

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
BOARD OF CONTRACT APPEALS

Washington, D.C.

In the Matter of:	:		
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JOSE M. VENTURA ALISIS,	:	HUDBCA No.	87-2956-D6
	:		87-3403-D24
	:	Docket No.	87-1187-DB
Respondent	:		88-1210-DB

For the Respondent:

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For the Government:

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DETERMINATION BY ADMINISTRATIVE JUDGE TIMOTHY J. GRESZKO

September 22, 1988

Statement of the Case

By letter dated August 20, 1987, Jack R. Stokvis, General Deputy Assistant Secretary for Community Planning and Development, U. S. Department of Housing and Urban Development ("HUD"), notified Jose Miguel Ventura Alisis ("Respondent"), that, pursuant to 24 C.F.R. §§24.13(a)(1)(iii) and 24.13(a)(2), he was suspended from further participation in HUD programs due to the entry of a Federal indictment against him. Respondent's indictment was returned by a Federal grand jury convened by the United States District Court for the District of Puerto Rico. The indictment charged Respondent with violations of Title 18 U.S.C., Sections 666(c) and 201(b), and 42 U.S.C. §408(g)(2). Respondent made a timely request for a hearing on the suspension by letter dated September 21, 1987.

On November 12, 1987, the Government requested that this matter be continued until such time as the Government had taken further administrative action against Respondent based on a conviction order entered against Respondent on August 27, 1987, by the United States District Court for the District of Puerto Rico. The Government's motion was granted by the Board on November 13, 1987.

By letter dated December 29, 1987, Jack R. Stokvis notified Respondent that, pursuant to 24 C.F.R. §§24.6(a)(1)(2) and 24.6(c)(13), HUD was considering debaring Respondent for a period of three years from further participation in HUD programs. The proposed debarment was based on Respondent's conviction in the United States District Court on one count of Title 18, United States Code, Section 201(f). Respondent made a timely request for a hearing on the proposed debarment by undated letter. Since the suspension was based on Respondent's indictment, and as the proposed debarment is based upon Respondent's conviction, this hearing is limited under 24 C.F.R. §24.5(c)(2) to the submission of documentary evidence and briefs. This determination is based on the record as a whole.

Findings of Fact

1. Respondent is a civil engineer and the sole owner of J.M. Ventura & Associates. On June 23, 1980, Respondent was awarded a contract by the Municipality of Catano, Puerto Rico, for the performance of engineering and consulting services relative to the development of a public housing project in Catano. The fees for this contract were paid from HUD Community Block Grant Funds. (Opposition to Proposed Debarment, Transcript, Change of Plea, U.S. District Court (Puerto Rico), Crim. No. 86-535 (cc), June 12, 1987.)

2. On October 17, 1986, a grand jury for the United States District Court (Puerto Rico) returned a five-count indictment against Respondent for alleged violations of 18 U.S.C. §§666(b), (c), 18 U.S.C. §201(b), and 41 U.S.C. 408(g)(2). (Govt. Exh. 2.)

3. On June 12, 1987, Respondent entered a plea of guilty to Count Three of the indictment, as amended, which charged Respondent with a violation of 18 U.S.C. §201(f), by knowingly and willfully giving a certificate of deposit in the amount of \$45,000 to the Mayor of the Municipality of Catano, Puerto Rico, to influence an official act, the signing of a contract for professional services in the amount of \$103,802.00. (Govt. Exh. 4.)

4. On August 27, 1987, Respondent was sentenced to five years probation and ordered to pay a \$10,000 fine to the United States. Imposition of sentence of imprisonment was suspended (Govt. Exh. 4.)

Discussion

Sanctions such as suspension and debarment are to be used to protect the public, and not for punitive purposes. Gonzalez v. Freeman, 334 F. 2d 570, 577(D.C. Cir. 1964); 24 C.F.R. §24.5(a). 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. Responsibility is a term of art in Government contract law, defined to include not only the ability to perform a contract, but the honesty and integrity of the contractor or grantee, as well. Roemer v. Hoffman, 419 F. Supp. 130 (D.C. D.C. 1976); 48 Comp Gen. 769 (1969); Paul Grevin, HUDBCA No. 85-930-D16 (July 10, 1986).

