

In the Matter of:

GARY S. GOLDSTEIN, : HUDBCA No. 94-A-182-D36  
Respondent : Docket No. 94-0088-DB(s)

Mr. Gary S. Goldstein : Pro Se  
2325 Greenbriar Drive  
Delray Beach, FL 33445

Georjan D. Overman, Esq. : For the Government  
Office of General Counsel  
U.S. Department of Housing and  
Urban Development  
Washington, D.C. 20410

DETERMINATION BY ADMINISTRATIVE JUDGE DAVID T. ANDERSON

January 23, 1996

By letter of undetermined date, but prior to August 5, 1994, Nicolas P. Retsinas, Assistant Secretary For Housing-Federal Housing Commissioner for the U.S. Department of Housing and Urban Development ("HUD", "Department", or "Government") notified Gary Goldstein ("Respondent"), that, based on an indictment for violation of 18 U.S.C. §§371 and 2, and 12 U.S.C. §1709-2, the Department was suspending Respondent and his affiliates, Goldstein Properties, Inc., Malka, Inc., and Aleph Properties, Inc., from participating 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 participation in procurement contracts with HUD.

By letter of undetermined date, but prior to August 5, 1994, Respondent requested an administrative review of the suspension. On November 3, 1994, a stay of proceedings in the above-captioned matter was imposed at the request of the Government for procedural reasons not now relevant.

On September 15, 1995, the Government filed a Response to Second Order to Show Cause. In that Response, the Government stated:

Respondent has entered a guilty plea to counts 1 and 2 of the Information  
Respondent's guilty plea was docketed with the U.S. district court on April 21, 1995. The Government has confirmed that docketing of the guilty plea constitutes its acceptance by the court. Accordingly, the "subject matter of the Information" against Respondent has been resolved.

The Government therefore agrees that this suspension action should now be terminated.

However, the Government requests that this Board stay such termination for a one-week period pending the Department's determination of whether to initiate debarment action against Respondent based upon his guilty plea.

Section 24.400(d) states, in pertinent part, that "[a]ll suspensions shall be for a temporary period pending the completion of an investigation and such legal or debarment proceedings as may ensue." Respondent's criminal proceeding has effectively been completed with the U.S. District Court's acceptance of Respondent's guilty plea. By order dated October 2, 1995, this Board granted not only the Government's specific request, but also stated the following in granting the Government:

leave to issue a notice proposing the debarment of Respondent on or before October 17, 1995. [emphasis in original]. A failure to do so shall be deemed to be an admission by the Government that the continuation of Respondent's exclusion to participate in the programs of the Department is no longer warranted.

There has been no action in this proceeding by either party since the issuance of that order, and no evidence in the record of this proceeding that a notice of proposed debarment was issued to Respondent "on or before October 17, 1995." The Government's inaction shall now be deemed to be an "admission" that "Respondent's exclusion to participate in the programs of the Department is no longer warranted." Therefore, it is my determination that the suspension of Respondent, which commenced on a date prior to August 4, 1994, be terminated immediately. Under the circumstances set forth above, I conclude that there is no reasonable basis to continue the suspension of Respondent's affiliates. Thus, it is my determination that the suspension of Respondent's named affiliates be likewise terminated. Respondent and Respondent's affiliates may now participate in the programs of the Department from which they have heretofore been excluded.

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David T. Anderson  
Administrative Judge