Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Basil Mangra, M.D.,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-327

Decision No. CR4636

Date: June 16, 2016

DECISION

First Coast Service Options, Inc. (First Coast), an administrative contractor for the Centers for Medicare & Medicaid Services (CMS), denied the Medicare enrollment application of Basil Mangra, M.D. (Petitioner). First Coast denied the enrollment application, which had been submitted in response to a revalidation request, based on Petitioner's April 2013 felony conviction for conspiracy to commit fraud on financial institutions, in violation of 18 U.S.C. § 1349. For the reasons explained herein, I conclude that First Coast had a basis to deny Petitioner's Medicare enrollment application.

I. Case Background and Procedural History

Petitioner is a physician who practices in the field of internal medicine. CMS Exhibit (Ex.) 5 at 1.

On or about January 3, 2013, a federal grand jury in the Southern District of Florida returned a true bill of indictment charging that Petitioner, along with four other named co-conspirators, engaged in a conspiracy to commit bank fraud in violation of 18 U.S.C. § 1349. CMS Ex. 1 at 1-5. The indictment also charged Petitioner with two counts of

making false statements on a loan application, in violation of 18 U.S.C. § 1014. CMS Ex. 1 at 8-11. With respect to the offense of "Conspiracy to Commit Bank Fraud," which was listed in count one of the indictment, the count charged that all five of the defendants "did knowingly and willfully combine, conspire, confederate, and agree with each other . . . to execute, and cause the execution of, a scheme and artifice to defraud financial institutions . . . and to obtain any of the moneys, funds, assets and other property owned by and under the custody and control of said financial institutions, by means of materially false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1344." CMS Ex. 1 at 2-3. A penalty sheet filed with the charging documents indicates that the maximum penalty for the offense of conspiracy to commit bank fraud is up to 30 years of imprisonment and a $250,000 fine or twice the gross value of the gross loss or gain from the crime, whichever is greater. CMS Ex. 1 at 19; *see* 18 U.S.C. § 1349.

On April 16, 2013, Petitioner, who was represented by counsel, entered into a plea agreement with the United States Attorney for the Southern District of Florida. CMS Ex. 2. Petitioner agreed to enter a guilty plea to the offense of conspiracy to commit fraud on a financial institution "in relation to conspiring to obtain bank loans and lines of credit," which is the offense that was charged in the first count of the indictment. CMS Ex. 2 at 1. The plea agreement stated that the remaining counts of the indictment pertaining to false statements on a loan application would be dismissed. CMS Ex. 2 at 1. Petitioner agreed that "the court may impose a statutory maximum term of imprisonment of up to 30 years imprisonment" and that he would "pay restitution to Regions Bank in the amount of $192,246.00, and Commerce Bank (now known as TD Bank) in the amount of $194,015.99, which obligation shall be joint and severable with his co-defendants." CMS Ex. 2 at 4.

In a stipulated factual proffer in support of Petitioner's guilty plea that was executed contemporaneously with the plea agreement, Petitioner agreed to the underlying factual basis for his plea. CMS Ex. 2 at 8. Petitioner acknowledged that "the Government would have established beyond a reasonable doubt that [he] . . . did knowingly and willfully conspire with others to execute and cause the execution of a scheme and artifice to defraud financial institutions through the submission of fraudulent lines of credit and loan applications and related financial documents on behalf of unqualified borrowers." CMS Ex. 2 at 8. The stipulation provided, in pertinent part:

> In order to get approved for a loan, BASIL MANGRA explained to law enforcement agents that they used his company, [Basil Mangra, MDPA (BMMDPA)], and added his brother, Michael Mangra, to the company with the Florida Department of Corporations. The purpose of adding Michael Mangra to the company was because Michael Mangra had a good credit score. Shortly after the two (2) loans funded, Michael Mangra was removed from the company because it was no longer necessary to have

> Michael Mangra listed on the company. The only affiliation Michael Mangra had with BMMDPA was that he (Michael Mangra) occasionally referred patients and may have provided some marketing services. However, BASIL MANGRA never paid Michael Mangra for any work for BMMDPA, as he was not an employee. Furthermore, BASIL MANGRA confirmed that Michael Mangra was not an 85% shareholder of BMMDPA.

