

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

MEYER KRAMER, MARCIA GOTTLIEB, ELLEN SCHISCHA,
and BENJAMIN SCHISCHA,

14 Civ. 1344

Plaintiffs,
- against -

COMPLAINT

CHESTY PROPERTIES LLC, as owner and/or operator of
Regency of Boro Park, GITTI SCHOENBERGER, as owner
and/or operator and/or administrator of Regency of Boro Park, and
ISAAC FRIEDMAN, as administrator of Regency of Boro Park,

Defendants.

-----X

Plaintiffs Meyer Kramer, Marcia Gottlieb, Ellen Schischa, and Benjamin Schischa
bring this action for injunctive and declaratory relief and damages and allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this civil rights action for discrimination in violation of the
federal Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.*, the New York State
Human Rights Law, N.Y. Exec. L. § 290, *et. seq.*, and the New York City Human Rights
Law, N.Y.C. Admin. Code § 8-101, *et. seq.*

2. Plaintiffs are residents of Regency of Boro Park (“Regency”), an adult
care facility located in Brooklyn, New York and owned, operated and/or managed by
Defendants. Plaintiffs use wheelchairs because of their disabilities and have done so for
all the years that they have lived at Regency.

3. In fall 2013, when Regency changed ownership, Defendants began
instituting policies that discriminate against residents who use wheelchairs. Residents
who use wheelchairs were not allowed in the common areas on the first floor, but were

instead relegated to the basement. They have been discouraged or banned from attending social events at the home. Defendants have told residents, including Plaintiffs, that they have to leave Regency because they use wheelchairs. Plaintiffs have each received a termination notice dated January 15, 2014 with a “discharge” date of March 1, 2014. Plaintiffs’ status as “chronically chairfast” was cited as a basis for terminating their residencies.

4. Plaintiffs have requested that Defendants make a reasonable accommodation that would allow them to stay at Regency. Defendants have refused to grant Plaintiffs’ request for a reasonable accommodation in violation of the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.*, the New York State Human Rights Law, N.Y. Exec. L. § 290 *et. seq.*, and the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 *et. seq.*

5. Defendants have intentionally and willfully discriminated against Plaintiffs and acted with disregard for their rights on the basis of disability in violation of the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.*, the New York State Human Rights Law, N.Y. Exec. L. § 290 *et. seq.*, and the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 *et. seq.*

6. This action seeks to (a) enjoin Defendants from discriminating against Plaintiffs based on their disabilities by granting them reasonable accommodations, (b) enjoin Defendants from discriminating against Plaintiffs because of their disabilities in the terms, conditions, or privileges of their housing and in the provision of services or facilities in connection with their housing, and (c) compensate Plaintiffs for the damages they have suffered. Plaintiffs seek attorney’s fees and costs.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the claims asserted here pursuant to 28 U.S.C. §§ 1331, 1343, 2201 and 42 U.S.C. § 3613. This court has supplemental jurisdiction over the New York State and New York City law claims pursuant to 28 U.S.C. § 1367.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because both Defendant corporations reside and do business in the district. Defendants own, operator or manage Regency within Kings County. Additionally, a substantial part of the events and/or omissions underlying this action occurred in the district.

THE PARTIES

9. Plaintiff MEYER KRAMER resides at Regency, located at 5110 19th Avenue in Brooklyn, New York. Mr. Kramer has physical and mental impairments that substantially limit one or more of his major life activities. Mr. Kramer uses a wheelchair.

10. Plaintiff MARCIA GOTTLIEB resides at Regency, located at 5110 19th Avenue in Brooklyn, New York. Ms. Gottlieb has physical impairments that substantially limit one or more of her major life activities. Ms. Gottlieb uses a wheelchair.

11. Plaintiff ELLEN SCHISCHA resides at Regency, located at 5110 19th Avenue in Brooklyn, New York. Ms. Schischa has physical and mental impairments that substantially limit one or more of her major life activities. Ms. Schischa uses a wheelchair.

12. Plaintiff BENJAMIN SCHISCHA resides at Regency of Boro Park located at 5110 19th Avenue in Brooklyn, New York. Mr. Schischa has physical and

mental impairments that substantially limit one or more of his major life activities. Mr. Schischa uses a wheelchair.

13. Upon information and belief, Defendant CHESTY PROPERTIES LLC is a domestic not-for-profit corporation incorporated in the State of New York and owns and/or operates Regency.

