

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

In the Matter of:	*	
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CHRISTIAN C. KLUEG and	*	DOCKET NO. 08-3536-DB
CMK DEVELOPMENT, INC.,	*	08-3537-DB
	*	
	*	
Respondents.	*	
	*	

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By separate Notices dated May 8, 2008 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondents CHRISTIAN C. KLUEG and CMK DEVELOPMENT, INC.,¹ that HUD was proposing their 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 one-year period from the date of the final determination of this action. The Notice further advised Respondents that the proposal to debar them was in accordance with the procedures set forth in 2 CFR parts 180 and 2424. In addition, the Notice informed Respondent Klueg that his proposed debarment was based upon his admission that he developed and communicated appraisals to others when he was not licensed to do so. CMK Development, Inc. (CMK) was advised that its proposed debarment was based upon information that CMK was an affiliate of Klueg's.²

A hearing on Respondents' proposed debarment was held in Washington, D.C. on October 22, 2008, before the Debarring Official's Designee, Mortimer F. Coward. Respondent was present by phone, appearing *pro se*. Amy Brown, Esq. appeared on behalf of HUD. Respondents filed supplemental submissions and the record closed on November 11, 2008.

¹ In an Order dated June 4, 2008, the Debarring Official's Designee granted the Government's motion to consolidate the two matters.

² Because Respondent Klueg is the wrongdoer here, this Determination focuses only on his actions. Accordingly, references to "Respondent" generally mean Klueg, except where the context makes it plain that the reference is to both respondents.

Summary

I have decided, pursuant to 2 CFR part 180, to reduce the proposed one year debarment of Respondents to six (6) months from the date of the determination. My decision is based on the administrative record in this matter, which includes the following information:

1. The respective Notices of Proposed Debarment issued to Respondents dated May 8, 2008.
2. An undated letter from Respondent requesting a hearing in this matter.
3. An undated document with attachments from Respondent Klueg titled "HUD Phone Conference 10/22/08" received by the Debarring Official's Designee on November 5, 2008.
4. The Government's Pre-Hearing Brief (including all exhibits and attachments thereto) filed September 10, 2008.

Government Counsel's Arguments

Government counsel states that, in a Consent Order dated September 8, 2007 issued by the State of New York, Department of State, Respondent admitted that he developed and communicated appraisals when he was not licensed as an appraiser.³ Respondent's conduct, counsel charges, in knowingly and willfully preparing and submitting the appraisals when he was not licensed to do so, is cause for debarment under 2 CFR § 180.800(d). Further, counsel argues that Respondent's actions demonstrate a lack of business honesty or integrity that seriously affects his present responsibility. Counsel also contends that Respondent's actions put both lenders and borrowers at risk to the extent they would have relied on the integrity of appraisals performed by an unlicensed appraiser.

Counsel points out that Respondent is covered by the debarment regulations at 2 CFR part 180. Respondent is now a licensed appraiser, listed on the FHA Appraiser Roster. Accordingly, Respondent has been, and may reasonably be expected to be, a participant in covered transactions.⁴ Additionally, the Department may exclude Respondent, based on Respondent's past work as an FHA appraiser, even if Respondent is not currently participating in nonprocurement transactions. *See* 2 CFR § 180.150.

Counsel points out that Respondent's actions were not an isolated incident; Respondent prepared several appraisals over a period of several months. Respondent's actions, counsel continues, indicate a serious lack of honesty and integrity, and his continued participation in federal programs would place Government funds at risk. Counsel therefore urges that Respondent be debarred for one year.

³ The Consent Order settled a complaint filed by the New York Department of State against Respondents and their correspondent charging them with several violations of New York Executive Law Section 160u.

⁴ The appraisal of property for HUD/FHA insurance is a covered transaction.

Counsel argues that CMK is an affiliate of Klueg, because Respondent Klueg as the Chairman/CEO of CMK has the power to control CMK. *See* 2 CFR § 180.905. Further, because HUD named CMK and gave CMK an opportunity to contest the proposed debarment, CMK is subject to the same period of debarment as Respondent Klueg. *See* 2 CFR § 180.625.

Respondent's Arguments

Respondent argues that in 2002 when he prepared the appraisals for which HUD is now proposing his debarment, he was twenty-one years old. Respondent states that a licensed appraiser, Robert Whittaker, asked Respondent to work for him. According to Respondent, at that time he knew nothing of real estate. Whittaker instructed him to inspect clients' properties and would write up the appraisal with Respondent before Whittaker would sign it for submission to the client. Respondent testified that he questioned Whittaker with respect to the propriety of his (i.e., Respondent's) actions, but was assured by Whittaker that his (i.e., Whittaker's) trainer had done the same thing with him. Some five months later when he took his state licensing courses, Respondent testified, he realized that his actions were a violation of the law. In May 2003, Respondent testified, he received his license, thus his continuing to do appraisals no longer violated the law.

Respondent further testified that he became embroiled in a dispute between Whittaker and Whittaker's former employer, Len Fiore. Fiore filed complaints against Respondent and Whittaker with the Department of State (DOS), ninety-nine percent of which DOS, according to Respondent, recognized were baseless fabrications, except the violation of preparing appraisals without a license.

Respondent argues that, although he had reservations about signing the consent order, he signed it to avoid facing mounting legal bills. Respondent also adds that he was persuaded to sign the consent order after receiving DOS assurance that it would not impact his license.

