

August 10, 2016 9:51 AM
CLERK OF COURT
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY lg / SCANNED BY lg / 8/10/16

**IN THE UNITED STATE DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**UNITED STATES ex rel.
Philip C. Bellfy, PhD**

1:16-cv-995

Paul L. Maloney, United States District Judge

PLAINTIFF-RELATOR,

HON.

FILED UNDER SEAL

**COMPLAINT FOR DAMAGES UNDER THE
FALSE CLAIMS ACT
JURY TRIAL DEMANDED**

vs.

**CITY OF EAST LANSING, MICHIGAN,
a MICHIGAN Municipal Corporation and INDIVIDUALS, et al;
Thomas M. Yeadon, East Lansing City Attorney,
Thomas M. Hitch, East Lansing Assistant City Attorney
Dennis E. McGinty -- "Special Assistant City Attorney"
Todd Sneathen
Ron Lacasse
Mary Haskell
Diane Goddeeris
Marie [McKenna] Wicks
Timothy Huffmyer (President of Epsilon Rho)
Kathleen Boyle
Nathan Triplett
Kevin Beard
Vic Loomis
Defendants as yet unnamed,**

DEFENDANTS,

DAVID J. GILBERT (P56956)
Attorney for Relator
306 E. Broadway St., Ste #3
Mount Pleasant, MI 48858
989-779-8505
djgilbertlaw@gmail.com

QUI TAM COMPLAINT

COMPLAINT FOR VIOLATIONS OF FEDERAL FALSE CLAIMS ACTS

NOW COMES, RELATOR PHILIP C. BELLFY, PhD, bringing this Qui Tam action in the name of the United States of America by and through his undersigned attorney, David J. Gilbert, and alleges as follows:

INTRODUCTION

1. Qui Tam Relator Philip C. Bellfy, PhD. brings this action on his own behalf and on behalf of the United States of America to recover damages and civil penalties under the False Claims Act, 31 U.S.C. § 3730(b)(2), et seq., against Defendants, the City of East Lansing, Michigan, a Michigan Municipal corporation, and others.
2. Relator's allegations relate to illegal use of Government Funds and fraudulent claims to receive funds from Community Development Block Grant Program (CDBG). These funds were used for two purposes (1) "replace the existing retaining wall and sidewalk on Abbot Road between Fern and Oakhill." (2) to enhance private property not publicly-owned, a violation of federal law.
3. Relator's allegations further can establish that the HUD-CDBG funding was used with full knowledge that the property to be enhanced was owned by the McGinty /Hitch Law Firm, and the Epsilon Rho fraternity. A private-practice law firm, McGinty/Hitch, was at that time, under contract to serve as the "City Attorney" for the City of East Lansing, Michigan.
4. Relator alleges that the parties, City of East Lansing, and the McGinty/Hitch Law Firm, and others, were well aware that the retaining wall and sidewalk, while within the City's Right of Way, were privately owned, and, as a consequence, that replacing the retaining wall fell well

outside of the "Eligible Activities" provisions of the CDBG, thus perpetrating a fraud on the taxpayers of East Lansing, Michigan, and the United State Government.

5. Defendant, City of East Lansing, acting by and through its City Attorney, McGinty/Hitch Law Firm, and others, also violated the federal False Claims Act (federal FCA), 31 U.S.C. § 3729 (a)(1)(A) and (B) et seq., knowing that they were ineligible for the CDBG payments, and created or used false records in support of these false claims in violation of 24 CFR § 570.207 - Ineligible Activities.

6. All Defendants participated in the illegal scheme between the City of East Lansing and McGinty/Hitch Law Firm by conspiring to defraud the federal government by giving false or fraudulent claims allowed or paid by the HUD-CDBG funding programs.

7. In addition, the beneficiaries of the unlawful funding were not the general citizens of the City of East Lansing, but the private owners of properties and companies, and, in this case, it should be considered a kickback to the City of East Lansing's City Attorneys, and others, when the law-firm's property was enhanced with HUD-CDBG funding procured by the City of East Lansing.

