

JUDGE GARDEPHI

11 CIV 6770

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

35-41 CLARKSON LLC and MMIKP BRONX  
REALTY LLC, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

-against-

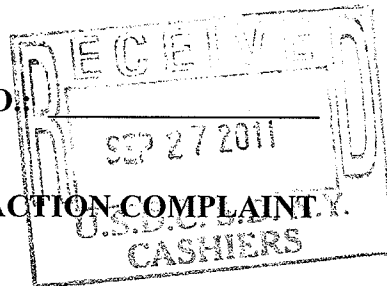
NEW YORK CITY HOUSING AUTHORITY,

Defendant.

CASE NO.

CLASS ACTION COMPLAINT, X.

JURY TRIAL DEMANDED



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This is a class action complaint for violations of procedural due process and federal statutory and regulatory guidelines governing the U.S. Department of Housing and Urban Development's ("HUD") Section 8 voucher program. Plaintiffs, property owners in the City of New York who rent to section 8 tenants, allege that the New York City Housing Authority ("NYCHA") fails to comply with its policies regarding statutory rent increases, fails to comply with its policies regarding reinstating payments after curing Housing Quality Standards ("HQS") violations, fails to provide due process, and fails to comply with federal statutes, rules, and regulations concerning the administration of the Section 8 voucher program.

Unless otherwise stated, all allegations in this complaint are made on information and belief.

#### **JURISDICTION AND VENUE**

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and § 1343(a)(3)-(4).
2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c).

Plaintiffs' principle places of business and Defendant's main office are located in this District and many of the acts and conduct complained of in this Complaint occurred within this District.

#### **PARTIES**

3. Plaintiff 35-41 Clarkson LLC ("35-41 Clarkson") is a New York limited liability company that operates properties that provide housing for low-income individuals and receives federal funding pursuant to HUD's Section 8 voucher program. 35-41 Clarkson's principle place of business is at 95-04 Delancey Street, New York, New York.

4. Plaintiff MMIKP Bronx Realty LLC ("MMIKP Bronx Realty" and together with 35-41 Clarkson, "Plaintiffs") is a New York limited liability company that operates properties that provide housing for low-income individuals and received federal funding pursuant to HUD's

Section 8 voucher program. MMIKP Bronx Realty's principle place of business is at 17 Murray Street, New York, New York.

5. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23 on behalf of themselves and all other landlords that participate in HUD's Section 8 voucher program as administered by NYCHA. According to NYCHA's website, there are more than 31,000 private landlords participating in the program.

6. Defendant NYCHA is an agency of the City of New York with its main office at 250 Broadway, New York, New York. NYCHA is a Public Housing Authority ("PHA").

### **FACT ALLEGATIONS**

#### **Overview of the Section 8 Voucher Program and Regulations**

7. The HUD Section 8 voucher program provides partial payment of tenants' rents to owners (such as Plaintiffs) on behalf of qualified low-income residents.

8. NYCHA oversees more than 95,000 Section 8 voucher units, far more than any other public housing authority in the country.

9. NYCHA receives a fee from HUD to administer the Section 8 voucher program on behalf of the federal government.

10. NYCHA is required to comply with HUD regulations and other HUD requirements for the program. HUD requirements are issued as regulations, Federal Register notices, or other binding program directives.

11. To participate in HUD's Section 8 voucher program, NYCHA must execute a housing assistance payment ("HAP") contract with the owners of units that is "word-for-word" in the form required by HUD.

12. The HAP contract must state the amount of the monthly housing assistance payment by NYCHA to the owner as determined by NYCHA in accordance with HUD regulations and other requirements.

13. HUD requirements provide that at each annual anniversary date of the HAP contract, NYCHA must adjust the rent to the owner at the request of the owner subject to the following conditions:

(a) The adjusted rent to the owner equals the lesser of:

(1) the pre-adjustment rent to owner multiplied by the applicable Section 8 annual adjustment factor published by HUD in the Federal Register, that is in effect 60 days before the HAP contract expires;

(2) the reasonable rent as most recently determined or determined by NYCHA in accordance with HUD guidelines; or,

(3) the amount requested by owner.

(b) In making an annual adjustment, the pre-adjustment rent to owner does not include any previously approved special adjustments.

(c) The rent to owner may be adjusted up or down in accordance with these rules.

14. The rent to the owner will be increased only for housing assistance payments covering months commencing on the later of the first day of the month commencing on or after the contract anniversary date, or at least 60 days after NYCHA receives the owner's request.

15. The owner must request the increase at least 60 days before the next annual anniversary date to receive the increase under the annual adjustment provision.

16. NYCHA must pay the housing assistance payment promptly when due to the owner in accordance with the HAP contract.

17. The owner is responsible for performing all of the owner's obligations under the HAP contract and the lease, including maintaining the unit in accordance with HUD defined HQS.

