

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.

In the Matter of:

JODI DANIELLE ROBINSON,

Respondent.

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DOCKET NO.: 13-0002-DB

**ORDER GRANTING GOVERNMENT'S ORAL MOTION TO DISMISS
RESPONDENT'S APPEAL AND AFFIRMING RESPONDENT'S PROPOSED
DEBARMENT**

Introduction and Background

HUD issued a Notice of Proposed Debarment dated September 11, 2012 ("Notice"), proposing Respondent's 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 an indefinite period from the date of the final determination of the proposed action. The proposed debarment was based on Respondent's conviction in the United States District Court for the Eastern District of Virginia for violation of 18 U.S.C §1341 (Mail Fraud). The Notice advised Respondent that she was found to have made materially false statements on loan applications to mortgage lenders and that her actions were evidence of serious irresponsibility and provide cause for her debarment pursuant to 2 C.F.R. §§180.800(a)(1),(3), and (4).

Respondent also was advised in the Notice that if she decided to contest the proposed debarment, she could submit documents and written argument or a request for an informal hearing, which she could attend in person, by telephone, or through a representative. The Notice further advised Respondent that, in accordance with 2 C.F.R. §180.125, her written submission must identify, among other things, specific facts that contradict the statement contained in the Notice, and that a general denial is insufficient to raise a genuine dispute over facts material to the debarment.

In a letter dated September 24, 2012, addressed to the Director of the Compliance Division, Respondent timely requested a hearing. In Respondent's letter, she asserted that it was her co-defendant who, prior to working with her on home loans, had "committed the crime of providing materially false statements; that she (i.e., Respondent)

did not make false statements on any loan application and did not prepare or submit loan applications; that, at the time of writing her letter, she was awaiting a decision on a FRCP Rule 35 motion for a downward departure for cooperating with the Government regarding her co-defendant's crimes; and that she was "planning to submit a Notice to Vacate or Set Aside or Correct a Sentence" based on ineffective assistance of counsel.

In response to Respondent's September 24, 2012, letter, the only document received from Respondent in this matter, the Debarring Official's Designee issued an Order dated October 19, 2012, setting a hearing date of January 8, 2013, and a deadline for submission of briefs from the Government and Respondent of December 11, 2012 and January 13, 2013, respectively. The Government timely filed its brief on December 11, 2012. No submission was received then or now from Respondent.

The matter was called on January 8, 2013, at the scheduled time with a call to the conference call number which Respondent was advised in the Order to call. The line was left open for 20 minutes to allow Respondent, if she so chose, to call in. At the end of that time, Government counsel moved that the matter be dismissed because of Respondent's failure to appear either in person or by phone or by her representative.¹ The Debarring Official's Designee declined to rule immediately, preferring to take the matter under advisement in light of Respondent's circumstances.² In an Order issued January 29, 2013, the Debarring Official's Designee rescheduled the hearing for February 20, 2013. Respondent again failed to appear when the matter was called, and to date has not communicated with this office regarding her failure to appear or to have a representative appear on her behalf.

As a result of Respondent's failure to appear a second time, and there being no reason known or communicated to the Debarring Official's Designee or Government counsel for her non-appearance, Government counsel renewed his motion to dismiss Respondent's appeal of her proposed debarment.

Discussion

The single issue for determination as raised by the government in its oral motion is the dismissal of Respondent's appeal. However, as a preliminary matter, and in the interest of justice, we first consider whether the proposal to debar Respondent can be sustained. Pursuant to 2 C.F.R. §180.815, if a respondent wishes "to contest a proposed debarment, [the respondent or her] representative must provide the debarring official with information in opposition to the proposed debarment" orally or in writing. Additionally, under 2 C.F.R. §180.825, as stated above, the respondent must identify "(1) Specific facts

¹ In a telephone conversation with Government counsel, Brent A. Jackson, who was listed as Respondent's attorney of record, advised Government counsel that his firm did not represent Respondent in the instant matter. Mr. Jackson later that day, December 13, 2012, confirmed the conversation in an e-mail to Government counsel.

