

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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CLERK

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

VIOLET CRUZ, BETTY JEAN
NOBRIGA, BERNICE RODRIGUES,
individually, and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

JACK HALL HAWAII HOUSING
CORPORATION; WAIPAHU JACK
HALL MEMORIAL HOUSING
CORPORATION; BOB TANAKA, INC.,

Defendants.

Civil No. 09-1-2077-09 SSM
(Contract)

COMPLAINT; SUMMONS

Class Action

COMPLAINT

BACKGROUND

1. Defendants JACK HALL HAWAII HOUSING CORPORATION,
WAIPAHU JACK HALL MEMORIAL HOUSING CORPORATION, and BOB

I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.



Clerk Circuit Court, First Circuit

TANAKA, INC. (collectively “Defendants”) own, operate, and/or manage Jack Hall Waipahu Memorial Housing (“Jack Hall Waipahu”), a housing project subsidized by the federal “project-based Section 8 New Construction program.” Under the program, tenants’ rents, including utilities, generally cannot exceed 30% of tenant income.

2. Plaintiffs VIOLET CRUZ, BETTY JEAN NOBRIGA, and BERNICE RODRIGUES, and the persons whose interests they represent, are Jack Hall Waipahu tenants who pay their own utilities.

3. Where tenants pay their own utilities, owners of housing projects must provide the tenants with utility allowances to cover the costs of the tenants’ utility consumption. To ensure that the allowances remain adequate to cover the tenants’ utility costs, the allowances must be regularly reviewed and adjusted where utility rates have increased by 10% or more since the last allowance adjustment.

4. Though rates have increased well beyond the 10% threshold, Defendants have failed to adjust the allowances in violation of federal law and in breach of the rental agreements for Plaintiffs VIOLET CRUZ, BETTY JEAN NOBRIGA, and BERNICE RODRIGUES, and the persons whose interests they represent. As a result, Jack Hall Waipahu tenants have been significantly overcharged for rent.

5. Further, Defendants have repeatedly falsely certified that the rents for tenants at Jack Hall Waipahu were properly calculated.

6. The Plaintiff class seeks reimbursement for rent overcharges resulting from Defendants' violations of law and breaches of tenants' rental agreements and treble damages for Defendants' unfair or deceptive actions in repeatedly overcharging residents for rent and falsely certifying that their rents were properly calculated.

7. Additionally, the Plaintiff class seeks declaratory and injunctive relief directing Defendants to comply with federal law, HUD procedures and regulations, and the terms of the Plaintiff class's rental agreements by updating the utility allowances to account for increases in utility rates since the allowances were last updated, and barring any eviction proceedings based on rent delinquencies until tenants are credited with rent overcharges resulting from Defendants' failure to adjust the utilities allowances.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to Haw. Rev. Stat. § 603-21.5(a)(3), which affords jurisdiction of all civil actions other than where otherwise expressly provided by statute. The amount in controversy in this case exceeds \$25,000.

9. Venue is appropriate pursuant to Haw. Rev. Stat. § 603-36(5).

PARTIES AND CLASS ACTION ALLEGATIONS

10. Plaintiffs VIOLET CRUZ, BETTY JEAN NOBRIGA, and BERNICE RODRIGUES are tenants of Jack Hall Waipahu Apartments and are

citizens and residents of the State of Hawai'i. Plaintiffs VIOLET CRUZ, BETTY JEAN NOBRIGA, and BERNICE RODRIGUES bring this action on their own behalf and, pursuant to Rule 23 of the Hawai'i Rules of Civil Procedure, on behalf of all others who are similarly situated.

11. Defendants JACK HALL HAWAII HOUSING CORPORATION, a nonprofit corporation, WAIPAHU JACK HALL MEMORIAL HOUSING CORPORATION, a nonprofit corporation, and BOB TANAKA, INC., a for profit corporation own, operate, and/or manage Jack Hall Waipahu Memorial Housing ("Jack Hall Waipahu"), located at 94-853 Kuhaulua Street, Waipahu, Hawai'i 96797, or hold themselves out as doing so.

