

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA**

(Ft. Myers Division)

<b>HOWARD SYMONS,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
v.	)	<b>CIVIL ACTION NO. _____</b>
	)	
<b>THE CITY OF SANIBEL, FLORIDA,</b>	)	
<b>COMMUNITY HOUSING AND</b>	)	
<b>RESOURCES, INC. AND JANIS A.</b>	)	
<b>HYATT, individually and in</b>	)	
<b>her capacity as</b>	)	
<b>Executive Director of Community</b>	)	
<b>Housing and Resources,</b>	)	
	)	
<b>Defendants.</b>	)	

**COMPLAINT**

**Introduction**

1. Plaintiff is a resident of housing developed for low-income seniors. He brings this action to prevent his eviction from his home and to obtain redress for defendants’ illegal discrimination, based on his actual and perceived disabilities, in violation of the Fair Housing Act and other civil rights laws.

2. Defendant City of Sanibel has illegally discriminated against plaintiff by its policy and practice of requiring that residents be evicted from units in the City’s below market rent housing program when housing management determines that the resident is not “capable of living independently”. Defendants Hyatt and Community Housing and Resources have illegally discriminated against plaintiff by the same policy and practice, as well as the use of illegal lease terms and disability inquiries, the determination that plaintiff is not “capable of living

independently,” and the issuance of lease termination notices and the commencement of eviction proceedings. Each defendant’s actions violate the Fair Housing Act, the Americans with Disabilities Act and the Rehabilitation Act of 1973.

3. Plaintiff seeks declaratory and injunctive relief to ensure that he is not subjected to ongoing and future discriminatory actions. In addition, plaintiff seeks compensatory and punitive damages for humiliation, embarrassment, emotional and physical distress, and the deprivation of his rights to equal housing opportunity and his privacy.

### Parties

4. Howard Symons is 82 years of age, a graduate of the U.S. Military Academy and a World War II veteran. Since May 1991, he has lived at 2320 Wooster Lane, Apartment #14, Sanibel, Florida. His only income derives from Social Security retirement benefits in the amount of \$573 per month and a veteran’s pension of \$235 per month. For the past 12 years, he has lived in housing owned or operated by Community Housing and Resources His current rent is \$205 per month.

5. The City of Sanibel (City) is a city organized and recognized under the Florida Constitution, incorporated on November 5, 1974. The City authorized and has funded the BMRH program since August 15, 1989.

6. Community Housing and Resources, Inc. (CHR) is a nonprofit Florida Corporation formed to own and operate affordable housing in the City of Sanibel, Florida. CHR has been designated as the housing foundation for the City of Sanibel, and has been charged with administration and operation of the City’s Below Market Rate Housing (BMRH) program.

7. Jan Hyatt is the executive director of Community Housing and Resources. In that position she is responsible for all decisions concerning tenant applications, tenant screening, leasing, maintenance and eviction. She is sued in her official and individual capacities.

### **Jurisdiction and Venue**

8. The Court has jurisdiction of this cause under 42 U.S.C. §§ 1331, 1343 and 3612.

9. Venue is proper in that all claims alleged herein arose in Lee County, Florida.

### **Facts**

10. Howard Symons, known as “Hop,” moved to Lee County in 1980 and worked as a tailor on Captiva Island from 1980 to 1991. He moved to the City of Sanibel in 1991 and has been living in his current apartment since that time.

11. At the time Mr. Symons moved in, and at each yearly renewal, CHR proffered a lease containing the challenged provision concerning “independent living.” (A copy of the most current lease is attached as Exhibit 1.)

12. On October 25, 2001, and again in September 2002, Hyatt or a CHR staff member at Hyatt’s direction wrote, respectively, to Mr. Symons’ adult daughters, Camille Patty and Anita Symons, alleging that Mr. Symons was not capable of “living independently.” The letters contain no allegations that Mr. Symons is unable to meet his tenancy obligations of paying the rent, keeping his apartment sanitary or being an acceptable neighbor.

