

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
SINDY COHEN, :
 :
 Plaintiff, :
 :
 - against - :
 :
 :
 ELM YORK LLC, MADISON YORK REGO PARK LLC, :
 and ELMHURST CARE CENTER, :
 :
 Defendants. :
----- X

11-Civ-2437(FB)(SMG)

**AMENDED AND
SUPPLEMENTAL COMPLAINT**

Jury Trial Demanded

Plaintiff Sindy Cohen, by her attorneys, MFY Legal Services, Inc., as and for her Complaint alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action brought to redress violations of the federal Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.*, and to recover under New York law for violations of General Business Law § 349, the New York State Human Rights Law, breach of contract, breach of fiduciary duty, and unjust enrichment.

2. Defendants Madison York Rego Park LLC (“Madison York LLC”) and Elm York LLC are affiliated corporations that operate assisted living facilities licensed by the New York State Department of Health (“the Department”). Madison York LLC operates Madison York Rego Park Adult Home (“Madison York Adult Home”). Elm York LLC operates Elm York Home for Adults (“Elm York Adult Home”).

3. Defendant Elmhurst Care Center is a related corporation that operates a nursing home adjacent to Elm York Adult Home. It offers adult day care services, often referred to as a “day program.”

4. Madison York Adult Home and Elm York Adult Home are subject to the same provisions of the New York Social Services Law and related regulations for providing housing and housing-related services to persons with disabilities. Madison York LLC rejects applicants for housing who have psychiatric disabilities on the basis of their psychiatric disability and refers them to Elm York Adult Home. Elm York LLC intentionally targets its services towards persons with psychiatric disabilities, and it offers services that are inferior to those provided at Madison York Adult Home. Defendants’ scheme discriminates against and exploits persons with disabilities in their provision of housing and housing-related services.

5. Plaintiff Sindy Cohen is a woman with disabilities who, prior to moving into Elm York Adult Home, had lived her entire life with her parents.

6. Plaintiff sought housing and related services from Madison York Adult Home, but Madison York LLC denied her housing and advised her that Elm York Adult Home is a facility that caters to persons with mental illness.

7. After Plaintiff communicated this information to Adult Protective Services, Plaintiff obtained housing and other assistance from Elm York LLC when her parents were no longer able to support her.

8. Elm York LLC admitted Ms. Cohen to its facility and executed an admission agreement regarding housing and housing-related services.

9. Upon learning that Ms. Cohen possessed a modest retirement instrument, Elm York LLC exploited her need for assistance by, among other things, forcing her to execute a

back-dated admission agreement on highly unfavorable terms and violating its obligation to provide case management services essential to protecting her health and well-being.

10. Defendant Elmhurst Care Center targeted Ms. Cohen for its deceptive business practices and used Elm York LLC's employees to extract more than \$9,000 from her that she never agreed to pay.

11. Jointly, through the use of shared employees and coordinated strategies, Defendants denied Ms. Cohen the housing of her choice and intentionally exploited her in order to bilk her of her limited resources.

JURISDICTION

12. This Court has subject matter jurisdiction over the claims asserted here pursuant to 28 U.S.C. §§ 1331 and 1343. This court has supplemental jurisdiction over the New York State law claims pursuant to 28 U.S.C. § 1367.

VENUE

13. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because Defendant corporations reside and do business in the district.

14. Defendant Elm York LLC operates an adult home located in Queens County.

15. Defendant Madison York LLC operates an adult home located in Queens County.

16. Defendant Elmhurst Care Center LLC operates a nursing home and adult activity center within Queens County.

17. All of the events and/or omissions underlying this action occurred in the district.

THE PARTIES

18. Plaintiff Sindy Cohen (“Ms. Cohen” or Plaintiff) is a 52-year old resident of the Elm York Adult Home, which is located at 100-30 Ditmars Boulevard, East Elmhurst, New York.

19. Upon information and belief, Defendant Elm York LLC is a domestic corporation. Elm York LLC’s agent for service of process registered with the New York State Department of State is Tibor Klein, 100-30 Ditmars Boulevard, East Elmhurst, New York.

20. Upon information and belief, Defendant Elm York LLC is the operator of Elm York Adult Home, which is where Plaintiff currently resides.

21. Upon information and belief, Defendant Madison York LLC operates Madison York Adult Home, which is located at 61-80 Woodhaven Boulevard, Rego Park, NY 11374.

22. Upon information and belief, Defendant Madison York LLC lists as its address for the receipt of process “Elm York HFA, 100-30 Ditmars Blvd., East Elmhurst, New York 11369,” and identifies no registered agent for service of process.

23. New York Social Services Law § 2(22) defines adult homes as adult care facilities which provide “temporary or long-term residential care and services to adults who, though not requiring continual medical or nursing care ... are, by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently.”

24. Upon information and belief, Defendant Elmhurst Care Center is a domestic corporation. Elmhurst Care Center’s agent for service of process registered with the New

York State Department of State is Tibor Klein, 100-30 Ditmars Boulevard, East Elmhurst, New York.

25. Upon information and belief, Defendant Elmhurst Care Center operates the “day program” in which Ms. Cohen participated after her admission to the home.

26. Upon information and belief, Defendant Elm York LLC and Defendant Elmhurst Care Center are both owned by Tibor Klein.

27. Upon information and belief, Tibor Klein also has an ownership interest in Madison York Adult Home.

FACTUAL ALLEGATIONS

Ms. Cohen Sought Assisted Living After Her Parents Became Unavailable To Support Her.

28. Ms. Cohen was cared for by her elderly parents at a private residence in Flushing, New York until shortly before entering Elm York Adult Home.

29. Ms. Cohen’s father died in May 2009. Months later, her mother was transferred to a nursing home on Long Island.

30. While in the care of her parents, one of Ms. Cohen’s relatives established an individual retirement annuity (“IRA”) to help Ms. Cohen support herself once her parents became unable to do so.

31. Ms. Cohen never applied for distributions from her IRA and received no reportable income therefrom.

32. Ms. Cohen did not understand this IRA to be a resource for paying rent or other bills. Ms. Cohen believed that she had no funds with which to pay her rent or care for other personal needs.

33. With the help of a social worker, Ms. Cohen applied for and obtained welfare benefits in early 2010. She also received healthcare coverage under the Medicaid program and participated in a job skills development program operated by Arbor WeCARE.

34. Upon information and belief, Arbor WeCARE is an organization that provides a wide range of services for people with medical and/or mental health conditions who receive or have applied for welfare benefits in the boroughs of Queens and Brooklyn.

35. Ms. Cohen's public assistance benefits were insufficient to cover the outstanding rent on the apartment she had shared with her parents. Ms. Cohen's disability substantially impaired her ability to coordinate her rent payments and other basic needs.

Although Both Facilities Are Licensed Adult Homes, Governed By The Same Regulations, Advertising Identical Services, Elm York Adult Home Has A Population of Persons with Mental Illness While Madison York Adult Home Has Very Few.

36. Elm York LLC advertises its services to the public at large through its website <http://www.elmyork.com>.

37. On its website, Elm York LLC states:

Elm York is an Adult Care Facility certified as an Assisted Living Program with a Licensed Home Care Service Agency. Through these specialized services, residents receive assistance with Activities of Daily Living and skilled services. This allows each resident of Elm York within a social model to age in place and feel a sense of self-dignity. Our program provides an alternative for the elderly living alone without needed care. Services include care management, counseling, advocacy, activities, as well as residential services. Our aim is to provide a warm, safe environment while encouraging independence. Our social living environment is an alternative to institutionalized care and to the nursing home.