² In a January 15, 2013 e-mail, Government counsel advised the Debarring Official's Designee that he had been advised by a HUD OIG agent that Respondent had been meeting with him and a representative of the U.S. Attorney's office at the same time her January 8, 2013, hearing was scheduled.

that contradict the statements” in the Notice, and “any information about any of the factors listed in §180.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment.” Section 180.830 also provides that “(a) You as a respondent will not have an additional opportunity to challenge the facts if the debarring official determines that (1) Your debarment is based upon a conviction . . . ; (2) Your presentation in opposition contains only general denials to information contained in the Notice; or (3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official’s decision whether to debar.” Under 2 C.F.R. § 180.845(a) “The debarring official may debar you for any of the causes in § 180.800; (b) The debarring official bases the decision on all information contained in the official record. The record includes – (1) All information in support of the debarring official’s proposed debarment; [and] Any further information and arguments presented in support of, or in opposition to, the proposed debarment.”

As indicated *supra*, Respondent was convicted of mail fraud, and I have so independently determined. Respondent entered into a plea agreement in which she pleaded guilty to a single count information charging her with mail fraud. Respondent also, as part of the plea agreement, admitted the facts set forth in the Statement of Facts. In brief, the facts show that Respondent, a licensed real estate agent, devised a scheme that she executed between 2006 and 2010 to defraud certain financial institutions, including Fannie Mae and Freddie Mac. As part of her scheme, Respondent falsified information on buyers’ loan applications and fraudulently applied for and received rental subsidies from HUD in connection with those properties.

Respondent also arranged for the sale of properties to straw buyers in sham sale transactions at higher prices than the sales prices paid before and with financing obtained through fraudulent mortgage loans. Respondent’s fraudulent transactions resulted in losses to the institutions involved of \$1,215,000.00. HUD itself, as a result of Respondent’s false claims, suffered a loss of \$105,000.00. In furtherance of her scheme, Respondent mailed or caused to be mailed using the U.S. Postal Service several letters to the affected financial institutions. Respondent was sentenced to a term of imprisonment of 51 months, placed on supervised probation for five years, and ordered to pay restitution in excess of \$1 million. Fraud, as the Government correctly points out in its brief, provides cause for debarment under 2 CFR § 180.800(a)(1).³

Moreover, Respondent’s presentation in opposition, such as it is, was limited to the assertions in her September 24, 2012 letter. These assertions are, at best, general denials or are not material to my decision whether to debar. Respondent thus presented

³ In its brief, the Government argues that “because the underlying facts of Respondent’s conviction are based on her false statements in order to obtain mortgage loans and rental subsidies, Respondent’s conviction for mail fraud was based in part on her submission of false statements, which is an offense that provides cause for debarment under 2 C.F.R. §180.800(a)(3) (*false statements*).” See Government’s Pre-Hearing Brief in Support of an Indefinite Debarment , 12. Because 2 C.F.R. §.180.800(a)(1) provides an adequate and independent cause for Respondent’s debarment, it is unnecessary to determine whether the Government’s position here can be sustained. Similarly, it is unnecessary to determine whether Respondent could be debarred under 2 C.F.R. §180.800(a)(4) because the record does not evidence Respondent’s conviction for “[c]ommission of any **other** offense” (emphasis added) as required by this section to support Respondent’s debarment thereunder.

no specific facts to contradict the statements in the Notice. *See* Respondent's assertions recited in the Introduction and Background section above. Further, under 2 C.F.R. § 180.850(b), "If the proposed debarment is based upon a conviction . . . the standard of proof [i.e., a preponderance of the evidence] is met."

The Government argued that Respondent is subject to debarment and to the debarment regulations because she has been a participant or principal in a covered transaction. *See* 2 C.F.R. §§ 180.120(a), 180.200, 180.980, and 180.995. (The rental subsidies paid to Respondent in connection with her fraudulent scheme are covered transactions.) The Government in its brief reviewed the factors listed in 2 C.F.R. § 180.860, especially focusing on those factors that highlighted the aggravated nature of Respondent's wrongdoing and the absence of mitigating factors. The Government concluded that Respondent's conduct demonstrates her lack of present responsibility and when considered along with the aggravating factors warrant Respondent's indefinite debarment.

