

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:

JULIO BLANCO,

Respondent

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: HUDBCA No. 85-927-D14  
: (Docket No. 85-993-DB)  
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For the Respondent

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U.S. Department of Housing  
and Urban Development  
Washington, D. C. 20410

For the Government

DETERMINATION

Statement of the Case

By letter dated April 2, 1984, Julio Blanco ("Blanco") was notified by the U.S. Department of Housing and Urban Development ("HUD") that he was temporarily suspended from participation in departmental programs, based on an indictment charging him with violation of 18 U.S.C. §§371, 1014 and 2. Pursuant to 24 C.F.R. §24.5(c)(2), a hearing on a suspension based on an indictment is limited to submission of written briefs and documentary evidence. The notice of suspension stated that it would constitute the Government's Complaint in the event that Blanco requested a hearing on his suspension. Blanco requested a hearing, and briefs and documentary evidence were filed by the parties.

By letter dated May 29, 1985, Blanco was notified that HUD intended to debar him for three years from the date of his suspension, based on his conviction for violation of 18 U.S.C. §§1014 and 2. A hearing on the proposed debarment was consolidated with the hearing on the suspension. The notice of proposed debarment stated that Blanco's suspension would continue

in effect until the debarment action was resolved. The parties filed amended pleadings and supplementary briefs and documentary evidence on the proposed debarment.

#### Findings of Fact

1. In 1982, Julio Blanco was a loan officer with Dual Mortgage Company. On July 30, 1982, Blanco prepared a loan application for [REDACTED] Bond to obtain a mortgage loan from First Nationwide Savings and Loan Association ("FNS&L"), a lending institution insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"), to purchase a property located at [REDACTED] Monserrate Street, [REDACTED], Florida. (Govt. Exhs. C, E.)

2. On February 10, 1984, a Federal Grand Jury for the Southern District of Florida returned a twelve-count indictment charging Blanco, Bond and five other individuals with conspiring to obtain mortgage loans from federally-insured lending institutions to purchase and remodel residential properties by making false statements about the terms of the real estate contracts and the income, assets and liabilities of the purchaser of the properties. Blanco was charged specifically with falsely stating on the loan application for the Monserrate Street property the sale price, the employment status of Bond, and the existence of money available for the downpayment on the purchase. Blanco was also charged with directing Bond to obtain false income tax returns. In addition, Blanco was charged with conversion of \$150,000 belonging to FNS&L for his own use and the use of Bond and two other defendants. The acts alleged in the Indictment would constitute violations of 18 U.S.C. §§371, 1014 and 2, if proven. (Govt. Exh. B.)

3. Sometime subsequent to return of the Indictment, Blanco was charged in a Bill of Information with knowingly making false statements in a loan application submitted to FNS&L concerning the purchase by Bond of the property located at [REDACTED] Monserrate Street for the purpose of influencing the lender to make the loan, in violation of 18 U.S.C. §§1014 and 2 (Govt. Exh. E).

4. On November 8, 1984, Blanco entered a plea of guilty to the Bill of Information. The Judgment and Order indicates that Blanco was fined \$2,000 and placed on probation for three years. (Govt. Exh. D.)

#### Discussion


The purpose of debarment is to assure the Government that it only need do business with responsible contractors and grantees. 24 C.F.R. §24.0. Debarment is to be used for the purpose of protecting the public and is not to be used for punitive purposes. 24 C.F.R. §24.5(a). Likewise, suspension is a temporary sanction to be used for essentially the same purposes as debarment. 24 C.F.R. §24.13.

The Government contends that Blanco is a "contractor or grantee" as defined at 24 C.F.R. §24.4(f) because he "processed loan applications for government guaranteed mortgages" and was "a participant in a program where HUD was the insurer." While this may be a correct statement, it is not supported by a scintilla of evidence in the record. The only evidence in the record is that Blanco facilitated a loan from a lending institution insured by FSLIC. FSLIC is not HUD. There is no evidence that either Blanco or Dual Mortgage participated in programs where HUD was the insurer, or that Blanco received HUD funds indirectly through non-Federal sources.

Under its existing regulations applicable to suspension and debarment, HUD may only sanction those who come within the definition of "contractor or grantee" or "affiliate." See 24 C.F.R. §§24.3(a); 24.4(d) and 24.4(f). The action against Blanco was as a "contractor or grantee." Based upon the record before me, I must conclude as a matter of law that he is not a "contractor or grantee" as defined in 24 C.F.R. §24.4(f). I cannot draw an inference pursuant to 24 C.F.R. §26.11 that Blanco admitted that he was a "contractor or grantee" simply because he did not specifically deny it in his answer to the complaint. Respondent's status as a "contractor" or "grantee" is an issue of law that the Government must affirmatively establish. 24 C.F.R. §26.11 applies only to factual allegations. I, therefore, have no jurisdiction to determine whether debarment is appropriate and necessary in this case. I further find that the Department lacked authority under its regulations to suspend Blanco for the same reasons.

#### Conclusion

For the foregoing reasons, Julio Blanco shall not be debarred, and the temporary suspension of Blanco shall immediately be terminated.

  
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JEAN S. COOPER  
Administrative Judge

June 19, 1986