14. Upon information and belief, Defendant GITTA SCHOENBERGER is an owner, operator, or administrator of Regency.

15. Upon information and belief, Defendant ISAAC FRIEDMAN is the administrator of Regency and manages its day-to-day operations.

FACTUAL ALLEGATIONS

16. Plaintiffs are residents of Regency, a 200-bed adult care facility located at 5110 19th Avenue, Brooklyn, New York 11204.

17. Upon information and belief, Regency's name may have recently changed to "Belvedere of Boro Park," but Plaintiffs currently pay their facility fees to "Regency of Boro Park."

18. An adult care facility provides "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." Social Services Law § 2(21).

19. Regency is an adult home, a type of adult care facility "established and operated for the purpose of providing long-term residential care, room, board,

housekeeping, personal care and supervision to five or more adults unrelated to the operator.” SSL § 2(25).

20. Upon information and belief, in or around fall 2013, Regency was purchased by Defendants CHESTY PROPERTIES LLC and GITTI SCHOENBERGER.

21. Upon information and belief, in or around fall 2013, Defendants began telling residents who use wheelchairs and their family members and aides that they should not use the common areas on the first floor of the facility.

22. Upon information and belief, in or around fall 2013, Defendants began telling residents who use wheelchairs and their family members and aides that they should not attend certain social events in the dining room.

23. Upon information and belief, in or around fall 2013, Defendants began informing residents who use wheelchairs and their family members that the residents would have to move out of Regency because they used wheelchairs.

24. Upon information and belief, between fall 2013 and the present, at least three residents who used wheelchairs moved out of the facility due to pressure by Defendants.

25. Upon information and belief, Defendants discourage applications for residency at Regency from people who use wheelchairs and express a preference or limitation on residency at Regency to people who do not use wheelchairs.

26. Under the Social Services Law, the New York State Department of Health (“the DOH”) supervises and regulates adult care facilities. See also 1997 N.Y. Laws 436 § 122(e) (transferring authority from the now defunct Department of Social Services to the DOH).

27. The Social Services regulations prohibit adult care facilities from admitting or retaining residents who are “chronically chairfast” or who “chronically require[] the physical assistance of another person.” See 18 NYCRR § 487.4(b)(9) and (10).

28. On or around January 15, 2014, Defendants issued to each Plaintiff a Notification of Termination citing § 487.4(b)(9) and (10).

29. Upon information and belief, the DOH is aware that residents who use wheelchairs live at Regency and has allowed them to continue to reside there despite the existence of regulations prohibiting their admission and retention.

30. Upon information and belief, the DOH has not taken any enforcement action against the operators of Regency or other adult care facilities for retaining such residents.

31. Upon information and belief, the DOH does not prohibit operators of adult care facilities from retaining residents who receive services from aides or home attendants.

32. An adult home operator may seek a waiver of any regulatory requirements not based in statute by submitting a written request to the DOH. See 18 NYCRR § 487.3(g). The request must explain why the waiver is necessary and describe what the operator will do “to achieve or maintain the intended outcome of the regulation and to protect the health, safety and well-being of the residents.” Id.

33. Plaintiffs have each requested that, as a reasonable accommodation, Defendants seek a waiver of the regulations that prohibit retention of residents who are

“chronically chairfast” and who “chronically require[] the physical assistance of another person in order to walk.”

34. Defendants have failed to respond to Plaintiffs’ requests for reasonable accommodations. The failure to respond to a reasonable accommodation request is equivalent to denying the request.

35. Defendants’ refusal to grant Plaintiffs’ reasonable accommodation requests by seeking a waiver of the admission regulations denies them continued enjoyment of and access to their dwelling.

36. To be fully integrated into the community at Regency, Plaintiffs should not be subjected to policies that unnecessarily segregate them from residents who do not use wheelchairs or otherwise discriminate against them based on their disabilities that require them to use wheelchairs.

37. Plaintiffs’ requests for reasonable accommodations are neither unreasonable financially nor an administrative burden because Defendants would merely have to make a written request to the DOH. It is reasonable to expect that the DOH would grant the waiver request given its awareness of Plaintiffs’ continued residency at Regency and because a denial of the waiver would result in illegal discrimination against people with disabilities.

38. Defendants’ intent to evict Plaintiffs when they could seek a waiver of the relevant regulations, where Plaintiffs have safely resided at Regency for many years, discriminates against Plaintiffs based on their disabilities.

