

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

In the Matter of:

**WILLIAM H. AUBREY, AKA
BILL AUBREY and
LODGEBUILDER, INC.,**

**Docket Nos. 12-3853-DB(S)
12-3854-DB(S)**

Respondents.

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SUSPENDING OFFICIAL'S DETERMINATION

Introduction and Background

By separate Notices of Suspension dated January 10, 2012 (“Notice or “Notices”), the Department of Housing and Urban Development (“HUD”) notified Respondents **WILLIAM H. AUBREY, AKA BILL AUBREY and LODGEBUILDER, INC.** of their 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. The Notices further advised Respondents that their suspension was in accordance with the procedures set forth in 2 CFR parts 180 and 2424.

Additionally, Respondent Aubrey was advised that his suspension is based upon a Superseding Criminal Indictment filed in the United States District Court for the District of Nevada charging him with violation of 18 U.S.C. §§ 1371 (Conspiracy), 666(a)(2) (Bribery Related to Federal Program Funds), 1163 (Embezzlement and Theft from Indian Tribal Organizations), and 2 (Aiding and Abetting). The Notice further informed Respondent Aubrey that it is alleged that he illegally provided casino gaming tokens to an official of the Navajo Housing Authority (NHA) in exchange for NHA contract awards to entities to develop NHA projects from which he benefitted. Respondent Aubrey also was alleged to have converted illegally NHA funds to his own personal use.

The Notice also advised that Respondent Lodgebuilder’s suspension was based on information that Lodgebuilder was an affiliate of Aubrey’s. The Notice informed Respondent Aubrey that the indictment constitutes adequate evidence on which to base his suspension under 2 C.F.R. §§ 180.700 and 180.705. The Notice added that Respondent Aubrey’s immediate

suspension is necessary to protect the public interest and that the Government faces a serious and immediate risk of harm if Respondent is permitted to continue doing business with the Government. Respondents were advised also that their suspension was for a temporary period pending the outcome of the criminal proceedings and any related debarment action.

A telephonic hearing was held on June 12, 2012, before the Suspending Official's Designee, Mortimer F. Coward. Respondent appeared *pro se*. Andrea M. Lee, Esq., assisted by Ana Fabregas, Esq., appeared on behalf of HUD.

Summary

I have decided, pursuant to 2 C.F.R. part 180, to affirm and to continue Respondents' suspension from participation in procurement and nonprocurement transactions as participants or principals with HUD and throughout the Executive Branch of the Federal Government. My decision is based on the administrative record in this matter, which includes the following information:

1. The Notices of Suspension dated January 10, 2012.
2. A letter dated February 9, 2012, from Respondent, addressed to the Director of the Compliance Division, stating his opposition to the suspension and requesting a hearing
3. A letter dated May 22, 2012, from Respondent, addressed to the Debarring Official's Designee, requesting a review by the Department of his February 9, 2012, letter.
4. A letter dated June 18, 2012, from Respondent, addressed to the Docket Clerk that serves as Respondents' post-hearing submission.
5. The Government's Brief in Support of Suspension, filed March 20, 2012 (including all exhibits and attachments thereto).
6. The Government's Response to Respondent's Submission of Additional Documents filed July 3, 2012.

Government Counsel's Arguments

The Government states, in its recitation of background facts, that NHA distributed Indian Housing Block Grant (IHBG) funds to the Fort Defiance Housing Corporation ("Fort Defiance"), which then contracted with Respondent Lodgebuilder to develop low-income housing for NHA. Chester Carl was then the CEO of NHA and Respondent Aubrey was the owner of Lodgebuilder. During the period June 2003 to June 2004, Respondent submitted 13 requests for IHBG funds to NHA totaling \$9,156,100.00, for payment for work performed by subcontractors at an NHA development, Chilchinbeto. Beginning in July 2004, NHA contracted directly with Lodgebuilder to develop housing projects using IHBG funds.

The Superseding Indictment returned September 13, 2011, alleges that Carl and Respondent Aubrey conspired to engage in a bribery scheme so that Respondent Lodgebuilder could receive favorable treatment from NHA. The Indictment also alleges that Respondent

Aubrey bribed Carl with \$6,000.00 in casino tokens. A further allegation is that Respondent, rather than using the funds from NHA to pay vendors and subcontractors, deposited the funds in his personal account for his own use. Two other counts in the Indictment allege that Respondent converted on two occasions in June 2004 a total of \$191,920.00 in IHBG funds.