8. By review of the documents, Relator can show outright fraud committed by the Defendants, and that the Defendants engaged in extremely questionable and collusive behavior for the private gain and benefit of the "City Attorneys" (they own Woodland Pass Equity; an ownership-interest that "City Attorneys" McGinty, Yeadon, and Hitch failed to disclose, which is a direct violation of the City of East Lansing's Ethics Code), and others directly.

9. Accordingly, the "Abbot Road Project" retaining wall appears to be the *only* retaining wall in the City of East Lansing that was built with public funds that sits on private property, private property that benefits the "City Attorneys" and others directly.

10. By funneling fraudulent documents (Easements) to the City of East Lansing after the “Abbot Road Project” was completed further benefited the deceit for the use of HUD-CDBG funding in violation of the False Claims Act, 31 U.S.C. § 3730(b)(2).

JURISDICTION AND VENUE

11. This action arises under the False Claims Act, 31 U.S.C. § 3729 *et seq.*

12. This Court maintains subject matter jurisdiction over this action pursuant to 31 U.S.C. § 3732 (a) (False Claims Act) and 28 U.S.C. § 1331 (Federal Question).

13. Venue is proper in this Court pursuant to 31 U.S.C. § 3732 (a) because (i) the City of East Lansing, Michigan is within this district, (ii) The City Attorneys, Yeadon and Hitch, and Woodland Pass Equity, LLC, transact business in this district, and did so at all times relevant to this complaint; and, averred below, (iii) The City of East Lansing, Michigan and its public actors, contractors, and employees committed acts proscribed by 28 U.S.C. § 3729 – acts giving rise to this action – within this district.

14. Upon filing this complaint, Dr. Bellfy served a copy of same upon the United States, together with a written disclosure statement setting forth and enclosing all material evidence and information he possesses, pursuant to the requirements of 31 U.S.C. § 3730(b)(2).

15. Dr. Bellfy is the original source of, and has direct and independent knowledge of, all publicly disclosed information on which any allegation herein might be deemed based, and has voluntarily provided such information to the Government before filing this action. Specific disclosures include:

(i) documents obtained through FOIA, (ii) drawings, (iii) contracts, (iv) filed documents with the Ingham County (Michigan) Register of Deeds, and (v) photographs.

PARTIES

16. Relator Philip C. Bellfy is a citizen of the State of Michigan and prior resident of the City of East Lansing, Michigan.

17. Defendants, the City of East Lansing, Michigan, is a Michigan Municipal Corporation, with principal offices in the City of East Lansing, Michigan, where it's Actors, Employees, and Contractors (which includes the other named Defendants) conduct business. Timothy C. Huffmyer, Epsilon Rho (Fraternity), Vice President, Chief Financial Officer and Treasurer of the University Fraternity.

FACTUAL ALLEGATIONS

18. On December 16, 2009, the City of East Lansing provided an application to HUD Community Development Block Grant Program (CDBG) for funding of the Abbot Road Project. The actual work on the project, and the expenditure of CDBG funds, was completed during the summer of 2012.

19. The total amount of funding requested for this Project by the City was \$135,378.40 (obtained through two CDBG grants: 2010--\$58, 762, and 2011--\$76, 378.40), and approximately \$150,000.00 was expended on the Abbot Road project, with the City of East Lansing providing approximately \$15,000 of in-kind funds. The estimated City overhead for this project is 15%.

20. There are four "elements" of this "project" paid for with HUD-CDBG funding: (1) the retaining wall, (2) the sidewalk, (3) the Americans with Disabilities Act ramps, and (4) the curb and gutter along Abbot Road.

(1) – The retaining wall is privately-owned (by Woodland Pass Equity and Epsilon Rho), so

its repair/maintenance is clearly NOT eligible for HUD-CDBG funding.