12. Plaintiffs represents present and past Jack Hall Waipahu tenants for whom Defendants pay or should have paid utility allowances and whose rights have been violated by Defendants as set forth herein.

13. The class is so numerous that joinder of all members is impracticable.

14. There are questions of law and/or fact common to the class, as set forth below.

15. Plaintiffs' claims are typical of the claims of the class as a whole.

16. Plaintiffs will fairly and adequately represent the interest of the class. Plaintiff knows of no conflicts of interest among members of the class.

17. Plaintiffs are represented by attorneys who are experienced class action litigators and will adequately represent the interest of the entire class.

18. A class action is appropriate in this case for one or more of the following reasons:

- a. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.
- b. Defendants have acted on grounds generally applicable to the class, making appropriate injunctive or declaratory relief with respect to the class as a whole.
- c. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

19. Questions of law and fact common to the Plaintiff class include:

- a. Whether the Defendants failed to increase or request an increase of the utility allowances where a utility rate change

would have resulted in a cumulative increase of 10 percent or more in the most recently approved utility allowance;

- b. The extent of the increases in utility rates since Defendants last adjusted the allowances;
- c. The amounts of the adjustments that should have been made to correspond with utility rate increases.
- d. Whether the Defendants' false certifications constitute an unfair and deceptive trade practice.

LEGAL FRAMEWORK

20. Pursuant to the United States Housing Act, 42 U.S.C.

§ 1437a(a)(1) (known as the "Brooke Amendment"), rent, including utilities, for tenants residing in project-based Section 8 New Construction developments cannot exceed a certain percentage of tenant income. 42 U.S.C. § 1437a(a)(1); see also 24 C.F.R. § 5.603(b).

21. The owner of a project-based Section 8 development receives a certain amount of rent to operate each unit (called the "contract rent"), which is set by a "Housing Assistance Payment Contract" between the owner and the U.S. Department of Housing and Urban Development ("HUD"). 24 C.F.R. § 880.201. To ensure that the owner receives the full contract rent for operation of a subsidized unit, HUD pays the owner the difference between the tenant's portion of the rent and the contract rent. 24 C.F.R. § 880.501(d).

22. To ensure that tenants' rents plus utilities do not exceed the Brooke Amendment's rent ceiling when tenants are directly responsible for the

payment of utility service (*i.e.*, where tenants must pay a utility provider directly), HUD regulations require that tenants are provided with a “utility allowance.” *See* 24 C.F.R. § 5.603(b).

23. The utility allowance provided to tenants takes the form of a rent credit that must be equal to an amount that tenants are estimated to pay for a reasonable consumption of utilities. *Id.*

24. Each time the contract rents for a project-based Section 8 development are to be adjusted, the owner must complete and submit an analysis of the adequacy of utility allowances in light of the relevant changes since the allowances were last adjusted (*e.g.*, changes in utility rates). *See, e.g.*, 24 C.F.R. § 880.610.

25. Where utility rates increase by 10 percent or more since the most recently approved utility allowance, the utility allowances must be increased to account for the utility rate increase to ensure that tenants are not charged more than 30 percent of their income for rent. *See, e.g.*, 24 C.F.R. § 880.610.

FACTUAL ALLEGATIONS

26. Plaintiff VIOLET CRUZ is 89 years old and has been a head of household and tenant of Jack Hall Waipahu for over 22 years.

27. Plaintiff VIOLET CRUZ resides in a one-bedroom rental unit in the Jack Hall Waipahu pursuant to a rental agreement executed between Plaintiff VIOLET CRUZ and Defendant BOB TANAKA, INC., most recently on December 23, 2008.

28. As a resident of Jack Hall Waipahu, Plaintiff VIOLET CRUZ pays her own electric and gas utilities. Defendants provide a monthly utility allowance to VIOLET CRUZ in the amount of \$35.00, which is deducted from her \$434.00 rent balance.

29. Plaintiff BETTY JEAN NOBRIGA has been a head of household and tenant of Jack Hall Waipahu for over 6 years.

30. Plaintiff BETTY JEAN NOBRIGA resides in a one-bedroom rental unit in Jack Hall Waipahu pursuant to a rental agreement executed between Plaintiff BETTY JEAN NOBRIGA and Defendant BOB TANAKA, INC, most recently on July 22, 2008.

