

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

In the Matter of:	*	
	*	
CHESTER CARL,	*	
	*	DOCKET NO. 08-3465-DB
	*	
Respondent.	*	
	*	

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice dated October 22, 2007 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent CHESTER CARL that HUD was proposing his debarment and continued suspension 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 October 24, 2006, the date of his suspension. Respondent also was advised in the October 22, 2007, Notice that his proposed debarment and continued suspension were in accordance with the procedures set forth in 24 CFR part 24¹. In addition, the Notice informed Respondent that his proposed debarment was based upon his receiving gratuities from Bill Aubrey, president of Lodgebuilder, Inc. and from Fort Defiance Housing Corporation (FDHC), a corporation controlled by Bill Aubrey and a subgrantee of the Navajo Housing Authority, while Respondent was serving as the Chief Executive Officer of the Navajo Housing Authority (NHA).

A telephonic hearing on Respondent's proposed debarment and continued suspension was held in Washington, D.C. on February 15, 2008, before the Debarring Official's Designee, Mortimer F. Coward. Respondent participated by phone at the hearing, appearing *pro se*. Travis Farris, Esq. appeared on behalf of HUD along with Geoffrey Patton, Esq. A status call was held with the parties on April 8, 2008, to discuss Respondent's continued failure to receive timely from HUD documents requested by him in a FOIA request. The record was kept open to allow Respondent time to review the

¹ HUD published a final rule on December 27, 2007 (72 FR 73484) that relocated and recodified 24 CFR part 24 as 2CFR part 2424. HUD's December 27, 2007, rule stated that the rule "adopts, by reference, the baseline provisions of 2 CFR 180 "the government-wide rule published by OMB on August 31, 2005 (70 FR 51863) setting forth guidance for agencies with respect to nonprocurement debarment and suspension. For the convenience of the reader, references herein will be to the regulations at 2 CFR part 180.

documents as soon as HUD provided them and for the filing of supplemental submissions from the parties. The record was closed on May 12, 2008.

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 three years from October 24, 2006, the date of his suspension. My decision is based on the administrative record in this matter, which includes the following information:

- (1) The Notice of Proposed Debarment and Continuing Suspension dated October 22, 2007.
- (2) A letter from Respondent dated October 31, 2006, addressed to the Regional Administrator, HUD Office of Native American Programs.
- (3) A letter (with enclosures) from Respondent addressed to the Docket Clerk dated November 19, 2007, contesting his proposed debarment.
- (4) Respondent's Submission in Response to Proposed Debarment received by HUD on February 8, 2008.
- (5) A letter (with attachments) from Respondent dated March 18, 2008, addressed to the Debarring Official's Designee.
- (6) A letter (with attachments) from Respondent to the Debarring Official's Designee dated April 28, 2008.
- (7) The Government's Submission in Support of a Three-Year Debarment filed January 17, 2008 (including all attachments and exhibits thereto).
- (8) The Government's Response to Mr. Carl's Supplemental Filing filed May 12, 2008.
- (9) The digital recording of the February 15, 2008, hearing.

HUD's Arguments

HUD argues that Respondent, during the period at issue here, was involved in covered transactions by virtue of his position as the chief executive officer (CEO) of the Navajo Housing Authority (NHA), an entity that administered Native American Housing and Self-Determination Assistance (NAHASDA)/ Indian Housing Block Grant (IHBG) funds. HUD states that, during Respondent's time in office, NHA provided substantial funding to a sub-recipient, Fort Defiance Housing Corporation (FDHC), to implement the activities set forth in the NHA's Indian Housing Plan (IHP). However, another company, Lodgebuilder, Inc., performed FDHC's activities and administered the funds FDHC received from the NHA. Pursuant to its contracts with Lodgebuilder, Inc., FDHC assigned to Lodgebuilder all of the IHBG funds it received from NHA. Bill Aubrey was the president of Lodgebuilder, Inc.

HUD further alleges that Bill Aubrey provided cash and gratuities in the form of casino chips to Respondent and that Lodgebuilder's subcontractors also performed

unpaid work on Respondent's house. HUD states that the value of the gratuities Respondent received and the amounts, if any, he repaid are unknown. HUD contends that, when first interviewed by agents from HUD's Office of Inspector General (OIG), Respondent denied receiving cash or gambling chips from Mr. Aubrey. Respondent later admitted receiving gaming chips from Aubrey after the OIG agents showed him copies of four Form 103-N Currency Transaction Reports (CTRs), evidencing his gambling activities.