18. HUD regulations require that NYCHA inspect units subject to the HAP contract prior to the lease, annually, and at other times as needed, to determine if the unit meets HQS. If a HQS violation is found, NYCHA must notify the owner of defects shown by the inspection.

19. If the owner fails to maintain the dwelling unit in accordance with HQS, NYCHA must take prompt and vigorous action to enforce the owners' obligations. NYCHA remedies for breach of the HQS include termination, suspension, reduction of housing assistance payments, and termination of the HAP contract.

20. NYCHA must not make any housing assistance payments for a dwelling unit that fails to meet the HQS, unless the owner corrects the defect within the period specified by NYCHA and NYCHA verifies the correction. For non-life threatening defects, the owner must correct the defect within no more than 30 calendar days (or any NYCHA-approved extension).

21. The HAP contract terminates automatically, 180 calendar days after the last housing assistance payment to the owner by NYCHA.

#### **NYCHA'S HAP Contract**

22. The HAP contract between NYCHA and Plaintiffs (and Class members) adopts similar language from HUD's regulations.

23. The HAP contract provides that owners must notify NYCHA of any changes in the amount of the rent at least 60 days before the changes go into effect. The amount of rent to an owner may not exceed the reasonable rent for the unit as most recently determined or re-determined by NYCHA in accordance with HUD requirements.

24. The HAP contract provides that NYCHA “must pay housing assistance payments promptly when due to the owner.”

25. The HAP contract states that NYCHA “shall not make any housing assistance payments if the contract unit does not meet the HQS, unless the owner corrects the defect within the period specified by the PHA [NYCHA] and the PHA [NYCHA] verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within the period specified by the PHA [NYCHA].”

26. NYCHA has the right to inspect the unit and premises at such times as NYCHA determines is necessary, to ensure compliance with the HQS. NYCHA “must notify the owner of any HQS defects shown by the inspection.”

27. If NYCHA “determines that a breach has occurred, NYCHA may exercise any of its rights and remedies under the HAP contract . . . .” NYCHA “shall notify the owner of such determination, including a brief statement of the reasons for the determination. The notice by [NYCHA] to the owner may require the owner to take corrective action, as verified or determined by [NYCHA], by a deadline prescribed in the notice.”

28. The HAP contract also states that the HAP contract terminates automatically, 180 calendar days after the last housing assistance payment by NYCHA to the owner.

#### **NYCHA’s Policy Regarding Annual Rent Renewal Increases**

29. NYCHA’s policy regarding rent increases fully incorporates the guidelines provided by HUD. *See supra* ¶¶ 12-16.

30. In addition to HUD procedures, NYCHA lists its policies and procedures for rent renewal increases on its public website and directly on Renewal Lease Forms.

31. Owners may request a rent increase for a particular unit upon expiration of initial or subsequent leases. The increase will generally be based upon the percentage increase permitted by the NYC Rent Guidelines Board. If an owner believes a larger increase is warranted, appropriate supportive documentation must be submitted for approval by NYCHA per the “rent reasonableness” standard as outlined by NYCHA and HUD regulations.

**NYCHA Violates Plaintiffs’ Rights Regarding Statutory Rent Increases**

32. Plaintiffs requested rent increases in accordance with HUD and NYCHA guidelines.

33. Plaintiffs provided tenants with Renewal Lease Forms in accordance with NYCHA and HUD guidelines for rental increases.

34. Plaintiffs subsequently delivered Renewal Lease Forms to NYCHA.

35. NYCHA has not acknowledged the receipt of Plaintiffs’ Renewal Lease Forms.

36. NYCHA has not increased rents to the amounts stated in Plaintiffs’ Renewal Lease Forms.

37. Plaintiffs have not received rent increases in accordance with NYCHA or HUD policies and practices.

38. Plaintiffs have attempted to contact NYCHA through written correspondence, telephone calls and in person complaints to address NYCHA’s failure to increase rent payments.

39. NYCHA has no grievance procedure through which Plaintiffs are afforded an opportunity to challenge the lack of rent increases, and thus, they have no recourse.

40. Paragraphs 32-39 are based on Plaintiffs’ personal knowledge.

## **NYCHA's Policy Regarding Corrective Action of HQS Violations**

41. NYCHA will not make a payment to an owner of a unit that fails to meet a HQS, until the owner corrects the defect and NYCHA verifies the correction.

42. NYCHA, on its public website, describes the process by which owners must abide in order to avoid suspension of rent payments due to HQS violations. *See*

[http://www.nyc.gov/html/nycha/downloads/pdf/lh\\_reinspections.pdf](http://www.nyc.gov/html/nycha/downloads/pdf/lh_reinspections.pdf).

