

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FILED IN CLERK'S OFFICE  
U S D C Atlanta

DEC 12 2006

JAMES N. HATTEN, Clerk  
By: *Jk Punch* Deputy Clerk

UNITED STATES OF AMERICA )  
ex rel. COMFORT FRIDDLE )  
and STEPHANIE KENNEDY )

Relators, )

v. )

TAYLOR, BEAN & WHITAKER )  
MORTGAGE CORPORATION; )  
HOME AMERICA MORTGAGE, INC.; )  
GREGORY HICKS; DENNIS MOSELEY; )  
CARL WRIGHT; and JOHN DOE; )

Defendants. )

Civil Action No. 06 CV 3023

FILED IN CAMERA  
AND UNDER SEAL

JEC

COMPLAINT

Plaintiff-Relators Comfort Friddle ("Friddle") and Stephanie Kennedy ("Kennedy") (collectively "Relators") hereby file their Complaint against Defendants Taylor, Bean & Whitaker ("TBW"); Home America Mortgage, Inc. (Florida) ("HAM"); Gregory Hicks ("Hicks"); Dennis Moseley ("Moseley"); Carl Wright ("Wright"); and John Doe ("Doe") (collectively referred to as "Defendants").

## INTRODUCTION

1. This is an action by Relators, for themselves and on behalf of the United States, to recover damages and civil penalties arising from Defendants' actions in knowingly presenting or causing to be presented false claims for payment or approval to the United States. As set forth below, Defendants violated the False Claims Act by knowingly engaging in a pattern of fraudulent activity and business practices that have resulted in false applications for mortgage guarantees to be presented to the United States Department of Housing and Urban Development ("HUD").

2. The Defendants' scheme is to falsify loan documents, manufacture documents, disregard FHA and HUD regulations, ignore the complete absence of necessary documentation, and where necessary lie about their own employees' income in order to obtain financing or refinancing for a loan. About thirty percent of these loans are government insured. After the U.S. agrees to guarantee these fraudulent loans - based upon the false applications submitted by Defendants - some of the loans inevitably go into default because they are made in complete disregard of the qualifications set by the governmental programs. After the loans go into default, Defendants knowingly present a claim for payment of the loan to the government that is both false and based on false information. The Defendants' fraud is causing HUD to guarantee loans that it otherwise would not, and to pay

money to the Defendants that is not justly due and owing. Additionally, Defendants may be defrauding their customer homeowners by indicating that they have warranties and inspections on their properties that are fictional.

3. This action seeks an end to the Defendants' illegal practices and to make the Plaintiffs whole by an award of fines and money damages.

### **Jurisdiction and Venue**

4. This is an action for damages and other relief arising under the laws of the United States, specifically the False Claims Act, 31 U.S.C. § 3729 *et seq.* This Court has jurisdiction of this action by reason of 28 U.S.C. § 1331, and pursuant to 31 U.S.C. § 3732(a).

5. Venue is proper in the United States District Court for the Northern District of Georgia, pursuant to 28 U.S.C. § 1391(b) and (c), because Defendants TBW, HAM, and Hicks are deemed to reside in this judicial district and because their contacts are sufficient to subject them to personal jurisdiction in this judicial district. Venue and personal jurisdiction are also proper in this District pursuant to 31 U.S.C. § 3732(a) because the Defendants transact business in this judicial district, and because part or all of the acts proscribed by 31 U.S.C. § 3729 occurred here.

**Parties**

6. Relator Comfort Friddle is a resident of the State of Georgia and is a United States citizen. Friddle brings this action for violations of 31 U.S.C. § 3729(a) for herself and for the United States Government pursuant to 31 U.S.C. § 3730(b)(1). Friddle was employed as a loan processor for Defendant HAM between December 2004 and August 2006. In that context, she observed first hand that loan conditions were disregarded, loans were underwritten by non-HUD qualified personnel, fraudulent files pervaded HAM's business practices, and documents were created and falsified in order to obtain financing.

7. Relator Stephanie Kennedy is a resident of the State of Georgia and is a United States citizen. Kennedy brings this action for violations of 31 U.S.C. § 3729(a) for herself and for the United States Government pursuant to 31 U.S.C. § 3730(b)(1). Between June 2002 and August 2006, Kennedy understood herself to be an employee of HAM, but later Defendant Hicks announced that she was actually an employee of TBW. Kennedy was Vice President of Operations at HAM and served as the escalation point for the problems reported by processors like Friddle. She undertook her own internal investigations, raised red flags with HAM, Hicks, and Moseley, and was not only rebuffed but ultimately fired for her activities.

