

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

In the Matter of:

JERRY A. WIEGAND,

Respondent.

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DOCKET NO. 08-3531-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice of Proposed Debarment and Continuation of Existing Suspension dated April 17, 2008 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent JERRY A. WIEGAND 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 three-year period from the date of his suspension, September 6, 2007. The Notice further advised Respondent that the proposal to debar him and his continuing suspension were in accordance with the procedures set forth in 2 CFR part 180 and 2424. In addition, the Notice informed Respondent that his proposed debarment was based upon his conviction in the United States District Court for the Southern District of Mississippi, for violating 18 USC § 641 (Theft of Government Funds Exceeding \$1,000.00). Respondent was found guilty by a jury on one count of a four-count Indictment. For his conviction, Respondent was sentenced to probation for two years and ordered to make restitution of \$3864.00 and pay a fine of \$5000.00.

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on September 10, 2008, before the Debarring Official's Designee, Mortimer F. Coward. Respondent was present by phone, appearing *pro se*. Stanley Field, Esq. appeared on behalf of HUD. The record was left open for the parties' filing of supplemental submissions and closed on September 29, 2008.

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 three years from the date of his suspension, September 6, 2007. My decision is based on the administrative record in this matter, which includes the following information:

- (1) The Notice of Proposed Debarment and Continuation of Existing Suspension dated April 17, 2008.
- (2) A letter dated May 16, 2008, with forty-three attachments thereto, from Respondent, addressed to the Debarment Docket Clerk, effectively appealing his proposed debarment.
- (3) Respondent's post-hearing submission dated September 10, 2008.
- (4) A four-count indictment filed March 6, 2007, charging Respondent with the commission of several offenses.
- (5) The Judgment in a Criminal Case entered October 26, 2007, adjudicating Respondent guilty of the offense of Theft of Government Funds Exceeding \$1,000.00.
- (6) An Order Denying Defendant's Motion for New Trial entered August 2, 2007.
- (7) The Department's Pre-Hearing Brief in Support of a Three-Year Debarment of the Respondent filed August 21, 2008 (including all exhibits thereto).

GOVERNMENT COUNSEL'S ARGUMENTS

Government counsel notes that Respondent applied for Katrina Homeowner Grant Assistance (KHGA) administered by the Mississippi Development Authority (MDA), but was ruled ineligible by the MDA. The funding for the KHGA program was provided by HUD's Community Development Block Grant (CDBG) program. Respondent, however, was successful in obtaining benefits through the Federal Emergency Management Authority (FEMA). It was the receipt of these benefits that resulted in Respondent's conviction of theft of Government funds. Respondent thereafter filed a motion for a new trial, which the court denied. In denying the motion, the court held that there was sufficient evidence upon which the jury could find that Respondent received rental assistance from FEMA when he did not pay rental expenses. Counsel argues that Respondent is subject to HUD's debarment regulations because of his filing an application for HUD funds through MDA. As such, Respondent was a participant in a HUD nonprocurement covered transaction, thus making him subject to the debarment regulations. *See* 2 CFR part 180.

Counsel argues that Respondent's conviction for theft is cause for debarment under 2 CFR 180.800(a)(3). Additionally, Respondent's criminal misconduct indicates a lack of business integrity and honesty that seriously affects his present responsibility,

and, under 2 CFR 180.800(a)(4), is another cause for his debarment. Counsel argues further that, pursuant to 2 CFR 180.850(b), as a result of Respondent's conviction, the Government has met its burden of proving that a cause for debarment exists. Counsel also adds that, under 2 CFR 180.800(a), the conviction does not have to be for a crime committed against HUD.

Counsel argues that imposing a three-year debarment on Respondent is in the public interest. Counsel asserts that Respondent is "unrepentant and undeterred, thus demonstrating his lack of integrity." Counsel argues that Respondent's violation is a serious one, which can "have a profound effect on the viability and efficacy of federal programs." Counsel urges the Debarring Official not to consider Respondent's claim of innocence. According to counsel, Respondent's "criminal case has been decided and his motion for a new trial considered and decided, [and] that case cannot be re-adjudicated here." Counsel urges that Respondent be debarred for three years for the safety of the public and HUD.

RESPONDENT'S ARGUMENTS

Respondent argues that the issue at his criminal trial was not whether he received assistance, rental or otherwise, but where he lived at the time Katrina destroyed his property. Respondent argues that he had convincing evidence that he lived in his property at the time Katrina struck, but because of poor investigative work by the authorities and an unwillingness by the investigators to examine the evidence in support of his claim, he was indicted for receiving funds to which he was not entitled – a charge that Respondent labels "unfounded and erroneous." Respondent contends that an applicant for FEMA funds could not know whether he was actually eligible for assistance because FEMA's guide books were not available until after the fact, i.e., after the application had been submitted.

Respondent testified that he contacted FEMA and answered all questions relating to his destroyed property, and was told that an adjuster would visit the property to determine his eligibility for assistance. On September 12, 2005, FEMA deposited \$2,000.00 in his checking account. Respondent argues that the deposit was made without an explanation of its purpose and there was no reason for him to believe that he was not entitled to the assistance. It was only later at his trial, Respondent testified, that he learned that FEMA termed the deposit "expedited assistance," which was given to everybody living in a disaster area. Three weeks later FEMA, again without explanation, deposited \$2358.00 in Respondent's checking account. This deposit was, as FEMA termed it, for transitional housing. According to Respondent, the money did not have to be returned, as he understood it, based on the information available on FEMA's website.

