

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2005 MAY -6 PM 4: 20

Of Counsel:

LAWYERS FOR EQUAL JUSTICE

GAVIN K. THORNTON 7922-0  
PO Box 37952  
Honolulu, HI 96837  
Telephone: (808) 542-5203  
Facsimile: (808) 262-4727  
Email: gavinthornton@verizon.net

F. OTAKE  
CLERK

ALSTON HUNT FLOYD & ING  
Attorneys At Law  
A Law Corporation

SHELBY ANNE FLOYD 1724-0  
THOMAS E. BUSH 4737-0  
Carter Professional Center, Suite C21  
65-1230 Mamalahoa Hwy,  
Kamuela, Hawai'i 96743  
Telephone: (808) 885-6762  
Facsimile: (808) 885-8065  
E-Mail: sfloyd@ahfi.com

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JACK WATERS, individually, and on )  
behalf of all persons similarly situated, )

Plaintiff, )

v. )

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

CIVIL NO. )  
(Contract)

05- 1- 08 15 - 05 E E H

COMPLAINT; SUMMONS  
Class Action

28S974-1/7919-1

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

SUMMONS  
DENIED

LEGAL DOCUMENTS BR

Hawai'i; HHA WILIKINA )  
APARTMENTS, INC., DOES 1-25 )  
 )  
Defendants. )  
\_\_\_\_\_ )

**COMPLAINT**

**I. INTRODUCTION**

1. Defendants Housing and Community Development Corporation of Hawaii ("HCDCH"), HHA Wilikina Apartments, Inc., and DOES 1-25 (hereinafter collectively referred to as "Defendants") own, operate and/or administer federally subsidized housing projects under the "project-based Section 8 program."

2. Plaintiff JACK WATERS and the class he seeks to represent (hereinafter "Plaintiff class") are tenants of project-based Section 8 programs owned, operated and/or administered by one or more of the above-named Defendants.

3. Pursuant to the United States Housing Act, 42 U.S.C. § 1437a(a)(1), rent, including utilities, for tenants residing in project-based Section 8 developments cannot exceed 30 percent of tenant income. Where tenants are directly responsible for the payment of utility service (i.e. where tenants must pay a utility provider directly), the supporting federal regulations require that tenants are provided with a "utility allowance" so that their rent

plus utilities does not exceed 30 percent of their income. See 24 C.F.R. § 5.603(d).

4. 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.*

5. 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.

6. 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 the project-based Section 8 developments that Defendants own, operate and/or administer.

7. Defendants actions are in violation of federal law and U.S. Department of Housing and Urban Development ("HUD") requirements regarding the setting of rents for project-based Section 8 tenants.

8. Defendants violations of federal law and HUD requirements amount to a material breach of the rental agreements for tenants residing in project-based Section 8 developments owned, operated and/or administered by Defendants.

9. The Plaintiff class seeks reimbursement for rent overcharges and inadequate utility reimbursements resulting from Defendants' violations of law and breaches of tenants' rental agreements.

10. Additionally, the Plaintiff class seeks declaratory and injunctive relief directing Defendants to comply with federal law, HUD requirements, 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 utility allowances.

## **II. JURISDICTION AND VENUE**

11. 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 \$20,000.

12. Jurisdiction is also appropriate under Haw. Rev. Stat. § 661-1(1), which affords jurisdiction for all claims against the State founded upon any contract with the State.

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

### III. PARTIES

14. Plaintiff JACK WATERS is a tenant of project-based Section 8 subsidized housing and a citizen and resident of the State of Hawaii. Plaintiff brings this action on his own behalf and, pursuant to Rule 23 of the Hawaii Rules of Civil Procedure, on behalf of all others who are similarly situated.

15. Plaintiff represents present and past project-based Section 8 tenants in the State of Hawaii for whom HCDCH, HHA Wilikina Apartments Inc., and/or DOES 1-25 pay or should have paid utility allowances and whose rights have been violated by HCDCH, HHA Wilikina Apartments Inc., and/or DOES 1-25 as set forth herein.

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

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

18. Plaintiff's claims are typical of the claims of the class as a whole.

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

20. Plaintiff is represented by attorneys who are experienced class action litigators and will adequately represent the interest of the entire class.

21. 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.

22. 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.

23. HCDCH is a duly organized and recognized agency of the State of Hawaii with the power to sue and be sued.

24. HHA Wilikina Apartments Inc. is a non-profit corporation incorporated in the State of Hawaii with the power to sue and be sued.

25. The board of directors of HHA Wilikina Apartments is comprised entirely of members of the board of directors of HCDCH and HCDCH holds itself out as the owner, operator, and/or administrator of Wilikina Apartments.

26. DOES 1-25 are owners, operators, and/or administrators of project-based Section 8 developments (other than HCDCH and HHA Wilikina Apartments Inc.) located within the State of Hawaii who are required by federal law to provide utility allowances to members of the Plaintiff class, and who have failed to adjust, or request adjustments to, the utility allowances though utility rates have increased in excess of 10 percent since the allowances were last revised. Plaintiff does not know the true names of these defendants and therefore sues them by these fictitious names.

#### **IV. FACTUAL ALLEGATIONS**

27. Plaintiff realleges and incorporates by reference each and every allegation contained in the above paragraphs.

28. Plaintiff JACK WATERS has been a head of household and tenant of a project-based Section 8 development for over seven years.

