

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

In the Matter of:	:		
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MARY TREADWELL;	:	HUDBCA No.	84-902-D49
P.I. Properties, Inc.;	:	Docket No.	84-971-DB
Pride International, Inc.;	:		
Sticks and Stones, Inc.;	:		
Youth Pride Economic	:		
Enterprises, Inc.;	:		
Pride Economic Enterprises	:		
Special Police;	:		
Pride Environmental	:		
Services, Inc.;	:		
T. Barry Associates, Inc.;	:		
Kiosk Advertising Associates;	:		
and	:		
Youth Pride, Inc.,	:		
	:		
Respondents	:		
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John W. Niels, Esquire Rosemary Henry, Esquire Howrey & Simon 1730 Pennsylvania Avenue, N.W. Washington, D. C. 20006-4793	For the Respondents
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Susan Korytkowski, Esquire Office of General Counsel Department of Housing and Urban Development Washington, D. C. 20410	For the Government
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DETERMINATION

STATEMENT OF THE CASE

By letter dated April 29, 1982, Philip Abrams, General Deputy Assistant Secretary, U.S. Department of Housing and Urban Development ("HUD" or "Department"), attempted to notify Mary Treadwell ("Treadwell") that she and her affiliates ("cumulatively "Respondents") were being suspended from participation in HUD programs based on her indictment on twenty-eight counts of alleged violations of 18 U.S.C. §§371, 1001, 1341 and 43, and 26 U.S.C. §7201. The affiliates named in the notice of suspension

were P.I Properties, Inc.; Pride International, Inc.; Sticks and Stones, Inc.; Youth Pride Economic Enterprises, Inc.; Pride Economic Enterprises Special Police; Pride Environmental Services, Inc.; T. Barry Associates, Inc.; Kiosk Advertising Associates, and Youth Pride, Inc. Respondents claim not to have received the April 29, 1982 letter notifying them of their suspension, and did not request a hearing on that matter.

By letter dated August 15, 1984 from Maurice L. Barksdale, Assistant Secretary for Housing, Treadwell was notified that the Department proposed to debar her and her affiliates previously named in the notice of suspension from participation in HUD programs for an indefinite period of at least five years from the date of the suspension, based on Treadwell's June 19, 1984 conviction for violating 18 U.S.C. §§371 and 1001. Respondents requested a hearing on the proposed debarment. Pursuant to 24 C.F.R. §24.5(c)(2), this hearing was limited to the submission of written briefs and documentary evidence on the issue of whether Respondents should be debarred based upon the conviction of Treadwell. Treadwell's sole basis for challenging her proposed debarment was that it was premature because her conviction was on appeal. Treadwell submitted no evidence in response to or in mitigation of the Government's charges. The affiliate Respondents contend that they should not be debarred because they were not convicted of any crimes.

FINDINGS OF FACT

1. Treadwell is President of P.I. Properties, Inc. She is also a director and/or chief executive officer of Pride International, Inc., Sticks and Stones, Inc., Youth Pride Economic Enterprises, Inc., Pride Economic Enterprises Special Police, Pride Environmental Services, Inc., T. Barry Associates, Inc., Kiosk Advertising Associates, and Youth Pride, Inc. (Govt. Exhs. B, C.)

2. On June 30, 1975, P.I. Properties, Inc. purchased the Clifton Terrace Apartments housing project from HUD, and entered into a National Housing Act Regulatory Agreement with HUD with respect to that project. The Regulatory Agreement required P.I. Properties, Inc. to manage and maintain the project, and to meet recordkeeping and financial reporting requirements imposed by HUD. The mortgage on the project was insured by HUD. (Govt. Exh. E.)

3. Between 1976 and 1978, Treadwell conspired to misappropriate funds from Clifton Terrace, and submitted six "Monthly Reports for Establishing Net Income" to HUD for Clifton Terrace Apartments which she knew to contain false statements. In addition, Treadwell made false statements to HUD to cover up the misappropriation of funds from Clifton Terrace Apartments. (Govt. Exhs. B, C.)

4. An indictment was returned on February 26, 1982, charging Treadwell in twenty-eight counts with violations of 18 U.S.C. §§371, 1001, 1341 and 43, and 26 U.S.C. §7201, based directly and indirectly upon her activities in connection with Clifton Terrace Apartments (Govt. Exh. B).

5. On June 19, 1984, following a jury trial, Treadwell was convicted on one count of conspiracy to defraud the United States in violation of 18 U.S.C. §371, and seven counts of knowingly and willfully making false statements to HUD in violation of 18 U.S.C. §1001. She was fined \$40,000 and sentenced to three years in prison and five years probation. (Govt. Exh. C.)

6. Treadwell appealed her conviction, but her appeal was denied by the U.S. Court of Appeals for the D.C. Circuit on April 30, 1985.

