

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

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**In the Matter of:**

**DORI MCGESHICK,**

**Respondent.**

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**Docket No.: 12-3887-DB**

**DEBARRING OFFICIAL'S DETERMINATION**

**INTRODUCTION**

By Notice of Proposed Debarment dated May 16, 2012 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent DORI MCGESHICK that HUD was proposing her 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 her proposed debarment was in accordance with the procedures set forth in 2 C.F.R. parts 180 and 2424. In addition, the Notice informed Respondent that her proposed debarment was based upon her conviction in the United States District Court for the Eastern District of Wisconsin for violation of 18 U.S.C. §§ 666 (a)(1)(A) and (B) (Obtain by fraud and convert without authority the use of property valued at \$5,000.00 or more).

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on December 7, 2012,<sup>1</sup> before the Debarring Official's Designee, Mortimer F. Coward. Respondent appeared *pro se*. Andrea M. Lee, Esq. appeared on behalf of HUD.

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<sup>1</sup> This matter originally was scheduled for hearing on October 23, 2012. When the matter was called, Respondent requested additional time to get legal representation. Specifically, Respondent requested an extension to communicate with her defense attorney in her criminal matter regarding defense counsel's representing her in this proceeding. The Debarring Official's Designee granted Respondent's request and set a deadline of December 1, 2012, for Respondent to retain counsel and submit her pre-hearing brief. Respondent's brief originally was due no later than October 9, 2012, pursuant to the Order issued August 15, 2012. Respondent did not submit a brief.

## 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, 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 May 16, 2012.
2. The Government's Pre-Hearing Brief in Support of Three-Year Debarment filed September 18, 2012 (including all exhibits and attachments thereto).

## Government Counsel's Arguments

Government counsel states that Respondent was an employee of the Sokaogon Chippewa Community Housing Department (Sokaogon Housing), the housing agency for the Sokaogon Chippewa Native American Indian Tribe (Tribe). In August 2009, HUD awarded the Tribe a grant under the American Reinvestment and Recovery Act of 2009 (Recovery Act). The grant of \$1.88 million was made for the construction of 11 homes and for furnishing the homes with appliances. Respondent was tasked with purchasing the appliances for the homes from an appliance vendor. Respondent, however, in addition to purchasing the authorized appliances purchased other appliances for her own use at a cost of \$13,054.64. At Respondent's request, Sokaogon Housing issued a check to the vendor that included payment for all the appliances purchased, including those bought for Respondent's own use. Respondent was found guilty and convicted of violating 18 U.S.C. §§ 666 (a)(1)(A) and (B).

Counsel, after reviewing the applicable regulations, argues that Respondent, as an employee of Sokaogon Housing, a recipient of Recovery Act funds, entered into a covered transaction as a participant or as a representative of a participant, citing 2 C.F.R. §§ 180.210, 180.970(a) and 180.980. Respondent, counsel adds, acted as the representative of Sokaogon Housing in connection with the activities that were made possible through a Recovery Act grant, thus she is also "a representative of a participant" under the relevant regulations.

Counsel argues that Respondent's conviction of theft, which she committed when she used Sokaogon Housing grant funds to purchase the appliances for her own use, provides cause for her debarment under 2 C.F.R. § 180.800(a)(1), as a conviction for a criminal offense in connection with a public or private transaction. Respondent's conviction also provides cause for her debarment under 2 C.F.R. § 180.800(a)(3), which lists "theft" as a specific cause for debarment. Additionally, Respondent's theft of Recovery Act funds intended for the construction and furnishing of homes for Tribal members is cause for debarment as it "indicat[es] a lack of business integrity or business honesty that seriously and directly affects" Respondent's present responsibility. 2 C.F.R. § 180.800(a)(4). Counsel notes that Respondent's illegal conversion of the grant funds for her own personal use "demonstrates disdain for the purpose and provisions of the Recovery Act and contempt for the law." Thus, Respondent "lacks the requisite responsibility to participate in programs funded by the Federal Government [and] poses a

risk to the government and public.” Respondent, counsel concludes, “is not a person with whom the Federal Government or other participants in covered transactions should conduct business.”

In considering the aggravating and mitigating factors in 2 C.F.R. § 180.860(a) as they apply to the instant case, counsel states that Respondent’s actions not only harmed HUD, but also deprived tribal members of \$13,054.56 in grant funds. Also, Respondent was solely responsible for initiating and executing the wrongdoing and there is no evidence that she has accepted responsibility for it. Counsel notes, too, that there is no evidence that Respondent offered to pay any investigative or administrative expenses related to her criminal conduct or that she cooperated with the government during the investigation.

Counsel, based on the foregoing, requests that Respondent be debarred for three years.

### **Respondent’s Arguments**

Respondent stated that she could not address the aggravating factors “because of the state” she’s in. According to Respondent, she is in the process of appealing her conviction and filing another motion. Respondent testified also that she has been advised by counsel not to discuss the case.