8. Defendant TBW is a corporation organized and existing under the laws of the State of Florida, with its principal place of business located in Ocala, Florida. TBW is transacting business in several states, including Georgia. Upon information and belief, TBW is owned in part by Defendant Hicks.

9. Defendant HAM is a corporation organized and existing under the laws of the State of Florida, with its principal place of business located in Atlanta, Georgia. HAM is transacting business in several states, including Georgia. Upon information and belief, HAM is owned entirely by Defendant Hicks. HAM has fourteen branch offices in four states.

10. Defendant Hicks is a resident of the State of Georgia. His home address is 5152 Legends Drive, Braselton, GA 30517-6277. Hicks owns HAM and is a part owner of TBW. He is head of the "Hicks Team" and has been responsible for hundreds, if not thousands, of fraudulent loan applications.

11. Defendant Moseley is a resident of the State of Georgia. His home address is 6350 Old Wood Hollow Way, Buford, GA 30518-6803. Moseley is president of HAM, and is also responsible for the vast numbers of fraudulent applications processed by HAM.

12. Defendant Wright is a resident of the State of Georgia. His business address is 4470 Atlanta Hwy, Loganville, GA 30052-7313. Wright is a closing

attorney associated with HAM, who has falsified documents including Verification of Employment records.

13. Defendant Doe is an attorney who worked with on certain fraudulent manufactured home refinances described herein, and upon information and belief falsified HUD-1 statements. He is a resident of the State of Georgia.

### **Factual Allegations**

14. HAM is a mortgage company that offers conventional and non-conventional home loans in Alabama, Florida, Georgia, Kentucky, North Carolina, and Tennessee. They offer loans for new home construction, home equity/home improvement, home purchase, and refinancing of existing mortgages.

15. TBW is a wholesale mortgage lender, which means that it provides financing to mortgage companies such as HAM. TBW's annual production volume approaches \$25 billion and its assets exceed \$3 billion.

16. About one third of the loans made by HAM are "government loans", which means that they are insured by the Department of Housing and Urban Development ("HUD"), Federal Housing Administration ("FHA"), Veterans Administration ("VA"), Rural Housing, Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), and the like. Most of these loans are for people who are first-time homeowners, people with low income, or people who have spotty credit history. Loans to these kinds of

customers are insured by government agencies so that companies like HAM can afford the risk of the loan, with the goal that everyone has a chance to own a home.

17. When customers come to HAM for a loan, they complete an application (either by phone, mail, face to face, or through the internet). A loan officer receives and reviews the application, runs a credit report for the borrower, and selects the program and rate that seems the best match for the borrower. They then assist the borrower with gathering the information required by the particular program (i.e. pay stubs showing salary, verification of employment, etc.).

18. The application and supporting documentation (the “file”) is then is passed to an underwriter to be underwritten by the guidelines for the selected program. The underwriter makes note of any concern or additional information he believes is required in order to complete the loan per the guideline for the selected program.

19. For example, the underwriter may ask for an additional comparable property (“comp”) to be provided in order to support the value on the appraisal for the property, or ask for a letter from the borrower to explain any credit concerns, etc. The file is then returned to the processor to gather any additional items.

20. Once all items are gathered by the processor, the full file should prove (a) the value of the property and (b) that the borrower is able to make the mortgage

payments, thus enabling the lenders and insurers to make informed decisions as to the risk associated with the transaction.

21. Based on the file (which is gathered by the processor pursuant to the underwriter's instructions) the underwriter makes the determination of whether or not the customer will qualify for the loan. This purpose is regularly defeated at HAM, however, where verification of employment, verification of deposits, and other documents are routinely altered or outright falsified in order to close the loan. In some instances, HAM employees are ordered to close the loan without conditions being met (such as missing septic or well certification, etc.). On other occasions, they have even been asked to create the file *after* the loan has closed.

22. Based on these false, fraudulent, incomplete, or even wholly fabricated files, if the loan is government-insured, a copy of all the (fraudulent) loan papers from the file held at HAM is made and assembled into a certain order and placed in a special file folder called a "HUD Case Binder." These binders are audited for accuracy and sent off to HUD or another insuring agency to be insured.

23. Kennedy began working for HAM and/or TBW in 2002. She was hired by Greg Hicks, the owner-operator of HAM, as a trainer. Two weeks later she was promoted to manager of operations, and in November 2005 was promoted to Vice President of Operations. Kennedy is a direct endorsed underwriter ("D.E.



underwriter”), which means she is endorsed by HUD and can underwrite government loans.