As previously discussed, Respondent submitted no cognizable arguments in her defense. The arguments that Respondent raises, if accepted, would result in an impermissible relitigating of her criminal case in this forum. Similarly, Respondent's claims of seeking post-conviction relief are of no avail to her since the regulations state that a respondent's criminal conviction provides cause for the respondent's debarment. There is no provision in the regulations for a stay of the debarment proceedings pending a respondent's exhaustion of her appeal rights or any post-conviction remedies. *See generally* 2 C.F.R. part 180.

The foregoing recitation, though, as indicated above, unnecessary to the disposition of the Government's oral motion, nonetheless is helpful in affirming Respondent's debarment. I find that the egregiousness of Respondent's conduct and the harm caused thereby show that she is not presently responsible. Accordingly, the protection of the public interest warrants Respondent's indefinite debarment.

The Oral Motion

The government moved for the dismissal of Respondent's appeal of her proposed debarment because of Respondent's failure to appear and to prosecute her appeal. The reasons advanced by Respondent in her September 24, 2012, letter, including her acting on the advice of her attorney in seeking relief from her conviction, do not justify her failure to appear and to prosecute her appeal in this proceeding. Moreover, this matter was continued once after it was learnt that Respondent was unavailable because of a conflict in her appearance before this tribunal and another government agency. The Debarring Official's Designee *sua sponte* continued this matter and so notified Respondent. Additionally, Respondent was provided with a phone number and with call-in directions that she could have taken advantage of in explaining any reticence she had in her appearing and presenting her case. The reasons stated in Respondent's September 24, 2012, letter were by the scheduled hearing date, February 26, 2013, over five months old

and may have been resolved.⁴ Further, Respondent provided no proof of the assertions in her letter, without regard to whether the assertions would have been helpful to her in the instant proceeding. Finally, Respondent has made no attempt to contact or communicate with this office regarding this matter.

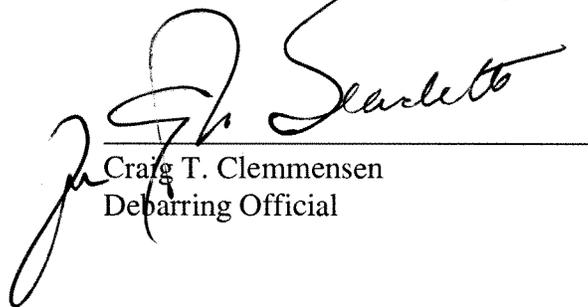
Conclusion

WHEREFORE, for all the foregoing reasons, it is ORDERED that the Government's Oral Motion to Dismiss Respondent's Appeal be, and it is hereby, GRANTED. It is further

ORDERED that, based on the administrative record and the foregoing, Respondent's proposed debarment be, and it is hereby, AFFIRMED.

Respondent's indefinite debarment is effective as of the date of this Order and "is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulations (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: 1-3-13

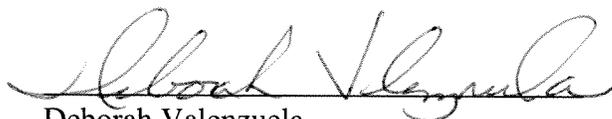


Craig T. Clemmensen
Debarring Official

⁴ For example, as discussed in note 3, as far back as December 13, 2012, Respondent's attorney had called to indicate that he was not representing her in this matter.

CERTIFICATE OF SERVICE

I hereby certify that on this 8TH day of April, 2013, a true copy of the **ORDER GRANTING THE GOVERNMENT'S ORAL MOTION TO DISMISS RESPONDENT'S APPEAL AND AFFIRMING RESPONDENT'S PROPOSED DEBARMENT** was served in the manner indicated.



Deborah Valenzuela
Program Specialist
Departmental Enforcement Center-Operations

HAND-CARRIED

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

David R. Scruggs, Esq.
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VIA FIRST CLASS MAIL

Jodi Robinson

