

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

In the Matter of:	*	
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MICHAEL A. BELK and	*	
MICHAEL A. BELK, CPA	*	Docket No. 12-3867-DB
	*	Docket No. 12-3868-DB
	*	
Respondents.	*	
	*	

DEBARRING OFFICIAL'S DETERMINATION

Introduction

By Notice of Proposed Debarment dated March 20, 2012 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent MICHAEL A. BELK that HUD was proposing his 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 three-year period from the date of the final determination of this action. The Notice stated that the proposed debarment was in accordance with the procedures set forth in 2 CFR parts 180 and 2424.

The Notice further informed Respondent that his proposed debarment was based on violations committed by Respondent MICHAELA. BELK, CPA ("firm") of Government Auditing Standards in the company's performance of audits of FHA-approved lenders. As summarized in the Notice, and as set forth in greater detail later, the company is alleged to have failed to document adequately work performed, failed to document audits of compliance with HUD program requirements, failed to document audits of internal control, failed to include adequate evidence of supervisory review, and failed to document validation of a lender's valuation of a non-cash capital contribution.

Respondent MICHAEL A. BELK was advised that the company's misconduct can be imputed to him because of his position as Resident Manager of the company, his attestation of the audits at issue on behalf of the company, and his knowledge or participation in the violations at issue.

A telephonic hearing on Respondents' proposed debarment was held in Washington, D.C. on July 10, 2012, before the Debarring Official's Designee, Mortimer F. Coward. Respondent was present by phone, appearing *pro se*. Terri L. Roman, Esq. appeared on behalf of HUD.

Summary

I have decided, pursuant to 2 CFR part 180, to debar Respondents 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 three 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 March 20, 2012.
2. A letter from Respondent dated April 16, 2012, addressed to the Director of the Compliance Division requesting a hearing on his proposed debarment.
3. The Government's Pre-Hearing Brief in Support of Three-Year Debarment, filed May 29, 2012 (including all exhibits and attachments thereto).

Government Counsel's Arguments

Government counsel states that Respondent is a CPA in Kansas, where his firm is located. Respondent is the Resident Manager of the firm.¹ During the period at issue here (2006 to 2008), Respondent's company performed audits of five companies, issuing opinions and reports signed by Respondent Belk which contained false statements. As charged by the Government, the statements in the Independent Auditor's Reports that the reports were based on audits conducted in accordance with Government Auditing Standards ("GAS") and the requirements of the HUD Office of Inspector General's Consolidated Audit Guide for Audits of HUD Programs 2000.04 ("HUD Audit Guide") were false, because they were not conducted as required by GAS and the HUD Audit Guide.

Specifically, as the Government sets it out, the allegedly false statements were common to the reports issued by Respondent's firm for the companies audited. Respondent Belk signed the statements in all the reports that are at issue in these proceedings, which Respondent knew or had reason to know were not true. The companies were all FHA-approved non-supervised loan correspondents. Respondent's firm failed, in the case of (1) Tri-Financial Services, Inc. for fiscal years ("FY") 2006-2007, (2) GF Ventures, LLC (DBA Advantage Financial Services) for FY 2007, (3) Mortgage Financial Group, Inc. for FY 2008, (4) Allen Mortgage, LLC for FY 2008, and (5) Classic Home Loans, LLC for FY2008, to document adequately the work performed.

Respondents did not explain in the audits' work papers why compliance requirements specified in HUD Audit Guide REV-2 (2006) and REV-2 CHG-6 (2007) at paragraph 7-5 were not tested. In spite of Respondents' failure to explain why the compliance requirements were not tested, in order to obtain HUD's acceptance of the audits, Respondents stated in the Reports on Compliance with Specific Requirements Applicable to Major HUD Programs (Reports on Compliance) that the audits were conducted in accordance with GAS and the HUD Audit Guide. Respondents failed to

¹ The Government notes in its brief that the term "Resident Manager" is "used by the Kansas Board of Accountancy to identify the managing member of the licensed firm." See n. 1 of the Government's Brief in Support of Three-Year Debarment.

document that they had audited compliance with the specific requirements applicable to major HUD programs and also had audited internal control; nonetheless, to obtain HUD's acceptance of the audits, Respondents stated on the Reports of Compliance that the audits were conducted in accordance with GAS and the HUD audit Guide.

