

MMS:ELM
F. #2017R543

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

17 M 805

- against -

TO BE FILED UNDER SEAL

NAGWA ELSILIMY and
AHMED ARAFA,

COMPLAINT AND AFFIDAVIT IN
SUPPORT OF ARREST
WARRANTS

Defendants.

(18 U.S.C. § 1040, 1001)

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EASTERN DISTRICT OF NEW YORK, SS:

RUSSELL FALK, being duly sworn, deposes and states that he is a Special Agent with the United States Department of Housing and Urban Development – Office of Inspector General, duly appointed according to law and acting as such.

In or about and between November 2012 and January 2017, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants NAGWA ELSILIMY and AHMED ARAFA did knowingly and willfully make materially false, fictitious and fraudulent statements, verbally and in writing, to the Federal Emergency Management Agency and the United States Department of Housing and Urban Development in a matter involving benefits authorized, transported, transmitted, transferred, disbursed and paid in connection with a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5170.

(Title 18, United States Code, Section 1040(a)(2))

In or about and between November 2012 and January 2017, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants NAGWA ELSILIMY and AHMED ARAFA did knowingly and willfully make materially false, fictitious and fraudulent statements and representations, in a matter within the jurisdiction of the executive branch of the Government of the United States.

(Title 18, United States Code, Section 1001(a)(2))

The source of your deponent's information and the grounds for his belief are as follows:¹

1. I am a Special Agent with the United States Department of Housing and Urban Development – Office of Inspector General, and have served in that capacity for one year. Previously, I served as a Special Agent with the United States Air Force Office of Special Investigations for nine years. During my time in law enforcement, I have investigated numerous cases involving fraud perpetrated against the Department of Housing and Urban Development and other federal agencies and other crimes. During the course of these investigations, I have conducted or participated in surveillance, witness interviews, undercover transactions, the execution of search warrants, debriefings of informants and reviews of taped conversations and financial records. I am familiar with the facts and circumstances set forth below from my participation in the investigation; my review of the investigative file, including the defendant's criminal history record; and from reports of other law enforcement officers involved in the investigation.

¹ Because the purpose of this Complaint is to set forth only those facts necessary to establish probable cause to arrest, I have not described all the relevant facts and circumstances of which I am aware.

BACKGROUND

2. On October 29, 2012, Hurricane Sandy (hereinafter “Sandy”) struck New York and New Jersey, causing widespread damage to homes and businesses in low-lying and coastal areas throughout the region. Many neighborhoods within the Eastern District of New York, including Oakwood, Staten Island, were devastated. Many homes were badly damaged or destroyed, and many residents were displaced as a result of Sandy. In the aftermath of Sandy, residents of hard-hit areas in the Eastern District of New York and elsewhere turned to government programs for help, including emergency assistance in obtaining temporary shelter and longer term assistance in rebuilding homes and businesses destroyed by the storm.

3. The defendants NAGWA ELSILIMY and AHMED ARAFA are married residents of Staten Island, in Richmond County, New York, who jointly own a home in the Oakwood neighborhood of Staten Island.

A. The Relevant Government Entities and Programs

4. The Federal Emergency Management Agency (“FEMA”) operates under the Department of Homeland Security to respond to natural and man-made emergencies and disasters. Pursuant to 42 U.S.C. § 5174 and Title 44 of the Code of Federal Regulations, FEMA is authorized to provide financial assistance to individuals and households for certain qualifying expenses that are the result of an event designated a “major disaster” by the President of the United States. 42 U.S.C. § 5174(a)(1). On October 30, 2012, in light of the damage caused by Sandy, President Obama issued a “major disaster declaration” for Richmond County, New York, and other counties, and authorized FEMA to

provide federal assistance to eligible individuals in those counties, pursuant to 42 U.S.C. § 5121 *et seq.* 77 Fed. Reg. 224 69647 (Nov. 20, 2012).

5. By statute, resources provided by FEMA for housing assistance² are available only to “individuals and households who are displaced from their predisaster primary residences or whose predisaster primary residences are rendered uninhabitable.” 42 U.S.C. § 5174(b)(1). The applicable regulations define “primary residence” as “the dwelling where the applicant normally lives during the major portion of the calendar year; or the dwelling that is required because of proximity to employment, including agricultural activities, that provide 50 percent of the household’s income.” 44 C.F.R. § 206.111.

