

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

In the Matter of:

CARLA FRANKS,

Respondent.

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Docket No. 09-3588-DB(S)

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice of Suspension dated May 7, 2009 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent CARLA FRANKS of her immediate suspension from participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government. The Notice further advised Respondent that her suspension was in accordance with the procedures set forth in 2 CFR parts 180 and 2424. In addition, the Notice informed Respondent that her suspension was based on an indictment filed in the United States District Court for the Middle District of Pennsylvania charging her with violation of 18 U.S.C. 1001 (False Statements) and 18 U.S.C. 2 (Aiding and Abetting).

A telephonic hearing on Respondent's suspension was held in Washington, D.C. on September 9, 2009,¹ before the Suspending Official's Designee, Mortimer F. Coward. Respondent did not appear and was not represented by counsel. Patrisha Tijerina, Esq. appeared on behalf of HUD.

Summary

I have decided, pursuant to 2 CFR part 180, to affirm the Respondent's suspension 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. The Notice of Suspension dated May 7, 2009.
2. An undated letter from Respondent received by the Departmental Enforcement Center on May 29, 2009.

¹ Respondent failed to appear when this matter was originally called on August 5, 2009.

3. The one-count indictment against Respondent filed in the United States District Court for the Middle District of Pennsylvania charging Respondent with making false statements in violation of 18 U.S.C. 1001 and 2.
4. The Government's Brief in Support of Suspension filed July 7, 2009 (including all exhibits and attachments thereto).

Government Counsel's Arguments

Government counsel states that Respondent was employed as a clerk by the Harrisburg Housing Authority (HHA), a recipient of federal funds under HHA's Annual Contributions Contract (ACC) with HUD. As a recipient of federal funding, HHA was a participant under 2 CFR 180.980. The ACC, counsel adds, is a covered transaction, citing 2 CFR 180.210 and 180.970(a). Counsel argues further that Respondent "in addition to be [sic] a recipient of federal funding through her salary, is a representative of the HHA." Counsel supports this argument by attributing to Respondent duties as they are detailed in two job descriptions,² which include the incumbent's responsibility for greeting visitors, responding to inquiries, receiving information and fees from tenants and the public, concluding that Respondent "is a representative of the HHA in its dealings with residents and the public. Accordingly, [Respondent] is a 'participant' in a covered transaction falling within the purview of HUD's suspension regulations."³

Counsel continues that Respondent was indicted for making false statements to an agent of HUD's Office of General Counsel (OIG), and an indictment constitutes adequate evidence to support her suspension. The allegations against Respondent, counsel asserts, demonstrates her lack of honesty and responsibility. In Respondent's position as a clerk for HHA, counsel argues, she was expected to be "honest and responsible to ensure that the public is served in an appropriate manner." In urging the Debarring Official to sustain the suspension, counsel cites the holding in *In the Matter of Yoel Movtady*, HUDALJ 95-5054-DB-(S) that "Charges of fraud and making false statements demonstrate a lack of business integrity and honesty that poses a clear and immediate threat to the government."

Respondent's Arguments

Respondent failed to appear at the hearing, but in her written response seeking a hearing protested her innocence.

Findings of Fact

1. Respondent at all relevant times was an employee of the Harrisburg Housing Authority, a public housing authority (PHA) which received HUD funding under an ACC entered into with HUD.

² See Gov't Exs. 3 and 4. The exhibits are captioned "HOUSING AUTHORITIES CLERK I" and "HOUSING AUTHORITIES CLERK TYPIST II," respectively.

³ Gov't Brief at 5.

2. Respondent was indicted in March 2009 for allegedly denying during a HUDOIG investigation having ever been convicted of a crime.
3. At the time of the HUDOIG investigation, Respondent well knew that she had a 2002 conviction.
4. The false statements allegedly made by Respondent concerned information in her employment application with HHA.

Conclusions

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

1. The HHA was a participant in a covered transaction, its ACC with HUD, under which HUD provided HHA with funding. *See* 2 CFR 180.200 and 180.970(a).
2. The ACC was a covered transaction that would have been executed by the HHA Board or its designee.
3. As defined in 2 CFR 180.980, a “participant” is “any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.”
4. Respondent is under indictment for making false statements, which, pursuant to 2 CFR 180.700, provides the basis for the imposition of a suspension.
5. Respondent at all relevant times was an employee of HHA assigned to Hall Manor, a project owned by HHA.
6. Respondent, as a clerk at Hall Manor charged with performing the duties detailed in the job descriptions that are a part of the record in this proceeding, acted as a “representative” of HHA.
7. Respondent’s indictment, as provided in 2 CFR 180.715, constitutes “adequate evidence” to support her suspension.
8. Respondent made only a “general denial” of the facts in the Notice of Suspension, and did not provide any “[s]pecific facts that contradict[ed] the statements contained in the Notice of Suspension,” as required by 2 CFR 180.730.
9. Because Respondent’s suspension is based on her indictment, she is not afforded an “additional opportunity to challenge the facts” of her suspension. *See* 2 CFR 180.735(a)(1).
10. Respondent’s suspension is necessary to protect the public interest because of her untrustworthiness. *See* 2 CFR 180.705(c).
11. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
12. 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 to affirm the suspension imposed on Respondent on May 7, 2009. As noted in the Notice of Suspension, Respondent is suspended from participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government. Specifically, pursuant to 2 CFR 180.1015, your suspension prohibits you from "participating in covered transactions and transactions covered under the Federal Acquisition Regulations (48 CFR chapter 1) for a temporary period, pending completion of [HUD's] investigation and any judicial or administrative proceeding that may ensue."

Dated: 10/28/09

Henry S. Czauski
Henry S. Czauski
Suspending Official