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

In the Matter of:	*	
ROSEMARY KAPPES,	*	DOCKET NO. 08-3457-DB
Respondent.	*	

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice dated October 11, 2007 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent ROSEMARY KAPPES that HUD was proposing her debarment and immediate suspension 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 May 25, 2007, the date of the Limited Denial of Participation (LDP) issued to her by HUD's Denver Regional Office of Public Housing. The Notice further advised Respondent that the proposal to debar and immediately suspend her superseded the LDP. Respondent also was advised in the October 11, 2007, Notice that her proposed debarment and suspension were in accordance with the procedures set forth in 24 CFR part 24[1]. In addition, the Notice informed Respondent that her proposed debarment was based upon her conviction in the United States District Court, Central District of Utah.

Respondent's conviction followed her guilty plea to the offense of Health Care Fraud. The allegations are set out in a thirty-six-count indictment handed down against Respondent. In summary and in pertinent part, the indictment alleges that Respondent was employed by the Housing Authority of Salt Lake City ("Housing Authority"). As one of the conditions of her employment with the Housing Authority, she and her dependents received health care coverage, offered through a plan administered by Regence Blue Cross Blue Shield of Utah ("Regence"). The coverage was paid for by the Housing Authority, which received funding from HUD. The plan specified divorce as an

[1] HUD published a final rule on December27, 2007(72 FR 73484) that relocated and recodified 24 CFR part 24 as 2CFR 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. However, because this matter arose before publication of HUD's final rule, for the convenience of the reader, references herein will be to the regulations in their former location at 24 CFR part 24.

event that would automatically terminate an ex spouse's coverage. Respondent divorced her husband effective November 1, 1996, but intentionally failed to inform the Housing Authority. The Housing Authority continued until August 2004, to pay monthly insurance premiums under the plan to Regence to cover Respondent's ex spouse. As a result of Respondent's scheme, her ex spouse continued to receive benefits under the plan to which he was not entitled. The government adds that Respondent knew that she had an obligation to inform the Housing Authority of her divorce. Respondent had participated in the drafting of COBRA letters that explained to employees their rights in the event of divorce.

For Respondent's conviction on her guilty plea to one count of the indictment, Respondent was sentenced to probation for one day and ordered to do ten hours of community service.

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on January 16, 2008, before the Debarring Official's Designee, Mortimer F. Coward. Respondent participated by phone at the hearing, appearing *pro se*. Ana Fabregas, Esq. appeared on behalf of HUD. The record was kept open until January 31, 2008, for Respondent to submit further documentation in support of her defense. A conference call was held on February 12, 2008, pursuant to a motion filed February 1, 2008, by the government, seeking to clarify an issue related to Respondent's possible violation of the LDP because of her unsolicited contacts with housing authorities. The record closed on February12, 2008.

Summary

I have decided, pursuant to 24 CFR part 24, 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 two years from May 25, 2007, the date of issuance of the LDP. My decision is based on the administrative record in this matter, which includes the following information:

(1) The Notice of Proposed Debarment and Suspension dated October 11, 2007.
(2) A letter (with attachments) from Respondent to the Debarring Official dated October 29, 2007.
(3) A thirty-six-count indictment filed August 1, 2007, in the United States District Court, District of Utah, charging Respondent with the commission of several offenses.
(4) The Statement by Defendant in Advance of Plea of Guilty filed August 30, 2007, in which Respondent agreed to plead guilty to one count of the indictment.
(5) The Judgment in a Criminal Case entered against Respondent on August 31, 2007.
(6) The Government's Pre-Hearing Brief filed December 19, 2007 (including all attachments and exhibits thereto).
(7) Letter from Respondent addressed to the Debarment Docket Clerk, dated January 3, 2008.

(8) Numerous commendatory letters submitted on Respondent's behalf by colleagues, city and county leaders, and others.
(9) The digital recording of the January 16, 2008, hearing.

HUD's Arguments

HUD argues that Respondent, as the Executive Director of the Housing Authority, was an agent of the Housing Authority. The Housing Authority, as a recipient of HUD funds, was a participant in a covered transaction. Consequently, pursuant to 24 CFR 24.980, Respondent was also a participant in a covered transaction. The government also argues that Respondent's conviction for health care fraud provides cause for her debarment in accordance with 24 CFR 24.800(a)(1). Further, Respondent's conviction for fraud shows a lack of business integrity and honesty and is evidence of her lack of present responsibility. The government also contends that as the executive director of the Housing Authority, Respondent "owed a duty to ensure that Housing Authority funds were used properly." Instead, argues the government, Respondent intentionally kept her divorce secret "to obtain, at the expense of the Housing Authority, benefits to which she was not entitled." The government adds that Respondent knew that she had an obligation to inform the Housing Authority of her divorce. Respondent had participated in the drafting of COBRA letters that explained to employees their rights in the event of divorce.

