

JUDGE SAND

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

Plaintiff,

08 Civ. _____

v.

COMPLAINT

SCOTT SHIELDS and PATRICIA SHIELDS,

Defendants.
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The United States of America, by and through its attorney, Michael J. Garcia, United States Attorney for the Southern District of New York, alleges for its complaint upon information and belief as follows:

PRELIMINARY STATEMENT

1. This is a civil action brought by the United States of America ("United States") against Scott Shields and Patricia Shields (collectively, "Defendants") under the False Claims Act, 31 U.S.C. §§ 3729-3733 (the "False Claims Act"), to recover damages sustained by, and penalties owed to, the United States as the result of Defendants having knowingly presented or

caused to be presented to the United States false claims for Federal Emergency Management Agency (“FEMA”) Mortgage and Rental Assistance (“MRA”) funds.

2. Alternatively, the United States asserts claims based on the same conduct under the common law for fraud, unjust enrichment, and payment under mistake of fact.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the claims brought under the False Claims Act pursuant to 31 U.S.C. § 3730(a) and 28 U.S.C. § 1331, and over all remaining claims pursuant to 28 U.S.C. § 1345 and this Court’s equitable jurisdiction.

4. Venue lies in this District pursuant to 31 U.S.C. § 3732(a), and 28 U.S.C. § 1391(b), because many of the acts complained of herein took place in this District.

PARTIES

5. Plaintiff is the United States on behalf of its agency the Federal Emergency Management Agency.

6. Defendant Scott Shields, formerly located at 225 Rector Place, New York, New York 10280 (“225 Rector Place”), on or about November 1, 2002 and March 23, 2003, applied for and received MRA funds from FEMA with a clause of restrictive and specific use that the funds be used for delinquent mortgage or rent payments from August 1, 2002 through December 31, 2002 and from January 1, 2003 through July 31, 2003.

7. Defendant Patricia Shields, formerly located at 225 Rector Place, New York, New York 10280, on or about November 1, 2002 and March 23, 2003, applied for and received MRA funds from FEMA with a clause of restrictive and specific use that the funds be used for

delinquent mortgage or rent payments from August 1, 2002 through December 31, 2002 and from January 1, 2003 through July 31, 2003.

FACTS

8. After the September 11, 2001 attacks on the World Trade Center, FEMA established the MRA program to provide financial assistance to families and individuals facing foreclosure or eviction as a result of reduced income caused by the attacks.

9. In order to qualify for MRA funding an applicant must have demonstrated: that he or she lived or worked in Manhattan on or before September 11, 2001, or that he or she was employed by a company economically dependent on companies based in Manhattan; at least a 25% reduction in household income directly related to the disaster; that he or she continued to live at the pre-disaster residence; that he or she was current with mortgage or rental payments prior to the disaster; and that he or she faced, at the time of the application, a hardship in paying rent or mortgage as a result of the disaster.

10. MRA funds were awarded to applicants with a clause of restrictive and specific use that required the recipient to use such funds towards the delinquent mortgage or rental payments indicated on that recipient's application.

11. On or about September 18, 2001, Scott Shields registered with FEMA for disaster assistance using a false social security number and named Patricia Shields as a co-registrant.

12. Scott Shields and Patricia Shields lived at 9 Nedley Lane in Greenwich, Connecticut, on September 11, 2001, and not in the vicinity of the World Trade Center.

13. In providing information to FEMA as part of the registration process, Scott Shields indicated that their home needed repairs to be lived in safely, that essential utilities were not working as a result of the disaster, and that someone in his family had lost work or had become unemployed due to the disaster.

First MRA Application and Award

14. On November 1, 2002, Scott Shields submitted an application for MRA funds.

15. On the Certificate of Household Income portion of the application, Scott Shields indicated that his pre-disaster household income was \$5,000 per month and that his post-disaster household income was \$400 per month.