Working papers in the audit files contained no evidence that they had been reviewed by a supervisor. Respondents' statements, however, recited that the audits were conducted in accordance with Government Auditing Standards on the Independent Auditor's Report. Additionally, with respect to the audit of the Mortgage Financial Group, Inc., Respondents discovered that the lender had adjusted net worth below HUD's requirement. In order to cure the deficiency, a stockholder made a capital contribution in the form of a single rental residence. The audit working papers contained no evidence that Respondents validated the lender's valuation of the residence and its related mortgage liability. In the case of Intellichoice Mortgage Services, LLC, Respondent failed to document that they audited internal control in violation of GAS and the HUD Audit Guide.

Counsel argues that Respondents are subject to the debarment regulations because they have been or "may reasonably be expected to be, a participant or principal in a covered transaction," *citing* 2 C.F.R. §§180.130, 180.980 and 180.985. Counsel also refers to 2 C.F.R. § 180.200(a), which spells out that a "covered transaction is a nonprocurement transaction," and that under 2 C.F.R. § 180.980 "nonprocurement transactions" include, among other things, "(6) Loans [and] (7) Loan guarantees."

Pursuant to 2 C.F.R. § 180.200(a), the companies affected by Respondents' actions, as approved FHA lenders, were primary tier participants that were required to submit audited reports to HUD. In this connection, counsel points out that "Respondents, as the auditors of FHA-approved lenders, were lower tier participants within the meaning of the debarment regulations."

Counsel argues that Respondents' acts or omissions are cause for debarment under 2 C.F.R. § 180.800 (b) in that they were "willful violation[s] of a statutory or regulatory provision or requirement applicable to a public agreement or transaction." Specifically, counsel charges that by Respondents' "issuing independent reports that were based on audits that were not conducted in accordance with [GAS] and the HUD Audit Guide, and by issuing reports that contained false statements concerning the conduct of those audits, Respondents violated regulatory provisions or requirements applicable to the FHA program," as provided in 24 C.F.R. § 5.801(a)(5) and (b)(3), 202.5, 202.7(b)(4), and 202.8(b)(3). Counsel also argues that Respondents' "acts and omissions" are cause for debarment pursuant to 2 C.F.R. § 180.800(d) because their misconduct was "of so serious or compelling a nature that it affects [their] present responsibility." Counsel states that the Government has met its burden to establish cause for debarment by a preponderance of the evidence by demonstrating Respondents' issuance of audit reports that were based on audits that violated GAS and the HUD Audit Guide requirements and that contained false statements.

Counsel argues that the debarment of Respondents for a three-year period is in the public interest, *citing* 2 C.F.R. § 180.110 and case law in support thereof. Counsel adds that "there can be no greater indicator of a lack of business integrity, honesty or responsibility than false statements in business dealings." HUD cannot rely upon

Respondents to act with probity and candor and Respondents' "demonstrated dishonesty has the potential to harm HUD, the government at large and the public." Counsel reviews the aggravating and mitigating factors in to 2 C.F.R. § 180.860 in light of Respondents' misconduct as described above and concludes that the "aggravating factors weigh heavily in favor of the proposed three-year debarment."

Respondent's Arguments

Respondent writes that, after reading the Notice, he "wasn't surprised by the findings of the reviews of certain engagements from 2006 through 2008, but [he] was again disheartened to know that [he] had done such substandard work." Respondent adds that he stands behind his audits because he did the work; he "was just lacking in documentation." Respondent describes his early auditing experience and the quality of his preparation, noting that when he learned that his "second peer review was going to be adverse," he took the initiative by having his peer reviewer spend a day at his office teaching the staff how to do the audits. Respondent notes that the Kansas State Board of Accountancy accepted his adverse peer review and allowed him to continue practicing as a firm though with stipulations attached. Respondent states that because of the opportunity given him by the Board to continue doing audits and the mentor relationship he has with another CPA, he is "now documenting [his] audits up to standards." Respondent acknowledges that he now understands the "need for competency, honesty, and integrity" and he hopes that his "letter has demonstrated [his] resolve to improve [his] audit documentation skill," and that the Debarring Official "will consider these improvements and growth in [the] decision process." Respondent also testified that he did not intend to do wrong.