38. On its website, Elm York LLC promises, *inter alia*, to assist residents "in setting up financial accounts including burial policies [,] etc."

39. Madison York LLC advertises its services to the public at large through its website <http://www.madisonyorkalp.com>.

40. On its website, Madison York LLC states:

Madison York is an Adult Care Facility certified as an Assisted Living Program with a Licensed Home Care Service Agency.

Through these specialized services, residents receive assistance with Activities of Daily Living and skilled services. This allows each resident of Madison York within a social model to age in place and feel a sense of self-dignity. Our program provides an alternative for the elderly living alone without needed care. Services include: care management, counseling, advocacy, activities, as well as residential services. Our aim is to provide a warm, safe environment while encouraging independence. Our social living environment is an alternative to institutionalized care and to the nursing home.

41. On its website, Madison York LLC also states, “We will assist our residents who are of need in setting up financial accounts including burial arrangements.”

42. According to the Department’s 2008 Adult Home Census, 99% of Elm York Adult Home’s residents have a diagnosed mental illness.

43. Those same census figures show that only 8% of Madison York Adult Home’s residents have a diagnosed mental illness.

Madison York LLC Denied Plaintiff Admission Based Upon Her Disability, Perceived Mental Illness, and/or Age.

44. An acquaintance advised Ms. Cohen to contact Madison York Adult Home and inquire about moving into its facility. Ms. Cohen followed this advice and spoke with the facility’s intake coordinator, Norman Strenger, about her need for housing and related services.

45. Upon information and belief, Mr. Strenger acts as both the bookkeeper at Elm York Adult Home and an employee in charge of new resident intake at Madison York Adult Home.

46. Upon information and belief, Mr. Strenger also arranges for the payment of “day program” fees to Defendant Elmhurst Care Center by residents of Elm York Adult Home.

47. Plaintiff expressed her desire to move into Madison York Adult Home to Mr. Strenger.

48. During their discussions, Mr. Strenger told Ms. Cohen that Madison York Adult Home “caters” primarily to elderly individuals. Mr. Strenger advised Ms. Cohen that Defendant Elm York Adult Home was a facility that “caters” to persons with mental illness, and referred her to it for housing and housing-related services.

49. Upon information and belief, Madison York LLC maintains a policy of rejecting applicants who take Seroquel, a drug commonly prescribed for persons diagnosed as having schizophrenia and bipolar disorder.

50. Upon information and belief, Madison York LLC rejected a potential applicant during the summer of 2011 after its intake coordinator, “Barbara,” learned that the prospective resident had been prescribed Seroquel and had been diagnosed with a mental illness.

51. Upon information and belief, the prospective resident was sent to Elm York Adult Home where she now lives.

52. Upon information and belief, Madison York LLC implements a general practice of denying housing to persons with mental illness who are otherwise eligible for housing at the facility and referring such persons to Elm York Adult Home.

53. Upon information and belief, Madison York LLC implements a general practice of denying housing to people but are not elderly who are otherwise eligible for housing at the facility and referring such persons to Elm York Adult Home.

Plaintiff Shares The Information Provided By Mr. Strenger With Adult Protective Services And Is Taken To Elm York Adult Home.

54. After Ms. Cohen's parents' apartment became the subject of an eviction proceeding, Ms. Cohen was referred to Adult Protective Services ("APS") for assistance.

55. According to New York Social Services Law § 473, APS is a state-mandated case management program that arranges services and support for physically and/or mentally impaired adults who are at risk of harm.

56. Due to the social stigma attached to mental illness and developmental disorders, Ms. Cohen is reluctant to discuss her disability openly and frequently states that she does not suffer from any psychosocial impairment. However, in September 2010, Ms. Cohen was subjected to a psychiatric evaluation by APS whose psychiatrist prepared a psychiatric evaluation report dated September 15, 2010 ("the PER").

57. The PER noted that Ms. Cohen was living alone in an apartment without telephone service. It also reported, "On the front door of her apartment [were] multiple signs written by [Ms. Cohen], warning maintenance people not to come in and not to take any of her things. They are very childlike both in the handwriting as well as how she communicates."

58. The PER stated that certain of Ms. Cohen's public benefits had been discontinued.

59. The PER further stated that Ms. Cohen “cannot perform even the simplest of calculations,” and that “[g]iven her apparent intellectual impairments, she is vulnerable and at ongoing potential risk.”

60. The PER concluded that Ms. Cohen was unable to apply for Supplemental Security Income (“SSI”) or relocate on her own “given her lack of understanding of what is necessary.”

61. The PER referred to Ms. Cohen’s previous conversations with “Norman” at Madison York Adult Home.

62. The PER included a diagnosis of Ms. Cohen made in accordance with the Diagnostic and Statistical Manual of Mental Disorders (4th Edition). It also recommended that Ms. Cohen receive assistance in applying for SSI based on her diagnosis.

63. Before APS commenced the guardianship proceeding, Ms. Cohen’s APS case worker contacted the staff at Elm York Adult Home to obtain emergency housing for her, based upon the information provided to Ms. Cohen during her conversation with Mr. Strenger.

64. The caseworker took Ms. Cohen to Elm York Adult Home for an interview with its intake staff. During that interview, Ms. Cohen advised the intake staff of her status as a recipient of public assistance. At the conclusion of their meeting, Elm York Adult Home offered Ms. Cohen a shared bedroom in its facility.

65. On October 12, 2010, Ms. Cohen’s APS case manager transported Ms. Cohen, along with a selection of her personal belongings, to Elm York Adult Home and closed Ms. Cohen’s case.

Elm York LLC Exploited Plaintiff And Failed To Provide Housing-Related, Case Management Services Required Under The Department's Regulations.

66. When Ms. Cohen arrived at the facility, she met with members of Elm York Adult Home's staff for the purpose of reviewing necessary admission paperwork.

67. Mr. Strenger assured Ms. Cohen that Elm York Adult Home would coordinate all of Ms. Cohen's public benefits as part of its case management services.

68. Ms. Cohen also executed an admission agreement which stated, in relevant part, that: (a) she had either been approved for or was applying for SSI and/or Home Relief assistance; (b) her monthly rent would be set at \$1190, the rate set forth in New York Social Services Law § 131-o; (c) the facility would provide "an organized and diversified program of individual and group activities;" and (d) the facility would also provide case management services.

69. Elm York Adult Home presented Ms. Cohen with a pre-written letter to sign which stated that she had no "known assets, additional income, bank accounts or burial accounts." Ms. Cohen did not fully comprehend the meaning of these financial terms, and her case manager did not explain these concepts to her.

70. Upon her admission and repeatedly thereafter, Ms. Cohen advised Elm York Adult Home and its employees of her intention to stay at their facility for only a limited period of time until she could obtain supported housing within the community.

Elm York LLC Failed To Assist Plaintiff In Maintaining Public Benefits And, Instead, Used Its Control Over Her To Extract Illicit Profits For Itself And Elmhurst Care Center.

71. Ms. Cohen's admission records at Elm York Adult Home lists her Medicaid policy number as well as the "primary diagnosis" and "secondary diagnosis" of her disability identified in the PER.

