

NEW JERSEY HOUSING FINANCE AGENCY,
Petitioner,
v.
**JAMES CANINO, METRO HANDYMAN
MAINTENANCE CORPORATION,
EXCEL PROPERTIES CORPORATION,
A. J. TENWOOD ASSOCIATES, INC.,
OVERLOOK TERRACE MANAGEMENT
CORPORATION AND PARKVIEW
MANAGEMENT CORPORATION,**
Respondents.

Initial Decision: March 8, 1983 Final Agency Decision: May 8, 1983

**APPROVED FOR PUBLICATION BY THE OFFICE OF
ADMINISTRATIVE LAW
PRIOR TO JULY 1, 1984**

SYNOPSIS

The New Jersey Housing Finance Agency sought to immediately suspend and proposed to debar respondent from agency contracting for five years because of Federal criminal convictions.

The administrative law judge assigned to the case rejected respondent's argument that the agency was unable to immediately suspend respondent from contracting before the exhaustion of the appeal of respondent's convictions and pending a hearing on debarment. The judge noted that immediate suspensions pending hearings had been constitutionally approved in other contexts. In addition, the judge concluded that the crimes of which respondent had been committed, *i.e.* mail fraud, fraud by wire and conducting affairs of an enterprise through a pattern of racketeering clearly evidenced a lack of business integrity and honesty within the meaning of *N.J.A.C. 5:80-4.2(a)(2)* and thus were sufficient grounds for debarment.

The judge also found that the five named corporate respondents were affiliated with respondent within the meaning of *N.J.A.C. 5:80-4.4(a)(4)* and were thus also subject to debarment.

Accordingly, the administrative law judge ordered a five-year debarment effective from the date of suspension.

The agency adopted the judge's initial decision as its own.

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Robert O. Meyer and Gary R. Backinoff, Deputy Attorneys General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Warren J. Kaps, Esq., for respondent (Kaps & Stern, attorneys)

Initial Decision

OSPENSON, ALJ:

This matter is a hearing on action by the New Jersey Housing Finance Agency (NJHFA) suspending and proposing to debar and exclude for five years James M. Canino and five alleged corporate affiliates from New Jersey Housing Finance Agency contracting, pursuant to authority of the *New Jersey Housing Finance Agency Law of 1967, N.J.S.A. 55:14J-1, et seq.*, and regulations promulgated thereunder in *N.J.A.C. 5:80-4.1 et seq.* Notice thereof to respondents on November 9, 1981 was posited on Canino's criminal convictions in United States District Court for the District of New Jersey, then presently under appeal, of "conspiring to commit mail fraud and fraud by wire (Count 1); mail fraud (Counts 2 through 8 and 16); fraud by wire (Counts 9 through 15); conducting affairs of an enterprise through a pattern of racketeering (Count 20)," all of which convictions were said to be grounds for suspension and/or debarment of Canino and affiliates within the meaning of *N.J.A.C. 5:80-4.2(a)(2); 5:80-4.4(a)(4); and 5:80-4.5.*

On December 7, 1981 respondents requested a hearing on the debarment proceeding (no specific appeal was made from the action of suspension); and the matter was transmitted by New Jersey Housing Finance Agency to the Office of Administrative Law on December 28, 1981 for hearing and determination as a contested case in accordance with *N.J.S.A. 52:14F-1 et seq.*

As established in the pre-hearing order, the issues¹ are as follows:

- A. Before exhaustion of appeal by respondent Canino, may the Housing Finance Agency immediately and temporarily, until hearing on debarment and exclusion for conviction of crime, constitutionally suspend respondents from NJHFA contracting?
- B. Do respondent's convictions indicate "a lack of business integrity or honesty," within the meaning of *N.J.A.C. 5:80-4.2(a)(2)*?

¹ The parties have stipulated that suspension and proposed five year debarment of respondents implicates only future NJHFA contracting and not performance of contracts in place. See *N.J.A.C. 5:80-4.8.*

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- C. If so, should respondent Canino be debarred and excluded from NJHFA contracting for five years?
- D. Are the five respondent corporations affiliated with respondent Canino within the meaning and prohibition of *N.J.A.C.* 5:80-4.1, 4.4(a)(4)?

