

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

In the Matter of:

RONALD K. FRUTH,

Respondent.

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DOCKET NO. 07-3414-DB

DEBARRING OFFICIAL'S DETERMINATION

Introduction

By Notice dated February 27, 2007 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent **RONALD K. FRUTH** 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 period of three years from February 27, 2007, the date on which Respondent's suspension became effective.

HUD advised the Respondent in the February 27, 2007, letter that proposed his debarment and effected his immediate suspension that the action was in accordance with the procedures set forth at 24 CFR part 24. Additionally, the February 27, 2007, Notice informed the Respondent that the proposed debarment was based upon his criminal conviction in the United States District Court for the Middle District of Pennsylvania.

Respondent's conviction followed his guilty plea to one count in a felony information charging him with violating 18 U.S.C. 1010(b)(2) (HUD fraud). Respondent's fraudulent action involved his purchase of distressed properties which were then resold to unqualified buyers. Respondent Fruth, in concert with his coconspirators, would qualify these otherwise unqualified buyers by improperly donating funds to them. To effect their scheme, Respondent and his coconspirators made false statements in an attempt to cover the fact that the funds were improperly donated from their own resources. The false statements were submitted to HUD on behalf of the unqualified buyers to induce HUD to provide mortgage insurance on the loans for properties that Respondent was selling to them. This fraudulent scheme resulted in losses to HUD of almost \$275,000. As punishment for his crime, the court placed Respondent on supervised probation for two years and ordered Respondent to make restitution of \$273,754.13.

A hearing on Respondent's proposed debarment was held in Washington, DC on July 25, 2007, before the Debarring Official's Designee, Mortimer F. Coward. Respondent appeared pro se at the hearing. Heather Walters, Esq. appeared on behalf of HUD. The record was held open until August 22, 2007, for the receipt of further documentation from the parties. No further documentation was received from the parties.

Summary

I have decided, pursuant to 24 C.F.R. part 24, to debar Respondent from future participation in procurement and non-procurement 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 his suspension – February 27, 2007. My decision is based on the administrative record in this matter, which includes the following information:

- (1) The Notice of Proposed Debarment and Suspension dated February 27, 2007, issued by HUD.
- (2) The Information filed by the U.S. Attorney on March 29, 2005.
- (3) The Plea Agreement agreed to by Respondent, filed March 29, 2005.
- (4) The Judgment in a Criminal Case with respect to Respondent dated September 26, 2006.
- (5) The Government's Brief in Support of a Three-year Debarment and Suspension filed July 10, 2007 (including all attachments and exhibits thereto).
- (6) The tape recording of the July 25, 2007, hearing.

As noted above, HUD proposed Respondent's debarment for a period of three years from the date of his suspension based upon his guilty plea and conviction in the U.S. District Court for the Middle District of Pennsylvania. The Information recites that Respondent Fruth "for the purposes of obtaining mortgages insured by the Department of Housing and Urban Development, knowingly made false statements regarding the source of funds used as eligibility for those mortgages and aided, abetted, counseled, commanded and procured the same. All in violation of Title 18, United States Code, Sections 1010 and 2."

HUD's Arguments

HUD contends that Fruth, as a real estate investor who sought out homebuyers for FHA-insured mortgage loans, participated in nonprocurement covered transactions. HUD argues that Fruth's fraudulent acts and conviction for submitting false statements to HUD indicate a lack of business integrity or business honesty that seriously affects the Respondent's present responsibility. Counsel for the government argued that Fruth, by his own admission at the hearing, acknowledged that at the time he engaged in the unlawful conduct that led to his conviction knew his actions were wrong. HUD further argued that Respondent offered no explanation or excuse for his actions. Government counsel reminded the hearing that Respondent's fraudulent actions resulted in losses to the government of almost \$275,000. Fruth, said government counsel, cited no factors in mitigation of his criminal actions. Counsel added that Fruth had not demonstrated that he was capable of acting in a responsible manner within the

bounds of FHA's requirements. Accordingly, counsel for the government reiterated that a three-year debarment should be imposed on Fruth.