Plaintiff Meyer Kramer

39. Meyer Kramer is 95 years old. He has resided at Regency since 2007.

40. In or around 2006, Mr. Kramer developed a disability that required him to use a wheelchair for mobility. Around the same time, he began using the services of a private aide.

41. Mr. Kramer receives 24-hour services from a private, non-certified aide that is paid for by family members.

42. Upon information and belief, sometime between fall 2013 and the present, Mr. Kramer's home health aide brought him to the Regency dining room for a party. The aide was told that Mr. Kramer should not attend the party and to come back at the regularly scheduled mealtime.

43. In or around January 2014, Tamar Klein, daughter and power of attorney for Mr. Kramer, received a Notification of Termination of Mr. Kramer's admission agreement from Regency.

44. The Notification was dated January 15, 2014 and gave a "discharge" date of March 1, 2014.

45. The Notification listed three reasons for the termination: (1) Mr. Kramer was "in need of continual medical or nursing care or supervision as provided by facilities licensed pursuant to article 28 of the Public Health Law, or licensed or operated pursuant to articles 19, 23, 29 and 31 of the Mental Hygiene Law," citing 18 NYCRR §487.4(b)(1); (2) Mr. Kramer was "chronically chairfast and unable to transfer, or chronically requires the physical assistance of another person to transfer," citing 18 NYCRR §487.4(b)(9); and (3) Mr. Kramer "chronically requires the physical assistance of another person in order to walk," citing 18 NYCRR §487.4(b)(10).

46. In or around early February 2014, Ms. Klein spoke with Mr. Friedman about the Notification. She asked him for more time to find a new home for her father. Mr. Friedman responded that Mr. Kramer could move to an unlicensed facility owned by Defendants, the Nautilus Hotel.

47. According to its website, the Nautilus Hotel is a “privately owned luxury resort for active adults 55 years and older” located in Atlantic Beach, New York.

48. In a letter dated February 14, 2014, Mr. Kramer by his attorneys faxed and mailed Defendants a written request for a reasonable accommodation in response to the Notification.

49. In his reasonable accommodation request, Mr. Kramer asked that Defendants seek a waiver of 18 NYCRR § 487.4(b)(9) and (10) pursuant to § 487.3(g).

50. In his reasonable accommodation request, Mr. Kramer noted that he did not require continual medical or nursing care pursuant to 18 NYCRR §487.4(b)(1) and that his health needs were met by independently provided homecare and medical providers.

51. Mr. Kramer requested a response to his reasonable accommodation request in writing by February 20. To date, he has not received a response.

52. In or around early February 2014, Ms. Klein spoke with the administrator about the Notification of Termination. He told her that her father could move to another facility owned by the same operator in another neighborhood in Brooklyn that is further away from Ms. Klein.

Plaintiff Marcia Gottlieb

53. Ms. Gottlieb is 56 years old. She has multiple sclerosis. She has used home attendant services for more than 20 years.

54. Ms. Gottlieb has resided at Regency since 2004. In or around 2004, Ms. Gottlieb began using a wheelchair for mobility.

55. When she could no longer transfer, Ms. Gottlieb began using a Hoya lift to transfer to and from her wheelchair.

56. A few years after she moved to Regency, Ms. Gottlieb had a religious wedding ceremony with a fellow Regency resident, Aaron Blasbalg.

57. Ms. Gottlieb has family and many friends in the neighborhood and attends synagogue at Regency a few times daily.

58. Ms. Gottlieb uses independently provided home attendant services paid for through Medicaid.

59. Ms. Gottlieb receives Social Security Disability benefits and Supplemental Security Income (“SSI”).

60. In or around fall 2013, the wife of the previous operator of Regency, Rivky Moskowitz, visited Regency. She told Ms. Gottlieb that the new owners might not want wheelchairs in the first floor lobby. She suggested that Ms. Gottlieb avoid the first floor lobby to please the new owners.

61. In or around fall 2013, Ms. Gottlieb heard that a resident who used a wheelchair was banned from the first floor lobby unless she could sit in a regular chair. Since that time, Ms. Gottlieb has tried avoid the first floor lobby.