HUD argues that Respondent's actions described here, including his repeated denials to the OIG of his visiting casinos with Bill Aubrey, provide cause for his debarment under 2 CFR 180.800(b) and (d). Respondent's actions constituted a violation of a public agreement or transaction so serious as to affect the integrity of the IHBG program and also affected his present responsibility. Specifically, HUD argues that Respondent's acceptance of gratuities from Bill Aubrey demonstrates his disregard for the NHA conflict of interest policies.²

HUD also cites as an additional basis for the suspension and proposed debarment of Respondent³, Respondent's authorizing of a payment of \$190,000.00 in IHBG funds for a project that had not received HUD approval in the IHP submitted by NHA. HUD argues that in a Determination Letter dated June 4, 2002, from the HUD South West Office of Native American Programs (SWONAP), Respondent was advised that "HUD cannot authorize the use of NAHASDA funds" for certain development activity identified in the IHP without HUD's receiving "additional information . . . to enable HUD to determine whether [the] activity is an eligible model activity."⁴ Nonetheless, on August 30, 2002, Respondent personally signed a requisition for \$190,000.00 in IHBG funds payable to Crow Springs Engineering and Construction, Inc. Respondent had entered into a sub-recipient agreement on August 20, 2002, with Crow Springs for construction of the same 20 units of housing that HUD had advised Respondent and identified in the June 4, 2002, letter as a "disapproved IHP activity." HUD notes that at the time Respondent approved payment to Crow Springs, HUD still had not approved the construction project as an activity eligible for NAHASDA funds. HUD argues that Respondent's act of approving funding for the Crow Springs construction project violated 24 CFR 1000.201, which prohibits recipients from proceeding with the funding of

²Recipients of IHBG funding are required under relevant HUD regulations to maintain a code of conduct in accordance with HUD's procurement standards. See 24 CFR 85.36. See also, Sec II, Navajo Housing Authority Procurement Policy and Standards (NHAPPS). See especially, Sec. 2.4, which provides in relevant part that "Employees, officers, . . . of the NHA shall not solicit nor accept gratuities, favors, . . . from contractors, . . . or parties to subagreements with the NHA." Further, employees are required to report any unsolicited offers.

³ HUD asserts that, notwithstanding the violations allegedly committed by Respondent "appear to have occurred while [Respondent] was operating within or under the auspices of the sovereign Navajo Nation [.] [t]he Navajo Nation's independent sovereignty does not impair HUD from proceeding with this action." HUD cites the regulations at 24 CFR 1000.44 in support of its contention that "ONAP's NAHASDA regulations specifically contemplate full force and effect of HUD's suspension and debarment regulations." In view of HUD's position and in light of Respondent's apparent acquiescence in HUD's claim of jurisdiction as set forth here, the Debarring Official does not *sua sponte* reach the issue of jurisdiction.

⁴ See Gov't Brief, Ex. 6B.

unapproved activities.⁵ In this regard, HUD argues that “[u]se of grant money in a manner inconsistent with the grant’s allocated purpose is an established cause for debarment under 24 CFR 24.800(b) and (d) [2 CFR 180.800(b) and (d)].”⁶

HUD also argues that Respondent’s debarment is in the public interest, citing 24 CFR 24.110(c). Specifically, HUD reiterates that Respondent’s acceptance of gratuities from Bill Aubrey, his denial to the OIG that he gambled with Mr. Aubrey, and his failure to follow specific HUD directions with respect to the use of federal funds demonstrate that Respondent is not honest and responsible in his business dealings as contemplated by 24 CFR 24.110(a)[2 CFR 180.125]. Accordingly, HUD concludes that “given the totality of the circumstances in this case, a three-year debarment is appropriate.”