31. As a resident of Jack Hall Waipahu, Plaintiff BETTY JEAN NOBRIGA pays her own electric and gas utilities. Defendants provide a monthly utility allowance to BETTY JEAN NOBRIGA in the amount of \$35.00, which is deducted from her \$163.00 rent balance.

32. Plaintiff BERNICE RODRIGUES has been a head of household and tenant of Jack Hall Waipahu for over 9 years.

33. Plaintiff BERNICE RODRIGUES resides in a one-bedroom rental unit in Jack Hall Waipahu pursuant to a rental agreement executed between Plaintiff BERNICE RODRIGUES and Defendant BOB TANAKA, INC, most recently on December 16, 2008.

34. As a resident of Jack Hall Waipahu, Plaintiff BERNICE RODRIGUES pays her own electric and gas utilities. Defendants provide a

monthly utility allowance to BERNICE RODRIGUES in the amount of \$35.00, which is deducted from her \$260.00 rent balance.

35. Though utility rates have increased in excess of 10 percent since the utility allowances were last updated, Defendants have failed to revise or request revisions to the utility allowances for Jack Hall Waipahu for many years.

36. On information and belief, Defendants have failed to complete and submit an analysis of the adequacy of utility allowances in connection with adjustments of the contract rents for Jack Hall Waipahu.

37. As a result, Plaintiffs VIOLET CRUZ, BETTY JEAN NOBRIGA, BERNICE RODRIGUES, and the persons whose interests they represent have been required to pay amounts for utility bills in excess of the utility allowance provided and thereby have been forced to pay an amount for rent in excess of 30% of their income.

38. With knowledge of the falsity of their statements, or in reckless disregard of whether the statements were true or false, Defendants have repeatedly certified that the rents for the members of the Plaintiff class were calculated in accordance with HUD regulations and procedures when in fact they were not.

39. In reliance on Defendants' statements, Plaintiffs and the Plaintiff class have not taken action earlier to enforce their rights.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF Breach of Rental Agreement

40. Plaintiffs reallege and incorporate by reference each and every allegation contained in the paragraphs 1 through 39.

41. The rental agreement for Jack Hall Waipahu tenants requires Defendants to calculate tenant rents in accordance with the HUD requirements.

42. Section 4 of the rental agreement for Jack Hall Waipahu tenants provides, in part, that “[t]he Landlord agrees to implement changes in the Tenant’s rent or assistance payment only in accordance with the time frames and administrative procedures set forth in HUD’s handbooks, instructions, and regulations related to administration of multifamily subsidy programs.”

43. Section 27 of the rental agreement for Jack Hall Waipahu tenants incorporates into the terms of the lease by reference Form HUD-50059, Certification and Recertification of Tenant Eligibility. Form HUD-50059 includes an “Owner’s Certification” section in which the owner must certify, in part, to the following: “I certify that this Tenant’s eligibility, rent and assistance payment have been computed in accordance with HUD’s regulations and administrative procedures....”

44. Additionally, since existing law is part of a contract where there is no stipulation to the contrary, the U.S. Housing Act and the supporting

HUD procedures and regulations are implied into the terms of the rental agreements between the Plaintiff class and Defendants.

45. Defendants' actions with regard to the calculation of tenant rents and their failures to revise, or request revisions to the utility allowances have not been in accordance with the U.S. Housing Act and the supporting HUD regulations and procedures, thereby breaching the Plaintiffs' rental agreements.

46. As a direct result of Defendants' breaches, Plaintiffs VIOLET CRUZ, BETTY JEAN NOBRIGA, and BERNICE RODRIGUES, and the persons whose interests they represent have been damaged in an amount to be determined at trial.

47. Additionally, on information and belief, Defendants have taken action to evict members of the Plaintiff class from their apartments for alleged rent delinquencies. Plaintiffs, and the persons whose interests they represent, are entitled to declaratory and injunctive relief to enforce the terms of the rental agreement and Defendants' corresponding obligations pursuant to the U.S. Housing Act and HUD requirements, and to prevent irreparable harm resulting from their evictions or other adverse actions.