16. On the Certificate of Household Income portion of the application, Scott Shields indicated that his supervisor at his employer, Marine Safety Service, was Joe Devylder.

17. Joe Devylder has never worked for Marine Safety Service, nor has he ever supervised Scott Shields.

18. On the Notice of Delinquency portion of the application, Scott Shields and Patricia Shields indicated that they owed outstanding rental payments of \$13,231 for Apartment 23G at 225 Rector Place, New York, New York. They indicated that this amount included monthly rent for August, September, October, and November of 2002, as well as late fees and legal fees.

19. On or about November 12, 2002, Scott Shields submitted to FEMA an amended MRA Certificate of Household Income.

20. On this document Scott Shields indicated that his pre-disaster income was \$60,000 per month and that his post-disaster income was \$0 per month. On this document Scott Shields also indicated that he had a spouse or co-applicant whose pre-disaster income was \$10,500 per month and post-disaster income was \$0 per month, working at “The Showroom” at 225 Rector Place, New York, New York 10280.

21. On or about November 19, 2002, Scott Shields received a letter from FEMA informing him that he had been awarded \$16,433.50 in MRA funds.

22. This letter indicated that the MRA funds must be used to pay mortgage or rent from August 1, 2002 through December 31, 2002, and that the money “is not for food, medical needs, or any personal items.”

23. Scott Shields and Patricia Shields did not use all of the \$16,433.50 to make rental payments.

Second MRA Application and Award

24. On or about March 23, 2003, Patricia Shields submitted a request for additional MRA funds on her and Scott Shields’ behalf.

25. On this application for additional MRA funds, Scott Shields and Patricia Shields indicated that they had spent their previous MRA funds on rent or mortgage payments at 225 Rector Place for the period August 1, 2002 to December 31, 2002.

26. Scott Shields and Patricia Shields did not spend all of the previous MRA funds on rent at 225 Rector Place, as they were required to do.

27. On this application for additional MRA funds, Scott Shields and Patricia Shields indicated that they were living at 225 Rector Place and that this was their pre-disaster residence.

28. Scott Shields and Patricia Shields were not, in fact, residing at 225 Rector Place prior to the disaster of September 11, 2001. Scott Shields' and Patricia Shields' lease at 225 Rector Place began on April 1, 2002.

29. On the Notice of Delinquency portion of the application, Scott Shields and Patricia Shields indicated that they owed outstanding rental payments of \$9,562.50 for Apartment 23G at 225 Rector Place. They indicated that this amount included monthly rent for January, February, and March of 2003, as well as late fees.

30. On or about March 27, 2003, Scott Shields received a letter from FEMA informing him that he had been awarded \$22,462.50 in MRA funds.

31. This letter indicated that the MRA funds must be used to pay mortgage or rent from January 1, 2003 through July 31, 2003, and that the money "is not for food, medical needs, or any personal items."

32. Scott Shields and Patricia Shields did not use the \$22,462.50 to pay their rent at 225 Rector Place and were evicted by court order on May 27, 2003 for non-payment of rent.

Third MRA Application

33. On or about October 23, 2003, Scott Shields and Patricia Shields submitted a request for additional MRA funds.

34. On this application, Scott Shields and Patricia Shields listed their address as 400 West 37th Street, New York, New York 10018, and indicated that this was not their pre-disaster residence.

35. On this application, Scott Shields and Patricia Shields indicated that they had used their previous MRA funds, awarded on or about March, 27, 2003, to pay rent for the period January 1, 2003 to July 31, 2003.

36. Scott Shields and Patricia Shields did not spend previous MRA funds on rent for the period January 1, 2003 to July 31, 2003.

37. On or about January 14, 2004, Scott Shield received a letter from FEMA informing him that his request for additional MRA had been denied. The letter indicated that Scott Shields did not qualify for continued assistance because he was no longer living in the pre-disaster residence.