FINDINGS OF FACT

Based on evidence and testimony adduced in hearing, and upon submission of proposed findings of fact submitted by the deputy attorney general on behalf of NJHFA, there having been no counter-proposals submitted by respondents, I hereby make the following **FINDINGS OF FACTS**:

1. James Canino was convicted of various counts of conspiring to commit mail fraud and fraud by wire, and conducting affairs of an enterprise through a pattern of racketeering activity in United States District Court, District of New Jersey, on July 23, 1981.
2. Judgment of conviction of the United States District Court, District of New Jersey, was affirmed by the United States Court of Appeals, Third Circuit, on April 14, 1982.
3. James Canino owns 50 per cent of Parkview Management Corporation.
4. James Canino was President of Parkview Management Corporation from October 1973 until May 1982.
5. The Estate of Alvin Raphael owns 50 per cent of Parkview Management Corporation.
6. By his admission, James Canino is affiliated with Parkview Management Corporation.
7. Parkview Management Corporation is an affiliate of James Canino because James Canino has the power to control it.
8. June Canino, James Canino's wife, owns 50 per cent of Excel Properties Corporation.
9. The Estate of Alvin Raphael owns 50 per cent of Excel Properties Corporation.
10. James Canino was President of Excel Properties Corporation from January 1974 until May 1982.
11. New Jersey Housing Finance Agency (hereinafter NJHFA) staff viewed James Canino and Alvin Raphael as the controlling interest behind Excel Properties Corporation.

12. Key NJHFA staff members have never met or done any business with June Canino.
13. Excel Properties Corporation has an ownership interest in the Overlook and Parkview Housing Projects.
14. James Canino was involved in discussions with NJHFA staff concerning return on equity and release of funds to the owners of Overlook Projects through the summer of 1982.
15. James Canino was engaged in discussions with NJHFA staff members concerning a brick popping problem of Overlook Housing Project through the date of the hearing in the within matter.
16. James Canino disclaimed any ownership interest in the Overlook Project. Nevertheless, he continued to speak for the owners of Excel Properties Corporation, which is a tenant in common with a 50 per cent ownership interest in Overlook Project, through the summer of 1982.
17. Excel Properties Corporation is an affiliate of James Canino because James Canino had the power directly or indirectly to control it, personally and/or through a spousal relationship with one of its owners, June Canino.
18. Excel Properties Corporation owns 100 per cent of Metro Handyman Maintenance Corporation.
19. James Canino was president of Metro Handyman Maintenance Corporation from 1971 through May 1982.
20. James Canino owned 50 per cent of Metro Handyman Maintenance Corporation prior to June 1980.
21. Metro Handyman Maintenance Corporation was an affiliate of James Canino because James Canino had the power to control it.
22. James Canino was president of A. J. Tenwood Associates, Inc. from its inception to the present time.
23. A. J. Tenwood Associates, Inc. is a general contracting firm that constructed Parkview Towers project.
24. James Canino initiated a lawsuit to collect accounts receivable for A. J. Tenwood Associates, Inc.
25. By his admission James Canino is affiliated with A. J. Tenwood Associates, Inc.
26. A. J. Tenwood Associates, Inc. is an affiliate of James Canino because James Canino has the power to control it.

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27. James Canino has a 50 per cent ownership interest in Overlook Terrace Management Corporation. The Estate of Alvin Raphael has a 50 per cent ownership interest in Overlook Terrace Management Corporation.
28. James Canino was president of Overlook Terrace Management Corporation from 1969 through May, 1982.
29. By his admission James Canino is affiliated with Overlook Terrace Management Corporation.
30. Overlook Terrace Management Corporation is an affiliate of James Canino because James Canino has the power to control it.
31. Hyman Wolborsky was hired by James Canino in February 1980 as controller of Parkview Management Corporation. He was asked to operate all of the respondent corporations.
32. Hyman Wolborsky has been controller of A. J. Tenwood Associates, Inc. from February 1980 until the present time.
33. James Canino called a meeting of the Board of Directors of Metro Handyman Maintenance Corporation, Excel Properties Corporation, Overlook Terrace Management Corporation, and Parkview Management Corporation. James Canino, June Canino, and Kathleen Raphael were in attendance at this meeting.
34. Hyman Wolborsky was appointed president of Parkview Management Corporation, Overlook Terrace Management Corporation, Metro Handyman Maintenance Corporation, and Excel Properties corporation at that meeting on May 1, 1982.
35. Hyman Wolborsky did not receive any stock or increase in salary following his appointment to the position of president of the corporations named above.
36. Hyman Wolborsky receives his salary from Parkview Management Corporation. The expense is allocated to the books of Metro Handyman Maintenance Corporation and Excel Properties Corporation through a "bookkeeping maneuver," which Hyman Wolborsky characterized as a "tax gimmick."
37. NJHFA staff viewed Hyman Wolborsky as the controller who was concerned with financial matters of the respondent corporations.
38. Maria Deptula was hired as office secretary for the respondent corporations.

