

In the
United States Court of Appeals
For the Seventh Circuit

No. 21-1852

NOREEN LANAHAN,

Plaintiff-Appellant,

v.

COUNTY OF COOK,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 17-cv-5829 — **Harry D. Leinenweber**, *Judge*.

ARGUED FEBRUARY 17, 2022 — DECIDED JULY 20, 2022

Before ROVNER, HAMILTON, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Relator Noreen Lanahan was a long-time employee of Cook County's Department of Public Health responsible for managing federal grants. After her retirement, Relator filed a *qui tam* suit against Cook County, alleging various violations of the False Claims Act arising out of the use of federal grants. The district court dismissed Relator's Second Amended Complaint with prejudice, and Relator now appeals. We affirm.

I. Background

Appellant Noreen Lanahan (“Relator”) worked as a director of financial control in Cook County’s Department of Public Health (“CCDPH”), a certified public health department, from 1994 until her retirement in 2017. In this capacity, Relator oversaw Cook County’s claim and reimbursement policies for hundreds of federal grants and crafted budgets submitted to the federal government in order to qualify for grant funding. During this period, Cook County received approximately \$20 million annually from the federal government for services related to federal public health priorities. Between 2008 and 2017, Relator repeatedly warned Cook County it was seeking federal reimbursement for unincurred expenses. Relator identifies four examples of Cook County’s purportedly fraudulent practices.

A. 2009–11 H1N1 Influenza Grant

In September 2009, the Centers for Disease Control and Prevention (“CDC”) awarded Cook County \$2.5 million in federal grant funds to distribute the H1N1 vaccine. Prior to performing under the grant, Cook County prepared an anticipated budget. By regulation, Cook County could only be reimbursed for costs associated with work actually performed under the grant. Instead, Relator asserts Cook County estimated the time dedicated to federal service after the fact and pinned the salary allocations submitted for reimbursement to the CDC to pre-performance budget estimates. Relator herself “never tracked [] federal service dedication,” never asked other managers how they apportioned employee time and was never solicited for an estimate of how individual employees apportioned their time among federal and local service.

Indeed, Relator never tracked her own dedication to federal service.

On September 1, 2011, Cook County submitted two Certified Grant Allocation Cost Reports, one associated with the IDPH Pandemic Flu program and one with the IDPH Mass Vaccination program. Although the line-item shared expenses for each individual employee are identical, the IDPH Pandemic Flu expense report requested \$1,065,506.05 in federal reimbursement while the IDPH Mass Vaccination expense report requested \$1,210,802.33 in federal reimbursement. On September 26, 2011, the CDC transmitted reimbursement vouchers to the Cook County Comptroller.

Cook County was also required by regulation to segregate federal reimbursement funds from unaffiliated Cook County revenue. Upon receiving federal funds, Cook County submitted credit vouchers to apply the reimbursements to accounts in the CCDPH's general ledger. On November 30, 2011, the Cook County Comptroller moved the H1N1 funds into a discretionary account for the benefit of Cook County Health and Hospital Systems ("CCHHS"). Relator asserts this transfer "frustrated the allocations" in the September 1, 2011, report and "undermined any truth to the budget and compliance certifications" represented to qualify for and close out the grants.

B. 2012–14 WIC Grant

The Supplemental Nutrition Assistance Program ("SNAP") for Women, Infants and Children ("WIC") provides supplemental nutrition, education, and healthcare to low-income citizens. Individual WIC grant business units occasionally retain positive balances at the end of the fiscal year

as a product of deferred personnel costs. By July 2014, Cook County had accumulated approximately \$6.8 million in deferred WIC credits. In an email to Cook County's Director of Grants Management, Relator explained the \$6.8 million "provides funding for Salaries and Fringe Benefits of grant employees should current grants not be renewed" and the "deferred revenue rolls forward from the previous grant year and is adjusted at grant closing." To avoid "distort[ing] current period grant expenses," Relator opined the "funds need[ed] to be segregated by the use of a unique Cost Center." Instead, Cook County opted to move the \$6.8 million in deferred revenue into the general health fund of the CCHHS as, according to Cook County's Chief Budget Officer, "[p]resumably these are expenses that were absorbed by the general/health fund when they occurred." Relator asserts CCHHS did not itself incur any expense in connection with the WIC grants.

C. Alleged Hektoen Kickback Scheme

The Hektoen Institute of Medicine ("Hektoen") is a non-profit fiscal agent that processes claims and collects reimbursement revenue on behalf of Cook County for personal service costs incurred by Cook County physicians for federal grants. Hektoen did not have a formal agreement with Cook County but instead unofficially contracted with Cook County physicians in an "Exhibit A" package. Hektoen retained the only executed copies of these agreements, which Relator alleges violated recordkeeping regulations. Hektoen submits claims upon and collects revenue from federal research grants on behalf of Cook County physicians in exchange for 10–15% of the awarded grant amount. Hektoen reallocated this collected revenue into a "Dean's Fund" and gave physicians "near autonomy" over the money.

In 2015, Hektoen collected and retained \$5 million in restricted federal funds. Relator points to a 2018 Chicago Tribune article detailing allegations against Dr. Bala Hota, a former Cook County hospital physician, as an example of the problems with Hektoen's practices. Dr. Hota allegedly embezzled almost \$280,000 from Hektoen's salary reallocation account, which he spent on personal expenses such as iTunes, luxury travel, and couture cupcakes.

D. 2009–12 PHIMC Grant Management

The Public Health Institute of Metropolitan Chicago ("PHIMC") is a nonprofit fiscal agent. PHIMC is not a certified health department. In 2010, the CDC awarded CCDPH \$15.9 million as an up-front payment for services to be rendered during a two-year period of performance. In the funding notice, the CDC limited funding to certified public health departments. The CCHHS Board approved PHIMC to serve as the fiscal agent for these funds. In June 2011, the CCHHS Board passed a resolution authorizing the transfer of grant funds to PHIMC, even though Relator alleges it had transferred the funds previously. PHIMC lacked the resources and financial controls to qualify for the award independently and the CCDPH would have to account for the funds in an annual audit.

E. Procedural History

Relator filed an initial *qui tam* complaint alleging various violations of the False Claims Act ("FCA"), 31 U.S.C. § 3729 *et seq.* After investigating Relator's allegations, the United States declined to intervene. Cook County moved to dismiss Relator's complaint for failure to state a claim under Rule 12(b)(6) and Rule 9(b). Instead of responding, Relator filed a First

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.