72. Elm York Adult Home staff led Ms. Cohen to believe that as of October 12, 2010, the day she moved into the facility, Elm York Adult Home staff had applied to become her representative payee and that the facility was receiving some form of public benefits on her behalf, either by renewing her then-existing benefits or applying for new ones, to cover her rent and medical expenses.

73. Upon information and belief, Elm York LLC applied for SSI and Social Security Disability Insurance ("SSD") on Ms. Cohen's behalf at some point after her admission to the Adult Home.

74. On October 30, 2010, Ms. Cohen was treated by Dr. Pilvas, an ophthalmologist visiting the facility, for a routine appointment.

75. Upon information and belief, Dr. Pilvas was paid by Medicaid under the insurance Ms. Cohen had when she entered Elm York Adult Home.

76. On November 1, 2010, Elm York LLC gave Ms. Cohen a document labeled, "Receipt# 100041812," in which the facility indicated that it had received a rental payment from "H/R" in the amount of \$1,190 and that it remitted an "allowance" of \$178 to Ms. Cohen.

77. Upon information and belief, "H/R" refers to home relief payments of public assistance made by the Human Resources Administration ("HRA").

78. On November 5, 2011, Ms. Cohen spoke on the telephone with a representative from the Social Security Administration (“SSA”). Ms. Cohen’s case manager did not explain the purpose of that discussion to her or otherwise assist her in preparing for her interview.

79. Ms. Cohen was unaware of the purpose of the SSA telephone call and had not been informed of the agency’s need for information regarding her psychiatric diagnosis. Because she unfamiliar with the process, she told the SSA representative that there was “nothing wrong with” her.

80. Elm York Adult Home never completed on Ms. Cohen’s behalf any of the disability and personal history forms required of SSI applicants.

81. Elm York LLC never forwarded the PER to SSA in connection with Ms. Cohen’s SSI application.

82. In a letter dated November 12, 2010, SSA denied Ms. Cohen SSI based on a finding that she was not “disabled,” made during her November 5, 2010 telephone conversation.

83. Elm York LLC failed to appeal SSA’s disability finding.

84. In a separate letter dated November 12, 2010, the SSA denied Ms. Cohen SSD based on its determination that she lacked a work history sufficient to receive that benefit.

85. Elm York LLC failed to appeal this determination and request a reconsideration of her application under 20 C.F.R. § 404.355 which provides benefits to certain qualified adult children of persons eligible for SSD.

86. Ms. Cohen received medication from Elm York Adult Home’s dispensary on November 19, 2010 which indicated that it had been paid for by “NY Medicaid.”

87. Upon information and belief, Ms. Cohen's public assistance and Medicaid benefits expired on November 30, 2010.

88. Upon information and belief, Elm York LLC failed to assist Ms. Cohen in obtaining healthcare benefits after her previous Medicaid benefits expired, and it failed to secure a primary care physician for her as required under the Department's adult home regulations.

89. At some point after her admission, Elm York LLC learned of Ms. Cohen's IRA.

90. Upon information and belief, Elm York Adult Home's administrator, Robert Amsel ("Administrator Amsel") obtained, completed, and notarized New York State tax form IT-2104-P, *Annuitant's Request for Income Tax Withholding*, and an Annuity Withdrawal Request from First SunAmerica Bank.

91. Upon information and belief, Administrator Amsel demanded that Ms. Cohen sign these documents.

92. Upon information and belief, neither Administrator Amsel nor Ms. Cohen's case manager referred her to a professional for advice on the implications of liquidating her IRA.

93. Upon information and belief, neither Administrator Amsel nor Ms. Cohen's case worker discussed with Plaintiff her need to file her taxes or report information about her IRA liquidation to the Internal Revenue Service.

94. Upon information and belief, neither Administrator Amsel nor Ms. Cohen's case manager called the Internal Revenue Service's taxpayer hotline for advice on how to properly liquidate her IRA.

95. Neither Administrator Amsel nor Ms. Cohen's case manager assisted Ms. Cohen in obtaining legal or financial assistance on how to address her right to obtain healthcare coverage and benefits in light of her IRA and long-term housing needs.

96. Upon information and belief, Administrator Amsel also told Mr. Cohen that he needed to "update" her admission agreement. The "updated" admission agreement stated, among other things, that Ms. Cohen (a) had never been approved for or was applying for SSI and/or Home Relief assistance and (b) her monthly rent for a shared room and bathroom would be set at \$2,325 – over \$1,000 more than the fee set forth in her initial admission agreement.

97. Under New York Social Services Law § 131-o, the facility fee for rent and all housing-related services for residents receiving SSI or public assistance is set at \$1190 per month.

98. Upon information and belief, Ms. Cohen's case manager never discussed with Ms. Cohen the implications of her signing either the back-dated admission agreement or the IRA liquidation documents.

99. Elm York LLC never investigated or applied for a request for hardship distributions on Ms. Cohen's behalf even though the Annuity Withdrawal Request stated that "a withdrawal of any type, before age 59 1/2 , may subject [Ms. Cohen] to an IRS penalty tax."

100. Upon information and belief, Elm York LLC never advised Ms. Cohen of any provisions of SSA's rules relevant to her assets or health benefits.

101. In fact, Elm York LLC took no preliminary steps towards obtaining replacement healthcare coverage for Ms. Cohen until early May 2011, after repeated demands and instructions from her counsel.

102. Although Elm York Adult Home, through its staff, repeatedly led Ms. Cohen to believe that it had secured the benefits and services to which she is entitled, Elm York Adult Home's employees ceased all investigation into Ms. Cohen's benefit eligibility after determining that it could extract from her IRA proceeds a rent grossly disproportionate to the rate established under the New York Social Services Law.

With Elm York LLC's Assistance, Elmhurst Care Center Provided Plaintiff Services Of Questionable Value Pursuant To An Unenforceable And Misleading Agreement.

103. Under the terms of Plaintiff's admission agreement and the governing regulations, Elm York Adult Home is required to provide "an organized and diversified program of individualized and group activities" as a housing-related service.

104. Instead of providing individualized and group enrichment activities, Mr. Strenger, Ms. Cohen's case manager, and employees of Defendant Elmhurst Care Center pressured Ms. Cohen into attending a five (5) hour per day "day program" operated by Defendant Elmhurst Care Center where, among other things, she colored in coloring books and was served lunch.

105. In August 2002, the New York State Commission on Quality of Care and Advocacy for People with Disabilities, an independent state agency, issued a report entitled, "Adult Homes Serving Residents with Mental Illness - a Study on Layering of Services" (the "CQC Report").

106. The CQC Report found that adult home residents with mental illness often “receive medical care under a system in which services are often not sought by the recipient, but initiated by the practitioner.”

107. The CQC Report found that in many “day programs,” such as the one provided to Plaintiff by Defendant Elmhurst Care Center, “much of the five-hour day [is] devoted to socializing and eating,” rather than providing therapeutic or rehabilitative services.

108. The CQC Report further noted that adult home operators, particularly those in charge of large facilities with high concentrations of residents with mental illness, frequently engage in highly profitable and underreported “related-party transactions” with healthcare service providers that do little to improve the “the quality of care of residents.”

109. On November 15, 2010, Elm York Adult Home sent Ms. Cohen to Elmhurst Care Center to begin participating in “day program” services.

