

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

In the Matter of:

WILBUR HENRY LETAK,

Respondent.

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Docket No. 13-0065-DB

DEBARRING OFFICIAL'S DETERMINATION

Introduction and Background

By Notice of Proposed Debarment and Termination of Existing Suspension dated March 26, 2013 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent WILBUR HENRY LETAK 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 seven years from the date of the final determination of this action. Additionally, the Notice advised Respondent that the period of his suspension (October 14, 2011 to March 26, 2013) was taken into account in determining the length of his proposed debarment. The Notice further advised Respondent that his proposed debarment was in accordance 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 Georgia for violation of 18 U.S.C. 1343, 1344, and 1349 [Conspiracy to Commit Bank Fraud and Wire Fraud]. The Notice continued that Respondent specifically was accused of submitting to lenders mortgage loan application packages that contained documents that Respondent knew were false and would be used by lenders to qualify borrowers for FHA-insured reverse mortgage loans. The Notice charged that Respondent's conviction is evidence of serious irresponsibility and is cause for debarment under the provisions of 2 C.F.R. §§ 180.800(a)(1),(3), and (4).

In response to the Notice, in a letter dated April 18, 2013, Respondent requested a hearing. A telephonic hearing was held on July 23, 2013, before the Debarring Official's Designee, Mortimer F. Coward. Respondent appeared by phone *pro se*. David Scruggs, Esq. appeared on behalf of HUD.

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 seven 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 and Termination of Existing Suspension dated March 20, 2013.
2. A letter from Respondent dated April 18, 2013, addressed to the Director of the Compliance Division requesting a hearing as well as seeking clarification of issues and raising defenses in connection with his proposed debarment.
3. The Government's Pre-Hearing Brief in Support of a Seven-Year Debarment (including all exhibits and attachments thereto filed June 24, 2013).

Government Counsel's Arguments

Counsel states, as background information, that Respondent, a loan originator, was convicted under 18 U.S.C. § 1349 with conspiracy to commit bank fraud. Respondent worked closely with six coconspirators to defraud FHA-approved mortgagees that participated in FHA's Home Equity Conversion Program (HECM) program. Respondent's role in the conspiracy, as detailed in the Criminal Information under which he was charged, included submitting reverse mortgage loan packages to lenders that contained false and misleading borrower qualifications and property valuations. Respondent also submitted among other things, loan packages that contained signatures illegally obtained without the full knowledge of the parties, loan documents that contained back-dated property transfer records, fraudulent representations to lenders that borrowers were making down payments to secure the mortgage loans, fraudulent gift letters, HUD-1 Settlement Statements, and official civil judgments showing monetary judgments in favor of the borrower, and loan packages that included artificially inflated home sales prices. In return for these actions, Respondent agreed to accept undocumented cash as fees from his coconspirators in addition to the reported brokerage fees and commissions. The unsuspecting lenders approved the mortgage applications based on respondent's false submissions. Additionally, respondent did not disclose to the defrauded lenders that proceeds from the loans they approved would be disbursed to Respondent's co-conspirators for deposit in bogus bank accounts controlled by them. Respondent's offenses resulted in his pleading guilty to a one-count Information. Respondent was convicted and sentenced to 30 months' incarceration, five years' supervised release, and ordered to pay restitution of \$255,962.30, of which \$243,012.30 is payable to HUD.

Counsel argues that, Respondent accepted and submitted loan applications to FHA-approved lenders to obtain FHA-insured reverse mortgages, which are covered transactions. *See* 2 C.F.R. §§ 180.210, and 180.970(6), (7), and (9). Thus, Respondent is a participant pursuant to 2 C.F.R. § 180.980. Additionally, by Respondent's accepting loan applications and submitting them to the FHA-insured lenders for approval, Respondent

exercised critical influence and substantial control over whether, and in what manner, the FHA-insured reverse mortgages would be approved. As such, Respondent is a principal pursuant to 2 C.F.R. § 180.995 and 2 C.F.R. § 2424.995. Accordingly, Respondent is subject to HUD's debarment regulations, because he is a "person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction."

Counsel argues that Respondent's conviction for conspiracy to commit bank fraud and wire fraud provides cause for his debarment pursuant to 2 C.F.R. §§ 180.800(a)(1) because Respondent's "conviction was for the commission of a criminal offense in connection with obtaining, [or] attempting to obtain a private agreement or transaction . . . FHA-insured loans." Counsel argues further that, "[a]lternatively, Respondent's conviction is cause for debarment under 2 C.F.R. § 180.800(a)(4) because Respondent's conviction for Conspiracy to Commit Bank Fraud and Wire Fraud demonstrates a lack of business integrity and business honesty that seriously and directly affects his present responsibility."¹

Counsel adds that Respondent's conviction provides cause for his debarment because his conviction clearly demonstrates that Respondent lacks present responsibility. The Government needs to be able to trust those with whom it does business, thus Respondent's debarment is necessary to protect the Government. Counsel surveys cases similar to Respondent' and finds support in those decisions to justify the government's proposal to debar Respondent for seven years.

