

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

v.

HIALEAH HOUSING AUTHORITY,

Defendant.

CASE NO. **8 - 22679**
CIV - GOLD

FILED by McALILEY J.C.
SEP 26 2008
STEVEN M. LARIMORE
CLERK U.S. DIST CT
S.D. OF FLA. MIAMI

COMPLAINT AND DEMAND FOR JURY TRIAL

The United States, by and through the undersigned United States Attorney, files this Complaint and Demand for Jury Trial and states:

1. This action is brought by the United States on behalf of Miguel Rodriguez, his wife, Lazara Rodriguez, and their children, Dianela Rodriguez and Emmanuel Rodriguez, to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601, *et seq.*
2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3612(o). Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 3612(o), as defendants are located in this judicial district and the events or omissions giving rise to the claim occurred in this judicial district.
3. Defendant Hialeah Housing Authority ("HHA") is a HUD-funded housing provider that manages several public housing developments throughout Hialeah, Florida. HHA

maintains its primary place of business at 75 East 6th Street, Hialeah, Florida.

4. HHA is responsible for the general overall management and operation of the multi-family apartment complex located at 6329 W. 24 Street, Hialeah, Florida (“subject property”).
5. The units at the subject property are “dwellings” within the meaning of 42 U.S.C. § 3602(b).
6. Miguel Rodriguez is a person with a disability as defined within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(h). Mr. Rodriguez has physical impairments that substantially limit his ability to climb stairs. He receives Social Security disability benefits.
7. The Rodriguez family lived in apartment 202, a second floor unit at the subject property, from 1995 until August 2005, when they were forced to move out.
8. On or about October 15, 1997, Miguel Rodriguez was hired part-time by HHA as night manager for the subject property. At that time, Mr. Rodriguez held a full-time position at a lumber supply yard.
9. In 2001, Miguel Rodriguez suffered a work-related fall at his full-time place of employment. Due to his physical injuries, his wife, Lazara Rodriguez, assumed his duties and responsibilities as night manager, with HHA’s knowledge.
10. On or about December 2004, disputes arose at the subject property among three resident families - one between the Rodriguez family and the Amparo family, and another between the Amparo and the Perez family.
11. On or about January 3, 2005, HHA served the Rodriguez family with a Notice of Lease Termination due to their conflict with the Amparo family. On information and belief,

HHA also served the other two families with termination notices.

12. On or about January 20, 2005, Miguel and Lazara Rodriguez attended an informal HHA internal grievance hearing to dispute the lease termination. During the hearing, HHA offered to transfer the Rodriguez family to a vacant unit at Hoffman Gardens, another public housing development operated by the defendant, in lieu of eviction.
13. At this hearing, Mr. and Mrs. Rodriguez advised HHA that Mr. Rodriguez had difficulty climbing stairs and needed a unit with a bathroom that was accessible without climbing stairs. They agreed to accept the transfer because HHA represented that the unit at Hoffman Gardens had a half-bath on the first floor.
14. On January 21, 2005, Lazara Rodriguez sent a letter to HHA rejecting the transfer to Hoffman Gardens because she had learned that there was no half-bath on the first floor of the unit, and Mr. Rodriguez would need to climb stairs to use the bathroom. She stated that she would provide medical documentation upon request.
15. On January 24, 2005, HHA issued a decision upholding the termination of the Rodriguez's lease.
16. On January 31, 2005, an attorney for the Rodriguez family sent a letter to HHA requesting a formal hearing. Neither the Rodriguez family nor their attorney received notice of the formal hearing, which, they were told, was held in their absence on March 9, 2005.
17. On March 11, 2005, HHA sent the Rodriguez family a letter upholding the decision to terminate their lease for failure to attend the formal hearing.
18. On May 4, 2005, HHA filed a complaint for eviction against the Rodriguez family in the

County Court for Miami-Dade County, Florida.

19. On May 17, 2005, the Rodriguez family filed an answer and motion to dismiss the complaint, alleging that HHA had failed to provide a reasonable accommodation for Mr. Rodriguez's disability, that he was disabled and had difficulty climbing stairs to the second floor bathroom due to hip and back problems and that he had informed HHA of his reasonable accommodation request on January 21, 2005.
20. On June 30, 2005, Miguel and Lazara Rodriguez participated in court-ordered mediation with HHA. During the mediation, Mr. and Mrs. Rodriguez rejected HHA's offer to transfer them to a unit at Hoffman Gardens because the available unit did not have a bathroom that was accessible without climbing stairs. HHA offered to place the Rodriguez family on a "waiting list" for an accessible unit, if adequate medical documentation was submitted, but stated that, in the meantime, they would have to vacate their present unit.
21. Because of HHA's refusal to provide him a unit with access to a bathroom that did not require him to climb stairs, Mr. Rodriguez signed a stipulation and order for dismissal, dismissing the eviction action and requiring his family to vacate the subject property by August 31, 2005.
22. On or about June 28, 2006, Miguel Rodriguez filed a complaint with the United States Department of Housing and Urban Development ("HUD") alleging that HHA denied his request for a reasonable accommodation when it refused to give him a unit that was suitable for his disability.
23. On or about July 23, 2008, Miguel Rodriguez filed an amended complaint with HUD,

adding his wife, Lazara Rodriguez, and their children as aggrieved persons.

