

65292-3

65292-3

No. 65292-3-I

COURT OF APPEALS,  
DIVISION I,  
OF THE STATE OF WASHINGTON

---

MOHAMED ADEN and FADUMA ALI,

Appellants,

vs.

SEATTLE HOUSING AUTHORITY,

Respondent.

---

BRIEF OF RESPONDENT

---

Donald S. Means, WSBA #8810  
Attorney for Seattle Housing Authority  
120 Sixth Avenue North  
Seattle WA 98109  
Telephone: (206) 615-3580

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
2010 SEP 28 PM 3:29

TABLE OF CONTENTS

I. Introduction.....1

II. Summary.....1

III. SHA’s Statement of Issues .....4

IV. Statement of the Case.....4

    A. Background.....4

        1. SHA and the Section 8 Program.....5

        2. Defendants’ participation in Section 8 program.....5

        3. Monthly housing subsidy for benefit of defendant.....6

    B. Defendants’ Income Reporting to SHA.....6

        1. Annual income report used by SHA in determining amount of subsidy.....6

        2. Certifications by defendants that they understood obligation to report income increases accurately and completely.....7

        3. Defendants’ awareness of their obligation to report income increases accurately and completely.....8

        4. Zero Income Affidavits contained statement regarding obligation to report income changes immediately.....8

    C. Defendants’ Repeated Failure to Report Income Increases.....9

        1. Failure to report increased income after submitting Zero Income Affidavit in May 2002 .....9

|   |    |
|---|----|
| 2. Failure to report increased income after submitting Personal Declaration in January 2003 .....   | 10 |
| 3. Failure to report increased income after submitting Personal Declaration in January 2004 .....   | 11 |
| D. Defendants' Failure to Provide Requested Documents for SHA Investigation .....   | 12 |
| 1. Anonymous complaint of unreported income .....   | 12 |
| 2. Defendants' refusal to provide financial records .....   | 12 |
| E. Termination .....  | 13 |
| F. Proceedings in the Trial Court .....   | 14 |
| 1. SHA's commencement of action, defendants' motion to dismiss, and SHA's amended complaint .....   | 14 |
| 2. Defendants' motion to dismiss amended complaint .....  | 14 |
| 3. Trial and entry of findings and conclusions .....  | 15 |
| V. Argument .....   | 15 |
| A. No Error by the Trial Court in Denying Defendants' Motion to Dismiss SHA's Amended Complaint Because the Circumstances Constituting Fraud Were Stated with Sufficient Particularity in the Amended Complaint and Because the Amended Complaint Alleged Causes of Action Other Than Fraud ..... | 15 |
| 1. Standard of review for trial court decision on motion to dismiss.....  | 15 |
| 2. CR 9(b) requirements for averments of fraud .....  | 16 |

|  |    |
|--|----|
| 3. Conformance of SHA’s amended complaint to requirements of CR 9(b) .....   | 17 |
| 4. Failure of defendants to establish that amended complaint should have been dismissed, even assuming that the amended complaint did not meet the requirements of CR 9(b) ..... | 20 |
| B. Support for Findings of Fact 21 and 22 by Substantial Evidence ...  | 22 |
| 1. Standard of review for findings of fact .....   | 23 |
| 2. Substantial evidence supporting Finding of Fact 21 .....  | 23 |
| 3. Substantial evidence supporting Finding of Fact 22 .....  | 26 |
| C. Conclusions of law Supported by Findings of Fact .....  | 28 |
| 1. Standard of review for conclusions of law .....   | 28 |
| 2. Support in the Findings of Fact for Conclusion of Law 1 .....   | 28 |
| 3. Support in the Findings of Fact for Conclusion of Law 2 .....   | 29 |
| 4. Support in the Findings of Fact for Conclusion of Law 3 .....   | 30 |
| 5. Support in the Findings of Fact for Conclusion of Law 7 .....   | 30 |
| 6. Support in the Findings of Fact for Conclusion of Law 8 .....   | 31 |
| 7. Support in the Findings of Fact for Conclusion of Law 9 .....   | 33 |
| D. Unchallenged Conclusion That Defendants Breached Contractual Obligations Is Sufficient to Support Judgment in Favor of SHA .....  | 33 |
| VI. Conclusion .....   | 34 |

V. Conclusion.....10

Appendix – Findings of Fact and Conclusions of Law

TABLE OF AUTHORITIES

Washington Cases

*Barstad v. Stewart Title Guaranty Co., Inc.*, 145 Wn.2d 528,  
39 P.3d 984 (2002) .....27

*Boonstra v. Stevens-Norton, Inc.*, 64 Wn.2d 621, 393 P.2d 287 (1964) ....27

*Burton v. Lehman*, 153 Wn.2d 416,103 P.3d 1230 (2005) .....16

*City of University Place v. McGuire*, 144 Wn.2d 640,  
30 P.3d 453 (2001) .....23

*Crisman v. Crisman*, 85 Wn.App. 15, 931 P.2d 163 (1997) .....29, 30

*DewBerry v. George*, 115 Wn.App. 351, 62 P.3d 525 (2003) .....30

*Fondren v. Klickitat County*, 79 Wn.App. 850, 905 P.2d 928 (1995) .....21

*Collins v. Lomas & Nettleton Co.*, 29 Wn.App. 415,  
628 P.2d 855 (1981) .....21

*Haberman v. Washington Public Power Supply System*, ,  
109 Wn.2d 107, 744 P.2d 1032 (1987) ..... 16, 17, 20

*Landmark Development, Inc. v. City of Roy*, 138 Wn.2d 561,  
980 P. 2d 1234 (1999) .....23

*Ledcor Industries (USA) Inc. v. Mutual of Enumclaw Insurance  
Company*, 150 Wn.App. 1, 206 P.3d 369 (2009) .....28

*Merriman v. Cokeley*, 168 Wn.2d 627, 230 P.3d 162 (2010) .....23

*Sunnyside Valley Irrigation District v. Dickie*, 149 Wn.2d 873,

|   |    |
|---|----|
| 73 P.3d 369 (2003) .....  | 28 |
| <i>Wenatchee Sportsmen Association v. Chelan County</i> , 141 Wn.2d 169,<br>4 P.3d 460 (2004) .....         | 23 |
| <i>Weyerhaeuser v. Tacoma-Pierce County Health Department</i> ,<br>123 Wn.App. 59, 96 P.3d 460 (2004) ..... | 23 |

Federal Cases

|   |    |
|---|----|
| <i>Bender v. Southland Corporation</i> , 749 F.2d 1205 (1984) ..... | 17 |
|---|----|

Statutes

|                                   |    |
|-----------------------------------|----|
| RCW 4.96.020 .....                | 7  |
| RCW 16.08.040 .....               | 10 |
| RCW 35.82.010 <i>et seq</i> ..... | 7  |

Federal Regulations

|                       |        |
|-----------------------|--------|
| 24 CFR §792.103 ..... | 28, 29 |
| 24 CFR §982.551 ..... | 31, 32 |
| 24 CFR §982.552 ..... | 31, 32 |

