

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FAIR HOUSING JUSTICE CENTER, INC.,

Plaintiff,

v.

PELICAN MANAGEMENT, INC.; FORDHAM
ONE COMPANY, LLC; CEDAR TWO
COMPANY, LLC.

Defendant.

1:18-cv-01564

SECOND AMENDED COMPLAINT

Plaintiff Fair Housing Justice Center, Inc. (“FHJC”), by its attorneys, Emery Celli Brinckerhoff & Abady LLP, alleges as follows:

PRELIMINARY STATEMENT

1. Alfred Spooner is an elderly man living with cancer and multiple physical disabilities. Mr. Spooner’s cancer diagnosis and subsequent medical treatment caused him to lose his job and his home, making him homeless during this already challenging time. In 2017, Mr. Spooner was approved for an Olmstead Housing Subsidy (“OHS”) —a state-funded housing subsidy for disabled low-income persons that guarantees that he need only pay 30% of his monthly income towards his rent and the remainder of the rent will be paid by the OHS.

2. In March 2017, Defendants, large real estate owners and property managers with rental buildings in Manhattan, Queens, the Bronx, and Westchester County, rejected Mr. Spooner’s application to rent an apartment from them, causing Mr. Spooner to move from a nursing home into a homeless shelter.

3. At the time, Defendants had a minimum annual income requirement of forty-three times the apartment's monthly rent, which effectively foreclosed disabled renters with an OHS rental subsidy from renting apartments in Defendants' buildings.

4. In response to Mr. Spooner's request for help, FHJC directed testers to inquire about apartments at various buildings owned and/or managed by Defendants. FHJC's investigation confirmed Defendants' discriminatory policy and practices.

5. Defendants' minimum income requirement and refusal to rent to Mr. Spooner constitute illegal disability and source-of-income discrimination in violation of the federal Fair Housing Act and the New York City Human Rights Law.

6. FHJC files this action seeking injunctive relief to stop Defendants' illegal housing practices, as well as compensatory and punitive damages, attorneys' fees, and costs.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 3613. This court has supplemental jurisdiction over the New York City law claims pursuant to 28 U.S.C. § 1367.

8. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b)(1) because Defendants are located within this District in the State of New York and a substantial part of the events giving rise to the claim occurred within this District in the State of New York.

PARTIES

9. Plaintiff FHJC is a non-profit organization with an office located in Queens, New York. FHJC is dedicated to ensuring that all people have equal access to housing opportunities in the New York City region by eliminating housing discrimination and creating open and inclusive communities.

10. Among other things, FHJC (a) provides information to the public and other nonprofit organizations in the New York City regional area about fair housing laws; (b) provides intake counseling to individuals and organizations with allegations of housing discrimination; (c) conducts testing and other investigations of allegations of housing discrimination; (d) makes legal referrals to cooperating attorneys; (e) assists with the preparation and filing of administrative housing discrimination complaints; and (f) provides post-referral litigation support services. FHJC provides these services free of charge and without regard to income.

11. FHJC also conducts testing investigations for government law enforcement agencies, provides technical assistance to nonprofit organizations engaging in fair housing enforcement activities, and engages in policy initiatives that further FHJC's mission, including the publication and dissemination of reports and educational materials.

12. FHJC employs individuals as "testers," persons who pose as renters or homebuyers for the purpose of obtaining information about the conduct of landlords, real estate companies, agents, and others to determine whether illegal housing discrimination is taking place.

13. Based on its particularized experience and knowledge, FHJC knows that in New York City it is common for landlords to refuse to rent to low-income people with disabilities even if they have sufficient resources to pay the rent from public sources of income, including rental vouchers and subsidies. This discriminatory practice against persons with disabilities and/or a public source of income makes it extremely difficult for disabled renters with a government housing subsidy to find affordable housing.

14. FHJC has expended staff time and other resources to investigate and respond to Defendants' discriminatory rental practices, which repeatedly diverts resources away from other FHJC activities. Furthermore, Defendants' discriminatory rental practices frustrate FHJC's

mission to ensure that all people have equal access to housing opportunities in the New York City region by, among other things, making apartments unavailable to certain individuals because of disability and source of income.

15. Pelican Management, Inc. is a New York corporation with offices in Manhattan, the Bronx, Queens, and Westchester. Pelican Management, Inc. is the managing agent of over 6,000 apartments throughout New York City and its surrounding suburbs, including many properties in this District. Pelican Management, Inc. operates its business under the name “Goldfarb Properties.” All public-facing documents regarding the business of “Goldfarb Properties” including, but not limited to, www.goldfarbproperties.com, all phone numbers and email addresses to contact “Goldfarb Properties,” all “Goldfarb Properties” rental applications, and all documents reflecting “Goldfarb Properties” rental policies for prospective applicants are controlled by Pelican Management, Inc. Pelican Management, Inc. is hereinafter referred to as “Goldfarb.”

