

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

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In the Matter of

**Docket No. 97-91-DA-S**

**JACOB ELBAUM,**  
Respondent.

Suspension Proceeding

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Appearances:

Gerald L. Shargel, Esq., New York, New York, for Respondent

Before:

Judge Richard F. O'Hair

**DECISION**

On June 30, 1997, Mr. Jacob Elbaum was issued a "Notice of Governmentwide Suspension from Federal Procurement and Nonprocurement Transactions," pursuant to 34 C.F.R. § 85.411. The Notice informed Mr. Elbaum 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.

Mr. Elbaum exercised his right to oppose this suspension proceeding in accordance with the provisions of 34 C.F.R. § 85.412, by filing a letter written by his attorney, Mr. Gerald L. Shargel. In that letter Mr. Shargel explained that while Mr. Elbaum 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. On the basis of this, Mr. Elbaum, through counsel, requests that this proceeding be stayed until the resolution of the pending civil case.

Mr. Elbaum's request for a stay is denied. The Notice of Governmentwide Suspension references Mr. Elbaum's May 28, 1997, indictment, along with five other co-defendants, of allegedly conspiring with each other 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. Elbaum 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 defrauded by Mr. Elbaum 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 indicates that this alleged misconduct violates 18 USC §§ 2, 371, 666, 1001, 1341, and 1343.

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. 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. My review of the file convinces me that Mr. Elbaum 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) and that an indictment on one or more of those offenses shall constitute adequate evidence for the purposes of suspension actions. 34 C.F.R. § 85.405. I have reviewed the indictment and 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. Elbaum 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.

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Judge Richard F. O'Hair  
Deciding Debarment and Suspension Official

Dated: August 4, 1997

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#### SERVICE

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

Gerald L. Shargel, Esq.  
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New York, NY 10036

David L. Morgan  
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