

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES ex rel. RACHEL GOLDBERG,

Plaintiff,

v.

INSTITUTE OF INTERNATIONAL
EDUCATION,

Defendant.

FILED UNDER SEAL
Pursuant to 31 U.S.C. § 3730(b)(2)

Civil Action no. 07 CV _____

COMPLAINT AND DEMAND FOR JURY TRIAL

1. This is a civil action by Rachel Goldberg (“Relator” or “Goldberg”) on her own behalf and on behalf of the United States against defendant Institute of International Education (“IIE”) under the *qui tam* provisions of the Civil False Claims Act, 31 U.S.C. § 3729 *et seq.*, for treble damages, civil penalties, and other relief arising from fraud and false claims act violations committed by IIE against the United States. Goldberg also asserts claims against IIE on her own behalf for retaliation in violation of section 3730(h) of the False Claims Act.

I. NATURE OF THE ACTION

2. In connection with the application for and receipt of federal monies under one or more contracts with the United States Department of State, IIE (a) knowingly presented, and caused to be presented, to an officer and employee of the United States Government false and fraudulent claims for payment and approval; and (b) knowingly made, used, and caused to be made and used, false records and statements to get false and fraudulent claims paid and approved by the Government, in violation of Title 31, United States Code, §§ 3729(a)(1) and (2).

3. More specifically, this action arises from IIE’s submission of fraudulent budget proposals and quota sheets to the United States Department of State in connection with the funding it received for the so-called “Fulbright Program” from 2001 if not earlier through at least 2003.

II. JURISDICTION

4. This Court has subject matter jurisdiction over the claims alleged in this Complaint under 28 U.S.C. §§ 1331 (Federal question), 1345 (United States as plaintiff) and 31 U.S.C. § 3732(a) (False Claims Act).

5. This Court has personal jurisdiction over IIE pursuant to 31 U.S.C. § 3732(a), because IIE can be found, resides, and transact business in the Southern District of New York and because an act proscribed by 31 U.S.C. § 3729 occurred within this District. Section 3732(a) further provides for nationwide service of process.

6. Upon information and belief, there are no pending actions that would be deemed to be related to this action, and further, this Complaint is not based on the facts underlying any such pending action, within the meaning of the False Claims Act's "first to file rule," 31 U.S.C. § 3730(b)(5).

7. This action is not precluded by any provisions of the False Claims Act's jurisdiction bar, 31 U.S.C. § 3730(e) *et seq.* This action is not brought by a current or former member of the armed services against another member of the armed services arising out of such person's service in the armed forces. 31 U.S.C. § 3730(e)(1). Nor, is it brought against a member of Congress, the judiciary or a senior executive branch official and based upon evidence or information already known to the Government. 31 U.S.C. § 3730(e)(2).

8. Upon information and belief, this Complaint is not based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the United States is already a party. 31 U.S.C. § 3730(e)(3).

9. Upon information and belief, there has been no "public disclosure" of the matters alleged herein and this action is not "based upon" any such disclosure, within the meaning of 31 U.S.C. § 3730(e)(4)(A). Notwithstanding the foregoing, through her employment with defendant IIE, Goldberg has "direct and independent knowledge" of the instant allegations. Additionally, Goldberg has "voluntarily provided," and offered to provide, this information to the Government

prior to the filing of this complaint. Therefore, to the extent any of these allegations is deemed to have been based upon a public disclosure, Goldberg is an “original source” of this information within the meaning of the False Claims Act and is expressly excepted from its public disclosure bar.

III. VENUE

10. Venue is proper in the Southern District of New York under 28 U.S.C. §§ 1391(b) and (c), and 31 U.S.C. § 3732(a) because IIE can be found, resides, and transacts business in this district; an act proscribed by 31 U.S.C. § 3729 occurred within this district; and a substantial part of the events or omissions giving rise to the claim occurred in this district.

IV. PARTIES AND ENTITIES

11. Defendant IIE is, on information and belief, a not-for-profit corporation headquartered at 809 United Nations Plaza, New York, NY 10017-3580. It administers publicly and privately funded education exchange and development programs of study in the United States and internationally. Among the programs it administers are programs funded by the United States Department of State and the United States Agency for International Development, including the Fulbright Student and Scholars Programs, International Visitors program, and others. The Fulbright Program, administered by IIE under contract with the Department of State, provides funding for students, scholars, and professionals to undertake graduate study, advanced research, university teaching, and teaching in elementary, and secondary schools.