24. As VP of Operations, Kennedy’s duties included making credit risk/exception decisions for all branch offices; managing payroll and incentives for the operations staff; and acting as intermediary for loan issues between operations and sales managers. Kennedy also created and implemented a loan tracking report that was used throughout HAM.

25. Friddle was hired by Kennedy in Dec 2004 to work as a loan processor for HAM. As a loan processor, she was responsible for gathering information requested by the underwriters in order for the loan to clear for a given program.

26. During their time with HAM, Friddle and Kennedy both saw a *breathtaking amount of fraud being perpetrated*. Some examples representative samples are set forth below, but this is by no means the end of the fraudulent practices that the two Relators uncovered.

27. In one example, in early 2005, shortly after she began to work at HAM, Friddle began to notice certain errors regarding files sent for processing by two particular loan officers, Andre White (“White”) and Jermaine Smith (“Smith”).

28. Smith was a “top producer” for HAM, and was ranked in the top 15 for fiscal year-end 2005.

29. Files received from Smith and White seemed odd in that they were “mirrored” or identical. The same property would be listed, and/or the profiles of the borrowers were identical. Many of the borrowers were very young, in their early to mid-twenties, and all of the properties seemed to come from the same area in downtown Atlanta.

30. This area (zip codes 30310, 30311, 30312, 30313 and 30314) encompass the area around Turner Field (home of the Atlanta Braves), where property values can vary wildly. This makes it a prime target for “flipping” schemes, in which property is purchased at a fraudulently depressed price, alleged “improvements” (also fraudulent) are made, and the property is resold at a much higher value.

31. Such flipping schemes are in violation of HUD guidelines. *See, e.g.* 24 C.F.R. Part 203.

32. Friddle raised concerns with the loan officers for the file (Smith and White) and with her manager, Kennedy.

33. For example, she specifically raised concerns about a particular file (the “Dyson file”). The Dyson file showed a property in the Turner Field area that

was apparently being sold for significantly more money than other properties in the area.

34. Kennedy reviewed the Dyson file, checked comparable properties using the MLS system (a so-called “desk review” of the appraisal) and raised concerns with Moseley. She asked that further appraisal review be done for other properties in the area before loans closed. She pointed out that prior foreclosures were being sold for four times the amount paid by the seller.

35. Kennedy pointed out to Moseley and to Hicks that TBW required desk reviews of appraisals, at a minimum. Given the variation of values in the area, and the significant amounts of money that the properties were being resold for, Kennedy advocated a “drive by” appraisal review, in which the second appraisal is actually conducted onsite to determine if the increase in value is real and warranted (and thus legal).

36. Kennedy was again rebuffed by Moseley and Hicks. When Kennedy reminded Hicks of the TBW regulations, she was told “F--- TBW’s rules. Get these loans into closing.”

37. The loans went into closing without the appraisal review recommended by Friddle and Kennedy. Kennedy was assured that any problems with the appraisals were “isolated” and told to leave the matter alone.

38. Kennedy attempted to order (in her capacity as VP of Operations) that all DeKalb/Fulton properties be given drive by appraisals, but Hicks kept overriding her orders.

39. When bills came in for second appraisals ordered by Kennedy, Hicks was furious and told Kennedy that if he got one more bill for appraisals, she would be fired.

40. In another example, Kennedy discovered that Tim Halstead, then a VP at HAM, had closed at least twenty-three FHA insured loans and used Kennedy's name, because Halstead is not a D.E. underwriter and cannot close FHA loans. When Kennedy protested, she was told that nothing could be done about it, nor were her suggestions that the system be changed so that only the logged-in person could add his or her own name heeded.

41. In yet another example, in or around May of 2006, Friddle again had concerns about certain files being underwritten by Smith and White.

42. She brought these concerns to Kennedy, who, angry at what seemed to be a repeat of the Dyson file, demanded that all of Smith and White's then-current files be pulled together for her review. Kennedy, Friddle, and Sandy Flagg, production manager, pulled the then-current files for Kennedy's inspection.

43. When Kennedy inspected the files side by side, it was immediately apparent that the files from Jermaine Smith had all been signed in the same hand. The files also showed inflated values and other suspicious issues.

44. Kennedy reported this problem to Hicks and Moseley. Upon inquiry, Smith admitted to signing the files himself, but stated that in each instance he had obtained the borrower's permission.

45. Ultimately, Smith was terminated.

46. Far from being grateful, Hicks and Moseley berated Kennedy for initiating the investigation. Moseley told her that if she had "kept her mouth shut" then Smith would not have had to be fired and HAM would not have lost the income he brought.

