

SUPREME COURT OF THE STATE OF NEW YORK  
RICHMOND COUNTY

-----x  
BARRY GREEN; PHILIP NOONAN;  
KENNETH PALTZIK; and LISA SOTO,  
Plaintiffs,

Index No. 104359/07  
Date purchased: 11/15/07

-against-

LAKESIDE MANOR HOME FOR ADULTS, INC.;  
and LAKESIDE MANOR HOMES FOR ADULTS,  
INC.,

Plaintiffs designate Richmond  
County as the place of trial.  
The basis of venue is  
CPLR 503(a)

Defendants.


**SUMMONS**

Plaintiffs reside at  
797 Brighton Avenue  
Staten Island, New York  
Richmond County

-----x  
**TO THE ABOVE NAMED DEFENDANTS:**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' Attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you on default for the relief demanded in the Complaint.

Dated: 11/14/07  
New York, New York

  
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KEVIN M. CREMIN  
Of Counsel to Jeanette Zelhof  
Attorney for Plaintiffs  
MFY LEGAL SERVICES, INC.  
299 Broadway  
New York, NY 10007  
(212) 417-3700

Defendants' addresses:

Lakeside Manor Home for Adults, Inc.  
797 Brighton Avenue  
Staten Island, New York 10301

Lakeside Manor Homes for Adults, Inc.  
797 Brighton Avenue  
Staten Island, New York 10301

PLAINTIFFS DEMAND A  
TRIAL BY JURY

SUPREME COURT OF THE STATE OF NEW YORK  
RICHMOND COUNTY

-----x  
BARRY GREEN; PHILIP NOONAN;  
KENNETH PALTZIK; and LISA SOTO,

Plaintiffs,

Index No.

COMPLAINT

-against-

LAKESIDE MANOR HOME FOR ADULTS, INC.;  
and LAKESIDE MANOR HOMES FOR ADULTS,  
INC.,

Defendants.

-----x

PRELIMINARY STATEMENT

1. Plaintiffs are individuals with disabilities who live in Lakeside Manor Home for Adults, which is an adult home. Lakeside Manor has approximately 200 residents with disabilities. By law, Lakeside Manor is required to have at least one telephone available for outside calls for every 40 residents or portion thereof. This requirement is incorporated into the admission agreements between the Plaintiffs and the Defendants. However, Lakeside Manor has merely two telephones available for the 200 residents to make outside calls. Lakeside Manor also charges residents fifty cents for each call to a toll-free telephone number such as those for the New York State Department of Health and other agencies that are responsible for investigating complaints about adult homes. By failing to provide the required number of telephones and charging for toll-free telephone calls, Defendants isolate Plaintiffs from the community and violate their rights to private

communications with their family members and friends; to private communications with their physicians, attorneys, or other advocates; to present grievances to governmental officials; to manage their financial affairs; and to privacy in treatment and in caring for their personal needs.

#### PARTIES and VENUE

##### Plaintiffs

2. Plaintiff Barry Green (“Plaintiff Green”) is a fifty-five year-old resident of Lakeside Manor. He has lived at Lakeside Manor since approximately 2005. Plaintiff Green has been determined by the Social Security Administration to be a person with a disability, and he receives benefits as a result of that determination.

3. Plaintiff Philip Noonan (“Plaintiff Noonan”) is a fifty-eight year-old resident of Lakeside Manor. He has lived at Lakeside Manor since approximately 1997. Plaintiff Noonan has been determined by the Social Security Administration to be a person with a disability, and he receives benefits as a result of that determination.

4. Plaintiff Kenneth Paltzik (“Plaintiff Paltzik”) is a forty-nine year-old resident of Lakeside Manor. He has lived at Lakeside Manor since approximately 2006. Plaintiff Paltzik has been determined by the Social Security Administration to be a person with a disability, and he receives benefits as a result of that determination.

5. Plaintiff Lisa Soto (“Plaintiff Soto”) is a forty-seven year-old resident of Lakeside Manor. She has lived at Lakeside Manor since approximately 2004. Plaintiff Soto has been determined by the Social Security Administration to be a person with a disability, and she receives benefits as a result of that determination.

Defendants

6. Defendant Lakeside Manor Home for Adults, Inc. ("Lakeside Manor") is an adult home located at 797 Brighton Avenue, Staten Island, New York 10301.

7. Pursuant to 18 NYCRR § 487.2(a), an adult home is a type of adult care facility that is "established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care and supervision" to the residents. See SSL § 461-b.