12. Among other activities, the Fulbright Foreign Student Program provides financial support for foreign students to study in the United States. The Institute of International Education (IIE) arranges academic placement for most Fulbright nominees and supervises participants during their stay in the United States.

13. In connection with this aspect of the Fulbright program, IIE submits budget information to the Department of State, receives Fulbright program monies, and distributes them

to the student participants in the program. IIE receives a percent of the Fulbright program monies as compensation for its role in administering the program.

14. Goldberg is a resident of New York City. She was employed by IIE as a program officer in the U.S. Student programs division beginning in July 1998.

15. In March 2003, Goldberg transferred to the Foreign Students division of IIE, and remains employed there at present. At all relevant times, her responsibilities include preparing budgets and “quota sheets” in connection with IIE’s participation in the Fulbright Foreign Student Program. The quota sheets are submitted annually and the government funds are transmitted to IIE on a quarterly basis.

VII. DEFENDANT’S FALSE CLAIMS SCHEMES

16. In connection with IIE’s contract or contracts with the Department of State, IIE submitted to the Department of State, and Goldberg was asked in effect to prepare, quota sheets purportedly containing dollar items of direct costs, i.e., tuition and fees, to fund students’ grants, when in fact these items improperly included amounts that IIE used for “supplemental benefits” (e.g., books and computers) that were not provided for as direct costs.

17. The quota sheets were submitted to the Department of State in connection with initial requests for funds and as periodic budget reports.

18. IIE’s contract with the Department of State for the Vietnam foreign student program. On information and belief, IIE’s contracts with the Department of State for the foreign student program generally similarly did not allow for supplemental benefits to be included in direct costs.

19. On information and belief, the improperly inflated quota sheets resulted in improperly inflated administrative fees received by IIE. In addition, to the extent monies that IIE misleadingly characterized as allocated to seminars and enrichment grants were not in fact spent for those purposes, those programs were shortchanged.

20. Goldberg protested to Carol Tegen (IIE's Director of Foreign Fulbright Programs division and Goldberg's direct superior) and Monti Castaneda, IIE's operations manager, about including amounts for supplemental benefits in the quota sheets. Goldberg refused and explained her belief that the budget could not be proper when the funds were being used to pay supplemental benefits.

21. Goldberg further stated to Tegen and also to a coworker, Sarah Ilchman, that such practices were wrong, i.e., in violation of IIE's foreign student program contracts with the Department of State. Tegen and Castaneda refused to address Goldberg's concerns.

22. On or about July 29, 2003, Goldberg sent an email message to the Department of State which alerted the government that supplemental benefits were being wrongly included in budget quota sheets.

23. Prior to that time, IIE had concealed from the Department of State that supplemental benefits were requested and funded through the quota sheets.

24. As a result of Goldberg's communication with the Department of State, the government ceased providing supplementary benefits funds.

25. On learning of Goldberg's communication with the government, IIE's Vice President of exchange programs, Mary Kirk, told Goldberg that she should not have sent the email and should have left the matter to her superiors at IIE.

26. Since she contacted The Department of State in 2003, Goldberg has been ostracized, her staff had been reduced, and she has incurred unwarranted negative performance evaluations.

27. In February 2004 and again in the spring of 2006, Goldberg was not permitted to attend a regional Asia conference, an unprecedented decision.

28. In her evaluation for 2005, Goldberg was criticized for a lack of judgment as to "whether a subject is worth pursuing or if it is best discussed in a private conversation rather than

making public issue without fully understanding the circumstances of the decision,” and for failing to “trust her supervisors to make necessary decisions.”

29. Goldberg was also criticized unfairly for the performance of one of her staff members, Sophia Seddiq.

30. Goldberg was not promoted to Assistant Director in early 2006, when each of her three coworkers were promoted.

31. Goldberg was given an increased workload and a substandard salary increase(2.5%) in October 2005.

32. In the United States division of IIE, where Goldberg worked previously, Goldberg did not encounter the practices she complained of in the foreign student division, and she did not experience the adverse actions and hostility described above.