110. When Ms. Cohen arrived at Elmhurst Care Center, she was presented with a contract entitled “Adult Day Health Program Agreement.”

111. Upon information and belief, the Adult Day Health Program Agreement that Ms. Cohen received consists of standard forms provided to all residents of Elm York Adult Home who participate in Defendant Elmhurst Care Center’s “day program.”

112. The Adult Day Health Program Agreement includes among the services to be provided by Defendant Elmhurst Care Center: (a) “board”; (b) “nursing services”; (c) “supervision and assistance, when necessary, with activities of daily living, including toileting, feeding, ambulation, and bathing;” (d) “rehabilitation therapy;” and (e) “nutritional counseling.”

113. The Department's regulations require Elm York Adult Home to provide, among other things, "board," "personal care," "supervision," and other services that "promote[] the social, physical and mental well-being of the residents." 18 NYCRR §§ 487.2 and 487.3. Ms. Cohen had no need to seek these services from Elmhurst Care Center.

114. Ms. Cohen has no medical condition which requires nursing care, rehabilitative therapy or medical services.

115. The Department's regulations prohibit Elm York Adult Home from admitting persons who are "in need of continual medical or nursing care or supervision" such as that provided by a nursing home, in-patient psychiatric treatment center, or residential drug treatment program. 18 NYCRR § 487.4(b)(1).

116. Ms. Cohen never received medical or nursing treatment from Elmhurst Care Center.

117. The Adult Day Health Program Agreement contained a section entitled "FINANCIAL ARRANGEMENTS."

118. In that section, the Adult Day Health Program Agreement read, "Basic Charge. The Basic Charge for the Adult Day Care Program is \$_____ per day. Monthly invoices will be sent to the private pay Registrant and/or Responsible Party."

119. The contract that Ms. Cohen signed contained no price term for the services that Elmhurst Care Center agreed to provide.

120. The Adult Day Health Program Agreement also contained a provision called "Increase in Charges" that reads, "If the Basic Charge is to be increased, the Program will give thirty days prior written notice of such increase to the Registrant and/or Responsible

Party and the Registrant or Responsible Party will be required to pay the Program the new, increased Basic Charge.”

121. The Adult Day Health Program Agreement further stated, “For those registrants who are not eligible for Medicaid, but cannot afford to pay the full Basic Charge, the Program may provide financial assistance based upon a sliding scale. To be considered for such financial assistance, the Registrant and/or Responsible Party must supply such financial information as the Program reasonably requests.”

122. The Adult Day Health Program Agreement also provided, “Medicaid currently covers all costs of services to be provided for those Registrants who are eligible for medical assistance under the Medicaid program. The Registrant and/or Responsible party agree(s) to provide all documentation necessary to apply for and obtain approval for Medicaid assistance and to assist in such application.”

123. Upon information and belief, Defendant Elmhurst Care Center never told Ms. Cohen what the “Basic Charge” for the “day program” would be.

124. Ms. Cohen believed that the cost of the “day program” was included within the activities and other housing-related services provided by Elm York Adult Home.

125. Upon information and belief, Elmhurst Care Center received payment from Medicaid for “day program” services it provided to Ms. Cohen in November 2010.

126. Upon information and belief, Defendant Elmhurst Care Center never advised Ms. Cohen of any changes in the rate of the services provided to her.

127. Upon information and belief, Defendant Elmhurst Care Center never informed Ms. Cohen of any communications it had with SSA or efforts to obtain coverage for the “day program” costs.

128. Upon information and belief, Defendant Elmhurst Care Center never provided Ms. Cohen invoices for outstanding balances owed for her “day program” participation.

129. Upon information and belief, Defendant Elmhurst Care Center never offered Ms. Cohen any financial assistance to cover the costs of the “day program” or discussed any of her needs for healthcare coverage.

130. Upon information and belief, no one at Defendant Elmhurst Care Center advised Ms. Cohen that she had any financial obligation to the facility for participating in the “day program.”

131. Defendant Elmhurst Care Center simply relied on Defendant Elm York LLC’s control over Ms. Cohen to extract payments for “day program” fees, notwithstanding Plaintiff’s failure to agree to those payments.

132. Ms. Cohen’s admission agreement states unequivocally that, with respect to payments for outside service providers, Elm York Adult Home “will not be involved in payments.”

133. Ms. Cohen’s admission agreement states that she would not be assessed any “additional charges.”

134. However, Defendant Elmhurst Care Center collected nearly \$100 for *each day* that Ms. Cohen attended the “day program” after Administrator Amsel wrote out checks to Elmhurst Care Center from Ms. Cohen’s checkbook, which he kept locked in his personal office.

135. Prior to February 22, 2011, Administrator Amsel had never advised Ms. Cohen of any outstanding “day program” fees owed to Defendant Elmhurst Care Center.

136. Elmhurst Care Center would not have obtained payment from Ms. Cohen but for Administrator Amsel's control over Ms. Cohen's checkbook and other unlawful conduct.

With The Assistance Of A Madison York Adult Home Employee, Elm York LLC Engaged In Unlawful Conduct And Exploited Its Control Over Ms. Cohen's Finances.

137. On February 14, 2011, two of Elm York Adult Home's employees – "Jonathan" of Elm York Adult Home and "David" from Madison York Adult Home (collectively, "the employees") – arrived at Defendant Elmhurst Care Center's "day program" to retrieve Ms. Cohen.

138. The employees had Ms. Cohen's IRA liquidation check in their possession. Ms. Cohen had no prior knowledge that Administrator Amsel had liquidated her IRA or that the liquidation check had arrived in the mail. She never authorized the employees to intercept her correspondence.

139. Upon information and belief, the employees told Ms. Cohen that she had to immediately leave the "day program" and accompany them to the bank to complete necessary paperwork.

140. The employees took Ms. Cohen into a branch of JP Morgan Chase Bank and informed the bank staff that Ms. Cohen wanted to open a checking account.

141. The employees turned over Ms. Cohen's IRA liquidation check to the bank staff.

142. Although Ms. Cohen did not want to open an account, she felt pressured to do so by the employees. She appended her signature to all of the documents that they directed her to sign.

143. Upon information and belief, Elm York LLC confiscated the debit card associated with the account that JP Morgan Chase subsequently mailed to Ms. Cohen.

144. Upon information and belief, Administrator Amsel told Ms. Cohen that she was “not allowed” to keep her own checkbook for the account.

145. Plaintiff never entered into any written agreement authorizing Administrator Amsel to exercise control over her checkbook.

146. Upon information and belief, Administrator Amsel periodically demanded that Ms. Cohen sign checks that he had written out to Elm York Adult Home and Defendant East Elmhurst Care Center.

147. Upon information and belief, on February 17, 2011, Administrator Amsel summoned Ms. Cohen to his office and presented her with a check for retroactive facility fees from the checkbook locked away in his office. Administrator Amsel had already written the check out to “ELM-YORK” in the amount of \$10,828 before ordering Ms. Cohen to append her signature.

148. Upon information and belief, on February 22, 2011, Administrator Amsel summoned Ms. Cohen to his office and presented her with a check for retroactive “day program” fees from the checkbook locked away in his office. Administrator Amsel had already written the check out to “ELMHURST CARE CENTER” in the amount of \$6,250.13 before ordering Ms. Cohen to append her signature.