CMS Ex. 2 at 12. Petitioner "acknowledged that lending the appearance to the banks that Michael Mangra was a partner of BMMDPA was a lie, and he knew that obtaining a loan in this manner was wrong." CMS Ex. 2 at 12. Petitioner further acknowledged that "he paid significant fees to obtain these loans, and used the loan proceeds to do so." CMS Ex. 2 at 13. The stipulation additionally explains the following:

> BASIL MANGRA admitted that he knew there was "dishonesty" with respect to these loans, and admitted that Regions Bank and Commerce Bank were defrauded because the banks relied on financial information that was not true. For example, BASIL MANGRA admitted that he did not have a net worth of $5 million, as listed on the financial information that was submitted to Regions Bank. To date, BASIL MANGRA has not been able to repay the loans.
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> BASIL MANGRA admits the allegations enumerated in counts 4 and 6 of the indictment. BASIL MANGRA admits that he knowingly made false statements for the purpose of influencing the actions of Regions Bank in connection with an application for a $400,000 line of credit which was approved in the amount of $200,000 and the actions of Commerce Bank (now known as TD Bank) in connection with an application for a $250,000 loan which was approved in the amount of $195,000, that is, the defendant falsely stated and caused to be stated on a line of credit application submitted to Regions Bank and a loan application to Commerce Bank, that BASIL MANGRA, M.D., P.A. was a medical practice of which 85% was owned by Michael Mangra, that Michael Mangra was a physician, that Michael Mangra had assets, a net worth and annual income of more than $500,000 from employment at BASIL MANGRA M.D., P.A., . . . when in truth and in fact . . . Michael Mangra did not own any portion of BASIL MANGRA M.D., P.A. and was not a medical doctor. . . did not possess assets or have a net worth in the amounts stated on the applications, and did not have an annual income in excess of $500,000 from employment at BASIL MANGRA M.D., P.A., and the 2006 and 2007 Internal Revenue Forms 1040 for Michael Mangra and the 2006 and 2007 Internal Revenue Form 1120S for BASIL MANGRA M.D., P.A. which were attached to the applications were not filed with the United States Internal Revenue Service and were not a true reflection of the income and expenses.

CMS Ex. 2 at 14-15. Finally, Petitioner acknowledged that he was pleading guilty to conspiracy to commit fraud on financial institutions, and that the offense has three elements, as follows:

> First: That two or more persons in some way or manner, came to a mutual understanding to try to accomplish a common or unlawful plan, as charged in the indictment;
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> Second: That the Defendant, knowing the unlawful purpose of the plan, willfully joined in it; and
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> Third: That the object of the unlawful plan was to defraud one or more financial institutions.

CMS Ex. 2 at 15-16.

Petitioner entered his guilty plea to the offense of conspiracy to commit fraud on a financial institution on April 16, 2013, and the remaining counts of the indictment were dismissed. CMS Ex. 3 at 1. The judgment of conviction, dated September 17, 2013, documents that Petitioner was ordered to be imprisoned for a period of 18 months and to pay $386,261.99 in restitution to the "victims as listed in the presentence report." CMS Ex. 3 at 2, 5.

First Coast sent Petitioner a revalidation request in March 2015, at which time it asked him to immediately submit an updated provider enrollment application, Form CMS-855I, or review, update, and recertify his information via the internet-based Provider Enrollment, Chain, and Ownership System (PECOS).[1] CMS Ex. 4 at 1, 8. Petitioner initially submitted an updated enrollment application through PECOS on July 28, 2015, at which time he did not report any final adverse legal actions. CMS Ex. 5. In a subsequent enrollment application update submitted through PECOS on November 4, 2015, Petitioner reported four adverse legal actions: his felony conviction in April 2013; the suspension of his Illinois medical license in November 2014; the surrender of his New York medical license in October 2015; and a reprimand by the Florida Department of Health in April 2014. CMS Ex. 9 at 2.