Criminal Guilty Plea

38. On March 21, 2008, Patricia Shields pled guilty to felony charges of conspiracy to fraudulently obtain federal funds and to commit mail fraud, theft of Government funds, and mail fraud, resulting from her application for and receipt of FEMA MRA funds, as well as disaster relief funding from the American Red Cross.

39. On March 21, 2008, at her plea allocution, Patricia Shields stated: "From September 2001 until October of 2003, I agreed with my brother to apply for and receive money ... from FEMA and Red Cross. We were not entitled to the FEMA money because our household income was not reduced by at least 25 percent as a direct result of the events of September 11, 2001. When we applied for the FEMA aid, we said that it was and that we had been living and working in lower Manhattan on September 11, 2001. When we received the money from FEMA, we used part of it to pay our back rent but did not use the remainder of it to pay for December 2002 and our January through July of 2003 rent as FEMA instructed us to ... I knew that what we were doing was wrong, and I am very sorry."

40. On March 27, 2008, Scott Shields pled guilty to felony charges of conspiracy to fraudulently obtain federal funds and to commit mail fraud, theft of Government funds, and mail fraud, resulting from his application for and receipt of FEMA MRA funds, as well as disaster relief funding from the American Red Cross.

41. On March 27, 2008, at his plea allocution, Scott Shields stated: "Between September 2001 up to and including October of 2003, I agreed with my sister, Patsy, to apply for and accept money from FEMA and from the American Red Cross. I knew the money from FEMA was to be used only to pay back rent. We were evicted before we received the money and we used the money from FEMA to pay rent on a new apartment in violation of our agreement with FEMA. I knew that was wrong."

42. At his plea allocution, Scott Shields also admitted that he knew that the FEMA MRA funds were federal government funds.

FIRST CLAIM

Violations of the False Claims Act (31 U.S.C. § 3729 (a)(1)) Presenting False Claims for Payment

43. The United States incorporates by reference paragraphs 1 through 42 above as if fully set forth herein.

44. The United States seeks damages and penalties against Scott Shields and Patricia Shields under Section 3729(a)(1) of the False Claims Act, 31 U.S.C. § 3729(a)(1).

45. As set forth above, Scott Shields and Patricia Shields knowingly, or in deliberate ignorance of or in reckless disregard of the truth, presented, or caused to be presented, to an officer, employee or agent of the United States, false and fraudulent claims for payment or approval by submitting false or fraudulent applications to FEMA for MRA funds.

46. The United States paid Scott Shields and Patricia Shields in reliance upon said false or fraudulent claims.

47. By reason of the actions and conduct of Scott Shields and Patricia Shields, the United States has been damaged in a substantial amount to be determined at trial.

48. The United States is also entitled to mandatory and civil penalties ranging from \$5,500 to \$11,000 per false claim. 31 U.S.C. § 3729(a).

SECOND CLAIM

Violations of the False Claims Act (31 U.S.C. § 3729 (a)(2)) Use of False Statements

49. The United States incorporates by reference paragraphs 1 through 42 above as if fully set forth herein.

50. The United States seeks damages and penalties against Scott Shields and Patricia Shields under Section 3729(a)(2) of the False Claims Act, 31 U.S.C. § 3729(a)(2).

51. As set forth above, Scott Shields and Patricia Shields knowingly, or in deliberate ignorance of or in reckless disregard of the truth, made, used, and/or caused to be made and used, false records and statements, in order to get false or fraudulent claims paid or approved by the United States for FEMA MRA funds.

52. The United States paid such false or fraudulent claims because of the acts and conduct of Scott Shields and Patricia Shields.

53. By reason of Scott Shields' and Patricia Shields' false claims, the United States has been damaged in a substantial amount to be determined at trial.

54. The United States is also entitled to mandatory civil penalties ranging from \$5,500 to \$11,000 per false claim. 31 U.S.C. § 3729(a).