62. In or around fall 2013, Ms. Gottlieb’s mother, Libby Fink, spoke with Gitti Schoenberger and reintroduced herself as they had known each other many years

ago. Ms. Fink told Ms. Schoenberger that Ms. Gottlieb was her daughter. At the end of the conversation, Ms. Schoenberger told Ms. Fink, “In three or four months, I won’t have any wheelchairs here. You should know that.”

63. In a letter dated November 27, 2013, Ms. Fink pleaded with Ms. Schoenberger to let Ms. Gottlieb stay at Regency and not to place or threaten to place her in a nursing home. She noted that the DOH had “made it possible for [Ms. Gottlieb] to stay all the years.” Ms. Fink noted the importance of Ms. Gottlieb’s religious marriage to Mr. Balsalg. She asked that Ms. Gottlieb “be treated with respect and to live with family where she is happy and where she wishes . . .”

64. Before Regency changed ownership, Ms. Gottlieb used to invite a singer to come and perform for residents in the first floor lobby. Residents who used wheelchairs and residents who did not use wheelchairs and members of the community could all attend. Ms. Gottlieb no longer attempts to plan such events.

65. Ms. Gottlieb attended a Chanukah party at Regency late last year, to which community members and prospective residents were invited. When she came near a photographer who was taking pictures, she was suddenly pushed down the hallway in her wheelchair away from the photographer by Ms. Schoenberger’s son, whom she did not know nor had she requested his assistance. She felt certain that he had pushed her down the hallway to ensure that she would not be in any of the photographs of the event.

66. In or around January 2014, Ms. Fink, received a Notification of Termination of Ms. Gottlieb’s admission agreement from Regency.

67. Even though Ms. Gottlieb makes her own decisions and does not have a designated guardian or representative, she was not given a copy of the Notification of

Termination until a few weeks later. When she asked to speak to Ms. Schoenberger or Mr. Friedman about it, she was told they would not speak with her.

68. The Notification was dated January 15, 2014 and gave a “discharge” date of March 1, 2014.

69. The Notification listed four reasons for the termination: (1) Ms. Gottlieb was “in need of continual medical or nursing care or supervision as provided by facilities licensed pursuant to article 28 of the Public Health Law, or licensed or operated pursuant to articles 19, 23, 29 and 31 of the Mental Hygiene Law,” citing 18 NYCRR §487.4(b)(1); (2) Ms. Gottlieb was “chronically chairfast and unable to transfer, or chronically requires the physical assistance of another person to transfer,” citing 18 NYCRR §487.4(b)(9); (3) Ms. Gottlieb “chronically requires the physical assistance of another person in order to walk,” citing 18 NYCRR §487.4(b)(10); and (4) Ms. Gottlieb is “dependent on medical equipment,” citing 18 NYCRR §487.4(b)(14).

70. In a letter dated February 13, 2014, Ms. Gottlieb requested that she be allowed to stay at Regency as long as possible so that she could be with her husband. She noted that if she had to move to a nursing home, she would lose her home attendant, “on whom [she] depend[s] every minute.”

71. In the February 13 letter, Ms. Gottlieb noted that Ms. Schoenberger had refused to speak with her. She stated: “I [cannot] walk because I have MS, but I’m in control of my mental faculties and responsible for my decisions. I ask you to respect that.”

72. In a letter dated February 24, 2014, Ms. Gottlieb by her attorneys faxed and mailed Defendants a written request for a reasonable accommodation in response to the Notification.

73. In her reasonable accommodation request, Ms. Gottlieb asked that Defendants seek a waiver of 18 NYCRR § 487.4(b)(9) and (10) pursuant to § 487.3(g).

74. In her reasonable accommodation request, Ms. Gottlieb noted that she did not require continual medical or nursing care pursuant to 18 NYCRR §487.4(b)(1), that she met the exceptions to §487.4(b)(14), and that her health needs were met by independently provided homecare and medical providers.

75. Ms. Gottlieb requested a response to her reasonable accommodation request in writing by noon on February 27. To date, she has not received a written response.

76. However, on February 26, 2014, Assistant Administrator and Director of Marketing, Eva Mordechai, came to Ms. Gottlieb's room while Ms. Fink was visiting. Ms. Mordechai told them that she was working to find a "wonderful place" for Ms. Gottlieb to live. She told Ms. Gottlieb that she might have to move as early as the week of March 3. Ms. Gottlieb responded that she did not want to go at this time and that she wanted to be with her husband.

77. Upon information and belief, the prior operator of Regency sought and obtained a waiver of certain retention regulations from the DOH so that Ms. Gottlieb could remain there.

