

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Washington, D.C.

In the Matter of:

JOHN HEMPHILL,

Respondent.

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DOCKET NO.: 11-3756-DB(S)

**ORDER DISMISSING RESPONDENT’S REQUEST FOR A HEARING AND
AFFIRMING RESPONDENT’S DEBARMENT**

INTRODUCTION

By Notice of Proposed Debarment and Termination of Existing Suspension (“Notice”) dated March 25, 2011, the Department of Housing and Urban Development (HUD) notified Respondent JOHN HEMPHILL that it was proposing his debarment from future participation in procurement and non-procurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a ten-year period from the date of the final determination of this action. The Notice advised Respondent that his proposed debarment was based upon his conviction in the United States District Court for the Northern District of Illinois for violation of 18 U.S.C. §§ 1341 (Mail Fraud) and 912 (Impersonating an Officer or Employee of the United States). The Notice recited that Respondent was found guilty of creating and recording fictitious deeds and releases for HUD REO property. The Notice also advised Respondent that his proposed debarment was in accordance with the regulations at 2 C.F.R. parts 180 and 2424.

Additionally, the Notice informed Respondent that his conviction is evidence of serious irresponsibility and is cause for his debarment under 2 C.F.R. §§ 180.800(a)(1), (3) and (4). The March 25, 2011, Notice also terminated Respondent’s suspension. Further, Respondent was advised that his period of suspension, which began from October 28, 2010, was taken into account in determining his proposed ten-year debarment. The Notice informed Respondent, too, that, because he was president of United States Mortgage Release Corporation and United States Receivers Caretakers Association, entities involved in the purchasing of HUD REO properties, he was involved in covered transactions. More particularly, the Notice advised Respondent that, if he decided to contest the proposed debarment, he must submit a written argument and request

for an informal hearing. The Notice also stated that, pursuant to 2 C.F.R. § 180.825, Respondent's written submission must identify, among other things, specific facts that contradict the statements in the Notice. The Notice further stated that a general denial was insufficient to raise a genuine dispute over facts material to his proposed debarment.

BACKGROUND

In an undated letter addressed to the Debarring Official's Designee, received by the HUD Departmental Enforcement Center on May 25, 2011, responding to HUD's Notice, Respondent requested a "phone hearing". In his letter, Respondent wrote that neither he nor his corporations have had dealings with HUD nor with "fictitious deals or releases for HUD."

In an Order dated July 8, 2011, the Debarring Official's Designee set a hearing date of August 30, 2011, in response to Respondent's request for an informal hearing. That Order also set a deadline of August 11, 2011, for Respondent's submissions and July 21, 2011, for the Government's brief. As of this writing, Respondent has not filed any submissions in this matter in accordance with the Order. (The Government's brief was filed timely.) The Order was sent first class mail via the United States Postal Service to the return address Respondent provided at the United States Penitentiary at 3901 Klein Boulevard, Lompoc, CA 93436. The Order was not returned by the USPS.

In accordance with the Order, the hearing was called, as scheduled, on August 30, 2011, at 10:00 Pacific Time. In the July 8, 2011 Order, Respondent was advised to make contact with the docket clerk to facilitate his appearance by phone. Respondent was provided with a HUD number to call and also advised that he could write the docket clerk to request alternative arrangements more convenient to him. Respondent did not call in on August 30, 2011, and did not communicate with this office at any time thereafter. In a later Order dated September 16, 2011, Defendant was provided a Sprint Conference call 866 number with instructions related to the call. Respondent also specifically was advised in the later Order that his failure to appear, and if he could not show good cause therefor, would result in a decision being issued on the "record as it then stands without further proceedings." In consideration of Respondent's current situation, Respondent was given more than ample time, even after his failure to comply with the two referenced Orders, to contact this office. Respondent, it would appear, based on his seeming unresponsiveness, has signaled his lack of interest in the requested informal hearing.

DISCUSSION

Respondent's attempt to sell or transact business involving various properties, including HUD-owned real estate, makes him a person who "has been, is, or may reasonably be expected to be a participant or principal in a covered transaction," and, thus, subjects him to exclusion under part 180 "[g]iven a cause that justifies an exclusion."¹ See 2 C.F.R. § 180.150. Respondent's conviction on two counts of mail fraud and impersonating an employee or officer of the United

¹ Under 2 C.F.R. 180.940, "Excluded" or "exclusion" means "(a) That a person or a commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment, [etc]."

States provides justifiable cause for his debarment under 2 C.F.R. §§ 180.800(a)(1), which provides that “[a] Federal agency may debar a person for conviction . . . for) “Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction.” Also under 2 C.F.R. § 180.800(a)(4), “[c]ommission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects [a person’s] present responsibility,” may subject such a person to debarment. Further, the debarment regulations at 2 C.F.R. § 180.850(b) specify that “[i]f the proposed debarment is based upon a conviction . . . the standard of proof is met.” Respondent’s burden thereafter, because the cause for debarment along with the proof thereof has been established, is to demonstrate to the “satisfaction of the debarring official that [he is] presently responsible and that debarment is not necessary.” *See* 2 C.F.R. § 180.855(b).

