

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

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In the Matter of:

BART ARCONTI, II,

Respondent.

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DOCKET NO. 10-3619-DB(R)

**DEBARRING OFFICIAL'S DETERMINATION**

INTRODUCTION

In a letter from Respondent BART ARCONTI II dated November 5, 2009, Respondent requested a "modification" of the three-year term of debarment imposed by HUD on him in a Determination issued June 10, 2008 (Docket No. 07-3449-DB). Respondent's three-year exclusion was based on his conviction for making false statements, which provides cause for debarment pursuant to 2 CFR § 180.800(a)(3). In his November 5, 2009, letter, Respondent requested that the three-year term of debarment "be modified to 1 year."

A hearing on Respondent's request for a reduction of his term of debarment was held in Washington, D.C. on February 24, 2010, before the Debarring Official's Designee, Mortimer F. Coward. Respondent appeared *pro se*. Stanley E. Field, Esq. appeared on behalf of HUD. The record in this matter closed on March 15, 2010.

Summary

I have decided, pursuant to 2 CFR § 180.880, to reduce Respondent's term of debarment, which commenced on June 12, 2008, to two years. Until the expiration of the reduced term of two years, Respondent continues to be debarred 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. My decision is based on the administrative record in this matter, which includes the following information:

- (1) A letter from Respondent dated November 5, 2009, with accompanying attachments, requesting reconsideration of his three-year debarment.

- (2) Post-hearing commendatory letters submitted on Respondent's behalf from his wife and Bruce Krain, respectively.
- (3) An explanatory letter from Respondent received March 15, 2010, with respect to Mr. Krain's earlier submission.
- (4) A letter from E. Thomas Manion, M.D. submitted on Respondent's behalf describing Dr. Manion's treatment of Respondent.
- (5) The Department's Brief in Opposition to Respondent's Request for Reinstatement (with accompanying attachments and exhibits) filed January 26, 2010.
- (6) The Department's Response to Respondent's Post-Hearing Submission filed March 9, 2010.

#### HUD's Arguments

Government counsel argues that Respondent's request to be reinstated is not justified. Respondent, counsel points out, has not addressed any of the specific grounds under 2 CFR §180.800(a) through (c). At best, as counsel sees it, Respondent's request may be considered only under paragraph (d) of 2 CFR § 180.880. Paragraph (d) allows the Debarring Official, in deciding on a request to reduce a term of debarment, to consider "the elimination of other causes for which the debarment was imposed." Counsel argues, however, that paragraph "(d) is not an open door." The issue, Government counsel continues, is still whether "Respondent is presently responsible and should be allowed to do business with the federal government."

Government counsel rejects Respondent's contention that he should be reinstated because he has complied with the terms of his criminal sentence and sufficient time has elapsed since his criminal conduct. Counsel argues that Respondent had an incentive to comply with the terms of his sentence, because Respondent's failure to do so would have resulted in his imprisonment. Counsel adds that "the passage of time does not necessarily create responsibility in an individual." (Citations omitted) Counsel comments that Respondent has given no explanation with respect to why he acted "so irresponsibly and so dishonestly," referring to Respondent's wrongdoing that led to his criminal conviction. In the absence of Respondent's explanation, counsel writes, Respondent "does not appear to be demonstrating present responsibility, or professional conduct."<sup>1</sup>

Counsel also reviews three letters of support that accompanied Respondent's request for reduction of his debarment. Counsel argues that each of the letters is deficient on several grounds, including the "shallowness of [the] character reference" in the Dimauro letter, the self-interest of Mr. Insley ("Mr. Arconti can make him money") in promising to rehire Respondent after his debarment ends,<sup>2</sup> and the lack of any evidence in

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<sup>1</sup> Gov't Br. at 13.

