

INTRODUCTION

1. This is a civil fraud action by the United States to recover treble damages and civil penalties under the False Claims Act (“FCA”), as amended, 31 U.S.C. §§ 3729 *et seq.*, arising from fraud on the Small Business Administration (“SBA”) in connection with the SBA Express Loan Program (“SBAExpress”). Specifically, HSBC sought and obtained from SBA reimbursement for losses HSBC had incurred in connection with fraudulent or potentially fraudulent loans it had issued under the SBAExpress program while failing to disclose to SBA that HSBC knew the loans were fraudulent or potentially fraudulent.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 31 U.S.C. § 3730(a) and 28 U.S.C. § 1331.

3. Venue is appropriate in this judicial district pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. §§ 1391(b)(1), (b)(3), and (c) because HSBC can be found and transacts business within this district.

PARTIES

4. Plaintiff is the United States of America.

5. Defendant HSBC is a chartered national banking association with its main office in Mclean, Virginia and its principal executive offices in New York. HSBC is authorized to issue SBAExpress loans.

FACTUAL BACKGROUND

I. SBAEXPRESS

A. Background

6. The SBA helps Americans start, build and grow businesses. In that regard, SBA offers a variety of loan programs to help businesses succeed. While SBA does not lend money

directly to entrepreneurs to start or grow a business, SBA guarantees at least some of the losses lenders may incur when such loans are not repaid, provided the lender has complied with SBA loan program requirements as defined in 13 C.F.R. § 120.10.

7. One such loan program is SBA's 7(a) Loan Program, a program for helping start-up and existing small businesses by providing guarantees on loans made for a variety of business purposes. The maximum loan amount under SBA's 7(a) Loan Program is \$5 million, and SBA can guarantee up to 75 percent of loans above \$150,000.

8. *SBAExpress* applies to certain loans that are eligible under SBA's 7(a) Loan Program. SBA created the *SBAExpress* program (formerly *FA\$TRAK*) in 1995 to (i) increase SBA's effectiveness in providing financial assistance to the small business community within the United States; (ii) increase the efficiency and reduce the costs of processing SBA loans for both the SBA and the SBA's lending partners; (iii) further streamline SBA's loan approval process and reduce required paperwork and procedures; and (iv) encourage the participation of more lenders in the SBA's loan programs.

9. *SBAExpress* loans are presently limited to up to \$350,000. Qualified lenders such as HSBC are authorized to approve *SBAExpress* loans, and to use their own loan analyses, procedures, and documentation, including their own application forms, internal credit memoranda and servicing documentation. Lenders are required to follow their same internal credit review and due diligence procedures that these lenders also use for their own non-SBA guaranteed commercial loans. In return for expanded authority and autonomy provided to lenders in this program, lenders agree to accept a maximum SBA guarantee of 50 percent on these loans.

10. In light of the high level of autonomy delegated to lenders, SBA is particularly concerned that loan proceeds are used only for business-related purposes. Lenders are required, among other things, to communicate to borrowers that all proceeds of the SBA guaranteed loan must be used exclusively for business-related purposes.

11. SBA*Express* lenders are expected to assume greater responsibility for screening applicants and loans for SBA eligibility in light of the authority and responsibility conferred on lenders by this program, and must be fully familiar with SBA's eligibility requirements.

B. Submission of Claims for Payment to SBA and Required Certification

12. A lender requesting that SBA pay the guaranteed portion of a defaulted loan must submit a Purchase Demand Kit ("PDK") to SBA. The PDK includes multiple certifications signed under penalty of perjury and also includes an express statement by the lender acknowledging that SBA will rely on these certifications. These certifications include, among others, that the "loan has been serviced and liquidated using generally accepted commercial banking standards employed by prudent lenders;" that the "lender has obtained SBA's written consent for all actions where required;" and that the "lender used appropriate diligence to ensure that disbursements were used exclusively for business related purposes."

13. For SBA to process the guaranty purchase, the lender generally submits to SBA a liquidating "wrap up report" with all the information required by SBA's Standard Operating Procedure 50-51. The wrap up reports include a summary of servicing actions taken during collection efforts or recovery, a summary of the outcome of any site visits with the borrower, and a summary of the liquidation of the collateral.

