

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

In the Matter of:

NORMA COLEMAN,

Respondent.

HUDBCA No. 88-3432-D42
Docket No. 88-1236-DB

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For the Government

DETERMINATION BY ADMINISTRATIVE JUDGE DAVID T. ANDERSON

February 15, 1990

Statement of the Case

By letter dated April 8, 1988 from HUD Assistant Secretary Thomas Demery, Norma Coleman ("Respondent") was notified by the U.S. Department of Housing and Urban Development ("HUD", "Department", or "Government") that, due to the filing, by the United States Attorney for the District of New Jersey, of a Bill of Information charging alleged violations of Title 18, Sections 1010 and 2, United States Code, Respondent was suspended from all participation, direct or indirect, in any HUD program, pending resolution of the Bill of Information. By letter dated May 24, 1988 from Assistant Secretary Demery, Respondent was notified that, due to her conviction in the U.S. District Court for the District of New Jersey, the Department intended to debar her from participation in HUD programs for a period of three years from the date of the suspension, April 8, 1988.

A hearing on a suspension or 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). Respondent filed a timely request to submit documentary evidence

and a brief in opposition to suspension and debarment. This determination is based on the Government's brief, the Respondent's brief, and documentary evidence submitted by the parties.

Findings of Fact

1. Respondent was licensed as a real estate agent in the State of New Jersey in 1980. Her license was last renewed by the New Jersey Real Estate Commission on July 1, 1988. (Govt. Exh. 3; Resp. Exh. B)

2. During all pertinent times, Respondent was employed by Daner Realty Co., Inc., at 3311 Federal Street, Camden, New Jersey. This was her first position as a licensed real estate agent. Her supervisor was [REDACTED] Cohen. (Resp. Brief)

3. During Respondent's employment at Daner Realty, Cohen instructed Respondent that, in assessing the financial worth of prospective mortgage applicants, "to estimate the personal property value of applicants liberally and also to provide them with an old model automobile in the event that they did not own one." On or about April 25, 1983, [REDACTED] in completing the residential loan application of [REDACTED] Randolph for the purchase of property at [REDACTED] S. 34th Street, Camden, New Jersey, Respondent, acting on Cohen's instructions, falsely wrote on their mortgage application "that they owned an old model Cadillac." (Resp. Brief)

4. A Bill of Information was filed in the U.S. District Court for the District of New Jersey on July 23, 1987. The eleven-count Bill of Information stated, *inter alia*, that Respondent "did knowingly and willfully make statements knowing them to be false in that [Respondent] submitted a HUD Residential Loan Application form which inflated the value of [REDACTED] Randolph's assets to make it appear that they were financially qualified for a HUD-insured mortgage loan when [Respondent] well knew that the statements regarding [the Randolphs'] assets were false [in violation of Title 18, United States Code, Sections 1010 and 2." (Govt. Exh. 3; Resp. Brief, Exh. A)

5. On February 19, 1988, Coleman pled guilty to one count in the Bill of Information and was convicted of making a false statement to HUD in violation of 18 U.S.C. §§1010 and 2. The court ordered a suspended sentence and that Respondent be placed on probation for a period of five years. The court further ordered as special conditions of probation that: (1) Respondent "pay a fine in the amount of \$1,000 in monthly installments within the first year of Probation;" and (2) Respondent "make restitution to HUD for its loan on the property at [REDACTED] S. 34th Street, Camden, New Jersey, as directed by the Probation Department." (Govt. Exh. 4)

6. In a Determination dated February 24, 1989, the New Jersey Real Estate Commission ordered that Respondent's real estate salesperson's license be revoked; Respondent was granted leave to apply "to the Commission for licensure as a real estate salesperson" after July 7, 1990. The Determination stated that Respondent's application would not be approved until completion of "all of the terms and conditions of her probationary sentence." Respondent's real estate broker's license was also revoked until "discharge from probation"; Respondent's application for this license would not be permitted prior to February 7, 1991. (Resp. Brief, Exh. B)

Discussion

The purpose of debarment is to ensure that the Government does business only with responsible contractors and grantees. 24 C.F.R. §24.0. "Responsibility" is a term of art in Government contract law. It refers not only to the ability to perform a contract satisfactorily but to the honesty and integrity of the contractor. Domco Chemical Corp., 48. Comp. Gen. 769 (1969). It is uncontested that a real estate agent who participates in HUD-insured mortgage transactions is a "contractor" within the meaning of 24 C.F.R. 24.4(g) (April 1, 1988 Edition).

Respondent was convicted of making false statements to HUD. False statements concerning financial representations are evidence of a serious lack of business integrity and honesty. However, Respondent contends that she was licensed as a real estate agent in 1980, that her first supervisor was ██████ Cohen of Daner Realty, and that "[t]he mortgage application involving the Randolphs was the last or next to last mortgage application that [Respondent] was involved in at Daner Realty under the direct supervision of Mr. Cohen before moving on to her present position at Newcam Realty." Respondent attributes her criminal conduct to her former supervisor, ██████ Cohen, who was convicted and imprisoned for his criminal actions. Respondent submits that she was at that time "a young, green real estate agent working at the instruction and under the direct supervision of ██████ Cohen."