39. Maria Deptula was elevated to the position of secretary of the Board of Directors of all of the respondent corporations except A. J. Tenwood Associates, Inc. at the May 1, 1982 meeting referred to above.
40. The evidential record did not demonstrate that Maria Deptula's duties, salary, or interest in the corporation changed in any way after she became a director of the respondent corporations.
41. James Canino lives with his wife, June Canino, and there is no evidence in the record to suggest disharmony in their spousal relationship.
42. James Canino is a civil engineer with extensive experience in real estate development, construction, and finance.

DISCUSSION

On the question of whether before the exhaustion of the appeal of a conviction by respondent Canino, the NJHFA may immediately and temporarily, until hearing on debarment and exclusion for conviction of crime, constitutionally suspend respondents from NJHFA contracting, it should be noted that suspension is defined in the regulations as an exclusion from NJHFA contracting for a temporary period of time, pending completion of an investigation or legal proceedings. *N.J.A.C.* 5:80-4.1. *N.J.A.C.* 5:80-4.5 provides that in the public interest, NJHFA, upon approval of the Attorney General, may suspend a person for any cause specified in *N.J.A.C.* 5:80-4.2, which includes any offense indicating a lack of business integrity or honesty. Suspensory action by NJHFA occurred on November 9, 1981 and was, of course, in effect immediately. Respondent Canino's conviction in United States District Court had occurred some four months previously. That such a suspension can be immediate in effect pending hearing is a proposition that would seem, generally, to have been constitutionally approved in another context. In *Trap Rock Industries, Inc. v. Kohl*, 59 *N.J.* 471 (1971), *cert. den.* 405 *U.S.* 1065 (1972), it appeared that the Commissioner of Transportation temporarily suspended a government contractor from a list of responsible bidders, and the contractor appealed. The New Jersey Supreme Court held the Commissioner of Transportation did not act unreasonably when he suspended classification for bidding on the basis of an indictment charging the corporate contractor's majority stockholder with conspiracy to bribe. The Court went on to say that an immediate suspension under the circumstances was appropriate and sufficient

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against claims of unconstitutional and fundamental unfairness. The Court noted the power of government, generally, to suspend a bidder pending a later hearing had been recognized in *Goldberg v. Kelly*, 397 US 254, 263 (1970). The Court noted, finally, that the Administrative Procedure Act (*N.J.S.A.* 52:14B-11) did not negate that general governmental power to act immediately in the public interest. 59 *N.J.* at 490-491. Since the record here contains no allegation or proof of immediate irreparable injury suffered by respondents during suspension, the question as framed at prehearing raises merely the facial power of NJHFA to act immediately to suspend respondents from NJHFA contracting pending formal debarment hearing. From the above, I **CONCLUDE** the suspensory power in *N.J.A.C.* 5:80-4.1 *et seq.*, therefore, is facially constitutional and must be sustained.

On the question whether the convictions of respondent James Canino of conspiring to commit mail fraud and fraud by wire, mail fraud, fraud by wire and conducting affairs of an enterprise through a pattern of racketeering, contrary to Federal criminal statute law, constitute offenses indicating "a lack of business integrity or honesty," within the meaning of *N.J.A.C.* 5:80-4.2(a)(2), it is my view that such convictions self-evidently involved a lack of business integrity and honesty. Though the precise question is perhaps novel in view of the short time in which the regulations have been in force, it does not strain reason to interpret the standard simply and straightforwardly. If the criteria were whether such convictions import moral turpitude, one might note that such convictions upon their face do involve moral turpitude at least in the view of the courts in licensing matters generally. Moral turpitude has been defined as an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow-men, to society in general, contrary to the accepted and customary rule of right and duty between man and man. Even the offense of issuing a check with insufficient funds, with intent to defraud, has been said upon its face to involve moral turpitude. *See generally, State Board of Medical Examiners v. Weiner*, 68 *N.J. Super.* 468, 484-5 (App. Div. 1971).

