

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

In the Matter of:

KARA E. ROBINSON FRANKS,

Respondent.

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Docket No. 11-3677-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice of Proposed Debarment dated September 22, 2010 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent KARA E. ROBINSON FRANKS 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 five 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 District of Kansas for violating 18 U.S.C. §§ 1343 and 2 (Wire Fraud) and § 1956(a) (Money Laundering).

In a Superseding Information filed by the United States in January 2008, Respondent along with her co-defendants was charged with eleven counts alleging their engagement in a conspiracy to enrich themselves by submitting false and fraudulent loan applications to obtain artificially oversized home loans from financial institutions and other lenders. The information further alleged that the conspiracy lasted from January 2002 through January 2004. Respondent entered into a Plea Agreement in October 2009. Respondent agreed to plead guilty to two of the counts in the Information, Counts Five and Eleven, which charged her with violations involving wire fraud and money laundering. Based upon her guilty plea and conviction, Respondent was sentenced to 36 months in prison, three years' supervised probation, and ordered to make restitution of \$680,836.54.

In the Plea Agreement, briefly summarized here, Respondent acknowledged that during the period May 2003 through January 2004, she engaged in no fewer than nine real estate transactions with her co-conspirators in which she acted as either the buyer or seller. The loans involved in these transactions were obtained by submitting fraudulent information to lenders including inflated appraisals, false loan applications, fraudulent information verification documents, and stolen identities of appraisers to deceive the lenders into approving the loans.

As part of the conspiracy, in November 2003 Respondent, acting as the homebuyer, aided and abetted her co-conspirators in the purchase of a home valued at about \$1,000,000.00 for one of the co-conspirators. The loan was obtained by Respondent's co-conspirator's providing false W-2 forms showing Respondent's earning over \$200,000.00 a year as an employee of her co-conspirator's company. In truth, Respondent earned about \$50,000.00 at her actual place of employment. Respondent also submitted a fraudulent loan application, which, among other things, misrepresented that her monthly income was over \$21,000.00, that she was the vice-president of her co-conspirator's company, that the home would be her primary residence, and that her total assets exceeded \$900,000.00.

Respondent acted with another one of her co-conspirators to show falsely that her total assets were larger than they actually were. The conspirators falsely enlarged Respondent's assets by adding Respondent's name to her co-defendant's personal bank account to deceive the lender and to influence the lender's decision to issue the loan to purchase the home. Shortly after the purchase of the home, Respondent submitted false loan applications to obtain a line of credit on the home, claiming that her monthly income was more than \$23,000.00. Respondent later received a check for \$95,074.72, representing proceeds from the home equity line of credit. Respondent cashed the check, and in an effort to conceal the source of the funds, used \$92,069.72 to purchase a cashier's check, knowing that the transaction represented the proceeds of wire fraud. Respondent then endorsed the check over to her co-conspirator who deposited it in his personal bank account.

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on April 19, 2011, before the Debarring Official's Designee, Mortimer F. Coward. Respondent appeared *pro se*. Patrisha Tijerina, Esq. appeared on behalf of HUD. The record closed on April 20, 2011.

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 five years 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 September 22, 2010.
2. Three letters from Respondent addressed to the Debarring Official's Designee dated October 17, 2010, November 12, 2010 (received by the Debarring Official's Designee on January 11, 2011), and December 28, 2010, respectively.
3. The Government's Brief in Support of Five-Year Debarment filed February 2, 2011 (including all exhibits and attachments thereto).

Government Counsel's Arguments

Counsel first sets forth a summary of the allegations in the Superseding Information and the relevant regulations in 2 CFR part 180 that the Government views as applicable to this case. Counsel argues that a real estate agent who works with HUD programs, as Respondent did, is a principal in a covered transaction within the meaning of the debarment regulations and is, therefore, subject to debarment. Prior involvement with HUD's program is not a prerequisite for debarment if the real estate agent such as Respondent reasonably may be expected to be involved in a future covered transaction. See 2 CFR §§ 180.120 and 180.210.