6. On or about January 29, 2013, the Disaster Relief Appropriations Act, 2013 (the “Appropriations Act”), was signed into law. Public Law 113-2 – Jan. 29, 2013. The Appropriations Act made supplemental federal appropriations to provide disaster assistance to victims of Sandy, including approximately \$16 billion to Community Development Block Grant (“CDBG”) funds. The United States Department of Housing and Urban Development (“HUD”) administered the CDBG funds, which were allocated for “necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974.” 78 Fed. Reg. 43 14329 (March 5, 2013).

² “Housing assistance,” as defined by statute, includes, among other types of assistance, financial assistance to rent alternative housing and the repair of owner-occupied private residences. 42 U.S.C. § 5174(c).

7. HUD distributed a portion of the CDBG funds to New York City. Id. at 14330. New York City, in turn, established the Build It Back Program (“BIB”) to aid New York City residents who were victims of Sandy with CDBG and other federal funds. BIB assisted New York City residents in rebuilding private single or multi-family homes damaged, destroyed or demolished because of Hurricane Sandy. Applicants had to satisfy several criteria in order to be eligible for assistance through BIB, including, as relevant here, a requirement that the damaged property be a primary residence.

B. The Fraudulent Scheme

8. In or about and between November 2012 and January 2017, the defendants NAGWA ELSILIMY and AHMED ARAFA obtained and attempted to obtain federal funds appropriated for Sandy disaster relief efforts by submitting material misrepresentations in their applications for disaster assistance. Specifically, the defendants falsely represented that their primary residence at the time Sandy hit the Eastern District of New York was 6 Topping Street, Staten Island, New York, 10306 (the “Topping Street Property”).³ In fact, no one was living in the Topping Street Property at the time of the storm. The defendants had been residing at a different address – 121 Wellington Court, Apartment 30, Staten Island, New York, 10314 (the “Wellington Court Apartment”) – since at least March 2012, seven months before Sandy hit the Topping Street Property, and

³ The Topping Street Property, which the defendants jointly own, was badly damaged by Sandy. The Topping Street Property was ordered demolished as a risk to public health and safety following an inspection by the New York City Department of Buildings (the “DOB”), pursuant to an Emergency Declaration issued by the DOB on November 17, 2017.

potentially as early as December 2009. At the time Sandy struck Staten Island, the Topping Street Property was uninhabited, and had been for at least seven months.

9. Evidence obtained in our investigation thus far suggests that the defendants fraudulently obtained federal aid totaling approximately \$767,249.11, including approximately \$16,526.22 from FEMA and approximately \$750,719.89 from HUD, through BIB, based upon their misrepresentations to FEMA, HUD and BIB in applications for disaster relief assistance.

PROBABLE CAUSE

C. The FEMA Applications and Benefits

10. On or about November 4, 2012, the defendant NAGWA ELSILIMY submitted an Application for Disaster Assistance to FEMA (the "First FEMA Application"). The FEMA Application identified a house in the Oakwood neighborhood of Staten Island, the Topping Street Property, as having been damaged by Sandy.

11. Question #8 on First FEMA Application requested the "Address of Damaged Property." In response to this question, ELSILIMY provided the address of the Topping Street Property. Question #12 asked "[i]s the address listed in [Question] #8 your primary residence?" to which ELSILIMY replied "Yes (Primary)." Question #21 on the FEMA Application requested a list of the "[n]ames of all persons living home at the time of the disaster." In response, ELSILIMY listed herself, defendant AHMED ARAFA (who was identified as a co-applicant) and their three shared children, indicating that they all lived at the Topping Street Property at the time Sandy struck Staten Island.

12. In connection with the First FEMA Application, ELSILIMY signed a certification stating "[a]ll information I have provided regarding my application for FEMA

disaster assistance is true and correct to the best of my knowledge.” She also certified her understanding that making intentionally false statements or concealing any information in an attempt to obtain disaster aid is a violation of federal and state law.

13. On or about November 5, 2012, FEMA informed the defendant NAGWA ELSILIMY by mail that her household was approved to receive expedited rental assistance because her home – the Topping Street Property – was inaccessible due to damage caused by Sandy. On or about November 7, 2012, ELSILIMY received a check in the amount of \$2,948, which was intended to cover two months of rental assistance for ELSILIMY and her household. On or about November 21, 2012, FEMA informed the defendant NAGWA ELSILIMY, via letter, that she was eligible to receive additional rental assistance from FEMA. ELSILIMY received a second check for this purpose, in the amount of \$3,790, on or about November 23, 2012.