Washington Court Rules

|                 |                       |
|-----------------|-----------------------|
| CR 8(a) ...     | 16, 20                |
| CR 9 .....      | 21                    |
| CR 9(b) .....   | 3, 15, 16, 17, 20, 21 |
| CR 12(b)(6) ... | 15, 16                |

Federal Court Rules

Fed.R.Civ.P. 9(b) .....16, 17

Treatises

Tegland, 14 *Wash. Prac.*, Civil Procedure (2d ed. 2009) .....21

Wright & Miller, *Federal Practice and Procedure* (2d ed. 1990) .....21

## I. INTRODUCTION

Defendants Mohamed Aden and Faduma Ali (“Aden and Ali” or “defendants”) filed this appeal following trial of the claims brought against them by Respondent Seattle Housing Authority (“SHA”). The trial court ruled that the defendants failed to report their actual income to SHA and as a result obtained housing benefits to which they were not entitled. The trial court found that this failure to report actual income constituted fraud, breach of the applicable regulations, and breach of contract and ruled that judgment should be entered against the defendants in the amount of \$37,267.00.

## II. SUMMARY

The defendants were participants in SHA’s Section 8 program. Under this program, the defendants received the benefit of a monthly housing subsidy payment made directly by SHA to the defendants’ landlord to pay a portion of their rent. The amount of the subsidy was based in part upon the household income reported by the defendants. The defendants understood that any change in their household income had to be reported promptly to SHA.

In 2002, 2003, and 2004, the defendants reported their income to SHA early in the year. Later in each of those years, the defendants' income increased substantially from the income they had reported to SHA, but they did not report these increases to SHA. As a result, the defendants received housing subsidy payments in each of those years to which they were not entitled.

In 2005, SHA received an anonymous complaint that Mr. Aden was receiving unreported business income. An investigation by SHA disclosed information suggesting that members of the defendants' household were involved with a business for which they had not reported income. SHA requested Mr. Aden to provide personal financial records and financial records of the business. He refused to do so. This refusal to provide the requested documents constituted a violation of the defendants' obligations under the Section 8 program that justified their termination from the program and resulted in payment by SHA of housing subsidies in 2005 to which the defendants were not entitled.

SHA filed this action against the defendants to recover housing subsidy payments in 2002, 2003, 2004, and 2005 to which the defendants were not entitled. In its amended complaint, SHA asserted causes of

action for fraud, breach of a binding agreement, and breach of the defendants' obligations under applicable HUD regulations. SHA sought recovery of wrongfully paid housing subsidies under each of these causes of action.

The defendants argue that their pre-trial motion to dismiss SHA's amended complaint should have been granted because the amended complaint did not conform to the CR 9(b) requirements regarding averments of fraud. However, the allegations in the amended complaint met the requirements of CR 9(b) because they included all the elements of fraud and a statement of the circumstances constituting fraud. Further, the amended complaint included additional causes of action, for breach of contract and breach of Section 8 regulations, which were not subject to CR 9(b).<sup>1</sup>

The defendants assign error to several Findings of Fact and Conclusions of Law. But the challenged Findings of Fact are supported by

---

<sup>1</sup> The trial court concluded that, by failing to report increases in their household income and failing to provide financial documents requested by SHA, the defendants breached obligations under the Section 8 program set forth in the Code of Federal Regulations and also breached their obligations under a binding agreement. (Conclusions of Law 4 and 6, CP 90-1). The defendants have not challenged these Conclusions of Law.

substantial evidence in the record, and the challenged Conclusions of Law flow from the Findings of Fact and are consistent with Washington law.

The defendants have not challenged a conclusion of law by the trial court that, by failing to report income increases in 2002, 2003, and 2004 and by refusing to provide financial documents requested by SHA as part of an investigation in 2005, the defendants breached their obligations under a binding agreement with SHA. The defendants' breach of contract is sufficient in and of itself to support an award of damages to SHA

### **III. SHA'S STATEMENT OF ISSUES**

- A. Should the trial court's denial of the defendants' motion to dismiss SHA's amended complaint be upheld because the averment of fraud in amended complaint met the requirements of CR 9(b) and because the amended complaint contained causes of action in addition to fraud?
- B. Should the trial court's entry of Findings of Fact 21 and 22 be upheld because they are supported by substantial evidence in the record?
- C. Should the trial court's entry of Conclusions of Law 1, 2, 3, 7, and 8 be upheld because they flow from the Findings of Fact entered by the trial court and because the defendants have not shown that they are inconsistent with Washington law?

### **IV. STATEMENT OF THE CASE**

- A. **Background**

### 1. SHA and the Section 8 program

SHA is a public housing authority, and it administers the Housing Choice Voucher (“Section 8”) Program in the city of Seattle. CP 84.<sup>2</sup> The Section 8 Program is subsidized by the United States Department of Housing and Urban Development (“HUD”) and is subject to regulations adopted by HUD. CP 84.

### 2. Defendants’ participation in Section 8 program

Mr. Aden, as the head of the Aden household, consisting of Mr. Aden, his wife (Ms. Ali), and a number of his children, applied for and was awarded a Section 8 voucher with an issue date of July 6, 1998. CP 84. As a result of obtaining a Section 8 voucher, the Aden household began to receive a housing subsidy in the form of a monthly payment made by SHA directly to their landlord. CP 84. The monthly payment made by SHA to the landlord was called the HAP payment, and it paid a portion of the monthly rental payment for the Aden household’s apartment. CP 84. The

---

<sup>2</sup> This citation to the Findings of Fact and Conclusions of Law (CP 83-92) is made because the particular fact stated here is included in a finding of fact that has not been challenged by the defendants on appeal. All other citations to Findings of Fact in this Statement of the Case are also related to facts that are included in findings of fact that have not been challenged by the defendants.

remaining portion of the monthly rental payment for the Aden household's apartment that was not covered by the HAP payment was the responsibility of the Aden household. CP 85.

3. Monthly housing subsidy for benefit of defendants

In 2000, the Aden household moved to a residence located at 3804 S. Orcas, Seattle, WA. CP 85. Pursuant to the Section 8 voucher that had been awarded to the Aden household, SHA paid a portion of the monthly rent for this apartment from the time the Aden household moved into the apartment until the Aden household's Section 8 voucher was terminated by SHA effective February 28, 2006. CP 85. The portion of the monthly rent that was paid by SHA was based in part on the total monthly income of all members of the Aden household. CP 85.

**B. Defendants' Income Reporting to SHA**

1. Annual income report used by SHA in determining amount of subsidy

Annually during the time that its Section 8 voucher was in effect, the Aden household, like all Seattle households with Section 8 vouchers, submitted to SHA a document known as a Personal

Declaration in which the Aden household was required to list all money earned by everyone in the household within the last 90 days before the submission of the Personal Declaration. CP 85. Each adult member of the household was expected to sign each Personal Declaration under penalty of perjury. CP 85. These annual Personal Declarations were used by SHA to determine the household income of the Aden household, which was then used by SHA for the purpose of determining the amount of the monthly rent that would be paid by SHA. CP 85.