149. Upon information and belief, on March 1, 2011, Administrator Amsel summoned Ms. Cohen to his office and presented her with a check for “day program” fees from the checkbook locked away in his office. Administrator Amsel had already written the check out to “ELMHURST CARE CENTER” in the amount of \$2,800 before ordering Ms. Cohen to append her signature.

150. Ms. Cohen signed all of these checks because she was pressured to do so by Elm York Adult Home's staff, including Administrator Amsel and the case worker responsible for coordinating her benefits, healthcare, and enrichment activities.

151. After Administrator Amsel's initial demand that she sign a check to cover "day program" expenses, Ms. Cohen continually asked Mr. Strenger for assistance in obtaining health insurance coverage that could be applied to her "day program" fees.

152. Upon information and belief, neither Mr. Strenger nor Ms. Cohen's case manager ever advised Ms. Cohen of her eligibility for coverage under any available government programs.

153. Despite Plaintiff's requests, Administrator Amsel did not relinquish control over Ms. Cohen's checkbook until her attorney demanded that he return it to her.

The Department Investigated Elm York Adult Home's Actions And Issued Numerous Violations Against The Facility For Its Misconduct.

154. On or about March 14, 2011, Ms. Cohen lodged a written complaint with the Department's Adult Home Complaint Intake Unit against Elm York Adult Home.

155. Ms. Cohen's complaint alleged, among other things, that Elm York Adult Home's administrator violated Ms. Cohen's rights by: pressuring Ms. Cohen into signing complex financial documents that had the effect of liquidating the IRA; confiscating Ms. Cohen's incoming mail when the proceeds of the IRA liquidation arrived; instructing the facility's employees to open a checking account against Ms. Cohen's will; maintaining control over Ms. Cohen's bank account and using that control to force Ms. Cohen into paying inflated rents and "day program" fees; and failing to assist Ms. Cohen to obtain health care benefits after her previous Medicaid benefits expired, notwithstanding the facility's obligation to assist her under the Department regulations.

156. Upon information and belief, the Department conducted an investigation into Ms. Cohen's complaints at the facility in May 2011.

157. According to the Department's investigation report dated June 2, 2011, Elm York Adult Home's employees "pre-determined how to handle the funds received from the liquidation of [Ms. Cohen's] annuity" and maintained control over her checkbook until ordered to return it to Ms. Cohen by her attorney.

158. The investigation report concluded that Elm York Adult Home "failed to afford [Ms. Cohen] the right to receive mail, or any other correspondence, unopened and without interception or interference."

159. The investigation report further stated that Elm York Adult Home "collected a higher monthly rate ... by executing a new admission agreement with [Ms. Cohen], which was backdated to the date of [her] admission."

160. The Department's investigator found evidence that Elm York Adult Home "almost certainly backdated" inventory forms documenting Administrator Amsel's control over Ms. Cohen's checkbook.

161. The Department's investigator also found evidence that Elm York Adult Home received \$1,190 in facility fees for the month of November 2010 from HRA.

162. The Department issued violations against Elm York Adult Home based on its misconduct and violation of Ms. Cohen's rights.

163. The Department ordered Elm York Adult Home to change its policies to protect Ms. Cohen from ongoing violations of her rights.

164. The Department ordered Elm York Adult Home to pay Ms. Cohen restitution.

165. On November 4, 2011, the Department advised Ms. Cohen that it had upheld the violations issued against Elm York Adult Home even after the facility appealed the findings in two separate administrative proceedings.

Elm York LLC Failed to Provide Required, Housing-Related Services After Ms. Cohen Commenced This Action To Protect Her Rights.

166. Elm York LLC is required to assist Ms. Cohen “in making application for, and maintaining income entitlements and public benefits” as part of its case management services.

167. Elm York Adult Home’s facility fee includes payment for its provision of case management services.

168. Ms. Cohen has been eligible for healthcare benefits since at least March 2011.

169. Ms. Cohen advised Elm York LLC of one specific program for which she was eligible in April 2011.

170. Upon information and belief, Elm York LLC filled out an application for those benefits in May 2011 before Ms. Cohen commenced this litigation but failed to assist Ms. Cohen in securing those healthcare benefits after she filed her complaint in this action.

171. Elm York LLC presented a similar application form to Ms. Cohen on August 25, 2011. However, that document contained numerous factual errors.

172. Elm York LLC failed to assist Ms. Cohen in obtaining healthcare benefits. As a result, Ms. Cohen has incurred thousands of dollars in medical and emergency room fees which she cannot pay.

173. Upon information and belief, in September 2011, Ms. Cohen’s case manager advised Ms. Cohen to take public transportation to the local “Medicaid office” to “sort out” her own benefits needs and did not assist her in obtaining healthcare coverage.

174. Plaintiff has been eligible to receive public assistance payments to cover her facility fees since at least July 2011.

175. Elm York LLC has not assisted Ms. Cohen in applying for public assistance on Ms. Cohen's behalf.

176. As a result of Elm York LLC's refusal to assist Ms. Cohen in applying for public assistance, Ms. Cohen has incurred months of outstanding facility fees.

177. A representative from SSA advised Ms. Cohen on December 8, 2011 that Elm York LLC never completed the "disability eligibility" form required for Ms. Cohen to prove her eligibility for SSI payments.

178. As a result of Elm York LLC's retaliatory denial of case management services, Ms. Cohen has no income or healthcare benefits. She has also incurred months of outstanding facility fees.

Elm York LLC Threatened To Evict Plaintiff Shortly Before A Court Appearance In This Action.

179. On November 1, 2011, a staff member of Elm York Adult Home handed Ms. Cohen a notice of the facility's intention to evict her for failure to pay facility fees ("the 30 Day Notice").

180. Elm York LLC never advised Ms. Cohen's counsel of its intention to evict her, nor did it transmit a copy of the 30 Day Notice to counsel.

181. On November 2, 2011, Elm York LLC attended a conference before this Court to address matters related to this litigation.

182. Elm York LLC could, but has refused to, assist Ms. Cohen in applying for HRA payments to cover the unpaid facility fees identified in the 30 Day Notice.

Elm York LLC Incurred Fiduciary Obligations By Serving As Ms. Cohen's Agent And Based On The Parties' Special Relationship.

183. Elm York LLC acted as Ms. Cohen's agent with respect to, *inter alia*: (a) filing benefit applications, (b) liquidating her IRA, and (c) establishing a bank account and controlling the flow of funds therefrom.

184. Administrator Amsel maintained possession of Ms. Cohen's checkbook until her counsel demanded that he return it to her.

185. Plaintiff is not a sophisticated party. She was unable to relocate from her previous residence without receiving significant assistance from APS. The PER and her case manager's notes indicate that she requires assistance to complete basic financial calculations or transactions. She has never applied to a public benefits program on her own behalf and is unfamiliar with many routine financial terms as well as systems of public benefits.

186. Elm York LLC knew, based upon the PER provided at the time of her admission and its case manager's assessment, that Ms. Cohen's psychosocial impairments made her vulnerable to financial exploitation and coercion.

187. Ms. Cohen and Elm York LLC are *not* involved in an arms-length commercial relationship. Elm York LLC arranges many, if not most, of Ms. Cohen's basic needs for food, shelter, and medical care. It monitors Plaintiff's incoming mail, selects her roommate, offers her food at scheduled times each day, assigns her a seat for each meal, and requires her to sign in and out of the facility every time she enters or leaves the home. Ms. Cohen must even advise Elm York LLC if she intends to miss a single meal.