16. Defendant Fordham One Company, LLC is the owner of a Goldfarb-managed 65-unit rental building located at 2121 Cedar Avenue, Bronx, New York 10468.

17. Defendant Cedar Two Company, LLC is the owner of a Goldfarb-managed 216-unit rental building located at 2175 Cedar Avenue, Bronx, New York 10468.

18. Defendants Pelican Management, Inc. is registered as having an office at 524 North Avenue, New Rochelle, NY 10801 within Westchester County.

19. Defendants Fordham One Company, LLC and Cedar Two Company, LLC have not registered offices in this state and have designated Pelican Management, Inc. as their registered agents.

BACKGROUND

The Olmstead Housing Subsidy

20. OHS is named after the Supreme Court's Decision in *R Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), where the Court aptly recognized that "unjustified institutional isolation of persons with disabilities is a form of discrimination" as the "institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life." *Id.* at 600.

21. Modeled after the U.S Department of Housing and Urban Development's Housing Choice Vouchers and designed to combat this unnecessary isolation, OHS helps to ensure safe and sustainable housing in the community for "high need" Medicaid beneficiaries who have become homeless or have been placed in nursing homes as a result of their disabilities.¹

22. OHS recipients are responsible for their own search for a privately owned apartment in New York City. Once an apartment is located by an OHS recipient and approved by OHS, a housing specialist for the New York Association on Independent Living (an organization that has contracted with New York State to administer the program) determines the amount of rent that must be paid by the tenant and the amount covered by OHS. By law, OHS clients such as Mr. Spooner, who at all relevant times received income via Social Security, are required to pay only 30 percent of their income towards rent and OHS provides a direct payment each month to the landlord to pay the remainder of the recipient's rent. In Mr. Spooner's case, he receives income from Social Security of \$770.50 per month, and must contribute \$231.15 per month to rent, and OHS guarantees the remainder. OHS recipients must pay their portion of the

¹ New York Association on Independent Living, Olmstead Housing Subsidy, <https://ilny.us/programs/ohs>.

rent on time at risk of losing their subsidy, thereby ensuring that landlords receive the full market rent for the apartment in question in the same time frame that they would with a tenant paying the full rent out-of-pocket.

23. In order to qualify for OHS, applicants must meet six criteria. Eligible applicants must: 1) be age 55 or older or be age 18 or older with a documented chronic disability; 2) be enrolled in Medicaid; 3) be in need of “nursing home level of care” as determined by the Uniform Assessment System for New York; 4) be living in a nursing home presently or be homeless or unstably housed; 5) have spent at least 120 consecutive days in a nursing home over the most recent two-year period; and 6) have the ability to live safely in the community.

24. In order to qualify for “nursing home level of care” under the Uniform Assessment System for New York, a person undergoes a multi-part test that assesses their mental and physical capabilities. The physical aspect of the assessment focuses on whether the person is able to walk, eat, climb steps, bathe, dress, and use the restroom without assistance. The mental aspect focuses on cognitive skills, memory/recall ability, ability to express oneself, and behavioral symptoms, among other things. Any person who scores a five or above on this test is deemed to require nursing home level of care.² Mr. Spooner received a score of sixteen on his assessment.

25. The Fair Housing Act (“FHA”), which prohibits discrimination on the basis of “handicap,” defines a person as “handicapped”³ if he or she has “(1) a physical or mental impairment which substantially limits one or more of such person’s major life activities, (2) a

² Uniform Assessment System for New York, Nursing Facility Level of Care, <http://www.leadingagency.org/linkservid/ef08bf37-cb52-806d-cf6b7de84054719a/showmeta/0/>.

³ Hereinafter, the term “disability” shall be used for the term “handicap.”

record of having such an impairment, or (3) [is] regarded as having such an impairment.” 42 U.S.C. § 3602.

26. The United States Department of Housing and Urban Development has elaborated that “major life activities” under the FHA include largely the same activities tested on the Uniform Assessment System for New York—walking, talking, hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself.⁴ If anything, New York’s Uniform Assessment for “nursing home level of care” is narrower than the FHA definition of disability.

27. Thus, because the Uniform Assessment System for New York tests whether a person is able to perform “major life activities,” any person found to require “nursing home level of care” in New York is also by definition disabled under the FHA. As a result, any person who qualifies for OHS is also disabled for purposes of the FHA.

28. The New York State Department of Health describes Medicaid as a “program for New Yorkers who can’t afford to pay for medical care.” Single adult households without children, like Mr. Spooner, can earn up to approximately \$16,000 per year to qualify for Medicaid.⁵

FACTUAL ALLEGATIONS

Housing Search by Mr. Spooner

29. Mr. Spooner has spent the majority of his adult life employed as a salesman for large corporations and renting an apartment in New York City.