2. Certifications by defendants that they understood obligation to report income increases

Each Personal Declaration completed and signed by members of the Aden household contained the following language: “I certify that I have completed all of the above information to the best of my knowledge and that it is true and correct. I also understand that any change for my household members must be reported to the Seattle Housing Authority in writing within ten (10) days of the change.” CP 85-6; Ex 10, 11, 12, 13, 14, 15, 16, and 18.

3. Defendants' awareness of their obligation to report income increases accurately and completely

As a participant family receiving benefits under the Section 8 program, the Aden household was obligated to comply with a number of participant obligations set forth in HUD regulations and in SHA's program requirements. CP 86. The participant obligations for households in Seattle receiving benefits under the Section 8 program include the obligation to supply any information that SHA determines to be necessary in the administration of the program and the obligation to report completely and accurately any increase in the income of any member of the household within 10 days of the increase. CP 86. Mr. Aden was aware that the household had these obligations. CP 86; RP p. 182, l. 17-21.

4. Zero Income Affidavits contained statement regarding obligation to report income changes immediately

Ms. Ali submitted four Zero Income Affidavits to SHA dated between July 23, 1999 and September 12, 2002. CP 86; Ex 19, 21, 22, and 24. In each of these declarations, signed under penalty of perjury, Ms. Ali declared that she did not have any income. CP

86. Each of these declarations also included the following statement: "I understand that I must IMMEDIATELY REPORT to Seattle Housing Authority any change in my status which will affect my income and assets." CP 86; Ex 19, 21, 22, and 24.

**C. Defendants' Repeated Failure to Report Income Increases**

1. Failure to report increased income after submitting Zero Income Affidavit in May 2002

Ms. Ali submitted to SHA a Zero Income Affidavit signed on May 7, 2002 in which she declared that she did not have any income on that date. CP 86; Ex22. According to the Washington State Employment Security Department's ("ESD's") employment history for Ms. Ali, she earned income in the third quarter of 2002 in the amount of \$1021 and in the fourth quarter of 2002 in the amount of \$852. CP 86; Ex 2. The defendants did not report to SHA at any time in 2002 after May 2, 2002 that Ms. Ali began to receive income. CP 86. SHA made HAP payments on behalf of the Aden household during the third and fourth quarters of 2002 totaling \$8,850.00. CP 86-7; Ex 25.

2. Failure to report increased income after submitting  
Personal Declaration in January 2003

In their Personal Declaration signed on January 13, 2003, the defendants reported that Mohamed Aden's only monthly income was from SSI in the amount of \$540 per month and that Faduma Ali had monthly income of \$284.16 per month. CP87; Ex 16. According to ESD's employment history for Mr. Aden, he earned \$9750 per quarter in income from Muslim Housing Services in each of the last three quarters of 2003. . CP 87; Ex 1. According to ESD's employment history for Ms. Ali, she earned income in the third quarter of 2003 in the amount of \$1267.20 (an average of \$422.40 per month) and in the fourth quarter of 2003 in the amount of \$1647.36 (an average of \$549.12 per month). CP 87; Ex 2. The defendants did not report at any time in 2003 after January 13, 2003 that Mr. Aden began to receive income from Muslim Housing Services or that Ms. Ali's income increased from \$284.16 per month first to an average of \$422.20 per month and then to an average of \$549.12 per month. CP 87. SHA made HAP payments on behalf of the Aden household during the second,

third, and fourth quarters of 2003 totaling \$18,311.00. CP 87; Ex 25.

3. Failure to report increased income after submitting Personal Declaration in January 2004

In their Personal Declaration submitted to SHA on January 6, 2004, the defendants reported that Mohamed Aden's only monthly income was from SS in the amount of \$547 per month. CP 87; Ex 17. According to ESD's employment history for Mr. Aden, he earned income from Muslim Housing Services in the first quarter of 2004 in the amount of \$6500, in the second quarter of 2004 in the amount of \$13,500, in the third quarter of 2004 in the amount of \$10,500, and in the fourth quarter of 2004 in the amount of \$10,500. CP 87-8; Ex 25. The defendants did not report at any time in 2004 that Mr. Aden was receiving income from Muslim Housing Services until they submitted their Personal Declaration for 2005 in December 2004. CP 88. SHA made HAP payments on behalf of the Aden household during the first, second, third and fourth quarters of 2004 totaling \$12,668.00. CP 88; Ex 25.

**D. Defendants' Failure to Provide Requested Documents for SHA Investigation**

**1. Anonymous complaint of unreported income**

In 2005, an SHA employee received an anonymous complaint that Mr. Aden was receiving income as the owner of a grocery store business. CP 88. As a result of this anonymous complaint, SHA assigned its employee Steven Koransky to conduct an investigation into whether members of the Aden household were involved in businesses and receiving income from any such businesses that they had not reported to SHA. CP 88. Mr. Koransky conducted an investigation, and as a result of the investigation SHA obtained information suggesting that members of the Aden household had some involvement with a business known as Crescent Custom Slaughtering. CP 88.

**2. Defendants' refusal to provide financial records**

Because of the information suggesting that members of the Aden household had some involvement with the business known as Crescent Custom Slaughtering, Toni Manjarrez of SHA wrote to Mr. Aden on December 14, 2005 and on December 21, 2005

requesting him to appear for a conference with SHA and to bring copies of his personal income tax records and bank statements for the years 1999 through 2005 and copies of the income tax records and bank statements for Crescent Custom Slaughtering for the same years. CP 88-9; Ex 7, 8. Mr. Aden appeared for a conference but refused to provide the requested records. CP 89. Mr. Aden did not present the requested records to any other employee of SHA. CP 89. The refusal by Mr. Aden to provide personal and business tax returns and bank statements as requested by SHA in letters of December 14, 2005 and December 21, 2005, constituted a violation of the defendants' obligations under the Section 8 program. CP 90. SHA made HAP payments on behalf of the Aden household during the year 2005 totaling \$6615.00. CP 89; Ex 25.

**E. Termination**

On January 31, 2006, SHA notified Mr. Aden that it was terminating the participation of the Aden household in the Housing Choice Voucher Program effective February 28, 2006 for violating participant obligations by failing to provide true and complete information regarding household income for the years

1999 through 2005. CP 89; Ex 9. The letter mentioned Mr. Aden's failure to bring to the December 27, 2005 conference copies of his personal and business income tax forms and bank statements for the years 1999 through 2005. CP 89; Ex 9.

**F. Proceedings in the Trial Court**

1. SHA's commencement of action, defendants' motion to dismiss, and SHA's amended complaint

SHA commenced this action against Aden and Ali with the filing of a summons and complaint on September 9, 2008. CP 1-13. Before filing an answer, the defendants filed a motion to dismiss on December 10, 2008. CP 26-42. On December 31, 2008, SHA filed an amended complaint (CP 50-56) and its opposition to the motion to dismiss (CP 93-102). The trial court issued an order denying the defendants' motion to dismiss on February 26, 2009. CP 57-58.

