

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTONIO DURAZZO,

Plaintiff,

-against-

BRG WEST VILLAGE LLC; SANDER
SRULOWITZ,

Defendants.

No. 16 Civ. _____

**COMPLAINT AND
JURY DEMAND**

Plaintiff Antonio Durazzo, by and through his attorneys, Emery Celli Brinckerhoff & Abady LLP, for his Complaint alleges as follows:

INTRODUCTION

1. BRG West Village LLC (“BRG”), the owner of a Manhattan apartment, refuses to allow Antonio Durazzo, a disabled man living with cancer, to exercise his option as a tenant to buy the West Village apartment that has been his home for 31 years.

2. In a February 19, 2016 letter from BRG’s attorney, Sander Srulowitz, BRG rejected Mr. Durazzo’s efforts to purchase his apartment, stating that as “a stage-4 cancer patient” Mr. Durazzo is “not the typical person buying an apartment to live in.”

3. Plaintiff seeks redress for the injuries he has suffered because of Defendants’ discriminatory statements and conduct. In addition, Plaintiff seeks damages and specific performance for breach of contract based on BRG’s failure to sell Mr. Durazzo the apartment for the terms set forth in the governing contracts.

PARTIES

4. Plaintiff Antonio Durazzo is a United States citizen and at all relevant times resided in New York, New York.

5. Defendant BRG West Village LLC is, upon information and belief, a New York limited liability company with a principal place of business in Great Neck, New York.

6. Defendant Sander Srulowitz is, upon information and belief, a United States citizen with a principal place of business in New York, New York.

JURISDICTION AND VENUE

7. This action arises under the Fair Housing Act, 42 U.S.C. §§ 3604 and 3613.

8. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331, 1343(a)(4), 1367(a), and the doctrine of supplemental jurisdiction.

9. The acts complained of occurred in the Southern District of New York and venue is lodged in this Court under 28 U.S.C. § 1391(b).

JURY DEMAND

10. Plaintiff demands trial by jury in this action.

FACTUAL ALLEGATIONS

Antonio Durazzo

11. Mr. Durazzo is a 66 year-old single man. In March 2013, he was diagnosed with colon cancer, a physical impairment that substantially limits his daily activities, including, but not limited to, manual tasks, walking, and other major life activities. Mr. Durazzo has a record of having cancer and is regarded as having cancer. Mr. Durazzo's diagnosis constitutes a "physical

impairment” as defined by 24 CFR Part 100.201. Mr. Durazzo is a person with a handicap as defined by the Fair Housing Act, 42 U.S.C. §3602(h).¹

12. Mr. Durazzo began renting Apartment 4B at 107 Morton Street, New York, New York in November 1985. He has been living there as a renter ever since. Mr. Durazzo is the sole occupant of the apartment.

13. Mr. Durazzo adores the West Village neighborhood that he has called home for the past 31 years. His life centers around it: His friends live there, he works in close proximity at a local restaurant on Hudson Street, and the stores and restaurants he most frequently visits are all within walking distance.

14. Since he was diagnosed with cancer in 2013, Mr. Durazzo’s reliance on the West Village has deepened as it has become more difficult for him to travel around the City. He has developed relationships with local business owners over the past 31 years who, because of his disability, go out of their way to deliver goods for him and accommodate him.

15. He also relies on his neighbors. His next-door neighbor at 107 Morton Street regularly cares for him and has taken him to the hospital on more than one occasion.

The West Village Houses

16. The apartment building at 107 Morton Street is part of a complex called the West Village Houses, which consists of buildings located in Manhattan on the square block that is bordered by Morton Street to the south, Washington Street to the east, Barrow Street to the north, and West Street to the west.

¹ The use of the terms “disability” or “disabled” in this complaint is intended to be used interchangeably with the term “handicap” as defined by the Fair Housing Act.

The Co-op Plan

17. In or around 2005, a Cooperative Offering Plan for West Village Houses (the “Plan”) was filed to facilitate the conversion of the West Village Houses to cooperative ownership.

