

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

In the Matter of:

PAUL J. O'ROURKE,

Respondent.

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DOCKET NO. 08-3495-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice dated January 10, 2008 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent **PAUL J. O'ROURKE** 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 the proposed action. Respondent also was advised in the January 10, 2008, Notice that his proposed debarment was in accordance with the procedures set forth in 24 CFR part 24¹. In addition, the Notice informed Respondent that his proposed debarment was based upon his improper conduct as a police officer with the Providence, Rhode Island, Police Department (PPD) and as an employee of the Providence Housing Authority (PHA). Specifically, Respondent is alleged to have arranged for a fellow officer's daughter to live rent-free in a PHA unit by falsely representing that the unit would be used for official PPD business. Respondent's action caused the unit to be taken off line² for a recipient whose eligibility for public housing had not been established.

¹ HUD published a final rule on December 27, 2007 (72 FR 73484) that relocated and recodified 24 CFR part 24 as 2 CFR part 2424. HUD's December 27, 2007, rule stated that the rule "adopts, by reference, the baseline provisions of 2 CFR 180 "the government-wide rule published by OMB on August 31, 2005 (70 FR 51863) setting forth guidance for agencies with respect to nonprocurement debarment and suspension. For the convenience of the reader, references herein will be to the regulations at 2 CFR part 180.

² Respondent asserts that the unit was already offline when it was given to his friend's daughter. A unit is described as offline when it is not available for rental.

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on June 11, 2008, before the Debarring Official's Designee, Mortimer F. Coward. Respondent participated by phone at the hearing along with his attorney, Kevin J Mc Allister. Sergeant Raymond Hull, a PPD officer, and John Costa, Security Operations Officer, Providence Housing Authority, testified on Respondent's behalf. 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 eighteen 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 Proposed Debarment dated January 10, 2008.
- (2) The Opposition to Notice of Proposed Debarment and Request for Hearing, and Request for Discovery filed by Respondent's attorney on February 4, 2008 (with exhibits thereto).
- (3) The Government's Brief in Support of Three Year Debarment filed May 8, 2008 (including all attachments and exhibits thereto).
- (4) Respondent's Submission and Documentary Evidence dated May 29, 2008.
- (5) The digital recording of the June 11, 2008, hearing.

GOVERNMENT COUNSEL'S ARGUMENTS

Government counsel argues that Respondent is a participant by virtue of his employment by Providence Housing Authority, a recipient of federal funding through its Annual Contributions Contract (ACC) with HUD. The ACC is a covered transaction, thus Respondent as a participant is subject to the debarment regulations at 2 CFR part 180.

Counsel next argues that Respondent's misconduct provides cause for his debarment under 2 CFR 180.800(b)(1) and (d). As counsel sees it, Respondent intentionally caused the unit to be taken offline under false pretenses. Respondent knew, and has acknowledged, that he was doing a favor for a friend's daughter, and that the unit was not to be used for law enforcement purposes. Counsel argues that a unit that should have been used to fight crime caused the housing authority to be a victim of fraud perpetrated by Respondent. Further, the fraudulent act disqualified the housing authority from legitimately receiving HUD subsidy for the unit for the period that Respondent's friend's daughter lived there, April 2005 to January 2006.

Counsel also contends that Respondent's conduct is cause for debarment under 2 CFR 180.800(d). Respondent's misrepresentation of the reason for taking the unit offline demonstrates that he is not presently responsible to perform work involving HUD funds. Counsel adds that Respondent's actions prevented an eligible low-income applicant from occupying the unit and prevented the housing authority from receiving rent for the unit. Additionally, it caused HUD to pay a subsidy to the housing authority for which it was not eligible. Counsel summarizes his position by asserting that in Respondent's position as a police officer, HUD and the housing authority are particularly dependent on his honesty and integrity. Thus, to the extent Respondent can't be trusted to safeguard PHA property and funds his debarment is necessary to protect HUD.

Government counsel concludes that Respondent's actions clearly warrant a debarment for three years.

RESPONDENT'S ARGUMENTS

Respondent states that he has served HUD and the PHA with honor and distinction for thirty-six years as a police officer. Respondent's wrongdoing represents an isolated incident that was motivated by his compassion for a fellow human being. Respondent cooperated fully with the investigating officers and never attempted to minimize his wrongdoing, and does not dispute the facts. Respondent sets forth several positive factors that he argues shows Respondent's exemplary service and character, notwithstanding the instant matter. Among the factors raised by Respondent are Respondent's continued employment by the PHA and PPD almost three years after the incident and the decision not to file criminal charges against him.