2. Defendants' motion to dismiss amended complaint

The defendants filed a motion to dismiss the amended complaint on March 9, 2009. CP 59-63. SHA filed its opposition to the motion to dismiss the amended complaint on March 12, 2009. CP 103-105. The trial

court issued an order denying the motion to dismiss the amended complaint on March 17, 2009. CP 64-5.

3. Trial and entry of findings and conclusions

The case was tried to the Court, without a jury, on March 3, 4, and 17, 2020. CP 83. On March 24, 2010, Judge Richard D. Eadie issued Findings of Fact and Conclusions of Law. CP 83-92. Judge Eadie found that judgment should be entered in favor of SHA in the amount of \$37,267.00.

**V. ARGUMENT**

**A. No Error by the Trial Court in Denying Defendants' Motion to Dismiss SHA's Amended Complaint Because the Circumstances Constituting Fraud Were Stated with Sufficient Particularity in the Amended Complaint and Because the Amended Complaint Alleged Causes of Action Other Than Fraud**

1. Standard of review for trial court decision on motion to dismiss

The defendants moved for dismissal of SHA's amended complaint pursuant to CR 12(b)(6) and CR 9(b).<sup>3</sup> The standard of review for the trial court's decision on a motion for dismissal pursuant to CR 12(b)(6) is de

---

<sup>3</sup> CR 9(b) does not include a provision for motions for dismissal. SHA believes that the defendants' motion should be analyzed as a 12(b)(6) motion to dismiss on the basis that the amended complaint's averment of fraud did not confirm to the requirements of CR 9(b). Thus the standard of review for 12(b)(6) motions is the appropriate standard here.

novo. *Burton v. Lehman*, 153 Wn.2d 416, 103 P.3d 1230 (2005). Dismissal is appropriate under CR 12(b)(6) only if “it appears beyond doubt that the plaintiff cannot prove any set of facts which would justify recovery.” *Id.* at 422, 103 P.3d at 1233-34; *Haberman v. Washington Public Power Supply System*, 109 Wn.2d 107, 120, 744 P.2d 1032, 1046 (1987). For such an analysis, the plaintiff’s allegations are presumed to be true. *Id.* at 422, 103 P.3d at 1234.

## 2. CR 9(b) requirements for averments of fraud

CR 9(b) includes the following provision:

In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.

CR 8(a) includes the following provision:

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross claim, or third party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which he deems himself entitled.

The Washington Supreme Court has stated:

CR 9(b), like its federal counterpart, Fed.R.Civ.P. 9(b), ensures that plaintiffs seek redress for a wrong rather than use lawsuits as pretexts to discover unknown wrongs, protects defendants from unnecessary harm to their reputation, and gives defendants sufficient notice to enable them to prepare a defense. . . . Applying CR 9(b) in light of CR 8(a), which requires a “short and plain

statement of the claim showing that the pleader is entitled to relief”, a complaint must allege specific fraudulent acts but need not plead evidentiary matters. . . .

A complaint adequately alleges fraud if it informs the defendant of who did what, and describes the fraudulent conduct and mechanisms.

*Haberman v. WPPS, supra* at 165, 744 P.2d at 1069.

The defendants cite *Bender v. Southland Corporation*, 749 F.2d 1205 (1984), a decision of the Sixth Circuit United States Court of Appeals, for the proposition that FRCP 9(b) requires a plaintiff to allege the time, place and contents of alleged misrepresentations. Appellants’ Brief, p. 8. However, the defendants have provided no authority indicating that Washington courts have interpreted CR 9(b) to require allegation of those specific facts.

### 3. Conformance of SHA’s amended complaint to requirements of CR 9(b)

The defendants’ first motion to dismiss was filed on December 10, 2008, and in it the defendants sought an order dismissing SHA’s original complaint. CP 26-42. On December 31, 2008, SHA filed and served an amended complaint. CP 50-56. As the defendants had not served a responsive pleading in response to SHA’s original complaint, SHA was

entitled under CR 15(a) to amend its pleading as a matter of course. The defendants have not challenged SHA's filing of its amended complaint. On February 26, 2009, the trial court denied the defendants' first motion to dismiss. CP 57-58. On March 9, 2009, the defendants filed a second motion to dismiss seeking an order to dismiss SHA's amended complaint. CP 59-63.

In the defendants' Assignment of Error No. 1, they claim that the trial court erred in entering an order to dismiss the original and amended complaints. Appellants' Brief, p. 1. SHA had amended its complaint before the trial court ruled on the defendants' first motion to dismiss SHA's original complaint, so the order denying that motion to dismiss the original complaint seems to be obviously appropriate. SHA will address the defendants' Assignment of Error No. 1 as if it addresses only the order denying the motion to dismiss the amended complaint.

The amended complaint included the following allegations:

12. The failure of Defendants Aden and Ali to truly and completely report income to SHA resulted in the Defendants receiving excess housing subsidy to which they were not entitled. As a result of their failure to truly and completely report their income for the years 2000, 2001, 2003, 2004 and 2005, the Defendants Aden and Ali received

excess subsidy in the total sum of \$93,582.00 or such other amount as proved at trial.

16. Defendants Aden and Ali made representations of fact to SHA concerning their income. These representations of fact were material to SHA's determination of whether the Defendants were entitled to housing subsidies and, if so, the amount of such subsidies. The representations of fact made by the Defendants concerning their income were false, the Defendants knew they were false, and the Defendants intended SHA to act upon their false representations. SHA did not know that the representations were false and relied upon the false representations in making its determinations about whether the Defendants were entitled to housing subsidies and, if so, the amount of the subsidies. SHA was entitled to rely upon Defendants' representations concerning their income. As a result, SHA was damaged by the payment of subsidized housing assistance through the Section 8 Program on the behalf of the Defendants to which the Defendants were not entitled. The Defendants' representation to SHA of information about their income that was not true and complete, and it constitutes fraud.

CP 53-54.

These allegations provided notice to the defendants of SHA's claim that Aden and Ali had failed to truly and completely report their income to SHA resulting in overpayment of housing subsidies for the years 2000 through 2005 and that SHA would be seeking to establish that this failure to truly and completely report income constituted fraud. This notice was sufficient to enable the defendants to anticipate the need to prepare a

defense to SHA's claim that they had failed to truly and completely report their income. These allegations conform to the requirements of CR 9(b), read in light of CR 8(a), as interpreted by the Washington Supreme Court in *Haberman, supra*.

