contractor. One who executes a loan application without knowledge of either the intended purpose of the loan, or the nature of the federal program which makes such a loan possible, is not the type of contractor with whom this Department should conduct its business.

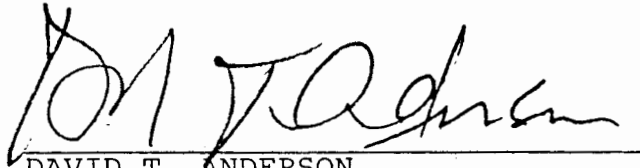
An unsigned statement from Rosanne Manley, Chief Steward for the National Treasury Employees Union, Chapter 36, attesting to Respondent's good character and work record was also submitted. This statement and the other documents submitted by the Respondent as evidence of mitigation fail to provide adequate proof that the Respondent is in fact presently responsible, nor do they provide sufficient reasons to believe that she would refrain from similar conduct in the future.

Although the Government has introduced no evidence to show that Respondent sought or received personal gain from her offense, the integrity of a program of this Department has been damaged by one who has failed to understand the ramifications of her complicity in an illegal scheme to defraud the Government. While Respondent appears to have been a pawn exploited by Foster and Hall, she is nonetheless responsible for the consequences of her conduct. I find that the three-year debarment sought by the Department is warranted under the circumstances of this case and is in the best interest of the public and this Department.

Respondent argues that her debarment is premature since her conviction is currently being appealed. This argument is without merit. Respondent's suspension and debarment are not precluded pending appeal of a criminal conviction under any regulation of this Department. Should Respondent prevail on appeal, she may seek reinstatement to eligibility to participate in the programs of this Department in the manner provided at 24 C.F.R. §24.11.

ORDER

For the foregoing reasons, FORESTINE BARNES shall be debarred for a period of three years up to and including November 17, 1986, credit being given from the date of her suspension.

A handwritten signature in black ink, appearing to read "D. T. Anderson", written over a horizontal line.

DAVID T. ANDERSON
Administrative Judge

May 6, 1985