

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

In the Matter of:

DEBRA ANTHONY,

Respondent.

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Docket No. 13-0037-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice of Proposed Debarment dated January 16, 2013 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent DEBRA ANTHONY that HUD was proposing her debarment 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 period of three years from the date of the final determination of this action. The Notice further advised Respondent that her proposed debarment was in accordance with the procedures set forth in 2 CFR parts 180 and 2424. In addition, the Notice informed Respondent that her proposed debarment was based upon her conviction in the United States District Court for the Northern District of Ohio for violation of 18 U.S.C. § 1344 (Bank Fraud) and § 2 (Aiding and Abetting and Causing an Act to be Done).

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on May 7, 2013, before the Debarring Official's Designee, Mortimer F. Coward. Respondent appeared *pro se*. David R. Scruggs, 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 one year from the date of this Determination. My decision is based on the administrative record in this matter, which includes the following information:

1. The Notice of Proposed Debarment dated January 16, 2013.
2. A letter from Respondent dated February 14, 2013, noting her opposition to the proposed debarment and requesting a hearing thereon.

3. Respondent's submission received by HUD on May 06, 2013.
4. The Government's Pre-Hearing Brief in Support of Three-Year Debarment, filed April 5, 2013 (including all exhibits and attachments thereto)
5. Respondent's post-hearing e-mail of June 5, 2013, explaining her inability to provide information related to her claim of discrepancies in the filings in her criminal matter.¹

Government Counsel's Arguments

Government counsel states that Respondent was a licensed real estate salesperson for over twenty years before obtaining a loan originator license in 2002. Sometime in September 2002, Respondent became a loan officer. In November 2002, in her capacity as a loan officer, Respondent accepted an application from a borrower for a mortgage loan to purchase a home. Respondent knew that the application contained fraudulent information. Respondent submitted the application to an FHA-approved mortgage company that unwittingly approved a loan for \$80,240.00 that was supported by the fraudulent documentation. The borrower defaulted on the FHA-insured loan within three months of its closing. In February or March 2007, the house was sold in a foreclosure sale with resulting losses suffered by HUD of \$122, 822.13.

Respondent was indicted and pleaded guilty to one count in the eight-count Indictment, which also alleged the commission of several offenses by her coconspirator. Respondent was convicted of bank fraud and aiding and abetting and sentenced to one day of imprisonment, three years of supervised release, and ordered to pay restitution of \$80, 240.00.

Counsel argues that Respondent is subject to the debarment regulations because she was or may reasonably be expected to be a participant or principal in a covered transaction. *See* 2 C.F.R. § 180.120(a). *See also* 2 C.F.R. §§ 180.200, 180.980, 180.995, and 2 C.F.R. § 2424.995. Counsel further argues that Respondent's conviction for bank fraud provides cause for her debarment pursuant to 2 C.F.R. §§ 180.800(a)(1). Counsel notes too that Respondent's conviction was based in part on her participation in a scheme in which she knowingly defrauded a lender by submitting a fraudulent loan application and fictitious financial documents to support the approval of a mortgage loan. Counsel adds that Respondent also aided and abetted the fraud by creating a false credit letter to support the fraudulent loan application. Accordingly, Respondent's conviction provides cause for her debarment, in that her misconduct involved falsification of records or making false statements, offenses specifically set forth in 2 C.F.R. § 180.800(a)(3). Counsel continues that the offenses and misconduct engaged in by Respondent demonstrate her lack of

¹ At the hearing, Respondent raised the issue of a discrepancy between the Judgment and the Plea Agreement, noting that the Judgment did not reflect accurately the basis of her conviction. Respondent was granted time to provide the corrected documents. In her e-mail of June 5, 2013, Respondent explained that her attorney has been unable, because of circumstances beyond her attorney's control, to file the necessary papers to have the errors corrected. Because, as Respondent herself observes in her e-mail, the errors noted are clerical in nature, their correction will not change the offense for which Respondent was convicted. Accordingly, while it would be useful to have the corrected documents filed in the record of these proceedings, their correction will have no influence on the outcome of today's decision. For that reason, although Respondent is encouraged to submit the corrected documents when they become available, it would be unfair to all parties involved to continue deferring the issuance of this decision.

