

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

---

**In the Matter of:**

\*

\*

**ROY CERVANTES,**

**Respondent.**

\*

\*

**Docket No. 12-3881-DB**

\*

\*

---

**DEBARRING OFFICIAL'S DETERMINATION**

**Introduction and Background**

By Notice of Proposed Debarment dated December 06, 2011 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent ROY CERVANTES of his proposed 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 the date of the final determination of this action. The Notice further advised Respondent that his proposed debarment complied with the procedures set forth in 2 CFR parts 180 and 2424 and was based upon his conviction in the United States District Court for the Northern District of California for violation of 18 U.S.C. § 1349 (Conspiracy to Commit Mail Fraud). The Notice also specifically advised Respondent that he was found to have devised a scheme to defraud a financial institution through materially false representations. Respondent's actions, the Notice intoned, were cause for his debarment under 2 C.F.R. §§ 18.800(a)(1), (3) and (4).

A telephonic hearing was held on August 21, 2012<sup>1</sup>, before the Debarring Official's Designee, Mortimer F. Coward. Respondent appeared *pro se*. Andrea Lee, Esq. appeared on behalf of HUD.

---

<sup>1</sup> A Notice of Final Determination was issued on May 11, 2012, in this matter, based on Respondent's failure to respond timely to the December 6, 2011, Notice. Respondent requested a reconsideration and moved to have the Determination set aside, arguing that he had received the December 6, 2011, Notice late. The matter was then set for hearing in an Order issued June 19, 2012.

The parties were given the opportunity to file post-hearing briefs and the record closed on September 20, 2012.

### Summary

I have decided, pursuant to 2 C.F.R. part 180, to debar Respondent 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 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 December 06, 2011.
2. An e-mail dated August 13, 2012, from Respondent, attaching several documents filed in his proceeding before the California Department of Real Estate subsequent to his criminal conviction.
3. An e-mail dated September 4, 2012, attaching a "Letter of Explanation" from Respondent with accompanying documents.
4. The Government's Pre-Hearing Brief in Support of Three-Year Debarment filed July 10, 2012 (with accompanying exhibits and attachments).

### Government Counsel's Arguments

Government counsel recites that Respondent was a loan officer who engaged in a mortgage fraud scheme along with a co-conspirator to submit false information on behalf of applicants seeking residential mortgage loans. Respondent was indicted and pleaded guilty to and was convicted on one count of conspiracy to commit mail fraud. Respondent admitted that he assisted a co-conspirator to obtain a loan from a lender by submitting false documentation in support of the co-conspirator's loan application. Respondent also admitted to similar wrongdoing in connection with three other loans. Respondent pleaded guilty and was convicted on one count of conspiracy to commit fraud. Respondent was sentenced to three years' probation, 200 hours of community service, and ordered to forfeit \$45,768.00.

Counsel argues that Respondent as an experienced loan officer may reasonably expected to be a participant in a covered transaction, including FHA-insured loans. See 2 C.F.R §§ 180.120(a), 180.200, and 180.970. Counsel adds that, although Respondent's wrongdoing was not in connection with an FHA-insured loan, Respondent is nonetheless subject to debarment "because evidence of prior involvement with HUD or the FHA is not a prerequisite for debarment" and Respondent is "likely to participate in HUD|FHA insurance programs in his work." (Citations omitted)

Counsel notes that, in accordance with the Secure and Fair Enforcement for Mortgage Licensing Act (S.A.F.E. Act) (12 U.S.C. § 5101-5116), Respondent is disqualified from holding a loan originator's license. However, Respondent's experience and knowledge of the mortgage industry equips him to hold other jobs in the industry and the S.A.F.E. Act "does not prevent him from getting a job *everywhere* in the mortgage industry." (Emphasis in original)

Counsel further argues that Respondent's conviction provides cause for his debarment because Respondent was convicted for fraud, an offense listed under 2 C.F.R. § 180.800(a)(1) as a cause for debarment. Respondent also is subject to debarment under 2 C.F.R. § 180.800(a)(4), because Respondent's fraud "which was perpetrated by the submission of fraudulent documents was an offense 'indicating a lack of business integrity or business honesty that seriously and directly affects' [his] present responsibility."

Counsel concludes that Respondent's "participation in a scheme that defrauded a lender demonstrates that he lacks the requisite responsibility to participate in programs funded by the Federal Government, that he poses a high risk to the government and to the public, and that he is not a person with whom the Federal Government or other participants in covered transactions should conduct business."

Counsel reviews the aggravating and mitigating factors at 2 C.F.R. § 180.860 and argues, among other things, that Respondent's wrongdoing not only caused financial loss to the lender but "may cause harm throughout the community where the fraud scheme was perpetrated." As a further aggravating factor, counsel states that Respondent was "a primary participant in carrying out the conspiracy" and his "actions were intended to deceive the lender and he knowingly played a crucial role in the scheme to illegally obtain funds." Counsel also notes that Respondent "has not provided any evidence that he is remorseful or that he accepts responsibility for his actions." While acknowledging that Respondent's real estate salesperson license has been revoked in California, counsel argues that, because of Respondent's experience, he "could potentially acquire such a license in another state." For this and the other reasons discussed above, and based on Respondent's criminal conviction, counsel requests that Respondent be debarred for three years.

