

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

In the Matter of:

BRUCE HALTOM,

Respondent

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: HUDBCA No. 87-2654-D62
: (Activity No. 87-1165-DB)
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:

H. Jack Holmes, Esq.
HOLMES, RICH & SIGLER, P.C.
218 W. Main
Jackson, Tennessee 38301

For the Respondent

Dane M. Narode, Esq.
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 July 31, 1987, Bruce Haltom was notified that the U.S. Department of Housing and Urban Development intended to debar him from participation in HUD programs for a period of three years pursuant to 24 C.F.R. §§24.6(a)(4)(5) and (b), based on his conviction for violation of 18 U.S.C. §§371, 1001 and 2. Haltom was temporarily suspended pending determination of debarment.

A hearing on a proposed debarment based on a conviction is limited by regulation to the submission of documentary evidence and written briefs. 24 C.F.R. §24.5(c)(2). Haltom made a timely request for an opportunity to submit a brief and documentary evidence on his behalf.

Haltom does not dispute HUD's right to debar him, or the appropriateness of the sanction, per se. His submission is limited to a presentation that the proposed duration of the debarment is excessive under the facts of this case.

Findings of Fact

1. On March 25, 1987, Bruce Haltom was charged in a two-count Information with violations of 18 U.S.C. §371, 1001 and 2 by the United States Attorney for the Western District of Tennessee. Count 1 of the Information alleged that Haltom and Ronnie Johnson conspired to make and cause to be made false statements to HUD, in violation of 18 U.S.C. §1001. The Information stated that the object of the conspiracy was for Haltom and Johnson to obtain purchasers for real estate owned by them. Haltom was charged specifically with representing to purchasers that they would have to make little or no downpayment to purchase properties with loans to be financed with HUD-insured mortgages. Haltom was further charged with signing sales contracts that falsely represented amounts of earnest money paid by purchasers, falsely representing to purchasers that they could borrow the money for the downpayment required by HUD, and falsely representing that a property could be purchased with a HUD-insured mortgage for "\$100 down" and that ownership could then be transferred to a relative of the purchaser, all in violation of 18 U.S.C. §371. Finally, Haltom was charged with having falsely stated on a contract for sale of property to be purchased with a HUD-insured mortgage that he had received \$700 earnest money from a purchaser, when he had not, in violation of 18 U.S.C. §§1001 and 2. All of the overt acts cited in the Information took place between February 2, 1983 and January 21, 1984. (Govt. Exh. 3.)

2. On May 22, 1987, Haltom entered a plea of guilty to the Information. He was convicted and sentenced to serve two years probation. He was also ordered to make restitution in the amount of \$19,000 to be paid during his probation. (Govt. Exh. 2.)

3. In a sworn affidavit dated October 30, 1987, Haltom stated that he has been paying \$500 per month pursuant to the restitution order and that he planned to increase his payments after November, 1987, so that restitution would be complete by December 1, 1988. He further stated that he cooperated fully with investigative authorities throughout the criminal investigation, and that the offenses to which he pled guilty were "inadvertent." Haltom averred that he had participated in HUD programs for nine years with "no previous problems" and no HUD-imposed sanctions. (Resp. Exh. A.)

Discussion

The purpose of debarment is to assure HUD that it only does business with responsible contractors and grantees. 24 C.F.R. §24.0. Debarment is to be used to protect the public interest and is not to be used for punitive purposes. 24 C.F.R. §24.5(a). "Responsibility" is a term of art in Government contract law. It is defined to include the honesty and integrity of the contractor, and not merely the ability to perform a contract. Arthur H. Padula, et al., HUDBCA No. 78-284-D30 (June 27, 1979). The test for whether debarment is warranted and necessary is present lack of responsibility. However, present lack of responsibility may be

inferred from past acts, Schlesinger v. Gates, 249 F. 2d 111 (D.C. Cir. 1957), so long as mitigating circumstances are taken into consideration. Gonzales v. Freeman, 344 F. 2d 570 (D.C. Cir. 1964).

Haltom admits that he is a contractor or grantee subject to debarment by HUD, and he further admits that cause for debarment has been established. He argues, however, that a three-year period of debarment beginning from the date of the notice of proposed debarment is excessive. He contends that the debarment should terminate at the end of his period of probation, on or about May 22, 1989.

Haltom has confused the purpose of debarment with the purpose of criminal penalties. Debarment is a sanction, not a penalty. It is used as a method of protecting the Government and the public from contractors lacking present responsibility. The acts to which Haltom pled guilty were not minor little peccadillos. He admitted to, and was convicted of, conspiracy, false statements and inducing others to defraud HUD. A number of transactions were involved. The whole purpose of the conspiracy was to make money at Government expense. If Haltom had been a HUD contractor for nine years, he knew or certainly should have known the basic HUD requirements for earnest money deposits, downpayments, and strictures against second trusts. It strains credulity that his false representations, constituting criminal offenses, were "inadvertent." Haltom's conspiracy with Johnson operated for almost a year, and cut a wide enough swath to have required continuing coordination and attention--quite the opposite of inadvertence.

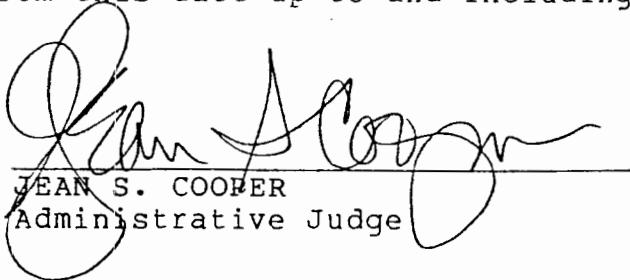
I find that a debarment of three years is necessary and appropriate in this case. Haltom's actions were serious, concerted, and intentional ploys to mislead and defraud HUD into insuring mortgages based upon false information. He compounded these dishonest and deplorable offenses by giving false advice to purchasers about HUD mortgage insurance requirements to lure them into his stable of unqualified purchasers. Haltom's affidavit is devoid of any recognition of the seriousness of his past acts, or why HUD has an interest in this matter both more immediate and more long-term than the court in which he was sentenced. The mitigating circumstances cited by Haltom do not focus on any change in attitude on his part. His very words bespeak of no change. I conclude that Haltom is not presently responsible based on the record before me. Making restitution ordered as a condition of probation is not evidence of present responsibility as a HUD contractor, nor does it mitigate the seriousness of the acts that led to the conviction.

Debarment is a prospective sanction and cannot be applied retroactively. Haltom has been temporarily suspended since July 31, 1987, and credit will be given for that period in ordering the duration of his debarment. I find that it is in the public

interest that Bruce Haltom be debarred from this date up to and including July 30, 1990.

Conclusion

For the foregoing reasons BRUCE HALTOM shall be debarred from participation in HUD programs from this date up to and including July 30, 1990.



JEAN S. COOPER
Administrative Judge

June 13, 1988.