

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

---

In the Matter of:

LARRY G. MILLER,

Respondent.

---

\*  
\*  
\*  
\*  
\*  
\*  
\*

DOCKET NO. 07-3424-DB(R)

**DEBARRING OFFICIAL'S DETERMINATION**

**INTRODUCTION**

In a letter dated April 30, 2007, to the debarring official, Respondent LARRY G. MILLER requested that his debarment status be "remove[d]". Respondent had voluntarily agreed to his indefinite debarment in a Settlement Agreement he entered into with HUD, effective October 5, 2004. One of the terms of the Settlement Agreement was that Respondent agreed to "withdraw his appeal of the Notice issued March 2, 2004, thereby agreeing to an extension of his April 16, 2003, debarment for an indefinite period." The April 16, 2003, Determination had notified Respondent that he was debarred for a period of two years from April 16, 2003, to April 15, 2005. The March 2, 2004, letter from HUD had proposed Respondent's indefinite debarment, reciting as the basis for the proposed debarment Respondent's violation of the April 16, 2003, debarment.

In the Settlement Agreement, Respondent agreed to his indefinite debarment as well as to the payment of a civil money penalty (CMP) of \$6,500.00 assessed against his company, Legacy Mortgage Financial Services, LLC, and a \$5,000.00 CMP imposed against him.

A telephonic hearing on Respondent's reinstatement request was held in Washington, D.C. on October 24, 2007, before the Debarring Official's Designee, Mortimer F. Coward. Respondent was present by phone at the hearing, appearing *pro se*. Stanley Field, Esq. appeared on behalf of HUD. The record was kept open until November 20, 2007, for further submissions from the parties.

## Summary

I have decided to reduce Respondent's indefinite debarment to seven years from the effective date of the Settlement Agreement provided Respondent pays the outstanding penalty of \$6,500.00 assessed against his company, LMFS, as agreed to in the October 5, 2004, Settlement Agreement. My decision is based on the administrative record in this matter, which includes the following information:

- (1) The Debarring Official's Determination dated April 16, 2003.
- (2) The Notice of Proposed Debarment dated March 2, 2004.
- (3) The Settlement Agreement executed by Respondent effective October 5, 2004.
- (4) A letter from Respondent to the Debarring Official dated April 30, 2007.
- (5) A document styled "Response by Larry G. Miller" dated October 15, 2007, addressed to HUD.
- (6) A letter from Respondent dated November 5, 2007, transmitting several commendatory letters and notes on behalf of the Respondent, addressed to the Debarring Official's Designee and Government counsel.
- (7) The Government's Brief in Opposition to Respondent's Request for Reinstatement, filed October 10, 2007.
- (8) The tape recording of the October 24, 2007, hearing.

## HUD's Arguments

HUD argues that Respondent's request for termination of the indefinite debarment and for reinstatement is premature and should be denied.

HUD points out in its brief that the applicable regulations grant "absolute discretion"<sup>1</sup> to the debarring official with respect to his consideration of a request for a reduction in the period of debarment. The regulations also set forth the basis for granting a request for reinstatement.<sup>2</sup> HUD argues that Respondent's request may be cognizable under 24.800(d), dismissing the other grounds as inapplicable to this matter, but posits that "(d) is not an open door."<sup>3</sup> The issue, according to the government, is "whether the Respondent is responsible and should be allowed to do business with the government," emphasizing that "[t]he standard of present responsibility governs whether continued imposition of the debarment sanction is necessary to protect the public."<sup>4</sup> (Emphasis in original. Citation omitted.)

In rebutting some of the specific arguments raised by Respondent, the government makes it plain that it is unpersuaded by Respondent's position that he should be reinstated because of his payment of the CMP. Payment of the CMP, the government contends, was a condition for Respondent's acceptance of his indefinite debarment: "it is

---

<sup>1</sup> Gov't brief at 7.

<sup>2</sup> See 24 CFR 24.880

<sup>3</sup> Gov't brief at 8.

<sup>4</sup> *Id.*

not proof of his present responsibility that he subsequently abided by it.”<sup>5</sup> At oral argument, the government also treated with short shrift Respondent’s plea that the debarment was causing him financial hardship, responding that financial hardship does not indicate present responsibility but only that Respondent is “suffering from the result of misconduct on prior occasions.”