Respondent's Arguments

Respondent acknowledges that his playing with Bill Aubrey’s casino chips was improper. Respondent states that he regrets his actions and expresses his remorse. Respondent avers that his resigning immediately as CEO of the NHA when his wrongdoing came to light is evidence of his taking responsibility for his actions. Respondent argues that the OIG investigators never asked him whether he gave Aubrey’s chips back to him. According to Respondent, the money he received from cashing in Aubrey’s chips was given to Aubrey. Respondent acknowledges that the OIG agents showed him a Casino Cash Transaction Form, but he denied their allegation that he had cashed in more than \$100,000.00 in chips or had received cash from Bill Aubrey. Respondent argues that the form was not clear to him and “was not easy to see.” Moreover, OIG refused to give him a copy of the form and HUD Exhibit 12-A was only a blank copy of the form. Respondent states that he does not recall admitting to the OIG that FDHC subcontractors had installed drywall in his house. Respondent acknowledges that the OIG showed him an invoice with respect to materials delivered to his house. However, Respondent states that when he went to pay the invoice, he was told the invoice did not exist.

Respondent terms “odd” the allegation that he released HUD funds without proper approval. Respondent states that he does not know how or why the changes were made to the Crow Springs project. Respondent argues that it was his experience that HUD would make changes to IHPs “without submission of documentation, often base [sic] on discussion over the phone.”⁷ For this reason, and the fact that there is a review and approval process of all documents submitted to his office for his signature, in addition to HUD’s review to ensure compliance with all requirements, Respondent asserts that he believes “information was provided to HUD and the scope of work was changed to remove the staff housing and office plans.”⁸ As Respondent sees it, if HUD

⁵ *Id.* at 3.

⁶ *Id.* at 10.

⁷ Respondent’s Submission at 3.

⁸ *Id.* at 4. *See also*, Respondent’s April 28, 2008, letter to the Debarring official Designee. Attached thereto is a copy of the NHA Annual Performance Report for the period 10/01/2002 to 09/30/2003. On p. 28 of the Annual Performance Report, the narrative, in pertinent part, states that “but HUD approved \$200,000 for 20 units, since they had questions on 3 units which Crowsprings wanted to use as

had been diligent in reviewing the 2001 Annual Performance Report, the funding issue related to Crow Springs would have been caught and he “would have corrected the mistake immediately.”⁹

Respondent argues that HUD failed to act in this matter in accordance with the “principle of fundamental fairness.” Respondent alleges that HUD allowed public leaks of the OIG investigation, in violation of 24 CFR 24.610 [2 CFR 180.610]. Additionally, there were media reports of his suspension before HUD communicated the fact of his suspension to him, which, Respondent asserts, was a violation of 24 CFR 24.715 [2 CFR 180.715]. Respondent argues that HUD’s alleged conduct here shows that HUD is not “a disinterested or impartial party in the suspension process.”¹⁰ Respondent further argues that the “conduct by HUD officials may be a cause to be considered as mitigating and aggravating factors that the debaring official may consider in determining whether to debar and determining the length of [the] debarment period.”¹¹

Respondent requests the Debaring Official consider his “dedication and efforts on behalf of Indian housing programs.” Respondent details his many accomplishments in the struggle to increase housing opportunities for Native Americans. In this connection, Respondent distinguishes his actions from the wrongdoings of those disbarred Respondents in the cases cited by the Government. Respondent concludes by requesting the “Debaring Official to remove the suspension and dismiss the proposed debarment, if not reduce the proposed debarment to [the] one-year period already served.”

Findings of Fact

1. Respondent was the Executive Director of the Navajo Housing Authority during the period in which he received gratuities from Bill Aubrey, the president of Lodgebuilder, a company that built homes funded under the Indian Housing Block Grant program.
2. Respondent executed an employment contract with the NHA that, *inter alia*, made his conduct subject to federal law and regulations.
3. In his position as CEO, Respondent was closely involved in implementing the NHA Indian Housing Block Grant (IHBG) program.
4. The “Employment Contract Between the Navajo Housing Authority and Mr. Chester Carl” provides in pertinent part in ¶ 8 that “[t]he CEO’s conduct shall at all times conform to applicable Federal and tribal laws and regulations.”
5. The NHA has adopted conflict of interest provisions in its Procurement Policy and Procedures in accordance with HUD requirements that prohibit employees from accepting gifts from contractors or from a party to a subagreement with the NHA.

administrative office buildings.” *Cf.* Government’s Response to Mr. Carl’s Supplemental Filing at ¶ 1, wherein the Government argues that Carl’s “submission admits that the project did not receive ‘HUD’s blessing.’”