<sup>2</sup> Counsel notes that, pursuant to 12 USC 1708(d)(2)(E), "[a]n approved mortgagee is not permitted to employ a loan originator who has been convicted of a felony related to his participation in the real estate or mortgage loan industry at any time, if such felony involved an act of fraud or dishonesty." Gov't Brief at 12

the Bollhorst letter of Respondent's present responsibility.<sup>3</sup> For these reasons, counsel contends that the letters carry little weight in Respondent's favor. In like manner, counsel also dismisses the two letters of commendation submitted by Respondent in his post-hearing filing. The letter from Respondent's wife, as counsel characterizes it, is "mainly directed to assure the Department that her husband is a responsible, trustworthy man." Mr. Krain's letter, counsel writes in his post-hearing submission, because of Mr. Krain's "background severely handicaps the value of [Mr. Krain's] opinion of [Respondent's] present responsibility."<sup>4</sup> Counsel argues that Respondent's using Mr. Krain as a character reference was unfortunate, if Respondent knew of Mr. Krain's past professional issues, and serves to implicate the old saying that "One is known by the friends one keeps."

Counsel concludes that nothing in Respondent's original request for reinstatement nor his post-hearing submissions persuades HUD that Respondent is presently responsible and should be reinstated.

### Respondent's Arguments

Respondent notes that it is ten years since he committed the acts of wrongdoing that led to his guilty plea and debarment. Respondent writes that he remains ashamed and regretful of his criminal conduct; that prior to his wrongdoing he had an unblemished record of almost 20 years in the mortgage industry; and that he has completed all the terms of his criminal sentence as of August 2008. Respondent believes that the passage of time since his wrongdoing in January 2000 demonstrates that he is no longer a public risk. Respondent testified that he is currently a licensed loan originator in Maryland and has taken mortgage ethics courses on which he scored highly. Additionally, Respondent testified that he strives to stay abreast of changes in the mortgage industry, especially the "sweeping" changes instituted by HUD.

Respondent testified that during the period 1998-2003, he suffered with constant back pain. As treatment for the pain, he began taking prescribed "opiate-based medicine" which left him "cluttered in [his] head." The medication, according to Respondent, affected his judgment and energy level, resulting in his inability to work as hard as he did before he began taking the medicine. During this period, Respondent testified, he fell into debt because he was unable to make as much money as he did before his medical problem developed, and he made bad decisions. Respondent further testified that in 2004, he was referred to a doctor whose treatment cured his back pain so that he no longer takes the pain medication. In response to Government counsel's observations with respect to the Krain letter submitted on Respondent's behalf, Respondent wrote that he would not have used Krain as a reference had he known of Krain's "past issues."

<sup>3</sup> See Exs. 7, 8, and 9 and pp. 11-12 of Gov't Brief.

<sup>4</sup> Mr. Krain, according to an article published in *The Baltimore Sun* on March 15, 1995, attached as Exhibit 1 of the Department's Response to Respondent's Post-Hearing Submission, "relinquished his license to practice law in Maryland on March 14, 1993, when he was suspected of misappropriating and misusing funds, according to the state Attorney Grievance Commission."

## Findings of Fact

1. Respondent was debarred effective June 12, 2008, for three years based on his conviction for making false statements.
2. Respondent's criminal conduct for which he was convicted occurred in 2000.
3. Respondent has completed the terms and conditions of his sentence.
4. There is no evidence in the record that Respondent has engaged in any wrongdoing since his conviction in 2005.
5. Respondent is not currently employed in the mortgage industry, but works for a golf course.
6. Respondent successfully applied for a license as a mortgage originator in the State of Maryland after his criminal conviction in 2005.
7. Respondent has taken ethics courses and stayed current with changes in the mortgage industry.
8. Respondent submitted letters of commendation from persons supporting his request for a reduction in his term of debarment.

