

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

JOSEPH LIPARI,
Respondent.

HUDALJ 92-1879-DB(S)
Decided: November 17, 1992

Theodore E. Kyles, Jr., Esquire

For the Respondent

Bryan P. Saddler, Esquire
For the Department

Before: Thomas C. Heinz
Administrative Law Judge

INITIAL DETERMINATION AND ORDER

This proceeding arose pursuant to 24 C.F.R. Sec. 24.100 *et seq.* as a result of action taken by the General Deputy Assistant Secretary, United States Department of Housing and Urban Development ("HUD" or "the Department" or "the Government") on June 12, 1992, temporarily suspending Respondent from further participation in primary covered transactions and lower tier-covered transactions as either a participant or a principal at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts. The action was based on an indictment of Respondent in the U.S. District Court for the District of New Jersey for conspiracy, bribery, extortion, and tax evasion. Respondent requested a hearing regarding his suspension.

Section 24.313(b)(2)(ii) of the Department's regulations (24 C.F.R. Sec. 24.313 (b)(2)(ii)) provides that where, as here, a suspension is based upon an indictment, the hearing is limited to submission of documentary evidence and written briefs. On August 25, 1992, the Government therefore was ordered to file a brief stating the grounds for the action on or before September 24, 1992, and Respondent was ordered to file his brief in opposition stating the grounds for any defenses or mitigating circumstances on or before October 25, 1992. The Government has filed its brief, but Respondent has not.

On November 5, 1992, the Government moved for issuance of an initial determination based on Respondent's failure to file a brief as ordered. Respondent has not filed a response to the Government's motion. By failing to respond to the Government's motion, Respondent has consented to the granting of the motion. *See* 24 C.F.R. Sec. 26.13(c).

Respondent's failure to obey the Order of August 25, 1992, constitutes grounds for issuance of a determination against him. *See* 24 C.F.R. Sec. 26.3. Furthermore, the Government's letter of June 12, 1992, notifying Respondent of his suspension constituted a complaint. *See* 24 Sec. 26.10(c). The allegations in that complaint must be deemed admitted because Respondent has not specifically denied them. *See* 24 C.F.R. Sec. 26.11.

Respondent is a "participant" within the meaning of 24 C.F.R. Sec. 24.105. An indictment for conspiracy, bribery, extortion, and tax evasion constitutes adequate evidence of cause to

suspend a participant. *See* 24 C.F.R. Secs. 24.305(a), 405(a), and 405(b).

Accordingly, I find and determine that good cause existed on June 12, 1992, to suspend Respondent from further participation in primary covered transactions and lower tier-covered transactions as either a participant or a principal at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts with HUD pending resolution of an indictment issued against Respondent in the United States District Court for the District of New Jersey and pending any legal, debarment or Program Fraud Civil Remedies Act proceedings which may ensue.

It is so ORDERED.

THOMAS C. HEINZ
Administrative Law Judge

Dated: November 17, 1992.

CERTIFICATION OF SERVICE

I hereby certify that copies of this INITIAL DECISION AND ORDER issued by THOMAS C. HEINZ, Administrative Law Judge, HUDALJ 92-1879-DB(S), were sent to the following parties on this 17th day of November, 1992, in the manner indicated:

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