### **The Freddie Mac Audit**

47. In still another example of the pervasive fraudulent practices at HAM, in approximately May/June of 2006, just as Kennedy was launching her own investigation of Smith and White, HAM received notice that Freddie Mac wanted to audit certain files. Such an audit may be triggered when a loan company has a high percentage of loans that go into default and/or has a high percentage of loans in which the first payment on the loan is missed.

48. The audit focused the same files that Friddle and Kennedy earlier had objected to closing without appraisal reviews, but that Hicks and Moseley had

insisted on closing. Since closing, there had been a high number of buy-backs based on first payment default. Some of the properties had even been burned down.

49. In fact, the list of files from Freddie Mac was so similar to Kennedy and Friddle's list of concerns that when Kennedy first was presented with the list from Freddie Mac, she thought that it was a copy of her own list of "problem" files. Only later did she realize that it was a different list that had come from Freddie Mac.

50. On July 12, 2006, Hicks called Kennedy into Moseley's office and informed her that she was going to handle the Freddie Mac audit because she caused it, and then she was going to be fired as soon as she had done so.

51. Kennedy reminded Hicks that these were the same files she had already told him were going to be problems because of his refusal to order appraisal verifications.

52. Hicks screamed at Kennedy to get out, that he never wanted to see her again. Kennedy collected her belongings and left HAM. At no time did Hicks indicate that Kennedy was an employee of TBW; rather, he fired her on the spot.

53. The next day, July 13, 2006, believing she had been terminated, Kennedy did not report to work. Hicks held an all-staff meeting that day to inform the staff that Kennedy had quit and refused to return, and stated that HAM was

having an “issue” but that it would all be worked out, because no one had done anything wrong.

54. At that same meeting, Hick’s emphasized to the entire staff that the most important thing was to make sure that the collateral for loans was in place, that if the collateral was taken care of, Hicks was not concerned about how the file got approved or with the state of the file itself. In other words, Hicks didn’t care if the file was fraudulent as long as the collateral was in place.

55. After the meeting, Friddle went into Hicks’ office and reminded him that she had already told him that the files in question were problematic.

56. Hicks told Friddle that in the future, if there were any problems, she was to see Hicks and no one else.

57. About an hour later, Hicks summoned Friddle to Moseley’s office and stated that if Smith and White had stolen from him, he would see them both put in jail.

58. Also on July 13, 2006, Hicks began calling Kennedy and leaving voice messages begging her to return to work and saying he “couldn’t run the company without her” and that he would change his business practices if she would return.

59. Kennedy eventually did agree to return, but only if (1) the company was required to follow her guidelines; (2) Hicks stopped undermining her in front

of the staff; (3) the existing issues were worked out and new procedures were agreed to by all parties.

60. On July 14, 2006, Friddle was approached by Kennedy and Jan Kelly (now HAM's manager of Operations), at the direction of Hicks, and told that she was to be suspended with pay pending an investigation of the Freddie Mac files.

61. Friddle protested that far from having covered up any problems, she had in fact raised concerns about the files in question.

62. Friddle was told that "everyone knew" that she had done nothing wrong, but that since she had worked on the files she could not be present during the investigation.

63. Friddle was sent home that same day and suspended with pay.

64. Upon information and belief, as a result of this audit, HAM was required to "buy back" several loans at a total cost of approximately \$2.5 million.

65. The files that were subject to buy-back were shredded. The shredding was witnessed by Jan Kelly.

66. Upon information and belief, Hicks then charged the \$2.5 million to HAM's Errors and Omissions insurance, which is FDIC insured.

67. Hicks did so despite that fact that he had been notified by both Kennedy and Friddle of the potential problems with the files.



### **The HUD Audit**

68. The HUD audit of HAM presents another example of HAM's conduct and demonstrates that the United States government and taxpayers have been paying for Defendants' fraudulent acts.

69. Kennedy was ordered by Hicks and Moseley to "handle" a HUD audit that lasted nearly a year. The audit was triggered because of the number of "first payment defaults." A first payment default occurs when the purchaser is unable to make even the first payment on the mortgage. When even the first payment cannot be made, there is a high probability that the borrower ought not have qualified in the first instance.

70. In the course of preparing the written response to the HUD audit, Kennedy became aware of a number of HAM files that had actually gone into foreclosure. She therefore has personal knowledge that false claims for payment for these loans were submitted to the U.S. government, thus triggering the audit. Such files include but are not limited to the following: Bratton, Bray, Bridenthal, Bullock, Bulman, Casper, Clayborne, Crawford, Cronil, Davis, Dixon, Drains, Duran, Green, Hardeman, Hatfield, James, Martin, and Medina.

### **The Radloff Fraud**

71. Kennedy also discovered that Pam Radloff, a HAM loan officer specializing in manufactured homes, had developed a fraudulent scheme as well.