SHA's amended complaint also contained allegations concerning an anonymous complaint and a related investigation concerning the defendants' suspected involvement in a business. CP 52. At trial, SHA did not produce evidence of specific income the defendants had received from involvement in such a business. The trial court adopted no findings or conclusions that the defendants had received income from such a business or that the defendants had committed fraud in connection with such a business. CP 83-92.<sup>4</sup>

4. Failure of defendants to establish that amended complaint should have been dismissed, even assuming that the amended complaint did not meet the requirements of CR 9(b)

---

<sup>4</sup> The trial court's Finding of Fact 23 addressed Mr. Aden's refusal to provide personal and business tax records as requested in two SHA letters in December 2005. CP 90. These records were requested by SHA as part of its investigation into whether the defendants were receiving income from a business. EX 7,8; RP p. 69, l. 9-20; RP p. 129, l. 7-19. The trial court's Conclusions of Law 4, 5, and 6 concluded that the defendants' refusal to provide these requested records constituted a breach of the defendants' obligations under the Section 8 program, subjected the defendants to termination from the Section 8 program, and constituted a breach of the defendants' obligations under a binding agreement with SHA. CP 90-91. But no Finding of Fact or Conclusion of Law was entered indicating that the defendants had received income from such a business or that the defendants committed fraud in connection with such a business.

Even assuming that the amended complaint failed to satisfy the requirements of CR 9(b), the defendants have not established that it would have been error for the trial court to deny their motion to dismiss SHA's amended complaint. Dismissals for failure to state a claim "are considered a drastic remedy and are granted only sparingly." Tegland, 14 *Wash. Prac.*, Civil Procedure §12.24, at 494 (2d ed. 2009). Motions for such dismissal are carefully scrutinized because granting them deprives the plaintiff of its day in court. *Id.*; *Collins v. Lomas & Nettleton Co.*, 29 Wn.App. 415, 628 P.2d 855 (1981). Also, a failure to comply with the pleading provisions of CR 9 do not have to be remedied by dismissal, since they can be corrected through a motion for a more definite statement or through the use of discovery procedures. *Fondren v. Klickitat County*, 79 Wn. App. 850, 858 (footnote 4), 905 P. 2d 928 (1995), citing: 5 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1291, at 564 (2d ed. 1990). The trial court should freely allow the plaintiff to amend a complaint instead of granting a motion for dismissal if it appears that by amending the plaintiff may be able to properly state a claim. Tegland, 14 *Wash. Prac.*, Civil Procedure § 12.24 at 495 (2d ed. 2009).

Further, SHA's amended complaint included causes of action in addition to fraud, including a cause of action that the defendants were obligated to reimburse SHA subsidy payments because the defendants had breached their obligations under the Section 8 program, including applicable HUD regulations, and a cause of action for damages from breach of contract. CP 50-56. Even if one assumes that the averments of fraud in the amended complaint failed to meet the requirements of CR 9(b), it does not follow that the trial court should have granted a dismissal of SHA's causes of action other than fraud. The other causes of action are significant in this case, as the trial court entered Conclusion of Law 4, in which the trial court stated its conclusion that the defendants had breached their obligations under the Section 8 program, including obligations set forth in HUD regulations, and Conclusion of Law 6, in which the trial court stated its conclusion that the defendants had breached their obligations under a binding agreement with SHA. CP 90-91. Neither Conclusion of Law 4 nor Conclusion of Law 6 has been challenged on appeal.

**B. Support for Findings of Fact 21 and 22 by Substantial Evidence**

### 1. Standard of review for findings of fact

Findings of fact are reviewed to determine if they are supported by substantial evidence in the record. *Landmark Development, Inc. v. City of Roy*, 138 Wn2d 561, 980 P.2d 1234 (1999). Substantial evidence is a sufficient quantum of evidence to persuade a reasonable person that the matter is true. *Wenatchee Sportsmen Association v. Chelan County*, 141 Wn.2d 169, 4 P.3d 123 (2000). The reviewing court defers to the trial court on issues of credibility, conflicting evidence and persuasiveness of evidence. *City of University Place v. McGuire*, 144 Wn.2d 640, 30 P.3d 453 (2001); *Weyerhaeuser v. Tacoma-Pierce County Health Department*, 123 Wn.App. 59, 96 P.3d 460 (2004). A reviewing court will not disturb findings of fact that are supported by substantial evidence even if there is conflicting evidence. *Merriman v. Cokeley*, 168 Wn.2d 627, 631, 230 P.3d 162, 164 (2010). Findings of fact that have not been challenged are considered verities on appeal. *Id.*

### 2. Substantial evidence supporting Finding of Fact 21

Finding of Fact 21 states the trial court's finding that the defendants' failures to report increases in their income were concealments of substantive facts that were made with the intent to mislead SHA and

that resulted in wrongful housing subsidy payments by SHA for the defendants' benefit. CP 89. The record contains substantial evidence that supports this finding. Unchallenged findings of fact also support this finding.

Findings of Fact 12, 13, and 14 (CP86-88) are unchallenged. These unchallenged findings of fact establish that the defendants reported income to SHA in 2002, 2003, and 2004, that in each of those years the defendants' income increased after they had reported their income to SHA, and that in each of those years the defendants did not report the increased income to SHA.

Ms. Ali submitted four Zero Income Affidavits to SHA between June 1999 and September 2002, and each included the statement that she understood that she must immediately report to SHA any change in her income. CP 86 (Finding of Fact 11); EX 20, 21, 22, 23. The Personal Declaration submitted by the defendants for each year during the time that the defendants' Section 8 voucher was in effect contained a certification by the defendants that the information included was true and correct and that they understood their obligation to report changes to SHA within ten days of the change. CP 85-86 (Findings of Fact 6, 8); EX 10, 11, 12, 13, 14, 15,

16, 17, and 18. Unchallenged Finding of Fact 10 established that Mr. Aden was aware that the household had the obligation to supply any information that SHA determined to be necessary in the administration of the Section 8 program and the obligation to report completely and accurately any increase in the income of any member of the household within ten days. CP 86. Mr. Aden testified that he was aware that he had an obligation to report increases in his income within ten days to SHA. RP 182, l. 17-21. p. 15 . There was testimony at trial to the effect that the amount of the housing subsidy would go down if the income of the participant family increased. RP, l. 12-18; RP 34, l. 4-13. Unchallenged Finding of Fact 5 establishes that the portion of the monthly rent paid by SHA was based in part upon the total monthly income of the defendants' household. CP 85.

The evidence in the record mentioned in the previous paragraph, buttressed by the unchallenged findings of fact also mentioned there, demonstrates that the defendants were fully aware of their obligation to report income increases to SHA within ten days. The defendant's awareness of this obligation supports the trial court's finding that their failures to so report income increases constituted intentional concealment

of the income increases. This finding is further supported by the fact that the Zero Income Affidavits submitted by the defendants demonstrated their willingness to report income decreases. Findings of Fact 12, 13, and 14.

Conclusions of Law 4 and 5 (CP 90-91) are unchallenged on appeal. They establish that the defendants failure to report income increases in 2002, 2003, and 2004 were a breach of their obligations under the Section 8 program which rendered the defendants subject to termination from the program. Housing subsidy payments made after these failures to report income increases were made in violation of the program requirements.

