UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of: FRANK C. MADDOX Respondent.	HUDALJ 94-0091-DB Decided: February 15, 1995

Frank C. Maddox, *pro se*

Walter E. Warren, Esquire
For the Government

Before: Constance T. O'Bryant
Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arose pursuant to 24 C.F.R. Part 24, Subpart G. On August 8, 1994, Nicholas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner of the U.S. Department of Housing and Urban Development ("HUD"), notified Respondent Frank C. Maddox that, to protect the public interest, consideration was being given to debar him from further participation in primary covered transactions and lower tier covered transactions as either a participant or principle at HUD and throughout the federal government, and from participating in procurement contracts with HUD for a period of three years from the notice date. In addition, pending final determination of the debarment, Respondent was temporarily suspended from further participation in such transactions and contracts.

The basis of the suspension and proposal of debarment was that Respondent had been convicted in the United States District Court for the Western District of Missouri, Western Division, for violation of Title 18, §§ 2314 and 2, United States Code. Since Respondent had participated in a covered transaction, and was reasonably expected to participate in covered transactions in the future, he was deemed to be a participant and a

principle, as defined in Title 24, Code of Federal Regulations, §§ 24.105(m) and (p). On August 15, 1994, Respondent exercised his right to appeal the Assistant Secretary's decision by filing an appeal with HUD.

Because HUD's action is based solely on a conviction, the hearing in this case was limited by 24 C.F.R. § 24.31(b)(2)(ii) to submission of documentary evidence and written briefs. On October 24, 1994, I issued a Notice Of Hearing And Order which established a schedule for the filing of briefs. In compliance with that Order, HUD filed its Government's Brief In Support Of Suspension And Debarment ("Government's Brief") on November 21, 1994. Respondent filed his reply captioned "Respondent Appeal of Superior (sic) and Debarment" ("Respondent's Rebuttal"), on December 21, 1994.[1] On January 19, 1994, the government filed its response To Respondent's Rebuttal. ("Government's Response").

Findings of Fact

On March 30, 1994, Respondent was indicted in the United States District Court

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[1]Respondent's rebuttal was due on December 21, 1994. It was not received timely. On January 6, 1995, the Government moved to dismiss his appeal. Respondent's rebuttal (1-page) was subsequently received on January 10, 1995. However, it was postmarked December 21, 1994, and although it had been addressed to the Office of Administrative Law Judges at HUD, it had been misdirected to the Office of Administrative Law Judges at Labor. On January 11, 1995, I accepted the filing as timely and denied the Government's motion.

for the District of Missouri, Western Division, and charged with violation of 18 U.S.C. §§ 2314 and 2.[2] On April 4, 1994, Respondent entered a plea of guilty to count 7 of an eight count indictment. Count 7 charged aiding and abetting interstate transportation of fraudulent securities. [3]

Count 7, to which Respondent plead guilty, charged that on or about August 3, 1988, in the Western District of Missouri, Mr. Maddox, along with two other defendants:

> did transfer and cause to be transferred in interstate commerce money of a value of $5000 or more, knowing the same to have been taken by fraud, that is, Defendants did cause a wire transfer of money in the amount of $50,000 to be transferred in interstate commerce from Kansas City, Missouri to Atlanta, Georgia, for deposit into an account under the control of Defendant MADDOX, which account bore the name Maddox and Associates, and at the time of said transfer, Defendants knew that said money had been taken by fraud, in furtherance of the scheme to defraud as set forth in paragraphs 1 through 4 of Count One of this Indictment; all in violation of Title 18, United States Code, §§ 2314 and 2. *Indictment*.

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[2]*Indictment,* District Court of the United States, District of Missouri, Western Division of March 30, 1993. *U. S. v. Frank Christian Maddox,* Criminal No. 93-00048-01/03-CR-W-8. GX#3.

[3]*Judgment in a Criminal Case,* United States District Court, District of Missouri, Western Division, April 4, 1994. GX#2.