72. In this scheme, the owner of a manufactured homes complex would come to HAM/Radloff for refinancing.

73. Generally, refinancing requires “seasoning” – i.e. the price is based on appraisal.

74. However, if the property was acquired less than six months before the refinancing, the acquisition/purchase price is used.

75. Radloff and her attorney, John Doe, would create a fictional HUD-1 settlement statement for the initial transaction showing that the property was acquired at a higher price than was actually paid. The difference in the price on the HUD-1 and the actual price was recorded as if there had been a large down payment that had been received by the borrower as a gift.

76. This affects the “loan to value” ratio, which is a percentage used by the lender to determine what rate should be given on the refinance and what paperwork should be required.

77. Suspicious at the number of “gifts” and large down payments made by Radloff’s clients, Kennedy requested to see the back up documentation on these transactions (i.e. that the file contain either the note or deed or similar documentation of original purchase price).

78. When Radloff was unable to provide such documentation, Kennedy reported the issue to Moseley.

79. Moseley refused to investigate. He stated “I don’t want to take away someone’s main source of business, if I call Pam out, she’ll fail.”

### **Other Fraudulent Loans**

80. During their time at HAM/TBW, Relators observed dozens of examples of fraudulent files. Just a few more examples are shown in the table below, in which a number has been substituted for the borrower’s name to protect the borrower’s privacy:

<b>No.</b>	<b>TBW No.</b>	<b>FHA No.</b>	<b>Reason fraudulent</b>
1	798646	105-235390	Siblings who filed qualifying tax returns as married
2	436628	unknown	Kennedy’s name listed as underwriter (by Tim Halstead, VP) when she did not approve the file. Kennedy was made aware of the file by 2 employees who reported that it had been declined by underwriting but was closed anyway by Tim Halstead, using Kennedy’s name as underwriter.
3	390578	unknown	Closed by Halstead under Kennedy’s name. Was missing new construction documents including Soil Treatment NPCA 99A and the 10 year warranty.
4	unknown	105-1497180	796 loan put into closing without FHA/ DE underwriter approval
5	647215	unknown	SISA or SIVA - never received documentation evidencing borrower was self-employed. Hicks waived all conditions.
6	1089539 110191	unknown	No documentation, done by Christy Hicks. DPA was used for downpayment per purchase contract. Loan closed using DPA against underwriter’s condition.
7	1148036	unknown	Closed 5/17/06; property zoned agricultural. Asked for full VOE but never received it
8	386516	unknown	Kennedy’s name listed as underwriter when she did not approve the file – file was cleared by Tim Halstead.

No.	TBW No.	FHA No.	Reason fraudulent
9	899841	unknown	<p>Income documentation was fraudulent and loan was declined by Kennedy. Moseley and Hicks closed after borrower stated he had filed his returns. Paul then denied because of fraudulent CPA letter.</p> <p>Borrower had earlier file in June (5171 Heather Rd, Smyrna) On the first loan (Heather Road), received report from Veritax stating borrower had not filed tax returns for the past two years even though there was a CPA letter stating he had been self employed for the past two years</p>
10	933285	unknown	Christy Hicks' personal loan. Property denied by Allison Paul due to commercial usage. Property had several rental cabins on site. No DOC loan, need to see where funds for closing came from. Loan was closed as commercial property Greg. Property closed as owner occupied. Believed to not be owner occupied.
11	451823	unknown	Kennedy's name listed as underwriter when she did not approve the file
12	439235	unknown	Kennedy's name listed as underwriter when she did not approve the file, was put in under her name by J. Vega (7/25), T. Halstead (7/25) and S. Ortone (7/25)
13	unknown	unknown	Bought four "second" homes in one day – misrepresented property occupancy.
14	481831	unknown	Kennedy's name listed as underwriter when she did not approve the file
15	636917	105-277382	Credit issue regarding garnishment and divorce
16	665949	105-2137667	Income, title/contract, credit, short funds required to close
17	728414	105-2249899	VOE, pay stubs, judgment against borrower – all problematic.
18	6825148	105-2165117	CAIVRS claim, credit
19	unknown	105-1780398	Closed 2/04. VOD in file was made up for post closing audit. Veritax found no records of returns for borrower. Post closing audit revealed that borrower had never had an account with bank listed on 1003.

