

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

In the Matter of:	*	
	*	
Eastern Electronics and Security, Inc.	*	Docket No. 08-3554-DB
and	*	
William Porfilio,	*	Docket No. 08-3555-DB
	*	
Respondents.	*	
	*	

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By separate Notices of Proposed Debarment and Suspension dated August 12, 2008 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondents EASTERN ELECTRONICS AND SECURITY, INC. and WILLIAM PORFILIO that HUD was immediately suspending them and 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 three-year period from the date of the Notices. The Notices further advised Respondents that their immediate suspension and proposed debarment were in accordance with the procedures set forth in 2 CFR parts 180 and 2424. In addition, the Notice to Respondent Porfilio informed him that his proposed debarment was based upon his conviction in the United States District Court for the District of Massachusetts for violation of 18 U.S.C. 371 and 1341 (Conspiracy to Commit Mail Fraud). Eastern Electronics and Security Inc. (Eastern Electronics) was advised that its suspension and proposed debarment were based on information that it was an affiliate of Porfilio's.¹ Respondent Porfilio pleaded guilty to the one count in the Information charging him with violating 18 U.S.C. 371 and 1341 and was sentenced to probation for a term of two years and ordered to make restitution of \$12,500.00.

A telephonic hearing on Respondents' suspension and proposed debarment was held in Washington, D.C. on February 3, 2009, before the Debarring Official's Designee, Mortimer F. Coward. Respondents were represented by Barry Ryan, Esq. Ana Fabregas, Esq. appeared on behalf of HUD. The record was held open for supplemental submissions and closed on February 17, 2009.²

¹ The two cases were consolidated for hearing in an Order entered December 3, 2008.

² Respondents submitted, through their attorney, a letter dated February 4, 2009, to the attention of the Debarment Docket Clerk, attaching a Release and Settlement Agreement entered into between Respondents and the Springfield Housing Authority that settled a lawsuit filed by SHA against Respondents. It later came

Summary

I have decided, pursuant to 2 CFR part 180, to debar Respondents 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, for a period of three years from the date of the Notices. My decision is based on the administrative record in this matter, which includes the following information:

1. The Notices of Proposed Debarment and Suspension dated August 12, 2008.
2. The Positional Statement of Eastern Electronics & Security, Inc. and William Porfilio with Respect to Notice of Proposed Debarment and Suspension dated September 4, 2008.
3. A letter dated September 4, 2008, from the Massachusetts Department of Public Safety (DPS) to Richard Porfilio conveying the DPS' determination not to disqualify him and Eastern Electronics from holding an S-license.
4. A letter dated September 4, 2008, from DPS to William R. Porfilio advising him of DPS decision to allow him to retain his Certificate of Clearance while putting him on probation.
5. A letter dated September 11, 2008, from Respondents' attorney to the Debarring Official's Designee summarizing the two aforementioned letters.
6. Pre-Hearing Brief of Respondents, William Porfilio and Eastern Electronics and Security, Inc. Opposing Suspension and Three-Year Debarment filed January 13, 2009 (including all exhibits and attachments thereto).
7. A letter dated February 4, 2009, from Respondents' attorney addressed to the Debarment Docket Clerk transmitting a Release and Settlement Agreement entered into by Respondents with the Springfield Housing Authority.
8. The Government's Pre-Hearing Brief in Support of Suspension and Three-Year Debarment filed December 17, 2008 (including all exhibits thereto).
9. A letter dated April 4, 2009, from Respondents' counsel attaching a Release and Settlement Agreement entered into between Respondents and the Springfield Housing Authority settling a lawsuit filed by SHA against Respondents.

Government Counsel's Arguments

Government counsel notes that at all relevant times Respondent Porfilio was an officer of Eastern Electronics with an ownership interest of 50 percent. Respondent Porfilio directed the operations of Eastern Electronics, which included contracts with the Springfield Housing Authority (SHA), a recipient of HUD funding, for the provision of goods and services. Pursuant to an Information filed by the U.S. Attorney, Respondent Porfilio was charged with one count of conspiracy to commit mail fraud. In brief, the allegations are that Respondent Porfilio conspired with SHA officials to provide goods and

to the attention of the Debarring Official that Government counsel only became aware of Respondent's submission after the expiration of some time. The Debarring Official, in the interest of justice, therefore entered an Order dated April 3, 2009, enlarging the time for the Government to respond. Government counsel was given until April 10, 2009, to file the Government's response to Respondents' submission. Counsel for the Government filed the response on April 8, 2009. The Order of April 3, 2009, indicated that the Determination will issue no later than April 17, 2009.

services from EES. Payment for the goods and services was made either from SHA's checking account or through another contractor, G&R, that performed work for SHA. In exchange for the goods and services provided the SHA officials and their relatives or associates, Eastern Electronics obtained contracts with SHA.