Counsel argues that Respondent is subject to the debarment and suspension regulations because he was a contractor receiving HUD grant funds from NHA, thus Respondent was a participant in a covered transaction, citing 2 C.F.R. §§ 180.210, 180.970(a), and 180.980. Respondent is also a principal in a covered transaction as he had control as the owner of Lodgebuilder over the Chilchinbeto project, a recipient of HUD funds. *See* 2 C.F.R. § 2424.995.

There is adequate evidence to support Respondent Aubrey's suspension because, as provided in 2 C.F.R. § 180.700(a), he is charged with offenses listed under 2 C.F.R. § 180.800(a) which include the "commission of a . . . criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction," the "commission of embezzlement," and the commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects . . . present responsibility."

Specifically, Respondent was indicted for conspiracy, bribery, and embezzlement of funds, and aiding and abetting, conduct, counsel states, that falls within the debarment and suspension regulations. Counsel adds that the allegations in the Indictment reflect Respondent "Aubrey's lack of honesty, integrity, and responsibility" [and] evidence his "lack of respect for the law and the IHBG program, from which a need for immediate protection can be inferred." Counsel notes that Respondent Aubrey's suspension provides cause for Respondent Lodgebuilder's suspension. The Respondents are affiliates in that Aubrey controls or has the power to control Lodgebuilder. *See* 2 C.F.R. § 180.905. Further, Respondent Lodgebuilder was named in the Notice and provided an opportunity to respond. As such, Respondent's suspension may extend to his co-respondent. *See* 2 C.F.R. § 180.625.

In addressing Respondent's claim that the allegations against him are false, counsel points out that, because Respondents' suspension is based on an indictment, he does not have an opportunity in this proceeding to challenge the validity of the indictment. *See* 2 C.F.R. § 180.8735(a)(1). Counsel also argues, again in response to Respondent's claim, that the causes for Respondents' suspension and debarment in 2008 are different from the causes asserted in the January 10, 2012, Notice. The 2008 debarment did not allege that Respondent misused funds from NHA contracts, or that he engaged in a scheme to bribe officials, or that he embezzled funds for his own use. Counsel concludes that, based on the foregoing, the suspension of Respondents should be upheld.

Respondent's Arguments

Respondent argues that his suspension is a “repeat of the same suspension and debarment [by HUD] that began in November 2006 and continued for three years.”¹ Respondent further argues that HUD has no justification for suspending him because he has not been found guilty of the charges in the indictment that does not “have one true allegation in the five counts contained in the indictment.”

The allegation that he bribed Chester Carl and that he illegally provided gaming tokens in exchange for NHA contacts is false, Respondent asserts. According to Respondent, Chester Carl makes no award of NHA contracts and does not serve on any of the committees involved in the review process. Respondent contends that the charge is false that Lodgebuilder developed and managed NHA projects. Lodgebuilder, in fact, developed projects for FDHC.

Similarly, Respondent rejects the charge that he converted NHA funds for his personal use. NHA funds, Respondent explains, were paid to FDHC, and FDHC paid Lodgebuilder. The payment, Respondent goes on to explain, was for work done a month before FDHC paid Lodgebuilder; therefore, those funds were not the property of NHA but the property of Lodgebuilder, as Respondent sees it.

Respondent contends that the indictment is based on “lies” and false information provided by the OIG special agent who conducted the investigation, and the agent’s withholding of exculpatory information. Respondent denies that a substantial part of the money he received that should have gone to contractors but, instead, went to him for his personal use came from HUD funds. According to Respondent, the agent was able to identify almost \$6 million of non-HUD funds in his account during the same period in which it is alleged he spent \$2.2 million on “gambling and other sundry expenses.”

Respondent states that the allegation Carl was fully aware that he, Respondent, controlled FDHC and that FDHC was used as a pass through for grant funds is another lie in the agent’s testimony before the grand jury. Respondent accuses the agent of attempting to mislead the grand jury in his testimony by implying Carl provided contracts to FDHC that benefited Respondent. The agent well knew, Respondent asserts, that Carl could only sign contracts that had been preapproved by several committees.

Respondent argues that the agent, had he read the casino documents properly, would not have made false claims with respect to how much of his chips Carl used on a gambling trip they made together. The agent originally testified that Carl cashed in more than \$91,000.00. The superseding indictment, based on the agent’s testimony, now alleges that it is \$6,000.00. Respondent argues that the agent failed to disclose in his testimony that Lodgebuilder was owed \$3.3 million of the \$12.6 million contract to develop Chilchinbeto when FDHC went bankrupt.

¹ Respondents were suspended and then debarred from November 14, 2006 for three years. Among the charges that led to Respondents’ debarment was Respondent Aubrey’s providing gratuities in the form of casino chips to Chester Carl and performing unpaid work on Chester’s house.