No.	TBW No.	FHA No.	Reason fraudulent
20	unknown	unknown	Kennedy refused to close because she knew it was a commercial property – it is on her route home and next to the day care she uses. But loan was closed as a residential loan at the direction of D. Moseley through underwriter Laura Klemek. Subsequently bulldozed.  This was a loan for Amanda Alexander, who was having an affair with Hicks.
21	634734	105-2089112	Condo not FHA approved and knowingly cleared. Condo would never meet spot approval
22	unknown	unknown	Hicks and Moseley made up pay stubs so she would qualify, she's a HAM employee
23	unknown	unknown	FICO score was whited out and changed
24	954352	105-2502389	Occupancy issue: New Jersey or Georgia?
25	741317	105-2268869	Income falsified.
26	891027	unknown	Submitted as an investment SIVA rate/term re-financing. Initial 1003 was not complete – income handwritten while everything else (which was very little) was typed; HUD-1 from the 9/30/05 purchase showed the loan as \$115K, copy of note in the file reflects loan as \$69K, payoff in the file is for \$185,983; App date of 10/03 with bank statements from June. Appraisal does not reflect purchase of property 9/05 in prior sales section; No. 24, month housing history on credit report; Locked as a full documentation loan and closed.
27	unknown	unknown	Carl Wright falsified the VOE
28	unknown	unknown	Drivers' license was from Illinois, but nothing indicated borrower had ever lived in Illinois; signature on driver's license did not match the 1003, the purchase contract, or the signatures on the disclosures in the file
29	454783	unknown	Kennedy's name listed as underwriter when she did not approve the file
30	376875	unknown	Kennedy's name listed as underwriter when she did not approve the file – File had 2 different property addresses; MCAW was blank; only 1 account instead of 3 and not verified; no credit update; no updated VOE; verify funds to close; gift letter in file was blank; GEF and TIL

No.	TBW No.	FHA No.	Reason fraudulent
31	unknown	105-2365052	File was never cleared to close; file was denied pending conditions but Hicks put the file into closing without DE signature
32	1093962	unknown	CPA letter was left in file and indicated borrower was self employed. Borrower did not qualify, so Hicks re-assigned file to another underwriter and removed the CPA letter
33	unknown	unknown	Per Option One representative, Option One ended its relationship with HAM in 2004 over this file, which was fraudulent and which Hicks subsequently refinanced with TBW using the same fraudulent file
34	1227746	unknown	Fraudulent documentation
35	unknown	105-1771417	Conditions were never cleared; file was put into closing without any conditions
36	885766	105-2436629	Job instability/assets issues
37	482072	unknown	Packet was sent to government insurance at TBW for processing as if Kennedy had approved it, but she had not. Ultimately loan was processed without conditions being cleared.

81. In numerous other instances, Hicks and Moseley put loans into closing under a residential home loan, when the properties were in fact commercial.

82. Other home loans were closed as “owner occupied” when it was actually for an investment property (*see, e.g.,* Edmondson, above). In some instances, this led to a single person with five or six “owner occupied” properties.

83. At one time, Hicks himself had five “owner occupied” properties.

84. Although breathtaking in their number and scope, this Complaint sets forth only a sampling of the types of fraud that has been at work at HAM.

### **Retaliation Against Friddle And Kennedy**

85. For about three weeks after being placed on administrative leave, Friddle continued to receive her pay but had no calls from HAM.

86. Around three weeks into her suspension, Friddle began to call HAM and leave voice mail messages, text messages, and emails for Moseley and Kennedy asking for an update on the status of the investigation.

87. Moseley returned Friddle's calls and told her to consider it a "paid vacation." Friddle was again assured that there was no chance of her being fired and that all was well.

88. Meanwhile, Hicks and Moseley told Kennedy that if she contacted Friddle, she (Kennedy) would be fired. They stated that they would know if she called Friddle because HAM paid Kennedy's cell phone bill.

89. Friddle waited another few weeks and then again attempted to contact HAM. Receiving no response, Friddle finally contacted Hicks directly. Hicks told Friddle that he was still in the middle of his investigation and would let her know the outcome.

90. On August 4, 2006, Moseley called and informed Friddle that although they had found nothing in the investigation that pointed to wrongdoing on her part, they were going to terminate her employment but would continue to pay her until she found another job.

91. Friddle immediately began to seek other employment.

92. HAM initially deposited Friddle's check into her bank account, as was customary through direct deposit. However, HAM then withdrew the money six days later, and forced Friddle to come to the office to collect a handwritten check.

93. On August 25, HAM sent Friddle an agreement for signature. At that time, HAM informed her that she would not continue to receive a paycheck unless she signed the agreement.

94. Friddle refused to sign the agreement, and was terminated.

95. Friddle then received notice that her insurance had been cancelled, effective July 31, despite that fact that her separation papers (which she did not receive until August 31) showed that she had been terminated as of August 11. HAM's back-dating of her insurance cancellation rendered it effectively impossible for her to obtain COBRA insurance.