24. Pursuant to 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD conducted and completed an investigation of the complaint, attempted conciliation without success, and prepared a final investigative report. Based upon the information gathered in the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that illegal discriminatory housing practices had occurred because of disability.
25. On or about August 6, 2008, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging that defendant HHA had engaged in discriminatory practices, in violation of 42 U.S.C. § 3604(f)(3)(B) of the Fair Housing Act, as amended.
26. On or about August 13, 2008, defendant HHA elected to have the claims asserted in HUD's Charge of Discrimination decided in a civil action, pursuant to 42 U.S.C. § 3612(a).
27. On or about August 20, 2008, the Administrative Law Judge issued a Notice of Election of Judicial Determination and terminated the administrative proceedings on the complaints filed by the Rodriguez family.
28. Following this Notice of Election, the Secretary of HUD authorized the Attorney General to commence a civil action, pursuant to 42 U.S.C. § 3612(o).
29. Defendant HHA, through the above-referenced actions, has:
 - a. Discriminated in the rental, or otherwise made unavailable or denied, a dwelling to Miguel, Lazara, Dianela and Emmanuel Rodriguez because of

Miguel Rodriguez's disability, in violation of 42 U.S.C. § 3604(f)(1);

- b. Discriminated against Miguel, Lazara, Dianela and Emmanuel Rodriguez in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of Miguel Rodriguez's disability, in violation of 42 U.S.C. § 3604(f)(2); and
- c. Refused to make reasonable accommodations in rules, policies, practices, or services when such accommodations may have been necessary to afford Miguel Rodriguez equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).

30. Miguel, Lazara, Dianela and Emmanuel Rodriguez are "aggrieved persons" within the meaning of 42 U.S.C. § 3602(i).

31. As a result of HHA's discriminatory conduct, Miguel, Lazara, Dianela and Emmanuel Rodriguez have suffered and continue to suffer damages.

32. The discriminatory actions of HHA were intentional, willful, and taken in disregard of the federally-protected rights of Miguel, Lazara, Dianela and Emmanuel Rodriguez.

WHEREFORE, the United States of America prays for relief as follows:

- A. A declaration that the discriminatory conduct of HHA as set forth above violates the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.*;
- B. An injunction against HHA, its agents, employees, successors, and all other persons in active concert or participation with any of them from discriminating because of disability in violation of the Fair Housing Act, as amended, 42 U.S.C.

§§ 3601, *et seq.*; and

- C. Awards of monetary damages to Miguel, Lazara, Dianela and Emmanuel Rodriguez, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1).

The United States further prays for such additional relief as the interests of justice may require.

JURY DEMAND

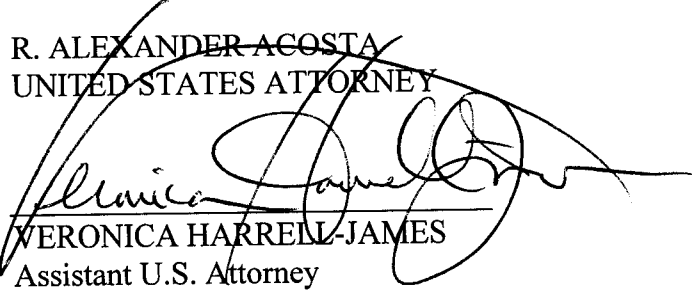
Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, the United States of America demands a jury trial on all issues that are triable to a jury.

DATED: September 26, 2008

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By:


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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

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

UNITED STATES OF AMERICA

FILED by _____ D.C.
SEP 26 2008
 STEVEN M. FROST
 CLERK U.S. DIST. CT
 S.D. OF FLA. MIAMI

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

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

Please see attached.

DEFENDANTS

HIALEAH HOUSING AUTHORITY

08-22679

CIV - GOLD

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

J. Frost Walker, III, Esquire
 100 W. Sunrise Avenue
 Gables, Florida 33133

McALILEY

Date 08-22679-CV-Gold/McAliley

(d) Check County Where Action Arose: DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input checked="" type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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 and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

Housing Discrimination on the basis of disability in violation of 42 USC Sections 3601 et.seq.,

LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

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

9-26-08

[Handwritten Signature]

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP