



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601

MICHAEL A. CARDOZO
Corporation Counsel

(212) 788-0800
Fax: (212) 227-5641
mcardozo@law.nyc.gov

March 10, 2009

Hon. Michael R. Bloomberg
Mayor
City Hall
New York, NY 10007

Hon. Christine Quinn
Speaker of the City Council
City Hall
New York, NY 10007

Re: New York City False Claims Act

Dear Mayor Bloomberg and Speaker Quinn:

Local Law No. 53 of 2005, the "New York City False Claims Act" (the "Act") was signed into law on May 19, 2005 and went into effect on August 17, 2005.

The purpose of the Act was to establish for New York City a statute modeled on the federal "False Claims Act" and to provide an additional tool to assist in the recovery of monetary damages from parties who have filed fraudulent claims for payment of City funds.

Under the Act, individuals who claim to have knowledge of false or fraudulent claims are empowered to submit proposed civil complaints to the City's Department of Investigation ("DOI"), which after reviewing them to ascertain whether an on-going investigation exists or whether one is warranted, forwards them to the Law Department. The Corporation Counsel has assigned responsibility for false claims matters to the Affirmative Litigation Division. The Division undertakes a careful review of the proposed civil complaint and the allegations contained therein, and determines whether it will commence a civil

enforcement action, or designate the person who submitted it to commence such action, or decline to commence such an action. If an action is commenced based on a person's proposed complaint, such person can receive a percentage of proceeds ultimately recovered in the action or settlement of the action.

The Act calls upon two agencies that are experienced in the areas addressed by the Act and are well positioned to collaborate to utilize this new tool for recovering money damages. A major mission of DOI is to investigate and refer for prosecution cases of fraud, corruption and unethical conduct by City employees, contractors and others who receive City funds. DOI is also charged with studying agency procedures to identify corruption hazards and recommending improvements in order to reduce the City's vulnerability to fraud, waste and corruption. The Affirmative Litigation Division of this office represents the City as plaintiff in a wide range of litigated issues in federal and state court and before administrative agencies. Some of the Division's lawsuits seek to recover money for the City in areas including commercial disputes; hazardous product claims; civil racketeering and fraud claims; nuisance and restitution claims; antitrust claims; intellectual property claims; and challenges to state and federal government decisions affecting funding for public benefit programs and education.

Under § 7-804(b)(2) of the Act, the Law Department and DOI are charged with promulgating rules regarding a protocol for processing the proposed civil complaints that would be submitted pursuant the Act. Attorneys from this office and DOI collaborated in the drafting of rules that were published in the *City Record* on July 6, 2005. A public hearing on those rules was held on August 5th and on August 8, 2005 a Notice of Adoption of the rules was duly published in the *City Record*, as of which date the rules became effective. The Rules are contained in Title 46 of the Rules of the City of New York. A copy of the rules is attached for your information. The Act itself became effective the following week, on August 17, 2005.

The text of the Act and the aforementioned Rules are posted on the websites of both the Law Department and DOI (<http://www.nyc.gov/html/law/html/fca/fca.shtml> and http://nyc.gov/html/doi/html/false_claims_home.html) in order to make them more accessible to the public, and the City's "311" hotline supervisory staff have been briefed about the Act so appropriate referrals can be made.

In 2007, the State enacted the New York False Claims Act (Chapter 58 of the Laws of 2007), legislation that in its earlier bill form had been one of the models upon which the New York City local law was based.

Calendar Year 2008

As discussed above, the Act provides that members of the public can submit proposed civil complaints that are investigated for purposes of determining whether they should be filed as civil complaints.

Section 7-808 of the Act provides that the Law Department report to the Mayor and the Council by March 1 of each year certain specified information regarding experience

under the Act in the previous calendar year. Set forth below is the information requested for calendar year 2008.

In 2008, no proposed civil complaints resulted in this office commencing a civil enforcement action. The Corporation Counsel did not designate any person, or his or her attorney, to act as a Special Assistant Corporation Counsel for purposes of commencing a civil enforcement action. Therefore, there are no dispositions to report of suits based on proposed civil complaints.

There were three proposed civil complaints submitted pursuant to Section 7-804 submitted in 2008. This office determined pursuant to §7-804(b)(3)(ii) not to commence a civil enforcement action in one of these complaints, and in five of the complaints that were submitted in 2007. In three of those six instances, the office determined not to commence a civil enforcement action because the proposed civil complaint was “based upon an interpretation of law or regulation which, if adopted, would result in significant cost to the city.” The proposed civil complaints presented claims for Medicaid funds, and, in the absence of express advance state approval, the City receives no benefit from successfully litigating such claims, as all Medicaid recoveries go to the State of New York pursuant to Part C of Chapter 58 of the Laws of 2005 (the “Medicaid cap statute”) and the subsequent re-enactment of the same Medicaid statute. Hence, any share that a relator might recover would have to come out of the City treasury without the City receiving any corresponding benefit, and litigating these claims would have resulted in a significant cost to the City under § 7-804(b)(3)(ii). The proposed civil complaints had already been filed as federal or state False Claims Act cases of which the federal government was fully aware, and the Attorney General’s Office was either also aware of the claim, or was made aware of the claim by a referral from this office.

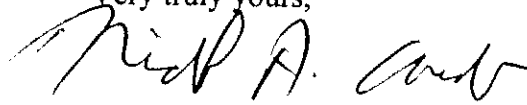
This office determined in 2008 not to commence the remaining three of the six civil enforcement actions when it was determined that (1) the proposed civil complaint involved a product that the City had not purchased, and thus any loss would be less than twenty five thousand dollars under § 7-804(d)(1) and any civil complaint on behalf of the City would be dismissed for failure to state a claim upon which relief may be based under §7-804(b)(3)(iv); (2) the proposed civil complaint involved a claim pursuant to federal, state or local tax law, which is explicitly excluded from the statute under § 7-804(d); and (3) the proposed civil complaint failed to state a claim upon which relief may be based under § 7-804(b)(3)(iv).

Two civil complaints submitted in 2008 remain under review, as does an earlier case that was referred under the State False Claims Act.

In addition, there have been five complaints filed by this office that pled a claim under the Act along with other claims, but were not related to a proposed civil complaint under Section 7-804. One of those actions settled; two of the actions have partially settled; the remaining two are in litigation. In NYC School Construction Authority v. CDI 21st LIC, LLC, the trial court upheld the New York City and New York State False Claims Acts as against a motion to dismiss, ruling that the False Claims Acts impose a duty in addition to “mere contractual obligation” and permit damages in excess of contract damages, as they “are a

manifestation of . . . social policy, designed as they were to deter future fraudulent claims and recoup government losses due to fraud.”

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael A. Cardozo". The signature is written in a cursive, flowing style with some loops and flourishes.

Michael A. Cardozo

c: Hon. Rose Gill Hearn