



Bank Hit with FCA Complaint over Mortgage Lending

May 03, 2011

On May 3, 2011, the U.S. Department of Justice filed a civil case against Deutsche Bank, Germany's largest bank, asserting that Deutsche Bank was liable for more than \$1 billion to the U.S. government for its statements and actions during the mortgage meltdown of the last few years.

This case is one of the few that has emerged from the mortgage crisis, and like many of the others, it's a civil rather than a criminal case.

What's particularly interesting is that the U.S. government is relying on the False Claims Act, a Civil War-era law that prohibits false claims against the government and that has been heavily relied on in contract disputes.

In this case, the government – this case, like many other recent filings, comes from the Southern District of New York, in Manhattan – asserts that the Frankfurt-based bank wrote mortgages for borrowers with dubious histories, then falsely certified to the Federal Housing Administration, a unit of the Department of Housing and Development that the loans were sound.

The complaint grows out of the conduct of MortgageIT, a subsidiary that Deutsche Bank owned at the time.

“Contrary to the certifications appearing on each and every mortgage endorsed by MortgageIT, MortgageIT engaged in a nationwide pattern of failing to conduct due diligence in according with HUD rules and with sound and prudent underwriting principles,” the complaint says. “MortgageIT knew that its certifications of compliance with HUD rules were false.”

Under the False Claims Act, the U.S. government can seek triple damages and penalties of more than \$1 billion.

Prosecutors say that while HUD rules required Deutsche Bank and MortgageIT to implement quality control programs to prevent defaults by their borrowers, they “ignored quality control” and gave mortgages to almost anyone who applied.

Is this an appropriate use of the False Claims Act? After all, MortgageIT, it seems, didn't make knowingly false statements about its borrowers in seeking FHA insurance for the loans. It simply made assessments that the borrowers were in good financial shape. They turned out not to be, and the FHA had to pay insurance claims. Is that the material out of which a \$1 billion civil case should be made?

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Groner, the former managing editor of the Legal Times. We look forward to hearing your thoughts and comments!



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