



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

In the Matter of:

KELVIN ELLIS,

Respondent

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: HUDBCA No. 91-5899-D45
: Docket No. 91-1639-DB
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:

RESPONDENT, PRO SE:

Mr. Kelvin L. Ellis
[REDACTED]

FOR THE GOVERNMENT:

Geoffrey T. Roupas, Esq.
HUD Chicago Regional Office
547 West Jackson Boulevard
Chicago, Illinois 60606

DETERMINATION BY ADMINISTRATIVE JUDGE JEAN S. COOPER

September 19, 1991

Statement of the Case

By letter dated December 4, 1990, Respondent Kelvin Ellis was notified that the U.S. Department of Housing and Urban Development (HUD) intended to debar him for a period of three years, based on his criminal conviction in Federal Court. Ellis was temporarily suspended pending determination of debarment. HUD cited 24 C.F.R. §24.305(a) and (d) as grounds for debarring Ellis from participation as a participant or principal at HUD and throughout the Executive Branch of the Federal Government.

Ellis requested a full hearing on his proposed debarment. A hearing in cases of suspension and proposed debarment based solely on a criminal conviction, such as this case, is limited by regulation to submission of briefs and documentary evidence. 24 C.F.R. §24.313(b)(2)(ii). The Government filed a brief and documentary evidence in this case. Ellis has failed to file anything beyond a statement that he had never been involved in HUD funded projects, and that his criminal conviction had nothing to do with HUD or "any federally funded matter."

Findings of Fact

1.) In 1986 and 1987, Ellis was an executive assistant to the Mayor of East St. Louis, Illinois. He was also the appointed "Enterprise Zone Coordinator" for the City of East St. Louis. In those two capacities, Ellis had the authority and control over political departments and employees of the City of East St. Louis to cause the denial of permits, contracts and licenses, including city permits for construction of the Eastwood Forest Nursing Home ("Eastwood"). (Gov't. Exh. 1 and 2.)

2.) Salem Construction Company ("Salem") had a contract to perform plumbing work on Eastwood. Ellis caused the cancellation of Salem's city work permits, based upon a charge fabricated by Ellis that Salem was in breach of an agreement to hire minority contractors. As a result of cancellation of the work permits, the Eastwood project was halted. Ellis caused Salem's work permits to be cancelled to force Salem to award the plumbing contract for Eastwood to Mississippi Valley Construction Company ("Mississippi"), a company in which Ellis had a financial interest. In May, 1987, Salem awarded the plumbing contract to Mississippi. Thereafter, city permits were reissued for construction and plumbing on Eastwood. (Govt. Exhs. 1 and 2.)

3.) The City of East St. Louis was a recipient of HUD funds in several programs, including the Community Development Block Grant Program ("CDBG") and the Rental Rehabilitation Program in the years 1986 and 1987. The Mayor of the City of East St. Louis made the annual requests for funds under the CDBG program, and used funds from HUD under the CDBG program and other programs for construction and rehabilitation projects for which city permits were required. (Govt. Exh. 3.)

4.) A Grand Jury convened by the United States District Court for the Southern District of Illinois returned a two-count indictment against Ellis, charging him with one count of criminal extortion in violation of 18 U.S.C. §1951, based on his actions in regard to Eastwood. He was also charged with a second count alleging violation of 18 U.S.C. §286 arising out of an unrelated transaction. (Govt. Exh. 2.)

5.) On July 5, 1990, Ellis was found guilty of 18 U.S.C. §1951, based upon his plea of guilty to that count of the indictment. He was sentenced to serve 21 months confined at the Marion Illinois Prison Camp and to serve three years under supervised release after completion of his prison term. (Govt. Exh. 1.)

Discussion

The Mayor's office of the City of East St. Louis and the City of East St. Louis were recipients of HUD funds and participated in a number of HUD programs that required the granting or award of contracts, city permits and licenses. Ellis had the power to control such awards through his positions with the Mayor's office and the City of East St. Louis. I therefore find that Ellis was both a "participant" and a "principal" in covered transactions because of his past participation in HUD programs as a key employee of a participant, and the reasonable expectation that he may participate in HUD programs in the future, if allowed to do so. 24 C.F.R. §§24.105(m) and (p)(22). He is therefore subject to the sanctions of debarment and suspension by HUD.

