

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
Washington, D.C.

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**In the Matter of:**

**J. DANIEL LINDLEY,**

**Respondent.**

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**DOCKET NO.: 11-3790-DB**

**ORDER GRANTING GOVERNMENT’S MOTION TO DISMISS**

**INTRODUCTION**

By Notice of Proposed Debarment and Termination of Existing Suspension (“Notice”) dated August 25, 2011, the Department of Housing and Urban Development (HUD) notified Respondent J. DANIEL LINDLEY that it was proposing his debarment from future participation in procurement and non-procurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for an indefinite period from the date of the final determination of this action. The Notice advised Respondent that his proposed debarment was based upon his conviction in the United States District Court for the District of Massachusetts for violation of 18 U.S.C. §§ 371 (Conspiracy) and 1343 (Wire Fraud).<sup>1</sup> The Notice recited that Respondent specifically was “found guilty of conspiring to launder loan proceeds from fraudulent mortgage property transactions that resulted [in] a financial loss of more than \$1.9 million to the mortgage industry.” The Notice also advised Respondent that his proposed debarment was in accordance with the regulations at 2 C.F.R. parts 180 and 2424.

Additionally, the Notice informed Respondent that his conviction is evidence of serious irresponsibility and is cause for his debarment under 2 C.F.R. §§ 180.800(a)(1), 3) and (4). The March 25, 2011, Notice also terminated Respondent’s suspension. Further, Respondent was advised that his period of suspension, which began from August 11, 2008, until its termination on the date of the Notice, i.e., August 25, 2011, was taken into account in determining his proposed indefinite debarment. The Notice informed Respondent, too, that, because he was “a

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<sup>1</sup> The Judgment in a Criminal Case indicates that Respondent was found guilty after a jury trial and was convicted, in addition to the wire fraud and conspiracy charges, of money laundering. Government’s Brief in Support of Debarment, Ex. F. Respondent was sentenced to a term of 72 months imprisonment and three years of supervised release.

former licensed attorney involved in closing single family real estate transactions,” he was involved or may reasonably be expected to be involved in covered transactions. More particularly, the Notice advised Respondent that, if he decided to contest the proposed debarment, he must submit a written argument and request for an informal hearing. The Notice also stated that, pursuant to 2 C.F.R. § 180.825, Respondent’s written submission must identify, among other things, specific facts that contradict the statements in the Notice. The Notice further stated that a general denial was insufficient to raise a genuine dispute over facts material to his proposed debarment.

## **BACKGROUND**

In a letter from Respondent’s attorney Thomas J. Butters dated September 22, 2011, addressed to the Docket Clerk (received by the HUD Departmental Enforcement Center on September 27, 2011), responding to HUD’s Notice, Respondent, through his attorney, requested an informal hearing. In the September 22, 2011, letter, Respondent contested the proposed debarment, arguing that the “action should be stayed until there is a final resolution of the matter. Further, since Mr. Lindley is incarcerated, no harm can flow from such a stay.”<sup>2</sup>

In an Order dated October 18, 2011, the Debarring Official’s Designee set a hearing date of December 6, 2011, in response to Respondent’s request for an informal hearing. That Order also set a deadline of November 29, 2011, for Respondent’s submissions and November 7, 2011, for the Government’s brief. As of this writing, Respondent has not filed any submissions in this matter in accordance with the Order. (The Government’s brief was filed timely.) The Order was sent first class mail, return receipt requested, via the United States Postal Service to Respondent’s attorney at his address of record and to Respondent at the Lewisburg Satellite Camp where he currently is incarcerated. Both receipts were returned duly signed either by the addressee or by a duly authorized person (the signature and printed name on the return receipt from Respondent’s attorney are illegible).

In accordance with the Order, the hearing was called, as scheduled, on December 6, 2011, at 10:00. A call was placed to Respondent’s attorney to initiate the proceedings. The Debarring Official’s Designee was informed by Julie Jackson, a paralegal in Respondent’s attorney’s office, that Respondent’s attorney, Mr. Butters, was out of the office and would return on December 12, 2011. Ms. Jackson also advised the hearing that Respondent was informed by Mr. Butters that he would not be able to represent him. Further, the Government’s brief that was delivered to Mr. Butters’ office was sent to Respondent. According to Ms. Jackson, who indicated that she was consulting the office records in providing her responses, Respondent

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<sup>2</sup> The debarment regulations make no provision for stay of a debarment action pending final disposition of a Respondent’s appeal of his criminal conviction. It is also a well-settled rule that a Respondent’s pending appeal of his criminal conviction is no bar to the prosecution of a debarment action, thus Respondent’s request is denied. *See, e.g., In the Matter of Thomas Mack Crossland*, HUDBCA No. 80-466-D14, 1981 HUD BCA LEXIS 34 (January 22, 1981), holding that “If appellant’s conviction should be reversed on appeal, that would be a basis for a petition for reinstatement at that time.”

was advised by Mr. Butters that Mr. Butters would not be able to submit a response to the Government's brief on Respondent's behalf. The Debarring Official's Designee, in consideration of Respondent's attorney's not returning to his office until December 12, 2011, and because Mr. Butters still was listed as the attorney of record (there being no record of Mr. Butters' withdrawal from the case) informed Ms. Jackson that he would give Mr. Butters until the following Friday to communicate with the Debarring Official's Designee. As of this writing, Mr. Butters has not communicated with this office nor filed any submissions. Similarly, no submission has been received from Respondent or from any representative on his behalf. Inarguably, Respondent has been given sufficient time in consideration of his predicament to file a responsive submission. In light of Respondent's inaction, the Government filed a Motion to Dismiss, which is the subject of this Order.