THIRD CLAIM

Violations of the False Claims Act (31 U.S.C. § 3729 (a)(3))

55. The United States incorporates by reference paragraphs 1-42 above as if fully set forth herein.

56. In connection with the foregoing scheme, defendants conspired with each other to defraud the United States by getting false or fraudulent claims allowed or paid.

57. By reason of these false claims, the United States has sustained damages in an amount to be determined at trial.

58. The United States is also entitled to mandatory civil penalties ranging from \$5,500 to \$11,000 per false claim. 31 U.S.C. § 3729(a).

FOURTH CLAIM

Common Law Fraud

59. The United States incorporates by reference paragraphs 1 through 42 above as if fully set forth herein.

60. Scott Shields and Patricia Shields made material misrepresentations of fact to the United States with knowledge of their falsity, or in deliberate ignorance of or in reckless disregard of their truth, in connection with their application for and receipt of FEMA MRA funds.

61. Scott Shields and Patricia Shields intended that the United States rely upon the accuracy of the false representations referred to above.

62. The United States made substantial payments of FEMA MRA funds, in justifiable reliance upon Scott Shields' and Patricia Shields' false representations.

63. Scott Shields' and Patricia Shields' actions caused the United States to be damaged in a substantial amount to be determined at trial.

FIFTH CLAIM

Unjust Enrichment

64. The United States incorporates by reference paragraphs 1 through 42 above as if fully set forth herein.

65. By reason of the payments made by the United States to Scott Shields and Patricia Shields, based on the FEMA MRA applications submitted by Scott Shields and Patricia Shields, and all money paid as a result of those submissions, Scott Shields and Patricia Shields were unjustly enriched. The circumstances of Scott Shields' and Patricia Shields' receipt of these payments are such that, in equity and good conscience, they should not retain these payments, the amount of which is to be determined at trial.

SIXTH CLAIM

Payment Under Mistake of Fact

66. The United States incorporates by reference paragraphs 1 through 42 above as if fully set forth herein.

67. The United States seeks relief against Scott Shields and Patricia Shields to recover monies paid under mistake of fact as a result of defendants' applications for FEMA MRA funds.

68. The United States paid Scott Shields and Patricia Shields based on claims that were submitted under the erroneous belief that Scott Shields and Patricia Shields were entitled to payment of such funds. This erroneous belief was material to the United States' decision to pay Scott Shields and Patricia Shields. In such circumstances, the United States' payment of federal

funds to Scott Shields and Patricia Shields in connection with their applications for FEMA MRA funds was by mistake and was not authorized.

69. Because of these payments by mistake, Scott Shields and Patricia Shields have received monies to which they are not entitled.

70 By reason of foregoing, the United States was damaged in a substantial amount to be determined at trial.

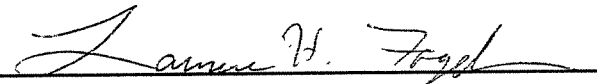
WHEREFORE, plaintiff, the United States, requests that judgment be entered in its favor and against defendants Scott Shields and Patricia Shields as follows:

- (a) On the First, Second, and Third Claims for Relief (Violations of the False Claims Act, 31 U.S.C. § 3729(a)(1), (2), and (3)), for treble the United States' damages, in an amount to be determined at trial, plus an \$11,000 penalty for each false claim presented;
- (b) On the First, Second, and Third Claims for Relief, an award of costs pursuant to 31 U.S.C. § 3729(a);
- (c) On the Fourth Claim for Relief (Common Law Fraud), in an amount to be determined at trial, together with costs and interest;
- (d) On the Fifth Claim for Relief (Unjust Enrichment), in an amount to be determined at trial, together with costs and interest;
- (e) On the Sixth Claim for Relief (Payment Under Mistake of Fact), in an amount to be determined at trial, together with costs and interest; and
- (f) Awarding such further relief as is proper.

Dated: New York, New York
October 31, 2008

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Southern District of New York
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By:



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