

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.

In the Matter of:

CARSEREENA JULIA RED DOG,

Respondent.

DOCKET NO. 08-3493-DB

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DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice dated September 24, 2007 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent CARSEREENA JULIA RED DOG that HUD was proposing her debarment and immediate suspension from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a three-year period from the date of issuance of the Notice. Respondent also was advised in the September 24, 2007, Notice that her proposed debarment and immediate suspension were in accordance with the procedures set forth in 24 CFR part 24¹. In addition, the Notice informed Respondent that her proposed debarment was based upon her conviction in the United States District Court for the District of Montana.

Respondent's conviction followed her guilty plea to the offense of Federal Housing Assistance Fraud in violation of 18 U.S.C. 1001(a)(1). The allegations are set out in the indictment handed down against Respondent and her codefendant, her husband², and in the plea agreement filed January 19, 2006. In summary, the allegations are that Respondent, over a nine-year period during which she was receiving rental subsidy payments, consistently certified that her employment was the only source of financial support for her family. In truth, during the nine-year period, Respondent's husband was gainfully employed. Respondent's failure to disclose her husband's income resulted in her receipt of over \$32,000.00 in subsidy to which she was not entitled.

¹ HUD published a final rule on December 27, 2007(72 FR 73484) that relocated and recodified 24 CFR part 24 as 2 CFR part 2424. HUD's December 27, 2007, rule stated that the rule "adopts, by reference, the baseline provisions of 2 CFR 180 "the government-wide rule published by OMB on August 31, 2005 (70 FR 51863), setting forth guidance for agencies with respect to nonprocurement debarment and suspension. For the convenience of the reader, references herein will be to the regulations at 2 CFR part 180.

² Respondent's husband is not a party to these proceedings.

For Respondent's conviction on her guilty plea to one count in the indictment, Respondent was sentenced to probation for a term of five years and ordered to make restitution of \$32,455.00.

A telephonic hearing on Respondent's suspension and proposed debarment was held in Washington, D.C. on May 14, 2008, before the Debarring Official's Designee, Mortimer F. Coward. Respondent participated by phone at the hearing, appearing *pro se*. Respondent was assisted at the hearing in the presentation of her case by her co-workers, Judy Tweet, Fiscal Officer, Patricia Campbell, Administrative Officer, and Les Stevenson, Executive Director. Lisa Saunders, Esq. appeared on behalf of HUD.

Summary

I have decided, pursuant to 2 CFR part 180, to debar Respondent from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government, for a period of three years from the date of issuance of her suspension, September 24, 2007. My decision is based on the administrative record in this matter, which includes the following information:

- (1) The Notice of Proposed Debarment and Suspension dated September 24, 2007.
- (2) An indictment filed in the United States District Court, District of Montana, on October 21, 2005, charging Respondent with the commission of two criminal offenses.
- (3) The Plea Agreement entered into by Respondent along with the Order of Proof, filed January 19, 2006.
- (4) The Judgment in a Criminal Case entered against Respondent on May 16, 2006.
- (5) The Government's Pre-Hearing Brief filed April 16, 2007 (including all attachments and exhibits thereto).
- (6) A letter from the Executive Director of Opportunities, Inc. addressed to Art Orton, dated January 23, 2008, requesting that Respondent be removed from the Debarment and Suspension List.
- (7) A letter from Respondent dated January 31, 2008, addressed to the Acting Director of the Departmental Enforcement Center, appealing her suspension and proposed debarment.
- (8) The digital recording of the May 14, 2008, hearing.

HUD's Arguments

HUD argues that, pursuant to 2 CFR 180.150, Respondent, as a recipient of federal housing assistance and as an employee of an agency that administers a HUD program, has been, and may reasonably be expected to be, a participant or principal in covered transactions. Thus, the suspension and debarment regulations apply to her. In this regard, HUD argues that Respondent's conviction "constitutes adequate evidence for [her] suspension and the Government has met its burden of proof" in accordance with 2 CFR 180.705. HUD further argues that Respondent's conviction also provides cause for

her debarment pursuant to 2 CFR 180.800(a)(1), (3), and (4). Specifically, Respondent's fraudulent acts, HUD contends, show a lack of business integrity or business honesty that seriously affects her present responsibility. For this reason, HUD asserts that Respondent's debarment would be in the public interest.