14. On or about December 20, 2012, the defendant AHMED ARAFA submitted an Application for Continued Temporary Housing Assistance (the “Second FEMA Application”) in his capacity as defendant NAGWA ELSILIMY’s co-applicant. At the end of the Second FEMA Application, the defendant AHMED ARAFA signed a certification stating that their “household cannot live in and/or access [its] pre-disaster primary home due to the disaster,” Hurricane Sandy. He also certified that he understood that making false statements, submitting false information or concealing information in an effort to obtain disaster assistance was a state and federal crime.

15. FEMA responded to the Second FEMA Application with three separate letters. On or about January 10, 2013, FEMA sent the defendant NAGWA ELSILIMY a letter stating that FEMA was not able to evaluate the Second FEMA Application’s request

for rental assistance because she failed to provide a copy of the lease for her temporary housing. In response, on or about January 14, 2013, ELSILIMY submitted a Temporary Housing Information Update to FEMA. ELSILIMY provided a copy of a lease for the Wellington Court Apartment in connection with this update, for a one-year term beginning January 1, 2013.

16. On or about January 11, 2013, FEMA sent the defendant NAGWA ELSILIMY two separate letters concerning the Second FEMA Application. The first informed ELSILIMY that she was ineligible for home repair assistance. The second awarded ELSILIMY \$9,788.22 for personal property damaged by Sandy; accordingly, ELSILIMY received a check for \$9,788.22 on or about January 14, 2017.

D. The BIB Applications and Benefits

17. On or about August 4, 2014, the defendants NAGWA ELSILIMY and AHMED ARAFA submitted a NYC CDBG Housing Assistance Application (the “BIB Application”). In response to Question 6 of the BIB Application, the defendants represented that they owned the Topping Street Property and were using it as their primary residence at the time Sandy struck Staten Island. Additionally, the defendants each provided their New York State driver’s license bearing the address of the Topping Street Property as proof that the Topping Street Property was their primary residence at the time Sandy hit Staten Island. In connection with the BIB Application, ELSILIMY and ARAFA submitted a signed certification that all the information therein was true and correct. They also certified that they understood that providing false statements or information in connection with the BIB Application was punishable under federal law.

18. On or about August 27, 2014, an attorney for the defendant NAGWA ELSILIMY submitted a letter to BIB in connection with ELSILIMY's application for temporary housing expenses. In the letter, ELSILIMY's attorney represented that ELSILIMY and her family were displaced from their home following Sandy, and were continuous tenants of the Wellington Court Apartment from November 2012 through August 2014. In connection with this application, ELSILIMY's attorney submitted a letter from ELSILIMY's landlord confirming her family rented the apartment for \$1,475 a month; copies of canceled checks and bank deposits reflecting the payment of rent for the period from November 2012 through August 2014; and copies of ELSILIMY's rental agreements covering the periods from January 2013 until December 2013 and February 2014 until January 2015. Based on these representations, ELSILIMY sought a credit for temporary housing in the amount of \$32,450.

19. On or about September 26, 2014, the defendants NAGWA ELSILIMY and AHMED ARAFA executed a Coordination of Benefits Worksheet, which calculated the amount of benefits the defendants received following Sandy against their verified, allowable disaster relief expenditures. The worksheet concluded that, based upon the benefits and expenditures identified by the defendants, ELSILIMY and ARAFA should have had \$38,281.75 to contribute towards the cost of rebuilding the Topping Street Property. Under the terms of the BIB Program, the defendants were required to contribute that amount of money towards the reconstruction of their home. In completing the worksheet, the defendants both certified that they had spent \$27,287.50 in temporary housing costs since being displaced by Hurricane Sandy, beyond the amount of disaster relief funds received for

that purpose. The defendants also certified under penalty of perjury that the statements made therein to BIB and HUD were true and correct.

20. On or about November 27, 2015, BIB notified the defendant NAGWA ELSILIMY that the rental expenses her household had incurred between September 2104 and November 2015, totaling \$22,125, would be credited towards her household's \$38,281.75 required contribution towards the rebuilding of the Topping Street Property, reducing the defendants' mandatory contribution to \$16,156.75.