Respondent argues that he should not be debarred because "CMK has had no violation with DOS, HUD or any other agency EVER." (Emphasis in original) The violation with which he was charged was an isolated incident with DOS, and he has no other violations. Since DOS did not suspend his license, why would HUD? The violation occurred over five years ago. If he was an unethical person, he would have committed more violations in those five years. Respondent acknowledges that he was suspended for sixty days in the fall of 2007 by FHA for making "some mistakes on some FHA appraisals". Respondent states that he has "since completed FHA education to ensure [his] compliance with FHA appraisal standards".

Respondent concludes that an unfavorable decision will have a negative impact on his ability to support his family, especially because FHA is enjoying a bigger share of the current market. Respondent admits that he made mistakes, but characterizes them as unintentional and naive mistakes that he regrets.

Findings of Fact

1. Respondent prepared appraisals for over five months without a license.
2. Respondent was charged by the State of New York Department of State with several violations of Executive Law section 160-u.
3. Respondent executed a consent order on September 8, 2007 to settle the DOS complaint in which he admitted that from January 2003 until May 2003, he prepared and communicated appraisals to others when he was not licensed in violation of Executive Law section 160-u. Respondent was fined \$2,000.00 for committing the violation.
4. Respondent was twenty-one years old and unschooled in real estate practices when he committed the violation.
5. Respondent acknowledged that he questioned the practice of preparing appraisals without a license with his employer, but was informed at the time by his employer that it was ok for him to inspect properties and write up the appraisals that were then signed by a licensed appraiser. The record does not show that Respondent sought further guidance on his concerns.
6. In May 2003, Respondent took a state licensing course and realized his actions were in violation of licensing law. The record does not show that he brought the improper activity to the attention of the appropriate government agency.
7. Respondent became a fully licensed appraiser in May 2005.
8. Respondent was suspended from doing FHA appraisals for sixty days in 2007 because of his failure to comply with FHA appraisal standards.
9. Respondent expresses regret for his wrongful actions.
10. Respondent argues as reasons for no debarment that the violations were, among other things, non intentional, naive, an isolated incident and he has had no other violations past or present, and the decision will impact his life because FHA has become a bigger part of the appraisal industry.

Conclusions

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

1. Respondent was a “participant” in a covered transaction, as defined in 2 CFR § 180.980. *See also*, 2 CFR § 180.915.⁵
2. Respondent’s violation of preparing appraisals without a license is a serious matter that reflects on his personal and business integrity.
3. The Consent Order signed by Respondent and dated September 8, 2007 provides sufficient proof of his improper conduct.
4. HUD has met its burden of proof that a cause for debarment exists pursuant to 2 CFR § 180.855(a).
5. The purpose of debarment is to protect the public interest by conducting business only with responsible persons.

⁵ 2 CFR § 180.915 defines an agent or representative as “any person who acts on behalf of, or who is authorized to commit, a participant in a covered transaction.” 2 CFR § 180.980 defines a participant as “any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.”

6. Respondent's attempts to minimize his mistakes as "non intentional", "naive" and not cause for debarment are not persuasive in concluding Respondent is presently responsible.
7. Respondent's arguments for no debarment because the violation was an isolated incident and he has had no other violations past or present is not credible and is contradicted by Respondent when he concedes he served a 60 day suspension from FHA in the fall of 2007 based on "mistakes" on some FHA appraisals.
8. Respondent's argument for no debarment because it will impact his life, especially since FHA has become a bigger part of the appraisal industry, is outweighed by the potential harm to the Government and the public.
9. Respondent's age, inexperience, and reliance upon the guidance of his principal at the time he committed the violation are mitigating factors and considered in determining an appropriate period of debarment. (*See* 2 CFR § 180.860(s) "Other [mitigating] factors that are appropriate to the circumstances of a particular case".)
10. Past acts may be used to determine Respondent's present responsibility and the passage of time, since Respondent's commission of the violation is also a factor that has been considered.
11. Respondent submitted three commendatory letters on Respondent's behalf by the Housing Assistance Program of Hamilton County, Inc., Timm Associates, Inc., and the Baptist Church of Northville, NY, respectively, which have been considered.
12. Additional mitigating factors that were considered include the relatively short duration of Respondent's misconduct; Respondent did not plan the wrongdoing, but did acquiesce in carrying it out; Respondent has accepted responsibility for his wrongdoing and recognizes the seriousness of the misconduct that led to the cause for debarment; Respondent has paid an administrative fine to DOS for his wrongdoing; Respondent cooperated with DOS.
13. The wrongdoing was not pervasive within Respondent's organization because Respondent formed CMK in 2005, two years after his violation. (2 CFR § 180.865(b))
14. CMK Development, Inc. is an affiliate of Respondent Klueg pursuant to 2 CFR § 180.905. *See* also, 2 CFR § 180.625.

Accordingly, in light of the factors recited above, and the other regulatory authorities cited, I have determined to debar the Respondents for a period of six months.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined to reduce the one year proposed debarment action against Respondents Christian C. Klueg and his affiliate, CMK Development, Inc. in the Notices dated May 8, 2008 to a period of six months commencing on the date of issuance of this determination.

Dated: 31 December 2008

Henry S. Czauski

Henry S. Czauski
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of January 2009, a true copy of the DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.

Tammie M. Parshall

Tammie M. Parshall
Debarment Docket Clerk

HAND-CARRIED

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

Dane Narode, Esq.
Amy Brown, Esq.
Government Counsel

FIRST CLASS MAIL

Christian C. Klueg


CMK Development, Inc.
c/o Christian C. Klueg
Chairman/Chief Executive Officer
401 South Main Street
Northville, NY 12134