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Office of Inspector General

Investigative Report

140108-01

March 6, 2017

Chris Hirst, Inspector General

Enhancing Public Trust in Florida's Affordable Housing

**Office of Inspector General
Investigative Report
Case Number 140108-02**

INTRODUCTION

On January 8, 2014, the Florida Housing Finance Corporation (Florida Housing), Office of Inspector General (OIG) received an anonymous complaint alleging fraud on the part of Robert Smith and Brenda Smith, Hardest Hit Fund (HHF) recipients. Specifically, Mr. and Mrs. Smith, owners of 14619 Indigo Lakes Circle, Naples, FL 34119 (14619 Indigo Lakes Circle), were reported to have, “listed their property for lease and rented it only months after signing the HHF document.”

According to HHF Program documents, Mr. and Mrs. Smith applied for HHF Program funds on May 23, 2011, and reported their primary address as 14619 Indigo Lakes Circle. On August 11, 2011, they were approved for HHF Program funding, receiving the following:

- From October 2011 - July 2013, they received Unemployment Mortgage Assistance Program (UMAP) funds totaling \$25,585.74; and
- On December 14, 2012, their lender received Mortgage Loan Reinstatement Payment (MLRP) Program funds of \$1,690.46.

The OIG initiated an investigation based on the information provided.

ALLEGATIONS

Mr. and Mrs. Smith allegedly committed fraud by failing to notify their HHF advisor that they had leased their primary residence, during a time period of receiving HHF Program funds. The 2011 HHF Advisor Guide and the HHF Program loan documents require applicants to occupy the property indicated on their HHF application as their primary residence. If supported, the allegation would constitute a violation of federal and/or state laws, including:

- Title 18, United States Code, §1001, False Statements;
- Section 817.034, Florida Statutes (F.S.), Making false statement to obtain property or credit;
- Section 817.545, F.S., Mortgage Fraud; and/or
- Section 837.06, F.S., False Official Statements.

EXECUTIVE SUMMARY

From January 14, 2014 until December 17, 2015, the OIG staff conducted interviews and reviewed significant documentation/records related to the allegation. As a result of the investigation, the OIG determined that the allegation of fraud by Mr. and Mrs. Smith, who failed to notify their advisor that they had leased their primary residence during a time period of receiving HHF Program funds, was **Supported**.

COMPLAINANT INTERVIEW

As reported above, the complaint was received from an anonymous source; therefore, the OIG staff were unable to speak with the complainant. However, the anonymous complainant provided the following explanation via facsimile and included the documents listed below in support of their statements:

RE: FRAUD Department

The Florida Hardest Hit Fund Program is supposed to be for individuals that own their home as a primary residence and not for a rental property. This owner, Robert Smith and Brenda Smith of 14619 Indigo Lakes Circle Naples, FL 34119, listed their property for lease and rented it only months after signing the HHF document.

Attached you will find:

1. Their HHF paper work reflecting they must occupy the property as their primary residence [Exhibit 1].
2. The current tenants lease for the 14619 Indigo Lakes Circle property that was submitted to the homeowners' association office [Exhibit 2].
3. The homeowners' association approval letter informing them their tenant was approved to occupy the unit (HOA contact information on the letter who will confirm their property is leased) [Exhibit 3].

It's unfortunate that individuals can defraud the government of \$18,000 by simply stating they promise to occupy a residence. They didn't pay the mortgage yet can lease it for almost \$3,000/month to make a profit.

Please put a stop to the fraud and help individuals who actually need assistance.

Note: As previously stated above, the HHF Program funding time period was from October 2011 - July 2013, with the lease agreement (See Exhibit 2) from May 31, 2013 - May 31, 2014. In addition, the lease lists Robert Smith's address as 16221 Birchwood Way, Orlando, FL 32828.

