



briefs. This determination is based on the record considered as a whole.

### Findings of Fact

1. Respondent, during all pertinent times, was a participant in HUD programs as an individual owner and seller of real estate subject to HUD/FHA insured mortgages. (Govt. Exh. 3; Respondent's Answer.)

2. On March 25, 1987, the United States District Court for the Western District of Tennessee, returned a two-count Bill of Information against Respondent. The Bill of Information charged that between February 1983 and February 1984, Respondent "knowingly and willfully combined, conspired, confederated and agreed with Bruce Haltom to make and cause to be made false statements to the U.S. Department of Housing and Urban Development and willfully and knowingly cause to be made false, fictitious and fraudulent statements and representations in a contract for sale of real estate." (Govt. Exh. 2, 3.)

3. Respondent pleaded guilty to the charges in the Bill of Information on May 22, 1987, received a suspended sentence with two (2) years probation, and was ordered to make restitution in the amount of \$19,000.00 (Govt. Exh. 2).

4. Respondent's unlawful conduct involved, inter alia, the signing of real estate contracts which falsely stated that earnest money had been paid. The purpose of this conduct was to help unqualified buyers and nominee purchasers to apply for and to obtain FHA insured loans. (Govt. Exh. 3.)

### 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 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, 419 F. Supp. 130 (D. D.C. 1976). Any mitigating circumstances affecting responsibility must be considered. Roemer v. Hoffman, supra. Debarment is not appropriate if the affected participant demonstrates that, notwithstanding any past non-responsible conduct, he no longer constitutes a business risk. 24 C.F.R. §24.0 and 24.6(b)(1).


Respondent concedes that he is a "contractor or grantee" within the scope of the HUD regulations, and further concedes that debarment is an appropriate sanction under the circumstances. Respondent asserts, however, that a three-year debarment is unwarranted and further asserts that his wrongful conduct was unintentional. Respondent concludes that a debarment in excess of two years is unwarranted. Id. In support of his position, Respondent argues that the Federal judge who imposed sentence determined that a suspended sentence and probation for a period of two years was appropriate. Respondent argues on this basis that the "punishment proposed by H.U.D. of debarment ... should not extend for a longer period of time than the Federal Court placed [Respondent] on probation." Respondent contends in his affidavit that he has admitted his wrongdoing, has cooperated with authorities, and that he is currently making restitution in the amount of \$19,000.00. Id. Respondent further asserts that he has not been previously suspended and that, with the exception of the offense in question, he has conducted himself in a professional manner. Id.

Although the test for debarment is the present responsibility of the contractor, a lack of present responsibility may be inferred from past acts. Schlesinger v. Gates, 2459 F. 2d 111 (D.C. Cir. 1957); Stanko Packing Co. v. Berqland, 489 F. Sup. 947, 949 (D. D.C. 1980); 46 Comp. Gen. 651, 658-59 (1967). Debarment is not penal or punitive in nature, but a measure properly taken by the Government to effectuate its statutory obligation to protect the public. See, L. P. Steuart & Bros v. Bowles, 322 U.S. 398 (1964); Gonzales v. Freeman, 344 F.2d 570 (D.C. Cir. 1964). The purpose of HUD debarments is to protect the public interest by ensuring that the Department does not do business with contractors or grantees who are not responsible. 24 C.F.R. §§24.0 and 24.5(a).

Respondent stands convicted of acts which evidence a serious lack of business integrity and honesty. These acts occurred frequently over a span of one year. Respondent's plea of guilty established the requisite criminal intent to support his conviction, despite his present assertions that his acts were "inadvertent." Fed. R. Crim. P. 11(f). Respondent's affidavit contains insufficient evidence to establish that he fully recognizes the serious nature of the offenses in question. Respondent has submitted no evidence in addition to his affidavit that would prove that he is presently responsible. The record, therefore, establishes the necessity and appropriateness of a three-year period of debarment of Respondent to protect the public interest.

CONCLUSION

Respondent shall be debarred from participation in HUD programs from this date through May 21, 1990, credit being given for the period of Respondent's suspension from May 22, 1987.

  
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Timothy J. Greszko  
Administrative Judge

May 5, 1988