The government further argued that Respondent’s submission attempts to relitigate old issues, e.g., the previous charge of his failure to remit MIP funds timely, but does not provide information on what he has accomplished since his debarment. Counsel for the government also discounted a letter submitted by Respondent as “suspect” because it came from a business colleague of Respondent’s. Additionally, one letter from one colleague, government counsel argued, was “not sufficient to prove [Respondent] is presently responsible.”

In summing up its case, the government urged that Respondent’s request for reinstatement be denied because Respondent had been debarred twice within two years, thus “calling into question Mr. Miller’s ability and willingness to conform to HUD’s requirements.”<sup>6</sup> Further, the government argued that Respondent’s request “does not meet the minimum requirements of the regulation. Respondent has not shown he is presently responsible. His request does not contain information of his acceptance of responsibility for his misconduct, and he has not demonstrated his current professional conduct.”<sup>7</sup>

#### Respondent's Arguments

Respondent takes issue with the government’s characterization of his actions and conduct that resulted in his indefinite debarment. Respondent challenged the government’s assertion that he acted “irresponsibly [and] dishonestly,” and that he “does not appear to be demonstrating present responsibility, or present professional conduct.” Respondent argues that the “same adjectives and descriptions” used by the government to denounce him “could be applied to the government and the prosecutors involved in [his] case.” Respondent states that he fully accepts the reason for his first debarment and previously admitted that.

In his written submission, Respondent argued that at the close of the hearing “in an attempt to FULLY comply with the restrictions about to be placed on [him], [his] attorney and [he] queried the government prosecutors [sic] as to specific actions” that were permissible. (Emphasis in original) According to Respondent, on no fewer than five or six occasions either he or his attorney was involved in conversations with the government in which “the specific question was raised” with respect to what should be done with his company, Legacy Mortgage Financial Services, LLC (LMFS). Respondent testified that he was told that there was no problem in his managing LMFS.

---

<sup>5</sup> *Id.* at 9.

<sup>6</sup> *Id.* at 11.

<sup>7</sup> *Id.* at 14.

Respondent further states that he “was instructed to contact the local HUD office for further clarification and the specifics” of what actions were allowable in light of his debarment. Respondent testified that he consulted with Robert Warnock, the then-acting chief of the Housing Office in Salt Lake City and told him of the restrictions imposed on him as a result of his debarment. Respondent therefore argues that for the government to allege that he acted irresponsibly and dishonestly “is a gross misrepresentation of [his] intentions, [his] actions, and the truth.” Respondent asserts that it was “acknowledged on both the national and local level, that it was OK” for him to proceed with his activities under LMFS. Respondent further asserts that the “government knew that [he] would continue to manage and own LMFS, and without comment and qualification, approved that.” Respondent continued that “[b]oth [his] lawyer at that time and [he] will testify, under oath, and be willing to submit to lie detector tests of this fact.”

Respondent acknowledges that his claim of the government’s knowledge of his continued actions is “not new information” in this case, that he has raised it before, but has yet to receive a response from the government. Respondent questions why the government has not responded and considered there was a reason for his actions, and that he “definitely was not irresponsible or dishonest.” Respondent argues that if he was going to “hide” his actions, as the government suggests, he would not have “sought permission from the government attorneys” and from the HUD Salt Lake City Office. Respondent asserts that “since the government had no objection” he continued to “run LMFS and the LMFS loan officers would continue to originate FHA loans.” He agreed, however, “to remove [himself] from originating FHA products.”

With respect to the government’s allegations of his involvement in the origination of loans on a condominium complex, Respondent states that “Mr. Warnock inquired of Washington and it was determined that LMFS would continue to service the master agreement and issue case numbers.” Respondent asserts further that the “local HUD office as well as the Regional Denver Office as well as all the way up the ladder to Washington[,] DC wanted to leave the master approval in LMFS name.” According to Respondent, the government is assuming that because the case number was originally assigned to LMFS, LMFS originated the loans. Respondent contends, however, that “[r]esearch will show LMFS then reassigned the case number to other lenders who originated the loans.”