Respondent has adduced no evidence that would support a finding that he is presently responsible. At best, Respondent has made a “general denial” in his letter that he engaged in fraudulent conduct, as charged in the Notice. *See* 2 C.F.R. § 180.830(a)(2). Moreover, because Respondent’s proposed debarment is based on a conviction, his “opportunity to challenge the facts” is limited. *See* 2 C.F.R. § 180.830(a)(1). A cursory examination of the record in this matter, especially the Indictment, the Government’s Sentencing Memorandum along with the attachments thereto filed in Respondent’s criminal matter,² and the Defendant’s Position Paper as to Sentencing Factors (Position Paper), paints a clear and irrefutable factual picture of Respondent’s misconduct. The following excerpt from the Position Paper filed by Respondent’s attorney is instructive. More importantly, the excerpt reinforces the conclusion of the speciousness of Respondent’s arguments propounded in his letter.

[Respondent] admitted conducting various real estate transactions while asserting that he had the lawful authority to perform such acts. Specifically, he sought to present a public authority defense based on a self-styled concept, which he refers to as “federal receivership”. Unfortunately for [Respondent], the court rejected his proffered defense as a matter of law. Thereafter, reduced to presenting a defense based on lack of fraudulent intent, the contours of which he appears never fully to have grasped, Mr. Hemphill was convicted.

The allegations against Respondent are serious and evince a pattern of egregious behavior for which Respondent seems unapologetic. The court, it should be pointed out, viewed Respondent’s actions with such disfavor that he was sentenced to ninety months’ imprisonment, three years’ supervised release, and ordered to make restitution of \$167,410.00. Respondent’s actions raise serious questions with respect to his business honesty and integrity. Pursuant to 2 C.F.R. § 180.125(a), “[t]o protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.” And “the non-procurement debarment and suspension system [is used by a federal agency] to exclude from Federal programs persons who are not presently responsible.” Respondent’s fraudulent scheme involving his selling and conveyance of property he did not own falls squarely within the causes

² *See* Ex.3 of the Government’s Brief in Support of Ten-Year Debarment.

for debarment set forth at 2 CFR § 180.800(a)(1). Respondent's false representation to prospective buyers that he was an officer or employee of the United States demonstrates his "lack of business integrity or business honesty that seriously and directly affects [his] present responsibility." See 2 CFR § 180.800(a)(4).

I have carefully considered in this case the aggravating and mitigating factors set forth in 2 CFR § 180.860. Respondent's wrongdoing resulted in financial harm to the persons he defrauded. Respondent was ordered by the court to make restitution of \$167,410.00. Respondent purported to sell several properties through his fraudulent scheme which he conducted for about a year. Respondent has prior convictions for fraud. There is no evidence that Respondent is remorseful for his wrongdoing. Indeed, even after his conviction, Respondent still attempts to justify his criminal conduct. Respondent initiated the fraudulent scheme and was the president of the corporations he used to further his scheme. The record in this case provides no evidence of mitigating factors that may be considered in Respondent's favor.

The regulations at 2 CFR § 180.865 provide, in pertinent part, that a Respondent's "period of debarment will be based on the seriousness of the cause(s) upon which [the Respondent's] debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment." The circumstances of this case clearly warrant a longer period of debarment than three years. The unrefuted evidence shows that Respondent planned his fraudulent scheme and executed it without regard to the deprivations visited upon his unsuspecting victims. Respondent's single-minded purpose, as the record unambiguously demonstrates, was not to aid potential homebuyers but to enrich himself even if that required fraud and deception. A lengthy period of debarment will afford Respondent the opportunity to show that, over time, he can conform his conduct to be considered presently responsible consistent with the Debarment regulations. *See e.g., In the Matter of: JOHN C. JONES*, HUDBCA No. 81-631-D36, 1982 HUD BCA LEXIS 19 (March 16, 1982). ("The imposition of a substantial period of debarment is warranted in the best interest of the government and the public to insure that HUD and the public will be protected for the duration of that debarment period.")

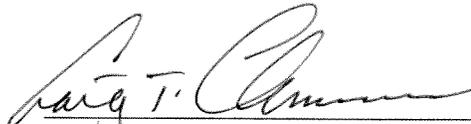
Accordingly, for the reasons stated in the Notice, the actual offenses committed by Respondent, the discussion set forth above, and the administrative record as a whole, I have determined, in accordance with 2 CFR §§ 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for a period of ten years from the date of this Order. Respondent's "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 C.F.R. chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

CONCLUSION

WHEREFORE, the premises considered, it is ORDERED that, because of Respondent's failure to respond to this office's process, Respondent's request for an informal hearing of his proposed debarment be, and it is hereby, DISMISSED with prejudice; and

It is further ORDERED that the proposed ten-year debarment of Respondent be, and it is hereby, AFFIRMED.

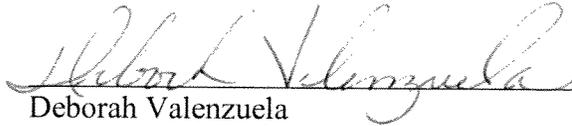
Dated: 11/18/11



Craig T. Clemmensen
Debarring Official
Departmental Enforcement Center

CERTIFICATE OF SERVICE

I hereby certify that on this 18TH day of November 2011, a true copy of the ORDER DISMISSING RESPONDENT'S REQUEST FOR A HEARING AND AFFIRMING RESPONDENT'S DEBARMENT was served in the manner indicated.



Deborah Valenzuela
Debarment Docket Clerk
Departmental Enforcement Center-Operations

HAND-CARRIED

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Debarring Official's Designee

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FIRST CLASS MAIL

John Hemphill

