UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

U. S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, Complainant, vs. CHRISTIAN SAUNIER, Respondent.	HUDALJ No. 07-004-PF OGC Case No. 07-3385-PF Decided: May 31, 2007

Heather Walters, Esq.
For the Government

Alexis Galindo, Esq.
For the Respondent

Before: Arthur A. Liberty
Chief Administrative Law Judge

INITIAL DECISION

On October 11, 2006, the U.S. Department of Housing and Urban Development ("HUD" or "the Department" or "the Government") served a Complaint against Christian A. Saunier ("Respondent"), seeking penalties under the Program Fraud Civil remedies Act of 1986 ("PFCRA"), 31 U.S.C. §§ 3901 - 3812, as implemented by HUD's regulations found at 24 CFR Part 28. The Department seeks a penalty of $5,500 and an assessment in the amount of $120,446.78, for a total of $125,946.78 against Respondent.

The Complaint charges that Respondent, as a real estate agent, caused a false claim to be submitted to HUD in connection with the sale of 2875 North Alameda Avenue, San Bernardino, California ("the Property"), a residential property insured by HUD/FHA to a buyer whom HUD asserts could not have legitimately qualified

for a HUD/FHA-insured loan. HUD alleges that, based upon Respondent's participation in a scheme to obtain fictitious documents for the buyer to support his loan application, documents that Respondent knew or had reason to know were fictitious, HUD paid out large sums of money upon the buyer's default.

The Complaint notified Respondent of his right to appeal the imposition of the civil penalties and assessments by filing an Answer within 30 days of receipt of the Complaint. Respondent filed an Answer and two Amended Answers to the Complaint. In his Answers, Respondent asserted several affirmative defenses.

A hearing was held on this matter on March 21 and 22, 2007, in Los Angeles, California. The parties thereafter submitted post-hearing briefs. This matter is thus ripe for decision.

FINDINGS OF FACT

HUD is an executive department of the United States Government, established by 41 U.S.C. § 3531. Pursuant to section 203(b) of the National Housing Act, 41 U.S.C. § 1709(b), the Department, through the Federal Housing Administration ("FHA"), insures private lenders against losses they may sustain as a result of a mortgage loan defaulted on by a borrower.

The Respondent is currently a licensed salesperson with the California Department of Real Estate. Stip. #6. Between 1996 and 2002, Respondent worked for his brother, Patrick Saunier. Stip. #1. In May 1999, Patrick Saunier and Gregory Salazar sold the Property to Wilford Lambey, the borrower whose HUD-insured loan application is at issue in the instant case. Stip. #11; G. Ex. G3, p. 17.

To obtain a HUD/FHA-insured mortgage, a borrower must establish that he has sufficient gross income to meet his financial obligations. Stip. #3. The borrower and lender must sign a Uniform Residential Loan Application ("URLA") containing the information to be used in underwriting the loan, such as the borrower's current employer, employment history, and his current monthly income. *Id.* The lender submits a case binder to HUD/FHA, on behalf of the borrower, and the binder contains a URLA and supporting documents such as W-2 forms, verification of employment forms, and paycheck stubs, demonstrating the borrower's eligibility for the loan. Stip. #4.

HUD/FHA endorsed and insured a mortgage loan, identified as FHA No. 048-1641451, for the Property. Stip. #5. The case binder submitted to HUD for the loan on the Property contained a URLA for Wilford Lambey. Stip. #6; G. Ex. 3, p. 25-32. On the URLA, Wilford Lambey's employer was listed as Arrow Tech. *Id.* Wilford Lambey's URLA also stated that his monthly gross income was $2,600 and that he had worked for Arrow Tech as a technician for five years and four months as of April 26, 1999. G. Ex. 3, p. 25, 28. The data entered on the URLA was relied upon by the lender to extend a mortgage loan to Wilford Lambey and thus became the basis of the lender's request for insurance reimbursement when the loan defaulted. The information on the URLA was predicated upon supporting documentation that was submitted with the case binder and loan application, including pay statements and W-2s. That documentation was fictitious and was generated by a company named April 8 Realty.

