

Another Escobar Exemplar: District of New Jersey Finds Materiality Lacking

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by Lindsey Schmidt

Last week, the U.S. District Court for the District of New Jersey dismissed a *qui tam* action against Defendants Pioneer Education, LLC, Pioneer Education Manager, Inc., Jolie Health & Beauty Academy, and Joseph Visconti (collectively, “the Academy”) alleging violations of the False Claims Act (“FCA”), 31 U.S.C. § 3729-33. *United States ex rel. Lampkin v. Pioneer Educ., LLC*, No. 16-cv-1817, 2020 U.S. Dist. LEXIS 136022 (D.N.J. July 31, 2020). In doing so, the Court reiterated that the “rigorous” and “demanding” materiality principle post-*Escobar* that requires specific allegations of deception which, had the government been made aware of the misrepresentations, influenced the payment of allocated funds. See *Universal Health Servs. v. United States ex rel. Escobar*, 136 S. Ct. 1989 (2016).

According to Relator’s Amended Complaint, there were several instances of improper administration practices occurring at the Academy, which specializes in cosmetology education and training. Relator alleged, for example, misrepresentations or “half-truths” about student attendance violations, various code of conduct infractions, and lack of satisfactory academic performance. Relator also alleged that the Academy’s failure to disclose this information established an FCA claim because the Academy was required, as an express condition of payment, to ensure adequate and efficient administration of the funds it received from the Department of Education. These misrepresentations, Relator contended, had “a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property”—triggering a FCA violation. 31 U.S.C. § 3729(b)(4).

The Court disagreed. Reiterating that the FCA is “not meant to be a vehicle for punishing garden-variety breach of contract or regulatory violations,” the Court concluded the Amended Complaint failed to demonstrate how, if at all, the Academy’s purported misrepresentations were material. In particular, the Court noted that the Relator’s Complaint was completely devoid of any, much less sufficient, allegations from which a fact finder could infer that the Department of Education would have ceased payment of Title IV funds as a result of the Academy’s conduct. Nor was it enough, the Court said,

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that the Relator's complaint broadly alleged that the Academy's conduct caused the Department of Education to pay claims under Title IV that it would not have paid but for the Academy's fraud. Instead, the Court explained, the materiality standard demands specific allegations demonstrating the alleged misrepresentations had a tendency to influence the Department of Education's disbursement of funds. Broad, conclusory declarations without substantive details demonstrating materiality will not do.

This decision once again serves as a reminder that a conclusory declaration of materiality will not suffice for purposes of stating a FCA claim. Instead, Courts will look for particular factual allegations demonstrating that a purported misrepresentation did, or was likely to, affect the recipient's actual behavior. Moreover, the potential increase in FCA actions as a result of the billions of dollars disbursed by the government in COVID-19 relief (and often based on certifications or representations from an individual or business that they are entitled to such relief), means that courts will likely continue to regularly confront questions of materiality in the future to determine whether any alleged misrepresentations actually affected the government's payment decisions.