Respondent offers a similar explanation regarding his participation in the closing of two construction loans. Respondent again asserts that Mr. Warnock approved his actions “since the case numbers had been issued prior to (and it was several months prior to) the debarment, [he] could go ahead and close them in [his] name.” However, there was a delay in the closing past the time Mr. Warnock had “granted” him. Mr. Warnock therefore advised him to “step out” and have one of the other loan officers sign for the loans. Respondent disputes HUD’s characterization of his having another loan officer sign for the loans as an attempt to deceive HUD. Respondent states that “Mr. Warnock

was just suggesting it would be cleaner and foster fewer questions if [Respondent] had another LO sign the final documents.” The other loan officer was Jason Jaussi.<sup>8</sup>

Respondent explained that his involvement in an FHA loan was limited to giving the client brief answers to their questions and then referring them to another loan officer. Thus, he handled the “situation exactly as Mr. Warnock had instructed” him to do. Respondent argues that of the 60 loans that LMFS is supposed to have originated since his debarment, he had a peripheral involvement in one, as discussed above.

It is Respondent’s contention that once HUD made him aware of the specific regulations that prohibited him from working with a company that had FHA approval, he immediately “put a stop to the FHA originations and all loans in process were transferred to other lenders. No more FHA loans were originated by LMFS employees after that time.” Respondent expresses remorse for his actions, which he said were not malicious, and attributes them to his reliance on what he “thought was good information, coming from the reliable sources of [his] counsel, [HUD] counsel, and [the HUD Salt Lake City Office] acting branch chief, to stay within boundaries [he] needed to stay within.” Respondent acknowledges that “it was the wrong path and . . . [t]here is no one to blame for the actions” but him.

Respondent challenges the government’s allegation that he has “not demonstrated professional conduct” by citing the actions he has taken since his debarment such as dismantling his company so that it now has one office, not 13, and three employees, not 100 employees, as it did when he was debarred. Respondent also points to other structural changes to his company, including periodic review of his accounting practices by a CPA firm. Further, Respondent cites his formerly unblemished record, though acknowledging his irresponsible actions that led to his first debarment.

Respondent argues that, but for the short period in which he failed to pay clients’ MIP timely, which he attributes to his poor management skills in running a large organization, he has shown the competence, skill, and character associated with a professional. In this regard, Respondent submitted several commendatory letters and notes from business colleagues, a city official, clients, and others with whom he has done business over the years attesting to his integrity and character.

Respondent states he was told that he could not seek reinstatement prior to the fine being paid off and not before the three-year term had expired. It is now more than four years since his debarment and he has paid the fine. Respondent argues that he has made a “concerted effort” to improve himself and to change his business practices. Based on his foregoing arguments, Respondent appeals for favorable consideration of his request for reinstatement.

---

<sup>8</sup> HUD proposed Mr. Jaussi’s debarment in a notice dated May 18, 2004. The record does not indicate the disposition of the proposed debarment.

## Findings of Fact

1. Respondent was debarred for a two-year period in a Debarring Official's Determination dated April 16, 2003.
2. In a Settlement Agreement dated October 5, 2004, Respondent agreed to a further debarment for an indefinite period.
3. The indefinite debarment was imposed based on allegations that Respondent, notwithstanding that the two-year debarment was still in force, continued to participate as president, principal, owner, and managing member of his company in the origination of FHA-insured mortgages.
4. Respondent, by his own admission, continued to participate in covered transactions until September 2003, at which time he transferred all loans in process to other lenders and stopped all FHA originations after HUD advised him that his actions were in violation of applicable regulations.
5. During the period of debarment when Respondent continued to participate in covered transactions, he sought advice from HUD personnel and his own counsel on the permissibility of his actions.
6. HUD personnel in the Salt Lake City Field Office approved of Respondent's continued participation in certain covered transactions, which later provided the basis for Respondent's indefinite debarment.
7. Respondent has paid the penalty assessed against him personally when he agreed to his indefinite debarment, but the penalty payable by his company, LMFS, is still unpaid.
8. Respondent is remorseful and takes full responsibility for the actions that resulted in his debarment.