8. As an adult care facility, Defendant Lakeside Manor is licensed by the New York State Department of Health ("DOH") and subject to New York State law and regulations.

9. Upon information and belief, Defendants hold a certificate of incorporation for the purpose of operating an adult care facility pursuant to Section 460-a of the Social Services Law.

10. Upon information and belief, Defendant Lakeside Manor is operated pursuant to Operating Certificate Number 610-F-037 issued by New York State pursuant to Section 460-b of the Social Services Law.

11. Upon information and belief, pursuant to 18 NYCRR § 485.2(i), Defendant Lakeside Manor is a private proprietary adult care facility that is operated for compensation and profit.

12. Upon information and belief, pursuant to 18 NYCRR § 485.2(a), Lakeside Manor provides temporary or long-term residential care and services to approximately 200 adults who have physical or other limitations associated with age, disability, or other factors.

13. Defendant Lakeside Manor Homes for Adults, Inc., a.k.a Lakeside Manor Home for Adults, Inc., is the Operator of Lakeside Manor, and, as such, is individually, jointly and severally responsible for providing a program of services, care, and supervision which assures the protection of the rights of the residents, promotes the physical and mental well-being of the residents, and complies with Sections 460 through 461-h of the Social Services Law and the implementing regulations at 18 NYCRR § 485 through 487.

14. The principal executive office for Defendant Lakeside Manor Homes for Adults, Inc. is located at 797 Brighton Avenue, Staten Island, New York 10301.

15. At all times relevant to the facts herein, Defendants were operating as a home for adults and were authorized to do business as such within the State of New York.

#### STATEMENT OF FACTS

16. Plaintiffs are unable to make outgoing telephone calls from their rooms at Lakeside Manor.

17. Lakeside Manor installs telephones in residents' rooms from which residents can receive telephone calls that are routed through the Lakeside Manor's main switchboard. These telephones cannot, however, be used to make outgoing telephone calls. Residents also cannot receive incoming calls directly from outside the home.

18. Each Plaintiff receives benefits from the Social Security Administration. Except for a \$164.00 or \$184.00 personal allowance that each Plaintiff receives on a monthly basis pursuant to 18 NYCRR § 485.12, their entire income is paid to Lakeside Manor. As a result, Plaintiffs cannot afford cellular telephones or regular telephone service in their rooms and must rely upon the public telephones provided by Lakeside Manor.

19. Upon information and belief, for approximately ten years prior to October 2007, there was only one telephone for the entire home's population to use to make outgoing telephone calls. Recently, Lakeside Manor installed a second telephone.

20. The approximately 200 residents at Lakeside Manor have to share these two telephones. As a result, Plaintiffs are often not able to make telephone calls when they desire to or have to do so.

21. Upon information and belief, access to emergency telephone numbers such as 911 is blocked on these two telephones.

22. A resident has to pay fifty cents to make a telephone call to a toll-free number from these two telephones. At certain times during and before October 2007, access to toll-free telephone numbers was blocked.

23. According to the Federal Communications Commission, toll-free numbers are numbers that begin with one of the following three-digit codes: 800, 888, 877, or 866. Toll-free numbers allow callers to reach businesses and/or individuals without being charged for the call, because the charge for using a toll-free number is paid by the called party instead of the calling party.

24. Plaintiffs desire to or need to call toll-free numbers, including those for: pre-paid phone card companies; the United States Social Security Administration, which provides benefits to Plaintiffs; the New York State Department of Health, which investigates complaints about adult homes; and the New York State Commission on Quality of Care and Advocacy for Persons with Disabilities, which also investigates complaints about adult homes.

25. Insufficient telephone access and charges for toll-free telephone calls interfere with Plaintiffs' ability to communicate privately with friends and family members.

26. Insufficient telephone access and charges for toll-free telephone calls interfere with Plaintiffs' ability to communicate privately with health care service providers.

27. Insufficient telephone access and charges for toll-free telephone calls interfere with Plaintiffs' ability to contact attorneys or other advocates.

28. Insufficient telephone access and charges for toll-free telephone calls interfere with Plaintiffs' ability to contact banks as well as the financial institutions and/or government agencies, such as the United States Social Security Administration, that provide them with benefits.

29. Insufficient telephone access and charges for toll-free telephone calls interfere with Plaintiffs' ability to contact government agencies, such as New York State Department of Health, and the New York State Commission on Quality of Care and Advocacy for Persons with Disabilities, to complain to them about dangerous conditions at Lakeside Manor or violations of their rights.

