

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

In the Matter of:

GLEN EDWARDS,

Respondent

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: HUDBCA No. 87-2305-D8
: Docket No. 86-1092-DB
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For the Respondent

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For the Government

DETERMINATION

Statement of the Case

By letter dated November 3, 1986, Respondent, Glen Edwards ("Edwards") was notified by the U.S. Department of Housing and Urban Development ("HUD") that it intended to debar him from participation in Departmental programs for a period of three years pursuant to 24 C.F.R. §24.6(a)(4) and (9), based upon his conviction for violation of 18 U.S.C. §1163. A Temporary Denial of Participation (TDP) had been imposed against Edwards on June 16, 1986. Edwards was also temporarily suspended pending determination of his proposed debarment.

Edwards filed a timely request for an opportunity to submit documentary evidence and a brief on his proposed debarment pursuant to 24 C.F.R. §24.5(c)(2). This Determination is based upon the Government's brief and documentary evidence submitted by the parties. Edwards did not submit a brief.

Findings of Fact

1. Edwards is the former Executive Director of the Absentee Shawnee Housing Authority, a participant in HUD's Indian Housing Program. He served in that position from 1974 until at least 1985. During his tenure, the housing authority was considered to

have one of the best Indian housing programs in the nation, and it received numerous awards reflecting its accomplishments. (Resp. Answer; Gov't. Exh. F.)

2. Between June 1, 1980 and October 1, 1982, Edwards, acting in his official capacity as Executive Director of the housing authority, knowingly permitted the misapplication of funds belonging to the Absentee Shawnee Indian Tribe, an Indian tribal organization (Govt. Exhs. B, C).

3. A Bill of Information dated June 26, 1985 charged Edwards with violation of 18 U.S.C. §1163 for permitting the misapplication of funds belonging to the Absentee Shawnee Indian Tribe (Govt. Exh. C.)

4. On August 28, 1985, Edwards entered a plea of guilty to the charge in the Bill of Information, and was convicted of violation of 18 U.S.C. §1163. The United States District Court for the Western District of Oklahoma sentenced Edwards to a suspended sentence of confinement, a two year probation period, and a fine of \$1,000.00. (Govt. Exh. B; Resp. Ans.)

5. Edwards cooperated with the Government investigation at all stages. His probation officer concluded in a written report that he has observed no evidence of additional criminal intent or behavior during Edwards' supervised probation. (Govt. Exh. F.)

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. Debarment is not to be used for punitive purposes, but for protecting the public interest. 24 C.F.R. §24.5(a). Responsibility is a term of art in Government contract law. It has been defined to include not only the ability to satisfactorily complete a contract, but the integrity and honesty of the contractor or grantee. 49 Comp. Gen. 139 (1969).

Under the definition set forth at C.F.R. §24.4(f), individuals and private organizations that receive HUD funds directly or indirectly or who are in a business relationship with such recipients are "contractors or grantees" subject to HUD's debarment regulation. Edwards is a "contractor or grantee" within the meaning of 24 C.F.R. §24.4(f) because he served as Executive Director of an organization which receives HUD funds directly.

Section 1163 of Title 18 of the United States Code is entitled "Embezzlement and Theft from Indian Tribal Organizations." Edwards' conviction of violation of that statute establishes a cause for debarment under 24 C.F.R. §24.6(a)(9), which specifically includes a conviction for embezzlement as an

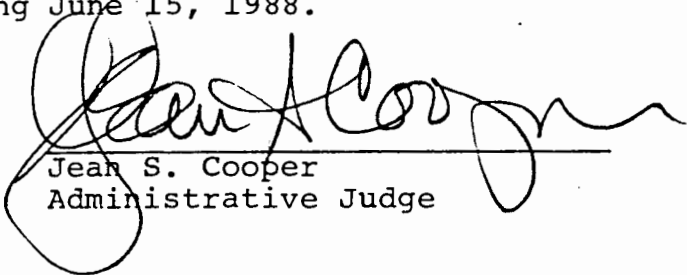
offense which shows a lack of business integrity and honesty which seriously affects the question of present responsibility.

Although Edwards may have directed a highly successful Indian housing program, he also betrayed the trust of the housing authority by knowingly allowing the misapplication of tribal funds in his official capacity. It is unclear from the record precisely what Edwards did, how the funds were misapplied or by whom. Nonetheless, Edwards had a business duty to assure that those funds were properly applied. He failed in that duty.

The record establishes the necessity and appropriateness of a period of debarment. I find that Edwards has been making substantial progress toward re-establishing his responsibility as a contractor, based on the report of his probation officer who has observed him closely. Administrative sanctions are not punitive. They are designed to protect the Government and public from contractors lacking present responsibility. I find that the mitigating evidence merits a debarment period of two years because Edwards was a passive rather than active participant in the crime for which he was convicted, and because he is regaining his responsibility. Debarment is a prospective sanction. Because Edwards has not been participating in HUD programs since June 16, 1986, I find it appropriate to give him credit for that period in assessing the necessary length of his debarment. I find that a period of debarment from today's date up to and including June 15, 1988 is warranted.

Conclusion

For the foregoing reasons, GLEN EDWARDS shall be debarred from this date up to and including June 15, 1988.



Jean S. Cooper
Administrative Judge

Date: November 30, 1987