21. On or about December 18, 2015, the defendants NAGWA ELSILIMY and AHMED ARAFA entered into a Grant and Subrogation Agreement with the City of New York (the "BIB Agreement"). The BIB Agreement awarded the defendants a \$733,019.89 grant for the purpose of rebuilding the Topping Street Property.

22. In executing the BIB Agreement, the defendants NAGWA ELSILIMY and AHMED ARAFA certified a number of facts regarding their eligibility for a grant under the BIB Agreement, including a certification that the Topping Street Property was not a second home as defined by the Internal Revenue Service Publication 936 ("IRS Publication 936"). IRS Publication 936 defined "second home" as a home that an owner chooses to treat as their second home, in contrast to a "main home," where the owner "ordinarily live[s] most of the time." According to IRS Publication 936, any individual "can have only one main home at any one time."

23. The defendants NAGWA ELSILIMY and AHMED ARAFA also certified that they had "provided true and accurate information on all Program documents and to Program staff and ha[ve] not misrepresented [their] eligibility for the Build It Back Program options and/or work under the Developer-Homeowner Agreement." The BIB

Agreement also included a notice that “intentionally or knowingly making a materially false or misleading written statement relating to the [BIB] Program could result in ineligibility for benefits, action to recover any Program benefits paid to or on behalf of Owner, and/or a referral to criminal law enforcement.”

24. Under the terms of the BIB Agreement, the grant was paid directly to the contractor performing the work of rebuilding the Topping Street Property.

25. The defendants NAGWA ELSILIMY and AHMED ARAFA continued to live at the Wellington Court Apartment while construction was ongoing at the Topping Street Property. During that time, ELSILIMY periodically requested temporary housing assistance from BIB to cover the rent the defendants paid for the Wellington Court Apartment. ELSILIMY made these requests by signing and submitting Temporary Relocation Assistance Claim Forms (the “Relocation Assistance Forms”). ELSILIMY submitted at least nine such requests for temporary housing assistance, for the period of December 2015 through January 2017. BIB awarded ELSILIMY temporary relocation assistance based upon her statements in the Relocation Assistance Forms, and accordingly mailed her multiple checks, totaling \$17,700 for that purpose.

26. In each of the Relocation Assistance Forms, ELSILIMY asserted that her household had been displaced by “Build It Back construction activities during the time period” applicable to that claim. She also certified, “under penalty of perjury, that the figures reported and the statements made [in the Relocation Assistance Form] to the New York City Build It Back Program and the United States Department of Housing and Urban Development are true and correct and that the amount claimed reflects only the amount I incurred in housing expense for the period claimed.”

E. The Topping Street Property

27. During the course of the investigation, I learned that the defendants NAGWA ELSILIMY and AHMED ARAFA purchased the Topping Street Property on or about June 29, 2000, with a mortgage assigned to PHH Mortgage Corporation.

28. During the course of a New York City Department of Investigation (“DOI”) investigation into the use of BIB Program grants, integrity monitors interviewed an individual who lived on Topping Street near the Topping Street Property (“Witness #1”). Witness #1 has lived on Topping Street since 2004. Witness #1 recalled that the defendants NAGWA ELSILIMY and AHMED ARAFA, along with their family, were residing at the Topping Street Property when Witness #1 moved onto Topping Street. Witness #1 stated that the defendants moved out of the Topping Street Property three or four years before Sandy hit Staten Island on October 29, 2012. Witness #1 stated that the Topping Street Property has been vacant since the defendants moved out. Witness #1 believed that the defendants left the Topping Street Property because it was in a state of disrepair, and they could not afford to make the necessary improvements.

29. The integrity monitors also interviewed a second individual who lived on Topping Street near the Topping Street Property (“Witness #2”). Witness #2 has resided on Topping Lane since 2007. Witness #2 occasionally observed people collecting mail from the Topping Street Property, but asserted that the house located there was vacant long before Hurricane Sandy hit Staten Island. Witness #2 recalled that the Topping Lane Property was vacant as of approximately 2010, when neighbors smelled gas coming from the property and reported a potential leak to the fire department. The New York City Fire Department responded and shut down the gas line to the house.