II. HSBC SUBMITTED CLAIMS FOR PAYMENT TO SBA FOR FRAUDULENT OR POTENTIALLY FRAUDULENT LOANS WITHOUT ADVISING SBA THAT HSBC KNEW THE LOANS WERE FRAUDULENT OR POTENTIALLY FRAUDULENT.

A. HSBC Prepared a List of Fraudulent or Potentially Fraudulent Loans

14. In or around 2006, HSBC conducted an internal review to identify reasons for the default rates on loans it had made to small and medium size enterprises, including but not limited to loans issued pursuant to *SBAExpress*.

15. An HSBC employee wrote in an internal email dated November 17, 2006 that “a list of known fraud accounts must be established” as part of an effort “to gain an understanding of fraud within the Small Business Portfolio.” The HSBC employee noted that the repository was being created “in order to understand the volume & different types of fraud.”

16. In collecting information regarding fraudulent loans, HSBC identified various possible categories of fraud that had been employed in connection with these loans, such as the creating of a false commercial identity; check fraud; a business closing or filing for bankruptcy to avoid the debt with the intent of re-opening a similar business; and identity theft.

17. HSBC identified many *SBAExpress* loans as fraudulent or potentially fraudulent in which borrowers may have submitted false information to HSBC in obtaining their loans, including the 42 loans referenced in Exhibit A (the “Loans”).

B. HSBC Submitted Claims to SBA for Loans that HSBC Knew Were Fraudulent or Potentially Fraudulent Without Disclosing to SBA the Fraud or Potential Fraud

18. After the Loans defaulted, HSBC sought reimbursement from SBA for the guaranteed amount on each of these Loans (*i.e.*, up to fifty percent of the principal of the Loans), without telling SBA that many of the Loans were fraudulent or potentially fraudulent.

19. In requesting the payment of the guaranteed amounts on the Loans, HSBC submitted a Purchase Demand Kit for each of these Loans.

20. The Purchase Demand Kit contained the certifications from HSBC that the “loan has been serviced and liquidated using generally accepted commercial banking standards employed by prudent lenders;” that the “lender has obtained SBA’s written consent for all actions where required;” and that the “lender used appropriate diligence to ensure that disbursements were used exclusively for business related purposes.”

21. In submitting the Purchase Demand Kit and the wrap up report for many of the Loans, HSBC did not inform SBA of all of the facts indicating that borrowers may have submitted false information to HSBC in connection with the origination of these Loans, or that HSBC had included these Loans on an internal list of fraudulent or potentially fraudulent loans.

22. HSBC’s failure to disclose that it had determined that many of the Loans were fraudulent or potentially fraudulent rendered HSBC’s reimbursement requests for losses incurred in connection with such Loans false, misleading, and/or fraudulent. The wrap up reports contained half-truths and material omissions by failing to disclose facts about fraud or potential fraud by borrowers when the Loans were originated.

23. The presence of fraud in loans guaranteed by the SBA is material to SBA’s decision on whether the lender is entitled to reimbursement of lender losses incurred in connection with such loans.

24. SBA regulations make clear that SBA is released from liability on its guarantee when, among other things, the lender “has failed to make, close, service, or liquidate a loan in a prudent manner,” the lender “has failed to comply materially with any Loan Program Requirement for 7(a) loans,” or the lender “has failed to disclose a material fact to SBA

regarding a guaranteed loan in a timely manner.” 13 C.F.R. § 120.524(a). HSBC’s failure to disclose that it had identified certain loans as fraudulent or potentially fraudulent deprived SBA of information that would have enabled it to evaluate whether HSBC had engaged in prudent lending and loan servicing practices, and whether HSBC accurately certified that it used appropriate diligence to ensure that disbursements were used exclusively for business related purposes.

25. As a result of HSBC’s submission of its Purchase Demand Kit, wrap up report, and signed certification, SBA paid the guaranteed amounts on the Loans.

