

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

In the Matter of:

JOHN E. SIGNORELLI,

Respondent

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: HUDBCA No. 94-C-144-D17
: Docket No. 94-C-0054-DB
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John E. Signorelli

Respondent, Pro Se

Dane N. Narode, Esq.
Office of General Counsel
Department of HUD, Rm. 10251
Washington, D.C. 20410

For the Government

DETERMINATION BY ADMINISTRATIVE JUDGE JEAN S. COOPER

September 20, 1995

Statement of the Case

By letter dated March 24, 1994, John E. Signorelli ("Signorelli" or "Respondent") received a notice of suspension and proposed debarment from Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner for the United States Department of Housing and Urban Development ("HUD", "Department" or "Government"). HUD intends to debar Respondent for an indefinite period from further participation in primary covered transactions and lower tier covered transactions as either a participant or principal at HUD and throughout the Executive Branch of the Federal government and from participating in procurement contracts with HUD, based upon his conviction for violation of 47 counts of 18 U.S.C. §1341 (mail fraud). Respondent was temporarily suspended pending a final determination of the debarment action.

A hearing in cases of debarment and suspension based solely upon a conviction are limited to the submission of briefs and documentary evidence. 24 C.F.R. § 24.313 (b)(2)(ii). Respondent made a timely request for an opportunity to submit a brief and documentary evidence. He was also given an extension of time to file his written submission, which was voluminous. Respondent contends that he did nothing wrong, and that reliance on poor advice of counsel and government employee misconduct led to his conviction. Additionally, Respondent argues that the proposed debarment constitutes Government persecution, double jeopardy, and is in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

Findings of Fact

1. At all relevant times in 1984 and 1985, Respondent was president and chairman of the board of Central Mortgage Trust, Inc. ("CMT"), a mortgage banking trust and financial institution located in Conroe, Texas. CMT was a HUD approved mortgagee originating Federal Housing Administration ("FHA") insured mortgages. It also serviced Government National Mortgage Association ("GNMA") mortgage pools. (Govt. Exhs. A and B).
2. Between May 1984, and July, 1985, Respondent sent false and fraudulent information to the public through mailed solicitations to invest in CMT's investment trust deposits program. In those mailed solicitations, Respondent, on behalf of CMT, falsely stated that all investment trust deposit principal was insured by the Federal Deposit Insurance Corporation ("FDIC"), and that the investments were free from any risk of loss, and were fully insured and guaranteed by the FHA, GNMA and HUD. In fact, none of those representations were true. (Govt. Exhs. A and B).
3. Upon receipt of a signed "Trust Agreement" signifying an investor's agreement to participate in the investment trust deposit program, Respondent mailed a "Trust Certificate". The Trust Certificates falsely represented that the investment trust deposit program's assets were fully insured by CMT and its insurer, Foremost Insurance Corporation. (Govt. Exhs. A and B).
4. As a result of the mailed solicitations containing false and fraudulent statements, numerous individuals were induced to participate in the investment trust deposit program. Approximately, \$17 million was fraudulently obtained by Respondent and CMT from the investors in the investment trust deposit program. (Govt. Exhs. A and B).
5. On February 5, 1992, the United States District Court for the Southern District of Texas found Respondent guilty of 47 counts of mail fraud, 18 U.S.C. §1341, based upon his use of the mail to send the solicitations and the Trust Certificates. Respondent was sentenced to 20 years of incarceration, none of it suspended, and a mandatory \$1,400 special assessment fee. (Govt. Exh. B).

6. In refutation, Respondent filed five volumes of documents which largely re-argue the facts and law on which his conviction was based. He states that he did nothing wrong, and that he relied upon the professional advice of accountants, bankers and lawyers. He argues that the Federal Government has sought to destroy him and his family, and that his conviction was based upon lies and mischaracterizations. (Resp. Brief, Resp. Reply Brief, Resp. Exhs. T50-T88, R1-R52, 1.T52, 1.T64, 2.R37).

Discussion

Respondent, is a "participant" and "principal" in a covered transaction because he was involved in the origination of FHA-approved mortgages and serviced GNMA pools, and may reasonably be expected to do so in the future. Therefore, Respondent is subject to HUD regulations as defined in 24 C.F.R. §§ 24.105(m), and 24.105(p).

The applicable regulation, 24 C.F.R. §24.305, provides that debarment may be imposed for:

- (a) Conviction of or civil judgment for:
 - (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
 - * * * * *
 - (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;
 - (4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly effects the present responsibility of a person;

The Government bears the burden of demonstrating by adequate evidence that cause for suspension exists, and by a preponderance of the evidence that cause for debarment exists. 24 C.F.R. §§ 24.313(b)(3), and (4). When the suspension and proposed debarment are based on an indictment and conviction, that evidentiary burden is deemed to have been met. 24 C.F.R. §§ 24.405(b) and 24.313(b)(3). However, the existence of a cause for debarment does not automatically require imposition of an administrative sanction. On gauging whether or not to impose a debarment on a participant or principal, 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). Respondent bears 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 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. 48 Comp. Gen. 769 (1969). The test for whether a debarment is warranted is present responsibility, although lack of present responsibility may be inferred from past acts. Schlesinger v. Gates, 249 F.2d 111 (D.C. Cir. 1957); Stanko Packing v. Bergland, 489 F. Supp. 947, 949 (D.D.C. 1980). Debarment shall be used to protect the public interest and not for purposes of punishment. 24 C.F.R. § 24.115(b).