78. Ms. Gottlieb previously complained to the DOH about the prior operator's violations of her rights, including her right to receive services from a home attendant. In

response to her complaint, a DOH inspector visited her at Regency and instructed the operator to allow her home attendant to provide her with services. The inspector was aware that Ms. Gottlieb used a wheelchair and a Hoya lift.

Plaintiff Ellen Schisca

79. Ellen Schisca is 79 years old. She has resided at Regency with her husband, Benjamin Schisca, since 2011.

80. Ever since Ms. Schisca has resided at Regency, she has used a wheelchair for mobility and has been unable to transfer to and from her wheelchair.

81. Ms. Schisca receives 24-hour services from a home health aide that is paid for through Medicaid.

82. Upon information and belief, when Ms. Schisca's sister visited her in October 2013, she was told that Ms. Schisca and her husband would have to leave Regency.

83. In or around January 2014, Regency sent a Notification of Termination of Ms. Schisca's admission agreement to her family members.

84. The Notification was dated January 15, 2014 and gave a "discharge" date of March 1, 2014.

85. The Notification listed three reasons for the termination: (1) Ms. Schisca was "in need of continual medical or nursing care or supervision as provided by facilities licensed pursuant to article 28 of the Public Health Law, or licensed or operated pursuant to articles 19, 23, 29 and 31 of the Mental Hygiene Law," citing 18 NYCRR §487.4(b)(1); (2) Ms. Schisca was "chronically chairfast and unable to transfer, or chronically requires the physical assistance of another person to transfer," citing 18

NYCRR §487.4(b)(9); and (3) Ms. Schischa “chronically requires the physical assistance of another person in order to walk,” citing 18 NYCRR §487.4(b)(10).

86. In a letter dated February 14, 2014, Ms. Schischa by her attorneys faxed and mailed Defendants a written request for a reasonable accommodation in response to the Notification.

87. In her reasonable accommodation request, Ms. Schischa asked that Defendants seek a waiver of 18 NYCRR § 487.4(b)(9) and (10) pursuant to § 487.3(g).

88. In her reasonable accommodation request, Ms. Schischa noted that she did not require continual medical or nursing care pursuant to 18 NYCRR §487.4(b)(1) and that her health needs were met by independently provided homecare and medical providers.

89. Ms. Schischa requested a response to her reasonable accommodation request in writing by February 20. To date, she has not received a response.

Plaintiff Benjamin Schischa

90. Benjamin Schischa is 93 years old. He has resided at Regency since 2011.

91. Ever since Mr. Schischa has resided at Regency, he has used a wheelchair for mobility and has been unable to transfer to and from his wheelchair.

92. Mr. Schischa receives 24-hour services from a home health aide that is paid for through Medicaid.

93. In or around January 2014, Regency issued a Notification of Termination of Mr. Schischa’s admission agreement to family members of Mr. Schischa.

94. The Notification was dated January 15, 2014 and gave a “discharge” date of March 1, 2014.

95. The Notification listed three reasons for the termination: (1) Mr. Schischa was “in need of continual medical or nursing care or supervision as provided by facilities licensed pursuant to article 28 of the Public Health Law, or licensed or operated pursuant to articles 19, 23, 29 and 31 of the Mental Hygiene Law,” citing 18 NYCRR §487.4(b)(1); (2) Mr. Schischa was “chronically chairfast and unable to transfer, or chronically requires the physical assistance of another person to transfer,” citing 18 NYCRR §487.4(b)(9); and (3) Mr. Schischa “chronically requires the physical assistance of another person in order to walk,” citing 18 NYCRR §487.4(b)(10).

96. In a letter dated February 14, 2014, Mr. Schischa by his attorneys faxed and mailed Defendants a written request for a reasonable accommodation in response to the Notification.

97. In his reasonable accommodation request, Mr. Schischa asked that Defendants seek a waiver of 18 NYCRR § 487.4(b)(9) and (10) pursuant to § 487.3(g).

98. In his reasonable accommodation request, Mr. Schischa noted that she did not require continual medical or nursing care pursuant to 18 NYCRR §487.4(b)(1) and that his health needs were met by independently provided homecare and medical providers.

99. Mr. Schischa requested a response to her reasonable accommodation request in writing by February 20. To date, he has not received a response.

