

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

In the Matter of:

**WILLIAM A. SIMKINS, JR., and
PROGRESSIVE PROPERTY
MANAGEMENT, INC.**

Respondents

HUDBCA Nos. 92-G-D71
93-G-D9

For the Respondents:

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DETERMINATION BY ADMINISTRATIVE JUDGE TIMOTHY J. GRESZKO

June 25, 1993

Statement of the Case

By letter dated March 6, 1992, the Manager of the Richmond, Virginia Office of the U.S. Department of Housing and Urban Development ("HUD," "Department," or "Government") issued a notice of Limited Denial of Participation ("LDP") to William A. Simkins, Jr. ("Simkins"), stating that he and his affiliate Progressive Property Management, Inc. (collectively, "Respondents") were not to participate in any programs or functions within

the jurisdiction of the HUD Richmond Office for a period of one year. This LDP was based on alleged multiple violations of HUD's rules and regulations relating to three projects managed by Respondents whose mortgages were insured by HUD. Respondents did not appeal the LDP sanction.

By letter dated July 30, 1992, Arthur J. Hill, Assistant Secretary for Housing - Federal Housing Commissioner, U.S. Department of Housing and Urban Development notified Respondents that based on a Criminal Information filed against Simkins in the United States District Court for the Eastern District of Virginia, Norfolk Division, charging Simkins with violation of 18 U.S.C. § 1343 (wire fraud), the Department was suspending Respondents from participating in primary covered transactions and lower-tier transactions as either participants or principals at HUD and throughout the Executive Branch of the Federal Government, and from participation in procurement contracts with HUD pending the resolution of any legal, debarment, or Program Fraud Civil Remedies Act which could ensue against Respondents. By letter dated August 28, 1992, Respondents requested a hearing pursuant to 24 C.F.R. § 24.412. The LDP was superseded by this suspension pursuant to 24 C.F.R. § 24.713 and Respondents' appeal shall be heard solely as an appeal of this suspension.

By letter dated October 8, 1992, Hill notified Respondents that, based on the conviction of Simkins for violation of 18 U.S.C. § 1343, the Department was considering debarring Simkins and Progressive Property Management, Inc. ("PPMI" or "Progressive") from participating in primary covered transactions and lower-tier transactions as either participants or principals at HUD and throughout the Executive Branch of the Federal Government, and from participation in procurement contracts with HUD for a three year period commencing on March 6, 1992, the date that the HUD Richmond Office issued the LDP. The notice also informed Respondents that their suspension was continuing pending a resolution of the issues relating to their proposed debarment.

After discussion with Respondents' counsel, the Government requested a stay in the proceedings until November 29, 1992, or until Respondents filed an appeal of the proposed debarment, due to the fact that the debarment appeal would supersede the suspension appeal. This Board granted the stay on October 30, 1992.

By letter dated November 2, 1992, Respondents requested a hearing in regard to their proposed debarment and further requested that the suspension appeal and proposed debarment appeal be consolidated. The two appeals were consolidated pursuant to 24 C.F.R. § 24.313(b)(5). The Government filed a brief in support of debarment on January 7, 1993. Respondents' brief was filed on May 7, 1993.

This determination is based on the written submissions of the parties, as Respondents are not entitled to an oral hearing on this matter. 24 C.F.R. § 24.313(b)(2)(ii).

Findings of Fact

1. An Information was issued by the U.S. Attorney for the United States District Court for the Eastern District of Virginia, alleging that on or about June through August, 1991, Simkins did knowingly, unlawfully, and willfully devise and intend to devise a scheme and artifice to defraud the National Mortgage Company ("NMC") by submitting false statements, representations, and documents to NMC in order to obtain a mortgage loan. (Resp. Exh. C/Govt. Exh. B/Information, pp. 1-2). Pursuant to this scheme, Simkins created false or altered documents, consisting of a W-2 Wage and Tax Statement, a payroll account, residential loan application, and employment certification. (Resp. Exhs. E-H). The Information also charged that on or about August 1, 1991, for the purpose of executing this scheme, Simkins caused to be transmitted by wire communication in interstate commerce a wire transfer of loan funds in the amount of \$158,077.50. (Resp. Exh. C/Govt. Exh. B/Information, pp. 2-3).