The Government has met its evidentiary burden of establishing cause for both suspension and debarment, based upon Respondent's conviction for mail fraud. 24 C.F.R. §§ 313(b)(3). The Government proposes that Respondent be indefinitely debarred because of the extent and seriousness of his criminal conduct. The Departmental regulations applicable to debarment state that the period of debarment generally should not exceed three years. However, where circumstances warrant, a longer period of debarment may be imposed. The seriousness of the cause for debarment is the basis for determining the appropriate length of the sanction. 24 C.F.R. § 24.320(a).

Respondent argues that the proposed debarment is unconstitutional because it violates the double jeopardy and due process clause of the Fifth Amendment, the Sixth Amendment's right to confront adverse witnesses, the Eighth Amendment's excessive fines clause and the Fourteenth Amendment of the U.S. Constitution. These arguments, which are based on constitutional rights, raise issues which are outside the jurisdiction of this proceeding. Administrative law judges and the administrative judges of federal agency boards of contract appeals do not have the authority or jurisdiction to decide constitutional issues, as opposed to issues of regulatory law, and Respondent's constitutionally grounded arguments cannot be addressed here. Califano v. Sanders, 430 U.S. 99, 108 (1977); Schlesinger v. Gates, 249 F. 2d 111 (D.C. Cir. 1957), cert. denied 355 U.S., 939 (1958).

Respondent contends that his conviction arose from "abuse and organized misconduct of State and Federal employees, acting in concert with deceit, intentionally promoting misrepresentations for self-serving purposes...", and "not responsible or reasonable representation by Counsel". (Resp. Brief, 3 and 45). Respondent denies that he did anything wrong, and that his conviction, and a debarment based on it, are improper. This contention is irrelevant to this proceeding, and is properly raised before a U.S. Court of Appeals reviewing Respondent's conviction. In a debarment case, cause for debarment is established by a conviction, and those facts on which the conviction is based are deemed proven. See, 24 C.F.R. § 24.313 (b)(3). Thus, I may not look behind the fact of Respondent's conviction to reconsider the facts which led to it. Ronald Jackson, HUDBCA No. 95-A-106-D5 (June 7, 1995). Rather, the burden of persuasion rests with Respondent to demonstrate that he is presently responsible in spite of his conviction, or that the acts for which he was convicted are not sufficiently serious to warrant debarment in this case.

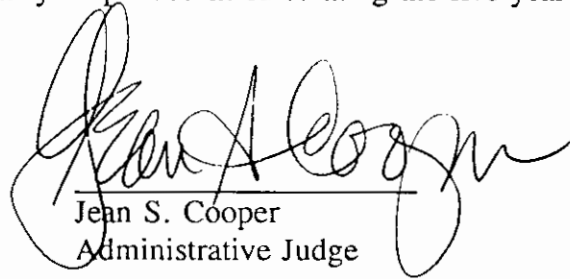
The offense for which Respondent was convicted, devising an investment program which defrauded the public of \$17 million through deliberately misleading solicitations, indicates a glaring lack of honesty and integrity. Respondent knew that the solicitations and Trust Certificates mailed to investors and potential investors at his direction falsely stated that the investment was fully insured and approved by the FDIC, HUD and GNMA, and by CMT's own insurer, Foremost Insurance. Yet, he takes no responsibility for these acts. The Government establishes certain financial safeguards so the public can be assured of a measure of security and quality in its investments. False statements about Government approval not only defraud and mislead the public, but undermine the public's faith in those Government programs. I find that Respondent's past acts and his refusal to acknowledge their seriousness demonstrate a lack of present responsibility.

Respondent was previously debarred by HUD for acts markedly similar to those for which he was convicted. John E. Signorelli, HUDBCA No. 86-1517-D8 (September 30, 1986). In that case, Respondent had prospectuses sent to financial institutions which falsely stated that MortgageBanc and Trust, Inc., another company operated by Respondent, had HUD/FHA approval. Respondent's 1986 debarment case, as well as this case now before me, suggests a pattern of irresponsible conduct for which Respondent fails to accept any responsibility. I am dismayed by the fact that Respondent has not demonstrated any understanding of either the gravity of his acts or the harm caused by them. Respondent's conduct demonstrates an egregious pattern of unethical business behavior from which the public needs protection. The twenty year period of incarceration imposed by the court for his criminal conviction, an unusually long sentence for a non-violent crime, indicates that the court also believed that the public needs protection from Respondent.

The Government's request for an indefinite debarment is well founded in this case because of the egregiousness of Respondent's acts, and because he has demonstrated no acceptance of responsibility of any kind in relation to them. 24 C.F.R. § 24.320. The acts underlying this debarment occurred over ten years ago. While passage of time would ordinarily be a mitigating circumstance, in this case it is not because Respondent still insists that he did nothing wrong. His utter failure over a ten year period to understand and acknowledge his wrongful acts means that he is as lacking in responsibility now as he was when those acts were committed. I am convinced by this record that HUD, and the public it serves, would not be secure in dealing with Respondent in the near future. It is impossible to determine from the record in this case when Respondent will finally achieve the necessary understanding and personal responsibility to again be a participant in Government transactions. Therefore, an indefinite debarment of at least five years is warranted by this unusual record.

Conclusion

Based upon the record considered as a whole, the debarment of John E. Signorelli is warranted and necessary to protect the Government and the public interest. That debarment shall continue indefinitely for a period of at least five years, except that Respondent shall be given credit for the time he has been temporarily suspended in calculating the five year period.



Jean S. Cooper
Administrative Judge