

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

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| In the Matter of: | * | |
| | * | |
| EUGENE D. HARDNEY, | * | Docket No. 08-3528-DB |
| | * | |
| | * | |
| Respondent. | * | |

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice of Proposed Debarment and Termination of Existing Suspension dated April 10, 2008 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent EUGENE D. HARDNEY 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 a twenty-eight month period from the date of the final determination of this action. 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 terminated the suspension issued on March 15, 2007. In addition, the Notice informed Respondent that his proposed debarment was based upon his conviction in the Circuit Court of Cook County in the State of Illinois for violation of certain enumerated provisions of the Illinois Compiled Statutes involving theft, forgery, loan fraud, and deceptive practices. Respondent was sentenced to a term of two years in prison for his conviction.

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on June 3, 2009, before the Debarring Official's Designee, Mortimer F. Coward. Respondent participated by phone, appearing *pro se*. Brendan Power, Esq. appeared on behalf of HUD.

Summary

I have decided, pursuant to 2 CFR part 180, to debar Respondent 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 15 months 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 Suspension dated March 15, 2007.
2. The Notice of Proposed Debarment and Termination of Existing Suspension dated April 10, 2008.
3. The indictment filed in the Circuit Court of Cook County, Illinois, charging Respondent with the commission of offenses involving theft, forgery, loan fraud, and deceptive practices in violation of Chapter 720 of the Illinois Compiled Statutes.
4. The Order of Commitment and Sentence entered July 12, 2007, sentencing Respondent to two years' imprisonment.
5. The Government's Pre-Hearing Brief filed August 7, 2008 (including all exhibits and attachments thereto).

Government Counsel's Arguments

Government counsel recites that the two counts on which Respondent was convicted involved his providing false information on the Uniform Residential Loan Application (URLA) for the purchase of a property and for paying a mortgage company with a check drawn on a bank that he knew would not honor the check. As an incident of his real estate activities, Respondent also was a landlord under HUD's Section 8 program, receiving Section 8 rental subsidy payments from the Cook County Housing Authority. Counsel argues that, pursuant to 2 CFR 180.150, as a recipient of Section 8 funding, Respondent has been, and may reasonably be expected to be, a participant or principal in covered transactions.

In this regard, counsel states that Respondent's conviction for loan fraud and deceptive practices provides cause for his debarment under 2 CFR 180.800(a)(1), (3), and (4). Additionally, the Government urges that cause for debarment exists under 2 CFR 180.800(a)(4) because Respondent's fraudulent acts indicate a lack of business integrity or business honesty that seriously affects his present responsibility. To this end, counsel argues that the Government has met its burden of demonstrating cause in this case because, under 2 CFR 180.800(a)(1), a conviction provides cause for debarment.

Government counsel, in arguing for Respondent's debarment, notes that the Government has a duty to protect the public interest and ensure that federal funds are properly spent. Respondent's criminal acts indicate a lack of honesty and integrity, and his continued participation would place Government funds at risk; thus, Respondent's debarment would be in the public interest. Counsel concludes that, based on the seriousness and type of criminal acts committed by Respondent, a twenty-eight month debarment is appropriate.

Respondent's Arguments

Respondent argues that the hearing should not go forward unless he is granted immunity from prosecution in a pending matter for his testimony. Respondent vigorously contends that the hearing could not proceed without violating his rights under the Fifth and Fourteenth Amendments.¹ Respondent also argues that his criminal conviction is false.

¹ Respondent was adamant that his constitutional rights were being violated by having the hearing before the disposition of a lawsuit he filed challenging his criminal conviction. Respondent was vague about the nature

Findings of Fact

1. Respondent was a landlord who received HUD's Section 8 program funds.
2. Respondent was indicted on eighteen counts involving various offenses he allegedly committed in violation of Illinois criminal statutes relating to theft, forgery, loan fraud, and deceptive practices.
3. Respondent was convicted of two counts involving loan fraud and deceptive practices and was sentenced to a prison term of two years.
4. Respondent was suspended on March 15, 2007.
5. Respondent expressed no remorse for his criminal conduct and challenged the justness of his conviction.

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 part 180.
2. Respondent'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. Respondent does not accept responsibility for his criminal conduct and expresses no regret for his wrongdoing. *See* 2 CFR 180.860(g).
5. The Government has met its burden of demonstrating that cause exists for Respondent's debarment based on Respondent's conviction. *See* 2 CFR 180.850 and 855.
6. Respondent's actions that led to his criminal conviction raise grave doubts with respect to his business integrity and personal honesty.

of the lawsuit and shared very little information about it. To the extent Respondent has filed suit, it would be a civil matter, thereby making his constitutional claim even less meritorious. However, notwithstanding the reassurances of the Debarring Official's Designee and Government counsel's dismissal of his constitutional claim, Respondent remained unconvinced that the hearing could proceed, and abruptly ended his participation in the hearing. During his colloquy with the Debarring Official's Designee on the propriety of continuing the hearing, Respondent was advised that he could submit any documentation or authority in support of his position, including his belief that the hearing legally could not go forward. As of the issuance of this Determination, the Debarring Official's Designee had not received any submissions from Respondent.

During the hearing, Respondent based his objection to the hearing's proceeding on the holding in *Lefkowitz, v. Turley*, 414 U.S. 70 (1973) that the Fifth Amendment privilege against self-incrimination applies to a witness or defendant in a statutory inquiry, and it is irrelevant the person is not a defendant in a criminal prosecution. *Lefkowitz*, however, is easily distinguishable from the instant case. In the first place, the hearing in this matter was informal. *See* 2 CFR 180.835. Additionally, Respondent was not being compelled to testify. Indeed, even if questioned by either the Debarring Official's Designee or Government counsel, Respondent could refuse to respond. Unlike the appellees in *Lefkowitz* who were threatened with a penalty - - loss of employment - - if they did not execute a waiver of immunity from prosecution and testify, Respondent could refuse to answer any question and suffer no penalty therefor. Moreover, Respondent already had been convicted in a criminal trial; thus, Respondent's apparent contention that he could face further criminal charges for the wrongdoing which led to his conviction is untenable. As provided in 2 CFR 180.800, it was the fact of Respondent's conviction that was the cause of his proposed debarment, not matters arising therefrom.

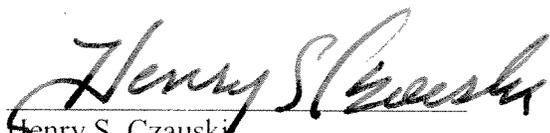
7. Respondent has raised no mitigating factors nor are there any evident in this case to the Debarring Official.
8. The seriousness of Respondent's criminal conduct acts as an aggravating factor justifying a period of debarment. *See* 180.865(a).
9. In imposing the period of debarment in this matter, the Debarring Official considered the time Respondent was suspended.² *See* 2 CFR 180.865(b). Accordingly, the proposed period of debarment of 28 months will be offset by a period approximately equal to the period of suspension already served by Respondent, i.e., 13 months.
10. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
11. 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.

CONCLUSION

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 fifteen-month period 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: _____

27 July '09


Henry S. Czauski
Debarring Official

² Respondent was suspended from March 17, 2007 to April 10, 2008.