⁴ Disability Rights in Housing, https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/inhousing.

⁵ New York State Department of Health, Medicaid in New York State, https://www.health.ny.gov/health_care/medicaid.

30. In 2015, Mr. Spooner was diagnosed with prostate cancer. The cancer then metastasized, including traveling to Mr. Spooner's spine. Mr. Spooner spent months in the hospital receiving treatment, which caused Mr. Spooner to lose both his job and his apartment in New York City.

31. In addition to his cancer, Mr. Spooner suffers from neuropathy and anemia, and has significant mobility limitations derived from a hip surgery. Mr. Spooner requires a walker, cane or other assistance to walk.

32. In March 2016, Mr. Spooner was discharged from the hospital to Village Care Rehabilitation and Nursing Center in lower Manhattan ("Village Care").

33. By early 2017, Mr. Spooner had already been living at Village Care longer than anticipated. Since Village Care only provides temporary housing, Mr. Spooner was asked to leave. Mr. Spooner began a diligent search for a more permanent place to live.

34. Due to his disabilities and low income, Mr. Spooner was deemed eligible for OHS, and a housing specialist at the Center for Independence of the Disabled—New York ("CID-NY"), Ms. Zola Mendoza, was assigned to assist Mr. Spooner in finding housing. Mr. Spooner and Ms. Mendoza were informed that if Mr. Spooner could find a one-bedroom apartment with rent under \$1,419 per month and Mr. Spooner contributed 30% of his monthly income towards that rent, OHS would pay for the rest. OHS would also pay for Mr. Spooner's rental application fees, security deposit, and basic furnishings. OHS would also provide him with an allowance for utilities in his new home.

Defendants' Blatant Discrimination Against Mr. Spooner

35. On or about March 6, 2017, Ms. Mendoza and Mr. Spooner were made aware of a potential apartment within Mr. Spooner's price range at 2121 Cedar Avenue, Bronx, New York 10468. This property is managed by Goldfarb and owned by Defendant Fordham One Company.

36. The following day, Mr. Spooner and Ms. Mendoza went to view the apartment and were told by the building's superintendent that another similarly priced apartment was available at 2175 Cedar Avenue, Bronx, New York 10468. This property is owned by Defendant Cedar Two Company, LLC, and likewise managed by Goldfarb.

37. Both apartments were located in buildings with elevators and within the rent range permitted by the OHS subsidy program. Mr. Spooner gave Ms. Mendoza permission to apply for the two apartments on his behalf. Ms. Mendoza was instructed by Goldfarb employees to submit a single application through Goldfarb's online portal. Ms. Mendoza inquired as to whether the units in question had any pending applications and was told both units were available and had no pending applications.

38. On or about March 10, 2017, Mr. Spooner received an email from Goldfarb informing him that his application had been denied for lack of income. Ms. Mendoza called Goldfarb on Mr. Spooner's behalf to discuss Mr. Spooner's application and spoke to two Goldfarb employees—Michael Taveras and his supervisor "Chris."

39. Both Goldfarb employees stated that Mr. Spooner was denied due to insufficient income and that he met all other requirements. They explained that all applicants, including those utilizing subsidies, must earn forty-three times the monthly rent in annual income. Ms. Mendoza explained that OHS subsidies are only available to low-income persons and that Goldfarb's requirement effectively disqualifies use of the OHS subsidy in their buildings. Goldfarb's employees simply responded that the requirement cannot be waived for any applicant

irrespective of subsidy use. Ms. Mendoza also asked if the requirement could be applied to only that portion of the rent that Mr. Spooner would be required to pay under his subsidy and was told that it could not.

40. Mr. Spooner subsequently received a formal denial letter from Defendant Fordham One Company, LLC listing insufficient income as the reason for the denial.

41. On or around July 12, 2017, Ms. Mendoza became aware of three additional available units in Goldfarb-managed buildings through listings on Goldfarb's website. These openings were in 1981-1995 Sedgwick Avenue, Bronx, New York 10453, and 939 Woodycrest Avenue, Bronx, New York 10452. Ms. Mendoza again contacted Goldfarb at the same phone number on Mr. Spooner's behalf to inquire if he would be considered for any of these available apartments.

42. A Goldfarb representative informed Ms. Mendoza that, irrespective of his subsidy, Mr. Spooner would be denied again for insufficient income if he did not earn forty-three times the monthly rent of the apartments in question.