The HUD regulation applicable to debarment states that a debarment may be imposed for conviction of:

Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person. 24 C.F.R. §24.305(a)(4).

The burden is on the Government to prove by a preponderance of the evidence that cause for debarment exists. 24 C.F.R. §§24.303(b)(3) and (4). Since the proposed debarment is based on Ellis' conviction, this burden is deemed to have been met. 24 C.F.R. §24.313(b)(3). However, existence of a cause for debarment does not automatically require that a debarment be imposed. There are other factors to be weighed in deciding whether debarment in a given case is necessary. 24 C.F.R. §24.115(d).

The test for whether a debarment is warranted is present responsibility, although a lack of present responsibility may be inferred from past acts. Schlesinger v. Gates, 249 F.2d 111 (D.C. Cir. 1957); Stanko Packing Co. v. Bergland, 489 F.Supp. 947, 949 (D.D.C. 1980). In gauging whether to debar a person, all pertinent information must be assessed, including the seriousness of the alleged acts or omissions, and any mitigating circumstances. 24 C.F.R. §§24.115(d), 24.314(a) and 24.320(a). A debarment shall be used only to protect the public interest and not for purposes of punishment. 24 C.F.R. §24.115(b).

Underlying the Government's authority not to do business with a person is the requirement that agencies only do business with "responsible" persons and entities. 24 C.F.R. §24.115. The term "responsible," as used in the context of suspension and debarment, is a term of art which includes not only the ability to perform a contract satisfactorily, but the honesty and

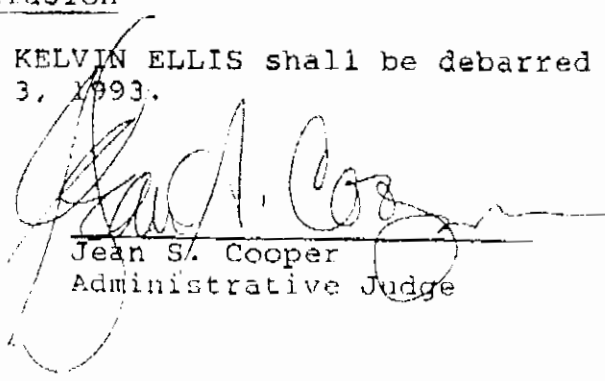
integrity of the participant as well. 48 Comp. Gen. 769 (1969). It is immaterial that the particular crime to which Ellis pled guilty did not take place in the context of a HUD program. By his acts, Ellis demonstrated an overwhelming lack of integrity and honesty that seriously and directly relates to his present responsibility. His lack of integrity is of great relevance to his right to participate in Federal programs.

I find Ellis' past acts to be so serious as to compel a finding that he lacks present responsibility based on those past acts. There is not a scintilla of evidence in mitigation of the criminal conduct to which Ellis pled guilty. Nowhere in any communication with this Board has Ellis either expressed regret for his criminal acts or shown any understanding of the horrific nature of his conduct. He merely argues that he was not a HUD participant and that his criminal acts were unrelated to any Federally-funded programs. He is incorrect in his first assertion, and his second assertion is irrelevant. Ellis' conduct is precisely the type of egregious conduct from which the Government and the public needs protection. He already abused a public office to further his personal interest, using extortion to further his personal agenda. There is no assurance in this record that a Federal program would not be a target for Ellis' activities in the future. That alone is sufficiently serious to warrant debarment to protect the Government from a public servant who would betray the public trust in such a way.

Based upon the record before me, I find it necessary that Ellis be debarred to protect the public interest, HUD, and the Federal Government as a whole. The Government has proposed Ellis's debarment to continue for three years from the date of his suspension. He has been suspended since December 4, 1990. Because debarment is a prospective sanction that cannot be applied retroactively, Ellis shall be debarred from this date through December 3, 1993, with credit given for the time he has been suspended. See, 24 C.F.R. §24.320(a).

Conclusion

For the foregoing reasons, KELVIN ELLIS shall be debarred from this date through December 3, 1993.


Jean S. Cooper
Administrative Judge