30. I have reviewed records provided by National Grid NY (“National Grid”) the natural gas utility in the area of Staten Island, which provides gas to the Topping Street Property. The records reveal that the defendant NAGWA ELSILIMY had an active account with National Grid at the Topping Street Property between July 31, 2000 and April 3, 2012, when the gas meter was removed from the property. There was no natural gas service at the Topping Street Property between April 3, 2012 and January 3, 2017, including at the time Hurricane Sandy struck the Topping Street Property in October 2012.

F. The Wellington Court Property

31. I have reviewed records provided by Whispering Woods at Latourette, Inc. (“Whispering Woods”), the landlord who owns and rents the Wellington Court Property. These records reveal that the defendants NAGWA ELSILIMY and AHMED ARAFA first entered into a one-year lease for the Wellington Court Apartment beginning on December 1, 2009 (the “2009 Lease”). Under the terms of the 2009 Lease, the monthly rent was \$1,400. On the lease application for the Wellington Court Apartment, ELSILIMY provided the same date of birth and same last four digits of her Social Security number that she provided on the First FEMA Application. She indicated that the defendant ARAFA was her co-applicant, and stated that the Topping Street Property was their current street address, as of the date she submitted the lease application on October 4, 2009. She also indicated that apartment would have a total of five occupants.

32. I have reviewed records provided by the New York City Department of Education concerning the home addresses provided for each of the defendants’ shared children. The addresses for two of their three children were changed from the Topping Street Property to the Wellington Court Apartment in January and September 2010,

respectively. The address for their third child was changed from the Topping Street Property to the Wellington Court Apartment in October 2015.

33. The defendants entered into at least four subsequent leases with Whispering Woods, for one-year terms beginning January 1, 2013 (the “2013 Lease”), February 14, 2014 (the “2014 Lease”), February 1, 2015 (the “2015 Lease”) and February 1, 2016 (the “2016 Lease”).⁴ The rent for the Wellington Court Apartment was \$1,475 per month, according to the terms of the 2013-2016 Leases.

34. I have reviewed records provided by Citibank, N.A., which reveal that, beginning in March 2012 and prior to the start date for the 2013 Lease, the defendants NAGWA ELSILIMY and AHMED ARAFA made regular payments to Whispering Woods in the amount of \$1,475 each month.⁵ Each of these payments were made by check, and each of the checks bore some variation of the notation: “Unit 3O.” The apartment number associated with the 2013, 2014, 2015 and 2016 Leases (and with the Wellington Court Apartment) is 3O.

CONCLUSION

34. In sum, there is probable cause to believe that, in or about and between November 2012 and January 2017, the defendants NAGWA ELSILIMY and AHMED ARAFA did knowingly and willfully make materially false, fictitious and fraudulent statements, verbally and in writing, to the Federal Emergency Management Agency and the United

⁴ The defendant NAGWA ELSILIMY alone executed the 2013, 2014 and 2015 Leases. Both ELSILIMY and AHMED ARAFA executed the 2016 Lease.

⁵ The defendants’ banking records indicate that they made such payments on March 26, 2012, April 30, 2012, May 18, 2012, June 28, 2012, August 1, 2012, August 28, 2012, September 27, 2012, November 11, 2012 and December 11, 2012.

States Department of Housing and Urban Development in a matter involving benefits authorized, transported, transmitted, transferred, disbursed and paid in connection with a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5170; and did knowingly and willfully make materially false, fictitious and fraudulent statements and representations, in a matter within the jurisdiction of the executive branch of the Government of the United States in asserting that the Topping Street Property was their primary residence as of October 29, 2012, when, in fact, the Wellington Court Apartment was the defendants' primary residence as of that date.

35. It is respectfully requested that this Court issue an order sealing, until further order of the Court, all papers submitted in support of this application, including the instant complaint and application and related arrest warrant. The defendants are currently at liberty, and it is respectfully submitted that sealing these documents is necessary to prevent the defendants from learning that a complaint has been filed and arrest warrants issued, and to thus prevent the defendants from avoiding arrest and prosecution.

WHEREFORE, your deponent respectfully requests that the defendants
NAGWA ELSILIMY and AHMED ARAFA be dealt with according to law.

RUSSELL FALK
Special Agent, United States Department of
Housing and Urban Development
Office of Inspector General

Sworn to before me this
13 day of September, 2017

THE HONORABLE ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK