

## FALSE CLAIMS ACT

### Maintenance Contractor Settles FCA Case For \$7.8 Million

A Maryland-based facility management and maintenance firm will pay the government \$7.8 million to end a lawsuit alleging the company and its owners made false representations to obtain contracts under two Small Business Administration programs.

***United States ex rel. Sansbury et al. v. LB&B Associates Inc. et al., No. 07-CV-00251, settlement announced (D.D.C. July 6, 2015).***

The settlement by LB&B Associates Inc. and owners Lily Brandon and her husband, F. Edward, resolves allegations that they violated the False Claims Act, the Justice Department said in a July 6 statement.

The FCA, 31 U.S.C. § 3729, is the government’s primary tool for fighting procurement fraud. The law allows private citizens to sue on the government’s behalf and share in any recovery.

Former LB&B project managers Steven Sansbury and James Buechler brought the alleged fraud to the government’s attention when they sued the company in February 2007.

In a complaint filed in the U.S. District Court for the District of Columbia, they said the defendants defrauded the SBA’s Section 8(a) business development and mentor-protégé programs.



Two former LB&B Associates Inc. project managers brought the alleged fraud to the government’s attention when they sued the company in February 2007. Its website is shown here.



## Section 8(a) program

The Small Business Administration's Section 8(a) business development program helps small, disadvantaged businesses compete in the marketplace.

Generally, to participate in the program a small business must meet these requirements:

- The business must be majority-owned (51 percent or more) by an individual(s) and not an entity.
- The individual(s) must be an American citizen.
- The business must be majority-owned and controlled/managed fulltime by socially and economically disadvantaged individual(s).
- The individual(s) must meet the SBA requirement for "disadvantage" by proving both social and economic disadvantage.

According to the SBA, socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their status as members of groups without regard to their individual qualities.

Under SBA regulations, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free-enterprise system has been impaired because of diminished capital and credit opportunities.

*The suit said the defendants held out Lily Brandon, an Asian woman, as the majority owner of LB&B Associates so the company would appear to be controlled by a socially and economically disadvantaged person.*

The Section 8(a) program helps small, disadvantaged businesses compete in the marketplace. The mentor-protégé initiative allows successful large companies to provide business development assistance to small firms that are Section 8(a) participants.

Sansbury and Buechler said LB&B obtained government contracts that were reserved for small firms under both programs by making false representations as to the company's eligibility.

To participate in the Section 8(a) program the defendants held out Lily Brandon, an Asian woman, as the majority owner so LB&B would appear to be controlled by a socially and economically disadvantaged person, the suit said.

F. Edward Brandon, an experienced government contractor, actually ran the business, according to the suit. He is a white male and therefore not a socially and economically disadvantaged person, and as a result LB&B was not eligible for the Section 8(a) program, the plaintiffs said.

By falsely certifying to the SBA that it met the requirements for program participation, LB&B was able to win contracts that the agency had set aside for legitimate program participants, according to the suit.

Sansbury and Buechler also alleged after LB&B's Section 8(a) participation ended in April 2004, the company joined the mentor-protégé program by making false representations.

LB&B allegedly represented to the SBA that it was acting as a mentor to, and forming joint ventures with, two small, Alaskan Inuit-owned, protégé companies called Bering Straits AKI and Chilkat Services Inc. Both of these companies were in the Section 8(a) program, the suit said.

## Mentor-protégé program

The Small Business Administration's mentor-protégé program allows successful large companies to provide business development assistance to small firms that are Section 8(a) participants.

Under this initiative a large company can act as a mentor and create an SBA-approved joint venture business entity with a small, disadvantaged firm. The joint venture can then bid on and perform federal contracts that have been set aside for small firms.

The SBA's mentor-protégé program rules provide that the protégé must perform the primary functions of any contracts that are awarded to the joint venture.

The plaintiffs claimed that after the Bering Straits joint venture won several government contracts in 2004, LB&B did not do any mentoring and used its own employees to perform the work.

LB&B also had one of its executives work at Chilkat and manage the joint venture in violation of program rules about affiliation between mentors and protégés, the complaint said.

The United States joined the lawsuit in April 2011 and chose to pursue the allegations regarding FCA violations in the Section 8(a) program, according to court records. The government did not intervene with regard to the alleged mentor-protégé program fraud, leaving Sansbury and Buechler to pursue those claims.

The government filed its own complaint against the defendants in August 2011 and then joined the plaintiffs in negotiating the settlement.

The defendants agreed to pay \$7.8 million to resolve both sets of fraud allegations without admitting to any wrongdoing, the Justice Department said. Sansbury and Buechler will receive \$1.5 million of the settlement funds.

The settlement is awaiting approval from the District Court.

### ATTORNEYS:

*Plaintiffs (Sansbury and Buechler):* Jay P. Holland and Brian J. Markovitz, Joseph, Greenwald & Laake, Greenbelt, Md.

*Plaintiff (United States):* Brian P. Hudak and Laurie J. Weinstein, U.S. attorney's office for the District of Columbia, Washington

*Defendants:* Roscoe C. Howard Jr., Andrews Kurth, Washington; Benjamin N. Thompson, Wyrick, Robbins, Yates & Ponton, Raleigh, N.C.

©2015 Thomson Reuters. This publication was created to provide you with accurate and authoritative information concerning the subject matter covered, however it may not necessarily have been prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional. For subscription information, please visit [www.WestThomson.com](http://www.WestThomson.com).