The government urged the Debarring Official to consider the aggravating factors listed in 24 CFR 24.860, especially the fact that Respondent's fraud was committed over an eight-year period; that she willfully devised the scheme to defraud her employer; that Respondent has "failed to recognize the seriousness of her misconduct," based on Respondent's references to comments made by the sentencing judge who trivialized her crime; and Respondent's slowness in disclosing the full extent of her crime when the investigation began.

Accordingly, the government concludes that, based on the seriousness of Respondent's conduct and her own arguments, and the aggravating factors discussed above, "the public interest warrants [Respondent's] debarment for a three-year period."

Respondent's Arguments

Respondent acknowledges that there is cause for her debarment and expects to be debarred, but believes a three-year "term is excessive." Respondent testified that she takes responsibility for her actions and recognizes that allowing her ex-spouse to continue receiving coverage was wrong. Respondent further testified that she was actively seeking a solution to her legal problems. Respondent stated that she asked the Housing Authority Board members to determine from HUD, once she learned she was under investigation, what appropriate actions could be taken. Respondent notes that she was willing to take responsibility for her actions, thus she requested her Board's involvement long before she was interviewed by the FBI and OIG. Respondent's testimony is that, as soon as she was confronted by the FBI with the actual period that her wrongdoing spanned, she

"confessed" and they "did not have to beat it out of" her. Respondent states that she "did not run from any responsibility," but "proactively did everything to make it right," as a result suffering a financial loss by not opting to retire early. A fact, Respondent says, that speaks to her integrity. Respondent also testified that she offered to repay the premiums paid by the Housing Authority on behalf of her ex-spouse, and did repay $28,000.00, representing eight years of payments.

Respondent states that she has apologized to all parties affected by her wrongdoing, and asks the Debarring Official to accept her "profound, profound remorse and apologies for [her] actions." Respondent seeks leniency based on her "contributions to low-income families, the disabled, elderly and homeless, Salt Lake City, Davis County and the State of Utah [and her] 30+ years of distinguished public service." Respondent concludes by requesting that her proposed three-year debarment be reduced.

Findings of Fact

1. Respondent was the Executive Director [2]of the Housing Authority of Salt Lake City, a housing authority that received funding from HUD.
2. The Housing Authority paid for health care coverage on behalf of Respondent and her spouse.
3. Respondent's spouse was entitled to coverage only so long as he remained married to Respondent.
4. Respondent and her spouse divorced in 1999, but Respondent did not inform her employer, the Housing Authority.
5. The Housing Authority continued paying for coverage for Respondent's ex-spouse until 2004.
6. Respondent was fully aware, through her participation in the drafting of COBRA letters, that an ex-spouse's health insurance coverage provided by the Housing Authority terminated almost immediately on divorce.
7. Respondent, after being confronted with the evidence of her wrongdoing, cooperated fully with the investigation.
8. Respondent pleaded guilty and was convicted of one count of health care fraud.
9. Respondent was sentenced to probation for one day and ordered to do ten hours of community service.
10. Respondent reimbursed the Housing Authority for the premiums paid on behalf of her ex-spouse.
11. Respondent was issued a Notice of Limited Denial of Participation on May 25, 2007, effective for one year based on, among other things, allegations that she "engaged in irregularities in [her] past performance in a HUD program."
12. Respondent has received many accolades for her contributions and service to the housing industry in Salt Lake City and beyond.
13. Respondent acknowledges her wrongdoing and expresses deep remorse and regret for her actions.

[2] Respondent resigned from the Housing Authority during the pendency of the criminal matter.

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 24 CFR part 24.
2. Respondent's criminal conviction serves as the basis for her debarment.
3. Pursuant to 24 CFR 24.800, a conviction for fraud, *inter alia*, is a cause for debarment.
4. Respondent's repayment of the premiums paid on her ex-spouse's behalf and her remorse for her wrongdoing are mitigating factors in determining the appropriate period of debarment to be imposed. Additionally, Respondent's cooperation with the investigation is also a mitigating factor in determining her period of debarment. *See* 24 CFR 24.860.
5. Respondent's long and distinguished service in her community as attested to by the numerous commendatory letters received from, among others, the current executive director of the Housing Authority of Salt Lake City, the executive director of the Housing Authority of Carbon County, the director of the Division of Housing and Community Development of the State of Utah, the director of the Salt Lake City Corporation, the director of the Salt Lake County Community Resources and Development Division, the deputy director of Davis Community Housing Authority, City Council Members Eric Jergensen, Van Turner, and Carlton J. Christensen. *See* 24 CFR 24.845(b)(2).
6. Respondent's actions that led to her criminal conviction raise grave doubts with respect to her business integrity and personal honesty.
7. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
8. 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 24 CFR 24.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for a period of two years from May 25, 2007, the date of issuance of the LDP. 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: 3/21/08

Henry S. Czauski
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March 2008, a true copy of the DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.

Tammie M. Parshall

Tammie M. Parshall
Debarment Docket Clerk

HAND-CARRIED
Mortimer F. Coward, Esq.
Debarring Official's Designee

Maura Malone, Esq.
Ana Fabregas, Esq.
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FIRST CLASS MAIL
Rosemary Kappes
[redacted]