#### 4. Substantial evidence supporting Finding of Fact 22

Finding of Fact 22 sets forth the trial court's finding that the defendants' failure to report income increases in 2002, 2003, and 2004 constituted false representations that the defendants knew were false and intended SHA to act upon, that SHA did know were false and relied upon, and that resulted in SHA making housing subsidy payments in violation of Section 8 program requirements. CP 89-90. This finding is supported by substantial evidence in the record and by unchallenged findings of fact.

Under Washington law, a failure to disclose a material fact when there is a duty to do so is, in effect, a representation of the nonexistence of the fact. *Boonstra v. Stevens-Norton, Inc.*, 64 Wn.2d 621, 393 P.2d 287 (1964). Such a failure is tantamount to an affirmative misrepresentation. *Barstad v. Stewart Title Guaranty Co., Inc.*, 145 Wn.2d 528, 39 P.3d 984 (2002). Unchallenged Findings of Fact 10, 12, 13, and 14 have established that the defendants had the duty to disclose increases in their income within 10 days and that they failed to do so. CP 86-88. Under Washington law, this constitutes a false representation of material fact.

The discussion at page 25 above addresses the defendants' intention for SHA to rely upon their non-disclosure of their income increases, and it will not be repeated here.

Unchallenged Findings of Fact 12, 13, and 14 establish the defendants did not report income increases to SHA in 2002, 2003, and 2004. CP 86-88. SHA makes the determination of whether there should be a change in the amount of the monthly subsidy based upon receipt from participants a report of income change. RP p. 34, l. 13-19; p. 35, p. 16 - p. 36., l. 9. Without such a report from the defendants for income increases in 2002, 2003, and 2004, SHA continued to make subsidy

payments for the remainder of each of those years after the defendants' income increased based upon the income reported before the increases.

EX 25.

### **C. Conclusions of Law Supported by Findings of Fact**

#### 1. Standard of review for conclusions of law

Conclusions of law are reviewed to determine whether they are supported by the findings of fact. *Ledcor Industries (USA) Inc. v. Mutual of Enumclaw Insurance Company*, 150 Wn.App. 1, 8, 206 P.3d 1255, 1260 (2009). Questions of law are reviewed de novo. *Sunnyside Valley Irrigation District v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369, 372 (2003).<sup>5</sup>

#### 2. Support in the Findings of Fact for Conclusion of Law 1

In Conclusion of Law 1, the trial court stated its conclusion that the defendants' failures to report income increases in 2002, 2003, and 2004 constituted "fraud and abuse" under the definition in 24 CFR §792.103. CP 90. The definitions in 24 CFR §792.103 include the following:

*Fraud and abuse.*

Fraud and abuse means a single act or pattern of actions:

---

<sup>5</sup> It does not appear to SHA that the defendants contend in this appeal that the Conclusions of Law are based upon errors of law. For the most part, the discussion here will be directed toward support for the Conclusions of Law in the Findings of Fact.

(1) That constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead; and

(2) That results in payment of section 8 program funds in violation of section 8 program requirements.

...

*Litigation*

A lawsuit brought by a PHA to recover section 8 program funds obtained as a result of fraud and abuse.

24 CFR §792.103.

Conclusion of Law 1 is supported by Findings of Fact 8, 9, 10, 11, 12, 13, and 14. Conclusion of Law 1 is also supported by challenged Finding of Fact 21, and SHA refers to its discussion of Finding of Fact 21 at pages 23-26 above.

3. Support in the Findings of Fact for Conclusion of Law 2

Conclusion of Law 2 states the trial court's conclusion that the defendants committed fraud under Washington law by failing to report to SHA increases in their household income during 2002, 2003, and 2004. CP 90. To recover under Washington law, a plaintiff may plead and prove the nine elements of fraud or may simply show that the defendant breached an affirmative duty to disclose a material fact. *Crisman v. Crisman*, 85 Wn.App. 15, 21, 931 P.2d163, 166 (1997).

Unchallenged Conclusion of Law 4 establishes that the defendants breached an affirmative duty to disclose to SHA their income increases in 2002, 2003, and 2004.<sup>6</sup> This is sufficient to establish support for Conclusion of Law 2 on the basis that the defendants breach a duty to disclose material facts to SHA. *Crisman, supra*. Conclusion of Law 2 is supported by Findings of Fact 21 and 22. SHA refers to its discussions of Findings of Fact 21 and 22 at pages 23-26 and pages 26-28 above.

#### 4. Support in the Findings of Fact for Conclusion of Law 3

Conclusion of Law 3 sets forth the trial court's determination that fraud was established by clear, cogent, and convincing evidence. CP 90. Where the evidentiary standard is "clear, cogent and convincing," the appellate court must determine whether substantial evidence in support of the finding of fact is highly probable. *DewBerry v. George*, 115 Wn.App. 351, 62 P.3d 525 (2003). SHA also refers to the discussion of the standard of review for findings of fact at pages 22-23 above, as it also applies here. The evidence in the record and the unchallenged findings of fact that relate to fraud are discussed at pages 23-28 above.

#### 5. Support in the Findings of Fact for Conclusion of Law 7

---

<sup>6</sup> Conclusion of Law 4 is supported by Findings of Fact 8, 9, 10, 11, 12, 13, and 14.

In Conclusion of Law 7, the trial court stated that SHA was damaged by making subsidy payments of specified amounts for the periods July to December 2002, April to December 2003, April to December 2004, and January to December 2005. This conclusion is supported by unchallenged Findings of Fact 12, 13, 14, 19, 20, and 23. It is also supported by Findings of Fact 21 and 22, and SHA refers to its discussion of these Findings of Fact at pages 23-28 above.

6. Support in the Findings of Fact for Conclusion of Law 8

Conclusion of Law 8 states that, as a result of the defendants' breach of their obligations under the Section 8 program, the defendants were subject to termination from the program, became ineligible for benefits under the program, and are obligated to reimburse benefits to SHA. CP 91-92. Conclusion of Law 8 includes a reference to 24 CFR §551(b)(1), (b)(4), and (k) and to 24 CFR §552(c)(1). CP 91. These reference were intended to be to 24 CFR §982.551(b)(1), (b)(4), and (k) and 24 CFR §982.552(c)(1). (See Conclusions of Law 4 and 5, CP 90-91).

These provisions provide as follows:

**§982.551 Obligations of participant.**

...

(b) *Supplying required information* – (1) The family must supply any information that the PHA or HUD determines is necessary in the administration of the program . . . .  
“Information” includes any requested certification, release or other documentation.

...

(4) Any information supplied by the family must be true and complete.

...

(k) *Fraud and other program violation.* The members of the family must not commit fraud . . . in connection with the programs.

...

**§982.552. PHA denial or termination of assistance for family.**

...

(c) *Authority to deny admission or terminate assistance.*

(1) *Grounds for denial or termination of assistance.* The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:

(i) If the family violates any family obligations under the program (see §982.551). . . .

