

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV - 05 - 4318
Civ. 4318

DIANA ESTEVEZ, ARCELIANO GONZALEZ,
GERMANIA GONZALEZ, ALBANIA NUNEZ,
ANA REYES, MARIA PAULINO, MARIA
TORRES, MARIA MORONTA, NANCY GARCIA,
ZOILA PINZON, EMMA ROMAN,
BERNARDINA INIRIO, MARY ALBERICCI,
GILMA BERMUDEZ, EVELYN TAVARES,
GUADALUPE GODINEZ, GLADYS ABREU
and RAMONA CALDERON,

Plaintiffs,

-against-

COSMOPOLITAN ASSOCIATES LLC

Defendant

COMPLAINT
GLEESON, J.
FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ SEP 13 2005 ★
BROOKLYN OFFICE

LEVY, M.J.

PRELIMINARY STATEMENT

1. This is an action brought by low income tenants residing at Cosmopolitan Houses, a large residential complex owned by defendant Cosmopolitan Associates LLC (hereinafter "Cosmopolitan"). Plaintiffs face eviction from their homes where most of them have lived for well over two decades because their landlord, defendant Cosmopolitan has refused to accept their enhanced Section 8 vouchers paid on their by the New York City's Department of Housing Preservation and Development (hereinafter "HPD"). Plaintiffs rely on these rental subsidies to pay a portion of their rent and cannot afford the entire contract rent on their low incomes. The defendant landlord is a formerly HUD subsidized landlord and as such, the defendant's actions violate 42 U.S.C. Section 1437f(t) and the directives of the United States Department of Housing & Urban Development ("HUD").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. Sec. 1331.
3. This Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 22201 et seq.
4. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. Sec. 1391(b) because both plaintiffs and the defendant are located in this district.

PARTIES

A. THE PLAINTIFFS

5. Plaintiff Diana Estevez moved to Cosmopolitan Houses (the "subject premises") in 1969 and resides with her daughter at 45-15 48th Street, Apartment 3C. She is disabled and receives disability benefits. She received a letter from defendant informing her that starting October 1, 2005 defendant Cosmopolitan will no longer accept her Section 8 subsidy and that she will have to pay the entire rent of almost \$800.00.
6. Plaintiff Arceliano Gonzalez moved to Cosmopolitan Houses in approximately 1984 and resides at 45-15 48th Street, Apartment 2C with his two children. Mr. Gonzalez is disabled and receives social security benefits. He received a letter from defendant informing him that starting October 1, 2005 defendant Cosmopolitan will no longer accept his Section 8 subsidy and that he will have to pay the entire rent of almost \$800.00.
7. Plaintiff Germania Gonzalez moved to Cosmopolitan Houses in 1974 and resides with her daughter at 47-15 48th Street, Apartment 2H. She received a letter from defendant informing her that starting July 1, 2005 defendant Cosmopolitan will no longer accept her Section 8 subsidy and that she will have to pay the entire rent of \$753.49..

8. Plaintiff Albania Nunez moved to Cosmopolitan Houses in 1981 and resides at 45-15 48th Street, Apartment 5H with her two children and her grandson. She received a letter from defendant informing her that starting October 1, 2005 defendant Cosmopolitan will no longer accept her Section 8 subsidy and that she will have to pay the entire rent of over \$900.

9. Plaintiff Ana Reyes moved to Cosmopolitan Houses in 1978 and resides at 45-15 48th Street, Apartment 5A with her two adult children. She received a letter from defendant informing her that starting October 1, 2005 defendant Cosmopolitan will no longer accept her Section 8 subsidy and that she will have to pay the entire rent of over \$900 on her limited earnings as a home healthcare aide.

10. Plaintiff Maria Paulino moved to Cosmopolitan Houses in 2001 and resides at 45-15 48th Street, Apartment 5D. She received a letter from defendant informing her that starting October 1, 2005 defendant Cosmopolitan will no longer accept her Section 8 subsidy and that she will have to pay the entire rent of almost \$700.