Operations of April 8 Realty

From 1996 until December 1999, a woman named Noemi Pugliese owned and operated April 8 Realty ("April 8"). Tr, pp. 16-17. The purpose of April 8 was to make fictitious employment and income documents for individuals applying for real estate loans. *Id.* April 8 also used or established fictitious employers (companies) to verify the content of the fabricated employment documents in response to lender queries. *Id.* Among the types of documents April 8 fabricated were employment pay stubs, or statements, and W-2 forms. Tr, p. 17. April 8 would receive requests for the fabricated documents from real estate agents and others, including the real estate agents' secretaries, wives, or sisters. Tr, pp. 18-19.

The requester would provide April 8 with the name of a borrower, the borrower's social security number, a position title, a beginning employment date, a weekly pay amount, and a year-to-date pay amount, as well as pay amount information for previous years' W-2 forms. Tr, pp. 25-28, 42-43; G. Ex. 2, p. 2. The purposes for collecting this information were: 1) so that April 8 could then use it to generate the fictitious employment and income documents needed for the borrowers' loan applications; and, 2) so that April 8 could pass the information on to the fictitious verification company to use in response to lender queries. Tr, p. 27, 41-43, 44-45.

Ms. Pugliese and her niece, Monica D'Angelo (Tr, p. 159), were April 8's operatives. They wrote the information provided to them by the requesters in a transaction notebook ledger kept in a standard format in the normal course of the business. Tr, pp. 25, 28, 30, 33-34, 52-53, 56-58. Ms. Pugliese and Ms. D'Angelo

also entered the name of the requester, the name of the verification company/employer, and payment information. Tr, pp. 25-26, 34. When the information was taken by Ms. Pugliese, the entries would be in her writing, and she would process and develop the documents involved. Tr, pp. 29. When Ms. D'Angelo took the information from the requester, the entries would be in her writing and she would process and develop the documents involved. Tr, pp. 29. In the course of her work creating fictitious employment and income documents, Ms. Pugliese worked with Respondent and his brother, Patrick Saunier. Tr, pp. 23-24, 67-69, 70, 72-73, 86-88.

Borrower Date Provided to April 8 Realty

April 8's transaction notebook ledger reflects an entry for Wilford Lambey. Tr, p. 39; G. Ex. 2, p. 2. The information was received, the entry was written, and the fictitious documents were prepared by Ms. D'Angelo because Ms. Pugliese was out sick in March 1999. Tr, pp. 77-80. Ms. D'Angelo did not testify in this case, nor were any statements made by her during HUD's investigation submitted for consideration. The April 8 ledger entry itself reflects that the information purporting to be about Wilford Lambey was received on or about March 12, 1999. G. Ex. 2, p. 2. Ms. Pugliese also stated that it appears to her, from the fact that Respondent's name was entered in the location in which she and Ms. D'Angelo habitually wrote the requesters' names, that Respondent was the requester of the fictitious documents regarding Wilford Lambey. Tr, pp. 34, 41, 47-48; G. Ex. 2, p. 2. She knows of no other reason Respondent's name would have been listed in that section of the entry. Tr, pp. 47-48. If correct, this would also indicate that Respondent provided the information to April 8 for entry into the fictitious documents. *Id.*

The information provided for Wilford Lambey, as entered into the April 8 ledger, was that he earned $600 weekly; he had earned $6,600 year-to-date as of March 12, 1999; he was a technician at Arrow Tech who began work in December 1993; and he had made $29,332.10 in 1997, and $30,285.38 in 1998. Tr, pp. 37-38, 38-41; G. Ex. 2, p. 2. The information entered into April 8's ledger for Wilford Lambey corresponds to the information contained in Wilford Lambey's URLA submitted to HUD and the loan application supporting documentation.