On November 18, 2015, First Coast notified Petitioner that based on its review of his revalidation enrollment application, it had denied him enrollment pursuant to 42 C.F.R. § 424.530(a)(3)(i)(B) due to his felony conviction under 18 U.S.C. § 1349. CMS Ex. 10. In a separate letter, First Coast notified Petitioner that it had deactivated his Provider Transaction Access Number (PTAN) based on its denial of Petitioner's revalidation

[1] This notice was mailed to two different addresses, and both notices were returned as undelivered. CMS Ex. 4 at 7, 14.

application. CMS Ex. 11. On December 7, 2015, Petitioner, through his current counsel, requested reconsideration of the denial of his revalidation application. CMS Ex. 12 at 5-7 and 13-15.

On January 5, 2016, First Coast issued a reconsidered determination that informed Petitioner that based on his conviction for conspiracy to commit fraud on a financial institution in violation of 18 U.S.C. § 1349 in the previous ten years, he had failed to comply with 42 C.F.R. § 424.530(a)(3)(i)(B).

Petitioner timely requested a hearing before an administrative law judge (ALJ) on February 19, 2016. I issued an Acknowledgment and Pre-Hearing Order (Order) to the parties on February 24, 2016. In accordance with the terms of my Order, CMS submitted a motion for summary judgment and pre-hearing brief (CMS Br.), along with supporting exhibits (CMS Exs. 1-13). Petitioner submitted a response to the motion for summary judgment and supporting brief (P. Br.). Petitioner did not submit any additional exhibits. Neither party submitted witness testimony, requested cross-examination of any witness, or otherwise requested a live hearing. *See* Order §§ 8, 9, 10. Absent any objections, I admit all proposed exhibits into the record. This matter is now ready for a decision.

II. Discussion

A. Issues

1. Whether summary judgment is appropriate; and

2. Whether CMS had a legal basis to deny Petitioner's Medicare enrollment application.

B. Findings of Fact and Conclusions of Law

1. Summary judgment in favor of CMS is appropriate.

Summary judgment is appropriate when there is no genuine dispute as to any issue of material fact for adjudication and/or the moving party is entitled to judgment as a matter of law. *Senior Rehab. & Skilled Nursing Ctr.*, DAB No. 2300 at 3 (2010); *see Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party must show that there are no genuine issues of material fact requiring an evidentiary hearing and that it is entitled to judgment as a matter of law. *Id.* If the moving party meets its initial burden, the non-moving party must "come forward with 'specific facts showing that there is a genuine issue for trial . . . .'" *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986). "To defeat an adequately supported summary judgment motion, the non-moving party may not rely on the denials in its pleadings or briefs, but must furnish evidence of a dispute concerning a material fact – a fact that, if proven, would affect the

outcome of the case under governing law." *Senior Rehab.*, DAB No. 2300 at 3. In determining whether there are genuine issues of material fact for hearing, an ALJ must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor. *Id.*

CMS has moved for summary judgment and submitted documentary evidence that establishes the material facts of the case. CMS Exs. 1-13. CMS proffered documentary evidence demonstrating Petitioner's guilty plea and conviction of the offense of conspiracy to commit fraud on financial institutions. CMS Ex. 1-3.

Petitioner does not contend there are any disputes as to material facts, and "agrees that there is no genuine dispute as to a material fact." P. Br. at 2. However, Petitioner argues that summary judgment is not warranted because the movant, CMS, is not entitled to judgment as a matter of law. P. Br. at 2-3. Specifically, Petitioner argues that summary judgment is not warranted because the offense of conspiracy to commit fraud on a financial institution is not a crime specified in 42 C.F.R. § 424.530(a)(3)(i)(B) for which CMS may deny his Medicare enrollment. P. Br. at 3.