43. Having been denied accessible housing, Mr. Spooner was eventually forced out of Village Care on July 25, 2017 and, with nowhere else to go, moved into a transitional homeless shelter in Brooklyn. As his unsuccessful housing search continued, Mr. Spooner moved to a larger eighty-bed homeless shelter in the Bronx in August 2017 where he remained until February 1, 2018.

44. Mr. Spooner spent more than six months in shelters unable to prepare his own food, sharing both a bedroom and bathroom with strangers, and storing his belongings in a locker. The noisiness of the shelters also made it difficult for Mr. Spooner to sleep and at times he was forced to climb a flight of stairs to reach an available bed despite his substantial mobility

limitations. This time in the homeless shelter also impeded Mr. Spooner's cancer treatment, as he was not able to undergo chemotherapy while residing in a congregate living facility without a clean and sanitary living space and without adequate control over his food preparation and access to medication.

FHJC Documentation of Goldfarb's Discriminatory Policy and Practices

45. On August 17, 2017, a tester employed by FHJC and posing as "Kate," the daughter of an OHS recipient, called Goldfarb's office at 718-461-7800 regarding an apartment advertised on Goldfarb's website at Wavecrest Gardens—20-10 Seagirt Blvd, Far Rockaway, NY 11691. The tester spoke with a woman named Renee and inquired as to whether her father, who she said had been in a nursing home for the last few months, would be able to live in the building with an OHS subsidy. Upon information and belief, Renee is an employee of Goldfarb. Renee stated that "whatever program/subsidy/incomes/monies [an applicant] receive[s] ha[s] to go toward making up that yearly income" of forty-three times the apartment's monthly rent.

46. Later that day, the same tester placed another call to Goldfarb at the same number and again spoke with Renee. The tester informed Renee that her father does not earn forty-three times the rent but his rent is guaranteed by the OHS program. Renee stated that the guaranty "isn't the thing" and that people with subsidies "have to go through the criteria with everyone else." The tester explained that in order to be eligible for the subsidy an applicant must have a low income to which Renee replied "that's their requirement I can only give you that. I can't tell you anything else other than that." When the tester inquired as to whether that is the policy for all Goldfarb buildings, Renee replied "Yes."

47. On August 22, 2017, the tester posing as "Kate" called Goldfarb's office at 718-299-0718 regarding an apartment posted on Goldfarb's website in Harbor House—3-43

Davenport Avenue, New Rochelle, NY. The tester spoke with a man named Robert and inquired as to whether her father, who she said was currently in a nursing home but hoping to transition out into the broader community, would be able to live in the building with his OHS subsidy. Upon information and belief, Robert is an employee of Goldfarb.

48. Upon hearing that the potential applicant was an OHS recipient, Robert replied that he would need to have a credit score over 650 and earn forty three-times the rent in annual income. When Kate explained that her father would not meet the income requirement but that his rent was guaranteed through the OHS program, Robert reiterated that he understood but that earning forty-three times the rent is “the company’s policy so all applicants would have to meet those policies—those requirements.”

49. On September 13, 2017, a tester employed by FHJC and posing as “Ellen,” went to the Capri, 1700 Grand Concourse, Bronx, NY, 10457 to inquire about available apartments. The tester was assigned to pose as a person with a Section 8 rental voucher. While visiting the Capri, Ellen spoke with Marcos Burgos, an employee of Goldfarb. Marcos informed Ellen that to be eligible to rent an apartment she would need a credit score of at least 650 and an income of at least forty-three times the rent. When Ellen asked about using her Section 8 voucher, Marcos told her “We count [the voucher] as income toward the minimum income requirement.”

50. On October 13, 2017, a tester employed by FHJC and posing as a woman named “Lisa,” with a brother who has a HASA rental subsidy, called Goldfarb’s office at 718-461-7800 regarding an apartment advertised on Goldfarb’s website in Wavecrest Gardens—20-10 Seagirt Blvd, Far Rockaway, NY 11691.

51. To qualify for HASA rental subsidy, a client must be indigent and living not merely with HIV, but with clinical/symptomatic HIV illness, or AIDS. All HASA clients are thus living

with a disability, a fact that is commonly known by landlords and agents with affordable rental apartments in New York City; indeed, the agency is named the “HIV/AIDS Services Administration.”

52. The tester spoke with a woman named Renee and inquired as to whether her brother would be able to live in the building with a HASA subsidy. Upon information and belief Renee is an employee of Goldfarb. Renee informed Lisa that while Goldfarb accepts all subsidies, any prospective tenant must have a credit score of 650 or better and earn forty-three times the rent in annual income. When Lisa explained that her brother’s subsidy would pay 100% of the rent, Renee responded that some vouchers pay the full amount but others do not and Goldfarb does not pick and choose but applies the same requirements to all applicants.