24 CFR §§ 982.551 and 982.552.

The defendants have not challenged Conclusions of Law 4 and 5. These Conclusions of Law establish that the defendants breached the regulatory obligations referred to above and were subject to termination from the Section 8 program. CP 90-91. SHA also refers to the discussion of Conclusion of Law 7 at pages 30-31 above.

7. Support in the Findings of Fact for Conclusion of Law 9

It appears that the defendants challenge Conclusion of Law 9. See Appellant's Brief, p. 2. Conclusion of Law 9 sets forth SHA's entitlement to judgment. CP 92. SHA believes that Conclusion of Law 9 requires no discussion in addition to the discussion directed to Conclusions of Law 7 and 8 at pages 30- 33 above.

**D. Unchallenged Conclusion That Defendants Breached Contractual Obligations Is Sufficient to Support Judgment in Favor of SHA**

Conclusion of Law 6 sets for the trial court's conclusion that the defendants breached their obligations under a binding agreement by their failure to report income increases in 2002, 2003, and 2004 and their failure to provide financial records as requested by SHA in December 2005. CP 91. This unchallenged Conclusion of Law is enough, without considering

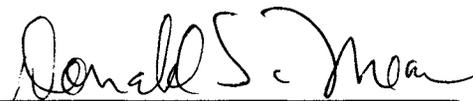
allegations of fraud or breach of regulatory obligations, to support an award of damages.

## VI. CONCLUSION

Based upon the above discussion, SHA requests this Court to affirm the trial court's denial of the defendants' motion to dismiss SHA's amended complaint and the trial court's entry of the Findings of Fact and Conclusions of Law that have been challenged by the defendants.

September 20, 2010

Respectfully submitted,

A handwritten signature in black ink that reads "Donald S. Means". The signature is written in a cursive style and is positioned above a horizontal line.

Donald S. Means, WSBA #8810  
Attorney for Respondent  
120 Sixth Avenue North  
Seattle, WA 98109  
(206)615-3572

APPENDIX

Findings of Fact and Conclusions of Law

**FILED**  
KING COUNTY, WASHINGTON

MAR 26 2010

SUPERIOR COURT CLERK  
BY ANDREW T. HAVIS  
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

HOUSING AUTHORITY OF THE CITY )  
OF SEATTLE, )  
Plaintiff, )

vs )

MOHAMED ADEN (a/k/a Maden )  
Mohamed, Mohamed M. Aden), and )  
Faduma M. Ali, )  
Individually, and as a marital community )  
composed thereof, and CRESCENT )  
CUSTOM SLAUGHTERING, Inc., a )  
Washington corporation, and 21<sup>ST</sup> )  
CENTURY BASIC HUMAN SERVICES, )  
a Washington non-profit corporation,) )  
Defendants. )

No. 08-2-31132-5 SEA

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This matter was tried to the Court, without a jury, on March 3, 4 and 17, 2010. The undersigned judge presided at the trial. The following claims were presented for adjudication:

1. The claims of Plaintiff Seattle Housing Authority ("SHA") against Defendants for fraud, negligent misrepresentation, violation of their obligations under the Housing Choice Voucher program, and breach of contract.

2. The counterclaim of the Defendants against SHA for intentional interference with contractual relations and business expectations.

SHA appeared at trial through its employees Toni Manjarrez and Steve Koransky and through its attorney Donald S. Means. Defendants Mohamed Aden and Faduma Ali appeared personally and through their attorney Hugh W. Berry.

Tony Manjarrez, Steve Koransky, and Mohamed Aden testified at the trial.

Based upon the evidence presented at trial, the Court makes the following Findings of Fact:

#### FINDINGS OF FACT

1. SHA is a public housing authority, and it administers the Housing Choice Voucher ("Section 8") Program for the city of Seattle. The Section 8 Program is subsidized by the United States Department of Housing and Urban Development ("HUD") and is subject to regulations adopted by HUD.

2. Defendant Mohamed Aden ("Mr. Aden"), as the head of a household ("the Aden household") consisting of himself, his wife Faduma Ali ("Ms. Ali"), and a number of his children, applied for and was awarded a Section 8 voucher with an issue date of 07-06-

98. 3. As a result of obtaining the Section 8 voucher, the Aden household began to receive a housing subsidy in the form of a monthly payment made by SHA directly to their landlord. The monthly payment made by SHA to the landlord was called the HAP payment, and it paid a portion of the monthly rental payment for the Aden household's apartment.

The remaining portion of the monthly rental payment for the Aden household's apartment that was not covered by the HAP payment was the responsibility of the Aden household.

4. In 2000, the Aden household moved to a residence located at 3804 S. Orcas, Seattle, WA. Pursuant to the Section 8 voucher that had been awarded to the Aden household, SHA paid a portion of the monthly rent for this apartment from the time the Aden household moved into the apartment until the Aden household's Section 8 voucher was terminated by SHA effective February 28, 2006.

5. The portion of the monthly rent for this apartment that was paid by SHA was based in part on the total monthly income of all members of the Aden household.

6. Annually during the time that its Section 8 voucher was in effect, the Aden household, like all Seattle households with Section 8 vouchers, submitted to SHA a document known as a Personal Declaration in which the Aden household was required to list all money earned by everyone in the household within the last 90 days before the submission of the Personal Declaration. Each adult member of the household was expected to sign each Personal Declaration under penalty of perjury.

7. These annual Personal Declarations were used by SHA to determine the household income of the Aden household, which was then used by SHA for the purpose of determining the amount of the monthly rent that would be paid by SHA.

8. Each Personal Declaration completed and signed by members of the Aden household contained the following language: "I certify that I have completed all of the above information to the best of my knowledge and that it is true and correct. I also

understand that any change for my household members must be reported to the Seattle Housing Authority in writing within ten (10) days of the change.”

9. As a participant family receiving benefits under the Section 8 Program, the Aden household was obligated to comply with a number of participant obligations set forth in HUD regulations and in SHA’s program requirements.

10. The participant obligations for households in Seattle receiving benefits under the Section 8 program include the obligation to supply any information that SHA determines to be necessary in the administration of the program and the obligation to report completely and accurately any increase in the income of any member of the household within 10 days of the increase. Mr. Aden was aware that the household had these obligations.

11. Faduma Ali submitted four Zero Income Affidavits to SHA dated between July 23, 1999 and September 12, 2002. In each of these declarations, signed under penalty of perjury, Ms. Ali declared that she did not have any income. Each declaration also included the following: “I understand that I must IMMEDIATELY REPORT to Seattle Housing Authority any change in my status which will affect my income and assets.

12. Ms. Ali submitted to SHA a Zero Income Affidavit signed on May 7, 2002 in which she declared that she did not have any income on that date. According to the Washington State Employment Security Department’s (“ESD’s”) employment history for Faduma Ali, she earned income in the third quarter of 2002 in the amount of \$1021 and in the fourth quarter of 2002 in the amount of \$852. The defendants did not report to SHA at any time in 2002 after May 7, 2002 that Ms. Ali began to receive income. SHA made HAP

payments on behalf of the Aden household during the third and fourth quarters of 2002 totaling \$8,850.00.

