

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC

In the Matter of:

FRED CONLEY,

Respondent.

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DOCKET NO.: 14-0053-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice of Proposed Debarment dated July 24, 2014 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent FRED CONLEY 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 ten years from the date of the final determination of this action. The Notice advised Respondent also that his proposed debarment was in accordance with the regulations at 2 C.F.R. parts 180 and 2424.

The Notice further advised Respondent that his proposed debarment was based on evidence HUD had that while he was a Board member and chairperson of the Omaha Housing Authority (OHA) from August 2009 to 2013, he failed to disclose to the Board and to HUD that he was a Director of Collateral Guaranty Fund, Inc. (CGFI), a company that contracted with OHA. Additionally, the Notice advised Respondent that he also

failed to disclose to OHA that he was being provided free office space, among other things, from the Davis Companies, a HUD vendor.

The Notice alleged that Respondent's failure to disclose his association with the companies mentioned above constituted an impermissible conflict of interest in violation of Section 19(A)(2) of the Annual Contributions Contract between OHA and HUD and Sections 71-15,151 and 71-15,153 of the Nebraska Housing Act. The Notice also advised Respondent that his actions were evidence of serious impropriety and were cause for debarment pursuant to 2 C.F.R. §§ 180.800(b) and (d).

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on January 13, 2015 before the Debarring Official's Designee, Mortimer F. Coward. John D. Stalnaker, Esq. appeared on behalf of Respondent. David R. Scruggs, Esq. appeared on behalf of HUD.

**ADMINISTRATIVE JUDGE'S FINDINGS OF FACT AND RECOMMENDED
DECISION**

After the filing of post-hearing submissions by Respondent and at the request of the parties, this matter was referred to the Office of Hearing and Appeals for fact-finding pursuant to 2 C.F.R. 180.845(c). The Administrative Judge, in his decision, among other things, found that HUD had "shown by a preponderance of the evidence that Respondent had a duty to disclose his relationship with the Davis Companies and did not fully do so." [HUD had] "not shown, however, that [Respondent] had a duty to disclose his relationship with the Davis Companies and did not fully do so. [HUD] has not shown, however, that [Respondent] had a duty to disclose his status as a CGFI Board member.

HUD has also failed to show that a ten-year debarment is an appropriate sanction. Accordingly, I [i.e., the Administrative Judge] find that Respondent is not presently responsible. As a result, I [i.e., the Administrative Judge] recommend that debarment be imposed for a period of one year.”

Discussion

I have carefully read the Recommended Decision, especially the facts found by the Administrative Judge, and do not dispute his findings in that regard. Accordingly, insofar as the findings of fact are concerned, I adopt those findings and see no reason to disturb them. The Administrative Judge, however, in his Recommended Decision, determined that Respondent was not presently responsible and recommended that Respondent be debarred for one year. In doing so, the judge concluded that HUD had failed to show that the proposed “ten-year debarment is an appropriate sanction.”¹

It is undisputed that the power to debar rests with the debarring official. *See generally* 2 C.F.R. 180.800. In the instant matter, the debarring official did not cede that power to the Administrative Judge, nor do the debarment regulations authorize or empower the debarring official to do so. Thus, although a debarring official may show deference to a gratuitous recommendation regarding a period of debarment recommended by an Administrative Judge, he is not bound to follow the recommendation.

¹ Pursuant to 2 C.F.R § 180.845(c), the regulatory authority that authorizes the debarring official to refer this matter to the Office of Hearing and Appeals, the administrative judge was empowered to make findings of fact only. The administrative judge, if acting in strict fealty to the plain language of the regulation, arguably would be acting *ultra vires* the regulation in recommending a period of debarment. Nonetheless, a recommendation by an administrative judge with respect to a period of debarment is given due consideration unless, as the regulation provides with respect to fact-finding, it is “determined[ed] . . . to be arbitrary, capricious, or clearly erroneous.”

In the case at bar, as mentioned above, the Administrative Judge specifically found that Respondent was not presently responsible. The judge concluded that Respondent "had a duty to disclose his status as a CGFI Board member." This Respondent did not do. Respondent's failure to do so clearly supports a charge of conflict of interest, which, by any measure, is a serious charge.

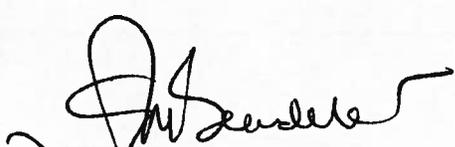
As provided in 2 C.F.R. 180.865(a), "your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years."

Conclusion

After a thorough review of the entire record, including the Recommended Decision, I conclude that a three-year debarment is appropriate in this matter. 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: _____

5/19/14



Craig T. Clemmensen
Debarring Official