Based on the foregoing, therefore, I **CONCLUDE** that the crimes of which respondent was convicted in Federal court were those indicative of a lack of business integrity and honesty within the meaning of *N.J.A.C.* 5:80-4.2(a)(2), and were, for that reason, necessary and sufficient grounds for his debarment by NJHFA from NJHFA contracting. In his case, moreover, I **FIND** no sufficient or plausible evidence in the record to mitigate debarment short of the proposed

five year term. Accordingly, I hereby **SUSTAIN** debarment of James Canino from NJHFA contracting for five years as heretofore proposed. *See, N.J.A.C. 5:80-4.8 and N.J.A.C. 5:80-4.3(a)(3)*. Such debarment shall commence with the effective date of suspension.

Finally, *N.J.A.C. 5:80-4.4(a)(4)* provides that debarment may include all known affiliates of a person such as one in respondent Canino's position. His offenses, failures or inadequacies of performance may be imputed to those with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effected by him with the knowledge or approval of such persons. Affiliates are those persons or corporations having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another. *N.J.A.C. 5:80-4.1*. The evidential record here is more than replete with proof of the power, if not also the actuality, of respondent Canino directly and/or indirectly to control the five named corporate respondents.² In addition to the testimonial evidence of record, one need only review terms of the indictment on which respondent Canino stood convicted to note not only that the crimes involved some of the named corporate entities here but that NJHFA itself was victimized by his criminal activities. To that extent, therefore, such offenses are readily imputable to his affiliates, within the meaning of *N.J.A.C. 5:80-4.4(a)(4)*.

Accordingly, I hereby **CONCLUDE** the proposed five year debarment terms for the five corporate affiliates of respondent Canino should be, and are hereby, **SUSTAINED**. In their cases, as in the case of respondent Canino, I **FIND** the record devoid of any plausible or sufficient mitigating factors to lessen the proposed terms of debarment. Such debarments shall commence with effective dates of suspension.

This initial decision may be affirmed, modified or rejected by the **NEW JERSEY HOUSING FINANCE AGENCY** which by law is empowered to make the final decision in this matter.

² As to respondent Canino's relationship to Excel Properties, Inc., 50 per cent of the proprietary stock ownership of which is held by his wife, *cf.*, in another context, *Florence Meth. Church v. Township Committee, Florence Township*, 58 *N.J. Super.* 85, 88-90 (App. Div. 1955) (transfer of liquor license to wife of one otherwise disqualified as licensee *denied*, on evidence, as illegal "front").

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**FINAL DECISION BY THE NEW JERSEY HOUSING
FINANCE AGENCY:**

On December 7, 1981 respondents requested a hearing before the Office of Administrative Law as regards action taken by the New Jersey Housing Finance Agency suspending and proposing to debar and exclude respondents from all New Jersey Housing Finance Agency contracting for a five year period. The New Jersey Housing Finance Agency acted pursuant to authority of the New Jersey Housing Finance Agency Law of 1967, *N.J.S.A.* 55:14J-1 *et seq.*, and the regulations promulgated thereunder in *N.J.A.C.* 5:80-4.1 *et seq.*

This hearing was held before Administrative Law Judge James A. Ospenson, who rendered his initial decision on March 8, 1983. Exceptions were filed to this initial decision on behalf of the respondents. No exceptions were filed by the New Jersey Housing Finance Agency.

Having fully considered and made an independent evaluation of the record, including Administrative Law Judge Ospenson's initial decision and the exceptions to that decision filed by the respondents, I hereby acknowledge and fully accept the conclusions reached in Administrative Law Judge Ospenson's initial decision.

ORDER

The New Jersey Housing Finance Agency fully accepts the decision of Administrative Law Judge Ospenson sustaining the proposed five year debarment terms of the respondents.

The New Jersey Housing Finance Agency fails to find merit in the exceptions filed by the respondents to the initial decision of Administrative Law Judge Ospenson.

The five year terms of debarment shall commence from the date of this order.