⁹ Respondent’s Submission at 8.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 6.

6. FDHC was a sub-recipient of IHBG funds from the Navajo Housing Authority (NHA).
7. Lodgebuilder entered into contractual arrangements with FDHC whereby Lodgebuilder would develop NHA-funded housing and in return FDHC assigned to Lodgebuilder the IHBG funds it received from NHA.
8. Bill Aubrey was a principal of FDHC.
9. Respondent received and admitted in his submission to receiving thousands of dollars in gambling chips from Bill Aubrey.
10. Respondent also admitted to the OIG during its investigation of his association with Bill Aubrey that he received chips from Aubrey.
11. The exact amount of Aubrey's chips used by Respondent and the amount repaid by Respondent to Aubrey remain in dispute.
12. Respondent was the beneficiary of materials supplied to and repair work performed on his house through FDHC.
13. Respondent did not pay FDHC for the materials used or the work performed on his house.
14. Respondent authorized a requisition for \$190,000.00 on a construction project that had not received the required HUD approval.
15. Respondent has been suspended since October 24, 2006.

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 2 CFR part 180.
2. Bill Aubrey served as president of Lodgebuilder and was a principal in FDHC.
3. FDHC and Lodgebuilder had a business relationship and received funds either directly or indirectly through grants or contracts from NHA.
4. The exact amount of gaming chips Respondent received from Bill Aubrey is undetermined as is the amount repaid by Respondent for use of Aubrey's chips.
5. The cost of the work performed on Carl's house and the exact amount paid by Carl therefor remain undetermined.
6. NHA receives its funding pursuant to NAHASDA and the IHBG program for the benefit of the Navajo nation.
7. The NHA has adopted, in accordance with 24 CFR 85.36, and published a handbook on Procurement Policy and Procedures, which, among other things, sets forth a Code of Conduct for its employees and persons providing services to NHA.
8. As Executive Director of the NHA, Respondent's acceptance and use of Bill Aubrey's chips, whom Respondent well knew performed contract work for the NHA using IHBG funds, and Respondent's receipt of unpaid work on his house from FDHC, was a clear violation of the provisions of ¶ 2.3 of the NHA Procurement Policy and Procedures, which prohibit "[e]mployees, officers . . .

- of the NHA [from accepting] gratuities . . . from contractors . . . or parties to subagreements with the NHA.”
9. Respondent, by virtue of his employment contract with NHA, in particular ¶ 8 thereof, is subject to “applicable Federal . . . laws and regulations,” including HUD’s Debarment regulations.
 10. Respondent’s admittedly improper actions detailed here created a conflict of interest, resulting in a “violation of the terms of a public agreement or transaction” e.g., the NHA’s IHP, Respondent’s employment contract with the NHA, and NHA’s Procurement Policy and Procedures, so serious as to affect the integrity of” the IHBG program and is cause for his debarment. *See* 2 CFR 180.800(b).
 11. Respondent’s action in authorizing funding for a project for which HUD had not given its required approval also provides cause for his debarment under 24 CFR 800(b)(3) [2 CFR 180.800(b)(3)].
 12. HUD has met its burden of proving that a cause for debarment exists. *See* 24 CFR 24.855 [2 CFR 180.855].
 13. None of the extraneous factors raised by Respondent in his defense, including the alleged leaks to the media or discussion of pending action against Respondent among parties with no role in the debarment process, affected the outcome of this matter or the Determination issued today. Accordingly, Respondent was not denied “fundamental fairness” nor due process by the Debarring Official in the consideration of his case.
 14. Respondent’s remorse for his wrongdoing and his recognition of the seriousness of his misconduct along with his acknowledged contributions to increasing housing opportunities for Native Americans, as detailed in his Submission, are mitigating factors to consider in determining the appropriate period of debarment. *See* 2 CFR 180.860.
 15. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
 16. 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 24 CFR 24.870(b)(2)(i) through (b)(2)(iv) [2 CFR 180.870(b)(2)(i) through (b)(2)(iv)], to debar Respondent for a period of three years from October 24, 2006, the date of his suspension. 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: _____

16 June 2008



Henry S. Czauski
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 2008, a true copy of the DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.

Tammie M. Parshall

Tammie M. Parshall
Debarment Docket Clerk

HAND-CARRIED

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FIRST CLASS MAIL

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