



**Board of Contract Appeals**  
U.S. Department of Housing and Urban Development  
Washington, D.C. 20410-0001

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In the Matter of:	:	
STEPHEN J.FERRY,	:	HUDBCA No. 90-5228-D17
BETH AN FERRY,	:	Docket No. 90-1424-DB
and	:	
FERRY FINANCIAL, INC.,	:	
Respondents	:	
.....	:	

DECISION AND ORDER AMENDING INITIAL DETERMINATION ON REMAND

Background

In accordance with the Determination on Secretarial Review issued in this case, the Initial Determination issued in a bench decision on October 31, 1990, was remanded for amendment as to the length of the period of debarment imposed on Respondents. In the Initial Determination, Stephen J. Ferry and his affiliate, Ferry Finincial, Inc., were debarred for four years, and Beth An Ferry was debarred for two years. The Determination on Secretarial Review held that an indefinite debarment of at least five years would have to be imposed on all Respondents, absent particularized findings to justify a lesser sanction, citing 24 C.F.R. Section 26.24(a).

Through inadvertence, the sentence in the Determination on Secretarial Review remanding this case for further action was overlooked. The case was not redocketed by the Board, and neither party responded in any way to the remand, or called it to the attention of the Board until August 27, 1992.

AMENDMENT TO INITIAL DETERMINATION

Although the Government proposed an indefinite debarment of all three Respondents, none of them were debarred before the hearing. The hearing was a de novo evaluation of whether there were grounds for debarment, and if so, whether debarment was needed to protect the public interest and the Government. In making such a de novo determination, the Hearing Officer also determines, based on the hearing record, how long a period of debarment is necessary. 24 C.F.R. Section 26.24(a).

The regulations applicable to debarment state that generally a debarment should not exceed three years. However, where circumstances warrant, a longer period of debarment may be imposed. 24 C.F.R. {Section 24.320(a)(1)}. A judge must balance the need for public protection with the caveat against using debarment for punitive purposes. 24 C.F.R. Section 24.115(b).

A. The debarment of Beth An Ferry for two years was supported by particularized Findings of Fact 2, 6, 20, 21, and 26. In summary, those findings set out that Beth An Ferry, although nominally a corporate officer of American Mortgage Securities Exchange, Inc. (American), had taken herself out of all corporate decision-making as of 1986. She was aware of corporate decisions made by Stephen J. Ferry and Robert Joyce, but did not participate in them. She was not aware that custodial funds had been misused by American until on or after January 31, 1989, when an audit report on the matter was provided to Stephen Ferry, who showed it to Beth An Ferry. Beth An Ferry played no role in the misuse of funds. She did sign some HUD Form 92900's for mortgage insurance after American's mortgagee approval had been withdrawn, and she did not tell Empire Realty Company (Empire), to whom American was assigning its FHA loans, that American was no longer a HUD-approved mortgagee. She believed that HUD was going to reinstate American's mortgagee approval. Negotiations were going on to that effect at the time, and she believed that it was in the best interests of American and HUD to continue to do business during the negotiation period, notwithstanding the withdrawal of mortgagee approval.

Although these facts certainly establish cause and need for debarment, they in no way warrant an indefinite debarment of at least five years for Beth An Ferry. I considered it critical that she played no role in, nor had knowledge of, the misuse of custodial funds, which was the reason that American's mortgagee approval was withdrawn, and it was also initially cited as a ground for an indefinite debarment. Furthermore, she removed herself from corporate decision-making before the cited grounds for debarment occurred. With three years as the general maximum period of debarment, absent egregious circumstances, I conclude, based on Findings of Fact 2, 6, 20, 21, and 26, that the debarment of Beth An Ferry for two years, rather than an indefinite period of at least five years, is warranted by the evidence in the record, and appropriate to achieve the purposes of the sanction.

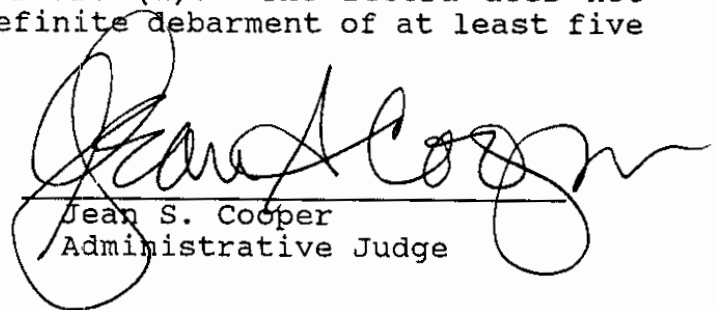
B. The debarment of Stephen J. Ferry, and his affiliate, Ferry Financial, Inc., for four years is supported by particularized Findings of Fact 1, 6, 10, 18, 19, 21, 22, 25, and 27. In summary, those findings set out the knowledge, and concurrence in the corporate decision, of Stephen J. Ferry that American would continue to do HUD-FHA mortgage business after American's mortgagee approval had been withdrawn. Ferry believed that American's approval would soon be reinstated. Ferry had become ill sometime in 1986, and from that time until January, 1989, he was not able to do more than simple part-time work, when he was able to work at

all. He turned over the management of American to Robert Joyce from August, 1987, until January, 1989. On or after January 31, 1989, Stephen J. Ferry found out through an annual audit report that custodial funds had been misused by American. He was not involved in the actual misuse, but when it reoccurred, he took no executive action to assure that it would not happen again.

Based upon these facts, I conclude that Stephen J. Ferry's knowing violation of the strictures of the withdrawal of mortgagee approval, a corporate decision made by Robert Joyce but supported by Ferry, was sufficiently egregious to warrant more than the general maximum period of debarment of three years. However, his lengthy illness and absence from American when the misuse of custodial funds occurred, and his inactive role as a corporate decision-maker, would make an indefinite debarment of at least five years punitive. Ferry's lack of involvement in or knowledge of the misuse of custodial funds, although they do not mitigate the seriousness of American's violation of the terms of the withdrawal of mortgagee approval, do mitigate the seriousness and egregiousness of Ferry's role in all that occurred at American while Ferry was a corporate officer. The conscious violation of the terms of the withdrawal of mortgagee approval warrants a period of debarment of four years. Ferry's failure to deal effectively with the misuse of custodial funds when he found out about it, further convinces me that Stephen J. Ferry and his affiliate, Ferry Financial, Inc., should be debarred for four years. This period of debarment is supported by the particularized findings, and is otherwise in conformance with the purposes of debarment to protect HUD and the public but not to be punitive. 24 C.F.R. Section 24.115(b).

ORDER

The Initial Determination issued on October 31, 1990, is amended by the foregoing text to explain, to the extent that the Initial Determination did not make clear, the nexus between the particularized Findings of Fact and the periods of debarment imposed. The periods of debarment of four years for Stephen J. Ferry and Ferry Financial, Inc., and two years for Beth An Ferry are supported by the particularized findings made in the Findings of Fact, and are otherwise imposed in accordance with the regulations applicable to debarment, including 24 C.F.R. Sections 24.115 (b), 24.320 (a)(1), and 26.24 (a). The record does not warrant the imposition of an indefinite debarment of at least five years on any of the Respondents.

  
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Jean S. Cooper  
Administrative Judge

September 2, 1992