Counsel argues that Eastern Electronics was a participant in a covered transaction because it was a person, as defined in 2 CFR 180.985, that contracted with SHA, a PHA that received HUD funding. Porfilio was a participant in a lower tier covered transaction. Porfilio, as officer and co-owner of Eastern Electronics, was an agent of a participant in a lower tier covered transaction through Eastern Electronics contracts with SHA, a recipient of HUD funds and a participant in primary tier covered transactions. Further, Porfilio acknowledged that Eastern Electronics was solicited recently by SHA to bid on SHA work. As such, Respondents were, and may reasonably be expected to be, involved in a covered transaction. Respondents, therefore, are participants that are subject to the debarment regulations.

Respondent Porfilio's conviction provides cause for debarment under 2 CFR 180.800(a)(1) and (a)(4), according to Government counsel. Respondent committed an act of fraud by causing SHA to pay invoices from Eastern Electronics for goods that were not provided to SHA but to SHA's officials and their relatives. Additionally, Porfilio's conviction for mail fraud provides cause for debarment under 2 CFR 180.800(a)(4). Mail fraud, counsel argues, is an offense that indicates a lack of business integrity or business honesty that directly affects Respondent's present responsibility. Counsel adds that Respondent's participation in the fraudulent scheme against SHA demonstrates that he poses a high risk to the Government and lacks the requisite responsibility to participate in federal programs.

Counsel reviews the aggravating and mitigating factors under 2 CFR 180.860 in light of the facts in this case and argues that "[b]ased upon the seriousness and extent of Porfilio's violations and his lack of integrity and present responsibility, . . . the public interest warrants a debarment for a period of three years." Counsel concludes that Eastern Electronics, which is part owned by Porfilio, thereby giving him the power to control the company, is an affiliate of Porfilio's, and also should be debarred for three years.

Respondents' Arguments

Counsel for Respondents acknowledges that cause for debarment exists based on the Government's arguments and Respondent's conviction. Counsel sees the real issue as whether there exist "sufficient mitigating factors . . . to substantiate that the governmental and public interests are adequately protected and the Respondents are sufficiently responsible for conducting business with the Federal Government." Counsel notes that Respondent Porfilio is a fifty percent owner of Eastern Electronics; Respondent's brother owns the other half of the company. The company is in the business of installing security and central vacuum systems.

Counsel further argues that it would be unjust to prevent Eastern Electronics from doing business with the Government when one of the two owners is innocent of the

wrongdoing committed by the other owner. Counsel finds support for his position from the DPS letter of September 4, 2008, in which DPS concludes that the conviction involving Respondent William Porfilio “should not preclude [Richard Porfilio] and [Eastern Electronics] from holding an S-License and doing business in Massachusetts.” Counsel offers as a solution to the problem of Respondent’s continued involvement with the company “an arrangement . . . which would preclude his direct or indirect involvement in any project involving the Government.”³

Counsel discusses other factors the he believes should be considered as mitigating. For example, counsel refers to the positional statement of the U.S. attorney who prosecuted Respondent on the mail fraud charge. In addition to taking no position on the possible revocation of Respondent’s license, the U.S. attorney points out that Respondent provided detailed information and cooperated fully with the investigation of SHA even before charges were brought against him. Respondent also was prepared to testify for the Government and waived formal indictment. Counsel argues that “additional mitigating factors” are raised in the DPS September 4, 2008, letter such as the various character reference letters and the absence of any negative history on the part of Respondent with DPS. Counsel suggests that DPS’ concerns would appear to be consistent with HUD’s. Counsel also refers to the favorable comments made in the character letters and by the judge at Respondent’s sentencing hearing. Counsel argues that the laudatory remarks made by Respondent’s friends, family, and business associates in their letters resulted in a “sentence at the low end of the guideline range.”⁴ Counsel further notes that Respondent acknowledged his wrongdoing and has made full restitution.

Counsel concludes that the Government has failed to demonstrate by a preponderance of the evidence that Respondents are not presently responsible. As counsel views it, the DPS correspondence, the character letters, and the praiseworthy remarks by the sentencing judge “support the fact that [Respondents] are presently responsible.” In his final remarks, counsel requests that, in the event the Debarring Official finds that Respondents are not presently responsible, they be debarred for no more than a year, to avoid “irreparable harm” to Respondent’s brother and co-owner of Eastern Electronics.

Findings of Fact

1. Respondent Porfilio, at all relevant times, was an officer of Eastern Electronics, a company that did business with SHA, a HUD-funded public housing authority.
2. Respondent co-owned Eastern Electronics, a family-owned business, with his brother.