188. Under 18 NYCRR § 487.3(a), Elm York Adult Home is required to provide Plaintiff with, *inter alia*, "24-hour-a-day program[s] of supervision, care, and services."

189. Elm York LLC possesses superior knowledge of the income support entitlements and healthcare benefits available to incoming adult home residents.

190. Elm York LLC has an affirmative obligation to provide case management services to coordinate Plaintiff's physical and mental health needs as well as her income and public benefit entitlements.

191. Plaintiff justifiably reposed confidence in Elm York LLC and, based on its statutory and contractual obligations to coordinate her care and public benefits, she reasonably relied on its superior expertise and knowledge.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST MADISON YORK LLC
VIOLATION OF THE FAIR HOUSING ACT, 42 U.S.C. § 3604**

192. Plaintiff repeats and realleges each of the foregoing paragraphs of this Complaint as though fully set forth herein.

193. The Fair Housing Act prohibits persons from discriminating “in the sale or rental, or to otherwise mak[ing] unavailable or deny[ing], a dwelling to any buyer or renter because of a handicap of that buyer or renter.” 42 U.S.C. § 3604(f)(1)(A).

194. The Fair Housing Act also prohibits persons from making statements “with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on . . . handicap . . . or an intention to make any such preference, limitation, or discrimination.” 42 U.S.C. § 3604(c).

195. Under the Fair Housing Act, it is “unlawful, because of . . . handicap . . . to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development.” 24 C.F.R. § 100.70(a).

196. Under the Fair Housing Act, “It shall be unlawful, because of ... handicap ... to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.” 24 C.F.R. § 100.70(b).

197. For purposes of the Fair Housing Act, prohibited actions include “[e]mploying codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of ... handicap ... or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular ... handicap” 24 C.F.R. § 100.70(d).

198. The Fair Housing Act also prohibits housing providers from “[c]ommunicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of ... handicap” 24 C.F.R. § 100.70(c)(3).

199. Defendant Madison York LLC operates Madison York Adult Home, which is, a “dwelling” within the meaning of 42 U.S.C. § 3602(b).

200. Plaintiff has a “handicap” within the meaning of 42 U.S.C. § 3602(h). Plaintiff has been determined by a licensed psychiatrist to be a person with a developmental disability that substantially impairs major life activities.

201. Plaintiff was qualified to be admitted as a resident into Madison York Adult Home under the criteria set forth in the Department’s regulations.

202. Defendant Madison York LLC discriminated against Plaintiff based on her “handicap” by denying her admission into Madison York Adult Home based upon her perceived mental illness.

203. Defendant Madison York LLC implements a policy of diverting persons with perceived mental illness and psychiatric disabilities away from Madison York Adult Home and into Elm York Adult Home.

204. Defendant Madison York LLC assesses applicants to ascertain whether prospective residents have a mental illness for the purpose of denying admission into the facility. Among other things, Defendant Madison York LLC employs a screening process in which its employees ask potential residents questions to determine whether prospective residents have been prescribed psychotropic drugs.

205. Defendant Madison York LLC made rental property unavailable to Plaintiff and denied Plaintiff the opportunity to obtain the housing of her choice based on her disability in violation of 42 U.S.C. § 3604(f)(1)(A).

206. Defendant Madison York LLC's employees made statements indicating their preference to house persons who do not have psychiatric disabilities in violation of 42 U.S.C. § 3604(c).

207. Defendant Madison York LLC's actions have the effect of rejecting and segregating persons with psychiatric disabilities in violation of 24 C.F.R. § 100.70(a).

208. Through the actions described above, Defendant Madison York LLC acted deliberately, with discriminatory intent, and with reckless disregard for Plaintiff's rights.

209. Plaintiff is an "aggrieved person" within the meaning of 42 U.S.C. § 3602(i). As a proximate cause of Defendant Madison York LLC's discriminatory conduct, Plaintiff was denied the housing of her choice. Plaintiff was also denied the opportunity to live in as part of an integrated community and, instead, is isolated in a segregated adult home populated almost exclusively by other persons with psychiatric disabilities.

210. Defendant Madison York LLC's actions were intentional, wanton, malicious and in violation of the public interest, thus, entitling Plaintiff to punitive damages.

211. Pursuant to 42 U.S.C. § 3613(c), Plaintiff is entitled to actual damages, punitive damages, injunctive relief, reasonable attorney's fees, and costs associated with this action.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST MADISON YORK LLC
VIOLATION OF THE NEW YORK STATE HUMAN RIGHTS LAW, N.Y. EXEC. LAW § 296**

212. Plaintiff repeats and realleges each of the foregoing paragraphs of this Complaint as though fully set forth herein.

213. The New York State Legislature passed the New York State Human Rights Law (NYSHRL) "to assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life" N.Y. Exec. Law § 290(3). The NYSHRL specifically recognizes and declares that "the [] use and occupancy of housing accommodations ... without discrimination because of age ... or disability ... is ... a civil right." N.Y. Exec. Law § 291(2).

214. Plaintiff is a person with a "disability," because, as described above, she has an impairment "resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques" or "a record of such an impairment" or "a condition regarded by others as such an impairment." N.Y. Exec. Law § 292(21).

215. Plaintiff is covered by the housing discrimination provisions of the NYSHRL, "as they relate to age," because she is at least eighteen years old. N.Y. Exec. Law § 296(5)(f).

216. Madison York Adult Home is a "housing accommodation" covered under the NYSHRL because it is a "building, structure, or portion thereof which is used or occupied or

is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings.” N.Y. Exec. Law § 292(10).

217. The NYSHRL prohibits Defendant Madison York LLC from discriminating against individuals based on their disability and/or age. N.Y. Exec. Law § 296(5).

218. As a result of Defendant Madison York LLC’s conduct as described above, Defendant Madison York LLC discriminated against Ms. Cohen based on her disability and/or age.

219. Defendant Madison York LLC’s conduct was willful, intentional, and in reckless disregard of Plaintiff’s civil rights.

220. As a result of Defendant Madison York LLC’s conduct as described above, Plaintiff has suffered damages.

221. Plaintiff is therefore entitled to compensatory damages, punitive damages, injunctive relief, and reasonable attorney's fees, including costs.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST ELM YORK LLC
VIOLATION OF THE FAIR HOUSING ACT, 42 U.S.C. §§ 3604, 3605**

222. Plaintiff repeats and realleges each of the foregoing paragraphs of this Complaint as though fully set forth herein.

223. “It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.” 42 U.S.C. § 3601.

224. Defendant Elm York LLC operates Elm York Adult Home, which is a “dwelling” within the meaning of 42 U.S.C. § 3602(b).

225. Plaintiff is a resident of Elm York Adult Home.

226. Defendant Elm York LLC’s admission agreement is a rental agreement within the meaning of 42 U.S.C. § 3602(e).

227. Case management services are a “service or facility in connection with the dwelling” because they are (i) identified as an included service within the admission agreement and (ii) required to be provided by Elm York LLC pursuant to 18 NYCRR § 487.7(g) and corresponding portions of the New York Social Services Law.