13. In their Personal Declaration signed on January 13, 2003, the defendants reported that Mohamed Aden had monthly income from SSI in the amount of \$540 per month and that Faduma Ali had monthly income of \$284.16 per month. According to ESD's employment history for Mohamed Aden, he earned income from Muslim Housing Services in the second quarter of 2003 in the amount of \$9750, in the third quarter of 2003 in the amount of \$9750, and in the fourth quarter of 2003 in the amount of \$9750. According to the ESD's employment history for Faduma Ali, she earned income in the third quarter of 2003 in the amount of \$1267.20 (an average of \$422.40 per month) and in the fourth quarter of 2003 in the amount of \$1647.36 (an average of \$549.12 per month). The defendants did not report at any time in 2003 after January 13, 2003 that Mr. Aden began to receive income from Muslim Housing Services or that Ms. Ali's income increased from \$284.16 per month first to an average of \$422.40 per month and then to an average of \$549.12 per month. SHA made HAP payments on behalf of the Aden household during the second, third, and fourth quarters of 2003 totaling \$18,311.00.

14. In their Personal Declaration submitted to SHA on January 6, 2004, the defendants reported that Mohamed Aden had monthly income from SS in the amount of \$574 per month. According to ESD's employment history for Mohamed Aden, he earned income from Muslim Housing Services in the first quarter of 2004 in the amount of \$6500, in the second quarter of 2004 in the amount of \$13,500, in the third quarter of 2004 in the

amount of \$10,500, and in the fourth quarter of 2004 in the amount of \$10,500. The defendants did not report at any time in 2004 that Mr. Aden was receiving income from Muslim Housing Services until they submitted their Personal Declaration for 2005 in December 2004. SHA made HAP payments on behalf of the Aden household during the first, second, third and fourth quarters of 2004 totaling \$12,668.00.

15. In 2005, an SHA employee received an anonymous complaint that Mr. Aden was receiving income as the owner of a grocery store business.

16. As a result of this anonymous complaint, SHA assigned its employee Steven Koransky to conduct an investigation into whether members of the Aden household were involved in businesses and receiving income from any such businesses that they had not reported to SHA.

17. Mr. Koransky conducted an investigation, and as a result of the investigation SHA obtained information suggesting that members of the Aden household had some involvement with a business known as Crescent Custom Slaughtering.

18. Because of the information suggesting that members of the Aden household had some involvement with the business known as Crescent Custom Slaughtering, Toni Manjarrez of SHA wrote to Mr. Aden on December 14, 2005 and on December 21, 2005 requesting him to appear for a conference with SHA and to bring copies of his personal income tax records and bank statements for the years 1999 through 2005 and copies of the income tax records and bank statements for Crescent Custom Slaughtering for the same

years. Mr. Aden appeared for a conference on December 27, 2004 but refused to provide the requested records.

19. On January 31, 2006, SHA notified Mr. Aden that it was terminating the participation of the Aden household in the Housing Choice Voucher Programs effective February 28, 2006 for violating its participant obligations by failing to provide true and complete information regarding household income for the years 1999 through 2005. The letter mentioned Mr. Aden's failure to bring to the December 27, 2005 conference copies of his personal and business income tax forms and bank statements for the years 1999 through 2005. The court further finds that Mr. Aden did not present the necessary documents to any other employee of SHA.

20. SHA made HAP payments on behalf of the Aden household during the year 2005 totaling \$6615.00.

21. When defendants failed to report increases in their household income to SHA in 2002, 2003, and 2004, those failures were concealments of substantive facts that were made with intent to mislead SHA and that resulted in housing subsidy payments by SHA for the benefit of the Aden household that were paid in violation of Section 8 program requirements.

22. The defendants' failure to report increases in their household income to SHA in 2002, 2003, and 2004 constituted representations of material fact that were false, that the defendants knew were false, that the defendants intended SHA to act upon, that SHA did not know were false at the time they were made, that SHA justifiably relied upon, and that

resulted in SHA making housing subsidy payments that were in violation of Section 8 program requirements.

23. The refusal by Mr. Aden to provide personal and business tax returns and bank statements as requested by SHA in letters of December 14, 2005 and December 21, 2005, constituted a violation of the defendants' obligations under the Section 8 program.

24. SHA did not interfere in any contractual relationship between the defendants and HUD.

Based upon the above findings, the Court makes the following Conclusions of Law:

#### CONCLUSIONS OF LAW

1. By failing to report increases in their household income during 2002, 2003, and 2004 to SHA, the defendants committed "fraud and abuse" under the definition of that term in 24 CFR §792.103.

2. By failing to report increases in their household income during 2002, 2003, and 2004 to SHA, the defendants committed fraud under Washington law.

3. The defendants' fraud was established by clear, cogent, and convincing evidence.

4. By failing to report increases in their household income during 2002, 2003, and 2004 to SHA and by failing to provide personal and business tax returns for years from 1999 through 2005 as requested by SHA in letters on December 14, 2005 and December 21,

2005 the defendants Aden and Ali breached their obligations under the section 8 program, including the obligations set forth in 24 CFR §982.551(b)(1), (b)(4) and (k).

5. By failing to report increases in their household income during 2002, 2003, and 2004 to SHA and by failing to provide personal and business tax returns for years from 1999 through 2005 as requested by SHA in letters on December 14, 2005 and December 21, 2005, the defendants Aden and Ali were subject to termination from the Section 8 program under 24 CFR §982.552(c)(1).

6. By failing to report increases in their household income during 2002, 2003, 2004 to SHA and by failing to provide personal and business tax returns for years from 1999 through 2005 as requested by SHA in letters on December 14, 2005 and December 21, 2005, the defendants Aden and Ali breached their obligations under a binding agreement between SHA and the defendants.

7. As a result of the acts of defendants Aden and Ali, SHA was damaged by making housing subsidy payments for the benefit of the defendants that were paid in violation of Section 8 program requirements in the amount of \$\$8850.00 for the period July to December 2002; \$13,763.00 for the period April 2003 to December 2003, \$8066.00 for the period April 2004 to December 2004 and \$6,615.00 for the period January 2005 to December 2005.

8. As a result of the defendants' breach of their obligations under the Section 8 program, including the obligations set forth in 24 CFR §551(b)(1), (b)(4), and (k) and in 24 CFR §552(c)(1), the defendants Aden and Ali are subject to termination for Section 8

benefits, became ineligible for benefits under Section 8 program requirements, and are obligated to reimburse the benefits paid by SHA on their behalf in the amount of \$37,267.00.

9. Judgment should be entered in favor of SHA and against the defendants in the amount of \$37,267.00.

12. The defendants have not established a prima facie case of intentional interference by SHA in any contractual relationships or business expectancies, and judgment should be entered dismissing the defendants' counterclaim for intentional interference with contractual relations and business expectations.

DATED this 24<sup>th</sup> day of March, 2010.

Richard D. Eddie  
Judge

Presented by :

Donald S. Means, WSBA #8810  
Of Attorneys for SHA