

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

DAVID EBTEHAJFAR

Respondent.

HUDALJ 97-7090-DB

Harry C. Batchelder, Jr., Esquire
For the Respondent

Walter E. Warren, Esquire
For the Government

Before: CONSTANCE T. O'BRYANT
Administrative Law Judge

FINDINGS OF FACT

On September 19, 1997, the above-entitled matter was referred to the Office of Administrative Law Judges by the Director, Office of Lender Activities and Program Compliance, HSL. The referral requested findings of fact relating to the accuracy of eight statements pertaining to seven real estate transactions which were appended to the referring memorandum. A hearing was held on November 4 and 5, 1997, in New York, New York. At the conclusion of the hearing the parties were given opportunity to file post hearing briefs which were due on or before January 20, 1998. The Government filed its brief timely. At Respondent's request, he was granted an extension of time to file his post-trial brief, to February 17, 1998. The case is now ready for the making of findings of fact.

The eight statements referred for factfinding are attached for easy reference. They pertain to seven real estate transactions in the following cases:

<u>FHA CASE NUMBER</u>	<u>PROPERTY ADDRESS</u>	<u>MORTGAGOR</u>	<u>GX-#¹</u>
374-2114639	561 Oine Street Brooklyn, New York	St. Louis, Jean Ballantyne, Arnette	1
374-2121442	33-22 106th Street Corola, New York	Mayers, Merlyn John, Francisco	6
374-2030233	1889 Bergen Street Brooklyn, New York	Wilson, Elizabeth Miller, Sammy	12,13
373-2023363	76 Clinton Place Bronx, New York	Estien, Carlos M. Estien, Luciana M.	18
374-2060661	177 Monroe Street Brooklyn, New York	DeJesus, Isabel	23
374-2054173	130 Cornelia Street Brooklyn, New York	Hunter, William Leslie, Ben	27
374-2060632	1822 Prospect Avenue Brooklyn, New York	Stafford, Leslie Taylor, Dorothea	32, 33

After consideration of the documentary evidence, trial testimony and the post-trial arguments, I make the following findings of fact regarding the accuracy of the referred statements:²

I. DECLARATION OF JEAN ST. LOUIS AND ARNETTE BALLANTYNE, signed by Jean St. Louis, dated August 23, 1996. (GX-1). The trial record includes the testimony of Jean St. Louis. Mr. Ballantyne did not testify. There are sixteen paragraphs contained in the declaration.

¹References to Government exhibits are designated by "GX-" and the exhibit number. References to Respondent's exhibits are designated by "RX-" and the exhibit number. All references to the transcript of the hearing are designated "Tr." followed by the referenced page numbers.

²In its post-hearing brief, the Government sets out eight fact issues for resolution which it asserts are "related to the statements and relevant to the allegations of the notice." (At p.3-4). I have not addressed these issues since they were not specified in the referring document.

Paragraphs numbers 1, 2, 3, 4, 10, 11, 12, 13, and 14 of GX-1 are accurate as written. Support for the accuracy of the statements in each paragraph is based on testimony in the record which can be found at the following pages:

¶1. Tr. 140	¶2. Tr. 140, 148	¶3. Tr. 141	¶4. Tr. 142; 148
¶10. Tr. 137; 146; 150	¶11. Tr. 138	¶12. Tr. 138	¶13. Tr. 146
¶14. Tr. 150			

Paragraphs number 5, 6, and 9 contain statements that were ambiguous and required clarification:

¶5. The statements in paragraph 5 are true with the clarification that the “they” mentioned in line one refers to Shlomo Chia and a woman named Janet. Tr. 151. See also Tr. 142-43; 151-52.