In reviewing the aggravating and mitigating factors in 2 C.F.R. § 180.860, which the Debarring Official may consider in determining the appropriateness and period of debarment, if any, Counsel observes that Respondent's "criminal conduct caused quantifiable harm to HUD" in the amount of \$243,012.30 – the amount of restitution the court ordered Respondent to pay HUD. Other aggravating factors noted by counsel include the fact that Respondent's wrongdoing lasted over 18 months and involved five lenders and multiple loans; Respondent's planning and execution of the fraudulent scheme; Respondent's failure to accept full responsibility for his wrongdoing, by claiming that "there was no harm done to any person" despite his being ordered to make restitution of \$255, 962.30; Respondent's failure to pay the restitution ordered, though claiming that he is making scheduled payments; and Respondent's use of his position as a loan originator and expertise in the real estate industry to convince lending institutions that the loan packages he submitted were acceptable.

¹ In attempting to provide a cause for debarment under 2 C.F.R. § 180.800(a)(4), counsel argues that "The commission of a substantive crime and the conspiracy to commit that crime are separate and distinct offenses." Accepting that as a truism makes the case for the application of (a)(1) and (a)(4) to the same crime, here conspiracy, less persuasive, if only because Respondent was convicted of only one crime. Paragraph (4) requires a conviction for "commission of any other offense, etc." as the basis for a debarment pursuant to this provision. Respondent was convicted of only one offense. It is the conviction for committing another offense that implicates (a)(4), not the distillation of another crime from the only crime for which the respondent was convicted. Stated succinctly, the *sine qua non* for a debarment under 2 C.F.R. § 180.800(a)(4) is the conviction for commission of any other offense than those set forth in (a)(1) through (a)(3) provided that other offense indicates "a lack of business integrity or business honesty that seriously and directly affects [a respondent's] present responsibility."

Counsel concludes that Respondent's conviction demonstrates that he lacks the present responsibility to do business with the government. And based on the seriousness of Respondent's criminal conduct, his lack of integrity and present responsibility, and upon consideration of the aggravating factors, a seven-year debarment of Respondent is warranted.

Respondent's Arguments

Respondent disputed the government's claim that he has been in the real estate business since 1999. According to Respondent, he received his real estate license in 2010 when it was mandated that he do so. Respondent agreed that his misconduct harmed FHA. Respondent testified, however, that under his definition of harm, he does not think anyone was harmed by his transgressions. As Respondent sees it, all the homeowners whose loans he originated "stayed in their homes." Further, the loan-to-value ratio was low in loans that he originated and the appraisals were accurate. Respondent explained that the reason he seemed so knowledgeable of the process was that his co-conspirators "were putting pieces [of the origination process] together" for him. Respondent testified that he had no prior history of wrongdoing and that the wrongdoing of which he was accused was a "bad decision, a one-time mistake."

Respondent agrees he carried out the wrongdoing and agrees he is guilty of the offenses with which he was charged. Respondent maintains that he has accepted full responsibility, he "did not lay it on anybody else," for his misconduct and stated that the "government position flies in the face of reality when you read the Plea Agreement." Respondent also testified that his misconduct hurt his family, his friends, and him. Respondent challenged the proposed seven-year debarment as excessive, especially when compared to the misconduct charged to some of the respondents in cases cited by the government in its brief. According to Respondent, he is making restitution as ordered by the court. Every month, Respondent testified, money is deducted from his commissary account to pay the court-ordered restitution². Respondent believes that the three-year "recommendation" in the regulation is a more appropriate period of debarment in this case.

Findings of Fact

1. Respondent was at all relevant times a licensed loan originator.
2. Respondent originated loans that were insured by HUD/FHA under the HECM program.

² Respondent submitted no documentation in support of his claim. When asked about the absence of documentation as proof of his monthly payments, Respondent promised to submit evidence of payment. In light of Respondent's present situation, Respondent was given more than ample time to have the necessary information retrieved and submitted to this office. As of this writing, Respondent has failed to provide the necessary supporting documentation.