COUNT I

31 U.S.C. § 3729(a)(1)

33. Relator realleges paragraphs 1 through ___ above.

34. IIE, in connection with its participation in the Fulbright program, from at least 2001 through at least mid-2003, engaged in a continuous practice of knowingly presenting, and causing to be presented, to an officer and employee of the United States Government, false and fraudulent claims for payment and approval, in that it prepared and submitted budgets and quota sheets which overstated the amounts required for the student grants and mischaracterized the actual use of the funds, by including “supplemental benefits” together with direct costs in violation of 31 U.S.C. § 3729(a)(1).

35. On information and belief, the United States would not have paid the monies in question to IIE had it known of the inflated and mischaracterized dollar figures in the quota sheets.

36. The United States of America made payments to IIE upon its false, fictitious, or fraudulent claims and was therefore damaged.

COUNT II

31 U.S.C. § 3729(a)(2)

37. Relator realleges paragraphs 1 through ___ above.

38. IIE, in connection with its participation in the Fulbright program, from at least 2001 through at least mid-2003, engaged in a continuous practice of knowingly making, using, and causing to be made and used, false records and statements to get false and fraudulent claims paid and approved by the Government, in that it prepared and submitted budgets and quota sheets which overstated the amounts required for the student grants and mischaracterized the actual use of the funds, by including “supplemental benefits” together with direct costs in violation of 31 U.S.C. § 3729(a)(2).

39. On information and belief, the United States would not have paid the monies in question to IIE had it known of the inflated and mischaracterized dollar figures in the quota sheets.

40. The United States of America made payments to IIE upon its false, fictitious, or fraudulent claims and was therefore damaged.

COUNT III
31 U.S.C. § 3730(h)

41. Goldberg realleges paragraphs 1 through ___ above.

42. By the conduct of IIE and its officers described above, IIE wrongfully retaliated against Goldberg for investigating and reporting to the defendants the fraudulent practices whereby they obtained government funds, contrary to the whistleblower protection provisions of the FCA, 31 U.S.C. § 3730(h).

43. Goldberg has been damaged by the defendants’ wrongful conduct.

DEMAND FOR RELIEF

WHEREFOR, Relator, on behalf of the Government of the United States pursuant to the *qui tam* provisions of the False Claims Act, and on behalf of herself individually, demands that judgment be entered against IIE as follows:

1. That IIE cease and desist from violating the False Claims Act, 31 U.S.C. § 3729 *et seq.*

2. On Count I, under the False Claims Provisions of the False Claims Act, 31 U.S.C. § 3729(a)(1), against IIE in the amount of three times the amount of damages the United States has sustained because of Defendant's actions, which amount is to be determined at trial or by the court, plus a civil penalty of between \$5,500 and \$11,000.00 for each act in violation of the False Claims Act, as provided by § 3729(a), with interest.

3. On Count II, under the False Claims Provisions of the False Claims Act, 31 U.S.C. § 3729(a)(2), against IIE in the amount of three times the amount of damages the United States has sustained because of Defendant's actions, which amount is to be determined at trial or by the court, plus a civil penalty of between \$5,500 and \$11,000.00 for each act in violation of the False Claims Act, as provided by § 3729(a), with interest.

4. As further relief under Counts I and II, awarding Relator an amount under the *qui tam* Provisions of the False Claims Act, 31 U.S.C. § 3730(d), for bringing this action, namely, between 15 and 25 percent of the proceeds of the action or settlement of the claim if the Government intervenes in the matter (or pursues its claim through any alternate remedy available to the Government, 31 U.S.C. § 3730(c)(5)), or, alternatively, between 25 and 30 percent of the proceeds of the action or settlement of the claim, if the Government declines to intervene.

5. On Count III, reinstatement, two times back pay, interest on the back pay, and compensation for pain and suffering, reputational damage, and all other damages sustained by Goldberg as a result of IIE's unlawful retaliation in violation of 31 U.S.C. § 3730(h), in an amount to be proved at trial.

6. Further, awarding Relator all reasonable expenses that were necessarily incurred in prosecuting this action, plus all reasonable attorneys' fees and costs, as provided by 31 U.S.C. § 3730(d) and 3730(h).

7. And finally, awarding the United States and the relator such other relief in law or equity as this Court deems appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Relator hereby demands trial
by jury.

Dated: New York, New York
September 21, 2007

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