HUD argues in support of a three-year debarment that Respondent's criminal actions resulted in \$32,000.00 in housing subsidies being paid on behalf of her family to which they were not entitled. It was Respondent, more so than her husband, who made the misrepresentations with respect to the family income. As a consequence, Respondent's "actions undermined [HUD's] rental assistance program."

HUD rejects Respondent's arguments in mitigation of her debarment. Respondent indicated that her husband is not in the home and it would be difficult for her to secure other employment to support herself and her three children. HUD argues that the letter from Respondent's "employer states that Respondent was 'obeying' her husband as is the cultural norm in the Native American community." Thus, HUD avers that "[g]iven [Respondent's] long term acquiescence to a criminal scheme and her inability to make an independent decision to not commit repeated criminal acts, HUD cannot be assured that Respondent will be able to resist other pressures to commit fraud or other criminal acts in the future."

Accordingly, HUD concludes that, on the record in this matter, a three-year debarment is appropriate.

Respondent's Arguments

Respondent testified that she accepts responsibility for her wrongdoing. Respondent also testified that she was the sole support of her family while her husband was away from their home. Respondent continues in the employ of Opportunities, Inc. She testified that it would be difficult for her to find a comparable-paying job that would enable her to support her family. Respondent stated that she would never steal nor do anything to jeopardize her job. Respondent further testified that she is making restitution, paying \$180.00 per month based on an approved reduction of the original court-ordered monthly payment of \$545.00. According to Respondent, she now has an outstanding balance of about \$28,000.00 on her court-ordered restitution.

Judy Tweet testified that Respondent works hard to accomplish her office's goals; that Respondent has "minimal exposure" to the very little cash that is handled in their three-person office; and that there is a separation of duties among the three staff, with all transactions requiring approval of the executive director. Patricia Campbell testified that she has worked with the Respondent for over twelve years and has watched Respondent raise her three children aged 12, 14, and 7 years while maintaining a stable home for them. Les Stevenson expressed his appreciation for Respondent's work for Opportunities, Inc. Mr. Stevenson testified that although Respondent's job title is accounting assistant, she does not have access to any funds and that the office has checks and balances in place that ensure the integrity of the accounting system.

Findings of Fact

1. Respondent was an employee of Opportunities Inc, an entity that administered a HUD program (Section 8 Moderate Rehabilitation Program) on behalf of the state of Montana.
2. Respondent was a recipient of federal rental assistance in the form of HUD subsidy payments to her landlord.
3. Respondent along with her husband was required to certify annually her eligibility for rental assistance.
4. The amount of rental assistance received was based on Respondent's and her husband's income.
5. Respondent and her husband, over a nine-year period, certified that her income was the only source of income received by the family.
6. Respondent's husband, in fact, regularly worked, but Respondent intentionally failed to disclose his income, thus causing housing assistance payments of \$32,455.00 to be improperly made on their behalf by Opportunities, Inc.
7. Respondent was indicted, pleaded guilty and was convicted of one count of Federal Housing Assistance Fraud.
8. Respondent was sentenced to probation for a term of five years and ordered to make restitution in the amount of \$32,455.00.
9. Respondent has been making monthly payments with respect to the restitution ordered and has reduced the amount owed to \$28,000.00.
10. Respondent acknowledges her wrongdoing and expresses remorse for her actions.

Conclusions

Based on the above Findings of Fact, I have made the following conclusions:

1. Respondent was a participant in a covered transaction as defined in 2 CFR part 180.
2. Respondent's criminal conviction serves as the basis for her debarment.
3. Pursuant to 2 CFR 180.800, a conviction for fraud, *inter alia*, is a cause for debarment.
4. HUD has met its burden of proof with respect to establishing cause for Respondent's debarment in accordance with 2 CFR 180.850.
5. Respondent's remorse for her wrongdoing is a mitigating factor in determining the appropriate period of debarment to be imposed.
6. Respondent's actions that led to her criminal conviction raise grave doubts with respect to her business integrity and personal honesty.
7. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
8. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honesty and integrity.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 CFR 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for a period of three years from September 24, 2007, the date of her suspension. Respondent's "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: 16 June 2008



Henry S. Czauski
Henry S. Czauski
Debarring Official