A reading of Count 1 of the Indictment shows that Mr. Maddox and two others participated in an illegal scheme to defraud certain individuals who were potential bond investors, the African Methodist Episcopal Church of Atlanta (AME Church) and its church board members. One of the other defendants had purchased Sister's Hospital in St. Joseph, Missouri, for the sum of $1.00. This building was unused, run down and not capable of producing income without major capital investment for improvements. The defendants plotted to obtain fraudulent appraisals on it, conduct misleading transfers and prepare a fraudulent prospectus to inflate the value of this property and to deceive investors concerning its use as security for some $2.9 million worth of bonds to be sold to them. The conspirators would also falsely represent that a certain church corporation would pay interest on the bonds and act as guarantor in the event of default. They also conspired to falsely represent that the corporation issuing the bonds was a "not for profit" corporation and the bonds would be subject to more favorable tax treatment by the Internal Revenue Service. They further agreed that upon the sale of the bonds they would convert the proceeds to their own use, and they arranged their corporate entities so as to conceal the money they received from the IRS. *Indictment, at 1-4, GEX-3*. The money transferred as stated above and alleged in Count 7 of the indictment was taken by fraud pursuant to the scheme described above. *Indictment, at 8.*

Jurisdiction

HUD's authority to sanction persons under 24 C.F.R. Part 24 is defined in the regulations at 24 C.F.R. § 24.110(a). Respondent has presented no challenge to jurisdiction. He has, instead, presented argument in mitigation of the three-year suspension and debarment. In his appeal, he urges that "dual standards of punishment" not be used in this case, but rather that he be allowed "to continue to work in the community and housing." *Respondent's Rebuttal.*

Cause for Debarment

The basis for suspension and debarment included in HUD's notice to the Respondent, *Government's Brief,* is Respondent's judgment and conviction of Count 7 of the indictment in the U. S. District Court for Missouri, Western Division. *Judgment, Indictment.* Upon a plea of guilty to that count, Respondent was sentenced to a total of three years probation and payment of restitution of $600,000.00 and payment of a fine ranging from $6,000.00 to $60,000.00, although payment of the fine was waived because of inability to pay and the substantial amount of the restitution. *id.*

Respondent's plea of guilty, and his subsequent conviction, is conclusive as a basis

of debarment. 24 C.F.R. Part 24, as set forth in 24 C.F.R. § 24.305(a)(1),(a)(3) and (4) provides that debarment may be imposed for:

> (a) Conviction of or civil judgment for:
>
> > (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
> >
> > * * *
> >
> > (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or
> >
> > (4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

The debarment proceeding in this case is based on the above-shown criminal conviction of Respondent for aiding and abetting interstate transportation of fraudulent securities. Although cause for debarment must be established by a preponderance of the evidence, where the debarment is based upon a conviction, the evidentiary standard is deemed to be met. 24 C.F.R. § 24.313(b)(3). The Government, by submitting documentary evidence of Respondent's conviction in the form of a copy each of the *Indictment* and *Judgment*, has met its burden of demonstrating cause for Respondent's debarment. Under the regulation found at 24 C.F.R. § 313(b)(4), the burden then shifts to the Respondent to show mitigating circumstances. Further, because Respondent's criminal conviction is cause for his debarment, it is also cause for his suspension. 24 C.F.R. § 24.405(a)(2).

In his reply to the Government's brief, Respondent sets forth his punishment handed down by the U. S. District Court. He notes that the Court departed from the sentencing guidelines to give him a less severe sentence. It waived a potentially hefty fine and did not require incarceration. *Respondent's Rebuttal*. *See also Judgment.* He asserts that a three-year suspension in addition to that punishment is "harsh and unusual inasmuch as the Court decided to give him another chance." He further states that he feels that he is "as much as a victim in this case as any one."[4] Further, Respondent states

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[4]Respondent does not explain what he means by this statement. I can find no basis for it on the evidence before me.

that he "has served the African Methodist Episcopal Church for 40 years without a spot on his record and is still serving the Church." The reasons he has offered do not constitute mitigating circumstances which would justify not taking the action HUD has proposed.