Counsel adds that Respondent's wrongdoing, which resulted in her guilty plea and conviction, involved fraud, an offense listed in 2 CFR § 180.800(a)(1) as a cause for debarment. Similarly, Respondent's conviction for money laundering also is cause for debarment under 2 CFR § 180.800(a)(1) because the offense was committed "in connection with obtaining, attempting to obtain, or performing a public . . . agreement or transaction." Respondent's conduct and criminal offenses, counsel argues, demonstrate her poor character, untrustworthiness, and lack of present responsibility. Respondent's misconduct, counsel continues, compromised the integrity of the underwriting and loan approval process and showed her contempt for the law and disregard for the consequences and the victims of her misdeeds.

Counsel argues that Respondent's participation in the fraudulent scheme shows her willingness to be dishonest in mortgage and other financial transactions. Respondent's actions demonstrate that she is not presently responsible and poses a risk to the Government and private citizens. Thus, Respondent is not a person with whom the Government or other participants in covered transactions should do business.

Counsel reviews the aggravating and mitigating factors that the Debarring Official should consider, as provided in 2 CFR § 180.860, in determining an appropriate period of debarment that should be imposed on Respondent. First, counsel argues that Respondent's wrongdoing resulted in actual harm as evidenced by the court's ordering her to make restitution of \$680, 836.54 to the victims of her fraudulent scheme. Respondent's misrepresentation of her financial position also misled lenders into approving loans and assuming a risk that they otherwise may not have assumed. Respondent's participation in the fraudulent scheme spanned a period of more than two years and involved at least nine real estate transactions. Respondent knowingly conspired with other persons to carry out the fraudulent scheme. Respondent submitted false documentation in support of her loan applications and laundered the proceeds from one loan to conceal the source of the funds. Except for Respondent's guilty plea, there is no evidence that Respondent recognizes the seriousness of her wrongdoing. Respondent has paid only \$350.00 towards her fine and

the restitution ordered by the court and has made no payment to defray the expenses incurred by the Government in investigating her crimes. To the extent Respondent cooperated with the Government in her criminal matter, it was in an attempt to receive favorable treatment at sentencing, not a demonstration of her remorse for her bad acts. The positions held by Respondent allowed her to have substantial control and responsibility in the fraudulent scheme. Finally, counsel adds that there is no evidence that Respondent informed any Government authority of her criminal actions before the Government began its investigation of her wrongdoing.

Counsel concludes that Respondent's criminal conviction provides cause for her debarment and demonstrates that she is not presently responsible. Additionally, because of Respondent's lack of integrity, and based upon the aggravating factors set forth above, Respondent's debarment for a five-year period is necessary to protect the Government and serve the public interest.

Respondent's Arguments

Respondent testified that she was not a licensed real estate agent at the time she committed her wrongful acts; she received her license in 2004. Respondent stated that she admitted in her criminal matter to everything that she did, and was not disputing the charges. Respondent further testified that she has remorse for her actions and understands the seriousness of her misdeeds. Respondent added that she does not take her misconduct lightly and is paying time for what she did.

Respondent offered that her wrongdoing occurred more than eight years ago and she has not repeated her misconduct during that time. In her letter of November 12, 2010, Respondent wrote that since her misconduct in 2003, she has "performed [her] duties and conducted [her] life with integrity and responsibility. [Her] profession has been a big part of [her] livelihood and [she] has followed the guidelines and laws." Respondent expressed in her letter that if "the debarment affects grants, loans, insurances, etc. that would cause more distress on [her] livelihood." She added that she was in "the process of filing for a school grant."

Respondent testified that she made "poor choices," but asked that she be given a chance and her proposed period of debarment be reduced. In her letter of November 12, 2011, Respondent also asked that the proposed period of debarment be reconsidered so as not to "cause a lot of distress in [her] livelihood . . . and [her] family."

Findings of Fact

1. Respondent at all relevant times held herself out to be a real estate agent.
2. Respondent conspired over a period from January 2002 to January 2004 with other individuals in a scheme to defraud lenders to obtain money and property.
3. Respondent's scheme involved the submission of materially false loan applications to obtain artificially oversized home loans from lenders.

4. Respondent engaged in no fewer than nine real estate transactions with her coconspirators where she acted as the borrower/buyer.
5. Respondent deliberately misrepresented her income and assets in the loan applications to deceive lenders into approving the loans.
6. Respondent enriched herself substantially from her participation in the fraudulent scheme.
7. As part of the scheme, Respondent attempted to disguise the source of the proceeds from one of her mortgage loan transactions.
8. Respondent shared the proceeds from her fraudulent transactions with her coconspirators.
9. Respondent pleaded guilty and was convicted on February 12, 2010, for her participation in the fraudulent scheme, on two counts of wire fraud and money laundering.
10. Respondent was sentenced to three years' imprisonment, three years' supervised release, and ordered to make restitution of \$680,836.54.
11. Respondent became a licensed real estate agent in 2004.
12. Respondent has accepted responsibility and has expressed regret and remorse for her criminal actions.

