

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

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In the Matter of:	*	
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PATRICK CRISLIP,	*	DOCKET NO. :08-3540-DB
	*	
	*	
Respondent.	*	
	*	

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice of Proposed Debarment dated May 8, 2008 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent PATRICK CRISLIP 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 the final determination of this action. The Notice further advised Respondent that the proposal to debar him was in accordance with the procedures set forth in 2 CFR parts 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 District of Kansas, for violating 18 USC §§ 371 and 208 (Conspiracy to Commit Acts by a Government Official Affecting a Personal Financial Interest). Respondent pleaded guilty to the one count in the Information that charged him with violating 18 USC §§ 371 and 208. For his conviction, Respondent was sentenced to five months' imprisonment and placed on supervised release for two years and ordered to make restitution of \$30,000.00.

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on October 29, 2008, before the Debarring Official's Designee, Mortimer F. Coward. Respondent failed to appear and no one appeared on his behalf. Stanley Field, Esq. appeared on behalf of HUD.¹

¹The Government filed a Motion to Dismiss Respondent's request for a hearing based on his failure to appear at the hearing and his failure to respond to an Order issued by the Debarring Official's Designee. The Order followed Respondent's failure to appear when this matter was called on October 29, 2008. Respondent was put on notice in the Order that his failure to advise the Debarring Official's Designee of his intention to appear at the hearing "may result in a final determination being issued without his having an opportunity to be heard." Respondent was given ample time both before and after the hearing, and after the filing of the Government's Motion, to respond to the Order. In the circumstances of this case, the Debarring Official's Designee granted the Government's motion. Accordingly, pursuant to 2 CFR 180.845(b), this determination is based "on all information contained in the official record." Additionally, although the Government's motion is styled a Motion to Dismiss, in its prayer the Government requests that "the record of this case be closed and the Debarring Official decide the case on the case record before him."

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 this Determination. My decision is based on the administrative record in this matter, which includes the following information:

1. The Notice of Proposed Debarment dated May 8, 2008.
2. An undated letter from Respondent (no addressee identified) responding to the proposal to debar him.
3. A one-count information filed September 20, 2007, charging Respondent with conspiring to engage in acts which constituted a conflict of interest in violation of 18 USC §§ 208(a) and 371.
4. The Judgment in a Criminal Case entered January 7, 2008, adjudicating Respondent guilty of Conspiracy to Commit Acts by a Government Official Affecting a Personal Financial Interest.
5. The Plea Agreement entered into by Respondent on October 2, 2007.
6. The Department's Pre-Hearing Brief in Support of a Three-Year Debarment of the Respondent filed September 15, 2008 (including all exhibits thereto).

Government Counsel's Arguments

Government counsel notes that Respondent entered into a conspiracy (while employed by HUD as a construction analyst) to submit requests for payment for work done by a company in which he had an interest. As further detailed in the Plea Agreement and Information, Respondent formed a company, N.O.N.I., in collaboration with an employee of Alpha Property Management (Alpha), a company which managed HUD-insured properties. N.O.N.I. was held in another person's name to conceal Respondent's interest therein. As agreed to by the conspirators, N.O.N.I. performed cleaning and renovation services at two properties managed by Alpha, Sunflower Park Apartments (Sunflower) and Silver City Apartments (Silver). Respondent, consistent with his duties as a construction analyst, inspected Sunflower and Silver City. Alpha paid N.O.N.I. for the work done by N.O.N.I. From the payments made by Alpha to N.O.N.I., Respondent's company received, between January 4, 2005, and July 27, 2005, approximately \$49,000.00 for work done at the two properties, much of which was inspected and approved by Respondent for H.U.D. reimbursement payments. Respondent agreed that he did not disclose to HUD his personal financial interest in N.O.N.I. as required by 5 CFR part 2635.

Counsel argues that Respondent is subject to HUD's debarment regulations because he is a person who "has been . . . a participant or principal in a covered transaction." Because Respondent was a principal of N.O.N.I., a company that contracted with a HUD-approved agent to clean and renovate HUD-assisted housing, Respondent was a participant in covered transactions and is, therefore, subject to HUD's debarment regulations.