DOCUMENTATION/RECORDS ANALYSIS

Reviews were conducted by the OIG staff of the documents associated with Mr. and Mrs. Smith's HHF Program funding, which included: the HHF Program loan eligibility determination documents, and the HHF Program loan documents (Loan # 1673). The results of the reviews are listed below by related documents, which are listed in bold:

- On May 23, 2011, Mr. and Mrs. Smith signed the HHF Program loan eligibility determination documents (Exhibit 4), and made the following certifications:
 - 14619 Indigo Lakes Circle was their primary residence (Page 2, **HHF Intake Form**);
 - To always provide honest and complete information to their HHF Advisor, whether verbally or in writing (Page 1, **Homeowner/Advisement Contract**);
 - To contact the HHF Advisor about any changes in their situation immediately (Page 1, **Homeowner/Advisement Contract**);
 - They understood and acknowledged that FHFC & HHF Advisor and/or its agents may investigate the accuracy of their statements, may require them to provide supporting documentation, and that knowingly submitting false information may violate Federal and/or state law (Page 2, **Hardship Affidavit**); and

- That their property was owner-occupied and their primary residence was not vacant, condemned or rented (Page 2, **Hardship Affidavit**).
- On August 11, 2011, Mr. and Mrs. Smith signed the HHF Program Loan documents (Exhibit 5), and made the following certifications:
 - **HHF Approval Letter** states:

. . . Your signature means that you agree to fulfill your obligations under the Florida HHF, and if you are not fulfilling all of these obligations, your enrollment in this program would be terminated. In addition, if it is determined that you provided fraudulent information or you fail to notify us of events that would disqualify you from this program, your enrollment will be automatically terminated.
 - On the **Promissory Note**, the property address was listed as 14619 Indigo Lakes Circle, and Mr. and Mrs. Smith acknowledged the following (emphasis added):
 - **Item 7. DEFAULT**

Default. I will be in default under their Note if: (i) I do not repay the HHF Loan as required in section 4 above; (ii) I submit incomplete, false or misleading information to the Lender, or anyone acting on Lender's behalf, before or after the approval of their HHF Loan; or (iii) I fail to provide to the Lender, or to anyone acting on Lender's behalf, on a timely basis any information required by the Lender in order for the Lender to monitor my continuing compliance with the terms and conditions of this Note. At the Lenders' option, I may be declared in default if I fail to comply with any of the terms and conditions in the Loan Documents or in the HHF Approval Letter issued to me in connection with the HHF Loan. If I am in default, the Lender may, its option, enforce this Note by any lawful means and require me to pay the Lender's costs and expenses as described in (D) below. . .
 - **Item 11. RESPONSIBILITY OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each of us is fully and personally obligated (jointly and severally) to pay the full amount owed and to keep all of the promises made in this Note. The Lender may enforce its rights under this Note against each of us individually or against all of us together and may enforce its rights against any of us in any order. This means that any one of us may be required to pay all of the amounts owed under this Note. Notwithstanding the terms and conditions in this section 11, the personal liability of any Borrower is limited in the manner and to the extent as provided in section 12 below.
 - **Item 12. LIMITS ON PERSONAL LIABILITY**

(B) The Borrower shall be personally liable to the Lender for the full repayment of the indebtedness evidenced by this Note if the indebtedness, or any portion of the indebtedness, is obtained or created as a result of fraud or misrepresentation, including the submission of false, misleading or incomplete information, by the Borrower in connection with the application for or creation of the indebtedness or in connection with any advance or disbursement of the indebtedness made by the Lender on Borrower's behalf during the term of this Note.
 - The **Rider to Promissory Note** states (emphasis added):

Item D. Conditions to Lender's Agreement to advance HHF Loan Proceeds. In addition to the conditions described in C.I.(b) above, The Lender's agreement to advance the HHF Loan proceeds under C. above is subject to and conditioned upon the following: **(i) The Borrower must occupy the Property at all times as the Borrower's primary residence. . .**

- On the **Subordinate Mortgage**, the property address was listed as 14619 Indigo Lakes Circle, and Mr. and Mrs. Smith acknowledged the following (emphasis added):
 - **PROVIDED ALWAYS that if Borrower shall pay to Lender, all sums due or to become due under the Note or this Mortgage and shall perform, comply with, and abide by each and every stipulation, agreement, condition, and covenant of the Note and of this Mortgage. . .**
 - **Item 15. Acceleration; Remedies. Upon the Borrower's breach of any covenant or agreement of the Borrower in this Mortgage**, including the covenants to pay when due any sums secured by this Mortgage, or in the event that the Borrower shall have made a material misrepresentation or material omission in Borrower's application for the loan evidenced by the Note, **Lender, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. . .and**
 - **Item 20. Special Provisions:**
 - (a) **Default.** In addition to any other event of default under this Mortgage, the Borrower will be in default if any of the following occur: . . . (ii) **if Borrower violates any terms and conditions of the Note, the terms and conditions of which are incorporated herein by reference, or any other loan document governing the Loan. . . (iii) if Borrower fails to provide to the Lender on a timely basis any information required by the Lender in order for the Lender to monitor Borrower's continuing compliance with the terms and conditions of the Loan.**
- On January 30, 2012, Mr. and Mrs. Smith were notified that the HHF Program funding would terminate after the February 2012 payment, and this was due to their receipt of the maximum benefits at that time.
- On October 18, 2012, Mr. and Mrs. Smith acknowledged receipt of the Notice to Current and Previous Participants in the HHF Program (Exhibit 6) of the increased assistance being offered due to the changes in the HHF Program funding.
- On December 11, 2012, the HHF Approval Letter and the modified closing documents (Exhibit 7) were executed by Mr. and Mrs. Smith, who made certifications similar to the previous acknowledgements in which they agreed to:
 - Fulfill their obligations under the HHF Program by not providing inaccurate or false information; withholding information; or failing to notify Florida Housing of events that would disqualify them from further assistance under the program;
 - Continue to own and occupy the property encumbered by the HHF Mortgage; and
 - The Additional Event of Default, where their failure "to comply with or perform any warranty. . . shall constitute an event of default under the HHF Mortgage. . ."