honesty and integrity that seriously affects her present responsibility. Thus, Respondent is subject to debarment under 2 C.F.R. §§ 180.800(a)(4). Counsel analyses Respondent's actions in their totality and describes them as having a "negative impact on HUD's FHA. Thus Respondent's debarment is necessary in order to protect the Government."

Counsel next reviews relevant cases and the aggravating and mitigating factors in 2 C.F.R. § 180.860 to determine an appropriate period of debarment in this case. As aggravating factors, counsel recites, *inter alia*, that HUD suffered a loss of \$122,822.13 when it settled the insurance claim submitted by the defrauded lender; the fact that Respondent used her position as a loan officer to plan, initiate, and carry out the fraudulent mortgage scheme; Respondent's apparent reluctance to accept responsibility for her wrongdoing; and the lack of any evidence that Respondent has made restitution as ordered by the court in her criminal case.

Counsel concludes that based on the factors discussed above, "the seriousness and extent of Respondent's criminal conduct, [and] her lack of integrity and present responsibility . . . the public interest warrants a debarment for a period of three years.

Respondent's Arguments

Respondent challenged the Government's case in her testimony, contending that the factual background, arguments, and conclusions asserted by Government counsel are incorrect. In her testimony, Respondent acknowledged that she was a loan officer in 2002. Respondent testified that she did not process the loan that was used to purchase the property involved in the fraudulent scheme described in the Indictment. According to Respondent, the fraudulent loan was made based on a referral and she processed the loan documents submitted by the borrower. All the documents were submitted to the mortgage company; however, the underwriters wanted additional documents, including a credit letter which the referrer gave her and which she submitted to the mortgage company.

Respondent further testified that she did not create the credit letter and did not know the documents were fraudulent. Respondent acknowledged later that she suspected the credit letter was fraudulent; that she "had no idea what these career criminals [i.e., her coconspirators] were about", asserting that "the bank created an atmosphere in which [she] believe[d] fraud was directed"; and that she "did not know that there was a problem with the loan until officials came to her office." As Respondent saw it, she "turned [her] head" when she knew something illegal was submitted. Respondent noted that she is cooperating with the Government now in the case against the referrer and the other coconspirators.

Additionally, Respondent testified that the period related to her misconduct was a stressful time for her; that prior to her wrongdoing, there were no complaints against her as a loan officer; and that her real estate license is suspended now only because of the "bad [real estate] market." Respondent observed that with respect to the fraudulent loan, both the bank and the Government did their quality control checks. Respondent stressed that the offense for which she was convicted was a singular incident in her otherwise unblemished record of more than 24 years as a real estate agent and loan officer.

Respondent argued that she should not be punished beyond what she has already endured and that she has no other convictions. Respondent stated as mitigating factors that she has provided the FBI and HUD officials information related to the fraudulent scheme; the fact that she worked hard to get her real estate license; and that debarment would be an "additional burden" to her "conviction which has impacted her life and her ability to make an income." Respondent expressed regret for her wrongdoing.

In her written submission received on May 6, 2013, Respondent elaborates on some of the arguments raised in her testimony, including averring that she did not know that the borrower was a drug dealer and thief and that the borrower "signed the "RESPA documents that stated that [the documents submitted] were true, valid and original documents." Respondent notes that her submission of the credit letter "with the knowledge that it may have been created for this purpose [i.e., the purpose of "find[ing] other credit that could be used," as Respondent phrased it] . . . was poor judgment."

