



Memorandum

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To: Mr. Don Horn, Chairperson, Miami-Dade Housing Finance Authority Board
Ms. Patricia J. Braynon, Director, Miami-Dade Housing Finance Authority

From:  Christopher Mazzella, Inspector General

Date: August 11, 2008

Subject: Misuse of Miami-Dade County Affordable Housing Funds; Failure to Reside
in Home Purchased with the Assistance of County Affordable Housing Funds

Attached please find the Office of the Inspector General's (OIG) Final Report on the above-captioned subject. A draft version of this report was provided to Mr. Shawn Beightol for his discretionary comments. Mr. Beightol's representative submitted a response on his behalf, which is attached as Appendix One.

This matter involves the Miami-Dade Housing Finance Authority's (HFA) 80/20 Downpayment Assistance Program. Mr. Shawn Beightol, a Miami-Dade County Public Schools schoolteacher, acquired a home located in the City of North Miami with the assistance of the HFA's program. In essence, the program makes primary mortgages at below market rates available to qualified homebuyers and provides the funds for the twenty percent downpayment in the form of a zero percent interest, 5-year deferred payment secondary mortgage. The second mortgage, like the primary mortgage, required the borrower to occupy the property as his principal residence within sixty (60) days of the closing.

The OIG investigation found that Mr. Beightol does not reside at the property, nor has he since purchasing the home in June 2006. He has rented this property since acquiring it and has collected approximately \$9,000 annually in rental income. The OIG believes that Mr. Beightol may have wrongfully applied for and received affordable housing funds through the HFA's 80/20 Downpayment Assistance Program. Irrespective of his intent to occupy the home as his primary residence within 60 days of the closing, he has not, and he should be determined by the HFA to be in default of the program's requirements. The HFA is empowered through the loan clauses to seek return of the loan monies in the event that the borrower does not establish the required residency. The OIG recommends that the HFA take such action.

The OIG requests that the HFA provide us with a follow-up report in 60 days regarding the status of our recommendation. The OIG would appreciate receiving this report on or before Friday, October 10, 2008.

cc: Hon. Mayor Carlos Alvarez, Miami-Dade County
Hon. Chairman Bruno A. Barreiro, Miami-Dade Board of County Commissioners
Hon. Audrey Edmonson, Chair, Economic Development & Human Services Committee
George Burgess, County Manager
Cynthia Curry, Senior Advisor to the County Manager
Charles Anderson, Commission Auditor
Clerk of the Board (copy filed)

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INTRODUCTION & SYNOPSIS

In July 2008, the Miami-Dade County Office of the Inspector General (OIG) began an investigation after receiving information that Shawn Beightol, a Miami-Dade County schoolteacher and School Board candidate, may have wrongly applied for and received affordable housing funds through the Housing Finance Authority of Miami-Dade County (HFA), which facilitated his purchase of a home in North Miami, Florida.

In June 2006, Mr. Beightol submitted various forms in connection with the loan application process for the purchase of a residence identified as 1860 Venice Park Drive, Unit 129, North Miami, Florida, 33181 (the North Miami property). The financing Mr. Beightol sought and obtained through the HFA, combined in a primary and secondary mortgage package in the amount of approximately \$186,000, was designed and intended to assist low-to-moderate income residents purchase their first home in Miami-Dade County. Because the purpose of the financing was to enable financially disadvantaged families to buy homes—as opposed to enabling them to purchase investment properties—the buyers were required to live in the homes, rather than rent them to tenants.

Mr. Beightol signed both the primary and secondary mortgages and represented therein—as required as a condition for financing—that he would personally occupy the North Miami property. The mortgages that Mr. Beightol signed also contained clauses triggering repayment or foreclosure if he failed to establish residency in the North Miami property within sixty days of purchase. The contents of documents and witness interviews obtained by the OIG investigation, including a homestead exemption cancellation form filed by Mr. Beightol, establish that Mr. Beightol has never lived in the North Miami property.¹ Rather, Mr. Beightol, since acquiring the property, has rented out the house and has collected almost \$9,000 per year in rental payments from a tenant.

OIG JURISDICTIONAL AUTHORITY

In accordance with Section 2-1076 of the Code of Miami-Dade County, the Inspector General has the authority to make investigations of county affairs and the power to review past, present and proposed County and Public Health Trust programs, accounts, records, contracts and transactions. The Inspector General is authorized to conduct any reviews, audits, inspections, investigations or analyses relating to departments, offices, boards, activities, programs and agencies of the County and the Public Health Trust.