Findings of Fact

1. Respondent Belk was at all relevant times a CPA and the Resident Manager of his co-respondent firm.
2. Respondents performed audits of FHA-approved lenders.
3. The audits were required to be performed in accordance with Government Auditing Standards, the HUD Office of Inspector General's Consolidated Audit Guide for Audits of HUD Programs 2000.04, and other applicable authorities.
4. Respondent's firm performed audits of FHA-insured lenders which were deficient and did not comply with accepted standards and the authorities mentioned above.
5. Respondent Belk admits that he did substandard work and that the audits were lacking in documentation."
6. Respondent signed a statement for each of the engagements attesting that the audits were performed in accordance with the above-cited authorities.

Conclusions

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

1. Respondents are subject to HUD's debarment regulations as persons who have been participants or principals in a covered transaction. *See* 2 C.F.R. § 180.200.
2. Respondents were involved in covered transactions to the extent they audited lenders that participated in HUD's mortgage insurance program. *See* 2 CFR § 180.970.
3. The facts recited above, along with the Government's un rebutted allegations, allied with Respondent's admission, make it abundantly clear that the audits at issue in this proceeding were not performed in accordance with accepted standards. Accordingly, Respondent Belk's attestations on behalf of his company with respect to the audit reports, in light of the factual finding and Respondent Belk's admission, were false.
4. Respondent Belk suggests that, at least in part, his sub-standard performance may be attributable to inexperience and a lack of knowledge. More critically, however, again by Respondent's own admission, is that his "clients were written up at a much higher percentage than" the two "highest volume FHA audit providers." That admission would suggest that Respondent's qualifications played less of a role in his failures or "sub-standard work," as set forth above, than intentional neglect or disregard of the requirements for an acceptable audit.
5. Respondent claims that he "did do the work. [He] was just lacking in documentation." As Respondent's claim readily suggests, documentation is a necessary element of an acceptable audit. Thus, Respondent's failure to include proper documentation is clearly not attributable to inexperience or ignorance but to a willful disregard of known auditing standards. *See, e.g.*, Government Auditing Standards, Ch. 5.16 (2011 Revision).
6. Respondents' failures and omissions, detailed *supra*, evidence a "willful failure to perform in accordance with the terms of one or more public agreements or transactions," i.e., GAS and the HUD Audit Guide. *See* 2 C.F.R. § 180.800(b)(1).
7. Respondents' failure was willful. The failures and violations were not "mere mistake resulting from inexperience, excitement or confusion, and . . . mere thoughtlessness or inadvertence." The violations were "intentionally done [and] act[s] of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow." *In the Matter of Seb Passanesi*, HUDALJ 92-1835-DB (December 16, 1992).
8. Respondents' failure to comply with the requirements of GAS and the HUD Audit Guide was "so serious as to affect the integrity of [the FHA insurance] program." *See* 2 C.F.R. § 180.800(b).
9. HUD has met its burden to prove a cause for debarment of Respondents exists. *See* 2 C.F.R. §180.850(b).

10. I have considered as mitigating factors Respondent Belk's recognition that he needs mentoring to ensure that, in the future, his work will meet all required standards. I have considered also the response of the Kansas Society of CPAs Peer Review Committee with respect to the peer review of Respondent's firm.
11. Respondents' actions in issuing audit reports that were not based on audits that complied with GAS and the HUD Audit Guide, and that contained false statements with respect to the conduct of the audits, along with the violation of HUD's regulations, however, are "of so serious or compelling a nature" that the evidence in mitigation is insufficient to persuade me that Respondents are presently responsible. *See 2 C.F.R. § 180.800(d). See also 2 C.F.R. §§180.125(a) and (b).*
12. For all the foregoing reasons, I conclude that Respondents' misconduct warrants their debarment for three years to protect the public interest. *See 2 C.F.R. §§180.865(a) and (b).*
13. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
14. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honesty and integrity.

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 Respondents MICHAEL A. BELK and MICHAEL A. BELK, CPA. for a period of three years from the date of this Determination. Respondents' "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: _____

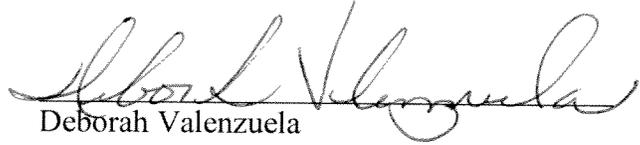
8/14/12



Craig T. Clemmensen
Debarment Official

CERTIFICATE OF SERVICE

I hereby certify that on this 14TH day of August 2012, 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

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CERTIFIED MAIL AND EMAIL

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