### **Respondent's Argument**

Respondent testified that the "government's [HUD's] information is true," although "some of the accusations are not precisely accurate." Respondent stated that he admitted guilt and saw it as an opportunity to start a new life following his wrongdoing that occurred over a six-week period in 2008. According to Respondent, his then-employer gave him the choice of processing the four loans which were at issue in his criminal matter or face the loss of his job. Respondent testified that he terminated his employment with that employer because of his "concern about what [he] was doing." The four loan transactions occurred over a six-week period and continue to be performing loans.

Respondent acknowledged that he lost his real estate license but that the California Department of Real Estate (DRE) was giving him the opportunity to get his license back in the near future. Respondent also testified that he has taken six real estate courses since he committed the fraudulent act for which he was convicted. As Respondent sees it, these courses will better prepare him to be an honest and knowledgeable real estate agent.

Respondent submitted for consideration documents that were entered in the record in the DRE proceeding involving the revocation of his real estate license. Among the documents Respondent submitted are letters from a retired supervisory FBI special agent and a retired supervisory U.S. probation officer, now a sentencing consultant. The letters discuss Respondent's actions and

character before and after his conviction and, in the case of the sentencing consultant, conclude that "it is [her] professional opinion that Mr. Cervantes poses no risk in re-offending, i.e., causing any harm to his present or future real estate clients." See letter from Rosemary Costa dated December 7, 2011, at page 4, included as an attachment to Respondent's e-mail of August 13, 2012. The FBI agent opined that he "firmly believe[s] that Roy Cervantes will now return to being one of the most honest and professional real estate agents practicing within" California. See letter of December 7, 2011, from John W. Zent Jr., also submitted as an attachment to Respondent's August 13, 2012 e-mail.

In the DRE matter, in which the cited letters were used in Respondent's arguing for a favorable disposition of his case, Respondent contended that he "is a strong candidate for some form of discipline short of revocation because he is presently fit for limited licensure." In the instant proceeding, Respondent concluded his testimony by stating that he had learnt his lesson from the severity of the criminal punishment. Respondent requested that he receive a lesser period of debarment than the three years proposed by HUD.

#### **Findings of Fact**

1. Respondent was a loan processor at all relevant times and also later acquired a real estate license..
2. Respondent engaged in a fraudulent scheme to provide false documentation in connection with four loan applications.
3. Respondent was indicted for conspiracy to commit mail fraud and entered into a plea agreement in which he pleaded guilty and was convicted of one count of conspiracy to commit mail fraud.
4. Respondent was sentenced to probation for three years and 200 months of community service and ordered to forfeit \$45,768.00.

#### **Conclusions**

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

1. Respondent is subject to the debarment regulations because he "has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction." 2 C.F.R. § 180.130.
2. A "covered transaction" is a nonprocurement or procurement transaction that is subject to the prohibitions of this part." See 2 C.F.R. § 180.200.
3. Respondent's conviction for conspiracy to commit mail fraud provides cause for his debarment. See 2 C.F.R. § 180.800. The government has met its burden of proof based on Respondent's conviction. See 2 C.F.R. § 180.850.
4. Respondent has expressed regret for his actions and has taken steps, through taking real estate courses, to inform himself of the ethical standards and requirements of practitioners in the real estate industry.

5. I have considered the fact that Respondent's wrongdoing was committed over four years ago and since September 2008 he has been working with a real estate broker. It has been held, however, that the passage of time, *ipso facto*, does not establish present responsibility. *Howard Perlow*, HUDBCA No. 92-7131-D5 (December 3, 1992).
6. There is no evidence in the record that either before or after the six-week period in which Respondent engaged in the illegal conspiracy, Respondent committed any other illegal acts.
7. Respondent has provided evidence of his efforts at compliance with the court ordered sentence, including his partial payment of the forfeited amount and his community service. Because Respondent was under compulsion of law to perform these acts, I have weighted his compliance with the terms of his sentence less favorably than his voluntary efforts, in considering Respondent's present responsibility.
8. The above mitigating factors, which are considered in light of the provisions at 2 C.F.R. § 180.860, demonstrate Respondent's efforts to rehabilitate himself and atone for his past conduct. I am not, at this time, persuaded that sufficient time has passed or that he has provided a compelling record of achievements for him to be considered presently responsible. *See* 2 C.F.R § 180.125..*See also* Carl W. Seitz, HUDBCA No. 91-5930-D66 (April 13, 1992) (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.)
9. As provided in 2 C.F.R. § 180.875, Respondent may request, at a later date, a reconsideration of this decision or that the period of the debarment be reduced.
10. Respondent's actions set forth above, and in the record as a whole, raise concerns with respect to his business integrity and personal honesty.
11. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.

### Determination

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 C.F.R. §§ 180.870(b)(2)(i) through (b)(2)(4), to debar Respondent for a period of three 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: \_\_\_\_\_

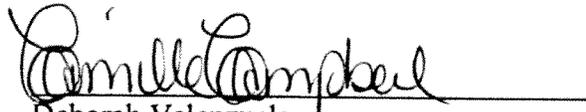
11/1/12



\_\_\_\_\_  
Craig T. Clemmensen  
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of November ~~October~~ 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**

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

Andrea M. Lee, Esq.  
Melissa Silverman, Esq.  
Ana I. Fabregas, Esq.  
Government Counsel

**FIRST CLASS MAIL**

Roy Cervantes