2. At all relevant times, Simkins was the owner and president of Progressive Property Management, Inc. ("PPMI" or "Progressive") which acted as a management agent for several projects with HUD-insured mortgages. (Govt. Exh. D). Respondents admit they are participants and principals as defined by 24 C.F.R. § 224.105(m) and (p). (Resp. Brief, p. 2).

3. On July 13, 1992, Simkins entered a plea of guilty and was convicted by the U.S. District Court for the Eastern District of Virginia, Norfolk County of wire fraud in violation of 18 U.S.C. § 1343. On September 25, 1992, he was sentenced to be placed on probation for a period of 3 years, and assessed a \$250.00 fine. Simkins is required to furnish financial information to the probation officer, participate in drug testing and possibly a drug program as directed by his probation officer, and is forbidden to incur additional credit without the probation officer's approval. (Govt. Exh. C/*United States v. William A. Simkins, Jr.*, Judgment, pp. 2-3).

4. Simkins has submitted statements of the Honorable Rebecca Beach Smith, the United States District Court Judge who presided over the action leading to his conviction, commenting that the activities that led to the conviction were in connection with a personal mortgage loan, apparently unconnected with the business of PPMI or its dealings with HUD. Judge Smith also stated she believed this was a "one-time occurrence," saw no need of rehabilitation, and would consider releasing Simkins from probation at an earlier date. (Resp. Exh. I, pp. 4, 6-7).

5. Several letters have been submitted by Simkins which attest to his character. The majority of these letters were submitted by individuals who have had business with Simkins. These letters generally seem to express the opinion that his actions upon which the conviction was based were aberrations and not representative of his character. The writers of these letters also indicate that they have confidence in his ability to comply with legal

practices, because they feel Simkins is remorseful for his actions and will act responsibly in the future. (Resp. Exh. J).

Discussion

It is uncontested that Respondents are "participants" as defined at 24 C.F.R. § 24.1 because they have previously entered into multiple covered transactions with HUD and may reasonably be expected to do so in the future. Simkins is also a "principal" as defined at 24 C.F.R. § 24.105(p) because he owned, operated, and exercised control over Progressive Property Management, Inc. at the time the offenses were committed. Because of his ownership and control over PPMI, it is his "affiliate" as defined at 24 C.F.R. § 24.105(b). Therefore, 24 C.F.R. part 24 applies to both Respondents. Under applicable HUD regulations, at 24 C.F.R. § 24.305, a debarment may be imposed for:

- (a) Conviction of or civil judgment for:

* * *

- (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; . . .

The Government bears the burden of demonstrating that cause for suspension and debarment exists. 24 C.F.R. §§ 24.313(b)(3), (4); *James J. Burnett*, HUDBCA No. 80-501-D42, 82 BCA ¶ 15,716. When the proposed suspension and debarment are based on an indictment and conviction, that evidentiary standard is deemed to have been met. 24 C.F.R. §§ 24.405(b) and 24.313(b)(3).

However, existence of a cause for debarment does not automatically require imposition of a debarment. In gauging whether to debar a person or entity, 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). Respondents bear the burden of proving the existence of mitigating circumstances. 24 C.F.R. § 24.313(b)(4).

Underlying the Government's authority not to do business with a person or entity is the requirement that agencies only do business with "responsible" persons or entities. 24 C.F.R. § 24.115. The term "responsible" 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). 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). A debarment shall be used only to protect the public interest and not for purposes of punishment. 24 C.F.R. § 24.115(d).

Simkins' conviction for knowingly, unlawfully, and willfully devising and intending to devise a scheme and artifice to defraud the National Mortgage Company by submitting false statements, representations, and multiple false or altered documents in order to obtain a mortgage loan raises profoundly disturbing questions with respect to Respondents' fitness to participate in the programs of this Department.

Simkins asserts that he should not be debarred because he was convicted of making false statements and misrepresentations in connection with a personal mortgage loan, which had no connection with the business of PPMI or its dealings with HUD. Simkins asserts that the submitted documents "clearly show that any wrongdoing was committed . . . in his personal capacity and in connection with his personal finances . . . not in his capacity as [an] officer of Progressive Property Management, Inc., and his actions were not in connection with transactions involving the Department of Housing and Urban Development or any other executive department of the United States . . ." I do not find this argument persuasive. The fact that HUD was not harmed by the misconduct at issue is irrelevant, because the offense was one involving base dishonesty, which impacts directly upon the question of Simkins' present responsibility. "To protect the public, it is paramount that individuals who contract with the government are forthright and responsible in their dealings Without the assurance that those who do business with the government are honest and have integrity, there is no guaranty that government funds are being properly spent." *In the Matter of Sidney Spiegel*, HUDBCA No. 91-5908-D53, 91-5920-D62 (July 24, 1992).

