UNITED STATES OF AMERICA

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

BOARD OF CONTRACT APPEALS

Washington, D. C.

In the Matter of:		
JOHN SERAVALLI, JR. and JOSEPH SERAVALLI, Respondents and BROOKCHESTER CORPORATION and BARCHESTER CORPORATION, Affiliates	HUDBCA Nos.	84-880-D37 84-881-D38 84-952-DB 84-953-DB

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DETERMINATION

Statement of the Case

By separate letters dated June 1, 1984, the Assistant Secretary for Housing, Maurice L. Barksdale, notified the Respondent John Seravalli, Jr., and the Respondent Joseph Seravalli that the U.S. Department of Housing and Urban Development ("HUD") proposed to debar them and their affiliates, the Brookchester Corporation and the Barchester Corporation, for a period of one year commencing from the date of the notices. Respondents were also notified that they were temporarily suspended from participation in HUD programs until resolution of this debarment action. Each notice indicated that it was to serve as the Government's complaint.

The proposed sanction was based upon the conviction of each of the Respondents in the Superior Court, Judicial District of New Haven, Connecticut, for conspiracy to commit arson in the second degree, in violation of Section 53a-48 of the Connecticut Penal Code as codified in the Connecticut General Statutes. The

notice cited this conviction as cause for debarment under 24 C.F.R. §24.6(a)(9).

A timely request for hearing, limited to the submission of documentary evidence and written briefs authorized by 24 C.F.R. §§24.5(c)(2) and 24.7(b), was filed by counsel on behalf of the Respondents and their affiliates. The two cases were consolidated by order dated July 2, 1984. The Respondents filed their brief and supporting documentary evidence on August 2, 1984. On August 8, 1984, the Respondents filed a Supplemental Brief, certain corrections to materials already submitted, and certain additional documentary evidence. The parties were advised that the additional evidence would be received as part of the record unless there were an objection from the Government. The Government filed no objection.

The Government requested and was granted by order dated September 7, 1984, an extension of time to file its brief until October 7, 1984, in order to permit settlement discussions. However, the Government has not filed a brief or documentary evidence, or any further request for an extension.

Statement of Facts and Discussion

The proposed period of debarment for those two Respondents and their two affiliates is scheduled to end on May 31, 1985. Since the Government has not filed a brief or supporting documentary evidence in support of its case for the imposition of the proposed sanction, there is no evidence in the record upon which to make a determination to debar these Respondents and their affiliates. This circumstance alone is sufficient to require dismissal of the action, sua sponte, for failure to prosecute and for failure to sustain the Government's burden of proof in support of the sanction.

In addition, however,the Respondents, who are brothers, have submitted extensive documentary evidence in mitigation. It may be assumed arguendo, in the absence of any dispute and in light of the protracted course of dealings with HUD admitted by the Respondents, that they qualify as "contractors or grantees" under 24 C.F.R. §24.4(f). It may also be assumed, in the absence of any dispute by the Respondents, that the Brookchester Corporation and the Barchester Corporation qualify as affiliates whose debarment would be dependent upon the debarment of the principals. 24 C.F.R. §§24.4(d), 24.8(a).

There is nothing in the record which brings into question the factual narration in Joseph Seravalli's affidavit to the effect that the Respondents' actions which precipitated their criminal indictment occurred approximately ten years ago when the Respondents were twenty-one years old. Joseph Seravalli states in that affidavit:

> On November 17, 1977 my brother and I were charged with crimes relating to a fire which occurred on September 14, 1974 in a vacant building which we owned and were renovating at 510-512 State Street in New Haven. After pleading not guilty the case came to trial in the Spring of 1980. The trial lasted throughout May and through most of June, 1980. The jury was unable to agree on a verdict. It reported deadlocked and a mistrial was declared. An appeal was thereafter taken to the Supreme Court of Connecticut on the grounds that since the State had failed to offer evidence sufficient to support a conviction, a retrial was barred by double jeopardy. The Connecticut Supreme Court held, however, that there was no procedure for such an appeal since a mistrial was not considered a final judgment. State vs. Seravalli, 189 Conn. 201 (1983).
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> Thereafter a petition of certiorari was prepared and filed with the Supreme Court of the United States on April 7, 1983. While that was pending a plea bargain was negotiated. My brother and I were facing the substantial expenses of an even lengthier retrial, exposure of a possible adverse verdict, and a need to have this Sword of Danioclis (sic) removed from our heads.
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> Thereafter they agreed, under an Alford vs. North Carolina - like plea (which permits the defendants to maintain innocence while pleading guilty) to plead to a charge of conspiracy to commit arson .... Under the arrangement the court, on the record, stated that in no event would either my brother or I serve more than 10 months in jail and further that we would be allowed to serve our sentences consecutively to each another.