**FIRST CAUSE OF ACTION—FAIR HOUSING AMENDMENTS ACT,
42 U.S.C. § 3601, et seq.**

100. Plaintiffs repeat and reallege the foregoing paragraphs of this Complaint as though fully set forth herein.

101. Plaintiffs are persons with a “handicap” pursuant to 42 U.S.C. § 3602(h).

102. Defendants own and/or lease the subject dwelling, as defined by Section 802(b) of the Fair Housing Act, 42 U.S.C. § 3602(b), to include “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.”

103. Defendants, as the owners and/or operators of the housing accommodations at 5110 19th Avenue, Brooklyn, NY 11204, are subject to the Fair Housing Act, 42 U.S.C. § 3601, et. seq., and are not exempt from the “reasonable accommodation” requirement.

104. Defendants’ conduct, as described above, constitutes discrimination against Plaintiffs in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap pursuant to 42 U.S.C. § 3604(f)(2).

105. Defendants’ conduct, as described above, constitutes discrimination against Plaintiffs in the sale or rental, or in otherwise making unavailable or denying, a dwelling to any renter because of a handicap pursuant to 42 U.S.C. § 3604(f)(1).

106. Defendants’ conduct, as described above, constitutes discrimination against Plaintiffs as persons with disabilities in refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling pursuant to 42 U.S.C. § 3604(f)(3)(B).

107. Defendants’ conduct, as described above, constitutes making, printing, or publishing, or causing to be made, printed, or published a notice, statement, or advertisement, with respect to the rental of a dwelling that indicates a preference,

limitation, or discrimination based on disability, in violation of Section 804(c) of the Fair Housing Act, 42 U.S.C. § 3604(c).

108. As a result of Defendants' conduct as described above, Plaintiffs are aggrieved persons as defined in 42 U.S.C. § 3602(i). Plaintiffs have been injured by Defendants' discriminatory conduct, and have suffered damages as a result.

109. Defendants' conduct was intentional, willful, and made in disregard for the rights of others.

110. Accordingly, under 42 U.S.C. § 3613(c), Plaintiffs are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorney's fees and costs.

**SECOND CAUSE OF ACTION—NEW YORK STATE HUMAN RIGHTS LAW,
N.Y. EXEC. L. § 290, et seq.**

111. Plaintiffs repeat and reallege the foregoing paragraphs of this Complaint as though fully set forth herein.

112. Plaintiffs are persons with disabilities pursuant to N.Y. Exec. L. § 292.

113. Defendants own and lease the subject housing accommodation, as defined by Article 15 of the New York Executive Law Section § 292(10) to include "any building . . . which is used or occupied . . . as the home, residence or sleeping place of one or more human beings."

114. Defendants, as the owners, lessees, sub-lessees, assignees, or managing agents of, or other persons having the right of ownership of or possession of or the right to rent or lease housing accommodations at 5110 19th Avenue, Brooklyn, NY 11204, are subject to the New York State Human Rights Law, N.Y. Exec. L. § 290 et. seq., and are not exempt from the "reasonable accommodation" requirement.

115. Defendants' conduct, as described above, constitutes discrimination against Plaintiffs by refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford said persons with disabilities equal opportunity to use and enjoy a dwelling pursuant to N.Y. Exec. L. § 296(18)(2).

116. Defendants' conduct, as described above, constitutes discrimination in the terms, conditions or privileges of rental or lease of a housing accommodation or in the furnishing of facilities or services in connection therewith based on disability in violation of Article 15 of the New York Executive Law § 296(5)(a)(2).

117. Defendants' conduct, as described above, constitutes printing or circulating or causing to be printed or circulated a statement, advertisement, publication, or using a form of application for rental, or making a record or inquiry in conjunction with a prospective rental, which expresses, directly or indirectly, a limitation, specification, or discrimination, or an intent to make such limitation, specification, or discrimination based on disability, in violation of Article 15 of the New York Executive Law § 296(5)(a)(3).

118. The Defendants' conduct was intentional, willful, and made in reckless disregard for the rights of others.

119. Plaintiffs have been injured by Defendants' discriminatory conduct, and have suffered damages as a result.

120. Accordingly, under N.Y. Exec. L. § 297, Plaintiffs are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorney's fees and costs.