³ Resp. Brief at 4. Respondents did not give any details of a possible arrangement and did not raise this matter again at any time during the pendency of this action. 2 CFR 180.880 provides, *inter alia*, that, in a request for reconsideration of a debarment decision, a factor that may influence the debarring official is “(c) A bona fide change in ownership or management.”

⁴ *Id.* at 7.

3. Respondent was charged with conspiracy to commit mail fraud based on his criminal wrongdoing in obtaining contracts over a period of several years from SHA for Eastern Electronics.
4. Respondent pleaded guilty and was convicted and sentenced to two years' probation and ordered to pay restitution of \$12,500.00.
5. In a proceeding before the Massachusetts Department of Public Safety resulting from Respondent Porfilio's conviction, Respondents were allowed to retain their business license and certificate.
6. Respondent cooperated fully with the investigation into SHA's wrongdoing.
7. Respondent expressed remorse for his criminal conduct and accepts responsibility for his actions.

Conclusions

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

1. Respondents were participants in a covered transaction as defined in 2 CFR part 180.
2. Respondent Porfilio's criminal conviction serves as the basis for his debarment.
3. Pursuant to 2 CFR 180.800, a conviction for fraud, *inter alia*, is a cause for debarment.
4. The commendatory letters and character references submitted on Respondent Porfilio's behalf strongly suggest that his professionalism and ethical standards are viewed favorably in his community, notwithstanding the writers' knowledge of Porfilio's wrongdoing.
5. Respondent Porfilio's acceptance of responsibility and expression of regret for his wrongdoing is a mitigating factor in determining the appropriate period of debarment to be imposed. *See* 2 CFR 180.860(g).
6. Although the interests of the Massachusetts Department of Public Safety and HUD may not be exactly congruent in this matter, if only because they are guided by different principles, it is instructive that DPS, after reviewing the same factors present here, did not revoke Respondent Porfilio's certificate. (Porfilio's certificate was kept active, though on a probationary basis.) The disposition of Porfilio's case before the DPS is a mitigating factor that was considered in this matter.
7. Respondent Porfilio's payment of all criminal and civil liabilities and his cooperation with the investigation is a mitigating factor that was considered in determining an appropriate period of debarment. *See* 2 CFR 180.860.
8. The mitigating factors are outweighed by the seriousness of Respondent Porfilio's actions. *See* 2 CFR 180.865. Respondent Porfilio's actions occurred over a period of almost seven years⁵ and involved a conspiracy with officials at the highest level of the housing authority. Respondent's actions, therefore, contributed to the subversion of the purposes and

⁵ See Gov't Ex. 1 (Information). Para. 6 indicates that Respondent executed his fraudulent scheme "Between on or about August 27, 1996 and on or about February 28, 2003."

authority of SHA and HUD's funding of SHA. Generally, a debarment should not exceed three years and should never be used for punitive purposes. *See* 2 CFR 180.865(a) and 125(c). However, the period of a debarment "should be long enough to demonstrate that the government takes the conduct at issue seriously, and it will refrain from doing business with debarred contractors and grantees 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." *In re Richard Duane Wilder*, HUDALJ 92-1766-DB, 1992 WL 12567425 at * 9 (June 18, 1992). The seriousness of Respondent Porfilio's conduct is, however, tempered by the mitigating factors set forth here, and does not justify a period of debarment in excess of three years.

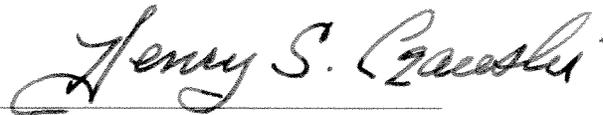
9. Respondent Eastern Electronics is Porfilio's "affiliate" as the term is defined in 2 CFR 180.905. As an affiliate, Eastern Electronics is subject to the same period of debarment as Porfilio.⁶ *See* 2 CFR 180.625.
10. The Government has met its burden of demonstrating that cause exists for Respondents' debarment. *See* 2 CFR 180.850 and 855.
11. Respondent's actions that led to his criminal conviction raise grave doubts with respect to his business integrity and personal honesty.
12. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
13. 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 honest and integrity.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 CFR 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for a three-year period from August 12, 2008, the date of the Notice of Suspension and Proposed 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: _____

4/17/2009



Henry S. Czauski
Debarring Official

⁶ Although it would appear that Respondent Porfilio no longer has an executive position with Eastern Electronics, he still retains a position of control in Eastern Electronics by virtue of his 50 percent ownership of the company. Counsel for Respondents intimated in his brief that an "arrangement" could be made that would prevent Respondent Porfilio from participation in any Government contract. No such arrangement was presented. Consequently, there is no basis for treating Respondent Eastern Electronics differently so long as there is no limit imposed on Respondent Porfilio's involvement with the company.