Respondent's Arguments

In his defense, Respondent stated that he did not dispute the factual background laid out by government counsel. However, Respondent did take issue with the number of loans that was considered improper and the calculation of the amount of loss suffered by the government as a result of his criminal conduct.¹ Respondent testified that he has paid to date \$75,942.80 towards the restitution that the court at sentencing ordered him and his codefendants to pay. Respondent stated that it was one of his codefendants who proposed the scheme in which the partnership funds were used, disguised as gifts, to help prospective homebuyers.²

Respondent stated that he started in the real estate business in 1969, later forming the partnership. Subsequently, at the suggestion of one of the coconspirators, the partnership became involved in the FHA program. To satisfy the FHA downpayment requirement, the partnership would collect a partial payment from a prospective buyer with the balance paid over the next two to three months in anticipation of settlement. If a buyer did not make the installment payments at time of settlement, the partnership would fund the shortfall though representing the entire downpayment as coming from the buyer's funds. According to Respondent, he became uneasy with the scheme and in 2001 the partnership was dissolved.

Respondent contended that although five of the 115 mortgage loans that were the subject of the federal investigation were found to be improper, none of the 50 loans that he independently negotiated during the same time period in which the 115 loans were made were found to be improper.

Respondent urged as mitigating factors to be considered in his behalf, his voluntary abandonment in 1999 of the illegal scheme five years before the investigation of his and the partnership's role in the fraudulent loans at issue began; his full cooperation with the government investigation of his and the partnership's actions in providing the unallowable gift funds and the false statements used to disguise the source of the funds; and his making payments towards the restitution that the court ordered him to make. Respondent urged that his period of debarment be limited to his suspension from February 27, 2007, to the present.

Findings of Fact

1. Respondent Fruth was a participant in a covered transaction.
2. Respondent pleaded guilty and was convicted of fraud involving a scheme to provide gift funds to homebuyers, disguising the source of those funds in false statements to HUD.
3. Respondent was sentenced to probation for a term of two years and ordered to pay restitution of \$273,754.13.

¹ Respondent argued that it was not six loans, as the Ellis declaration asserts (see Ellis declaration attached to the Government's brief as an unnumbered exhibit), but five loans that were found to be supported by false documents.

² Respondent testified that he formed a partnership with David Walsh, one of the coconspirators, in 1982.

4. Respondent's conviction provides the basis for his debarment under 24 CFR 24.800.
5. Respondent was a partner in the partnership that was involved in the illegal scheme.
6. Respondent voluntarily abandoned his involvement in the illegal scheme before the investigation began.
7. Respondent cooperated with federal authorities in their investigation of the illegal scheme.
8. Respondent had no prior record of criminal activity.
9. Respondent to date has paid \$75,942.80 and continues to make payments towards the full restitution ordered by the court.
10. Respondent was suspended by HUD from participation in procurement and nonprocurement transactions throughout the federal government.

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.
2. Respondent's conviction on fraud charges provides the legal basis for debarment.
3. Respondent provided substantial assistance to federal authorities in their investigation and prosecution of his own misconduct.
4. Respondent's involvement in the scheme to obtain fraudulent loans for his clients to purchase homes raises grave doubt with respect to his business integrity and personal honesty.
5. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
6. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs fail to act with honesty and integrity.
7. Respondent has not yet made full restitution as ordered by the court.
8. Respondent had no prior record with HUD involving wrongdoing or violation of laws covering HUD's programs.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined to debar Respondent for three years commencing on the

date of his suspension – February 27, 2007. In accordance with 24 CFR 24.870(b)(iv), 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: 9/14/2007

Henry S. Czauski

Henry S. Czauski
Debarring Official
Departmental Enforcement Center