

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA
ex rel. **KAREN SCHWARE,**

Plaintiff/Relator,

v.

**VINCENT AND BERNARD
FANTOZZI, d/b/a BELLANTE
PROPERTIES,**

Defendants.

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CIVIL ACTION NO. 13-7312

UNITED STATES OF AMERICA'S COMPLAINT IN INTERVENTION

1. The United States brings this action to recover treble damages and civil penalties under the False Claims Act (hereinafter "FCA"), 31 U.S.C. §§ 3729, et seq., to recover all available damages, civil monetary penalties, and other relief available under common law and/or equitable theories.

2. This action arises out of defendants' submission of false claims to the Lehigh County Housing Authority, a recipient of federal funds, for payment of rental subsidies during the time period July 2007 to September 2013 (hereinafter "the Claims Period").

JURISDICTION

3. This action arises under the False Claims Act, 31 U.S.C. § 3729, et seq. This Court has jurisdiction of this claim under 28 U.S.C. §§ 1331 and 1345, and 31 U.S.C. §§ 3730 and 3732.

4. Venue is proper in the Eastern District of Pennsylvania because Relator and the defendants reside in the District, and all acts alleged in this complaint took place within the District.

THE PARTIES

5. Plaintiff is the United States of America.

6. Relator is Karen Schware, a resident of the State of Pennsylvania, and formerly a tenant at 3801 Allen Street, Second Floor, Emmaus, Pennsylvania 18049 (the “Rental Unit”). Schware is referred to in this Complaint as the Relator.

7. Defendants are Vincent Fantozzi and Bernard Fantozzi, doing business as Bellante Properties (collectively, the “Defendants”). At all times relevant to this action, the Defendants owned the Rental Unit.

8. Defendant Vincent Fantozzi negotiated directly with Relator in the matters giving rise to this action, and caused Relator to pay, and Defendants to receive, sums in excess of those permitted by law.

THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

9. The Housing Choice Voucher Program (“HCV Program”), sometimes known as the Section 8 housing subsidy program, is funded through the U.S. Department of Housing and Urban Development (hereinafter “HUD”) and is locally administered by public housing authorities.

10. HUD provides federal funds to the public housing authorities, which the public housing authorities disburse directly to property owners as rent subsidies for eligible low-income participants in the HCV Program. See 42 U.S.C. § 1437f(b)(1) (2011).

11. The amount of a rent subsidy paid to a property owner through the Housing Choice Voucher Program is set by the public housing authority at levels between 90 percent and 110 percent of the rental price of modestly priced apartments in the local market. See 42 U.S.C. § 1437f(c) (2011).

12. Tenants in the HCV Program pay at most 30 percent of their adjusted monthly income for rent. See 42 U.S.C. § 1437a(a) (2011).

13. The public housing authority pays the property owner the remaining contract rent up to the approved maximum. This payment is known as a Housing Assistance Payment (hereinafter “HAP”). See 42 U.S.C. § 1437f(c)(3) (2011).

14. The public housing authority and the property owner enter a HAP Contract that establishes the rental amount for the unit, which is known as the “Contract Rent”; the amount the public housing authority will pay the property owner is known as the “HAP Amount”; and the amount the tenant will pay the property owner is known as the “Tenant Amount.”

15. Payment of the HAP Amount is expressly conditioned upon certification by the property owner that the property owner is meeting the conditions of the HAP Contract.

16. These conditions include, but are not limited to, a promise by the property owner that the property owner will not demand or accept from the tenant any rent for the rental premises other than the Tenant Amount.

RELATOR’S TENANCY

17. Defendants entered into a HAP Contract with Lehigh County Housing Authority (“LCHA”) relating to the Rental Unit and Relator’s tenancy.

18. Under the HAP Contract, effective July 15, 2007, the Contract Rent for the Rental Unit was to be \$596.00 per month. The HAP Amount paid by the LCHA to Defendants was to be \$477.00, and the Tenant Amount paid by Relator to Defendants was to be \$119.00.

19. On or about July 23, 2013, the LCHA agreed to increase the Contract Rent for the Rental Unit. Effective September 1, 2013, the Contract Rent for the Rental Unit was to be

\$675.00 per month. The HAP Amount paid by the LCHA to Defendants was to be \$651.00 per month, and the Tenant Amount paid by Relator to Defendants was to be \$24.00 per month.