The OIG staff conducted the following additional activity associated with Mr. and Mrs. Smith and 14619 Indigo Lakes Circle:

- Searches of the Collier County Property Appraiser's (CCPA) and Collier County Tax Collector's office websites revealed:
 - On April 23, 2004, Mr. and Mrs. Smith purchased the property (Exhibit 8); and
 - According to the tax records (Exhibit 9), Mr. and Mrs. Smith received homestead exemption on the property from 2008 to 2013, but not in 2014.
- Searches of 14619 Indigo Lakes Circle on the real estate website Zillow (www.Zillow.com) revealed that between January 18, 2013 and May 6, 2014, the property was listed for rent three times (Exhibit 10).

- Review of reports from the Consolidated Lead Evaluation and Reporting (CLEAR)¹ database, revealed the following addresses for Mr. and Mrs. Smith during the timeframe of 2004 to present:

| Date Range | Address | Source | Reported Date(s) |
|--|---|---|--|
| 01/01/04-12/01/15 | 14619 Indigo Lakes Cir. Naples, FL 34119 | Experian Gateway Experian Household Listing TransUnion Utility Listing Address Compilation, Tax Roll, and Deed | 11/23/04 - 12/01/15 11/23/04 - 02/03/13 01/01/04 - 11/30/12 06/08/12 - 06/08/12 10/01/10 - 11/04/10 |
| 07/21/04 - 10/11/04 01/01/12 - 11/09/15 | 512 Henley Dr. Naples, FL 34104 | Household Listing Utility Listing TransUnion Experian Gateway <u>FL Dept. of Business & Professional Regulation (DBPR)- Professional License(s):²</u> Community Assoc. Manager (Active) Real Estate Sales Associate (Expired) (Sun Realty Referrals Corporation, Inc.; and PS Beat) | 01/01/12 - 11/30/14 12/23/13 - 07/31/14 07/21/04 - 10/11/04 11/09/15 - 11/09/15 08/18/11 - 09/30/16 10/28/13 - 09/30/15 |
| 06/3/11 | PO Box 990321 Naples, FL 34116 | Experian | 06/03/11 - 06/03/11 |
| 11/30/12-10/11/13 | 16221 Birchwood Way Orlando, FL 32828 ³ | Experian Experian Gateway TransUnion Household Listing | 03/10/13 - 10/11/13 03/21/13 - 10/11/13 05/13/13 - 05/13/13 11/30/12 - 01/01/13 |
| 07/14/14-08/07/15 | PO Box 7204 Naples, FL 34101 | Vehicle Experian Driver's Licenses Household listing Tax Roll | 08/07/15 - 08/07/15 12/04/13 - 03/02/15 07/14/14 - 07/14/14 01/01/13 - 03/31/13 |
| 06/23/15 | 33333 Indigo Lakes Naples, FL 34119 | Experian | 06/23/15 - 06/23/15 |

- CLEAR also provided the names of other individuals associated with the address 14619 Indigo Lakes Circle, who are reported below by date range:

| Date Range | Name(s) |
|---------------------|--|
| 01/01/12 - 06/01/14 | William Scott Jackson and Melissa Palceski Jackson |
| 03/01/13 - 04/04/13 | Donna Gershon |
| 01/01/14 - 12/31/14 | William Lavon Summers and Desiree L. Summers |

¹ **Consolidated Lead Evaluation and Reporting (CLEAR)** is a public records search platform, designed specifically for government and law enforcement use.