¶6. The statements in paragraph 6 are true to the extent of Shlomo Chia’s participation. At trial, Ms. St. Louis did not recall the presence of a person named Herzel Meir. Tr. 152. After Ms. St. Louis and Mr. Ballantyne left the closing that day, Shlomo Chia told them they owed him more money. Tr. 152. They gave Shlomo the \$1,500 they had brought to closing. Tr. 152-53, 143, 152. Ms. St. Louis did not verify in her testimony that Shlomo told them after closing that they had to pay him \$2,500 or that they gave Shlomo Chia two installments of \$150 each. Tr. 143. Therefore, I am unable to determine, based on this record, the accuracy of the latter two statements.

¶9. The statements in paragraph 9 are accurate with the following clarifications. Shlomo told Ms. St. Louis by phone to go to his office to see his secretary because he had more papers for her to sign.³ Tr. 144 -147, 150. At the office, the secretary gave her blank papers to sign. Tr.144-45. David Ebtehajfar was not present at the office when the secretary had her sign the blank papers. Tr. 144; 149. The secretary told her to sign the papers and she (the secretary) would just fill out whatever it was. Tr. 137, 138. The secretary told her to take some papers home to have her husband sign them. Ms. St. Louis signed no papers when she was with Shlomo and David together. Tr. 147. See also Tr. 143, 149-50.

¶¶ 7, 8, 15 and 16. I am unable to determine the accuracy of the statements in these

³The Government argues, based on language in the transcript, that it was David who told Ms. St. Louis to go to his office and see his secretary to sign papers. (Post-hearing brief at pp. 5-6). I reject this reading of the transcript. The statement “he told me that over the phone” referred to Shlomo, not Mr. Ebtehajfar. (Tr. 146).

paragraphs. Although Ms. Napier testified that this information was provided by Ms. St Louis and Mr. Ballantyne, the accuracy of these statements was not verified by Ms. St. Louis at trial.

II. INTERVIEW NOTES ON FRANCISCO JOHN AND MERLYN MAYERS (GX-6)

I find that the statements in the interview notes accurately reflect the statements given to Ms. Napier, the interviewer, by Mr. John and Ms. Mayers. I find, however, based on the trial testimony of both Mr. John and Ms. Meyers that they gave mostly false information to Ms. Napier. The statement is accurate that they did not know a Patricia Sheehan. Tr. 165. I find that the statements beginning with “They received gift funds ...” and ending with “Ms. Mayers called the number and said she did not get an answer” are false⁴. Tr. 159, 184-85; 193; 195; 207.

III. DECLARATIONS OF ELIZABETH WILSON and MARY MILLER (GX-12, 13)

A. ELIZABETH WILSON (GX-12)

Mrs. Wilson testified at trial and adopted the statements made in Government Exhibit 12, with some explanations. I find the statement to be accurate as written, with the exception of the statements made in paragraphs 2 and 10. Support in the record for the accuracy of the statements can be found in the testimony as follows:

¶1. Tr. 253	¶3. Tr. 263	¶4. Tr. 280-81	¶5. Tr. 253, 213
¶6. Tr. 245	¶7. Tr. 265	¶8. Tr. 236	¶9. Tr. 265
¶11. Tr. 265-66; 279	¶12. Tr. 259-60; 266	¶13. Tr. 259; 266	¶14. Tr. 267
¶15. Tr. 267	¶16. Tr. 267- 270	¶17. Tr. 269	

Paragraph 2 is accurate with the explanation that Mrs. Wilson’s daughter, Mary G. Miller, provided the funds for the earnest money deposit of \$2500, made by Mrs. Wilson.

Paragraph 10 is not accurate as written. Mrs. Wilson told Shlomo Chia they only

⁴Respondent argues that the information provided in this unsigned statement should be accepted as true, despite Ms. Meyer’s and Mr. John’s testimony that the information was false. (Respondent’s post-trial brief, at 4). I credit their sworn testimony repudiating the statements they provided orally to Ms. Napier.

had \$2,500 to put down on the subject property. Tr. 270. Although David Ebtehajfar was present when she made that statement, she was talking to Shlomo Chia. Tr. 265. David made no remarks and she never “had any conversation whatsoever with Mr. Ebtehajfar.” Tr. 277-78; 281, 288.