53. The same tester called the same office again four days later and spoke to a General Manager, Guy Cerino. Upon information and belief, Guy Cerino is an employee of Goldfarb. Lisa explained to Guy that her brother would not meet either Goldfarb’s credit score or income requirement but that his voucher would guarantee 100% of his rent. Guy told Lisa that he “see[s] exactly where you’re coming from” and understands that “the HASA voucher is paying 100% of it and the money is guaranteed by the City” but refused to accept the HASA subsidy.

FHJC’s Prior Investigation of Goldfarb and Goldfarb’s Subsequent Intentional Discrimination

54. In late 2014 and early 2015, FHJC received two separate complaints from indigent disabled men alleging that Goldfarb refused to accept their HASA subsidies.

55. In response, FHJC conducted tests between October 2014 and May 2015, which confirmed that Goldfarb did not accept tenants using a HASA rental subsidy. During this time, Goldfarb’s minimum annual income requirement was lower than its current mandate that all tenants earn forty-three times the monthly rent in annual income.

56. For example, on March 2, 2015, a tester employed by FHJC and posing as a woman named “Sarah” called Goldfarb’s office at 718-299-0718 regarding an apartment advertised on Goldfarb’s website at 939 Woodycrest Avenue, Bronx, New York 10452. The tester spoke with a woman named Dina and inquired as to available apartments in the building. Upon information and belief Dina is an employee of Goldfarb.

57. Dina informed Sarah that, in order to be approved for an apartment in the building with a rent of \$975 a month, she would need to have an income of \$35,000 a year. This reflects that, at that time, Goldfarb required applicants to earn only between thirty-five and thirty-six times an apartment’s monthly rent in annual income.

58. Similarly, on April 16, 2015, a tester employed by FHJC and posing as a man named “Todd” went to Wavecrest Gardens, 20-10 Seagirt Boulevard, Far Rockaway, New York, 11691 regarding an apartment advertised on Goldfarb’s website. While visiting Wavecrest Gardens, Todd was given a brochure with pricing information for rentals by a Goldfarb employee named Tish. The brochure stated that the least expensive studio in the building at that time was \$999 per month with a minimum income requirement of \$35,000. The least expensive one-bedroom apartment was \$1,215 per month with a minimum income requirement of \$43,000. The least expensive two-bedroom apartment was \$1,560 per month with a minimum income requirement of \$55,000. These requirements all reflect that, at that time, Goldfarb required applicants to earn only between thirty-five and thirty-six times an apartment’s monthly rent in annual income, not forty-three times the rent.

59. After these two tests were conducted by FHJC in 2015, Goldfarb was sued in state court by a man alleging Goldfarb refused to rent to him because he had a HASA subsidy.

Goldfarb and the plaintiff in that suit reached a settlement under which Goldfarb agreed that it would not discriminate on the basis of lawful source of income when renting its apartments.

60. Upon information and belief, Goldfarb raised its minimum annual income requirement to forty-three times the rent after it resolved the lawsuit. This change was significant because the new requirement makes it impossible for applicants with rental subsidies, almost all of whom are required by their subsidy programs to pay up to, but no more than, 30% of their monthly income towards rent (i.e. forty times the rent), to meet Goldfarb's income requirement.

61. All rental subsidy programs evaluate whether a tenant is income eligible for the program and then place a limit on both the total of amount of rent allowed and the total amount of the tenant's share of the rent.

62. All OHS recipients pay 30% of their monthly income towards rent.

63. Section 8 voucher holders typically pay 30% of their monthly income towards rent.⁶

64. HASA recipients pay a maximum of 30% of their monthly income towards rent.⁷

65. When amending the New York City Human Rights Law ("NYCHRL") to ban source of income discrimination, the City Council made clear that one of the purposes of the law was to prevent discrimination against persons with rental subsidies.⁸

66. In light of this express purpose, a landlord maintaining a minimum income policy in compliance with New York City law should calculate an applicant's income based on the applicant's monthly share of the total rent rather than the total rent being charged. If landlords

⁶ See supra. ¶ 22 (OHS); New York City Housing Authority: Frequently Asked Question for Section 8 Tenants, <https://www1.nyc.gov/assets/nycha/downloads/pdf/SECTION8.TENANTS.FAQ.pdf>.

⁷ See HIV/AIDS services, HASA FAQ, <http://www1.nyc.gov/site/hra/help/hasa-faqs.page>

⁸ See, e.g., *Hearing on 61-A Before the Comm. on Gen. Welfare*, Jan. 8, 2008, at 3:16-3:23.

were permitted to use minimum income requirements that required a prospective tenant to have sufficient income to pay the total rent rather than just the amount the tenant himself or herself would pay, every landlord in New York City could evade and subvert the NYCHRL merely by adopting a minimum-income requirement that no individual using a government rental subsidy or voucher could meet.