² Per the DBPR online license search (www.myflroidalicense.com).

³ According to the Orange County Property Appraiser's website (<http://www.ocpafi.org/>), this property was not owned by the Smiths; and www.Zillow.com shows that the property was listed for rent from 1/15/13 -1/23/13.

Based upon the documents reviewed, a timeline of activity (Exhibit 11) was created. A portion of this timeline is listed below regarding the Smiths vacating the property while still receiving HHF program funds.

| Robert & Brenda Smith - Possible timeframe of Smiths vacating 14619 Indigo Lakes Circle | |
|--|--|
| Date | Details |
| 11/30/12 | The Smith's address was listed as 16221 Birchwood Way, Orlando, FL 32828 (Source: Experian, TransUnion, and household listing). |
| 12/11/12 | The Smith executed the modified closing documents and a closing quarterly touch (QT) was completed. |
| 12/14/12 | MLRP payment of \$1,690.46 made on behalf of the Smiths |
| 1/1/13 | UMAP payment of \$1,690.46 made on behalf of the Smiths |
| 1/18/13 | Listed for rent on Zillow - 14619 Indigo Lakes Circle source Avalon Management |
| 2/1/13 | UMAP payment of \$1,690.46 made on behalf of the Smiths |
| 2/7/13 | Removed rental listing from Zillow - 14619 Indigo Lakes Circle source Avalon Management |
| 3/1/13 | UMAP payment of \$1,690.46 made on behalf of the Smiths |
| 2/1/13 | Robert Smith submitted an APPLICATION FOR APPROVAL TO LEASE LOT (14619 Indigo Lakes Circle) to the Indigo Lakes Homeowners Association, Inc. (HOA), who required the form to be submitted at least 20 days prior to occupancy. Smith listed the Term of Lease reported as 3/1/13-2/28/14. It was approved by the HOA. |
| 3/10/13 | Listed for rent on Zillow - 14619 Indigo Lakes Circle source Avalon Management |
| 3/13/13 | March QT reviewed |
| 4/1/13 | UMAP payment of \$1,699.50 made on behalf of the Smiths |
| 5/1/13 | UMAP payment of \$1,699.50 made on behalf of the Smiths |
| 5/1/13 | The last date the account for 14619 Indigo Lakes Circle was listed in the Smith's names per a representative of Florida Power and Light (FPL). |
| 5/2/13 | Removed rental listing from Zillow - 14619 Indigo Lakes Circle source Avalon Management |
| 5/6/13 | Robert & Brenda Smith signed a lease agreement for 14619 Indigo Lakes Circle, with William & Melissa Jackson, who agreed to pay monthly rent in the amount of \$2,995.00, for the time period of 5/31/13-5/31/14. Robert Smith's address was listed as 16221 Birchwood Way, Orlando, FL 32828. |
| 6/1/13 | UMAP payment of \$1,699.50 made on behalf of the Smiths |
| 7/1/13 | LAST UMAP payment of \$1,699.50 made on behalf of the Smiths |
| 7/1/13 | Robert & Brenda Smith were informed that they will need to resume making payments starting 8/1/13. |
| 2014 | Robert & Brenda Smith did not have homestead exemption on 14619 Indigo Circle |

| Color Key |
|--|
| CCPA homestead exemption information |
| HHF Program payments |
| HHF Advisor activity (monthly and quarterly touches - contacting the Smiths) |

WITNESS INTERVIEW

On January 14, 2014, the OIG staff conducted a telephone interview with Marie Gonzper, the Smith's HHF Program advisor. The following represents actual and paraphrased statements made by Ms. Gonzper:

Spoke with borrower, he emailed me the first page of the lease, it's dated May 2013. Spoke with Justin Evans [Internal Investigator/Auditor, OIG, Florida Housing], in his last conversation with

borrower he was informed rent started to be collected in July 2013. So, the borrower will need to pay that month back to Florida Housing.

Spoke again to borrower to obtain his mailing address and he informed me it appears he was mistaken when he originally spoke with Mr. Evans concerning the first rental payment. I asked him to check his records, confirm, and then call Mr. Evans back with the correct date and to also provide his mailing address.