Respondent argues that his debarment for a three-year period, in the circumstances of this case, would be tantamount to punishment, which is specifically proscribed by 2 CFR 180.125(c). According to Respondent, there is no merit to the suggestion that his continued service could present a threat to the public interest. If there was merit to the suggestion, efforts would have been made to suspend him for his misconduct, but that did not happen. Respondent further argues that 2 CFR 180.125(b) contemplates that debarment will be used against a person who is "not presently responsible." However, because Respondent has an unblemished record since the incident at issue, an aberration in his long career, "there can be no evidence that that [he] is not presently responsible, a finding that is required by the regulations." Respondent also analyzes the factors in 2 CFR 180.860 to demonstrate that there are no negative conclusions that can be drawn from them to prejudice his case.

Respondent testified that he is ashamed and sorry for what he did, and takes responsibility for his misconduct. Respondents' colleagues testified that his misconduct was caused by a mistake of the heart, that Respondent has faced many challenges at great

personal risk, and though his misconduct reflected bad judgment, it is easy to make for a street cop who has friends in the community and sees problems that people face daily.

Respondent concludes that, applying the facts of his case to the debarment regulations makes it clear that debarment is not justified. The evidence shows that he is presently responsible and his continued service poses no threat to the public interest. Debarment would only serve to punish him, and that is prohibited by the regulations. Accordingly, Respondent requests that the debarment proceedings be dismissed.

FINDINGS OF FACT

1. Respondent was a police officer for the City of Providence Police Department assigned to Hartford Park, a project owned by the Providence Housing Authority, a recipient of HUD funds.
2. Respondent has over thirty-six years' experience with the Department, serving virtually all his time at the same project, Hartford Park.
3. Respondent misrepresented to the manager of the project that a unit was to be used for law enforcement purposes, causing the unit to be taken offline.
4. Respondent knew that the unit would not be used for law enforcement, but would be occupied by a friend's daughter. The friend's daughter had not applied for the unit nor had her eligibility for rental assistance been determined.
5. Respondent's friend was a fellow police officer whose family requested his help in finding a unit for their troubled daughter.
6. HUD paid a subsidy of \$2534.00 to the housing authority, to which it was not entitled, on account of the occupancy of the unit rent-free by Respondent's friend's daughter.
7. Respondent has received many commendations and citations for his service to the PPD.
8. Respondent readily admitted his misconduct to investigators.
9. Respondent was not charged with a crime.
10. Respondent continued to work at the Hartford Park project after his misconduct was discovered and investigated.
11. Respondent has not been asked to reimburse HUD for the subsidy paid for the ineligible unit, but is willing to do so.
12. Respondent is sorry for and ashamed of his misconduct.

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 misconduct was willful and in violation of 2 CFR 180.800(b)(1) and (d).
3. HUD has met its burden of proof with respect to establishing cause for Respondent's debarment in accordance with 2 CFR 180.850 and 855.
4. Respondent's remorse for his wrongdoing is a mitigating factor in determining the appropriate period of debarment to be imposed.
5. Other mitigating factors that determine an appropriate period of debarment include Respondent's long and meritorious service with the PPD and, in particular, his long service with the Hartford Park project. Additionally, the staleness of the charge – the misconduct occurred almost three years ago – “diminishes the probative value of [Respondent's act] showing lack of present responsibility.” *In re. Gary M. Wasson*, HUDALJ No. 04-030-DB (August 5, 2004) *citing In re. Lynne Borrell*, HUDBCA No. 91-5907-D52, 1991 HUDBCA LEXIS 22 (September 20, 1991). The continued confidence implicitly shown by the PPD and the PHA in continuing to assign Respondent to the same project is a further mitigating factor that has been considered in determining an appropriate period of debarment. The commendatory remarks submitted as exhibits to Respondent's submission along with the candid testimony of Respondent's colleagues are also mitigative factors that were considered.
6. Respondent's past misconduct can be used to determine his present lack of responsibility. *See In re: Lan Associates, Inc.* 1991 HUDDEBAR LEXIS1,*32 (September 5, 1991), *quoting Schlesinger v. Gates*, 249 F.2d 111 (D.C. Cir. 1957).
7. Respondent's debarment serves the public interest and is not imposed as punishment for his wrongdoing. *See* 2 CFR 180.125.
8. Respondent's misrepresentation regarding use of the unit raises grave doubts with respect to his business integrity and personal honesty.
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. 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 period of eighteen months 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: 25 July '08



Henry S. Czauski
Henry S. Czauski
Debarring Official