43. In order to avoid suspension of rent payments as a result of a newly found HQS violation:

Owners are required to correct serious violations found by the Inspector within 30 days after the inspection. In order to encourage timely repairs of serious Housing Quality Standards (HQS) violations without suspension of rent subsidy payments to owners, borough offices produce a printed NE-1 Notice to owners, using standardized HQS references, on the next working day following the inspection. Owners should receive it within 3-5 days after the inspection. Owners should thereby have a realistic opportunity to complete repairs in time to avoid suspension.

As permitted by HUD, the owner's repairs can be verified by either of two methods: 1) Reinspection or 2) the owner and the tenant certifies to us that the violations listed in the NE-1 have been corrected. The NE-1 contains a certification page, which can be signed by the owner and the tenant and returned to us, or both can sign work orders. The certification or work order can be either faxed or mailed.

If such a certification is received within 26 days after the inspection, it will suffice as evidence that the apartment meets HQS and the owner's subsidy will not be suspended. If the tenant certification is received after suspension, it will suffice for reinstatement of subsidy payments. This provision is designed to encourage owners to promptly complete repairs with the tenant's involvement.

For owners preferring reinspection, the NE-1 will also give the owner advance notice that reinspection is being pre-scheduled for the 25th day following the inspection. If we receive notice from the owner that repairs are completed, but not through a jointly signed certification, within 20 days after the inspection, the reinspection appointment for the 25th day will be confirmed and carried out. Notices from the landlord will be accepted by fax and mail.



If the borough office does not receive notice from the owner regarding completion of repairs within 20 days after inspection, staff shall cancel the pre-scheduled reinspection for the 25th day. A cancellation notice will be sent to the tenant. Reinspection as pre-scheduled can proceed when the owner's notice is received 21-25 days after inspection if the slot is still available. If the apartment passes reinspection before the 26th day, no suspension will occur.

If neither reinspection nor tenant certification has been successfully concluded or pending as of 26 days after inspection, (including cases where an apartment fails a reinspection and immediate follow-up is not possible), then NYCHA staff shall take the suspension action on these apartments no later than the 30th day. Payment will stop on the first day of the first month for which payment has not already been generated.

44. If the owner and NYCHA are unable to resolve the HQS violation within thirty days of the discovery, Section 8 status is suspended and payment will stop. The owner, however, still has the right to cure the HQS violation, become reinstated, and receive rent. This will happen if NYCHA receives a certification of repair by the tenant and owner (the "Joint Verification") or upon passing a re-inspection, which takes place after NYCHA's receipt of owner's notice of a completed repair. Regarding the re-inspection, NYCHA states that it will prioritize the re-inspections to "as soon as feasible within fourteen days of notice of the repair."

45. NYCHA also states that "[r]einstatement payments will resume retroactive to the date of the reinspection or certification [Joint Verification] unless the owner reports that the repairs are done earlier. In that case, payment will be retroactive to that earlier date. However, the owner must document all repairs completed more than 30 days before the receipt of the tenant certification or the reinspection date."

46. NYCHA has no grievance procedure for owners to challenge any failure to receive notice of the HQS violations, late notice of HQS violations, monthly rental payments, or retroactive rental payments.

## **NYCHA Violates Plaintiffs' Rights Regarding Corrections of HQS Violations**

47. Plaintiffs signed HAP contracts with NYCHA to receive Section 8 monetary benefits for renting to qualified tenants within the HUD voucher program.
48. NYCHA discovered HQS violation(s) at Section 8 units owned by Plaintiffs.
49. After discovery of HQS violations, NYCHA did not notify Plaintiffs of the HQS violations in a timely manner.
50. Upon receipt of notice of a HQS violation, Plaintiffs remedied the HQS violation.
51. NYCHA failed to follow its procedures allowing Plaintiffs to cure HQS violations prior to suspending rent payments.
52. Plaintiffs delivered Joint Verifications of owner's repairs signed by both the tenant and the owner to NYCHA.
53. NYCHA failed to pay Plaintiffs rent payments after receiving the Joint Verifications.
54. NYCHA failed to schedule or conduct re-inspections of Plaintiffs' units within the time periods stated in NYCHA's policy.
55. NYCHA did not follow its policy of re-instating Plaintiffs' units.
56. After receiving Plaintiffs' Joint Verification, NYCHA did not reinstate rent payments retroactive to the date of the Joint Verification.
57. After receiving Plaintiffs' completed work orders, NYCHA failed to reinstate rent payments retroactive to the date of the completed work orders.
58. As a result of NYCHA's failure to execute its policy, Plaintiffs had units that were suspended by NYCHA and denied rental payments.
59. NYCHA has no procedure for Plaintiffs to address NYCHA's decisions to deny and/or suspend rental payments.