I find that there is no genuine issue of disputed material fact. The only issue I need to resolve in this case is a matter of law, which, as discussed below, I decide in CMS's favor. Summary judgment is therefore appropriate.

2. The evidence shows that, within the preceding ten years, Petitioner was convicted of a felony offense for conspiring to commit bank fraud.

Petitioner does not dispute that, on April 16, 2013, he entered a plea of guilty to count one of an indictment that charged he had committed "Conspiracy to Commit Bank Fraud" in violation of 18 U.S.C. § 1349. P. Br. at 1; *see* CMS Ex. 1 at 2-3; CMS Ex. 3 at 1. Evidence submitted by CMS documents that Petitioner submitted a guilty plea pursuant to a plea agreement. CMS Exs. 1-3. The stipulated facts underlying Petitioner's guilty plea demonstrate that he "did knowingly and willfully conspire with others to execute and cause the execution of a scheme and artifice to defraud financial institutions through the submission of fraudulent lines of credit and loan applications and related financial documents on behalf of unqualified borrowers." CMS Ex. 2 at 8. Petitioner admitted that "Regions Bank and Commerce Bank were defrauded because the banks relied on financial information that was not true." CMS Ex. 2 at 14. Petitioner further admitted the allegations enumerated in counts 4 and 6 of the indictment, "False Statements on a Loan Application to a Financial Institution" in violation of 18 U.S.C. § 1014. CMS Ex. 2 at 14; *see* CMS Ex. 1 at 19. Petitioner acknowledged that he had obtained $395,000 in loans from two banks and that he "knowingly made false statements for the purposes of influencing the actions of Regions Bank" and "falsely stated" information in connection with a loan application to Commerce Bank. CMS Ex. 2 at 14-

15. The District Court accepted Petitioner's plea on April 16, 2013, and entered judgment against him on September 17, 2013. CMS Ex. 3 at 1.

Petitioner does not contest that he was convicted of a felony offense within the preceding ten years. *See* 42 C.F.R. § 424.530(a)(3).[2]

3. CMS was authorized to deny Petitioner's enrollment application pursuant to 42 C.F.R. § 424.530(a)(3)(i)(B).

CMS may deny a provider or supplier's enrollment in the Medicare program for several enumerated reasons, including:

> (3) *Felonies.* The provider, supplier, or any owner or managing employee of the provider or supplier was, within the preceding 10 years, convicted (as that term is defined in 42 [C.F.R. §] 1001.2) of a Federal or State felony offense that CMS determines is detrimental to the best interests of the Medicare program and its beneficiaries.
>
> > (i) Offenses include, but are not limited in scope or severity to —
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> > * * *
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> > > (B) Financial crimes, such as extortion, embezzlement, income tax evasion, insurance fraud and other similar crimes for which the individual was convicted, including guilty pleas and adjudicated pretrial diversions.

42 C.F.R. § 424.530(a)(3)(i)(B); *see also* Social Security Act (Act) § 1842(h)(8) (42 U.S.C. § 1395u(h)(8) (authorizing the Secretary of Health and Human Services to refuse to enter in an agreement or refuse to renew an enrollment agreement with a physician or supplier convicted of a federal or state felony offense "which the Secretary determines is detrimental to the best interests of the program or program beneficiaries")).

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[2] The evidence indicates that Petitioner first reported his felony conviction to CMS in November 2015, more than two years after his conviction occurred. *See* 42 C.F.R. § 424.516(d)(1)(ii) (stating that a physician is required to report an adverse legal action within 30 days of the adverse legal action).

a. Petitioner's felony conviction was a financial crime within the plain meaning of 42 C.F.R. § 424.530(a)(3)(i)(B).