30. Insufficient telephone access and charges for toll-free telephone calls interfere with Plaintiffs' ability to place telephone calls to the police department, fire department, and ambulance services in the event of an emergency.

31. Insufficient telephone access and charges for toll-free telephone calls interfere with Plaintiffs' ability to place telephone calls to transportation providers such as Access-a-Ride, which is a door-to-door transportation service operated by the Metropolitan Transportation Authority for people with disabilities.

32. Insufficient telephone access and charges for toll-free telephone calls interfere with Plaintiffs' ability to seek alternative services and housing options.

33. The telephones provided for residents are sometimes out of order. For example, for approximately two weeks during September 2007 the only telephone was inoperable. During this time, there was a sign near the telephone that read: "Telephone is Temporarily Out of Order. Do Not Use. Do Not Put Any Money into the Coin Slot."

34. When the telephones are not available or inoperable, in order to make a telephone call, Plaintiffs have to search for a public telephone outside of Lakeside Manor.

35. Upon information and belief, the nearest public telephone is located near 480 Castleton Avenue, Staten Island, New York, 10301, which is approximately a quarter of a mile away from Lakeside Manor, and it is located outside. Plaintiffs have had to walk to use this telephone when the telephones at Lakeside Manor have been unavailable or inoperable. It is often impracticable for Plaintiffs to use this telephone. This is especially true for Plaintiff Green who has a physical disability and has difficulty walking. Furthermore, this telephone is sometimes unavailable or inoperable.

36. Despite repeated requests by Plaintiffs and/or Plaintiffs' attorneys, Lakeside Manor has refused to provide the required number of telephones for outgoing telephone calls and to stop charging for toll-free telephone calls.

AS AND FOR A FIRST CAUSE OF ACTION:  
BREACH OF CONTRACT

37. Plaintiffs repeat and re-allege paragraphs 1 through 36 as if fully set forth herein.

38. Pursuant to Section 461-c of the Social Services Law, Defendants are required to execute an admission agreement with every applicant for admission.



39. Each Plaintiff signed or should have signed an admission agreement with Defendants at the time of his or her admission, stating, *inter alia*, that Defendants must abide by the Social Services Law, as well as the implementing regulations for the Social Services Law, and treat residents in accordance with the rights and protections afforded thereunder.

40. Plaintiffs have fulfilled and continue to fulfill their obligations as defined by the admission agreement, including the responsibility of paying rent.

41. The Social Services Law accords residents of adult care facilities specific rights as residents of such facilities. Section 461-d(3) of the Social Services Law provides that resident rights and responsibilities shall include, but not be limited to:

(a) "Every resident's civil and religious liberties, including the right to independent personal decisions and knowledge or available choices, shall not be infringed and the facility shall encourage and assist in the fullest possible exercise of these rights." (SSL § 461-d(3)(a))

(b) "Every resident shall have the right to have private communications and consultations with his or her physician, attorney, and any other person." (SSL § 461-d(3)(b))

(c) "Every resident shall have the right to present grievances on behalf of himself or herself or others, to the facility's staff or administrator, to governmental officials, or to any person without fear of reprisal, and to join with other residents or individuals within or outside of the facility to work for improvements in resident care." (SSL § 461-d(3)(c))

(d) "Every resident shall have the right to manage his or her own financial

affairs.” (SSL § 461-d(3)(d))

(e) “Every resident shall have the right to have privacy in treatment and in caring for personal needs.” (SSL § 461-d(3)(e))

(f) “Every resident shall have the right to receive or to send personal mail or any other correspondence without interception or interference by the operator of an adult care facility or any person affiliated therewith.” (SSL § 461-d(3)(h))

42. In setting forth the standards for adult homes, the implementing regulations for the Social Services Law require that “All facilities shall, with the cooperation of the telephone company, have at least one telephone available for outside calls for every 40 residents or portion thereof. The operator may impose equivalent charges for use.” 18 NYCRR § 487.11(l)(15).

43. Defendants have breached the admissions agreements with Plaintiffs by violating the implementing regulations of the Social Services Law regarding the minimum number of telephones that must be made available to residents for outside calls.

44. Further, by interfering with Plaintiffs’ ability to make regular, emergency, and toll-free telephone calls, Defendants have breached the admissions agreements with Plaintiffs by violating their rights pursuant to the Social Services Law to: make independent personal decisions; have private communications and consultations with his or her physician, attorney, and any other person; present grievances to governmental officials; manage his or her own financial affairs; have privacy in treatment and in caring for personal needs; and to correspond without interception or interference by the operator of an adult care facility.