67. Goldfarb, a large rental management company operating thousands of apartments throughout New York City, knew or should have known that its failure to implement its income requirement in this manner runs afoul of the NYCHRL.

68. Using the appropriate calculation under New York City law, as described above, a person paying 30% of his or her monthly income towards rent earns forty times his or her share of the rent in annual income. Thus, a requirement like Goldfarb's of forty-three times the rent categorically excludes all renters with a housing subsidy or voucher that limits the renter's share of the rent to no more than 30% of the renter's monthly income.

69. For example, Mr. Spooner earns \$770.50 per month, for an annual income of \$9,246. This annual income of \$9,246 is exactly forty times Mr. Spooner's monthly rent payment of \$231.15 (30% of his monthly income). This calculation is the same for all recipients of OHS, most recipients of Section 8 vouchers, and recipients of HASA who pay the maximum percentage of their income that the program allows (all other HASA recipients pay an even smaller percentage out-of-pocket, if anything at all).

70. At least in part for this very reason, landlords in New York City typically only require that prospective tenants earn *forty* times their monthly rent in gross annual income.⁹

71. Goldfarb's increase in its income requirement, above what is standard in New York City, makes it such that even were Goldfarb to compute a prospective tenant's income as it should under New York City law, it would still disqualify all renters complying with subsidy program rules requiring them to pay no more than 30% of their gross monthly income in rent.

72. Goldfarb's decision following its previous settlement to adopt this higher income requirement, just above the standard forty times the rent threshold, appears perfectly calibrated to be just high enough to exclude all applicants with OHS and HASA subsidies and nearly all applicants with Section 8 vouchers.

73. As the manager of thousands of rental units throughout New York City, Goldfarb is familiar with the various public rental subsidies available in the City and the programs' general eligibility criteria.

74. Upon information and belief, Goldfarb knew that a disproportionate number of the subsidy and voucher users that would be excluded by its forty-three times the rent income requirement are persons with disabilities.

Disparate Impact of Defendants' Policy

75. There are 8,000,000 residents in New York City and an average of 2.6 persons per household. *Id.* at NA-23. Thus, there are approximately 3,000,000 households in New York City.

⁹ See, e.g., Streeteasy. Com, How Much Rent Can I Afford?, <https://streeteasy.com/guides/renters-guide/how-much-rent-can-i-afford/> (last visited May 29, 2018) ("Most landlords in New York City require your gross annual income (before taxes) be 40 times your monthly rent."); Tanay Warekar, *Most NYers make less than what's needed to rent in NYC*: report, Curbed (Nov. 2, 2017) ("You are probably all too familiar with this NYC landlord requirement: tenants are required to make at least 40 times the monthly rent to secure that apartment.").

76. If we assume that the ratio of persons to households is the same or at least similar among the disabled population as the population at large (2.6:1), there are approximately 307,692 total households in New York City where at least one member of the household has a disability (“disabled household”).

77. The City has approximately 350,000 single elderly adults, age 62 or older, living by themselves.¹⁰ Single elderly adults, age 62 or older, comprise approximately 12% of all households in New York City. *Id.* at NA-4. The median income of all single elderly households was extremely low at \$16,000 in 2010 with single elderly renters’ median income at just \$12,000. *Id.* at NA-19.

78. Of the approximately 800,000 New York City residents who are individuals living with disabilities (10% of total City population), 44% or 355,000 are 65 or older. *Id.* at NA-23.

79. All (100%) of OHS recipients do not and cannot earn an income sufficient to both meet Defendants’ minimum income requirements and be eligible for OHS. As explained above, when the income requirement is calculated in a manner consistent with New York City law, an OHS recipient can only earn forty times his or her monthly rent in annual income. It is impossible for a person to both qualify for OHS and earn forty-three times his monthly rent in annual income.

80. Even under Defendants’ practice of calculating its income requirement based on the total rent rather than just the portion the subsidy-holder pays, all (100%) OHS recipients cannot earn an income sufficient to both meet Defendants’ minimum income requirements and be eligible for OHS. For example, the two apartments Mr. Spooner applied for at Defendants’ properties were advertised for \$1,384 and \$1,300 rent per month. These rent values fell well

¹⁰ New York City Consolidated Plan, Effective as of December 16, 2016, NA-4, NA-19

within Mr. Spooner's OHS subsidy, which allows him to rent a one-bedroom apartment for up to \$1,419 a month. Yet, under Defendants' requirements, any applicant for these apartments—including recipients of OHS—would need to earn a yearly income of \$59,512 and \$55,900 respectively. It is impossible for a person to both qualify for OHS and earn an income of \$59,512 or \$55,900.