11. Plaintiff Maria Torres moved to Cosmopolitan Houses in 1993 and resides at 47-25 48th Street, Apartment 5E. She received a letter from defendant informing her that starting July 1, 2005 defendant Cosmopolitan will no longer accept her Section 8 subsidy and that she will have to pay the entire rent of \$680.00, more than she receives from her disability benefits. On information and belief, defendant Cosmopolitan has refused the subsidy payments made on her behalf by HPD and has served her a rent demand for the entire contract rent.

12. Plaintiff Maria Moronta moved to Cosmopolitan Houses approximately in 1998 and resides at 45-25 48th Street, Apartment 5B with her two children. She received a letter from defendant informing her that starting October 1, 2005 defendant Cosmopolitan will no longer

accept her Section 8 subsidy and that she will have to pay the entire rent of almost \$800, almost 70% of her earnings from she supports her family.

13. Plaintiff Zoila Pinzon moved to Cosmopolitan Houses in 1977 and resides at 45-35 48th Street, Apartment 3B. She received a letter from defendant informing her that starting October 1, 2005 defendant Cosmopolitan will no longer accept her Section 8 subsidy and that she will have to pay the entire rent of over \$800 which is about what she receives from social security and a small pension.

14. Plaintiff Nancy Garcia moved to Cosmopolitan Houses approximately in 1990 and resides at 45-35 48th Street, Apartment 4F with her daughter. She received a letter from defendant informing her that starting October 1, 2005 defendant Cosmopolitan will no longer accept her Section 8 subsidy and that she will have to pay the entire rent of \$772.00, more than she receives from her disability benefits and child support.

15. Plaintiff Emma Roman moved to Cosmopolitan Houses in 1975 and resides at 45-55 48th Street, Apartment 2H with her two children and grandchild. She supports her family on her disability benefits and food stamps. She received a letter from defendant informing her that starting April 1, 2005 defendant Cosmopolitan will no longer accept her Section 8 subsidy and that she will have to pay the entire rent of almost \$900. On information and belief, defendant Cosmopolitan has refused the subsidy payments made on her behalf by HPD.

16. Plaintiff Bernadina Inirio moved to Cosmopolitan Houses in 1979 and resides at 47-05 48th Street, Apartment 1H. She received a letter from defendant informing her that starting July 1, 2005 defendant Cosmopolitan will no longer accept her Section 8 subsidy and that she will have to pay the entire rent of \$897.16 which she cannot afford on her social security and food

stamps. On information and belief, defendant Cosmopolitan has refused the subsidy payments made on her behalf by HPD and has served her with a rent demand for the entire contract rent.

17. Plaintiff Mary Albericci moved to Cosmopolitan Houses in 1976 and resides at 47-15 48th Street, Apartment 4H with her son. She received a letter from defendant informing her that starting July 1, 2005 defendant Cosmopolitan will no longer accept her Section 8 subsidy and that she will have to pay the entire rent of \$735. On information and belief, defendant Cosmopolitan has refused the subsidy payments made on her behalf by HPD.

18. Plaintiff Gilma Bermudez moved to Cosmopolitan Houses in 1976 and resides at 47-06 49th Street, Apartment 2F with her daughter. She received a letter from defendant informing her that starting June 1, 2005 defendant Cosmopolitan will no longer accept her Section 8 subsidy and that she will have to pay the entire rent of over \$790 which is about what she receives from child support. On information and belief, defendant Cosmopolitan has refused the subsidy payments made on her behalf by HPD and plaintiff is now being sued for the entire contract rent in the Housing Part of Civil Court.

19. Plaintiff Evelyn Tavares moved to Cosmopolitan Houses in 1992 and resides at 47-06 49th Street, Apartment 3A with her daughter. She received a letter from defendant informing her that starting June 1, 2005 defendant Cosmopolitan will no longer accept her Section 8 subsidy and that she will have to pay the entire rent of over \$773.10 which is more than she receives in disability benefits. On information and belief, defendant Cosmopolitan has refused the subsidy payments made on her behalf by HPD.

