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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RODELLE SMITH, SHEILA TOBIAS,
BARBARA BARAWIS, and LEWIS
GLASER individually, and on behalf of
all persons similarly situated,

Plaintiffs,

v.

HOUSING AND COMMUNITY
DEVELOPMENT CORPORATION OF
HAWAII, a duly organized and
recognized agency of the State of
Hawaii.

) CIVIL NO. 04-1 0069K
) (Contract)
) Class Action

) **PLAINTIFFS' MOTION FOR CLASS**
) **CERTIFICATION; MEMORANDUM IN**
) **SUPPORT OF MOTION; EXHIBITS "A"-**
) **"E" DECLARATION OF SHELBY ANNE**
) **FLOYD; EXHIBIT "1"; DECLARATION**

) (Title continued on next page)

) HEARING:

) DATE: September 20, 2005

) TIME: 8:00 A.M.

) JUDGE: HON. ELIZABETH STRANCE

Defendant.

) OF GAVIN; THORNTON; EXHIBITS
) "A"- "C";
) NOTICE OF MOTION AND
) CERTIFICATE OF SERVICE

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Plaintiffs RODELLE SMITH, SHEILA TOBIAS, BARBARA BARAWIS, and LEWIS GLASER, by and through their counsel, hereby move this Court for an Order allowing this cause to be maintained as a class action, and requiring notice to be provided to all class members.

This Motion is made pursuant to Rules 7, 23(a) and (b)(3) of the Hawai'i Rules of Civil Procedure. It is based on the attached Memorandum in Support of Motion, the Declaration of Shelby Anne Floyd, and the Declaration of Gavin Thornton.

In support of this Motion, Plaintiffs assert that:

1. Plaintiffs seek certification of a class and subclass as follows:

Class: persons that currently reside, or resided at any point from May 17, 2002 to the present in a federally funded public housing project in which residents receive or should receive utility allowances

Subclass: persons that resided at any point between May 17, 1998 to May 16, 2002 in a federally funded public housing project in which residents receive or should receive utility allowances.¹

2. The class and subclass is so numerous that joinder of all its members is impracticable.

¹Plaintiffs may later seek to certify a class of tenants residing in public housing prior to May 17, 1998 depending on information derived through discovery.

3. There are questions of law and/or fact common to the class and subclass.

4. The claims of the named Plaintiff are typical of the claims of the class and subclass.


5. The named Plaintiffs will fairly and adequately represent the claims of the entire class and subclass.

6. The Defendants have acted on grounds generally applicable to the class and subclass, thereby making appropriate final injunctive and declaratory relief with respect to the classes as a whole.

7. Questions of law and fact 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.

WHEREFORE, Plaintiffs pray that this action be certified as a class action pursuant to Rules 23(a) and (b)(3) of the Hawai'i Rules of Civil Procedure, and that Defendants be ordered to provide notice of the pendency of this action to all class members.

DATED: Honolulu, Hawai'i, AUGUST 10, 2005.


SHELBY ANNE FLOYD
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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RODELLE SMITH, SHEILA TOBIAS,)	CIVIL NO. 04-1 0069K
BARBARA BARAWIS, and LEWIS)	
GLASER individually, and on behalf of)	MEMORANDUM IN SUPPORT OF
all persons similarly situated,)	MOTION
)	
Plaintiffs,)	
)	
v.)	
)	
HOUSING AND COMMUNITY)	
DEVELOPMENT CORPORATION OF)	
HAWAII, a duly organized and)	
recognized agency of the State of)	
Hawaii.)	
)	
Defendant.)	

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Plaintiff seeks declaratory relief and damages against Defendant Housing and Community Development Corporation of Hawaii ("HCDCH") for failing to adjust utility allowances in public housing as utility rates increased, in violation of Plaintiffs' rights under the U.S. Housing Act, the Annual Contributions Contract ("ACC") between HCDCH and the U.S. Department of Housing and Urban Development ("HUD"), and the rental agreement between public housing residents and HCDCH.