81. The same is true for HASA clients, 100% of whom are disabled, because HASA recipients also only pay a maximum of 30% of their monthly income in rent. Thus, whether a HASA client has no income or meets the program's maximum allowed income by receiving, for example, Social Security disability income, the person pays no more than 30% of his or her income towards rent and earns forty times his or her share of the total rent in annual income

82. Even accepting Defendants' practice of calculating their income requirement based on the total rent rather than just the portion the subsidy-holder pays, no HASA client could earn an annual income sufficient to meet Defendants' minimum income requirements and still qualify for a HASA subsidy.

83. There is also an adverse statistical impact on disabled households in New York City using OHS, HASA or Section 8 rental subsidies compared to non-disabled households using these subsidies.

84. There are 121,773 disabled households in New York City using OHS, HASA, or Section 8 vouchers to pay their rent.

85. There are 26,456 households in New York City that use either OHS or HASA subsidies to pay their rent.¹¹ 100% of OHS and HASA clients are disabled. There are 202,721

¹¹ HASA Facts, City of New York Human Resources Administration, March 2018.

households that use Section 8 vouchers to pay their rent.¹² Of this group, 95,317 are disabled households, and 107,404 are households where no person has a disability. *Id.*

86. Accordingly, 39.5% of all disabled households in New York City use either OHS, HASA, or Section 8 vouchers:

$$\frac{121,773}{307,692} = 39.5\%$$

(disabled households with OHS, HASA or Section 8)
(approximate number of disabled households)

87. In contrast, only 4% of non-disabled households in New York City use OHS, HASA or Section 8 vouchers to pay their rent:

$$\frac{107,404}{2,692,308} = 4\%$$

(non-disabled households with Section 8—no non-disabled households use HASA or OHS)
(approximate number of non-disabled households)

88. As illustrated by the prior paragraphs, 39.5% of all New York City disabled households use these subsidies to pay their rent as compared to only 4% of non-disabled households.

General Allegations

89. As alleged in the foregoing paragraphs, Defendants were specifically put on notice by both Ms. Mendoza and the FHJC testers that their policy had the effect of foreclosing persons with OHS, HASA, and/or Section 8 vouchers from renting an apartment in a building managed by Goldfarb.

¹² HUD Residents Characteristics Report, New York City, April 2018.

90. As alleged in the foregoing paragraphs, Defendants know that persons receiving public rental subsidies such as OHS and HASA are low-income persons with disabilities who, by the design of their subsidy program requirements, only earn forty times their monthly rent in annual income. Nonetheless, Defendants increased their minimum annual income requirement from thirty-five to forty-three times the monthly rent.

91. Defendants' adoption and use of a policy increasing their minimum annual income requirement to forty-three times the monthly rent in income, a requirement that categorically excludes disabled individuals who receive OHS or a HASA rental subsidy, and most Section 8 voucher holders, a substantial portion of whom are disabled households, constitutes intentional discrimination on the basis of disability and source of income.

92. Defendants' adoption and use of the minimum annual income policy alleged above constitutes discrimination, by way of disparate impact, on the basis of disability and lawful source of income.

93. Defendants' adoption and use of the minimum annual income policy alleged above constitutes intentional discrimination on the basis of disability and lawful source of income.

94. By reason of the foregoing, FHJC has been injured by Defendants' discriminatory conduct in the form of a diversion of its resources and frustration of its mission, including staff time expended to respond to Defendants' discriminatory conduct and to assist Mr. Spooner.

95. At or before the commencement of this action, Plaintiff provided notice of this action to the New York City Commission on Human Rights and Corporation Counsel, pursuant to the New York City Administrative Code § 8-502(c).

FIRST CLAIM FOR RELIEF

(Fair Housing Act: 42 U.S.C. § 3604(f)(1))

96. Plaintiff restates and incorporates by reference the preceding paragraphs above as if fully set forth herein.

97. The FHA provides that it is illegal “to discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter” because of a disability. 42 U.S.C. § 3604(f)(1).

98. Defendants illegally discriminated against Plaintiff FHJC in the manner set forth *supra*, e.g., by otherwise making housing unavailable, both intentionally and by way of disparate impact, based on disability.

99. Defendants’ conduct was willful, intentional, and in reckless disregard of the Plaintiff’s civil rights.

100. FHJC is an aggrieved person as defined by the FHA, 42 U.S.C. § 3602(i), and as a direct and proximate result of Defendants’ unlawful discriminatory conduct have sustained damages.

101. Accordingly, under 42 U.S.C. § 3613(c), Plaintiff is entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys’ fees and costs.

SECOND CLAIM FOR RELIEF

(New York City Human Rights Law: Disability Discrimination)

102. Plaintiff restates and incorporates by reference the preceding paragraphs above as if fully set forth herein.

103. Defendants are the managing agents of housing accommodations and/or have the right to approve the rental of housing accommodations located in New York City as defined by Section 8-102(10) of the New York City Administrative Code to include “any building . . .

which is used or occupied . . . as the home, residence or sleeping place of one or more human beings.”