13. To each letter, Mr. Symons’ daughters responded that Mr. Symons was capable of taking care of himself and intended to stay in his CHR unit.

14. During 2001 and 2002, in addition to sending the letters described in paragraph 12, above, Hyatt and CHR repeatedly attempted to convince Camille Patty and Anita Symons that they should move their father out of his apartment into an assisted living facility.

15. From the inception of the lease, throughout their campaign to convince Mr. Symons's children to move him and continuing to the present, Hyatt and CHR have made frequent and repeated inquiries about Mr. Symons' physical and mental condition.

16. Not knowing that federal, state and local fair housing laws prohibit such inquiries, Mr. Symons routinely responded to questions from Hyatt and CHR and provided (or authorized the release of) confidential medical information to CHR.

17. CHR compiled information on Mr. Symons' physical and mental condition obtained from these prohibited inquiries, most recently in a document entitled Hop Symons Medical Related History Updated 10/02/02.

18. Hyatt and CHR did not provide this document to Symons to permit him to review and correct its significant errors.

19. On information and belief, Hyatt and CHR have caused this document to be made public through filing with the Florida County Court of the Twentieth Judicial Circuit and by providing it to one or more members of the media. These disclosures of personal and medical information about Mr. Symons were made without his consent.

20. On or about September 20, 2002, Hyatt convened the CHR Landlord/Tenant Committee for the purpose of reviewing Mr. Symons' tenancy.

21. At that meeting, an unnamed CHR employee made a contemporaneous notation about the Committee's decision which says: "L/T Committee decided to review Hop Symons' history at their September meeting, one month earlier than Mr. Symons' regular reevaluation month of October, there was a unanimous decision that Hop not be renewed for a new lease."

22. A certified letter was sent by Cynthia Hoggett, a CHR employee, to Anita Symons on or about September 24, 2002. In pertinent part, the letter said:

The Landlord/Tenant Committee of CHR's Board of Directors reviewed your father's physical and medical history at their meeting in September, 2002. Due to his physical deterioration over the past several months, his inability to keep proper care of the unit, and the independent living criteria of the City's Below Market Rate Housing program, the L/T Committee has decided not to reevaluate him for a new lease. His present lease ends December 31, 2002. The Committee's decision has not as yet been given to your father. Please call me to discuss how best to inform your father and to tell us about you plans to help your father move....

23. On October 28, 2002, defendant Hyatt sent a letter to Mr. Symons informing him that he would be subjected to court process and removed from his home of 12 years if he did not leave voluntarily prior to December 21, 2002.. In pertinent part, the letter said:

The Landlord/Tenant Committee...asked me to tell you the Committee made a unanimous decision not to reevaluate you for a new lease. The Committee must follow strict regulations in administering the City's BMRH program, and has determined that you don not meet the program's required independent living criteria.

24. In taking the actions outlined in paragraphs 11 through 23, above, defendants Hyatt and CHR regarded Symons as having one or more disabilities within the meaning of the Fair Housing Act, the Americans with Disabilities Act, and the Rehabilitation Act of 1973.

25. Following receipt of the October 28, 2002 letter, Mr. Symons compiled letters from his treating physician, consulting physicians, dentist and pharmacist and conveyed these to CHR and to City.

26. Individually and collectively, these letters indicated that Mr. Symons was fully capable, both mentally and physically, to take care of himself and to live independently.

27. Mr. Symons' previous lease expired by its terms on December 31, 2002. To date, he has not been offered a new lease.

28. On or about February 13, 2003, Mr. Symons filed a housing discrimination complaint with the United States Department of Housing and Urban Development (HUD) on the basis of a perceived disability. HUD referred the matter for investigation to the Lee County Office of Equal Opportunity. On information and belief, the complaint is still pending with that agency.

29. Notwithstanding the credible and compelling medical evidence he supplied, on or about March 4, 2003, Hyatt and CHR, with the full knowledge and assent of City, commenced an eviction action in the County Court for the Twentieth Judicial Circuit.