45. Defendants have breached their admissions agreements with Plaintiffs by violating New York Social Services Law § 461-d and the implementing regulations for the Social Services Law.

46. Plaintiffs have been and continue to be injured by Defendants' breach and have suffered and continue to suffer damages.

AS AND FOR A SECOND CAUSE OF ACTION:  
BREACH OF WARRANTY OF HABITABILITY

47. Plaintiffs repeat and re-allege paragraphs 1 through 46 as if fully set forth herein.

48. Pursuant to Section 461-c of the Social Services Law, Defendants are required to execute an admission agreement with every applicant for admission.

49. Plaintiffs signed or should have signed an admission agreement with Defendants at the time of their admission, stating, *inter alia*, that Defendants must abide by the Social Services Law, as well as the implementing regulations for the Social Services Law, and treat residents in accordance with the rights and protections afforded thereunder.

50. Pursuant to Section 461-c(2-a) of the Social Services Law, “[t]here shall be an implied warranty of habitability in each written admission agreement executed pursuant to this section that shall ensure the premises be fit for human habitation and for the uses reasonably intended by the operator and the resident and that the occupants of the facility shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health, safety or welfare.”

51. In setting forth the standards for adult homes, the implementing regulations for the Social Services Law require that “All facilities shall, with the cooperation of the

telephone company, have at least one telephone available for outside calls for every 40 residents or portion thereof. The operator may impose equivalent charges for use.” 18 NYCRR § 487.11(I)(15).

52. Defendants have failed to ensure that the premises are fit for human habitation and for the uses reasonably intended by the operator and the resident in that Defendants have failed and continue to fail to “have at least one telephone available for outside calls for every 40 residents or portion thereof,” as required by 18 NYCRR § 487.11(I)(15). For the same reason, Defendants have failed to ensure that the occupants of the facility shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health, safety or welfare.

53. Furthermore, Defendants have failed to ensure that the premises are fit for human habitation and for the uses reasonably intended by the operator and the resident by interfering with Plaintiffs’ ability to make regular, emergency, and toll-free telephone calls. By interfering with Plaintiffs’ access to government and other agencies that could assist Plaintiffs in remedying dangerous conditions, Defendants have also failed to ensure that the occupants of the facility shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health, safety or welfare.

54. Defendants have actual and/or constructive notice of the substandard conditions because the telephones for outgoing telephone calls are located in the common areas of Lakeside Manor. Moreover, Plaintiffs and/or Plaintiffs’ attorneys have repeatedly requested that Lakeside Manor start providing the required number of telephones for outgoing telephone calls and stop charging for toll-free telephone calls.

55. Defendants have taken insufficient measures to cure said substandard

conditions.

56. Defendants' failure to correct the substandard conditions has made and continues to make Lakeside Manor unfit for human habitation and for the uses reasonably intended by the operator and the resident.

57. Defendants' failure to correct the substandard conditions has subjected and continues to subject the Plaintiffs to conditions which are dangerous, hazardous or detrimental to their life, health, safety or welfare.

58. Defendants have breached the warranty of habitability by violating the implementing regulations for the Social Services Law.

59. Plaintiffs have been and continue to be injured by Defendants' breach of the warranty of habitability and have suffered and continue to suffer damages.

AS AND FOR A THIRD CAUSE OF ACTION:  
VIOLATION OF THE FAIR HOUSING ACT

60. Plaintiffs repeat and re-allege paragraphs 1 through 59 as if fully set forth herein.

61. Pursuant to Section 801 of the Fair Housing Act, "[i]t is the policy of the United States to provided, within constitutional limitations, for fair housing throughout the United States."

62. Lakeside Manor is a "dwelling" within the meaning of 42 U.S.C. § 3602(b).

63. Telephones for outgoing calls are a service or facility in connection with the dwelling because, *inter alia*, they are required to be provided in Lakeside Manor pursuant to 18 NYCRR § 487.11(l)(15) and the Social Services Law.

64. Plaintiffs are "handicapped" within the meaning of 42 U.S.C. § 3602(h). Each plaintiff has been determined by the Social Security Administration to be a person with a

disability, and each plaintiff receives benefits as a result of that determination.

65. Plaintiffs are residents of Lakeside Manor.

66. Defendants have discriminated against Plaintiffs based on their “handicap” by failing to provide at least one telephone available for outside calls for every 40 residents or portion thereof, at Lakeside Manor, as required by 18 NYCRR § 487.11(I)(15).