Conclusions

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

1. As a real estate agent, 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).
2. Respondent's conviction for wire fraud and money laundering provides cause for her debarment pursuant to 2 CFR § 180.800(a)(1).
3. The courts have held that debarment is a sanction, which 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). Further, the debarment regulations at 2 CFR § 180.125(a) provide that "to protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons."
4. 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)

5. Respondent's involvement in the fraudulent scheme described here clearly shows that she lacks the present responsibility to be trusted to participate in federal or conventional financial transactions.
6. There is no evidence in the record of Respondent's professionalism or business dealings and related activities since her wrongdoing to show that Respondent is presently responsible.
7. HUD has established a cause for Respondent's debarment by a preponderance of the evidence based upon Respondent's criminal conviction. *See* 2 CFR § 180.850.
8. Pursuant to 2 CFR § 180.860, the following mitigating and aggravating factors were considered in imposing an appropriate period of debarment:

Mitigating factors:

 - a. Respondent's remorse and acceptance of responsibility for her improper conduct; and
 - b. The fact that Respondent's misconduct occurred well over seven years ago.¹

Aggravating factors:

 - a. Respondent's participation in the scheme and active role in carrying out the wrongdoing;
 - b. The fact that Respondent's misconduct was motivated by cupidity and pecuniary gain;
 - c. The harm that resulted from Respondent's wrongdoing— Respondent was ordered to make restitution of \$680,836.54 to lenders she defrauded;
 - d. The fact that Respondent's wrongdoing occurred over a two-year period and involved no fewer than nine loans; and
 - e. The fact that Respondent knowingly acted as the buyer/borrower in these nine transactions.
9. Respondent's actions described here raise grave doubts with respect to her business integrity and personal honesty.
10. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs or programs in which HUD may have an interest.
11. HUD cannot effectively discharge its responsibility and duty to the public if participants or those who may participate in its programs or programs that it funds fail to act with honesty and integrity.²

¹ The Board recognized in *In the Matter of Kantrow*, HUDBCA NO. 95-109-D7, 1995 HUD BCA LEXIS 7, that "a substantial passage of time following misconduct leading to the imposition of an administrative sanction as being a potentially mitigating factor. However, the passage of time, *ipso facto*, does not establish present responsibility. The appropriate test for present responsibility does not focus merely on the number of years which have passed since Respondent's misconduct occurred, but rather on current indicia of Respondent's professionalism and business practice which the Government must consider before it again assumes the risk of conducting business with Respondent." (Citations omitted)

² Pursuant to 2 CFR § 180.875, "a debarred person . . . may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment." The factors that may influence the debarring official are listed in 2 CFR § 180.880.

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 five years 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: _____

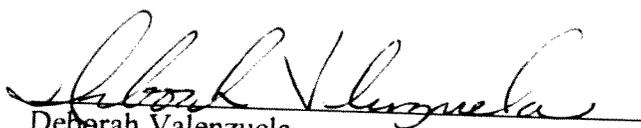
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Craig J. Clemmensen
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 25TH day of May 2011, a true copy of the DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.



Deborah Valenzuela
Debarment Docket Clerk
Departmental Enforcement Center (Operations)

HAND-CARRIED

Mortimer F. Coward, Esq.
Debarring Official's Designee

Patrisha L. Tijerina, Esq.
Geoffrey L. Patton, Esq.
Government Counsel

FIRST CLASS MAIL

Kara E. Robinson Franks

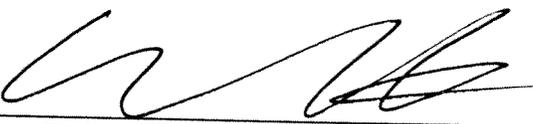


CONCURRENCE:

In the Matter of:

KARA E. ROBINSON FRANKS – DOCKET NO. 11-3677-DB

Dated: May 20, 2011



Mortimer F. Coward
Debarring Official's Designee