## Conclusions

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

1. Respondent violated the terms of his debarment when he continued to participate in covered transactions.
2. Respondent shares the primary responsibility for his violative actions.
3. Respondent, at the time his indefinite debarment was imposed, was already serving a two-year debarment.
4. Respondent and LMFS now enjoy a much reduced presence in the local mortgage market since his debarment.
5. Respondent still retains the principal position in LMFS.
6. Respondent has provided no information or evidence in his request for termination of his debarment that satisfies any of the factors enumerated in 24 CFR 24.880(a) through (d).
7. Pursuant to 24 CFR 24.880(e), the debarring official may terminate or reduce a debarment based on reasons other than those enumerated in paragraphs (a) through (d) that "the debarring official finds appropriate."
8. Respondent's testimony, though unsworn, that he consulted with HUD personnel in the field before he engaged in covered transactions, was

- unrebutted. Similarly unrebutted was his testimony that HUD personnel in the Denver Regional Office and HUD Headquarters were aware of his activities during his debarment.
9. Respondent specifically mentioned Mr. Warnock, the HUD Housing chief in the Salt Lake City Field Office, as the person from whom he sought advice and relied thereon, but no rebuttal from Mr. Warnock is in the record or was offered at the hearing.
  10. Mr. Warnock was aware of Respondent's debarment.
  11. Nothing in 24 CFR part 24 recognizes the role of any HUD program official in modifying a debarment once imposed.
  12. There is credible evidence in the record that at least one HUD official, Mr. Warnock, acted in a manner so as to create a belief that he had, if not actual, at least apparent authority to advise Respondent on the scope of limitations inherent in his debarment.
  13. Respondent relied on that apparent authority in engaging in covered transactions during his debarment.<sup>9</sup>
  14. Respondent's actions violated the restrictions imposed on him during his debarment, though the egregiousness of those actions is mitigated by his reliance on advice from HUD personnel and his attorney.
  15. Respondent's actions in seeking the advice of HUD personnel with respect to LMFS and his activities are inconsistent with intent to ignore HUD's regulations.
  16. The commendatory references submitted on Respondent's behalf by, among others, City of Highland Recorder Winifred Jensen, Gerald Garrett, Senior Partner at Keeler Thomas, Investment & Retirement Advisors, Nathan Whiting, Joel D. Zabriskie, and Con and Mary Brady show that Respondent is considered responsible and his professional reputation and integrity is looked on favorably in his community.
  17. Pursuant to 24 CFR 24.880(e), the debarring official may find reasons other than those enumerated in 24 CFR 24.880(a) through (d) appropriate for reducing a debarment.
  18. Even though unauthorized actions by HUD officials cannot fully excuse Respondent's actions, HUD officials' actions are appropriate in determining any measure of relief to be granted Respondent.
  19. Respondent's payment of the civil money penalty is a factor to be considered in determining his present responsibility.
  20. In determining the imposition of a period of debarment, Respondent's present responsibility is a factor to be considered.

---

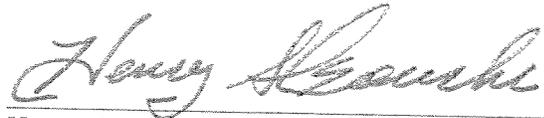
<sup>9</sup> Because the doctrine of apparent authority does not generally apply to dealings with the government, Respondent took the "risk of having accurately ascertained" that Mr. Warnock, in purporting to act for HUD, stayed "within the bounds of his authority." See *United States of America v. District of Columbia*, 669 F.2d 738, 747 n.13 (D.C. Circuit 1981).

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I find that sufficient reason exists to modify Respondent's term of debarment. Accordingly, I have decided to modify Respondent's indefinite debarment to a term of seven years from October 5, 2004, the date of imposition of his indefinite debarment, with the condition that Respondent pay the penalty of \$6,500.00 assessed against LMFS, as agreed to by him in the Settlement Agreement dated October 5, 2004, within 60 days of the date of this Determination. The debarment will not be lifted unless and until Respondent pays the penalty within 60 days of the date of this Determination and provides evidence thereof to the Debarring Official. Additionally, Respondent may seek reconsideration of this Determination, provided the \$6,500.00 penalty is paid timely and Respondent provides evidence of his present responsibility at the time his request for reconsideration is filed.

Dated: \_\_\_\_\_

12/28/07



Henry S. Czauski  
Debarring Official