The Inspector General shall have the power to review and investigate any citizen's complaints regarding County or Public Health Trust projects, programs, contracts or transactions. The

¹ The cancellation form is attached to this report as Exhibit D. The question of whether Mr. Beightol improperly applied for and received a homestead exemption for the North Miami property is not a focus of this report.

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Inspector General may exercise any of the powers contained in Section 2-1076, upon his or her own initiative.

The Inspector General shall have the power to require reports from the Mayor, County Commissioners, County Manager, County agencies and instrumentalities, County officers and employees and the Public Health Trust and its officers and employees regarding any matter within the jurisdiction of the Inspector General.

BACKGROUND - The HFA Program

The Housing Finance Authority of Miami-Dade County (HFA) was created by the Miami-Dade County Board of County Commissioners in 1978 in accordance with Florida Housing Finance Authority law, Part IV of Chapter 159, Florida Statutes as amended. The HFA is a county agency represented by its own Board of Directors.

The HFA administers various programs designed to provide affordable housing funds for low-to-moderate income residents of Miami-Dade County. The HFA's 80/20 Downpayment Assistance Program is designed and intended to assist those residents in purchasing their first home in Miami-Dade County. The program is structured so that qualified applicants could obtain a primary mortgage at below market rates, as well as a zero interest, payment deferred second mortgage to cover the cost of the down payment. Funding for the primary mortgages is generated from Miami-Dade County bond revenues. Funding for the second mortgages is provided by the HFA using monies supplied by the Documentary Stamp Surtax Fund.

INVESTIGATION

During the course of the investigation, OIG Special Agents reviewed numerous documents including, but not limited to, HFA program documents, the loan application, mortgage, and closing documents, as well as documents filed by Mr. Beightol in connection with his School Board candidacy and his receipt of a homestead exemption. In addition, OIG Special Agents interviewed witnesses including HFA employees and the current tenant of the North Miami property.

The North Miami Property Financing Process

On June 6, 2006, Mr. Beightol completed, signed, and submitted a loan application to J. P. Morgan Chase Bank. (Exhibit A²) In that application, for a primary mortgage in the amount of \$146,925, Mr. Beightol represented that the property would be his primary residence. Mr. Beightol signed the application under criminal penalties for misrepresentation.

² J.P. Morgan Chase Bank was paid a fee by the HFA to initially underwrite and fund the primary mortgage.

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Thereafter, also on June 6, 2006, Mr. Beightol signed and executed the primary mortgage agreement with J. P. Morgan Chase Bank. (Exhibit B) The primary mortgage agreement required Mr. Beightol to occupy the property as his principal residence within sixty (60) days after the execution of the instrument. The mortgage also stated that the borrower shall be in default if he made misrepresentations about his occupancy of the property as his principal residence.

Finally, on June 6, 2006, Mr. Beightol signed and executed a second mortgage agreement with the HFA. The second mortgage is called a *HFA 80/20 Down Payment Assistance Program Loan*. (Exhibit C) The second mortgage, in the amount of \$39,180, required zero percent interest and deferred payment of any principal for five years. Like the primary mortgage, the second mortgage also required Mr. Beightol to occupy the property as his principal residence within sixty (60) days after the execution of the instrument.

Mr. Beightol Has Never Lived in the North Miami Property

The OIG investigation has established that Mr. Beightol is a landlord who has never lived in the North Miami property.

1. Mr. Beightol's Homestead Exemption Cancellation Form

On July 15, 2008, Mr. Beightol signed and filed a homestead exemption cancellation form with the Miami-Dade County Office of the Property Appraiser. (Exhibit D) On the cancellation form, Mr. Beightol stated that he wished to cancel his homestead exemption for the North Miami property. In response to the question “[m]onth, day, and year you moved out?” Mr. Beightol stated “NA, NEVER MOVED IN, EFFECTIVE 1/1/07?”

2. Mr. Beightol's Campaign Filing

On June 20, 2008, Mr. Beightol signed and filed a sworn disclosure of financial interests in connection with his candidacy for the Miami-Dade County School Board. (Exhibit E) On the disclosure form, Mr. Beightol listed as a source of income received in 2007 “Rent Income on home, 1860 Venice Park Dr. 129, \$8,700.”

3. Interview of Mr. Beightol's Tenant

As part of the investigation, OIG Special Agents interviewed Melissa Yerecici. Ms. Yerecici stated that she has resided in the North Miami property continuously since October 2005, approximately eight months before Mr. Beightol purchased it. Ms. Yerecici explained that she makes monthly rental payments in cash to Mr. Beightol in the amount of \$725. The payments were originally based upon a series of renewed 3-month lease extensions, but at present she does not have a lease agreement with Mr. Beightol.