Counsel argues that Respondent's conviction for conspiracy is adequate cause for his debarment under 2 CFR 180.800(a)(1) because his crime was committed in connection with "obtaining, attempting to obtain, or performing a public or private agreement or transaction." Additionally, Government counsel argues that Respondent's conspiracy to commit acts in his capacity as a government official which affected his personal financial interest indicates a lack of business integrity or business honesty that seriously and directly affects his present responsibility. *See* 2 CFR 180.800(a)(4). Counsel adds that, because Respondent's proposed debarment is based upon his conviction, the Government has met its burden of proving that a cause for debarment exists. *See* 2 CFR 180.850.

In arguing for Respondent's debarment, counsel stresses that Respondent's criminal violations were serious with the potential to have a "profound effect on the administration of federal programs." Counsel dismisses Respondent's argument that his debarment should be retroactive to September 2005, "effectively nullifying his proposed debarment, because, . . . , he was directed by HUD Office of Inspector General employees, 'not to have dealings with Housing and Urban Development.'" Counsel rejects Respondent's argument that he has already "done his time" as implying debarment is punishment. Counsel states that Respondent "has yet to prove that without the oversight of the federal criminal justice system he can be a responsible participant in federal government programs." Counsel reviews applicable caselaw and concludes that a three-year debarment of Respondent from the date of this determination is appropriate for the protection of the public and the Department.

Respondent's Arguments

In his undated letter responding to HUD's proposal to debar him, Respondent states that he does not contest the debarment. Respondent requests, however, that the Debarring Official take into account that in September 2005 HUD's OIG told him not to have any dealings with HUD. Two months after the OIG admonition, Respondent writes that HUD's Office of Administration told him the same thing. In January 2008, he was convicted, according to Respondent, and later received the notice of proposed debarment "telling [him] something that has been imposed on [him] better than two years ago." Respondent states that he blames himself for his "mistake in judgment," but "asks for [HUD's] consideration in placing the effective date of [his] debarment."²

Findings of Fact

1. Respondent was employed by HUD at all relevant times as a construction analyst.
2. Respondent agreed with an employee of Alpha, a company that managed certain properties on behalf of HUD, to form a company, N.O.N.I.
3. N.O.N.I. performed cleaning and renovation services for Alpha at two HUD properties that Alpha managed.

² Although Respondent is not clear as to the effective date from which he would like his debarment to commence, the Debarring Official infers from the discussion in Respondent's undated letter that he would like his debarment to be retroactive to September 2005, about the time the OIG "informed [him] that [he] was not to have dealings with" HUD.

4. HUD, as Respondent's employer, had no knowledge of nor did it consent to Respondent's financial interest in N.O.N.I.
5. Respondent approved work done at the two properties, and also performed management duties for Alpha while on duty for HUD.
6. Between January 2005 and July 2005, Alpha paid N.O.N.I. approximately \$49,000.00 for work at the two properties.
7. A significant amount of the work for which Alpha paid N.O.N.I. was inspected and approved by Respondent for HUD reimbursement payments.
8. Respondent pleaded guilty and was convicted of one count of conspiracy to commit acts by a government official affecting a personal financial interest and was sentenced to a term of five months' imprisonment and two years' probation and ordered to make restitution of \$30,000.00.

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 of a criminal offense in connection with obtaining, or attempting to obtain, or performing a public or private agreement or transaction, such as a contract to perform work for HUD-assisted properties, is a cause for debarment.
4. The passage of time since Respondent's commission of the crime for which he was convicted and the absence of evidence of any further wrongdoing by Respondent are mitigating factors that were considered favorably in determining Respondent's debarment. *See* 2 CFR 180.860.
5. Respondent offered no independent evidence that he is presently responsible. *See* 2 CFR 180.125(a) and 180.855.
6. Respondent'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).
7. The seriousness of Respondent's acts is an aggravating factor considered in imposing the period of debarment on him. *See* 2 CFR 180.865.
8. The Government has met its burden of demonstrating that cause exists for Respondent's debarment. *See* 2 CFR 180.850 and 855.
9. Respondent's actions that led to his criminal conviction raise grave doubts with respect to his business integrity and personal honesty.
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 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 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: 4 February 2009



Henry S. Czauski
Henry S. Czauski
Debarring Official