Respondent again accuses the agent of lying in the agent's response to a question from a grand juror. The agent testified that there were no other funds coming into Respondent's account other than IHBG funds. According to Respondent, the agent's forensic accountant identified over \$4 million deposited into Respondent's account from other sources. See Respondent's Ex. 3 of Respondent's letter of February 9, 2012. However, the agent failed to inform the grand jury of the millions of non-HUD funds then in Respondent's bank account.

Respondent further accuses the agent of testifying falsely as he responded to a question regarding the amount of funds diverted from the Chilchinbeto project to Respondent's personal expenses in excess of what Respondent was due as a contractor. According to Respondent, the agent's response that HUD's regulations state that the "allowable profit is to be reasonable" is a lie. Respondent argues "[t]here is absolutely no HUD regulation that describes the profit of a contractor or developer that is in a fixed contract" as opposed to a cost plus contract, which Lodgebuilder and FDHC did not have.

Respondent again challenges the agent's truthfulness for testifying that Respondents were given preferential treatment because of Carl's relationship with Respondent Aubrey, resulting in subcontractors not being paid because "the checks and balances were effectively skirted."

The agent's veracity again is called into question by Respondent for the agent's testifying that the grant funds were "wired to the NHA account and then either wired or paid by check to the personal account of Aubrey." Respondent contends that all the documents show NHA wrote checks only to FDHC. FDHC, in turn, wrote checks to Lodgebuilder, at which time "it became Lodgebuilder's money under Aubrey's control."

Respondent questions the thoroughness of the six-year investigation of this matter. The agent testified that the investigation revealed that monies the investigators thought were paid to Therm-O-Flex, a sub-contractor on the Chilchinbeto project, "it turns out it was not." According to Respondent, "Therm-O-Flex provided the stucco materials for all of the Chilchinbeto homes, [and] these were all homes in the contracts between FDHC and Lodgebuilder."

Respondent states that the agent lied when he testified that IHBG funds were disbursed to Respondent on the South Shiprock Houses, Inc. contract, "a deal Chester Carl entered NHA into." Respondent argues that Carl's approval of payments on this contract, despite the fact that, as the agent testified, it was evident to Carl the payment "requests did not have the proper backup documentation to show why the money was needed," is "a complete lie by" [the agent] . . . because [an] NHA field inspector approved this request."

Respondent denies that there was an issue of comingling of funds which Carl knew, yet Carl "continued to authorize NHA to pay the [IHBG] funds to Fort Defiance," according to the agent's testimony. Respondent asserts that, contrary to the agent's testimony, he never paid Carl's travel or motel rooms. Respondent states that he has the agent's declaration of his interview with Carl. Carl never acknowledges, as the agent testified, receiving Respondent's money from the casino for Carl's personal use.

Respondent concludes that “the entire indictment is caused by lies . . . and fraudulent investigations or documentation” from the agent and his staff. Respondent requests that HUD “immediately dismiss [his] suspension” as he has “already served a three-year debarment for these exact same issues.”

Findings of Fact

1. Respondent Aubrey at all relevant times was the owner and operator of Lodgebuilder, his co-respondent.
2. Lodgebuilder was a for-profit corporation that built low-income housing for Fort Defiance Housing Corporation.
3. FDHC was a non-profit development corporation that received IHBG funds from the Navajo Housing Authority.
4. NHA was an entity under the control of the Navajo Indian Nation that received its funding pursuant to the Native American Housing Assistance and Self-Determination Act (NAHASDA).
5. FDHC used the funds received from NHA to satisfy its commitments to Lodgebuilder for construction of the Chilchinbeto and other housing development.
6. At all times relevant, Chester Carl was the Executive Director of NHA.
7. Chester Carl and Respondent Aubrey at times gambled together in Las Vegas.
8. Respondent Aubrey shared his gaming chips with and gave access to his casino credit to Respondent Aubrey.
9. Respondent performed work on Carl’s house that was paid for by Lodgebuilder.
10. As president of the NHA, Carl had final approval and signing authority for contracts with Lodgebuilder.
11. Respondent Aubrey and Chester Carl were indicted for Conspiracy, Bribery Relating to Federal Program Funds, Embezzlement and Theft from Indian Tribal Organizations, and Aiding and Abetting.
12. Respondent Aubrey was suspended and debarred for three years in 2008 for providing gratuities to Carl Chester, and Lodgebuilder was debarred as Aubrey’s affiliate.