FLORIDA HOUSING MANAGEMENT REVIEW

On December 17, 2015, the OIG contacted HHF program management, who provided the following details about provisions and requirements for repayments of the HHF Program funds (paraphrased):

- The portion circled on the Note, Mortgage and Loan Modification Agreement [See page 2 of Exhibit 1], are part of the Recitals meaning at the time we did the mortgage modification, they continued to own and occupy their house as they were previously funded.
- If they moved out in February 2013, to me the portion to be recaptured would be the March through July payments which total \$8,488.46 as they did have to occupy their house as their primary residence to receive assistance.
- There is no provision that they need to continue to occupy the house after assistance. They do have to own the house; and
- Just for clarification – he is stating that he only received rent payment in July for the HHF assisted residence? If is this correct, I would say that does not matter. He would owe from the date the HHF assisted residence ceased to be his primary residence (move out date).

SUBJECT INTERVIEWS

On January 14, 2014, OIG staff spoke with Mr. Smith, who confirmed he had moved out of his home in February 2013 and leased the home in May 2013. Mr. Smith stated that he had to relocate in order to find employment.

Note: As previously reported above, Ms. Gonzper stated that she spoke with Mr. Smith, who explained he started to collect rent in July 2013. He was requested to contact the OIG to provide the correct date for the initial rent collection and to provide his current mailing address. However, Mr. Smith never contacted the OIG to provide this information.

On August 14, 2015, the OIG called Mr. Smith to confirm the information he had previously provided and to inform him that upon completion of the report, it would be forwarded to the Florida Department of Law Enforcement (FDLE).

ADDITIONAL ISSUES

Based on the information obtained during this investigation, the following additional issue was discovered:

As previously reported, Mr. and Mrs. Smith were granted Homestead Exemption on the property from 2008-2013; however, the property was rented to Mr. and Mrs. Jackson from May 31, 2013 – May 31, 2014. This matter was referred to the CCPA for review of possible Homestead Exemption violations for rental of the home during a

portion of 2013 in accordance with Section 20.055(6)(c), F.S., which requires the OIG to conduct, supervise, or coordinate other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations.

On January 7, 2016, the CCPA Director of Exemptions and Customer Service called OIG staff, stating the Smith's homestead exemption status was appropriate for 2013. The Director also stated that the homestead exemption was removed in 2014 after the Smiths notified their office that they no longer occupied the property.

FINDINGS/CONCLUSIONS

It is alleged that Mr. and Mrs. Smith committed fraud by failing to notify their HHF advisor that they had leased their primary residence, 14619 Indigo Lakes Circle, during a time period of receiving HHF Program funds (Exhibit 11). The allegation was **Supported** by: the documents provided by the anonymous complainant; the HHF Program application/loan documents; and based on confirmation from Mr. Smith that he had rented the property. Therefore, based upon these findings, Mr. and Mrs. Smith are in default of the terms of the HHF Program Loan because they failed to notify their HHF advisor that they had leased their primary residence during relevant times.

In accordance with Section 20.055(6)(c), F.S., on January 14, 2016, this investigation was coordinated with the Florida Department of Law Enforcement (FDLE) for a possible violation of federal and/or state laws, including:

- Title 18, United States Code, §1001, False Statements;
- Section 817.03, Florida Statutes (F.S.), Making false statement to obtain property or credit;
- Section 817.545, F.S., Mortgage Fraud; and/or
- Section 837.06, F.S., False Official Statements.

On April 5, 2017, FDLE advised that the State Attorney's Office will not file criminal charges based on the following:

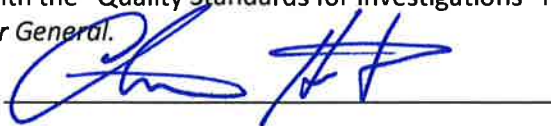
At this time, we are declining to file charges in the investigation. While it is our opinion that there is a viable prosecution that can be pursued, it is not the type of case our office normally handles. Unfortunately, the statute of limitations lapsed on filing fraud charges that we initially hoped to file. Moreover, there is a weak multi-circuit jurisdictional nexus.

INSPECTOR GENERAL COMMENTS

The OIG recommends that HHF program management require Mr. and Mrs. Smith to return the HHF Program fund totaling \$8,488.46 that they were provided in assistance.

CERTIFICATIONS

Their investigation was conducted in compliance with the "Quality Standards for Investigations" found within the *Principles and Standards for the Offices of Inspector General*.



Name, Title, Office of Inspector General

APPROVALS



Melanie Yopp
Internal Investigator/Auditor

4/6/17

Date



Chris Hirst
Inspector General

4/6/2017

Date