Respondent is a "contractor or grantee" as defined in 24 C.F.R. §24.4(f). Contractors and grantees are defined therein 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...." Id. Respondent was under a contract to provide professional engineering and consulting services to the Municipality of Catano, Puerto Rico. The municipality was a direct recipient of Community Development Block Grant funds from HUD. As such, Respondent was an indirect recipient of HUD funds.

The Government asserts correctly that pursuant to 24 C.F.R. §24.6(a)(2), the Department may debar a contractor for conviction for the offense of bribery of a public official. Respondent's conviction was based on a knowing, intelligent and voluntary plea to the elements of the offense in question. I find that cause for the debarment of Respondent has been established under 24 C.F.R. §24.6(a)(2).

Even if cause for debarment is established, mitigating evidence must be considered in determining whether debarment is necessary. Roemer v. Hoffman, 419 F. Supp. 130 (D.D.C. 1976); 24 C.F.R. §24.6(b)(1). The test for whether debarment is warranted is present responsibility. Although present responsibility is the critical test of whether debarment is necessary, a lack of present responsibility may be inferred from past acts. Schlesinger v. Gates, 249 F. 2d 111 (D.C. Cir. 1957).

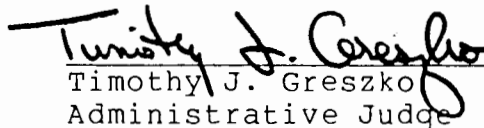
Respondent argues that the seriousness of his conviction is mitigated by evidence contained in his Pre-sentence Memorandum, which includes a number of letters from friends and acquaintances. While the authors of these letters expound on Respondent's virtues as a social companion and family man, these submissions do not address in any detail the issue of the past or present responsibility of Respondent as a contractor, and are therefore unpersuasive. Lee Phelps, HUDBCA No. 87-2669-D65 (March 4, 1988), citing Michael F. Koury and Maxine Koury, HUDBCA No. 81-618-D30, 81 619-D31 (Sept. 18, 1981).

Respondent also argues in mitigation that the payment which he made to the Mayor of Catano was made because the Mayor wrongfully refused to pay Respondent for services rendered under the contract and the Mayor suggested that "a contribution would substantially enhance the speed with which payment was made." In support of this argument, Respondent has submitted a written statement dated August 7, 1987, which he apparently provided to the U.S. Probation Department prior to sentencing. (Resp. Exh. II). This evidence while probative of Respondent's guilt or innocence, does not affect Respondent's guilty plea which constitutes an admission of guilt to the offense as charged. It would be inappropriate to determine in this proceeding the merits of Respondent's contentions to the extent he contests the validity of the plea as entered. Ramsey A. Aqan, HUDBCA No. 83-773-D17 (Slip. op. April 21, 1983), and cases cited therein. Respondent's denial of guilt is not mitigating evidence and the reasons given to justify Respondent's criminal actions are not mitigating factors under the regulations of this Department.

Respondent's actions demonstrate a strong lack of honesty and integrity. Although Respondent asserts that the public was not harmed by his actions, I disagree. The crime for which Respondent was convicted involved the bribing of a public official to influence his judgment in the performance of an official act. This crime tainted an official act involving the programs of an agency of the United States Government. Such crimes clearly erode public confidence in important Government social policy programs. While the offenses charged occurred in 1982, Respondent has offered no evidence which would show that he is any more responsible now than he was in 1982, or that he now understands the regulations of this Department. Based on the very serious nature of the crime and the lack of substantial mitigating evidence, I find that the suspension of Respondent was proper and that a three-year debarment is warranted to protect the integrity of the Department and the public interest.

Conclusion

It is my determination that Respondent be debarred from participation in programs of this Department for three years from this date through August 19, 1990, credit being given for the period of Respondent's suspension from August 20, 1987.



 Timothy J. Greszko
 Administrative Judge