Conclusions

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

1. Respondent is subject to the suspension regulations because, as a recipient of IHBG funds he “has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction.” 2 C.F.R. § 180.120.
2. Respondent was a “participant,” defined as “any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.” 2 C.F.R. § 180.980.
3. In executing contracts as the owner of Lodgebuilder with FDHC, a recipient of federal funds through the IHBG program, Respondent entered into a covered transaction.
4. A “covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part.” See 2 C.F.R. 180.200.

5. Respondent also was a “principal” as he was the owner of Lodgebuilder, thus a person who had a “critical influence on, or substantial control over a covered transaction.” 2 C.F.R. § 2424.995.
6. Respondent’s indictment for bribery and embezzlement, and other offenses cognizable under 2 C.F.R. § 180.800, “constitutes adequate evidence” to support his suspension. See 2 C.F.R. §§ 180.700 and 705(b).
7. Respondent Aubrey’s actions compromised the integrity of the IHBG program. Respondent’s personal relationship and gambling activities with Chester Carl raise questions with respect to Carl’s judgment and objectivity as the CEO of NHA who approved contracts from which Respondents benefitted..
8. Respondent’s actions are not consistent with a person who is responsible and who will act with honesty and integrity in conducting business with HUD. See 2 C.F.R. § 180.125.
9. Respondent’s actions that led to his indictment persuade me that if “immediate action to protect the public interest,” 2 C.F.R. § 180.705(c), is not taken, there is a risk of a repeat of similar actions.
10. As indicated above, Respondent’s indictment, and the allegations set forth therein, provides the necessary quantum of evidence to warrant Respondent’s suspension.
11. The regulations are clear that a suspension can be based on an indictment. See 2 C.F.R. § 180.700.
12. Respondent’s detailed response and attempted rebuttal of the allegations in the indictment, through his attempted impeachment of the special agent’s grand jury testimony, is misplaced. A suspension proceeding does not afford a respondent an opportunity or a forum to challenge a criminal indictment. See, e.g., 2 C.F.R. § 180.735(a)(1).
13. Respondents’ previous debarment is no bar to the prosecution of the instant matter because the charges in the first debarment action are not the same as the charges at issue in this suspension action.²
14. Lodgebuilder is an affiliate of Aubrey’s and is subject to suspension based on its affiliation status. See 2 C.F.R. §§ 180.625 and 180.905.
15. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
16. 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.

² In the previous debarment action, Respondent Aubrey was found to have provided gratuities in the form of casino chips to Chester Carl and to have performed unpaid work on Carl’s house. These actions were held to violate NHA’s conflict of interest policies as well as the IHBG program requirements under which these policies were adopted. In the instant action, in contrast, Respondent Aubrey is suspended pursuant to an indictment charging him with criminal offenses, including bribery, embezzlement, theft, and conspiracy.

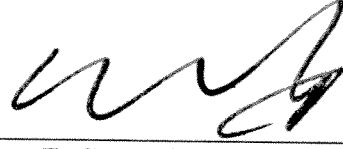
CONCURRENCE:

In the Matter of: WILLIAM H. AUBREY– DOCKET NO. 12-3853-DB(S)

And

LODGEBUILDER, INC. – DOCKET NO. 12-3854-DB(S)

Dated: August 14, 2012



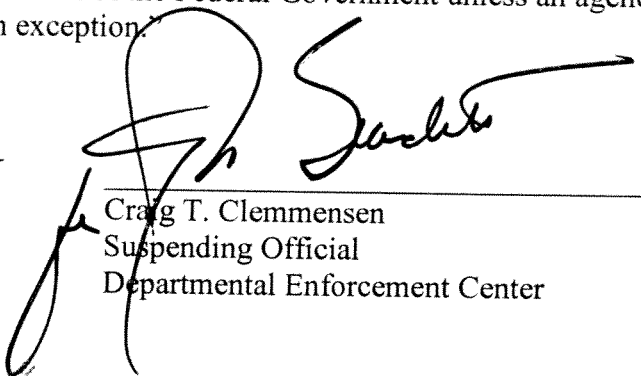
Mortimer F. Coward
Suspending Official's Designee

Determination

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined to affirm and continue the suspension of WILLIAM H. AUBREY and LODGEBUILDER, INC. from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government. The suspension 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: _____

8/17/12



Craig T. Clemmensen
Suspending Official
Departmental Enforcement Center

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August 2012, a true copy of the
SUSPENDING OFFICIAL'S DETERMINATION was served in the manner indicated.

Ronald Houser for

Deborah Valenzuela
Debarment Docket Clerk
Departmental Enforcement Center

HAND-CARRIED

Mortimer F. Coward, Esq.
Suspending Official's Designee

Andrea M. Lee, Esq.
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CERTIFIED MAIL

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