Ms. Pugliese stated that she and Ms. D'Angelo entered the name of the requester into the ledger for each transaction because they would need to contact the requester if something went wrong or they needed more information. Tr, p. 35. She and Ms. D'Angelo would communicate with the requester after the initial

information was received. *Id.* There is nothing in the ledger entries to indicate who made any payments for the fictitious documents, when or in what amounts such payments may have been made, to whom the payments were made, or to whom the fictitious documents may have been given. G. Ex. 2, p. 2. Because Ms. D'Angelo was the April 8 employee who handled the Wilford Lambey transactions, Ms. Pugliese could not verify who actually requested the fictitious employment documents or to whom the documents had been given in that transaction. Tr, pp. 78-80. She testified that the normal practice was that April 8 would call up the requester, tell them the documents were ready, and the requester or someone else on behalf of the requester would come pick the documents up in person. Tr, p. 67. Often the real estate agent behind the particular request would send a relative to pick up the documents. *Id.* The person picking up the documents would bring cash to pay for the documents. *Id.*

Respondent's Dealings with April 8 Realty

Ms. Pugliese remembered having dealings with Respondent, and that he came to April 8 in person on more than one occasion. Tr, p. 68, 70, 72, 86. She did not remember whether he was dropping off a request for documents or picking up documents that had already been created. *Id.* She also spoke with Respondent on the phone, and in one instance sometime in 1999 she had a disagreement with him about a pay check amount that had been changed, after which point she refused to do business with him any longer. Tr, pp. 68-69, 85, 88. Ms. Pugliese described Respondent as tall and rather nice looking, although on later questioning she couldn't remember for sure if the person she was thinking of, was Respondent or "somebody kind of linked [with him], maybe it was a cousin or a relative." Tr, p. 87. She described Patrick Saunier, Respondent's brother, in a similar way as "a tall one, kind of blond, . . . kind of cute." Tr, p. 73.

Ms. Pugliese positively identified Respondent as Christian Saunier in the courtroom. Tr, p. 24. However, during her testimony her recollections of Respondent and whether she had dealt with him or his "relative" – i.e. possibly his brother Patrick – were vague and contradictory. It is unclear from the record whether she actually remembered seeing Respondent in the course of her April 8 work or was confusing him with someone connected to him. It is also unclear from the record whether any business interactions Ms. Pugliese might have had with Respondent were on his own behalf or whether he was a messenger for someone else; perhaps his brother, for whom he worked at the time.

Ms. Pugliese could not verify that Respondent had made the request for fictitious employment documents for Wilford Lambey, or that Respondent had picked up or paid for the documents. Although it is possible to infer from Ms. Pugliese's testimony about the transaction entry in April 8's ledger for Wilford Lambey that Respondent did contact April 8 with information for Wilford Lambey's employment documents, it is not possible to conclude whether he did so on his own or on behalf of someone else. Nonetheless, the transaction ledger does indicate that Respondent provided Wilford Lambey's information to April 8 and there is nothing in the record to indicate either that the transaction ledger is wrong or that Ms. D'Angelo would have written Respondent's name for any other reason. I therefore find that Respondent did contact April 8 to provide it with Wilford Lambey's income and employment information, and that he requested that April 8 generate employment and income documents for Wilford Lambey. However, I do not find that Respondent picked up any Wilford Lambey documents generated by April 8 or that he rendered payment for them. There is simply no evidence that he did so. I also do not enter a finding as to whether Respondent was acting in his own capacity or as an employee of his brother when he dealt with April 8.

Wilford Lambey's Documents and Loan

Although Ms. Pugliese also could not verify that April 8 had in fact produced fictitious employment or income documents for Wilford Lambey, she testified that she recognized the format of the employment documents contained in the HUD case binder for the loan involving Wilford Lambey. Tr, pp. 61-66; G. Ex. 3, pp. 81, 82. Ms. Pugliese identified the format of the pay stub and the W-2s contained in Wilford Lambey's HUD loan case binder as template formats she had developed and made on her computer, based on similar documents she had seen. *Id.* She also identified the company named as the employer in those documents as Arrow Tech, a company someone created for the sole purpose of verifying employment. *Id.* Not only did the pay stub and W-2s submitted to HUD in Wilford Lambey's case binder indicate Arrow Tech as the employer, they also stated that his gross weekly pay was $600, that he had earned $29,332.10 in 1997, and that he had earned $30,285.32 in 1998, amounts that were identical to those entered into April 8's transaction ledger for Wilford Lambey. G. Ex. 2, p. 2; G. Ex. 3, pp. 81, 82. Furthermore, the lender verified Wilford Lambey's employment as being current with Arrow Tech, both orally and via a written request. G. Ex. 3, pp. 79, 80. I find that April 8 did indeed prepare fictitious employment documents for Wilford Lambey that were submitted to HUD as part of Wilford Lambey's loan case binder.