20. During the Claims Period, the LCHA paid Defendants HAP Amounts in accordance with the HAP Contract, for an aggregate HAP of approximately \$39,594.00.

21. During the same time, Relator paid Defendants the Tenant Amounts in accordance with the HAP Contract.

22. In addition to the Tenant Amounts, however, in direct violation of their contractual, statutory, and regulatory obligations, Defendants demanded and Relator paid \$79.00 per month more than the Tenant Amount set forth in the HAP Contract.

23. Defendants demanded and collected the extra and unlawful payment of \$79.00 per month based on the pretext that the payment was for trash removal, despite the fact that Defendants knew and had agreed in the HAP Contract that trash removal fees could not exceed \$21 per month.

24. Accordingly, Defendants received from Relator approximately \$4,060 during the Claims Period, and from the LCHA approximately \$39,594.00, in violation of federal statutes and regulations.

THE FALSE CLAIMS

25. Defendants accepted from LCHA and retained approximately 70 payments of the HAP Amount while unlawfully demanding and receiving unauthorized rent payments from Relator.

26. The HAP Contract between the Defendants and the LCHA provides in part as follows:

7. PHA Payment to Owner

- b. Owner compliance with HAP contract.** Unless the owner has complied with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments under the HAP contract.

and

8. Owner Certification.

During the term of this contract, the owner certifies that:

- d.** Except for the rent to owner, the owner has not received and will not receive any payments or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit during the HAP contract term.

27. Federal regulations governing the HCV Program provide in part:

Subpart J – Housing Assistance Payments Contract and Owner Responsibility

(3) The total of rent paid by the tenant plus the [public housing authority] housing assistance payment to the owner may not be more than the rent to owner. The owner must immediately return any excess payment to the PHA.

(4)(i) The part of the rent to owner which is paid by the tenant may not be more than:

(A) The rent to owner; minus

(B) The PHA housing assistance payment to the owner.

(ii) The owner may not demand or accept any rent payment from the tenant in excess of this maximum, and must immediately return any excess rent payment to the tenant.

24 C.F.R. § 982.451.

28. Defendants accepted, retained, and failed to return excess rent payments despite knowing that they were not entitled to receive these funds.

29. Defendants knew that their certifications to the LCHA concerning compliance with the HAP Contract were false. By accepting and negotiating the HAPs, Defendants falsely certified that they were in compliance with the provisions of the HAP Contract and applicable laws and regulations.

30. Had the LCHA known that Defendants were charging and receiving from Relator payments in addition to the Tenant Amount, LCHA would not have disbursed any HAPs to Defendants.

31. The United States suffered damages as a result of the violation of the False Claims Act because HUD disbursed funds to the LCHA for payment to Defendants pursuant to the Housing Choice Voucher Program HAP Contract that would not have been disbursed had LCHA known of Defendants' demand for and receipt of payments from Relator in addition to that provided for by the HAP Contract.

COUNT I PRESENTMENT OF FALSE CLAIMS

32. Plaintiff repeats and realleges each allegation in paragraphs 1 through 31, as if fully set forth herein.

33. Defendants knowingly presented or caused to be presented to the United States, or a grantee thereof, false or fraudulent claims for payment or approval, in the form of the HAP contract, and in the form of their receipt and negotiation of approximately 70 HAP payments while in knowing violation of the terms and conditions of that contract.

34. By virtue of the false claims made by Defendants the United States suffered damages and therefore is entitled to treble damages, as such damages may be determined at trial, plus a civil penalty of \$5,500 to \$11,000 for each of the approximately 70 violations.

WHEREFORE, the United States demands judgment against the Defendants, as follows:


a. In an amount equal to treble that received by Defendants from both the LCHA and the Relator under the HAP Contract; and

b. For a civil penalty of \$5,500 to \$11,000 for each of the approximately 70 false claims to the LCHA by defendants, represented by the receipt and negotiation of each of the approximately 70 HAP payments.

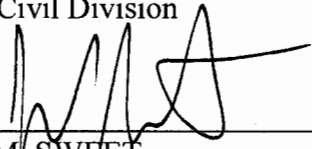
Respectfully submitted,



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