60. Paragraphs 47-59 are based on Plaintiffs' personal knowledge.

### **CLASS ALLEGATIONS**

61. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) on behalf of a class consisting of all persons or entities who provided Section 8 housing and were denied due process as a result of NYCHA's failure to administer the HUD Section 8 voucher program in accordance with HUD regulations and NYCHA procedures (the "Class").

62. The members of the Class are so numerous that joinder of all members is impracticable.

63. There are questions of law or fact common to the Class.

64. Plaintiffs' claims are typical of the claims of the other Class members because Plaintiffs' and all the Class members' injuries arise from and were caused by the same course of conduct by NYCHA.

65. Plaintiffs will fairly and adequately represent and protect the interests of the Class members.

66. Plaintiffs bring this action pursuant to Rule 23 subpart (b)(2) of the Federal Rules of Civil Procedure for equitable relief to remedy the lack of due process for Class members to petition NYCHA to enforce regulations of NYCHA and HUD.

67. Plaintiffs also brings this action pursuant to Rule 23 subpart (b)(3) of the Federal Rules of Civil Procedure for damages incurred as a result of a denial of statutory rent increases, lack of rent payments, and denial of retroactive payments.

68. Common questions of law and fact exist as to all Class members and predominate over any questions affecting solely individual Class members.

69. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members to seek redress for the wrongful conduct alleged. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

**CLAIM FOR RELIEF**  
**(All pursuant to 42 U.S.C. § 1983)**

**I. VIOLATION OF DUE PROCESS**  
**(Statutory Rent Increases)**

70. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

71. NYCHA failed to adopt and enforce policies providing due process with respect to the administration and enforcement of HUD's Section 8 voucher program.

72. NYCHA was required under the HAP contract and HUD regulations to provide a process by which an owner can obtain a rent renewal increase.

73. NYCHA on its public website and on Renewal Lease Forms provided guidelines by which an owner can obtain a rent renewal increase.

74. NYCHA failed to comply with its policies.

75. NYCHA failed to comply with HUD regulations.

76. NYCHA does not have a process that permits Plaintiffs and the Class to remedy NYCHA's failure to increase rent renewal payments.

77. NYCHA continues to unjustly deny Plaintiffs' and the Class's earned increased rent renewal payments.

## **II. VIOLATION OF DUE PROCESS (Remedied HQS Issues)**

78. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

79. NYCHA failed to adopt and enforce policies providing due process with respect to the administration and enforcement of HUD's Section 8 voucher program.

80. NYCHA was required under the HAP contract and HUD regulations to provide a process by which an owner who is found to have violated a HQS may remedy the violation and receive payments in accordance with the HAP contract.

81. NYCHA issued a detailed policy concerning reinstatement after a HQS violation that, if complied with, would require NYCHA to resume payment and refund withheld payments to Plaintiffs and the Class on a retroactive basis.

82. NYCHA failed to comply with its policies.

83. NYCHA failed to comply with HUD regulations.

84. NYCHA does not have a process which permits Plaintiffs and the Class to remedy NYCHA's failure to resume and refund rent payments.

85. NYCHA continues to unjustly deny Plaintiffs' and the Class's earned rent payments.

## **III. VIOLATIONS OF 42 U.S.C. § 1437f & 24 C.F.R. § 928**

86. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

87. NYCHA failed to make timely payments to Plaintiffs and the Class in accordance HUD Regulations and Federal Statute.

88. NYCHA failed to implement rent increases in accordance HUD Regulations and Federal Statute.

89. NYCHA failed to follow policies approved and reviewed by HUD in violation of HUD Regulations and Federal Statute.

90. NYCHA continues to unjustly deny Plaintiffs' and the Class's earned rent payments.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs on behalf of themselves and the Class demand judgment against Defendant as follows:

(a) Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiffs as the Class Representatives;

(b) Providing equitable relief in the form of an injunction or declaratory judgment to remedy the lack due process for Class members thereby restraining NYCHA, its agents, employees, successors, and all others acting in concert or conjunction with them, from continuing practices of failing to adhere to HUD and NYCHA policy concerning rent increases, and of failing to adhere to HUD and NYCHA policy concerning remedies for HQS violations;

(c) Awarding compensatory damages in favor of Plaintiffs and the other Class members against Defendant for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(d) Awarding Plaintiffs and the other members of the Class prejudgment and post-judgment interest;

(e) Awarding Plaintiffs attorneys' fees, expert fees, and other costs; and

(f) Awarding such other relief as this Court may deem just and proper.

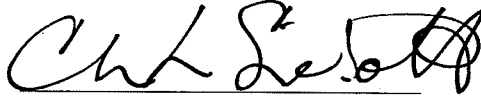
**JURY DEMAND**

Plaintiffs demand a trial by jury.

Dated: September 27, 2011

Respectfully submitted,

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