SECOND CLAIM FOR RELIEF
Unfair Trade Practices Prohibited by H.R.S CHAPTER 480

48. Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraphs 1-39.

49. Plaintiffs VIOLET CRUZ, BETTY JEAN NOBRIGA, and BERNICE RODRIGUES, and the persons whose interests they represent, are

“consumers” and “persons” as those terms are defined in H.R.S. Chapter 480-1, and the described acts and practices involved “trade or commerce,” as that term is defined in H.R.S. § 480-2(a).

50. An unfair or deceptive act or practice in the conduct of any trade or commerce is unlawful pursuant to H.R.S. § 480-2(a).

51. Defendants have engaged in unfair and deceptive acts or practices that violate H.R.S. § 480-2(a), including but not limited to:

- a. Repeatedly certifying that Defendants had properly calculated the rents for each member of the Plaintiff class when in fact Defendants had not.
- b. Charging rents in excess of those permitted by the rental agreements between Defendants and the members of the Plaintiff class; and
- c. Charging rents in excess of those permitted by federal law.

52. Defendants’ unfair and deceptive acts or practices have caused Plaintiffs VIOLET CRUZ, BETTY JEAN NOBRIGA, and BERNICE RODRIGUES, and the persons whose interests they represent, to suffer injury to their property in an amount to be determined at trial.

53. VIOLET CRUZ and many members of the class whose interests she represents are “elders” within the meaning of H.R.S. § 480-13.5. Defendants’ conduct was in willful disregard of the rights of such elders and Defendants knew or should have known that their conduct was directed towards or targeted such elders.

54. Pursuant to H.R.S. § 480-13, Plaintiffs, and the persons whose interests they represent, are entitled to declaratory relief, injunctive relief, treble damages, and attorneys' fees as a result of Defendants' unfair trade practices.

55. Plaintiff VIOLET CRUZ and other elder class members whose interests she represents are also entitled to minimum damages of \$5,000 under H.R.S. § 480-13(b)(1).

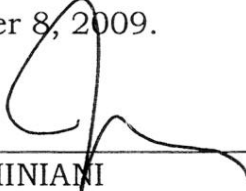
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and behalf of all persons similarly situated, pray that this Court:

1. Assume jurisdiction of this case.
2. Certify the Plaintiff class.
3. Declare that Defendants have violated Plaintiffs' rights as set forth herein.
4. Enter preliminary and permanent injunctions requiring Defendants to comply with the terms of the rental agreements of the plaintiff class, the U.S. Housing Act and HUD requirements, and barring Defendants from initiating or proceeding with eviction actions against members of the Plaintiff class based on rent delinquencies until rent overcharges resulting from Defendants' unlawful actions are credited to the tenants' rent payments.
5. Award damages and pre-judgment interest to each member of the Plaintiff class for amounts charged for rent by Defendants in excess of 30% of tenant income resulting from inadequacies in the utility allowances.

6. Award treble damages.
7. Award Plaintiffs costs and attorneys' fees.
8. Grant Plaintiffs such other relief as may be just and proper.

DATED: Honolulu, Hawai'i, September 8, 2009.



VICTOR GEMINIANI
PAUL ALSTON
JASON H. KIM
Attorneys for Plaintiffs

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STATE OF HAWAII

VIOLET CRUZ, BETTY JEAN
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JACK HALL HAWAII HOUSING
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HALL MEMORIAL HOUSING
CORPORATION; BOB TANAKA, INC.,

Defendants.

Civil No.
(Other Civil Action)

SUMMONS

SUMMONS

STATE OF HAWAII

To the above-named Defendant(s):

You are hereby summoned and required to serve upon ALSTON HUNT FLOYD & ING, attorneys for Plaintiffs, whose address is 1001 Bishop Street, 18th Floor, Honolulu, Hawaii 96813, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a

judge of the above-entitled court permits, in writing on this Summons,
personal delivery during those hours.

A failure to obey this Summons may result in an entry of default
and default judgment against the disobeying person or party.

SEP - 8 2009

DATED: Honolulu, Hawai'i, _____.

F. OTAKE



CLERK OF THE ABOVE-ENTITLED COURT