(2) – The sidewalk is privately-owned (by Woodland Pass Equity and Epsilon Rho), so its repair/maintenance is clearly NOT eligible for HUD-CDBG funding. Documents show that it was in good shape –it's only “fault” was that it was old, with the City claiming that it may have reached the end of its useful life. Also, it was NOT on the City's list of “hazardous sidewalks.”

(3) – The City might pose an argument that they are “responsible” for ADA compliance ramps. But, there is a problem in that the City of East Lansing fraudulently and deceptively claimed in their Applications to HUD that there were no ADA ramps at either intersection/corner of this city block. Totally false and erroneous –there were ramps, albeit ones that lacked the “tactile surfaces” that new ramps are required to have. There is no ADA mandate to install tactile surfaces in existing ramps, which is what the City of East Lansing did to enhance the property values and aesthetics at the corners of these Private Properties.

(4) There are three major problems with the use of CDBG funds to replace the contractor-damaged curbs: (1) curb-replacement was not an element of either of the two HUD Applications provided by the City of East Lansing, and (2), HUD-CDBG funds can never be used to replace/repair anything that was damaged by the contractor through negligence, and (3) while it is true that the curbs are an element of a “public facility,” HUD-CDBG regulations specifically prohibits the use of HUD-CDBG funds for the repair or maintenance of any such “public-facility” within the City of East Lansing.

21. In addition to misdirecting the HUD-CDBG funds for use on private property, it appears that the only retaining wall built with public funds on Private Property within the City is the retaining wall built on the Private Property of the City Attorneys Dennis McGinty, Thomas

Hitch, and Thomas Yeadon, and the adjacent Epsilon Rho fraternity property.

22. Furthermore, ignorance of the Law is No Excuse (especially when professed by a law-firm which serves as the City's "City Attorneys"), when 24 CFR § 570.270 clearly states:

Ineligible activities. (2) Operating and maintenance expenses. The general rule is that any expense associated with repairing, operating or maintaining *public facilities*, improvements and services is *ineligible*. ... Examples of ineligible operating and maintenance expenses are:

(i) Maintenance and repair of publicly owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with a disabilities, parking and other public facilities and improvements. Examples of maintenance and repair activities for which CDBG funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs; and

(ii) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities

23. Additionally, The City of East Lansing, in its Code, Section 38-123, specifies that building or repairing any and all sidewalks in the City are the financial responsibility of the property-owner. Clearly Sidewalk repair (and, presumably, the adjoining retaining wall repair/reconstruction) is an "Ineligible Activity" under HUD-CDBG guidelines and not in accordance with The City of East Lansing's Code.

24. *Ongoing Misrepresentations.* Dr. Bellfy has firsthand knowledge that The City of East Lansing made application and scripted counsel minutes to substantially simulate that the funds used by the City of East Lansing were in accordance with federal law.

25. Likewise, one may reasonably infer that City Attorneys' proposals to the counsel regarding the easements would be unquestionably self-serving and possibly reveal numerous similar (if not identical) misstatements to other governmental entities in the City of East Lansing's successful attempts to secure other federal HUD funds.

FALSE CLAIMS ACT

26. The federal False Claim Act (federal FCA) provides, in pertinent part:

(a) Any person who (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; (3) conspires to defraud the Government by getting a false claim allowed or paid, is liable to the United States Government for a civil penalty of not less than \$5,500 and not more than \$11,000, plus 3 times the amount of damages which the Government sustains because of the act of that person.

(b) For purposes of the section, the terms "knowing" and "knowingly" mean that a person, with respect to information (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth and falsity of the information, and no proof of specific intent to defraud is required.

COUNT I (ALL DEFENDANTS) VIOLATIONS OF THE FALSE CLAIMS ACT

27. Plaintiff incorporates by reference paragraphs 1 through 26.

28. Relator re-alleges each of the foregoing allegations is re-alleged and incorporated hereby as though fully set forth herein

29. As described in this Qui Tam Complaint, Defendant City of East Lansing, and its public actors, by and through its officers, agents, and employees: (i) knowingly presented, or caused to be presented, to the United States Government, a false or fraudulent claim for payment or approval; (ii) knowingly made, used, or caused to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; and (iii) knowingly made, used, or caused to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government.