Respondent's excuse that her criminal conduct was due to ignorance and poor supervision does not exculpate her. An individual who receives a real estate license is certainly expected to know that deliberately making false statements on a loan application is wrong and unacceptable professional conduct. The New Jersey Real Estate Commission, in its Order of Determination issued on February 24, 1989, stated:

In considering the severity of the sanctions to be imposed upon the respondent, the Commission took into account the seriousness of the violations, considerations of deterrence and the mitigating factors in the record.

The Commission noted that the Respondent engaged in criminal conduct in her capacity as a real estate licensee. Her falsification of mortgage applications as to the amount of assets owned by applicants were acts which directly violated the public trust reposed in her by grant of the real estate salesperson's license. Attorneys, sellers, title companies and mortgage lenders, as well as the U.S. Government, must rely daily upon the truth of such applications and other documents prepared by New Jersey real estate licensees. Therefore, the sanction imposed here must be sufficient to deter this licensee and others from engaging in such practices. (Resp. Brief, Exh. B)

Debarment is not to be used for punitive purposes, but to protect the public interest. 24 C.F.R. 24.5(a). It is used as a method of protecting the Government and the public from contractors lacking present responsibility. The burden is on the Government to prove that the debarment sanction is necessary to protect the Government's interest and use of the sanction has been precluded where this burden has not been met. John R. Morris, HUDCA No. 84-836-D8 (April 5, 1984). However, even if cause for debarment is established, the existence of a cause does not necessarily require that a contractor be excluded from Departmental programs. 24 C.F.R. §24.5(a). Mitigating factors must be considered in determining the seriousness of the offense, and present responsibility must be evaluated in determining whether the sanction is necessary to protect the public interest. Roemer v. Hoffman, 419 F. Supp. 130 (D. D.C. 1976); 24 C.F.R. §24.5(a).

The record in this case clearly establishes cause for debarment. The only documentary evidence Respondent offers in mitigation is a copy of a letter to the U.S. District Court Judge dated February 16, 1988 from Assistant U.S. Attorney Lorraine S. Gerson, who prosecuted Respondent in the U.S. District Court. That letter, which apparently was included in the presentence report, states in part that, Respondent's "testimony was generally truthful" and "that Ms. Coleman was fully cooperative." Cooperation during a criminal proceeding by an accused is not, per se, persuasive evidence of mitigation. However, that letter also stated:

Pursuant to a written plea agreement, the defendant pleaded guilty to knowingly overstating the assets of purchasers applying for a government-backed mortgage loan. This practice was one of the many devices employed by the defendant, and included, among others, the preparation of fraudulent child-care letters to conceal a purchaser's expenses; the preparation of false mortgage applications which would conceal a prospective purchaser's prior mortgage defaults or misrepresent the number of purchasers and their occupancy status; and

other practices which would manipulate a purchasers' [sic] income and expense figures so as to place them within [a] ratio known to be acceptable to HUD. The purpose of these devices was to make purchasers appear to be qualified for government-backed mortgages when, in many instances, they were not so qualified. The ultimate objective was to increase sales and thereby increase the defendant's income. (Resp. Brief, Exh. A)

These deplorable actions clearly describe the type of contractor with whom HUD should not do business. Respondent's participation in these criminal schemes cannot be excused by her inexperience in the real estate profession. Respondent's counsel states that "[s]ince moving to Newcam in 1984 ... Ms. Coleman has had no problems and has in fact been an upstanding real estate agent and broker." The representation of Respondent's counsel that Respondent is now responsible is mere argument and provides no evidence of mitigation, as it is unsupported by affidavit or documentary evidence.

The Government seeks protection from Respondent for a period of three years. However, Respondent requests that any sanction by HUD "run concurrent with the sanctions imposed by the New Jersey Real Estate Commission." Under those sanctions, Respondent would be able to apply for the reinstatement of her real estate brokers license no earlier than February 7, 1991, and to apply for her real estate salesperson's license no earlier than July 7, 1990. Although Respondent has been granted the opportunity to seek reinstatement of her real estate licenses on certain dates, there is no guarantee that Respondent's licenses will be reinstated, even if she files applications for reinstatement on or after these specified dates. The limitations on Respondent's real estate practices by the New Jersey Real Estate Commission serve as an additional level of protection for HUD since, without licenses to work as a real estate salesperson or broker, Respondent would be unable to engage in the types of transactions in which her criminal conduct occurred.

The fact that Respondent's criminal conduct occurred over six years ago could result in an amelioration of the need for debarment. The passage of time diminishes the probative weight which should be given to prior criminal conduct, as that conduct relates to the issue of present responsibility and the immediacy of the Government's need for protection. Spencer H. Kim and Kamex Construction Corp., HUDBCA No. 87-2468-D58 (June 21, 1988), Ray Riddele, et. a., HUDBCA No. 87-1953-D3 (July 1, 1988). While Respondent has offered no evidence which would show that she is any more responsible now than she was in 1983, neither has the Government made a persuasive showing that it needs protection from doing business with Respondent until April 1991, based on Respondent's 1983 criminal behavior. Consequently, I believe that a period of debarment until July 7, 1990, the date on which

Respondent may apply to the New Jersey Real Estate Commission for reinstatement of her salesperson's license, is adequate. This period of debarment will provide sufficient protection to the public and the Department.

Conclusion

For the foregoing reasons, it is my determination that Respondent be debarred from participation in HUD programs from this date up to and including July 7, 1990, Respondent having been suspended from eligibility to participate in HUD programs since April 8, 1988.



David T. Anderson
Administrative Judge