

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: :  
: VERDIACEE HAMPTON-GOSTON, : HUDBCA No. 85-918-D7  
: : (Docket No. 85-987-DB)  
Respondent :  
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Ms. Verdiacee Hampton-Goston

Respondent, pro se

Serena Williams, Esquire  
Office of General Counsel  
U.S. Department of Housing  
and Urban Development  
Washington, D. C. 20410

For the Government

DETERMINATION

Statement of the Case

By letter dated November 1, 1984, Verdiacee Hampton-Goston ("Respondent") was notified by the U.S. Department of Housing and Urban Development ("HUD") that she was temporarily suspended from participation in departmental programs, based on an indictment returned in the Parish of Oachita, Louisiana, charging Respondent with public contract fraud and conspiracy to commit public contract fraud, in violation of Louisiana R.S. 14:26 and 14:140. The letter notice stated that, in the event that Respondent requested an opportunity to submit documentary evidence and a written brief in opposition to her suspension pursuant to 24 C.F.R. §24.5(c)(2), the letter notice would serve as the Government's Complaint.

Respondent requested an opportunity to file a brief and documentary evidence. She filed an extensive submission of what she considered to be the relevant facts and documentary evidence in support of her position. Subsequently, in response to the Government's brief and documentary evidence, Respondent filed a reply brief and additional documentary evidence.

Respondent contends that she is not a "contractor" or grantee" within the scope of HUD's regulations applicable to debarment and suspension. She also contends that her indictment should not be given weight because she is innocent of the charges in it and because it was obtained for purposes of racial harassment. The Government contends that Respondent is a "contractor or grantee" because, as Mayor of the Town of Richwood, Louisiana, she applied for and obtained HUD Community Development Block Grant funds, and then exerted authority over the use of those funds by the Town of Richwood. The Government further contends that Respondent's indictment is a cause for suspension pursuant to 24 C.F.R. §24.13(a)(1)(i) and (c), and that her guilt or innocence of the charges in the indictment may not be litigated in this proceeding.

#### Findings of Fact

1. On or about July 1, 1980, Respondent took office as Mayor of the Town of Richwood, Louisiana. Shortly after she was elected Mayor of Richwood in 1980, Respondent declared a "state of emergency" and delegated to herself sweeping powers, which included the paying of all bills, control of the town checking account, purchasing and tax collection. Respondent handled all town funds personally and kept the financial records in her personal control. (Resp. Exh. Attachment to Answer.)

2. On November 12, 1980, Respondent signed an application to HUD for Community Development Block Grant ("CDBG") funds on behalf of the Town of Richwood to complete installation of a sanitary sewage collection system. Subsequently, after another application for CDBG funds on June 19, 1981, HUD approved expenditure of \$697,502 in such funds for the Town of Richwood. Respondent signed the Acceptance Provisions of the grant as Mayor of the Town of Richwood on June 29, 1981. (Govt. Exhs. C, D, F.)

3. Wellington Jenkins, Jr., an employee of the Town of Richwood, was appointed as Administrator of the sewage project funded through the CDBG. He and Respondent co-signed checks to subcontractors for work on the CDBG project. (Govt. Exh. G; Resp. Exh. III.)

4. On June 29, 1984, Respondent and Wellington Jenkins, Jr., were indicted by a Grand Jury convened in the Parish of Oachita, Louisiana for conspiracy to commit public contract fraud and for public contract fraud involving the CDBG funds for the sewage project. The indictment charged them with conspiring to and using their powers or positions to secure the expenditure of \$149,867.42 in money of the Town of Richwood to pay to themselves or to corporations in which they are officers, stockholders or directors, namely, Unity Markets, Inc.; American Plumbing and Construction Company, Inc.; Hasty Truck Lines, Inc.; and Richwood Community Center, Inc. The indictment recites that

these criminal acts took place between December 14, 1981 and September 18, 1982. (Govt. Exh. B.)

5. Respondent denies that she is an officer, stockholder or director of Unity Markets, Inc., American Plumbing and Construction Company, Inc., or Hasty Truck Lines, Inc. She states that Richwood Community Center, Inc. is the seat of government of the Town of Richwood, of which she claims she is still the duly elected Mayor. (Attachment to Resp. Brief.)

#### Discussion

Suspension from participation in HUD programs is a sanction to be used in the best interests of the Government when it is suspected, upon adequate evidence, that a contractor or grantee has committed certain acts enumerated in the relevant regulation that indicate a lack of responsibility. 24 C.F.R. §24.13(a). A suspension is only applied for a temporary period pending the completion of an investigation and such administrative or legal proceedings as may ensue. 24 C.F.R. §24.14. Its purpose is to protect the Government during an investigative period from contractors and grantees who may lack responsibility.