The undisputed facts surrounding Petitioner's conviction support CMS's determination that Petitioner pleaded guilty to a felony "financial crime" covered by section 424.530(a)(3)(i)(B). In reaching this conclusion, I need to examine the conduct and circumstances underlying Petitioner's offense and consider whether his offense is a financial crime like those listed in section 424.530(a)(3)(i)(B). *See Abdul Razzaque Ahmed, M.D.*, DAB No. 2261 at 7, 11 (2009), *aff'd, Ahmed v. Sebelius*, 710 F. Supp. 2d 167 (D. Mass. 2010).

In perpetrating his crime, Petitioner "did knowingly and willfully conspire with others to execute and cause the execution of a scheme and artifice to defraud financial institutions through the submission of fraudulent lines of credit and loan applications and related financial documents on behalf of unqualified borrowers." CMS Ex. 2 at 8. Furthermore, Petitioner conceded that "he knew he would not get approved for a loan" and had previously been denied for a $250,000 or $300,000 loan. CMS Ex. 2 at 11. Petitioner "admitted that he knew there was 'dishonesty' with respect to these loans," and that the banks "were 'defrauded' because the banks relied on financial information that was not true" when they issued a loan and line of credit totaling nearly $400,000. CMS Ex. 2 at 14. Petitioner conceded in his plea agreement that the elements of the charged offense were met and that there was a factual basis for his plea of guilty; he specifically acknowledged that an element of the offense of conspiracy to commit fraud on a financial institution is "the object of the unlawful plan was to defraud one or more financial institutions." CMS Ex. 2 at 16.

While Petitioner previously conceded, in the criminal proceedings, that his crime involved a plan to defraud financial institutions, he now disputes that such a crime is actually a "financial crime." P. Br. at 2-5. Petitioner argues that "he was convicted of conspiracy, not a financial crime." P. Br. at 4. Petitioner further explains, citing to numerous federal cases, that "[a] person may be convicted of conspiracy even though he does not participate in the substantive crime." However, the very nature of the conspiracy for which Petitioner was convicted, a conspiracy to commit fraud against a financial institution, *is* a financial crime: As stated in the elements of the offense listed in the plea agreement, "the object of the unlawful plan was to defraud one or more financial institutions." CMS Ex. 2 at 16; *see* 18 U.S.C. § 1349. Simply because Petitioner was convicted of a conspiracy to commit a financial crime does not mean that his crime is not financial in nature, and Petitioner need not have been convicted of a completed act of bank fraud in order to have committed a financial crime. Furthermore, the first count of the indictment, which is the count to which Petitioner pleaded guilty, states that Petitioner, along with his co-conspirators, "did knowingly and willfully combine, conspire, confederate, and agree with each other . . . to execute and cause the execution of, a scheme to defraud financial institutions . . . and to obtain any of the moneys, funds,

assets, and other property owned by and under the custody and control of said financial institutions, by means of materially false and fraudulent pretenses, representations, and promises, *in violation of Title 18, United States Code, Section 1344.*"[3] CMS Ex. 1 at 2-3 (emphasis added). Thus, the unambiguous language of the count to which Petitioner pleaded guilty indicates that he schemed to defraud banks in violation of 18 U.S.C. § 1344, "Bank Fraud." CMS Ex. 1 at 2-3. While Petitioner contends that a conviction for conspiracy could merely involve "participating in a conversation to plan the fraud, even if he takes additional steps in furtherance of the conspiracy," and that his participation in a conspiracy "cannot now be re-characterized as a substantive offense," he overlooks that the indictment charged, and the evidence supports, that Petitioner, with his co-conspirators, successfully *completed* the object of the conspiracy and fraudulently obtained nearly $400,000 from two banks. P. Br. at 5. Petitioner's felony offense, perpetrated to fraudulently obtain nearly $400,000 from both Regions Bank and Commerce Bank, plainly constitutes a "financial crime" within the meaning of 42 C.F.R. § 424.530(a)(3)(i)(B). *See Lorrie Laurel, PT*, DAB No. 2524 at 4-5 (2013) (finding that an individual's guilty plea to felony grand theft constitutes a "financial crime" that can be used as a basis to revoke enrollment and billing privileges regardless of a direct relation to the Medicare program).