Respondent discusses the factors in 2 C.F.R. § 180.860 and adds that her real estate sales license is "suspended only because her continuing education is not currently complete. The market is coming back and she would like to become active in the field again." Respondent submits as other mitigating factors that (1) there was no pattern of wrongdoing and only one act of wrongdoing during her more than 25-year career as a real estate salesperson and nine-year history of mortgage origination; (2) she did not plan or initiate the fraudulent scheme; (3) she had no knowledge that the loan had defaulted until she was contacted by the authorities; (4) she told the authorities the truth and accepted responsibility for her role in the scheme and agreed to cooperate with the prosecution; and (4) she agreed to a payment plan and is making monthly payments with respect to the restitution ordered by the court.

Respondent concludes that she sincerely regrets her wrongdoing and that she has "been punished already by the limitations [the] conviction has for [her] career options." Respondent continues that the "order of restitution is going to be a burden but an additional limit to [her] ability to produce income will make this an impossibility."

Findings of Fact

1. Respondent was at all relevant times a loan officer involved in the origination of mortgage loans.
2. Respondent, as the loan officer, submitted to an FHA-approved lender in 2002 a loan application from a borrower seeking approval of a mortgage loan.
3. The loan application was supported by, among other things, a credit letter from the borrower that contained false information.
4. Respondent knew that the credit letter was fraudulent.
5. The FHA-approved lender approved the mortgage loan based on the fraudulent credit letter that was submitted with the application.
6. Within a few months of the purchase of the property in early 2003, the loan became delinquent resulting in the disposition of the property in a foreclosure sale in 2007.
7. HUD paid a claim for \$122, 822.13 to the FHA-approved lender.

8. Respondent was indicted and pleaded guilty to one count of bank fraud.
9. Respondent was convicted and sentenced in June 2012 to one day of imprisonment, three years of supervised probation, and ordered to make restitution to HUD in the amount of \$80,240.00.
10. There is no evidence in the record that Respondent has a history of prior wrongdoing.

Conclusions

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

1. As a loan officer with responsibility for processing applications for 1 mortgage loans, Respondent is subject to the debarment regulations as a "person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction." 2 CFR § 180.120(a). *See also* 2 C.F.R. § 180.970(a)(6) and 2 CFR § 2424.995.
2. Respondent's conviction for bank fraud provides cause for her debarment pursuant to 2 CFR § 180.800(a)(1).
3. The regulation at 2 CFR § 180.800(a)(1) empowers a federal agency to debar a person convicted of "fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction." Respondent's conviction for bank fraud stemmed from her performing a private transaction, that is, Respondent's role in submitting the fraudulent credit letter with the loan application to the bank.
4. The debarment regulations make no provision for a respondent to challenge her criminal conviction in this forum. Thus, Respondent's attempt to dispute in this proceeding the underlying facts related to her criminal conviction is unavailing. *See In the matter of Wayne D. Turner*, HUDBCA No. 91-5903-D49, 1993 HUD BCA LEXIS 6 (a respondent convicted of a criminal offense may not "collaterally attack his conviction in [a debarment] proceeding.")
5. The courts have held that debarment is a sanction that may be invoked by HUD as a measure of protecting the public by ensuring only those qualified as "responsible" are allowed to participate in HUD programs. *In re. Buckeye Terminix Co., Inc.*, citing *Stanko Packing Co. v. Bergland*, 489 F. Supp. 947, 949 (D.D.C. 1980) and *Roemer v. Hoffman*, 419 F. Supp. 130, 131 (D.D.C. 1976).
6. The regulation at 2 CFR § 180.125(a) provides that "[t]o protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons." Thus, it is well established that lack of present responsibility can be based upon past acts. *See In re Buckeye Terminix Co., Inc.*, HUDALJ 89-1402-DB (August 31, 1990), holding that "Responsibility encompasses the projected risk of a person doing business with HUD. This includes his integrity, honesty, and ability to perform. The primary test for debarment is present responsibility although a finding of present lack of responsibility can be based upon past acts." (Citations omitted)