The lender in Wilford Lambey's case relied upon the URLA, the fictitious pay stub and W-2 forms, and the false verification of employment at Arrow Tech that were part of the loan case binder in certifying to HUD that the mortgage was eligible for insurance. Stip. #13, G. Ex. 3, pp. 79, 80. As a result, HUD agreed to endorse the mortgage for insurance. Stip. #13.

Wilford Lambey received the loan that was insured by HUD in the amount of $103,841. G. Ex. 3, pp. 1, 6. His first payment of $889.32 was due on July 1, 1999. G. Ex. 3, pp. 3, 4, 6, 31. Wilford Lambey subsequently defaulted on the loan for the Property. Stip. #14. There is no indication in the record as to when Wilford Lambey defaulted or how many months, if any, he had made payments on the loan prior to defaulting. The lender submitted a claim to HUD for $111,223.39 based on the default of the loan for the Property and HUD paid the claim, taking possession of the property. Stip. #15. The evidence does not indicate when the lender submitted the claim to HUD or when HUD paid the claim, but HUD's asset management system records indicate that HUD acquired the property on October 18, 2002, three years and roughly three months after the first payment was due. G. Ex. 5, p. 1.

Although I find that the documents generated by April 8 were fictitious employment and income documents, I do not find that they contained a false, fictitious, or fraudulent material fact. There is no evidence in the record that Wilford Lambey did not make $600 a week, or that he did not earn $29,332.10 in 1997 or $30,285.32 in 1998. In fact, the record is devoid of information about Wilford Lambey.

Sandra Smith, the HUD underwriter who reviews case binders for HUD's Santa Ana office (Tr, pp. 93, 94) testified that an unqualified borrower was more likely to default on a loan, but she did not provide any information to show that Wilford Lambey was an unqualified borrower. Tr, p. 99. She stated that she had never met or spoken with Wilford Lambey and did not know if he worked in 1999 or how much money he made. Tr, pp. 101-02.

Stephanie Orrick, the FBI special agent who testified for the Government in this case did not speak with Wilford Lambey during the course of her investigation into Respondent and his actions with April 8. Tr, p. 140. She also did not testify as to what income Wilford Lambey did or did not earn.

Chris Hyun, the HUD auditor who aided HUD's and FBI's joint investigation into Respondent did not speak to Wilford Lambey or sit in on an

interview with him as part of the investigation. Tr, p. 159. He did not testify as to Wilford Lambey's income or lack thereof.

The documents produced by the Government do not show that the income reported for Wilford Lambey in the loan documents was false, nor do they indicate that lack of income in the stated amount was the cause of his subsequent default.

Furthermore, Ms. Pugliese testified that she created false employment documents for individuals, not that she generated false income amounts for them. In fact, she stated that she would not create fictitious employment documents for individuals without first seeing their bank statements and asking them how much money they had. Tr, p. 69. She stated that she used this information as a basis upon which to set their income for the fictitious employment documents. *Id.* She said that if the income amount she was requested to put into the fictitious employment documents was excessively high compared to what the individual had in their bank statements or said they earned, she would realize the individual would not be able to pay for the property and she would thus not create the fictitious employment documents for them. Tr, pp. 69-70.

The disagreement Ms. Pugliese had with Respondent or his brother that led to her decision to no longer do business with them was based upon this policy. Tr, pp. 68-69. She stated that she had asked Respondent to fax a copy of a pay stub she had created for "them" (meaning Respondent and someone else, presumably his employer and brother) for another borrower so she could prepare a final pay stub for that person. *Id.* When she received the fax, the amount was not the same as in her ledger. *Id.* Respondent told her "they" had had to change it to reflect a higher amount so the client would qualify for the loan. *Id.* Ms. Pugliese explained that this action upset her because the person would not be able to pay for the property if the loan and payments were based upon the changed amount rather than the amount she had determined they had, via their bank statements and what they told her they had. *Id.* This incident apparently occurred some time between March 1999, when April 8 prepared documents for Wilford Lambey, and December 1999, when April 8 went out of business due to an FBI investigation.