### **Findings of Fact**

1. Respondent was at all relevant times an employee of the Sokaogon Housing, an entity of the Sokaogon Tribe, which received grant funds under the Recovery Act.
2. The Recovery Act funds were awarded by HUD for the construction of 11 homes and for the purchase of appliances for the homes.
3. Respondent negotiated with an appliance vendor for the purchase of the authorized appliances, but also ordered appliances, without the approval or authorization of Sokaogon Housing, for her own personal use.
4. Respondent was indicted and convicted for violating 18 U.S.C. §§ 666 (a)(1)(A) and (B) and sentenced to 15 months’ imprisonment, a fine of \$5,000.00, and ordered to make restitution of \$13,054.46.
5. There is no evidence that Respondent has a history of prior wrongdoing.

### **Conclusions**

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

1. As an employee of Sokaogon Housing, a recipient of federal funding, who negotiated on its behalf for the purchase of appliances, Respondent is subject to the debarment regulations as a “person who has been, is, or may reasonably be expected to be, a participant or principal in a covered

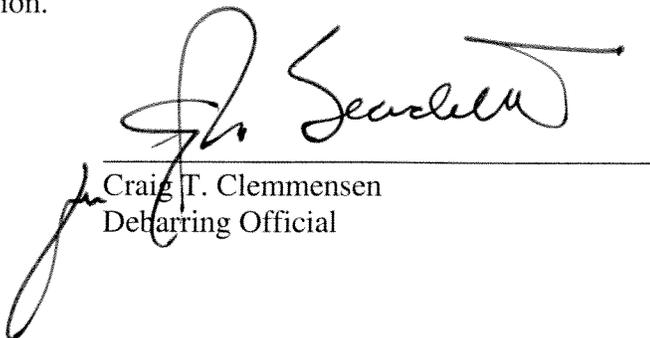
transaction.” 2 C.F.R. § 180.120(a). *See also* 2 C.F.R. §§ 180.200, 180.970, and 190.980.

2. Respondent’s conviction for her wrongdoing involved “commission of . . . a criminal offense in connection with obtaining , . . . or performing a public or private . . . transaction,” that is, the unauthorized purchase of the appliances for her personal use.
3. Respondent’s conviction for violating 18 U.S.C. §§ 666(a)(1)(A) and (B) involves theft and provides cause for her debarment pursuant to 2 C.F.R. § 180.800(a)(3).
4. The regulation at 2 C.F.R. § 180.125(a) provides that “to protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons. Thus, it is well established that lack of present responsibility can be based upon past acts. *See In re Buckeye Terminix Co., Inc.*, HUDALJ 89-1402-DB (August 31, 1990) , holding that “Responsibility encompasses the projected risk of a person doing business with HUD. This includes his integrity, honesty, and ability to perform. The primary test for debarment is present responsibility although a finding of present lack of responsibility can be based upon past acts.” (Citations omitted)
5. The regulations also provide at 2 C.F.R. 180.150 that “[g]iven a cause that justifies an exclusion under this part, a Federal agency may exclude any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction.” In the instant matter, the cause that justifies Respondent’s exclusion is her criminal conviction. *See* 2 C.F.R. § 180.800.
6. HUD has established a cause for Respondent’s debarment by a preponderance of the evidence based upon Respondent’s criminal conviction. *See* 2 C.F.R. § 180.850.
7. Respondent’s actions demonstrate that she is not presently responsible.
8. Pursuant to 2 C.F.R. § 180.860, the Debarring Official may consider certain aggravating and mitigating factors in determining whether to debar a respondent and the length of the debarment period. Respondent, as noted above, did not present a defense, thus she raised no mitigating factors. More pointedly, there is nothing in the record that palliates Respondent’s conduct. On the other hand, the aggravating factors recited by government counsel, fully supported in the record, demand consideration in assessing the period of exclusion that should be imposed.
9. Respondent’s actions described here raise grave doubts with respect to her business integrity and personal honesty.
10. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
11. 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

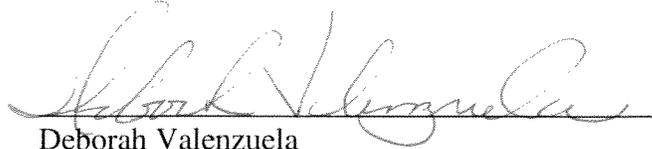
Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 C.F.R. §§ 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for a period of three years from the date of this Determination. Respondent's "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 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: 1-17-13

  
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Craig T. Clemmensen  
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 17<sup>TH</sup> day of January 2013, 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.  
Ana I. Fabregas, Esq.  
Melissa B. Silverman, Esq.  
Government Counsel

**FIRST CLASS MAIL**

Dori F. McGeshick