Discussion

The purpose of debarment is to assure the Government that it only does business with responsible contractors and grantees. 24 C.F.R. §24.0. "Responsibility" is a term of art in Government contract law. It is defined to include the integrity and honesty of the contractor, as much as ability to perform a contract satisfactorily. 48 Comp. Gen. 769 (1969). Debarment is not to be used for punitive purpose, but to protect the public interest and the interest of the Government. 24 C.F.R. §24.5(a) and 24.6(b) (1).

HUD's debarment regulation defines "contractors or grantees" to include "all participants, or contractors with participants, in programs where HUD is the guarantor or insurer." 24 C.F.R. §24.4(f). As President of P.I Properties, the holder of a HUD-insured mortgage, Treadwell is a participant in a program in which HUD is an insurer, and thus she is a "contractor or grantee" as defined in 24 C.F.R. §24.4(f). It was admitted that the named companies were Treadwell's affiliates for purposes of this proceeding, but any wrongdoing on their part was denied.

The Government asserts that cause for debarment of the Treadwell can be established under 24 C.F.R. §§ 24.6(a) (4), (6) and (9). In relevant part, these sections provide that cause for debarment may be established by the following:

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

* * *

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

* * *

(9) ... conviction for any ... offense indicating a lack of business integrity or honesty, which seriously and directly affects the question of present responsibility.

Treadwell's conviction was based on her willful and knowing submission of false statements to the Department and her conspiring to defraud the Department over a period of time. I find that cause for debarment of Treadwell has been established under 24 C.F.R. §24.6(a)(4), (6) and (9).

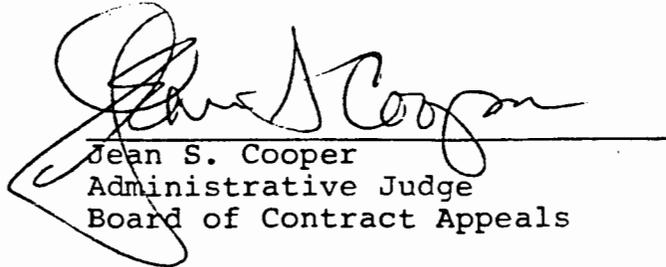
Even if cause for debarment is established, mitigating evidence must be considered in determining whether debarment is necessary. Roemer v. Hoffman, 419 F. Supp. 130 (D.D.C. 1976); see also 24 C.F.R. §24.6(b)(1). The test for whether debarment is warranted is present responsibility. However, a lack of present responsibility can be inferred from past acts. Schlesinger v. Gates, 249 F. 2d 111 (D.C. Cir. 1957). No mitigating evidence was offered on behalf of Treadwell. I find that her conduct is evidence of an egregious lack of business integrity and honesty. Despite the lapse of time since the criminal acts were committed, Treadwell has offered no evidence whatsoever to prove that she is any more responsible now than she was in 1978. Treadwell's willful and egregious attempts to manipulate Department programs for personal gain warrant an indefinite period of debarment of at least five years to protect the integrity of Department programs and the public interest.

Treadwell's numerous affiliates were essentially her alter egos. She was in direct control of them as either their chief executive officer or as a controlling principal/officer. She conducted her criminal activities under the guise of her corporate role. Unless and until Treadwell separates herself legally and actually from her named affiliates, I find that they, too, pose a threat to the public interest because of the ability of Treadwell to control their corporate conduct. Indeed, lacking any evidence to the contrary, I find that Treadwell's control over the operation of her affiliates is sufficient ground for their debarment. Therefore, they shall be debarred for an indefinite period of at least five years, as well.

Treadwell asserted that the debarment of her and her affiliates is premature since her conviction is being appealed. However, this argument is rendered moot by the U.S. Circuit Court of Appeals for the District of Columbia's recent denial of her appeal. Moreover, the agency's right to debar a contractor or grantee is not suspended while the appeal of a criminal conviction is pending. See, e.g., Barry Silver, 84-859-D23 (Dec. 11, 1984); Forestine Barnes, 84-878-D35 (May 6, 1985). In the event that Treadwell's conviction is reversed at some time in the future, she can apply for reinstatement, citing the reversal as a ground. 24 C.F.R. §24.11.

CONCLUSION

For the foregoing reasons, Mary Treadwell and her affiliates, P.I Properties, Inc.; Pride International, Inc.; Sticks and Stones, Inc.; Youth Pride Economic Enterprises, Inc.; Pride Economic Enterprises Special Police; Pride Environmental Services, Inc.; T. Barry Associates, Inc.; Kiosk Advertising Associates; and Youth Pride, Inc., shall be debarred from participating in Department programs for an indefinite period of at least five years, credit being given from the date that notice of suspension was mailed on April 29, 1982.



Jean S. Cooper
Administrative Judge
Board of Contract Appeals

Issued at Washington, D.C.
June 28, 1985