Although this incident and Ms. Pugliese's policy do not necessarily prove that the income amounts reported for Wilford Lambey were true or accurate, it creates an inference that they could have been. Combined with the record's lack of evidence to the contrary, the inference is the only indication as to whether the amounts purportedly earned by Wilford Lambey were true or false.

I therefore find that there is insufficient evidence that the income and employment amounts reported for Wilford Lambey in the fictitious documents created by April 8 in his name were themselves false. However, based upon Ms. Pugliese's anecdote above about another transaction with Respondent, I do find that Respondent knew or had reason to know that documents generated by April 8 were false or fictitious when he requested the documents to be made for Wilford Lambey.

LEGAL AUTHORITY AND DISCUSSION

The PFCRA states, in relevant part:

> (a)(1) Any person who . . . causes to be made, presented, or submitted, a claim that the person knows or has reason to know –
>
> (A) is false, fictitious, or fraudulent;
> (B) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent . . .
>
> shall be subject to . . . a civil penalty of not more than $5,000 for each such claim.
>
> (2) Any person who . . . causes to be made, presented, or submitted, a written statement that –
>
> (A) the person knows or has reason to know –
> (i) asserts a material fact which is false, fictitious, or fraudulent . . .
>
> shall be subject to . . . a civil penalty of not more than $5,000 for each such statement.

31 U.S.C. § 3802(a)(1)(A),(B) and (a)(2)(A)(i). The implementing regulations promulgated by HUD contain similar provisions. 24 C.F.R. § 28.10(a). Pursuant to 28 C.F.R. § 85.31(a)(10), the $5,000 statutory amount of the civil penalty has been raised due to inflation, and the Government has requested the $5,500 maximum penalty in this case. Complaint, ¶ 9. The PFRCA also authorizes an assessment of twice the amount of the claim, or relevant portion of the claim, to be imposed upon a liable person if the Government has made any payment or transferred property on the claim. 31 U.S.C. § 3802(a)(1)(D) and (3); 24 C.F.R. § 28.10(A)(6).

The PFRCA includes the following relevant definitions:

(a) For purposes of this chapter . . .

(1) "authority" means –
(A) an executive department; . . .

(3) "claim" means any request, demand, or submission . . .

(B) made to a . . . party to a contract with an authority . . .

(ii) for the payment of money (including money representing . . . loans, insurance . . .) if the United States . . .

(II) will reimburse such recipient or party for any portion of the money paid on such request or demand . . .

(5) "knows or has reason to know", for purposes of establishing liability under section 3802, means that a person, with respect to a claim or statement –

(A) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;
(B) acts in deliberate ignorance of the truth or falsity of the claim or statement; or
(C) acts in reckless disregard of the truth or falsity of the claim or statement,

and no proof of specific intent to defraud is required . . .

(9) "statement" means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made –
(A) with respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a

claim); or

(B) with respect to (including relating to eligibility for) . . .

(ii) a . . . loan, or benefit from, an authority . . . . or other party, if the Government will reimburse such . . . party for any portion of the money or property under such contract or for such . . . loan or benefit . . . .

(b) For purposes of paragraph (3) of subsection (a) ...

(3) a claim shall be considered made, presented, or submitted to an authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity . . . acting for or on behalf of such authority, recipient, or party.

31 U.S.C. § 3801(a)(1), (3), (5), (9) and (b)(3).

The Government must prove all the elements set forth by the PFCRA by a preponderance of the evidence. 24 C.F.R. § 26.44(e). A preponderance of the evidence has been defined as that proof which leads the fact finder to conclude "that the existence of a fact is more probable than its nonexistence." *In re Winship*, 397 U.S. 358, 371 (1970), quoting F. James, *Civil Procedure* 250-251 (1965).

The preponderance of the evidence in this case indicates that Respondent caused to be made the documents generated by April 8 for Wilford Lambey and that those documents were fictitious. Respondent contacted April 8, as shown in April 8's transaction ledger, with the information on Wilford Lambey, and there is no evidence that Respondent did not in the process request that April 8 generate employment and income documents, as was the company's normal practice. Ms. Pugliese's testimony that she had dealt with Respondent in the past on April 8 transactions, while somewhat vague in parts, was sufficient to establish that Respondent had reason to know that providing information to April 8 would result in generated documents and that the documents generated by April 8 would be fictitious.