The United States Housing Act requires that shelter costs for tenants residing in federally subsidized public housing projects do not exceed 30% of tenant income. 42 U.S.C. § 1437a(a), 24 C.F.R. §§ 965.501-965.508. *See also Dorsey v. Housing Authority of Baltimore City*, 984 F.2d 622, 624 (4th Cir. 1993). Utilities are included in rent. *Id.* Where tenants are directly responsible for the payment of utility service, the supporting federal regulations require public

housing authorities (PHAs) like HCDCH to provide the tenants with a utility allowance. 24 C.F.R. §§ 965.501-965.508.

In establishing the utility allowances, a PHA must approximate a "reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment." 24 C.F.R. § 965.505(a). Sometime prior to 1997, HCDCH determined the amounts of utility consumption by public housing residents that were reasonable and in accordance with 24 C.F.R. § 965.505(a). Based on its determination, HCDCH established a utility allowance schedule set in terms of consumption per kilowatt hour of electricity or cubic foot of gas (hereinafter "consumption allowances"). A copy of the HCDCH consumption allowance schedule is attached hereto as Exhibit "A" to the Declaration of Gavin Thornton. Because tenants at different projects pay for different utilities (e.g. some tenants might pay for only electric lighting and refrigeration, while others might pay for electric lighting and refrigeration plus gas for cooking and a hot water heater), the consumption allowances set forth the consumption amounts in different categories (e.g. the amount of gas required for one month's use of a hot water heater) and according to the number of bedrooms in a unit. For example, a family residing in a three-bedroom unit at a project where tenants pay electricity bills for lighting, refrigeration, and cooking would have a consumption allowance of 480 kilowatt hours of electricity per month. See Exhibit "A" to Declaration of Gavin Thornton.

To allow tenants to purchase the quantity of utilities provided for in the consumption allowances, at some point HCDCH applied the utility rates at the time to the consumption allowances to convert them into terms of dollar amounts (hereinafter "dollar allowances"). When the rents for public housing tenants are calculated, HCDCH factors in a rent credit in the amount of the dollar allowances in an attempt to ensure that the tenant's total rent, including the cost of utilities, does not exceed 30% of tenant income.

While the consumption allowances are applicable to all public housing tenants who pay their own utilities, because of differences in the cost of utilities, the dollar allowances differ depending on the location of the housing project. For example, a tenant on Maui who resides in a one-bedroom unit and pays for utilities to cover lighting and refrigeration would be provided the same consumption allowance as a tenant on Oahu living in a one-bedroom unit and paying for lighting and refrigeration. However, the dollar allowances provided to the Oahu resident and the Maui resident would be different because of differences in the cost of electricity on each island.

The federal regulations require regular revisions to the dollar allowances to ensure that the rent credits tenants receive continue to be sufficient to cover the reasonable utility consumption amounts provided for in the consumption allowances, thereby ensuring that rents do not exceed 30% of tenant income. PHAs are required to annually review and adjust their utility allowances. 24 C.F.R. § 965.507(a). Additionally, in between annual reviews, where there is a change in the utility rates of greater than 10%, PHAs must make interim adjustments to their allowances. 24 C.F.R. § 965.507(b).

Since sometime prior to 1997, HCDCH has failed to annually review the utility allowances and make adjustments to the dollar allowances to account for utility rate increases. Because utility rates have increased substantially since the dollar allowances were last adjusted, the rent credits provided to residents under the dollar allowances were grossly insufficient to purchase the amount of utilities provided for in HCDCH's consumption allowance schedule. Only recently, after a suit seeking injunctive relief was filed by Plaintiffs in the United States District Court for the District of Hawaii, did HCDCH update the dollar allowances to account for changes in utility rates since the allowances were last revised.¹¹

¹¹ Two related class action suits were filed in the United States District Court for the District of Hawaii. The suits are briefly described below:

Smith, et al. v. Aveiro, et al., Civil No. 04-00309 DAE KSC, was filed on