228. Plaintiff has a “handicap” within the meaning of 42 U.S.C. § 3602(h). Plaintiff has been determined by a licensed psychiatrist to be a person with a developmental disability that substantially impairs major life activities.

229. Defendant Elm York LLC has discriminated against Plaintiff based on her “handicap” by targeting Plaintiff for a predatory rental transaction that, by reason of its grossly inflated facility fees and noncompliance with required, housing-related case management services and history of committing residents’ rights violations, provided Plaintiff with grossly inferior terms, conditions, and/or privileges on the basis of her “handicap.”

230. Through the actions described above, Defendant Elm York LLC acted deliberately, with discriminatory intent, and with reckless disregard for Plaintiff’s rights. Its actions were intended to and did exploit the need for case management assistance and supervision of “handicapped” persons seeking housing within the adult home setting.

231. Plaintiff is an “aggrieved person” within the meaning of 42 U.S.C. § 3602(i). As a proximate cause of Defendant Elm York LLC’s discriminatory conduct, Plaintiff has and continues to suffer economic losses and the deprivation of rights and protections guaranteed to her under the New York Social Services Law.

232. Defendant Elm York LLC’s actions were intentional, wanton, malicious and in violation of the public interest, thus, entitling Plaintiff to punitive damages.

233. Pursuant to 42 U.S.C. § 3613(c), Plaintiff is entitled to actual damages, punitive damages, injunctive relief, reasonable attorney's fees, and costs associated with this action.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST ELM YORK LLC
VIOLATION OF THE FAIR HOUSING ACT, 42 U.S.C. § 3617**

234. Plaintiff repeats and realleges each of the foregoing paragraphs of this Complaint as though fully set forth herein.

235. It is unlawful for any person "to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by" the Fair Housing Act. 42 U.S.C. § 3617.

236. The Fair Housing Act prohibits persons from "[r]etaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Fair Housing Act." 24 CFR § 100.400(c)(5).

237. Defendant Elm York LLC retaliated against Plaintiff after she commenced this litigation by refusing to provide essential, housing-related case management services required under 18 NYCRR 487.7(g)(vii).

238. Defendant Elm York LLC further retaliated against Plaintiff by threatening to evict her from the facility shortly before a scheduled court appearance in this action.

239. Defendant Elm York LLC's eviction threat was intended to and had the effect of intimidating Plaintiff who feared that she might suffer imminent homelessness.

240. Defendant Elm York LLC's eviction threat was never communicated to Plaintiff's counsel. Defendant Elm York LLC communicated its threat to Plaintiff directly to achieve its retaliatory ends.

241. Defendant Elm York LLC's refusal to provide mandated services has resulted in Plaintiff's loss of income support and healthcare benefits to which she is entitled.

242. Defendant Elm York LLC's retaliatory threat to evict Plaintiff, on the eve of a court appearance, was intended to pressure Plaintiff into discontinuing this litigation. Defendant Elm York LLC's threat was meant to and had the actual effect of causing Plaintiff to experience fear and intimidation.

243. Defendant Elm York LLC's conduct has been willful, intentional, and calculated to suppress Plaintiff's enforcement of her civil rights, thus, entitling Plaintiff to punitive damages.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST ELM YORK LLC
BREACH OF FIDUCIARY DUTY**

244. Plaintiff repeats and realleges each of the foregoing paragraphs of this Complaint as though fully set forth herein.

245. Under New York common law, an agent owes its principal a fiduciary duty.

246. Defendant Elm York LLC owed Plaintiff a fiduciary duty based upon the special relationship of the parties and Elm York Adult Home's acting as Plaintiff's agent with regard to numerous financial transactions.

247. Plaintiff justifiably reposed confidence in Defendant Elm York LLC.

248. Defendant Elm York LLC breached its obligations to Plaintiff by, *inter alia*:

- a. pressuring Plaintiff to sign complex financial documents for the purpose of liquidating her Individual Retirement Annuity that she could neither effectively review nor understand;
- b. misleading her as to the status of her public benefits and the facility's receipt of payments therefrom;

- c. using its employees, including Administrator Amsel, to pressure Plaintiff to attend a costly and unnecessary “day program” in which Defendant has a financial interest;
- d. using its employees to intercept Plaintiff’s incoming mail and take possession of her IRA liquidation check;
- e. using its employees and employees of Defendant Madison York LLC to force Plaintiff to open a checking account without obtaining independent advice or assistance on how to best provide for Plaintiff’s long-term needs;
- f. confiscating Plaintiff’s checkbook;
- g. backdating Plaintiff’s amended admission agreement;
- h. charging Plaintiff \$2335 in facility fees for the month of November 2010 after receiving payment of those fees from public assistance/HRA;
- i. collecting retroactive fees on behalf of Defendant Elmhurst Care Center that Plaintiff never agreed to pay;
- j. failing to comply with its obligation to provide case management services, including its obligations to: “establish[] linkages with and arrang[e] for services from public and private sources for income, health, mental health and social services” as required under 18 NYCRR § 487.7(g)(vii); “assist[] [Plaintiff] in obtaining and maintaining a primary physician or source of medical care of choice, which is responsible for the overall management of [Plaintiff’s] health

and mental health needs” as required under 18 NYCRR § 487.7(g)(viii); and “assist[] [Plaintiff] in making arrangements to obtain services, examinations and reports needed to maintain or document the maintenance of [Plaintiff’s] health or mental health” as required under 18 NYCRR § 487.7(g)(ix).

249. Plaintiff incurred substantial financial losses as a direct result of Defendant Elm York LLC’s breaches. Plaintiff: (a) was charged \$1,135 each month in excess rent charges; (b) paid \$2,335 in facility fees for November 2010 after Defendant Elm York received payment based upon Plaintiff’s public benefits; (c) paid more than \$9,050 for a “day program” offering services that Defendant promised to provide; and (d) continues to receive charges for medical expenses not covered by any health insurance. Plaintiff also faces significant tax penalties for the premature liquidation of her IRA and failure to file a timely income tax report.

250. Accordingly, Plaintiff is entitled to actual and consequential damages resulting from Defendant Elm York LLC’s breaches of its fiduciary obligations.

**AS AND FOR A SIXTH CAUSE OF ACTION AGAINST ELM YORK HOME LLC
BREACH OF CONTRACT**

251. Plaintiff repeats and realleges each of the foregoing paragraphs of this Complaint as though fully set forth herein.

252. Plaintiff entered into a valid contract, the admission agreement, with Defendant Elm York LLC.

253. Plaintiff dutifully performed her obligations thereunder.

254. Defendant failed to perform its obligations as set forth in the admission agreement. To wit, Defendant failed to provide case management services and “[a]n

organized and diversified program of individual and group activities” promised in the contract. Defendant also breached the provision of the admission agreement which provides that, with respect to outside service providers, the “facility will not be involved in payments unless requested by resident [sic].”

255. As a proximate cause of Defendant’s breaches of the admission agreement, Plaintiff has and continues to suffer damages, including the loss of healthcare benefits, unnecessary medical bills, and rent paid in excess of the facility fee established under the New York Social Services Law.

256. Accordingly, Plaintiff is entitled to actual and consequential damages resulting from Defendant’s breaches.

**AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST ELMHURST CARE CENTER
VIOLATION OF N.Y. GENERAL BUSINESS LAW § 349**

257. Plaintiff repeats and realleges each of the foregoing paragraphs of this Complaint as though fully set forth herein.