While Petitioner attempts to distinguish a factually similar case, *Stanley Beekman, D.P.M*, DAB No. 2650 (2015) from his own case, he fails in this effort. Petitioner's primary basis for distinguishing the *Beekman* case from his own is that Dr. Beekman had conceded that he had committed a financial crime, whereas Petitioner has not made such

[3] I observe that none of the five co-conspirators were charged with committing bank fraud, even though the indictment clearly indicates that the conspiracy was completed, in that "the fraudulent loan applications were . . . submitted to the banks" and "resulted in substantial losses to the banks." CMS Ex. 1 at 5. While conspiracy, rather than bank fraud, was charged, the indictment clearly charged that there was *actual* loss to the defrauded banks. Thus, Petitioner is quite mistaken that his offense of conspiracy did not equate to a "substantive crime." P. Br. at 5. I further point out that there is little distinction between the crimes of bank fraud and conspiracy to commit bank fraud. To be found guilty of committing bank fraud under 18 U.S.C. § 1344, one need only "*attempt* to execute" a scheme or artifice to "defraud an institution" or "obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody of control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises." 18 U.S.C. § 1344 (emphasis added). The maximum period of incarceration for bank fraud is 30 years. *Id.* The offense of conspiracy to commit bank fraud carries an identical maximum period of incarceration of 30 years. 18 U.S.C. § 1349. Pursuant to 18 U.S.C. § 1349, "[a]ny person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy."

a concession. However, whether or not Petitioner has conceded that he committed a financial crime is wholly irrelevant to whether he actually committed a financial crime. In the *Beekman* case, the Departmental Appeals Board (Board) concluded that "conspiring to commit bank fraud and using false statements to obtain a bank loan are crimes that are financial at their heart, with elements of seeking money using criminal devices." *Beekman,* DAB No. 2650 at 8. The Board further explained that "[t]he circumstances of the crimes for which Petitioner pled guilty make clear that all the charges arose from financial misconduct, in short lying to the bank in order to obtain loans by criminal means." Thus, while Petitioner distinguishes the *Beekman* case because Dr. Beekman conceded he had committed a financial crime, such a concession is irrelevant. The Board's analysis in *Beekman* is relevant to the instant case, and like Dr. Beekman, Petitioner was convicted of an offense that was "financial at its heart," in that Petitioner entered into a conspiracy which resulted in him fraudulently obtaining nearly $400,000 from two banks.

While I conclude that conspiracy to commit bank fraud is a financial crime that is clearly contemplated by 42 C.F.R. § 424.530(a)(3)(i)(B), I also point out that CMS has determined that "financial crimes, *such as* extortion, embezzlement, income tax evasion, insurance fraud *and other similar crimes*" are detrimental per se to the best interests of the Medicare program and its beneficiaries. *See Dinesh Patel, M.D.*, DAB No. 2551 at 5-6 (2013) (emphasis added) (citations omitted). Even though conspiracy to commit bank fraud is not specifically listed in section 424.530(a)(3)(i)(B), it is, for the reasons previously stated, a financial crime, and it is certainly a similar crime to the representative offenses listed in section 424.530(a)(3)(i)(B), which do not constitute an all-inclusive list. As such, conspiracy to commit bank fraud is appropriately considered to be a crime that is detrimental to the Medicare program. *See also* 42 U.S.C. § 1395u(h)(8).

III. Conclusion

CMS was authorized under 42 C.F.R. § 424.530(a)(3)(i)(B) to deny Petitioner's Medicare enrollment application and I uphold CMS's determination.

/s/
Leslie C. Rogall
Administrative Law Judge