## Conclusions

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

1. Respondent's request for a reduction in his three-year term of debarment is governed by the regulations at 2 CFR § 180.880.
2. Respondent produced no newly discovered evidence, the conviction on which his debarment was based was not reversed, nor was the cause for which the debarment was imposed (i.e., his criminal conviction) reversed. *See* 2 CFR §§ 180.800(a), (b), and (d).
3. Pursuant to 24 CFR § 24.800, a conviction for fraud, *inter alia*, is a cause for debarment.
4. Respondent's request, therefore, is cognizable only under 2 CFR § 180.800(e), which allows the Debarring Official, in reconsidering his decision to debar a respondent, to consider "[o]ther reasons the debarring official finds appropriate."
5. Respondent's criminal wrongdoing occurred in 2000, notwithstanding that he did not enter a guilty plea until 2005, thus Respondent has had several years to prove that he is presently responsible. Admittedly, neither the passage of time nor the absence of wrongdoing, without more, is conclusive of Respondent's present responsibility. *See, e.g., In the Matter of Carl W. Seitz*, HUDBCA No. 91-5930-D66, 1992 HUD BCA Lexis 3 (April 13, 1992). Nonetheless, these two factors cannot be entirely ignored in determining whether a debarred person who requests a reduction in his debarment should not have part of his debarment remitted. *In the Matter of Roderick Nelson*, HUDBCA No. 99-C-107-D6, 1999 HUD BCA LEXIS 9 (August 31, 1999), the Board, citing *In re: Charles Kirkland*, HUDBCA No. 90-5285-D57 (January 14, 1990), stated, *inter alia*, "[i]t is well established that a significant passage of time since the

commission of the improper conduct can be a mitigating factor in determining whether the debarment . . . is necessary to protect the public. . . . [T]he passage of time diminishes the probative weight which should be given to prior criminal conduct as that conduct relates to the issue of present responsibility." *Nelson, supra* at \*8. (Citations omitted) See also *In the Matter of: Ray Riddle*, HUDBCA No. 87-1953-D3, 1988 HUD BCA LEXIS 15 (July 1, 1988), where the Board held, in a request for reinstatement, that "[t]he long passage of time [the relevant events leading to the Respondent's debarment began in 1980] blunts somewhat the immediacy of the Government's need for protection in 1988." *Id.* at \*18.

6. The references submitted on Respondent's behalf are instructive in considering whether Respondent poses a risk to the Government if reinstated because he is not presently responsible. Tony Dimauro, one of Respondent's references, states that he has known Respondent professionally for many years. Mr. Dimauro writes that he "firmly believe[s] that Bart [Arconti] does not represent any liability or danger to prospective employers or HUD and would serve the public trust if given the opportunity." Respondent's former employer, Marty Insley, writes that he has known Respondent "for over 12 years" and told Respondent when he was debarred that he "would gladly hire him back whenever the [debarment] was lifted." These statements, unlike those offered by the respondent in *Seitz, supra*, clearly show that these individuals have more than a "limited knowledge" of Respondent. Further, again unlike *Seitz*, Respondent submitted a "self-authored statement[ ] which indicate[s] that he understands the gravity of his misconduct." *Seitz, supra*, at \*12.
7. Respondent explained that his dependence on pain medication compromised his judgment during the period when he committed the wrongdoing that resulted in his debarment. Respondent spoke candidly about his dependence while taking full responsibility for his misconduct. Respondent's candor and remorse, fully expressed at his hearing and in his request for reconsideration, is a demonstration of his present responsibility. The Board stated in *In the Matter of Kenneth A. Ashley*, HUDBCA No. 95-G-138-D23, 1996 HUD BCA LEXIS 5 (March 6, 1996), in reviewing Ashley's appeal of his suspension, that "In cases where passage of time is viewed as a mitigating factor, it has been coupled with adequate evidence of present responsibility, rehabilitation, and/or remorse for causing injury to the integrity of Federal programs." *Id.* at \*10. (Citation omitted)
8. The criteria enunciated in *Ashley* are "appropriate," in accordance with 2 CFR § 180.800(e), to apply in the instant case and are sufficient to view the passage of time as a mitigating factor that should result in a reduction of Respondent's debarment.

## DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 CFR § 180.880, to reduce Respondent's debarment to a period of two years from June 12, 2008, the date of issuance of his debarment. 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: 4-25-10

  
James M. Beaudette  
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 27<sup>th</sup> day of April 2010, a true copy of the  
DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.

*C. Stevenson*

Corlis Stevenson  
Debarment Docket Clerk  
Departmental Enforcement Center (Operations)

**HAND-CARRIED**

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

Dane Narode, Esq.  
Stanley Field, Esq.  
Government Counsel

**FIRST CLASS MAIL**

Bart Arconti, II