Respondent contends that she is not a contractor or grantee within the meaning of the departmental regulation applicable to suspension and debarment. "Contractors or grantees" is defined at 24 C.F.R. §24.4(f) 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 contracts.

Respondent is the Mayor of a local government that is the direct recipient of HUD funds through the CDBG program. Her indictment concerns alleged fraud and misuse of those funds through her public office. She signed the application for the CDBG as the representative of the Town of Richwood and at all times held herself out as the individual who represented the Town of Richwood in its role as a grantee. The Town of Richwood is a "contractor or grantee" as defined at 24 C.F.R. §24.4(f). The question raised by Respondent is whether she is a contractor or grantee, as well, through her office as Mayor of the Town of Richwood.

In general, public and private corporations can only operate through the principals who control their activities, policies and management. Warren Brothers Road Co. v. United States, 355 F. 2d 612 (Ct. Cl. 1965); 39 Comp. Gen. 468 (1959). An officer of a corporate contractor has been held to be a HUD contractor as an indirect recipient of HUD funds given to the corporation by a local housing authority. Milton Girard, HUDBCA 81-730-D47 (May 23, 1983). Likewise, the administrator of a local housing authority with the authority to disburse HUD funds has been held to be a contractor or grantee. Marvin B. Awaya, HUDBCA 84-834-D6 (May 8, 1984); David L. Townsend, HUDBCA 83-755-D3 (October 14, 1983).

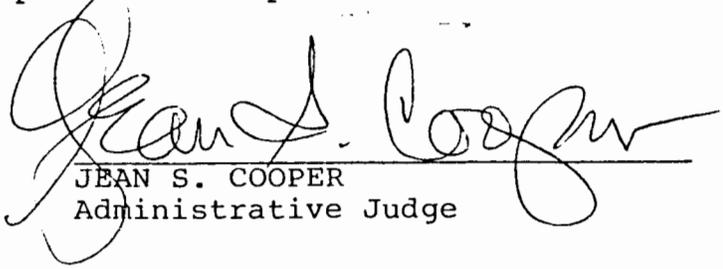
In the instant case, Respondent exerted actual control over the disbursement and use of the CDBG funds given to the Town of Richwood by HUD. Certainly, in this case, Respondent's role is not only analogous to that of a public housing authority official, but is virtually indistinguishable from it. In Thomas G. Fiorica, HUDBCA 85-929-D15 (September 24, 1985), it was held that a member of a town planning board that received CDBG funds was a contractor or grantee within the scope of 24 C.F.R., Part 24 because he had the opportunity to affect the expenditure of block grant funds through his position. The concept behind the Department's definition of "contractors or grantees" is to identify persons or organizations who participate in, financially benefit from, or are in a position to influence the expenditure of HUD funds. Id. Respondent was not only in a position to influence the expenditure of HUD funds; she actually did so. I, therefore, find that she is a "contractor or grantee" within the meaning of the HUD regulation applicable to suspension and debarment, 24 C.F.R. §24.4(f).

HUD suspended Respondent based upon her indictment for public contract fraud and conspiracy to commit contract fraud. Commission of fraud or a criminal offense in the performance of Government business or contractual dealings is one of the enumerated grounds for suspension. 24 C.F.R. §24.13(a)(i). An outstanding indictment of a contractor or grantee is adequate evidence of suspected criminal conduct and may be the basis for imposition of a suspension. 24 C.F.R. §24.13(c). A hearing on a suspension based on an indictment is not a forum for determination of the guilt or innocence of the party suspended. It is merely to ascertain whether a ground for the suspension has been established based on adequate evidence. It is inappropriate that I look behind the indictment that is the basis for the suspension unless compelling evidence has been presented that the indictment was obtained through fraud or is otherwise unlawful. No such evidence has been presented in this case. Therefore, I find that Respondent's indictment for contract fraud and conspiracy constitutes adequate evidence of suspected criminal

conduct to sustain her suspension from HUD programs pending completion of the legal proceedings against her or dismissal of the indictment.

Conclusion

For the foregoing reasons, I find that the suspension of VERDIACEE HAMPTON-GOSTON is supported by adequate evidence of a ground for suspension, and insufficient evidence has been offered to warrant termination of Respondent's suspension at this time.



JEAN S. COOPER  
Administrative Judge

Issued at Washington, D.C.  
September 30, 1985