96. Despite her insurance being cancelled as of July 31, insurance money was deducted from each of the three checks paid to Friddle between July 14 and her ultimate termination in August.

97. To date, Friddle has been able to secure only contract positions in her field.

98. On August 4, 2006, the same day that Friddle was terminated by telephone call, Kennedy was working in her office at HAM on a home equity line



of credit file with Allison Paul when Hicks stormed into her office and demanded to know why the file was not already closed.

99. Kennedy attempted to tell Hicks what the problems with the file were. Hicks told Kennedy he wanted the file in closing “now.”

100. Kennedy refused. Hicks demanded, “Did you just tell me ‘no’?” He stated that no one was to leave the office until that file was in closing. Kennedy again refused.

101. Hicks stated that he couldn’t fire Kennedy, because he was not her employer, but that he didn’t want to see her at the office any more. Hicks then stormed out.

102. This was the first indication Kennedy had that Hicks would contend that she was a TBW employee rather than a HAM employee.

103. Within minutes, Moseley came over to ask Kennedy if she had been contacted by Stephanie Gibbons of TBW. Kennedy said that she had not, and asked why Gibbons was expected to call her. Moseley told Kennedy that Hicks did not want her working in the office any more.

104. Kennedy contacted Gibbons, who informed Kennedy that she was being transferred to the Marietta location. The Marietta location is more than fifty miles, one way, from Kennedy’s home.

105. Kennedy protested that transfer such a distance amounted to discharge. She was then offered \$115,000 for working six months at the Marietta location.

106. On August 31, 2006, after numerous requests for termination papers, Kennedy tendered her letter acknowledging her termination from HAM. In response, Hicks sent an email from Moseley's computer account, stating that she had always been a TBW employee. That same day, her paycheck was withdrawn from her bank account.

107. To date, neither HAM nor TBW has paid Kennedy for her vacation time or paid her the bonus due and owing under her prior contract.

108. Hicks then engaged in a campaign to keep other mortgage companies in the area from hiring Kennedy.

109. Hicks falsely stated that he had received a letter from attorneys representing Kennedy and that she was suing him and was a trouble maker.

110. Hicks stated publicly that he was going to "make [Kennedy's] life a living hell."

111. Hicks stated that he was suing Kennedy because "it is illegal for her to be working for two financial institutions at the same time."

112. Hicks told Kennedy that he would "take you down" and "ruin your life" if she sued him.

113. Hicks sent a letter denigrating Kennedy to Rob Young of TBW.

114. Despite Hicks' efforts, Kennedy was able to obtain new employment. This did not stop Hicks' harassment, however.

115. On or about August 29, 2006, Hicks called Kennedy's new boss and made every effort to have her fired. He told the new boss that Kennedy had stolen company documents and was a bad employee.

116. Hicks has continued to retaliate against Kennedy through his ownership in TBW and his contacts in the mortgage industry. This is possible because Kennedy's new employer also uses TBW as a wholesale lender.

117. For example, Hicks has caused TBW to attempt to force Kennedy to personally pick up a check for closings at her old place of employment.

118. TBW refused to permit Kennedy to act as an underwriter for TBW loans after she found new employment. This was despite the fact that she was qualified, had been doing so for a number of years while with HAM, and did so with perfect ratings.

119. TBW also refused to permit either Allison Paul (another former HAM employee) and Greg Shumate (who hired Kennedy) to underwrite TBW loans.

120. When refusing to add Kennedy, Paul, and Shumate did not intimidate Kennedy's new company, Hicks used his influence to order that TBW do no further business with Kennedy's new employer. Mark Hammond, the national

sales person for TBW, admitted to Kennedy's new employer that the decision was made by Hicks and Lee Farkas, the other owner of TBW, in retaliation for having hired Kennedy.

121. Hicks continues to retaliate by attempting to smear Kennedy's reputation. He has since repeatedly and publicly stated that Kennedy was fired in part for writing a letter to Hicks' wife disclosing his affair with a TBW employee (whose child he is rumored to have fathered). Kennedy has written no such letter.

122. Hicks has repeatedly and publicly continued to state that it is his intention to make Kennedy's life a "living hell."

**COUNT I**  
**False Claims Act Violations**  
**31 U.S.C. § 3729**

123. The allegations of the preceding paragraphs are incorporated herein by reference.

124. The Defendants engaged in a pattern of mortgage fraud, by which they submitted fraudulent files to be insured by the United States government.