Simkins also asserts that he is presently responsible and should not be debarred. As evidence of this issue, Simkins has submitted a number of letters from people in the housing industry and the public sector who believe that his criminal conduct was essentially an aberration, that he is now a responsible person who has shown remorse, and that Simkins would not engage in criminal conduct in the future. I do not question the sincerity of the individuals whose supportive letters are part of this record, and it should be comforting to Respondent that so many of his former and current business associates think so highly of him that they would have no hesitation in continuing to do business with him. However, these declarations do not persuade me that programs financed by the nation's taxpayers should be exposed to Respondent's participation at the present time. When contrasted with the seriousness of Simkins' actions, these attestations do not establish that Respondent is at present an individual with whom the Government should conduct its business, particularly because they involve Simkins' conduct, in large part, prior to the activities which led to his conviction. I am also disturbed by the fact that there is neither explanation in the record from Simkins with respect to his criminal activity, nor any showing of remorse from him for these acts. In the absence of such evidence, I cannot assess Simkins' character in a positive light. I, accordingly, do not find these letters sufficient to rebut the presumption of a lack of present responsibility which flows from Simkins' conviction for wire fraud.

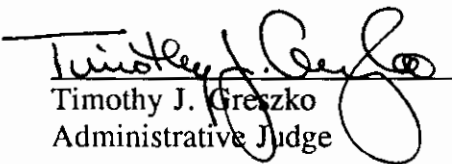
Simkins has also submitted as documentary evidence the comments of Judge Rebecca Smith, who presided over the action leading to his conviction. Judge Smith commented that the activities that led to Simkins' conviction were in connection with a personal mortgage loan, apparently unconnected with the business of PPMI or its dealings with HUD. She stated she believed this was a "one-time occurrence," saw no need of rehabilitation, and would consider releasing Simkins from probation at an earlier date. Judge Smith also stated that her sentencing determination was influenced by the fact that Simkins was going to lose his "ability to obtain government contracts." (Resp. Exh. 1, pp. 4, 6-7, 9). I find that the facts regarding Simkins' conviction, just over a year ago, establish gross irresponsibility, a high degree of dishonesty, and compelling cause for the imposition of a lengthy sanction. Moreover, notwithstanding the fact that the sentencing judge believed that the goals of the criminal justice system could be served with a light sentence, she also clearly acknowledged and understood that sanctions might be imposed against Simkins to protect the public interest in government contracting, and appears to have taken this factor into consideration in her sentencing decision. However, I am not persuaded that the sentence is indicative of Respondent's degree of present responsibility. While Judge Smith believes that a minimal sentence would suffice for penal purposes, I believe that, as a prospective sanction, a reasonable period of time may be necessary for HUD to observe a pattern of responsible professional conduct before again doing business with Simkins.

In regard to Progressive Property Management, Inc., Respondents state that PPMI has "ceased doing business and is no longer a viable corporate entity." (Resp. Brief at 2). Respondents, however, have submitted no evidence that there has been a legal dissolution of the corporation. Because of Simkins' ownership and control over PPMI, it is clearly his "affiliate" as defined at 24 C.F.R. § 24.105(b), and therefore PPMI is subject to debarment because of the actions of Simkins, for the reasons stated above.

The charge for which Simkins pleaded guilty is indeed serious and shows a flagrant disregard for the law. Respondents have not met their burden of proving mitigating circumstances, and have failed to convince me that they are at present an individual or entity with which the Government should conduct its business. I therefore find no basis for reducing the period of proposed debarment.

Conclusion

Based on the record in this matter, and for the foregoing reasons, I find that the suspension of Respondents was warranted and that a three year debarment of Respondents is warranted and necessary to protect HUD and the public interest. It is therefore ORDERED that Progressive Property Management, Inc. and William A. Simkins, Jr. shall be debarred from this date until March 6, 1995, credit being given for the time which Respondents have been precluded from participation in programs of this Department.


Timothy J. Greszko
Administrative Judge