

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of

Docket No. 97-88-DA-S

KALMEN STERN,
Respondent.

Suspension Proceeding

Appearances:

John T. Hecht, Esq., Morvillo, Abramowitz, Grand, Iason & Silberberg, P.C., New York, New York, for Respondent.

Before:

Judge Richard I. Slippen

DECISION

On June 30, 1997, Mr. Kalmen Stern was issued a Notice of Governmentwide Suspension from Federal Procurement and Nonprocurement Transactions (Notice of Suspension), pursuant to 34 C.F.R. § 85.411. The Notice of Suspension informed Mr. Stern that the suspension was based upon a 21-count indictment brought against him on May 28, 1997, in the United States District Court for the Southern District of New York. I have jurisdiction to decide this matter by virtue of a Delegation of Authority from the Director, Office of Hearings and Appeals, U.S. Department of Education.

On July 29, 1997, Mr. Stern exercised his right to oppose this suspension proceeding, pursuant to 34 C.F.R. § 85.412, by filing a letter written by his attorney, Mr. John T. Hecht. In that letter, Mr. Hecht explained that while Mr. Stern is vigorously defending himself against the charges contained in the indictment, he will be unable to present any information in his defense to the Deciding Debarment and Suspension Official until the resolution of the criminal case. For this reason, Mr. Stern, through counsel, requests that this proceeding be stayed until the resolution of the pending criminal case.

Mr. Stern's request for a stay is denied. The June 30, 1997, Notice of Suspension references Mr. Stern's May 28, 1997, indictment, along with five other co-defendants. In said indictment, Mr. Stern is charged with allegedly conspiring to defraud various agencies of the United States by participating in various fraudulent schemes to obtain tens of millions of dollars through federal and state grant, loan, and subsidy programs for the benefit of themselves and other residents of their community. The indictment charges that to effectuate these schemes, Mr. Stern and the other co-conspirators created legal entities through which federal and state funds could be obtained, submitted false documentation to establish the eligibility to participate in these government programs, used the funds obtained from these programs for impermissible purposes, and concealed their fraud by various methods. The programs allegedly defrauded by Mr. Stern and the other co-conspirators include the Pell Grant program (U.S. Department of Education), the Tuition Assistance Program (New York State Department of Education), a Small Business Administration program designed to provide venture capital to small businesses, and the Section 8 rental subsidy program (U.S. Department of Housing and Urban Development). The indictment states that this alleged misconduct violates 18 U.S.C. §§ 2, 371, 666, 1001, 1341, and

1343.

To protect the public interest, debarments and suspensions are discretionary actions which are initiated to implement the Government policy that it conduct business only with responsible persons. 34 C.F.R. § 85.115(a). The regulations authorizing these proceedings apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. 34 C.F.R. § 85.110(a). I have considered the record in this matter and I find that the Respondent falls within this category.

The governing regulation further provides that a suspension may be imposed if an individual is suspected of committing an offense which is listed as a cause for debarment in 34 C.F.R. § 85.305(a). An indictment on one or more of those offenses constitutes sufficient evidence for the purposes of suspension actions. 34 C.F.R. § 85.405(b). After reviewing the indictment, I find that the offenses charged therein, following a conviction, would provide adequate evidence to support a debarment. Accordingly, I find that a suspension of Mr. Stern is appropriate and the Notice of Suspension was properly issued.

ORDER

On the basis of the foregoing, it is hereby ORDERED that the Notice of Governmentwide Suspension from Federal Procurement and Nonprocurement Transactions is affirmed.

Judge Richard I. Slippen
Deciding Debarment and Suspension Official

Dated: August 6, 1997

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

John T. Hecht, Esq.
Morvillo, Abramowitz, Grand, Iason & Silberberg, P.C.
565 Fifth Avenue
New York, NY 10017

David L. Morgan
Administrative Actions and Appeals Division
U.S. Department of Education
Room 3923, ROB-3
Washington, D.C. 20202-5341