

prequalification of bidders for Department funded highway and bridge construction projects.¹ Both Hermes and Larry Frangos appealed the notices.

An administrative hearing was thereafter conducted before a hearing officer. The hearing officer found that Hermes is an Ohio based corporation with its place of business located at 5752 Webb Road, Youngstown, Ohio 44515. Argo Painting Corporation (Argo) is also an Ohio based corporation with the same business address as Hermes.

In August of 2006, an employee of the Department was at a highway construction project site inspecting the records of Hermes to determine whether it had paid taxes on hauling equipment used on the project but registered in another state. At the time, Hermes was under contract with the Department to paint a

¹ The pertinent part of 67 Pa. Code § 457.12 provides that “[a] contractor, subcontractor or individual who knowingly makes or causes to be made, a false, deceptive or fraudulent statement on the prequalification application . . . may be debarred . . . from bidding on or participating in State supervised or funded highway construction work.”

In accordance with 67 Pa. Code § 457.4(c)(3), prequalification statements must include:

(ii) A statement as to organization which shall develop the adequacy of such organization, including key personnel

(iii) A statement as to prior and current experience of the contractor, his principal officer and key employees

. . . .

(xviii) A statement indicating misdemeanor convictions involving moral turpitude, conviction of a bidding crime and other felony convictions of the contractor, as well as the contractor’s directors, partners, principal officers and key employees.

In addition, 67 Pa. Code § 457.4(e) further requires:

(e) Complete statement of misdemeanor convictions involving moral turpitude and felony convictions of the contractor, as well as the contractor’s directors, principal officers and key employees.

bridge in Indiana County. During the review, the Department received a fax from Hermes consisting of a tax receipt from the Ohio office of the International Registration Plan. The receipt was made out to “Argo Contracting, DBA Hermes Painting Co.” (R.R. at 25a-28a, 285a-287a.)

Further investigation revealed that Argos was owned by Larry Frangos and George Ginnis. Larry Frangos ceased doing business in 2004 for a period of three years pursuant to debarment proceedings initiated by the federal government due to Larry Frangos having pled guilty to bribing a highway construction officer. Additionally, the state of Ohio permanently debarred Larry Frangos and Argo in October of 2004 because of the federal debarment.

As to Hermes, Peter Maglis was the incorporator, initial director and also a shareholder. Spiro Frangos and Christopher Frangos, sons of Larry Frangos, were each shareholders. On December 30, 2002, the shareholders elected Spiro and Christopher to the board of directors and the board appointed Spiro president, Christopher vice-president and Maglis secretary and treasurer. The board also authorized the president to enter into a lease for offices, at which time Hermes entered into a lease for the premises at 5742 Webb Road in Youngstown.

When Hermes submitted its application to be prequalified by the Department in order to bid on and perform highway construction contracts, which Department ultimately granted, Hermes did not identify Larry Frangos in the list of “officers and management personnel including superintendents.”

Other testimony at the hearing revealed that in 2005, Hermes submitted a worker protection plan in connection with the performance of contracts for the Department that identified Larry Frangos as a “competent person” with “the complete authority to implement the plan ... and ensure that control measures,

work practices, personal protective equipment, and hygiene facilities are as prescribed in this document.” (R.R. at 42a-46a, 297a-302a.)

Also, Hermes represented to the Department in a submission dated March 31, 2006, that its officers had elected to be compensated by "one lump sum payment made to them at the end of the year.” One of the officer’s listed was Larry Frangos.

Two employees of Hermes signed statements on March 31, 2006, certifying that Larry Frangos paid them in cash at various times in 2005 because they were working out of town and could not cash their checks. In addition, Larry Frangos also signed a document representing that he received a “salary” and was an “owner” of Hermes.

Based on the above evidence, the hearing officer, in his proposed report determined that the above facts established a prima facia case for debarment under the regulations and specifically found:

- The failure of Hermes to list Harry Frangos in its prequalification application constituted “[p]roviding false or misleading information to ... the Department” because (1) Frangos exercised management responsibility for Hermes and (2) he was treated as an officer by Hermes. 67 Pa. Code § 457.13(a)(12).
- Frangos was debarred by “agency or Department of the Federal government.” 67 Pa. Code § 457.13(a)(9).
- The participation of Frangos in the management of Hermes constituted “improper conduct or knowledge or approval of, or acquiescence ... by a contractor ... officer, employe or other individual associated with ... performing a public contract or subcontract.” 67 Pa. Code § 457.13(a)(2).
- The “acts and omissions” of Hermes demonstrates an attempt to continue the operations of Argos and

Frangos under a new identity, thereby “indicating a lack of ... business integrity or business honesty that seriously and directly affect the present responsibility of a contractor.” 67 Pa. Code § 457.13(a)(13).