30. Mr. Symons obtained the assistance of Florida Rural Legal Assistance, which was able to obtain the dismissal of the eviction on procedural and regulatory grounds unrelated to the issue of whether CHR could evict a resident because they deemed Mr. Symons unable to "live independently."

31. On or about March 24, 2003, Hyatt and CHR re-filed the eviction action in state court.

32. HUD has determined that the Fair Market Rent for a one-bedroom apartment in the Fort Myers Standard Metropolitan Statistical Area is \$516 per month, and average rents in the City of Sanibel are significantly higher.

33. If he is evicted, Mr. Symons, who is an active, independent man and who would like to continue to live among his friends and community will, in all likelihood, have no housing options other than to seek congregate or institutional housing, or face homelessness.

**The City of Sanibel, its Below Market Rental Housing Program  
and Community Housing Resources**

34. The City of Sanibel is located in Lee County, on the Gulf Coast of Florida. Within the City of Sanibel, the portion of the population that is 65 years or older is 40%.

35. In order to meet the city's "obligation to attempt to make housing available for moderate and lower income residents," in or about August 1989, the City authorized and created the BMRH program. On information and belief, the City is a recipient of federal housing funds.

36. After creation of the BMHR program in 1985, the City entered into an agreement with CHR to develop, establish and administer the BMHR program.

37. On information and belief, CHR administers approximately 50 units under the BMRH program, at least some of which are supported by federal funds.

38. The City and CHR revised and approved Policy Guidelines for implementation of the BMRH program effective February 15, 2002.

39. The BMRH Policy Guidelines provide as follows:

...applicants for housing must be fully capable of independent living. Independent living means the ability to care for oneself and one's home without assistance, and includes, but is not limited to, self-ambulation; self-medication; bathing; dressing; eating; grooming; toileting; proper nutrition; proper care of the unit; and other daily activities.

CHR maintains the right at its discretion to deny an application when an applicant is considered to be incapable of independent living

*BMRH Program Policy Guidelines, Revised and Approved February 15, 2002, Section 1.1.A.*

*(emphasis in the original).*

41. BMRH Policy Guidelines further provide:

The BMRH senior citizen location is an independent living project, and as such, applicants for this housing location must be fully capable of independent living.

Independent Living means capable of performing ACTIVITIES of Daily Living without direct physical assistance or supervision....

In those instances where a tenant is considered to no longer be able to live independently, CHR maintains the right at its discretion to review the situation, and discontinue a tenant's lease should the situation warrant such action. As part of this review, CHR may require that the tenant undergo an assessment by an agency or doctor of CHR's choice who deals with the issue of independent living on a regular basis, and is knowledgeable in the parameters involved with such a determination. The need for such action will be determined on a case-by-case basis....

*BMRH Program Policy Guidelines, Revised and Approved February 15, 2002, Section 1.1.E.*

42. At all relevant times, the City has maintained an illegal ordinance on its books, knew of and required the illegal inquiry into disability by CHR and Hyatt, knew of and required the enforcement of the Independent living requirement by CHR, and took no steps to prohibit such actions by Hyatt and CHR.

43. On information and belief, the City established and maintains the BMRH program in a manner intended to exclude and otherwise discriminate against people with disabilities and people regarded as having disabilities.

44. Defendants' "independent living" policies and practices unfairly, illegally and disparately affect people with disabilities and people regarded as having disabilities.

### **Claims for Relief**

#### **I. Federal Fair Housing Act (42 U.S.C. §3601 *et seq.*)**

45. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 44, above.

46. By the actions detailed in paragraphs 11 through 44, above, the City, CHR and Hyatt have violated the federal Fair Housing Act by: (1) Making illegal inquiries concerning disability; (2) intentionally discriminating against people with disabilities and those regarded as having disabilities by enacting and enforcing the Independent living requirement; (3) retaliating, interfering and harassing Symons because of his exercise of rights under the federal Fair Housing Act.