30. Defendant City of East Lansing authorized and ratified all the violations of the False Claims Act committed by its various officers, agents, and employees.

31. The United States Government and the public fisc have been damaged as a result of Defendant City of East Lansing's violations of the False Claims Act.

32. Dr. Bellfy requests a jury trial on all issues so triable.

COUNT II CIVIL CONSPIRACY / FALSE CLAIMS ACT

33. Plaintiff incorporates by reference paragraphs 1 through 32.

34. Defendants illegally, maliciously, and wrongfully conspired with one another with the intent to and for the illegal purpose of defrauding the United State of money and property to which the Applicant City of East Lansing was not lawfully entitled under the CDBG.

35. Defendants acquired property enhancements, services and accommodation to which they were not lawfully entitled under the CDBG.

36. Defendants were provided work on Private Property and East Lansing City property for which the United State Government is not responsible for under the CDBG and further

fraudulently acquired by manipulation of documents and easements approved by, presented by the public Actors, private entities and corporations.

37. Defendants made and presented false, fictitious and fraudulent claims to HUD a Department of the United States.

38. Defendants City Attorneys, and employees of the City of East Lansing presented documents to HUD and did so with specific intent to defraud the government, violate the law and with consciousness that what they were doing was wrong. Ignorance of the Law is no excuse.

39. Defendants all acted in concert at one point or another to manipulate, deceive and procure a payment money under pretenses not allowed by law for the private gain of enhancement of private property and City Property which it is not entitled to by law.

40. As a result of the conspiracy, the Defendants' illegal and wrongful acts Plaintiff sustained the following damages: The City of East Lansing received funds from the government under the CBDG grant in the amount of \$135,378.40 which is not allowed under the grant. Private entities received property enhancement resulting in increased property values and the cost of material and labor to be determined.

41. Defendants are jointly and severally liable to the Plaintiff for all enhancements not covered by the Grant and to the extent of property values increased by this fraudulent and conspiratorial action.

WHEREFORE, Relator Philip C. Bellfy, on behalf of himself and the United States Government, prays:

- (i) that this Court enter a judgment against Defendant or Defendants in an amount equal to three times the amount of damages the United States has sustained as a result of Defendant's violations of the False Claims Act;
- (ii) that this Court enter a judgment against ALL Defendants for a civil penalty of \$10,000 for each of Defendant's violations of the False Claims Act;
- (iii) that Relator Philip C. Bellfy recover all costs of this action, with interest, including the cost to the United States Government for its expenses related to this action;
- (iv) that Relator Philip C. Bellfy be awarded all reasonable attorneys' fees and costs in bringing this action;
- (v) that in the event the United States Government proceeds with this action, Relator Philip C. Bellfy be awarded an amount for bringing this action of at least 15% but not more than 25% of the proceeds of the action;
- (vi) that in the event the United States Government does not proceed with this action, Relator Philip C. Bellfy be awarded an amount for bringing this action of at least 25% but not more than 30% of the proceeds of the action;
- (vii) that Relator Philip C. Bellfy be awarded prejudgment interest;
- (viii) that a trial by jury be held on all issues so triable; and
- (ix) that Relator Philip C. Bellfy and the United States of America receive all relief to which either or both may be entitled at law or in equity.
- (x) That this honorable court refer this case to the United State Attorney General for further investigation under 18 U.S.C. § 371 – Conspiracy to Defraud the United States.

Respectfully submitted,



/s/

David J. Gilbert, (P56956)
Attorney for Relator
306 E. Broadway St., Ste #3
Mount Pleasant, MI 48858
989-779-8505
djgilbertlaw@gmail.com

Dated: August __, 2016

ATTACHED: DISCLOSURE STATEMENT

ATTACHED: EXHIBIT LIST 1 THRU 26