(Proposed Report at 6.) Petitioners filed exceptions to the proposed report. The Secretary denied the exceptions, adopted the report, and made it final. This appeal followed.²

On appeal, Petitioners argue that substantial evidence does not support the conclusion that Larry Frangos exercised management responsibility over Hermes to justify the permanent debarment of both Larry Frangos and Hermes. Larry Frangos claims that, by his own testimony, he was an uncompensated truck driver for Hermes, who transported material, obtained license plates and cashed checks for two employees. Larry Frangos claims that such periodic work and activity is not prohibited conduct worthy of permanent debarment. We agree with the Department, however, that the debarment for both Larry Frangos and Hermes was appropriate.

We initially note that with respect to debarment of qualified bidders, 67 Pa. Code § 457.13 provides the following:

§ 457.13. Suspension or debarment.

(a) *Reasons for suspensions or debarment.* The Department may temporarily suspend or may debar, for a set period or permanently, a contractor, subcontractor or individual from bidding on or participating in State supervised or funded highway construction work for any of the following reasons:

² Our review is limited to determining whether necessary findings are supported by substantial evidence, whether there was a constitutional violation or an error of law. Balfour Beatty Construction v. Department of Transportation, 783 A.2d 901 (Pa. Cmwlth. 2001).

...

(2) Commission of fraud or a criminal offense or other improper conduct or knowledge or approval of, or acquiescence in these activities by a contractor or an affiliate, officer, employe or other individual or entity associated with either obtaining, attempting to obtain or performing a public contract or subcontract. The contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of knowledge, approval or acquiescence.

...

(9) Suspension or debarment by the Commonwealth or an agency thereof or an agency of another state or by an agency or department of the Federal government.

...

(12) Providing false or misleading information to the . . . Department, or a representative of an agency as part of any investigation, audit, program review, prequalification statement of certification, contract bids or proposals, contractor applications or claims for payment. This information includes:

...

(iii) Affidavits or statements of compliance with prevailing wage statutes.

...

(13) Other acts or omissions indicating a lack of skill, ability, capacity, quality control, business integrity or business honesty that seriously and directly affect the present responsibility of a contractor or any basis for debarment or suspension in the Commonwealth's Contractor Responsibility Program, Management Directive 215.9

Petitioners claim that there is no evidentiary support for the determination that Larry Frangos exercised managerial responsibilities over Hermes. We disagree. Testimony, along with documents presented, reveal that submissions provided to the Department listed Larry Frangos as an officer of the company who received an annual salary. Hermes also listed Larry Frangos as a competent person on a worker protection plan. In addition, Larry Frangos took responsibility for transferring vehicle registrations from Argos to Hermes.

Petitioners respond that although Larry Frangos was listed as a responsible person, such was done in error as the designation resulted from re-use of forms originally prepared for Argos and that Larry Frangos did not act in such a position. As to the salary, Larry Frangos stated that the money he received was not for work he performed because he volunteered his services but, instead, the money was for rent he received on his property. As to the document listing Larry Frangos as a competent person, Petitioners claim that they were unaware of such a document and that it was mistakenly prepared. Concerning the registration for Hermes' vehicles, Larry Frangos stated that he obtained such because he had a commercial driver license.

Despite the explanations given by Larry Frangos, the report of the hearing examiner, which the Secretary adopted, determined that the testimony of Larry Frangos was not credible. The documents submitted to the Department on various occasions spoke for themselves that Larry Frangos acted in a managerial capacity for Hermes. Larry Frangos was listed as a responsible person, signed a form stating that he was a salaried owner of Hermes and received money from Hermes despite his claim that his services were voluntary. Larry Frangos also changed the registration on the company vehicles, something which is not done by

someone who lacks authority. The hearing officer concluded that Larry Frangos' conduct was calculatedly dishonest and that allowing Frangos to contract with the Department would undermine the public's confidence in the integrity of government contracting.

Petitioners also claim that merely because Larry Frangos was debarred by the federal government, that debarment does not warrant Department's permanent debarment of Larry Frangos and Hermes. We note that in addition to being debarred by the federal government, the state of Ohio had also permanently debarred Larry Frangos and Argos. As provided for in 67 Pa. Code § 457.13(a)(9), the Department may debar a contractor or employee based on debarment by another state or by an agency or department of the federal government. In this case, as found by the hearing officer and adopted by the Secretary, Hermes knew of Frangos' guilty plea resulting in his federal and Ohio debarment, yet allowed him to maintain a managerial role in the company and, contrary to the regulations, concealed such participation from the Department by failing to list Larry Frangos in its prequalification application to Department. Such evidence supports the permanent debarment of Larry Frangos and Hermes.

In accordance with the above, the decision of the Secretary is affirmed.

JIM FLAHERTY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Hermes Painting Company, Inc., and	:	
Larry Frangos,	:	
	:	
Petitioners	:	
	:	
v.	:	No. 1128 C.D. 2007
	:	
Pennsylvania Department of	:	
Transportation,	:	
	:	
Respondent	:	

ORDER

Now, January 31, 2008, the Order of the Secretary of Transportation, in the above-captioned matter, is affirmed.

JIM FLAHERTY, Senior Judge