## DISCUSSION

Respondent's role as the closing attorney in no fewer than 16 of the 21 fraudulent mortgage transactions, his preparation of false HUD-1's, and his previous experience in the real estate business, *inter alia*, make him a person who "has been, is, or may reasonably be expected to be a participant or principal in a covered transaction," thereby making part 180 applicable to him. *See* 2 C.F.R. § 180.120(a). More pointedly, 2 C.F.R. § 180.150 subjects a respondent to exclusion under part 180 "[g]iven a cause that justifies an exclusion."<sup>3</sup> Respondent's conviction on 31 counts involving wire fraud provides justifiable cause for his debarment under 2 C.F.R. § 180.800(a)(1), which provides that "[a] Federal agency may debar a person for conviction . . . for 1) "Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction." Additionally, under 2 C.F.R. § 180.800(a)(4), "[c]ommission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects [a person's] present responsibility" may subject such person to debarment. In the instant case, Respondent also was convicted of money laundering and conspiracy. Respondent's misconduct, as demonstrated in his commission of these two offenses, undoubtedly indicates his lack of business integrity and honesty that seriously and directly affects his present responsibility and provides a further cause for his debarment.

The debarment regulations at 2 C.F.R. § 180.850(b) specify that "[i]f the proposed debarment is based upon a conviction . . . the standard of proof is met." Respondent's burden thereafter, because the cause for debarment along with the proof thereof has been established, is to demonstrate to the "satisfaction of the debarring official that [he is] presently responsible and that debarment is not necessary." *See* 2 C.F.R. § 180.855(b).

As alluded to above, Respondent did not specifically respond to nor contest the allegations in the Notice. Respondent has adduced no evidence that would support a finding that he is presently responsible. Moreover, because Respondent's proposed debarment is based on a conviction, his "opportunity to challenge the facts" is limited. *See* 2 C.F.R. § 180.830(a)(1). A

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<sup>3</sup> Under 2 C.F.R. 180.940, "Excluded" or "exclusion" means "(a) That a person or a commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment, [etc]."

cursory examination of the record in this matter, especially the counts in the Indictment which resulted in Respondent's conviction, paints an unflattering and irrefutable factual picture of Respondent's misconduct. Respondent's conduct here is more egregious than that of the respondent in *In the Matter of Joseph Young*, HUDBCA No. 91-5792-D26, 1991, HUD BCA LEXIS 6 (March 11, 1991, but the Administrative Judge's remarks regarding Young's conduct and character apply with equal force in the instant matter. In *Young*, the AJ held that "the evidence in this record shows . . . that Respondent has demonstrated . . . a blatant disregard of the public trust resulting in deliberate criminal activity." Just as the Administrative Judge held in *Young*, I, too, "find no evidence in this record that Respondent has sufficient possession or understanding of the ethical concepts expected of [an attorney and HUD program participant] in order to avoid such improper conduct in the future."

The allegations against Respondent are serious and evince a pattern of criminal behavior over a twenty-month period. The District Court, it should be pointed out, viewed Respondent's criminal actions with such disfavor that he was sentenced to 72 months' imprisonment, three years' supervised release, and ordered to forfeit \$1.9 million jointly and severally with his co-defendants. During the criminal proceedings, the court observed that "the aspects of the case that would support a stronger sentence are the nature and circumstances of the offense, the planned nature of the offense, the repetitious participation, and so on."<sup>4</sup> These aspects are just as relevant in this proceeding and are consistent, in part, with the provisions of 2 C.F.R. § 180.860 in "determining whether to debar [Respondent] and the length of [Respondent's] debarment period."

A précis of the counts in the Indictment on which Respondent was convicted reveals the enormity and egregiousness of Respondent's misconduct. During the period from May 2005 through December 2006, Respondent and his coconspirators engaged in a scheme in which properties were purchased by Respondents and his coconspirators in the name of straw buyers. The mortgage loan applications were submitted in the name of the straw buyers. Respondent made fraudulent representations with respect to the purchasers' identity, income and employment, and the intended use of the property as the purchasers' primary residence. The sales prices of the properties were inflated by Respondent. The fraudulent loan applications with their inflated sales prices were submitted to unsuspecting lenders that approved the loans. The mortgage proceeds were deposited in bank accounts controlled by Respondent. Respondent reaped a windfall in the difference between the inflated and actual sales price. In all, Respondent and his coconspirators submitted 21 fraudulent mortgage applications eight of which involved five FHA-approved lenders. Respondent also acted as the closing attorney for 16 of the 21 loans. The 21 transactions generated \$10.6 million in mortgage loan proceeds with \$1.9 million of this total representing the difference between the inflated sales prices and the actual sales prices. In due course, the mortgages went into default and in some cases foreclosure.