7. The regulations provide at 2 CFR 180.150 that “[g]iven a cause that justifies an exclusion under this part, a Federal agency may exclude any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction.” In the instant matter, the cause that justifies Respondent’s exclusion is her criminal conviction. See 2 CFR § 180.800. As previously determined, Respondent’s past employment as a loan officer means that she has been and may reasonably be expected to be a participant or principal in a covered transaction. See ¶ 1, *supra*.
8. HUD has met its burden of proof because of Respondent’s conviction. See 2 C.F.R. § 180.850(b), which provides that “[i]f the proposed debarment is based upon a conviction . . . , the standard of proof [i.e., a preponderance of the evidence] is met.”
9. The foregoing discussion clearly establishes the basis and cause for the imposition of a debarment in the usual case. The regulations, however, also provide in pertinent part at 2 CFR § 180.845(a) that “the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating and aggravating factors set forth at § 180.860.”
10. Pursuant to 2 CFR § 180.860, the following mitigating factors were considered in imposing an appropriate period of debarment: Respondent’s expression of regret for her criminal conduct; the fact that her improper action resulted from one act of wrongdoing; the lack of evidence in the record of any prior wrongdoing in her more than thirty-four-year career as a real estate salesperson and a loan officer; the fact that her misconduct occurred in 2002, almost 11 years ago, and the relative lenient sentence imposed in her criminal matter. As aggravating factors, I have considered Respondent’s role in carrying out the wrongdoing and the financial loss suffered by HUD as a result thereof.
11. In the instant case, the “evidence of mitigation . . . [is] not sufficiently persuasive to negate the need for the imposition of a sanction.” *In the Matter of James Webb*, HUDBCA No. 92-G-7709-D60, 1992 HUD BCA LEXIS 11. In *Webb*, HUD proposed debarring the respondent for three years based on his conviction for making a false statement. Webb pleaded guilty and was convicted and sentenced to two years’ imprisonment (all but four months of the sentence was suspended) and placed on probation for three years and fined \$550.00. While noting that the evidence in mitigation was not sufficiently persuasive, the Administrative Judge determined that the record “did not support the period of debarment proposed,” concluding that “the public interest would not be served by excluding Webb . . . for a three-year period.” In arriving at his decision, the AJ found that, based on the “aberrational nature of Webb’s misconduct, the passage of time [six years since Webb’s commission of the offense], and Webb’s evidence of responsible behavior since the misconduct . . . a three-year debarment is not necessary to protect the public interest . . . [and] a six-month debarment will afford HUD and the public ample protection from Webb’s misconduct.” Additionally, the AJ specifically noted that “particularly when coupled with other evidence of mitigation the

passage of time can diminish the presumption of lack of present responsibility which flows from a conviction." *Id.*

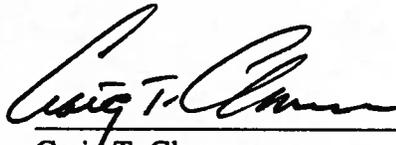
12. As previously discussed, among other things, Respondent was sentenced to one day in prison, her offense was committed nearly 11 years ago, and her misconduct was "aberrational." In a weighing of the mitigating and aggravating factors, and in light of *Webb*, a three-year debarment under these circumstances arguably may be "punitive." See 2 CFR § 180.125(a)(1) ("A Federal agency may not exclude a person or a commodity for the purposes of punishment.").
13. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
14. 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 one year from the date of this Determination. 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: _____

6/13/13



Craig T. Clemmensen
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June 2013, a true copy of the **DEBARRING OFFICIAL'S DETERMINATION** was served in the manner indicated.

Ronald Landa for
Deborah Valenzuela
Debarment Docket Clerk
Departmental Enforcement Center (Operations)

HAND-CARRIED
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VIA FIRST CLASS MAIL
Debra Anthony