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Ms. Yerecici acknowledged that Mr. Beightol has never lived in the property and that he has never spoken to her about the possibility of him moving into the house. She explained that her arrangement with Mr. Beightol, as she understands it, is that she will continue to rent the property from him for the foreseeable future.

RESPONSE TO THE OIG'S DRAFT REPORT & OIG COMMENTS

On July 28, 2008, the OIG provided this report in its draft form to Mr. Shawn Beightol for his discretionary comment and written response. The OIG received a written response from Mr. Beightol's representative, which is appended hereto as Appendix One. In his response, Mr. Beightol offers four primary arguments in support of his conclusion that he "in no way wrongly applied for and received affordable housing funds through the HFA."

First, although Mr. Beightol acknowledges that his primary mortgage agreement required personal occupancy of the property within sixty (60) days after the execution of the instrument, he contends that such requirement was not included in the HFA-backed second mortgage agreement. However, Mr. Beightol's analysis ignores the clearly worded covenant of the second mortgage—that "the [b]orrower shall perform all of the borrower's obligations under the First mortgage"—one obligation of which is the personal occupancy requirement he has already acknowledged.

Second, Mr. Beightol contends that he intended to move into the property, but his personal financial difficulties excused him from the HFA program's occupancy requirement. In support of his contention, Mr. Beightol places much emphasis on a memorandum generated by the Miami-Dade State Attorney's Office, which he attached to his response as an exhibit. The memorandum is silent concerning the HFA's program requirements, but does include Mr. Beightol's admission that he never lived in the property, a recitation of his financial difficulties, and the conclusion that "examining the totality of the circumstances, there would be no way to demonstrate any criminal intent on the part of Mr. Beightol to commit any fraud on his homestead application."³

As a threshold matter, we note that Mr. Beightol's intent to commit fraud, criminal or otherwise, has not been a focus of this OIG investigation. In addition, as already noted above, the question of whether Mr. Beightol may have committed homestead exemption fraud is not a focus of this report. Accordingly, consideration of the State Attorney's memorandum, although strenuously urged by Mr. Beightol, is not relevant to the OIG's investigation.

Instead, the focus of this report remains whether Mr. Beightol may have misused affordable housing funds obtained through the HFA program. In his third primary argument, Mr. Beightol claims that the OIG has exceeded its jurisdictional authority, which he maintains is

³ Similarly, Mr. Beightol attached the affidavit of his tenant, who apparently now concludes that he has always intended to move into the property.

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limited to the investigation of “county contracts or transactions” (emphasis in the original). Mr. Beightol is simply mistaken: Section 2-1076(d)(1) specifically authorizes the OIG to make investigations of county “programs ... contracts and transactions.” A further assertion by Mr. Beightol in this regard, namely that his primary mortgage was a “non-public” document, and thus not subject to OIG investigation, transparently ignores the ambit of the HFA program.

Mr. Beightol also maintains that the draft report masquerades as a legal opinion, albeit an inaccurate one, which could cause him “unnecessary legal trouble including incarceration.” However, as the OIG has stressed throughout its existence, we do not issue advisory legal opinions. The OIG’s function is to investigate and report the findings of our investigation for management and/or the governing board to consider. Likewise, the OIG declines to opine upon Mr. Beightol’s contention that he lacked fraudulent intent; such an issue is rightfully reserved, if need be, for a judicial determination of an ultimate issue of fact.

Finally, Mr. Beightol complained that the draft report described the financial relationship between the HFA and J.P. Morgan Chase Bank in a confusing manner. In order to provide clarification, the OIG investigation has confirmed that the fees paid to J.P. Morgan as part of the HFA program were to underwrite, fund, and service the primary mortgage.

CONCLUSION

The draft report of the OIG investigation determined that Shawn Beightol, a Miami-Dade County schoolteacher and School Board candidate, appears to have misused affordable housing funds received through the HFA, because he never lived in the home that he purchased with those funds. Upon review of the response received from Mr. Beightol, we do not believe that material changes to the draft report were necessary.

The mortgages that Mr. Beightol signed contained clauses triggering immediate repayment or foreclosure if he failed to establish residency in the North Miami property within sixty days of purchase. As Mr. Beightol himself admits, he never complied with the HFA program’s residency requirements. The HFA is empowered through those clauses to seek return of the loan monies in the event Mr. Beightol did not establish the required residency. Accordingly, by way of this report, the OIG recommends that the HFA seek return of the loan monies from Mr. Beightol or make whatever other arrangements are appropriate, consistent with the aim and design of the 80/20 Downpayment Assistance Program. The OIG requests that we are provided with an update in 60 days, or before Friday, October 10, 2008, regarding the status of any action taken with regards to our recommendation.