Responsibility and the Public Interest

It is the policy of the federal government to do business only with responsible persons. 24 C.F.R. § 24.115(a). The debarment process protects governmental interests not safeguarded by other laws. It is not intended as a punishment. *Id*. at 24.115(b); *See also Joseph Constr. v. Veterans Admin*., 595 F.Supp. 448, 452 (N.D. Ill. 1984). Government and public interests are safeguarded by precluding persons who are not responsible from participating in government programs. *See Agan v. Pierce*, 576 F. Supp. 257 (N.D. Ga. 1983); and *Stanko Packing Co., Inc. v. Bergland*, 489 F. Supp., 947, 948-49 (D.D.C. 1980).

The term "responsibility" as used in the regulations governing suspension and debarment, is a term of art which includes the honesty, integrity and ability to perform of the participant. *In re Chesley Doak,* HUDBCA No. 89-4364-D12 (May 24, 1989); *see also Roemer v. Hoffman*, 419 F. Supp. 130 (D.D.C. 1976). It encompasses the projected risk of a person doing business with HUD. The primary test for debarment is present responsibility, although a finding of present lack of responsibility can be based on past acts. *Schlesinger v. Gates*, 249 F. 2d 111 (D. C. Cir. 1957), *cert. denied,* 355 U. S. 939, (1958). The charge for which Respondent Maddox was convicted is very serious and is indicative of his lack of present responsibility, honesty and integrity and demonstrates that Respondent poses a risk to the integrity of HUD programs.

Deterrence

Deterrence is also a legitimate purpose of debarment. *In re Arc Plumbing and Heating Corporation,* HUDBCA No. 88-3459-D68, Docket No. 88-1273-DB (Feb. 2, 1990); *In re Rudolph J. Hymer,* HUDALJ 90-1552-DB (Mar. 14, 1991). Also, while debarment cannot be imposed for punitive purposes (24 C.F.R. § 24.115), the inadvertent punitive effect of debarment does not transform it into a purely punitive sanction. *Janik Paving and Construction, Inc. v. Brock,* 828 F. 2d 84, 91 (2d Cir. 1987). The deterrent effect of debarment and suspension is an important reason for HUD to carry out its mandate of protecting the public interest by suspending and debarring those persons found to be presently irresponsible. *See In re Dennis I. Ackerman*, HUDALJ 87-1201-DB

(Feb.26, 1988); and *In re Theodore A. Hummell*, HUDALJ 84-929-DB (June 1, 1984).

In this matter, Respondent was charged with, plead guilty to, and convicted of aiding and abetting interstate transportation of fraudulent securities, as described. This meets the Government's burden of proof of showing lack of present responsibility sufficient to justify debarment. And, debarment in this case would promote confidence in the federal government and serve as deterrence to others who might be tempted to engage in a similar scheme to defraud. Respondent states that consideration should be given to the fact that he has served the African Methodist Episcopal Church "for 40 years without a spot on his record and is still serving the Church." *Respondent's Rebuttal.* However, Respondent admitted by his plea of guilty that he set out to deceive investors who placed their trust in him. These investors included that same Church and its board members. He schemed and carried out fraudulent activities in an attempt to convert very large sums to his own use. If Respondent were to escape debarment or suspension in this case, he as well as others could perceive HUD to condone his actions, and they may be led to believe that HUD's lack of forceful action means that HUD itself does not consider Respondent's prior actions to be serious. *See In re Richard G. Belin*, HUDALJ 94-0058-DB (1994). Respondent's criminal actions are indeed serious, and it is imperative that a strong message be sent to Respondent and the public that engaging in such a scheme to defraud will not be tolerated. For these reasons, the suspension pending the outcome of debarment proceedings and the debarment itself are deemed to constitute an appropriate governmental response, and they will be upheld in the order issued below.

Conclusion and Order

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that cause exists for the three-year debarment of Respondent Frank C. Maddox, and for his suspension during the pendency of this determination.

So **ORDERED**.

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CONSTANCE T. O'BRYANT
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DETERMINATION issued by CONSTANCE T. O'BRYANT, Administrative Law Judge, HUDALJ 94-0091-DB, were sent to the following parties on this 15h day of February, 1995 in the manner indicated:

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Chief Docket Clerk

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