Respondent argues that the investigators termed these FEMA deposits "rental assistance, which was inaccurate and resulted in his having to repay the assistance as restitution. A later payment of \$1,506.00 from FEMA, Respondent agrees, was correctly

identified as rental assistance, and represented reimbursement of three months' rent he paid to his ex-wife while living at her damaged property.

Respondent argues that it was a year after Katrina, in September 2006, that he contacted the Mississippi authorities to determine whether there were benefits available to him since he was living in one of the units in his four-plex that was damaged by the storm. Respondent argues that he was concerned about the dual use character of the property and insisted that it be so described in the application.¹ Respondent insists that all of the documents attached to his application were furnished by him on the day he completed the application. Respondent asserts that this is the same information the investigator used as evidence in his criminal case, and Respondent asks, "Where is the fraud or attempt to mislead here."

Respondent contends that his application was intended to be an inquiry with respect to his eligibility for assistance, not an attempt to defraud. Nonetheless, in spite of the information he provided the investigators that proved he was living in one of the units in the 4-plex on the day of the storm, he was accused of falsely applying to the State for grant funds. According to Respondent, while the State was investigating his eligibility for assistance he was indicted, even though up to the time he was indicted, March 6, 2007, he had not received any assistance from the State. Seven weeks after his indictment, on April 27, 2007, Respondent states he received a "preliminary decision" in a letter from the State notifying him of his ineligibility for HAP assistance.

Respondent challenges the jury's verdict, arguing that "[t]here is no specific crime or act listed in Count 4 [the only count in the four-count Indictment on which he was convicted] that says WHAT money was stolen, or HOW the money was stolen." (Emphasis in original). It is Respondent's position that, as the Indictment reads, the crime charged in the fourth count "has to be the same as the 1st three" such that "if found innocent on the 1st three, then Innocence should also go to the 4th Count."²

Respondent concludes that "he cannot be repentant for an act [he] did not do, and [he] will never plead guilty to a crime [he] did not commit [and he] believe[s] in [his] innocence in [his] heart, and conscience, and [he] will stand by that belief no matter what."

¹ See Gov't Ex. 2, at p.2, wherein Respondent's property is described as a "Duplex (2-4 units with 1 unit owner-occupied)."

² See Respondent's post-hearing submission of September 10, 2008, at 7.

FINDINGS OF FACT

1. Respondent was a recipient of Hurricane Katrina Disaster assistance from FEMA.
2. Respondent's property was damaged by Hurricane Katrina.
3. More than a year after the destruction caused by Hurricane Katrina, Respondent applied for a Homeowner Assistance Program (HAP) grant under a program administered by the MDA.
4. The funding for the program, part of the larger Katrina Recovery Homeowner Grant Program, was provided by HUD's CDBG program.
5. The MDA denied Respondent's request, informing Respondent in a letter dated April 27, 2007, that he was ineligible for a HAP grant.
6. Respondent was later indicted on four counts in which he was alleged to have filed fraudulent applications for assistance. The applications were alleged to be fraudulent because Respondent represented that his primary residence was in Gulfport, Mississippi, part of the Gulf area that was destroyed by Hurricane Katrina, when, in fact, it was not.
7. Respondent was found not guilty of three of the four counts.
8. Respondent was found guilty on count four of the Indictment, which charged him with stealing funds in excess of \$1,000.00 belonging to the United States by receiving Hurricane Katrina disaster relief benefits from FEMA, to which he knew he was not entitled.
9. Respondent was sentenced to two years' probation and ordered to pay a fine of \$5,000.00, and make restitution of \$3,864.00.
10. Respondent's Motion for a New Trial was denied, the court holding that "there was evidence that [Respondent] received money for rental assistance from FEMA when he did not pay rental expenses."

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 is subject to HUD's debarment regulations based on his application for funding from MDA, an agency funded by HUD. See 2 CFR 180.150.
3. Respondent's criminal conviction serves as the basis for his debarment.
4. Pursuant to 2 CFR 180.800(a)(3), a conviction for commission of theft is a cause for debarment.
5. The Government has met the requisite standard of proof to support Respondent's proposed debarment pursuant to 2 CFR 180.850.
6. In light of 2 CFR 180.850(b), which provides that "[i]f the proposed debarment is based upon a conviction, . . . the standard of proof is met," Respondent's collateral attack on his guilty verdict on count 4 of the

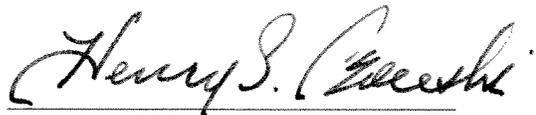
indictment is unavailing. Moreover, the Debarring Official is without authority to disregard Respondent's guilty conviction or to entertain arguments that challenge the basis of Respondent's conviction. *See, e.g., In re: Robert F. Hayter, HUD BCA No. 82-697-D25, 1983 HUDBCA Lexis 19 (March 23, 1983).*

7. Respondent offered no factors in mitigation, and expressly rejected any pretensions of remorse while continuing to claim his innocence of any wrongdoing. *See 2 CFR 180.860.*
8. The seriousness of Respondent's wrongdoing was an aggravating factor considered in imposing the three-year period of debarment. *See 2 CFR 180.865.*
9. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
10. Respondent's actions that led to his criminal conviction raise grave doubts with respect to his business integrity and personal honesty.
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 honesty 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 September 6, 2007. 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: 12 Nov. 2008



Henry S. Czauski
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November 2008, a true copy of the DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.



Tammie M. Parshall
Debarment Docket Clerk

HAND-CARRIED

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

Geoff Patton, Esq.
Stanley E. Field, Esq.
Government Counsel

FIRST CLASS MAIL

Jerry A. Wiegand