125. When the purchasers defaulted on these government-insured loans, then Defendants, individually or by and through their officers, agents, supervisors and employees, presented or caused to be presented to the United States Government false or fraudulent claims for payment or approval in violation of 31 U.S.C. § 3729(a)(1).

126. The Defendants, individually and/or by and through their officers, agents, supervisors, and employees, knowingly made, used, or caused to be made or used false records or statements to get false or fraudulent claims paid or approved by the United States Government in violation of 31 U.S.C. § 3729(a)(2).

127. In presenting or causing to be submitted claims as set forth above, Defendants acted “knowingly” as that term is defined in 31 U.C.S. § 3729, in that they acted in deliberate ignorance or in reckless disregard of the truth or falsity of the information submitted in connection with the claims.

128. The Defendants, individually and/or by and through their officers, agents, supervisors, and employees, conspired to defraud the Government by getting a false or fraudulent claim allowed or paid in violation of 31 U.S.C. § 3729(a)(3).

129. The United States has been damaged as a result of Defendants’ violations of the False Claims Act in an amount to be proven at trial. The United States is entitled to this sum as reimbursement for monies obtained by Defendants for fraudulent claims submitted to the United States.

130. The United States is entitled to three times the total damages sustained as a result of Defendants’ violations of 31 U.S.C. § 3729(a)(1) – (3).

131. The United States is entitled to a civil penalty of between \$5500 and \$11,000 as required by 31 U.S.C. § 3729(a) for each of Defendants' false and/or fraudulent claims.

132. Relators are entitled to reasonable costs and attorneys' fees pursuant to 31 U.S.C. 3730(d)(1).

**COUNT II**  
**False Claims Act Retaliation Against Kennedy**

133. The allegations of the preceding paragraphs are incorporated herein by reference.

134. As set forth at length above, Kennedy was terminated from her employment for investigating fraudulent practices at HAM and TBW, in violation of 31 U.S.C. § 3730(h).

135. Even after her termination, Kennedy has been subjected to ongoing harassment and retaliation in violation of 31 U.S.C. § 3730(h).

136. Money rightfully due to Kennedy under her contract with HAM/TBW (including vacation pay and bonus pay) have not been paid in retaliation, in violation of 31 U.S.C. § 3730(h).

137. Pursuant to this statute, Kennedy is entitled to be reinstated at the same level of seniority she would have enjoyed absent Defendants' illegal acts; an award of two times the amount of back pay (including bonus) plus interest;

compensation for special damages; and litigation costs and reasonable attorneys' fees.

**COUNT III**  
**Retaliation as Against Friddle**

138. The allegations of the preceding paragraphs are incorporated herein by reference.

139. As set forth at length above, Friddle was terminated from her employment for investigating fraudulent practices at HAM and TBW, in violation of 31 U.S.C. § 3730(h).

140. Pursuant to this statute, Friddle is entitled to be reinstated at the same level of seniority she would have enjoyed absent Defendants' illegal acts; an award of two times the amount of back pay (including bonus) plus interest; compensation for special damages; and litigation costs and reasonable attorneys' fees.

**COUNT IV**  
**Breach of Contract**

141. In September 2005, Kennedy was heavily recruited by SunTrust to join their practice.

142. Hicks begged Kennedy not to leave HAM. He offered to promote her to vice president of operations, to increase her compensation, to award her sales options, and to pay her bonuses.

143. Kennedy accepted these terms and refused the job at SunTrust.

144. Hicks did change Kennedy's title to vice president. However, she has never been paid bonuses (although they were acknowledged as being owed) and has never been awarded sales options.

145. Defendants breached this employment contract with Kennedy by failing to pay bonuses and failing to award sales options.

**PRAYER FOR RELIEF**

WHEREFORE, Relators pray for Judgment against the Defendants, and each of them:

(a) Ordering Defendants to pay the United States three times its actual damage resulting from each of the false claims presented or caused to be presented plus interest; and to pay Relator her attorney's fees and costs;

(b) Ordering Defendants to pay the United States government a civil penalty of \$11,000 as required by law to be assessed against Defendants for each of the false claims presented or caused to be presented;

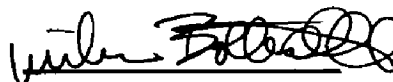
(c) Awarding Relators not less than 25% nor more than 30% of the proceeds of this action or the settlement of any such claim;

(d) Ordering Defendants to reinstate Relators with the levels of seniority they would have enjoyed but for the retaliation; pay two times the amount of back pay due to Relators plus interest; compensate Relators for special damages, litigation costs and reasonable attorneys' fees; and



(e) granting such other relief as the Court may deem just and proper.

Respectfully submitted this 12th day of December, 2006.



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