Respondent's actions, as noted above, raise serious questions with respect to his business honesty and integrity. Pursuant to 2 C.F.R. § 180.125(a), "[t]o protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with

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<sup>4</sup> See Gov't Brief, Ex. F (Statement of Reasons).

responsible persons.” And “the non-procurement debarment and suspension system [is used by a federal agency] to exclude from Federal programs persons who are not presently responsible.” Respondent’s fraudulent scheme falls squarely within the causes for debarment set forth at 2 CFR § 180.800(a)(1). Respondent’s other unlawful actions detailed here demonstrate his “lack of business integrity or business honesty that seriously and directly affects [his] present responsibility.” See 2 CFR § 180.800(a)(4).

I have carefully considered in this case the aggravating and mitigating factors set forth in 2 CFR § 180.860. Respondent’s misconduct manifested in his fraudulent scheme resulted in financial harm to the persons and entities he deceived and defrauded. Respondent was ordered by the court to make restitution of \$1.9 million. Respondent engaged in his fraudulent scheme with his coconspirators for almost two years. There is no evidence in the record that Respondent is remorseful for his wrongdoing or that he has made restitution to the defrauded lenders. Respondent was a major participant in the scheme in his role as closing attorney. The record in this case is bereft of mitigating factors that may be considered in Respondent’s favor.

The regulations at 2 CFR § 180.865 provide, in pertinent part, that a Respondent’s “period of debarment will be based on the seriousness of the cause(s) upon which [the Respondent’s] debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.” The circumstances of this case clearly warrant a longer period of debarment than three years. The unrefuted evidence shows that Respondent planned his fraudulent scheme and executed it without regard to the financial harm that would be wrought upon his unsuspecting victims. Respondent’s single-minded purpose, as the record unambiguously demonstrates, was to enrich him even if that required fraud and deception. To be sure, a lengthy period of debarment will not only protect the public interest, but will afford Respondent the opportunity to show that, over time, he can conform his conduct to be considered presently responsible consistent with the Debarment regulations. In considering an appropriate period of debarment in light of the respondent’s misconduct in *In the Matter of Homer E. Nichols*, HUDBCA 80-490-D32, 1981 HUD BCA LEXTS 37 (January 22, 1981), the AJ noted that “Debarment is not a penalty but a way for the Government to execute its statutory obligations effectively to protect the public. [Because of] the serious offenses involved in [*Nichols*], the absence of contest, mitigation, or even interest on the part of appellant,<sup>5</sup> a substantial period of debarment is warranted in the best interests of the Government and the public.” (Internal citations omitted)

The AJ’s pronouncement in *Nichols* is an instructive guide in determining the appropriate period of debarment in this matter. See also *In the Matter of Samuel T. Isaac*, HUDBCA Nos. 80-452-M2, 80-485-D29, 1983 HUD BCA LEXIS 10 (November 10, 1983, where the respondents were charged with violating HUD’s regulations. In affirming the respondents’ exclusion, the AJ held that the “record also provides an adequate and independent evidentiary basis for a finding of egregious and willful improper conduct and, therefore, warrants debarment of the Respondents. . . , for an indefinite period.” Similarly, the record in this case detailing Respondent’s “egregious and willful improper [and criminal] conduct” also provides an

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<sup>5</sup> As noted above, neither Respondent nor his attorney of record has communicated with this office since Respondent, through his attorney, requested a hearing, nor did either appear at the scheduled hearing.

uncontested and “an adequate and independent evidentiary basis” for Respondent’s indefinite exclusion.<sup>6</sup>

### CONCLUSION

WHEREFORE, the premises considered, it is ORDERED that the Government’s Motion to Dismiss be, and it is hereby, GRANTED. It is

FURTHER ORDERED that, for the reasons stated in the Notice, the actual offenses committed by Respondent, the discussion set forth above, and the administrative record as a whole, and in accordance with 2 CFR §§ 180.870(b)(2)(i) through (b)(2)(iv), Respondent be debarred for an indefinite period from the date of this Order. Respondent’s “debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 C.F.R. chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.”

Dated: 1/31/12



Craig T. Clemmensen  
Debarring Official  
Departmental Enforcement Center

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<sup>6</sup> As set forth above, Respondent was suspended from August 11, 2008 to August 25, 2011. Accordingly, in determining the period of debarment, and as directed by 2 C.F.R. § 800.865(b), due consideration was given to the time Respondent was suspended.

CERTIFICATE OF SERVICE

I hereby certify that on this 31<sup>ST</sup> day of January 2012, a true copy of the ORDER GRANTING GOVERNMENT'S MOTION TO DISMISS was served in the manner indicated.



Deborah Valenzuela  
Debarment Docket Clerk  
Departmental Enforcement Center-Operations

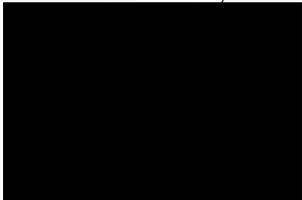
**HAND-CARRIED**

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