47. The law on these issues is well settled, and defendants acted in willful and malicious disregard for the rights of plaintiffs.

48. As a proximate result of the Defendants' conduct, Mr. Symons has suffered, is continuing to suffer, and will in the future suffer irreparable loss and injury including, but not limited to, humiliation, embarrassment, emotional and physical distress, and a deprivation of his rights to equal housing opportunity.

49. In engaging in the unlawful conduct described above, Defendants acted intentionally and maliciously and with callous and reckless disregard of the federally protected rights of the Plaintiff.

**II. Title II of the Americans with Disabilities Act (42 U.S.C. §12131 *et seq.*)**

50. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 49, above.

51. By the actions detailed in paragraphs 11 through 44, above, the Defendants have violated the federal Americans with Disabilities Act by attempting to exclude Mr. Symons from participation in or denying him the benefits of the housing services of the City, subjecting him to discrimination, utilizing criteria or methods of administration that have the effect of subjecting him to discrimination, and threatening to force him into an assisted living facility or other setting that is not the most integrated settings appropriate to his needs.

52. As a proximate result of the Defendants' conduct, Mr. Symons has been damaged as set forth above. Mr. Symons has suffered and will continue to suffer damages as alleged herein.

### **III. Violation of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794)**

53. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 52, above.

54. By the actions detailed in paragraphs 11 through 44, above, the Defendants have violated the Rehabilitation Act by attempting, solely on the basis of a perceived disability, to exclude Mr. Symons from participation in or denying him the benefits of the housing services of the City, subjecting him to discrimination, utilizing criteria or methods of administration that have the effect of subjecting him to discrimination, and threatening to force him into an assisted living facility or other setting that is not the most integrated settings appropriate to his needs.

55. As a proximate result of the Defendants' conduct, Mr. Symons has been damaged as set forth above. Mr. Symons has suffered and will continue to suffer damages as alleged herein.

### **IV. Breach of Privacy—Florida Landlord-Tenant Act (Florida Statutes, Title VI, Chapter 83)**

56. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 55, above.

57. By the actions detailed in paragraphs 11 through 44, above, the Defendants have violated Mr. Symons' right to privacy and confidentiality of his health and other personal information.

58. As a proximate result of the Defendants' conduct, Mr. Symons has been damaged as set forth above. Mr. Symons has suffered and will continue to suffer damages as alleged herein.

### **Prayer for Relief**

Wherefore, under all the foregoing counts, plaintiff respectfully requests this Court to grant him the following relief:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2201, declaring that the Defendants have violated the federal Fair Housing Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1993 and the Florida Landlord-Tenant Act;

2. Preliminary and permanent injunctive relief:

- (a) requiring Defendants to issue Mr. Symons a new lease and to refrain from pursuing any eviction actions against him based on the “independent living” criteria;
- (b) prohibiting Defendants from maintaining and enforcing City Code and lease provisions which contain an independent living requirement;
- (c) prohibiting Defendants from terminating a tenancy based on such a requirement or from making any inquiries into the nature and severity of a disability of an applicant or resident;
- (d) requiring Defendants to notify any prior applicants who were denied housing, or residents who were sent notices or were evicted pursuant to the independent living policy, of their right to reapply for BMHR/CHR housing and to be placed at the top of the waiting list if found otherwise eligible;

- (e) requiring Defendants to notify BMRH tenants of all lease, policy and procedure changes made as a result of this litigation;
  - (f) requiring Defendants to establish a recovery fund to compensate unknown victims of the discriminatory policies;
3. Appropriate compensatory and punitive damages be awarded to the Plaintiff and against the Defendants;
  4. Costs and reasonable attorney's fees in this action; and
  5. Such other and further relief as the Court deems just and proper.

**Demand for Jury Trial**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff demands a trial by jury on all issues so triable.

Dated: August 5, 2003

Respectfully submitted,

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