20. Plaintiff Guadalupe Godinez moved to Cosmopolitan Houses in 1989 and resides at 47-16 49th Street, Apartment 2F. She received a letter from defendant informing her that starting

June 1, 2005 defendant Cosmopolitan will no longer accept her Section 8 subsidy and that she will have to pay the entire rent of over \$780. On information and belief, defendant Cosmopolitan has refused the subsidy payments made on her behalf by HPD and is suing her for the entire contract rent in the Housing Part of Civil Court.

21. Plaintiff Gladys Abreu moved to Cosmopolitan Houses approximately in 1997 and resides at 47-26 49th Street, Apartment 5A with three children. She received a letter from defendant informing her that starting June 1, 2005 defendant Cosmopolitan will no longer accept her Section 8 subsidy and that she will have to pay the entire rent of over \$900 which is more than she earns. On information and belief, defendant Cosmopolitan has refused the subsidy payments made on her behalf by HPD and is suing for the entire contract rent in the Housing Part of Civil Court.

22. Plaintiff Ramona Calderon moved to Cosmopolitan Houses in 1997 and resides at 47-26 49th Street, Apartment 4B. She received a letter from defendant informing her that starting June 1, 2005 defendant Cosmopolitan will no longer accept her Section 8 subsidy and that she will have to pay the entire rent of over \$795 which is about what she receives from social security and a small pension. On information and belief, defendant Cosmopolitan has refused the subsidy payments made on her behalf by HPD and is suing her for the entire contract rent in the Housing Part of Civil Court.

B. THE DEFENDANT

23. Defendant Cosmopolitan Associates (hereinafter "Cosmopolitan") is a domestic corporation, established and existing in the State of New York, having its principal place of business at 47-01 49th Street, Woodside, New York 11377. Cosmopolitan is the owner of

Cosmopolitan Houses, a large complex located in Woodside and Sunnyside in Queens consisting of over 1500 apartments in approximately 38 buildings. Sixteen of these buildings, located on 48th and 49th Street in Sunnyside were subsidized by the United States Department of Housing and Urban Development (hereinafter "HUD") with project-based rental subsidies until 2003 when defendant Cosmopolitan opted out of its contract. After the opt-out, plaintiffs were provided with tenant-based "enhanced" vouchers which defendant Cosmopolitan now refuses to accept in violation of federal and state laws.

STATUTORY AND REGULATORY SCHEME

24. Federal Law protects the right of current tenants who receive enhanced vouchers to continue to reside in their apartments, utilizing enhanced Section 8 vouchers to remain in place. 42 U.S.C. § 1437f(t). This statute provides that families renting at the time of the termination of the project-based subsidy contract have the right to remain in their units, using enhanced vouchers, for so long as the apartments qualify for assistance and the tenants remain eligible for the vouchers. In pertinent part, the text of 42 U.S.C. § 1437f(t)(1)(b) reads as follows:

Enhanced voucher assistance under this subsection for a family shall be voucher assistance under subsection (o), of this section, except that under such enhanced voucher assistance -
(B) the assisted family may elect to remain in the same project in which the family was residing on the date of the eligibility event for the project...

(Emphasis added).

25. Eligibility event is defined in 42 U.S.C.A. § 1437f(t)(2) as follows:

For purposes of this subsection, the term "eligibility event" means, with respect to a multifamily housing project, ...the termination or expiration of the contract for rental assistance under this section for

such housing project...results in tenants in such housing project being eligible for enhanced voucher assistance under this subsection.

26. The Department of Housing and Urban Development (hereinafter "HUD") has made it clear that formerly HUD subsidized landlords must accept tenants' enhanced vouchers and allow them to remain in place. HUD's Section 8 Renewal Policy Guidebook, issued by the Office of Multifamily Housing on January 19, 2001, provides guidance on an owner's responsibility to accept enhanced voucher assistance on behalf of eligible tenants if an owner opts-out of the Section 8 project-based contract. For example, Chapter 11, Section 3, of the handbook entitled "Tenant Protections," provides that

tenants who receive an enhanced voucher have the right to remain in their units as long as the units are offered for rental housing when issued an enhanced voucher sufficient to pay the rent charged for the unit, provided that the rent is reasonable. Owners may not terminate the tenancy of a tenant who exercises this right except for cause under Federal, State, or local law.