B. MARY MILLER: (GX-13)

Ms. Miller’s testimony at trial established the accuracy of all statements made in Government’s exhibit #13, except as to paragraphs 1, 10 and 13. Support for the accuracy of the statements can be found in the record as follows:

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|-------------------------------|------------------------------|------------------|---------|
| ¶2. Tr. 213, 240 | ¶3. Tr. 216. | ¶4. Tr. 213, 280 | ¶5. |
| | | Tr. 213; 253 | |
| ¶6. Tr. 245 | ¶7. Tr. 265 | ¶8. Tr. 236. | ¶9. Tr. |
| | | 213 | |
| ¶11. Tr. 214,265-66, 270,279. | ¶12. Tr. 213-14, 259-60, 266 | | |
| ¶14. Tr. 269 | | | |

Paragraph 1 is true as to all but the statement that David Ebtehajfar was at the closing. Tr. 211. Although Ms. Miller states that David was present at closing, she could not remember where he was seated or otherwise placed in the room at the time of closing, Tr. 235-36, and her testimony was not particularly credible in that regard. Her mother, Mrs. Wilson, stated that she could not remember whether David was at the closing, Tr. 279, 283, and Mr. Ebtehajfar categorically denied that he was there. Tr. 412. Based on my assessment of the credibility of the witnesses on this issue, I find that David Ebtehajfar was not at the closing on the property in this matter. Tr. 412, 423.

Paragraph 10 is not accurate as written. Ms. Miller’s mom (Elizabeth Wilson) told Shlomo Chia in the presence of David Ebtehajfar, at Consumer Home Mortgage, that they only had \$2,500 to put down on the subject property and that they had no other money. Tr. 214, 246, 265. Mrs. Wilson did not have any conversations with David. Tr. 277, 278.

Paragraph 13 is accurate in part. Ms. Miller’s mother was given blank papers to sign by David Ebtehajfar, but not at the time of closing. Tr. 240-42, 247, 269-70. See also Tr. 412, 414 - 415.

IV. DECLARATION OF CARLOS M. AND LUCIANA ESTIEN (GX-18)

The testimony of Mrs. Luciana Estien established the accuracy of her statements

made in Government's exhibit 18, except as to paragraphs 3, 5 and 6, as to which she testified that the statements were not accurate.

Testimony in the record which establishes the accuracy, or inaccuracy, of the declaration can be found as follows:

- | | | |
|---------------------|-----------------------|---------------------------|
| ¶1. Tr. 289;330;350 | ¶2. Tr. 298; 310; 337 | ¶4. Tr. 292-93; 333; 315. |
| ¶7. Tr. 339; 358 | ¶8. Tr. 360-61. | ¶9. Tr. 340 |

Paragraphs 3, 5, and 6 are not accurate. Government's exhibit 39 shows the accurate restatement of paragraphs 3, 5, and 6. See GX-39 ¶3 and transcript pages 335 and 340; GX-39 ¶5, and transcript page 340; and GX-39 ¶6 and transcript pages 296, 302, 320, 333, 339-40, 353, 359. I credit the trial testimony that these three paragraphs in GX-18 contained inaccuracies and that they have been corrected in GX-39.

V. DECLARATION OF ISABEL DEJESUS (GX-23)

The information contained in the declaration of Mrs. DeJesus is accurate as to all paragraphs. Support in the record for the accuracy of the statements can be found as follows:

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|-----------------|-----------------|---------------|---------------------------------|
| ¶1. Tr. 86 | ¶2. Tr. 93 | ¶3. Tr. 91,95 | ¶4. Tr. 90 -95; 98 ⁵ |
| ¶5. Tr. 91, 92. | ¶6. Tr. 91 - 93 | ¶7. Tr. 93 | ¶8. Tr. 93 |

VI. TELEPHONE STATEMENTS OF MR. WILLIAM HUNTER (GX-27)

Mr. Hunter did not testify. Since the report of the statements attributed to him was not signed by him, I have no reliable basis for making a determination of the accuracy of this summary.