Joseph Seravalli further states that he served his sentence mostly in a minimum security institution and pursuant to work release and was released finally in about five and one-half months. John Seravalli, Jr.'s sentence was subsequently modified by the sentencing judge to eliminate all incarceration. In lieu there he was rehabilitating a house for a local charitable organization, Columbus House, for use as a shelter for the needed. According to Joseph Seravalli, the Appellants have no other criminal records.

The Respondents also assert that their conduct since the time of the conviction has demonstrated that they are presently responsible. Joseph Seravalli states in his affidavit that he has purchased fifty-four buildings since he started purchasing buildings for renovations ten to fifteen years ago. Respondents assert that they have purchased nine buildings from HUD between the time of the incident for which they were convicted and the present. They have expended substantial amounts of money to renovate and rehabilitate those buildings in order to provide needed and adequate low income housing.

In the instant case, they have filed fifty-six affidavits by tenants in the Good Neighbors Apartment Complex, which the Seravallis own and manage in New York City and five affidavits from various other tenants of their properties in New Haven. The affidavits are basically uniform and express general satisfication with the Seravallis' competence, fairness and honesty as landlords and with the tenants' dealings with them. Additional letters from a variety of business contractors, suppliers, and clients with whom the Seravalli's have dealt express satisfaction with and approval of their business dealings. It appears that the Seravallis have been good managers of their property, in particular the Good Neighbor Apartment Complex in New York City, where they also reside. There is no indication of default or inadequate performance in their record since the incident which resulted in the convictions.

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, supra; 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.C.C. 1980); 46 Comp. Gen. 651, 568-59 (1967).

The principal issues related to this proposed debarment are whether the Respondents' past conduct establishes such a lack of present responsibility as to require their debarment and the debarment of their affiliates; whether the evidence submitted in mitigation overcomes any inference of a lack of responsibility; and how long a debarment period, if any, is required to protect the public interest adequately under the circumstances. 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. Any mitigating circumstances affecting responsibility must be considered. 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). 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 Respondents lack present responsibility.

It may be presumed arguendo that participation in a conspiracy to commit arson is an offense indicative of a lack of responsibility. However, the record discloses nothing of the underlying circumstances of events which occurred ten years ago.

On the affirmative record before me, I find that these Respondents do not pose a present business risk to the Government. The fact of the convictions is not in dispute. However, a hung jury leading to a mistrial and a plea which does not admit guilt as to an offense alleged to have occurred a decade ago does not provide a strong basis from which to infer a present lack of responsibility. The record before me contains substantial and diverse credible evidence, much of it supported by affidavit, of present responsibility of these Respondents as owners and managers of rehabilitated residential properties. The offense which led to the conviction is now more than ten years past. The Respondents were relatively young at the time of the offense and have been sentenced for it. One has served time in prison; the other, apparently, has done alternative public service. The experience, should have served as a significant deterrent to future transgressions. Although the circumstances of the offense are not disclosed, there is no suggestion that it constituted part of a pattern or practice. Moreover, the Respondents have not admitted the offense, if, as they assert, their plea was entered under the rubric of Alford v. North Carolina, 400 U.S. 25 (1970). Although there is no transcript of the pleas in the record, the pleas under the Alford rule, which are analogous to pleas of nolo contendere, would not seem to establish any underlying facts of record, because it would appear that no admission of those underlying facts is implied or should be inferred because of the nature and circumstances of the plea.

Conclusion

The Respondents, John Seravalli, Jr., and Joseph Seravalli, and their affiliates Brookchester Corporation and Barchester Corporation, shall not be debarred. Their suspensions from participation in HUD programs should be terminated forthwith, and this case should be, and hereby is, dismissed with prejudice.

Edward Terhune Miller
Administrative Judge

Date: May 30, 1985.