

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

In the Matter of:

JACK K. BROWN,

Respondent.

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DOCKET NO. 07-3415-DB(R)

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By letter dated May 18, 2005, HUD notified Respondent that he was debarred 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 five years with effect from March 29, 2004. The debarment action followed Respondent's decision not to contest his debarment proposed in a March 2, 2005, notice to him. Respondent's debarment was based on his guilty plea and conviction on December 13, 2004, for violating 18 U.S.C. 1010 (fraud) in that he provided false statements regarding FHA-insured loan activities. Respondent was sentenced to a term of fifteen months' incarceration and ordered to make restitution to HUD of \$443,694.00. Additionally, Respondent was placed on supervised release for one year and ordered to perform 100 hours of community service.

Since his March 29, 2004, debarment, Respondent has been released from prison and completed probation along with the court ordered community service. Respondent also has made full restitution to HUD of \$443,694.00.

In a letter dated March 21, 2007, Respondent's attorney petitioned the Department to "reconsider the [five-year] period of debarment and reduce the period to three (3) years effective March 29, 2004."

A telephonic hearing on Respondent's request for a reduction of his period of debarment was held in Washington, D.C. on August 8, 2007, before the Debarring Official's Designee, Mortimer F. Coward, Esq. Respondent was represented by his attorney, Raymond C. Schultz, Esq. Ana Fabregas, Esq. appeared on behalf of HUD.

SUMMARY

I have decided not to reduce Respondent's term of debarment. My decision is based on the administrative record in this matter, which includes the following information:

- (1) Notice of Proposed Debarment and Continuation of Existing Suspension issued by HUD on March 2, 2005.
- (2) Letter of March 18, 2005, from Respondent's attorney, Raymond C. Schultz.
- (3) Letter of March 29, 2004 to Respondent from the Acting Director of the HUD Departmental Enforcement Center.
- (4) Letter of May 18, 2005, from the Director of the Departmental Enforcement Center to Respondent.
- (5) The Indictment filed June 26, 2003, charging Respondent with several counts in a scheme to defraud HUD.
- (6) Letter of March 21, 2007, from Respondent's attorney requesting a reduction in the period of debarment imposed on Respondent from five years to three years.
- (7) Letter of January 16, 2007, from the probation office, informing Respondent that his supervised release terminated on January 5, 2007.
- (8) Letter of March 21, 2007, from Respondent to HUD.
- (9) Letters dated March 5, 2007, and March 6, 2007, from the Grand Rapids Association of REALTORS and from the Home and Building Association of Greater Grand Rapids, respectively.
- (10) Letter of July 26, 2007, from Respondent's attorney addressed to the Debarment Docket Clerk.
- (11) Letter of July 24, 2007, from David A. Dodge, Esq., Respondent's attorney in the criminal matter that led to his debarment.
- (12) Letter of June 5, 2007, from Habitat for Humanity of Kent County.
- (13) Other letters of recommendation from business associates, customers, and friends.
- (14) The Government's Opposition to Petitioner's Request to Reduce the Time Period or Scope of his Debarment.
- (15) The tape recording of the August 8, 2007, telephonic hearing.

HUD'S ARGUMENTS

HUD argued that Respondent was convicted for misrepresenting his role in real estate transactions - a matter that the government takes seriously. Counsel for HUD acknowledged that Respondent, from the character references received on his behalf, is capable of doing good quality construction work, but questioned whether that was enough to prove Respondent's present responsibility. Further, the government argued that Respondent had shown no remorse for the actions that led to his criminal conviction.

In its brief, the government examined each of the factors set forth in 24 CFR 24.880. The government concluded that none of the arguments advanced by Respondent satisfied the burden that the regulations placed on Respondent with respect to his making a successful request for a reduction in his period of debarment.

The government rejected Respondent's argument that he no longer participates in covered transactions as a basis to reduce or terminate his debarment. The government argued that Respondent, who admitted to being still active in the building industry, may reasonably be expected to be a participant in a HUD program. In addition, as a former participant in a covered transaction, Respondent continues to be subject to the debarment regulations. The government also found no reason to modify the five-year debarment because of the financial hardships Respondent described he is now suffering as a consequence of his debarment. According to the government, "financial hardship is not sufficient cause to reduce a period of debarment because evidence of financial hardship does not demonstrate that a petitioner is presently responsible." Finally, in opposing Respondent's request for a reduction, the government argued that Respondent had failed to provide "evidence of his honesty and integrity in his current business dealings, or assurance that [his] future conduct will be in accordance with HUD regulations."

RESPONDENT'S ARGUMENTS

In his plea for a reduction of the five-year period of debarment, Respondent argued that he had learned from his errors and would never repeat the conduct that led to his criminal conviction. Respondent expressed his remorse for the actions that led to his incarceration and took full responsibility for the "entire mess." Respondent pleaded that his "focus now is to conduct [his] life with integrity and honesty." In further support of his plea, Respondent detailed the financial hardships and difficulties that now bedevil him and his family because of his being placed on the debarment list. According to Respondent, he is unable to refinance his properties to pursue his real estate investments and to pay off outstanding debt and tax liabilities.

Respondent raised for consideration the letters of recommendation and support in the record submitted on his behalf by various persons. The letters were complimentary of Respondent and cited his honesty and reliability in his dealings with his customers both before and after his conviction. Respondent's attorney argued that the letters "are sufficient to show Brown's reliability."

FINDINGS OF FACT

1. Respondent was debarred by HUD effective March 29, 2004, for five years based on his conviction for making false statements to HUD.
2. Respondent was sentenced to 15 months' incarceration and ordered to pay restitution of \$443,694.00 and placed on one year's supervised probation.
3. Respondent has served his prison sentence and probation and made full restitution as ordered by the court.
4. Since Respondent's release from prison, he has been active in the construction industry, but has been unsuccessful in his attempts to seek financing for his properties as a result of his debarment.
5. Respondent's five-year debarment terminates on March 28, 2009.

CONCLUSIONS

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

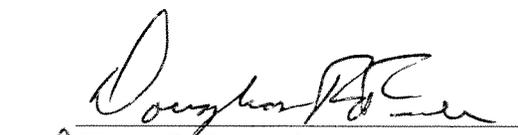
1. Respondent was a participant in a covered transaction as defined in 24 CFR Part 24 and was debarred for five years until March 28, 2009, based on his criminal conviction for making false statements to HUD.
2. Respondent has more than sixteen months remaining before his debarment period expires.
3. HUD has a responsibility to protect the public interest and to take appropriate measures against participants whose actions may affect the integrity of its programs.
4. The debarment regime is not punitive but protects the public interest (see 24 CFR § 24.110).
5. HUD's regulations at 24 CFR 24.880 allow for a reduction of a respondent's debarment based on certain enumerated factors, including "reasons the debarring official find appropriate", but the facts do not support any factors cited.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined not to reduce Respondent's period of debarment.

Dated: _____

9/18/07



Henry S. Czauski
Debarring Official
Departmental Enforcement Center