67. Defendants have also discriminated against Plaintiffs based on their “handicap” by interfering with Plaintiffs’ ability to make regular, emergency, and toll-free telephone calls.

68. Defendants, through the actions described in paragraphs 66 and 67, above, have discriminated in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of handicap, in violation of 42 U.S.C. § 3604(f)(2).

69. Plaintiffs are aggrieved persons within the meaning of 42 U.S.C. § 3602(i), have been injured by Defendants’ discriminatory conduct, and suffered damages as a result.

70. Accordingly, pursuant to 42 U.S.C. § 3613(c), Plaintiffs are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys’ fees and costs.

#### REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court issue an Order and Judgment:

(A) Declaring that Defendants have:

(1) breached their obligations under the admissions agreements with Plaintiffs by violating New York Social Services Law § 461-d and the

implementing regulations for the Social Services Law;

(2) breached the warranty of habitability by violating the implementing regulations for the Social Services Law; and

(3) discriminated in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of handicap, in violation of 42 U.S.C. § 3604(f)(2).

(B) Enjoining Defendants and their successors and/or assignees to:

(1) fulfill immediately their obligations under the admissions agreements with Plaintiffs, including their obligation to provide at least one telephone available for outside calls for every 40 residents or portion thereof, at Lakeside Manor, as required by 18 NYCRR § 487.11(l)(15), and to cease blocking telephone calls to emergency services and to cease charging residents for toll-free telephone calls;

(2) correct immediately the substandard conditions at Lakeside Manor by providing at least one telephone available for outside calls for every 40 residents or portion thereof, at Lakeside Manor, as required by 18 NYCRR § 487.11(l)(15), and ceasing to block telephone calls to emergency services and ceasing to charge residents for toll-free telephone calls; and

(3) comply immediately with the Fair Housing Act, including the prohibition against discrimination in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of handicap, in violation of 42 U.S.C. § 3604(f)(2).

(C) Awarding Plaintiffs:

- (1) compensatory damages in an amount to be determined at trial;
- (2) punitive damages in an amount to be determined at trial;
- (3) costs, disbursements, and attorney fees; and
- (4) Other relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury pursuant to C.P.L.R. section 4102.

Dated: 11/14/07  
New York, New York



KEVIN M. CREMIN  
Of Counsel to Jeanette Zelhof  
Attorney for Plaintiffs  
MFY LEGAL SERVICES, INC.  
299 Broadway  
New York, NY 10007  
(212) 417-3700



SUPREME COURT OF THE STATE OF NEW YORK  
RICHMOND COUNTY

-----X  
BARRY GREEN; PHILIP NOONAN;  
KENNETH PALTZIK; and LISA SOTO,

Plaintiffs,

Index No.

VERIFICATION

-against-

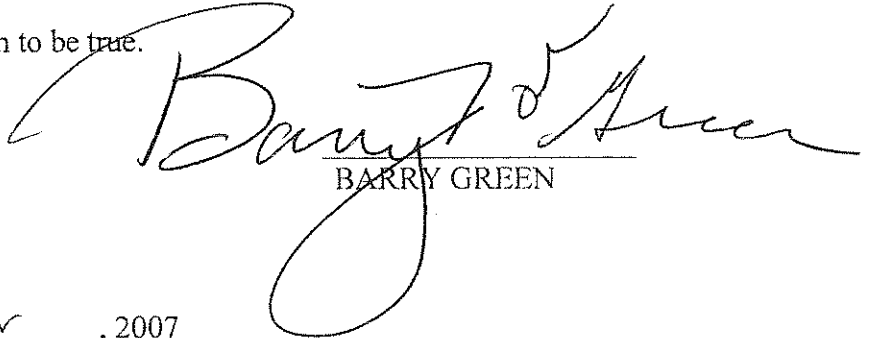
LAKESIDE MANOR HOME FOR ADULTS, INC.;  
and LAKESIDE MANOR HOMES FOR ADULTS,  
INC.,

Defendants.  
-----X

STATE OF NEW YORK )  
                          )ss.:  
RICHMOND COUNTY )

BARRY GREEN, being duly sworn, deposes and says:

I am a plaintiff in this action and the foregoing complaint is true to my own knowledge, except as to matters therein to be alleged on information and belief, and as to those matters I believe them to be true.

  
BARRY GREEN

Sworn to before me this  
14<sup>th</sup> day of November, 2007

  
NOTARY PUBLIC

**KEVIN M. CREMIN**  
Notary Public, State of New York  
No. 02CR6120426  
Qualified in New York County  
Commission Expires December 20, 2008