**THIRD CAUSE OF ACTION—NEW YORK CITY HUMAN RIGHTS LAW,
N.Y.C. ADMIN. CODE § 8-101, et seq.**

121. Plaintiffs repeat and reallege the foregoing paragraphs of this Complaint as though fully set forth herein.

122. Plaintiffs are persons with disabilities pursuant to N.Y.C. Admin. Code § 8-102(16).

123. Defendants, as the owners or other entities having the right to rent or lease or approve the rental or lease of housing accommodations at 5110 19th Avenue, Brooklyn, NY 11204, are subject to the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 et. seq., and are not exempt from the “reasonable accommodation” requirement.

124. Pursuant to N.Y.C. Admin. Code § 8-107(5), Defendants discriminated against Plaintiffs in the terms, conditions or privileges of the rental or lease of their housing accommodations and in the furnishing of facilities in connection therewith because of their disabilities.

125. Pursuant to N.Y.C. Admin. Code § 8-107(15)(a), Defendants discriminated against Plaintiffs by failing to make a reasonable accommodation to the needs of Plaintiffs in the terms, conditions or privileges of the rental or lease of their housing accommodations and in the furnishing of facilities in connection therewith because of their disabilities.

126. Defendants’ conduct, as described above, constitutes declaring, printing, or circulating a statement, advertisement, publication, or using a form of application for rental, or making a record or inquiry in conjunction with a prospective rental, which expresses, directly or indirectly, a limitation, specification, or discrimination, or an intent

to make such limitation, specification, or discrimination based on disability, religion, race, and color in violation of New York Administrative Code § 8-107(5)(a)(3).

127. Defendants' conduct was intentional, willful, and made in disregard for the rights of others.

128. Plaintiffs have been injured by Defendants' discriminatory conduct, and have suffered damages as a result. Accordingly, under the New York City Administrative Code §§ 8-502(a) and (f), Plaintiffs are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

a) Declare that Defendants' discriminatory practices violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*, the New York State Human Rights Law, N.Y. Exec. L. § 290 *et seq.*, and the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 *et seq.*;

b) Enjoin Defendants to provide reasonable accommodations and direct them to request a waiver of the relevant retention regulations pursuant to 18 NYCRR § 487.3(g);

c) Enjoin Defendants from commencing litigation to terminate Plaintiffs' admission agreements unless and until they grant Plaintiffs' reasonable accommodation requests and have received a final determination of their waiver request to the DOH;

d) Enjoin Defendants, Defendants' agents, employees, and successors, and all other persons in active concert or participation from discriminating on the basis of disability, including the following,

- (i) Refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling;
 - (ii) Denying or withholding housing or otherwise making housing unavailable;
 - (iii) Discriminating in the terms, conditions, or privileges of rental; and
 - (iv) Making, printing, or publishing, or causing to be made, printed, or published a notice, statement, or advertisement, with respect to the rental of a dwelling that indicates a preference, limitation, or discrimination.
- e) Enjoin Defendants and their agents, employees, and 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;
 - (ii) Train all management, agents, and employees on fair housing laws;
 - (iii) Advertise apartments available for rent in a non-discriminatory manner, including displaying an Equal Housing Opportunity logo (or statement to that effect) on all print and internet advertisements and displaying in all offices and rental buildings appropriate fair housing law posters;
 - (iv) Allow monitoring of their application and rental process;

- (v) Retain advertising and rental records to allow for appropriate monitoring;
 - (vi) Develop written procedures on rental process and fair housing policy to be distributed to all employees, agents, tenants, and rental applicants; and
 - (vii) Establish a system for testing agents and employees for unlawful discriminatory practices;
- f) Award such damages to Plaintiffs as will fully compensate them for any loss of civil rights, and other damages, including humiliation, embarrassment, and emotional distress suffered due to Defendants' discriminatory conduct;
- g) Award punitive damages because of the discriminatory housing practices that have occurred or continue to occur pursuant to 42 U.S.C. § 3613(c)(1);
- h) Award Plaintiffs reasonable attorney's fees, costs and expenses incurred in prosecuting this action pursuant to 42 U.S.C. § 3613(c)(2); and
- i) Order such other further relief as this Court deems just and proper.

Dated: New York, New York
February 28, 2014

Respectfully submitted,

Jota Borgmann, Esq. (JB-1227), of counsel to
Jeanette Zelhof, Esq.
MFY LEGAL SERVICES, INC.
299 Broadway
New York, New York 10007
(212) 417-3717
jborgmann@mfy.org
Attorneys for Plaintiffs