The documents generated by April 8 for Wilford Lambey were submitted as written statements supporting his loan application, which loan application qualifies

as a claim as defined in the PFCRA statute. Respondent therefore caused to be made written statements that supported a claim that was submitted to the lender, who was a party to a contract for insurance reimbursement by HUD in the event of a default. There is no evidence that Respondent made, presented, or submitted, or caused to be made, presented, or submitted, an actual claim; the evidence in this case connects Respondent only with the written statements submitted to support a claim.

Although the evidence does not indicate that Respondent was involved in picking up the supporting fictitious documents from April 8, paying for them, providing them to Wilford Lambey or the lender, or submitting Wilford Lambey's loan application to the lender, the false documents generated by April 8 were nonetheless submitted to the lender. Respondent does not have to be the actual person who submits the supporting written documents to the lender to be liable under the PFCRA, nor does he have to cause the submission or presentation of the documents. He was involved in causing the supporting documents to be made. His involvement in causing the documents to be made is sufficient to meet this element. *See, e.g., United States v. Mackby*, 261 F.3d 821, 827 (9th Cir. 2001) ("A person need not be the one who actually submitted the claim forms in order to be liable.").

However, the evidence does not establish that Respondent knew or had reason to know that the documents he caused to be generated by April 8 for Wilford Lambey, that were submitted as support for Wilford Lambey's loan application claim, asserted material facts that were false, fictitious, or fraudulent. Although the documents themselves were fictitious, the statute does not create liability for making, or causing to be made, false, fraudulent, or fictitious *written statements*; it creates liability for making, or causing to be made, written statements that assert a material fact, which *material fact* is false, fictitious, or fraudulent. 31 U.S.C. § 3802(a)(1)(B) and (a)(2)(A)(i) (emphasis added).

As discussed in the findings of fact above, the evidence presented in this case does not address the truth or falsity of the material facts set forth in the April 8 documents – i.e. the amount of income Wilford Lambey made, if any. The only evidence in the record regarding the possible veracity of the information reported in the April 8 documents for Wilford Lambey is Ms. Pugliese's testimony that she would not generate such documents if the person named in them did not have enough money to support the claimed amount of income or pay the mortgage payments. Although this testimony was not more fully explained or developed, and does not prove that the material facts in the Wilford Lambey documents were true, it creates an inference that the material facts might have been true.

The Government has cited to several cases brought under the False Claims Act ("FCA") (31 U.S.C. § 3729) to support its assertions as to Respondent's liability. While it is true that the FCA and the PFCRA are very similar, and thus cases brought under the FCA, of which there are many, are regularly relied upon as precedent in PFCRA cases, there is a significant difference between the two statutes that is relevant to the facts of the instant case. The FCA states that a person will be liable, in relevant part, if the person "knowingly presents or causes to be presented . . . a *false or fraudulent claim* . . ." or if the person "knowingly makes, uses, or causes to be made or used, a *false record or statement* . . . ." 31 U.S.C. § 3729(a)(1), (2) (emphasis added). This differs from the express language in the PFCRA, which establishes liability for claims or statements that assert false, fictitious, or fraudulent *material facts*. Therefore, the cases cited by the Government are inapplicable to the instant case.

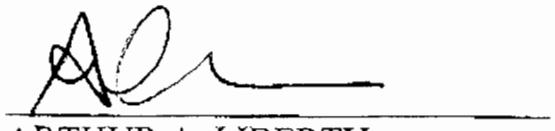
CONCLUSION AND ORDER

As the preponderance of the evidence in the record does not establish that the material facts contained in the documents Respondent requested April 8 Realty to generate were false, fictitious, or fraudulent, the Government has failed to meet this element of its case and has not established Respondent's liability.

The Government's request for imposition of a civil penalty and a damage assessment in this case is DENIED.

Pursuant to 24 C.F.R. 26.50(b), only the Respondent may petition the Secretary for review of this determination. The petition must be filed within 30 days of service of the decision.

So **ORDERED.**



ARTHUR A. LIBERTY
Chief Administrative Law Judge

Dated: May 31, 2007