258. Section 349(a) of the New York General Business Law prohibits “[d]eceptive practices in the conduct of any business, trade or commerce or in the furnishing of any service.”

259. An individual “injured by reason of any violation of [New York General Business Law § 349(a)] may bring an action in his own name to enjoin such unlawful acts or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions.”

260. Defendant Elmhurst Care Center’s “day program” is a consumer-oriented business marketed to persons with disabilities who seek therapeutic and rehabilitative services.

261. Defendant Elmhurst Care Center's conduct has a broad impact on consumers at large.

262. Defendant Elmhurst Care Center engages in deceptive practices towards consumers at large by, *inter alia*: (i) contracting to provide unnecessary and duplicative services; (ii) promising to provide adult home residents with services that are inconsistent with the Department's adult home admission criteria; and (iii) targeting indigent persons with psychiatric disabilities for services that are unnecessary, duplicative, and of questionable therapeutic or rehabilitative value.

263. In addition to the conduct described above, Defendant Elmhurst Care Center engaged in deceptive practices towards Plaintiff by, *inter alia*: (i) providing her with a contract lacking essential terms; (ii) failing to inform her of payments collected on her behalf; (iii) double-billing Plaintiff for payments received from Medicaid in November 2010; and (iv) using employees of Elm York Adult Home to collect fees that Plaintiff never contracted to pay.

264. Defendant Elmhurst Care Center knowingly and intentionally induces members of the public, including Plaintiff and other adult home residents, to enter into contracts for, and authorize Medicaid and other third-party payment for, services that are unnecessary, duplicative, and inconsistent with the Department's adult home admission criteria.

265. Defendant Elmhurst Care Center knowingly and intentionally targets persons with disabilities, in particular the nearly 200 persons with psychiatric disabilities who reside at Elm York Adult Home, because Defendant believes them to be unsophisticated and easily deceived consumers.

266. Defendant Elmhurst Care Center committed the above-described acts willfully and/or knowingly.

267. Plaintiff has been directly and proximately harmed by Defendant Elmhurst Care Center's conduct because she paid \$9,050 for "day program" services that were unnecessary, duplicative, and of questionable value.

268. Other members of the public have been harmed by Defendant Elmhurst Care Center's conduct because they have paid or have authorized third party payments for "day program" services that were unnecessary, duplicative, and of questionable value.

269. Plaintiff is thus entitled to the relief requested below including injunctive relief, the greater of minimum or actual damages, costs, and attorney's fees.

**AS AND FOR A EIGHTH CAUSE OF ACTION AGAINST ELMHURST CARE CENTER
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

270. Plaintiff repeats and realleges each of the foregoing paragraphs of this Complaint as though fully set forth herein.

271. As set forth above, Defendant Elm York LLC owed Plaintiff a fiduciary duty.

272. As set forth above, Defendant Elm York LLC breached its fiduciary duties to Plaintiff.

273. Defendant Elmhurst Care Center knowingly induced and participated in Defendant Elm York LLC's breach of its duties owed to Plaintiff by, *inter alia*: (i) deceiving Plaintiff and other adult home residents as to the nature of the "day program" services it provides; (ii) providing Plaintiff with an invalid service agreement and using Administrative Amsel's control over Plaintiff to collect on that unenforceable contract; and (iii) contracting to provide services, at additional cost, that Elm York LLC is required to provide.

274. Plaintiff suffered damages flowing directly from Defendant Elmhurst Care Center's aiding and abetting of Defendant Elm York LLC's breach. Plaintiff has lost more than \$9,050 in fees that she paid to Defendant Elmhurst Care Center for its "day program" services.

275. Accordingly, Plaintiff is entitled to actual and consequential damages resulting from Defendant's aiding and abetting of Elm York LLC's breaches.

**AS AND FOR A NINTH CAUSE OF ACTION AGAINST ELMHURST CARE CENTER
RESTITUTION BASED ON UNJUST ENRICHMENT**

276. Plaintiff repeats and realleges each of the foregoing paragraphs of this Complaint as though fully set forth herein.

277. Plaintiff and Defendant Elmhurst Care Center never entered into an enforceable contract.

278. Defendant Elmhurst Care Center exploited Elm York Adult Home's control over Plaintiff and unlawful confiscation of her checkbook to receive payments of \$9,050 from Plaintiff for its "day program" services.

279. Defendant Elmhurst Care Center received payments for services it provided to Plaintiff in November 2010 from Medicaid.

280. Defendant Elmhurst Care Center charged Plaintiff approximately \$100 per day, including days for which it received payments from Medicaid.

281. Defendant Elmhurst Care Center never provided Plaintiff with skilled nursing care.

282. Defendant Elmhurst Care Center provided services that were unnecessary and duplicative of services that Elm York Adult Home is required to provide and that were of questionable value.

283. Defendant Elmhurst Care Center never assisted Plaintiff in obtaining Medicaid and the other financial assistance identified in the Adult Day Health Program Agreement.

284. Defendant Elmhurst Care Center benefitted from its receipt of Plaintiff's payments.

285. Under principles of equity, the Defendant Elmhurst Care Center should not be permitted to retain such payments, totaling \$9,050.

JURY DEMAND

286. Plaintiff hereby demands a jury trial in this proceeding.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

- a. A judgment declaring that Defendant Madison York LLC has violated the Fair Housing Act;
- b. A judgment declaring that Defendant Madison York LLC has violated the New York State Human Rights Law;
- c. A judgment declaring that Defendant Elm York LLC violated the Fair Housing Act;
- d. A judgment declaring that Defendant Elm York LLC breached its fiduciary duty;
- e. A judgment declaring that Defendant Elm York LLC breached the admission agreement;
- f. A judgment declaring that Defendant Elmhurst Care Center violated New York General Business Law § 349;
- g. A judgment declaring that Defendant Elmhurst Care Center aided and abetted Defendant Elm York LLC's breach of its fiduciary duty;
- h. A judgment declaring that the Adult Day Health Program Agreement is void and unenforceable;
- i. A judgment declaring that Defendant Elmhurst Care Center has been unjustly enriched;
- j. An order enjoining and directing Defendant Elm York LLC to provide the case management services required under the terms of Plaintiff's admission agreement and 18 NYCRR § 487.7(g), including, but not limited to, assistance

in “arranging for services for public and private sources for income, health, mental health, and social services;”

- k. Actual and consequential damages pursuant to all causes of action;
- l. Actual and/or minimum damages, whichever are greater, pursuant to N.Y. Gen. Bus. Law § 349(h);
- m. Punitive damages pursuant to the 42 U.S.C. § 3613(c)(1) and N.Y. Executive Law § 297(9);
- n. Costs and attorney’s fees pursuant to 42 U.S.C. § 3613(c)(2) and N.Y. Executive Law § 297(10); and
- o. Costs and expenses pursuant to all causes of action; and
- p. All such other relief deemed just and equitable by the Court.

Dated: New York, New York
January 9, 2011

By:



Barbara Graves-Poller, of counsel to
Jeanette Zelhof, Esq.
MFY LEGAL SERVICES, INC.
Attorneys for Plaintiff
299 Broadway, 4th Floor
New York, NY 10007
Tel: (212) 417-3724

Attorneys for Plaintiff Cindy Cohen