104. Section 8-107(5)(a) of the New York City Administrative Code provides that it shall be “an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignees, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation . . . (1) To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny to or withhold from any person or group of persons such a housing accommodation or interest therein because of the actual or perceived . . . disability . . . of such person or persons.”

105. Defendants violated Section 8-107(5)(a) by discriminating against Plaintiff FHJC in the rental of housing accommodations in the manner set forth *supra*, e.g., by otherwise denying or withholding apartments from any group of persons, both intentionally and by way of disparate impact, based on disability.

106. Defendants’ conduct was willful, intentional, and in reckless disregard for the Plaintiff’s rights.

107. = FHJC is an “aggrieved person,” as defined in the New York City Administrative Code, § 8-502(a), and have suffered damages as a direct and proximate result of Defendants’ discriminatory conduct.

108. Accordingly, under New York City Administrative Code §§ 8-502(a) and (g), Plaintiff is entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys’ fees and costs.

THIRD CLAIM FOR RELIEF

(New York City Human Rights Law: Source of Income Discrimination)

109. Plaintiff restates and incorporates by reference the preceding paragraphs above as if fully set forth herein.

110. Defendants are the managing agents of housing accommodations and/or have the right to approve the rental of housing accommodations located in New York City as defined by Section 8-102(10) of the New York City Administrative Code to include “any building . . . which is used or occupied . . . as the home, residence or sleeping place of one or more human beings.”

111. Section 8-107(5)(a) of the New York City Administrative Code provides that it shall be “an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignees, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation . . . (1) To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny to or withhold from any person or group of persons such a housing accommodation or interest therein because of . . . source of income of such person or persons.”

112. Defendants violated Section 8-107(5)(a) by discriminating against Plaintiff FHJC in the rental of housing accommodations in the manner set forth *supra*, e.g., by otherwise denying or withholding apartments from any group of persons, both intentionally and by way of disparate impact, based on source of income.

113. Defendants’ conduct was willful, intentional, and in reckless disregard for the Plaintiff’s rights.

114. FHJC is an “aggrieved person,” as defined in the New York City Administrative Code, § 8-502(a), and have suffered damages as a direct and proximate result of Defendant’s discriminatory conduct.

115. Accordingly, under New York City Administrative Code §§ 8-502(a) and (g), Plaintiff is entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys’ fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request judgment against Defendants as follows:

- (a) Declaring that Defendants’ discriminatory practices violate the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.* and the New York City Administrative Code § 8-107 *et seq.*;
- (b) Enjoining Defendants, Defendants’ agents, employees, and successors, and all other persons in active concert or participation from:
 - (i) Denying or withholding housing, or otherwise making housing unavailable on the basis of disability or lawful source of income; and
 - (ii) Discriminating against any person in the terms, conditions, or privileges of rental of a dwelling because of disability or source of income;
- (c) Enjoining Defendants and their agents, employees, successors, and all other persons in active concert or participation to:
 - (i) Make all necessary modifications to their policies, practices, and procedures to comply with fair housing laws, including eliminating minimum income requirements that foreclose OHS, HASA, Section 8 and other rental subsidy recipients from renting apartments in their properties;

- (ii) Develop written procedures on rental process and fair housing policy to be distributed to all staff, tenants, and rental applicants;
 - (iii) Train all current and future management, agents, and employees on fair housing laws;
 - (iv) Display an Equal Opportunity logo (or statement to that effect) on all rental advertisements and display HUD, state, and local fair housing posters in all rental offices;
 - (v) Notify New York City organizations assisting renters utilizing OHS, a HASA subsidy, and/or using a Section 8 voucher or other rental subsidy to find housing, that Defendants have adopted non-discriminatory rental policies;
 - (vi) Allow monitoring of their advertising, listings, showing of apartments, application process, and rental decisions for multiple years;
 - (vii) Retain records to allow for appropriate monitoring; and
 - (viii) Establish a system so that their employees and agents can be tested for unlawful discriminatory practices for multiple years;
- (d) Awarding such damages to Plaintiff FHJC as will fully compensate it for the diversion of resources and frustration of mission caused by Defendants' unlawful practices;
- (e) Awarding punitive damages to Plaintiff;
- (f) Awarding Plaintiff's reasonable attorneys' fees, costs, and expenses incurred in prosecuting this action; and
- (g) Granting Plaintiff such other and further relief as may be just and proper.

Dated: July 2, 2019
New York, New York

EMERY CELLI BRINCKERHOFF & ABADY LLP

By: _____/s/_____
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