3. Respondent knowingly originated several loans containing fraudulent information that induced unsuspecting lenders to make the loans.
4. Respondent was aided in the fraudulent scheme by co-conspirators who paid him undocumented cash fees in addition to his brokerage fees and commissions.
5. Respondent was charged in a one-count Information with conspiracy to commit bank fraud and fraud by wire, radio, or television pursuant to 18 U.S.C. §§ 1349, 1344, and 1343.
6. Respondent pleaded guilty and was convicted of the one count as set forth above.
7. Respondent was sentenced to 30 months of incarceration, five years of supervised release, and ordered to make restitution of \$255,962.30 to his victims, including \$243,012.30 to HUD.
8. Respondent was suspended from October 14, 2011 until March 26, 2013 from participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government.
9. Respondent has not provided any evidence or documentation that he has made any payments towards the court-ordered restitution.

Conclusions

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

1. As a loan originator, pursuant to 2 C.F.R. § 180.120(a), Respondent “may reasonably be expected to be a participant or principal in a covered transaction,” thus making him subject to the debarment regulations in 2 C.F.R. part 180.
2. Specifically, Respondent’s acceptance of loan packages and submitting them to FHA-approved lenders for insurance under the HECM program made him a participant and principal in a covered transaction pursuant to 2 C.F.R §§ 180.980 and 180.995.
3. Respondent’s conviction for conspiracy to commit bank fraud provides cause for his debarment under 2 C.F.R. § 180.800(a)(1).
4. The Government has established the cause for debarment by a preponderance of the evidence, the requisite standard of proof, because “the proposed debarment is based upon a conviction.” 2 C.F.R. §§180.850(a) and (b).
5. Respondent, pursuant to 2 C.F.R. §180.855(b), has “the burden of demonstrating to the satisfaction of the debarring official that [he is] presently responsible and that debarment is not necessary.” *See also*, 2 C.F.R. §180.125(a).
6. Respondent has adduced no evidence in this proceeding that would demonstrate that he is presently responsible.
7. Respondent’s conduct was egregious and intentional, and his assertion that no one suffered harm from his wrongdoing is without merit.

8. Respondent's qualified acceptance of responsibility for his egregious conduct allied with his failure to support his claim of making restitution payments demonstrates that he is not presently responsible. *See* 2 C.F.R. § 180.125(b).
9. The period of Respondent's proposed debarment is not excessive and finds full support in the regulations. *See* 2 C.F.R. § 180.865(a) ("If the debarring official decides to debar you, 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. However, if circumstances warrant, the debarring official may impose a longer period of debarment.") Emphasis added. *See also In re Richard Duane Widler*, HUDALJ 91-1766-DB (June 18, 1992) holding that the debarring official should consider the "minimum length of debarment necessary to ensure that risk to [the Government] is minimized The period should be long enough to demonstrate that the government takes the conduct at issue seriously, and that it will refrain from doing business with [debarred persons] until they have had sufficient time to reflect on the cause for their debarment and to conform their conduct to the standard of present responsibility."
10. Respondent's tepid expressions of remorse³ were considered in arriving at a just period of debarment. No other credible mitigating factors were raised by Respondent and none, except as indicated above, is readily apparent to this official in the record.
11. The aggravating factors in this case, including the extent of the loss suffered by HUD, the length of time Respondent was engaged in the conspiracy and the number of fraudulent loan packages submitted, and Respondent's major role in carrying out the conspiracy, *inter alia*, require a lengthy period of debarment, giving Respondent the opportunity to show that he can act responsibly and conform his "conduct to the standard of present responsibility." *Widler, supra*, at 9.
12. Respondent's actions described here raise grave doubts with respect to his business integrity and personal honesty.
13. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
14. 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)

³ Respondent refers to the record in his criminal matter where he expressed remorse and took responsibility for his wrongdoing. As noted, that was a mitigating factor that was considered in the instant matter. Respondent's contrition expressed in his criminal case has limited weight in this proceeding, however, because such remorse may spring from an interest in avoiding more severe penalties. *See In re Raymond Farroni*, HUDALJ 87-160-DB (October 9, 1997)

through (b)(2)(iv), to debar Respondent for a period of seven years from the date of this Determination. Respondent's debarment is effective for covered transactions 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."

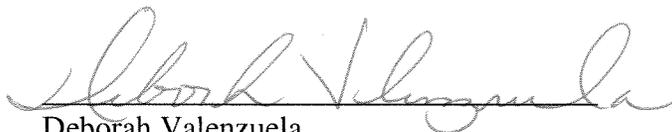
Dated: 9/11/13



Craig T. Clemmensen
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 11TH day of September, 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

David R. Scruggs, Esq.
Melissa Silverman, Esq.
Ana I. Fabregas, Esq.
Government Counsel

VIA CERTIFIED MAIL

Wilbur Henry Letak