VII. SUMMARY OF RELEVANT INFORMATION OBTAINED

⁵Shlomo brought her some papers to sign. Tr. 90, 91-92; 93-94. Later, at the bank she signed about 6 or 7 papers given her by the secretary. Tr. 91-92; 95; 98. She never talked to Mr. Ebtehajfar. He was at the bank and had some papers ready for her to sign. Tr. 92, 97. However, she dealt with Shlomo on "everything" relating to purchase of the property. Tr. 95, 98.

Although Mr. Ebtehajfar argues about whether he had her sign blank papers, (post-trial brief at p. 8), he stipulated to the fact that he had borrowers sign blank papers in each of these seven cases. Tr. 7. Accordingly, I credit Mrs. DeJesus' testimony that he handed her blank papers to sign.

from LESLIE STAFFORD (GX-32 and 33)

I find the statements in this summary of GX-32 to be accurate or not, as follows:

- ¶1. Accurate, Tr. 372; ¶2. Accurate, Tr. 380,386 ¶5. Accurate, Tr. 381
- ¶3. Not accurate. I credit the trial testimony of Mr. Stafford that Mr. Ebtehajfar asked him, and he told Mr. Ebtehajfar, that he would rent the property for \$800 per month. Tr. 401- 02.
- ¶4. Accurate in part. Tr. 381; 373; 379. Mr. Stafford, while testifying that the statements made in paragraph 4, were true, testified that he did not know Scott Sisskind . He had never met him. Tr. 387-88. Accordingly, I find that his statement about Scott Sisskind is not true. As to David Ebtehajfar, Mr. Stafford testified that he went to Shlomo Chia’s office with Ms. Taylor to sign some forms. There he encountered Mr. Ebtehajfar. In Ebtehajfar’s presence he told Shlomo that Ms. Taylor was being put on the loan only so he could qualify and Shlomo, in front of Ebtehajfar, made telephone calls to obtain bogus credit for Ms. Taylor. Tr. 391-92. This is the basis of Mr. Stafford’s belief that Mr. Ebtehajfar knew that Ms. Taylor was being put on the loan as co-signer only so that he could qualify for the loan. Although Mr. Ebtehajfar denied knowing that Ms. Taylor was put on the loan solely to enable Mr. Stafford to qualify for the loan, (Tr. 456-57), I credit Mr. Stafford’s testimony and find that he knew or had reason to know that such was the case.

The statements in GX-33 are accurate with the following explanations.

- ¶1. The lease, marked Exhibit A, was not attached to the referred document. However, it appears to be the same lease included in the record as Respondent’s exhibit D (“RX-D”). Mr. Stafford testified that the signature on the lease contained in RX-D, was not his. Tr. 387. I find no evidence to contradict his testimony.
- ¶2. Accurate as written. Tr. 386-87.
- ¶3. Accurate as to David Ebtehajfar. Tr. 379. However, Mr. Stafford testified he did not know Scott Sisskind and never met him. Tr. 387-88. Accordingly, there is no basis in the evidence to establish the accuracy of the statement as it pertains to Scott Sisskind.
- ¶4. This statement is true as to David Ebtehajfar and Shlomo Chia, but not as to Scott Sisskind. Tr. 387-88.

CONSTANCE T. O'BRYANT
Administrative Law Judge

Dated: March 18, 1998

CERTIFICATE OF SERVICE

I hereby certify that copies of this FINDINGS OF FACT issued by CONSTANCE T. O'BRYANT, Administrative Law Judge, in HUDALJ 97-7090-DB, were sent to the following parties on this 18th day of March, 1998, in the manner indicated:

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