27. Appendices 11-1 and 11-2 prescribe the required form of opt-out notice which an owner is required to send to tenants, which includes a statement that the Federal law allows the tenant to elect to continue living at the current property and which includes a certification that the owner will honor the tenant's right as a tenant to remain at the property. Section 8-1 of the HUD Guidebook requires owners to certify that they will honor the tenant's right to remain after the owner opts-out. See also Section 1-6 ¶ I, which states that owners must certify that they will comply with the requirement to allow families with enhanced vouchers who elect to remain to do so as long as the property remains a rental property.

28. Similarly, HUD Notice PIH 2001-41 which was issued on November 14, 2001 and references Section 8 Tenant-Based Assistance (Enhanced and Regular Housing Choice

Vouchers) For Housing Conversion Actions specifically states in part II (B) entitled “Enhanced voucher family right to remain” that “[a] family that receives an enhanced voucher has the right to remain in the project as long as the units are used for rental housing.” See also HUD Notice PIH 99-36; HUD Notice PIH 00-09; and HUD Notice PIH 01-13.

STATEMENT OF FACTS

29. Plaintiffs are low income tenants who reside in various apartments in buildings located at 48th and 49th Street (“the subject premises”), and owned by defendant Cosmopolitan as part of its large rental complex. Plaintiffs are long-term tenants and many have lived at the premises for over two decades. They receive Section 8 rental subsidies and rely on these subsidies to pay a substantial portion of their rent which they otherwise could not afford on their low wages or fixed incomes.

30. On information and belief, in the mid-80's these buildings were rehabilitated with federal and private funds through a program administered by the Department of Housing Preservation and Development of the City of New York (hereinafter “HPD”). In order to prevent the displacement of low income tenants as a result of rent increases authorized by the program, HPD provided these buildings with project based rental subsidies for apartments occupied by low income and therefore eligible tenants. The subsidies were provided by HUD under its Moderate Section 8 program but were administered by HPD.

31. On information and belief, at the completion of the buildings' rehabilitation in the mid-80's, defendant Cosmopolitan entered into a project-based subsidy contract with HPD. Under this contract, known as Housing Assistance Payments (“HAP”) contract, plaintiffs' rents were subsidized.

32. In 2002, each of the plaintiffs, along with numerous other tenants of the subject buildings,

received a letter from an attorney stating that defendant Cosmopolitan had determined that it would not renew the "Section 8 Housing Assistance Payments Moderate Rehabilitation Program presently existing as it regards your apartment and it is the intention of Cosmopolitan Associates LLC to terminate the Contract." The termination was to be effective in 2003.

33. Upon defendant's opt-out of the project-based Section 8 contract, HPD, in accordance with federal laws and regulations as set forth above, provided plaintiffs with "enhanced" vouchers, and defendant, on information and belief, entered into new individual HAP contracts and issued plaintiffs leases under the Housing Choice Voucher Program which run concurrent with plaintiffs' rent stabilized leases.

34. In 2005, Steven Seltzer in his capacity as General Manager of defendant corporation, send letters to plaintiffs, informing them that Cosmopolitan had elected to not offer a new lease under the Housing Choice Voucher Program and that plaintiffs would be responsible for the entire contract rent should they renew their rent stabilized lease.

35. Defendant's letter shocked and frightened plaintiffs who do not have the means to pay the full contract rent or to move to even more expensive apartments. Many of the plaintiffs are elderly and survive on a fixed income, and those that still raise families either receive public assistance or earn barely above the minimum wage.