FIRST CLAIM

Violations of the False Claims Act (31 U.S.C. § 3729(a)(1) (2006), and, as amended, 31 U.S.C. § 3729(a)(1)(A)) Presenting False Claims

26. The Government incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

27. The Government seeks relief against HSBC under Section 3729(a)(1) of the False Claims Act, 31 U.S.C. § 3729(a)(1) (2006), and, as amended, Section 3729(a)(1)(A) of the False Claims Act, 31 U.S.C. § 3729(a)(1)(A).

28. As set forth above, HSBC knowingly, or acting with deliberate ignorance and/or with reckless disregard for the truth, presented and/or caused to be presented, to an officer or employee of the Government, false and fraudulent claims for payment or approval by failing to disclose for many of the Loans submitted for payment of guaranteed claims that HSBC had identified these Loans as fraudulent or potentially fraudulent, while at the same time certifying that the “lender used appropriate diligence to ensure that disbursements were used exclusively for business related purposes.”

29. The Government paid guaranteed claims on the Loans and incurred losses relating to HSBC's wrongful conduct.

30. By reason of the false claims of HSBC, the Government has been damaged in an amount to be determined at trial.

SECOND CLAIM

Violations of the False Claims Act (31 U.S.C. § 3729(a)(2) (2006), and, as amended, 31 U.S.C. § 3729(a)(1)(B)) Use of False Statements

31. The Government incorporates by reference paragraphs 1 through 25 as if fully set forth in this paragraph.

32. The Government seeks relief against HSBC under Section 3729(a)(2) of the False Claims Act, 31 U.S.C. § 3729(a)(1) (2006), and, as amended, Section 3729(a)(1)(B) of the False Claims Act, 31 U.S.C. § 3729(a)(1)(B).

33. As set forth above, HSBC knowingly, or acting in deliberate ignorance and/or with reckless disregard of the truth, made, used, or caused to be made or used, false records and/or statements material to false or fraudulent claims in connection with HSBC's requests for payment on many of the Loans.

34. The Government paid guaranteed claims, and incurred losses, relating to the Loans because of HSBC's wrongful conduct.

35. By reason of the false records and/or statements of HSBC, the Government has been damaged in an amount to be determined at trial.

WHEREFORE, the Government respectfully requests that judgment be entered in its favor and against HSBC as follows:

- a. On Counts One and Two, a judgment against HSBC for treble damages and civil penalties to the maximum amount allowed by law;
- b. An award of costs pursuant to 31 U.S.C. § 3729(a); and
- c. An award of any such further relief as is proper.

Dated: New York, New York
April 10, 2017

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Exhibit A

LOAN NUMBER

1	[REDACTED]-4002
2	[REDACTED]-4003
3	[REDACTED]-4005
4	[REDACTED]-5004
5	[REDACTED]-4006
6	[REDACTED]-4006
7	[REDACTED]-4009
8	[REDACTED]-5003
9	[REDACTED]-5002
10	[REDACTED]-4003
11	[REDACTED]-4006
12	[REDACTED]-4009
13	[REDACTED]-4010
14	[REDACTED]-4001
15	[REDACTED]-4009
16	[REDACTED]-5003
17	[REDACTED]-4010
18	[REDACTED]-4004
19	[REDACTED]-02
20	[REDACTED]-4002
21	[REDACTED]-4009

LOAN NUMBER

22	[REDACTED]-5009
23	[REDACTED]-5006
24	[REDACTED]-00
25	[REDACTED]-4002
26	[REDACTED]-4000
27	[REDACTED]-4007
28	[REDACTED]-04
29	[REDACTED]-4009
30	[REDACTED]-4006
31	[REDACTED]-4004
32	[REDACTED]-02
33	[REDACTED]-4006
34	[REDACTED]-06
35	[REDACTED]-4005
36	[REDACTED]-5007
37	[REDACTED]-4007
38	[REDACTED]-5005
39	[REDACTED]-4009
40	[REDACTED]-04
41	[REDACTED]-4003
42	[REDACTED]-4002

REDACTED