36. As a result, plaintiffs are at risk of being evicted. Indeed, where plaintiffs' Section 8 lease has already expired, as in the case of plaintiffs Maria Torres, Emma Roman, Mary Albericci, Gilma Bermudez, Evelyn Tavares, Gladys Abreu, Guadalupe Godines and Ramona Calderon, defendant is now demanding the full contract rent even though HPD has continued to

tender payments to defendant on behalf of plaintiffs.¹

37. Plaintiffs believe that by refusing to accept their Section 8 subsidy defendant is trying to evict all low income tenants from Cosmopolitan Houses in order to attract tenants who can afford to pay a much higher rent.

38. Unless defendant renews their Section 8 lease and accepts their subsidy, plaintiffs risk losing their home of many years and may face homelessness. Most of the plaintiffs have lived in their apartment for well over a decade and have established strong ties to their communities. Being displaced by defendant's unlawful action would completely disrupt their lives and endanger the welfare especially of the elderly plaintiffs.

FIRST CAUSE OF ACTION

28. Defendant Cosmopolitan's refusal to renew plaintiffs' Section 8 lease and accept plaintiffs' Section 8 voucher violates 42 U.S.C. Section 1437f(t).

SECOND CAUSE OF ACTION

29. Defendant Cosmopolitan's refusal to renew plaintiffs' Section 8 lease and accept plaintiffs' Section 8 voucher violates the HUD Section 8 Renewal Policy Guide.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

(1) enter a final judgment pursuant to 28 U.S.C. §§ 1331, 1343(3) and 1337 of the Federal Rules of Civil Procedure declaring that:

a) Defendant Cosmopolitan's refusal to renew plaintiffs' Section 8 lease and accept plaintiffs' Section 8 voucher violates 42 U.S.C. Section 1437f(t).

¹ Defendant recently sought unsuccessfully to enjoin HPD from remitting Section 8 payments to Cosmopolitan in Queens Supreme Court (Cosmopolitan v. HPD, Index #4816/05).

b). Defendant Cosmopolitan's refusal to renew plaintiffs' Section 8 lease and accept plaintiffs' Section 8 voucher violates the HUD Section 8 Renewal Policy Guide (January 19, 2001).

(2) enter a mandatory injunction, compelling defendant Cosmopolitan to renew plaintiffs' Section lease and accept plaintiff's Section 8 voucher.

(3) award to plaintiffs reasonable attorneys' fees; and

(4) grant such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 12th, 2005

Yours,

Adriene Holder, Esq.
Attorney in Charge
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The Legal Aid Society
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Attorneys for the Plaintiff

By: 

ODA FRIEDHEIM (OF 9836)

CIVIL COVER SHEET

JS 44 (Rev. 11/04)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Diana Estevez, Arceliano Gonzalez, Germania Gonzalez, Albania Nunez, Ana Reyes, Maria Paulino, Maria Torres, Maria Moronta, et al.,

DEFENDANTS

Cosmopolitan Associates LLC

(b) County of Residence of First Listed Plaintiff Queens (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Queens (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)

The Legal Aid Society, 120-46 Queens Boulevard, Kew Gardens, York 11415, Tel. 718 286 2459

Attorneys (If Known)

Horing Welikson & Rosen P.C., 11 Hillside Avenue, Williston Park, New York 11596

FILED IN CLERK'S OFFICE U.S. DISTRICT COURT EDNY * SEP 13 2005 BROOKLYN OFFICE

GLEESON, J.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. s. 1437f
Brief description of cause: Defendant is violating 42 U.S.C. 1437f(t)2 by refusing to accept plaintiffs' Section 8 vouchers

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

09/12/2005

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

I, Oda Friedheim, counsel for plaintiffs

 do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs.

 Relief other than monetary damages is sought.

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

none

Did the cause arise in Nassau or Suffolk County? no

If answered yes, please indicate which county.

County of residence of plaintiff(s) (1) Queens
(2)
(3)

County of residence of defendant(s) (1) Queens
(2)
(3)

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes (If yes, please explain) No

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.

(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

ATTORNEY BAR CODE: OF 9836

E-MAIL Address: ofriedheim@legal-aid.org

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re Electronic Filing Procedures(EFP)", and consent to the electronic service of all papers.

Signature: 