18. Under the Plan, tenants living in the building at the time of the conversion were given a ten-year option from the “Property Closing Date”—March 9, 2006—to purchase their apartments for below market value.

19. The Plan includes a template Rider that is attached to leases at the West Village Houses—including every lease signed by Mr. Durazzo since 2006—which specifically grants tenants an option to purchase their apartment (the “Rider”). Under the terms of the Rider, tenants may exercise their option at any point up to and including March 8, 2016.

20. To exercise an option, a tenant is required to send a written notice by certified mail to the owner of the apartment, specifying the identity of the purchasing tenant and the name and contact information for the purchasing tenant’s attorney.

21. Upon receipt of a valid option notice, the owner must send, via either personal delivery or certified mail, two copies of a purchase contract to the purchasing tenant’s attorney within twenty-one days.

22. Within ten days of the purchasing tenant’s attorney’s receipt of the purchase contract, the purchasing tenant must deliver, via personal delivery or certified mail, one countersigned copy of the purchase contract and a check for the down payment or deposit.

23. The Rider contained in the Plan includes a schedule that sets forth the purchase price per share that applies to tenants who exercise their option to purchase their apartment. The applicable purchase price is determined by the date on which the sale closes.

24. The schedule provides for an 11% price per share increase on each anniversary of the Property Closing Date—March 9. The price for sales that closed in “Year 1”—*i.e.*, March 9, 2006 – March 8, 2007—was \$482.5392 per share. In “Year 2”—*i.e.*, March 9, 2007 – March 8, 2008—the price per share went up 11% to \$535.6185 per share.

25. The schedule sets forth the purchase price for all sales that close prior to the tenth anniversary of the Property Closing Date—March 9, 2016—but it is silent with respect to the purchase price that applies to tenants who timely exercise their option to purchase prior to the tenth anniversary, but close on the sale on the tenth anniversary or beyond.

26. The Rider permits tenants to exercise their option to purchase their apartment for a period of ten years. The formula for calculating the purchase price on an option that was exercised prior to March 9, 2016, but closed on after March 9, 2016, is dictated by the Rider: The purchase price is an 11% price per share increase from the price per share that applied to a sale that closed in Year 10. The price per share in Year 10 (March 9, 2015 – March 8, 2016) was \$1,234.3531; thus, with an 11% increase, the price per share in Year 11 is \$1,370.1319.

27. The Plan also provides a number of benefits that last for *twelve years* for tenants—like Mr. Durazzo—who were living in their apartments at the time of the conversion.

28. First, the Plan restricts the sale or transfer of apartments within the West Village Houses for twelve years from its effective date. The Plan references and incorporates a Regulatory Agreement between the cooperative corporation and the New York City Department of Housing Preservation and Development (“HPD”), which restricts the sale of apartments over a twelve year period from the date of the conversion. Under the Regulatory Agreement, the price of every sale is capped for a period of twelve years, unless certain exceptions apply. The sale or transfer of Mr. Durazzo’s apartment is restricted under the Regulatory Agreement.

29. Second, the Plan protects existing tenants by granting each tenant the rights afforded under the rent stabilization laws through a “Contract Rent Regulation Lease.” Existing tenants are entitled to the benefits of a Contract Rent Regulation Lease for at least twelve years, or until March 31, 2018.

30. And third, to “promote the goal of maintaining affordable housing at West Village Houses,” the Plan provides for certain real estate tax benefits for a period of twelve years.

The Lease Agreement

31. The 401 shares assigned to Mr. Durazzo’s apartment now belong to Defendant BRG.

32. Mr. Durazzo renewed his lease agreement with BRG on January 5, 2016 (the “Lease Agreement”).

33. The Lease Agreement includes the Rider set forth in the Plan, which grants Mr. Durazzo the option to purchase his apartment pursuant to the procedures set forth in the Rider.

34. The Lease Agreement expressly grants Mr. Durazzo the right to exercise his option to purchase his apartment at any point up to and including March 8, 2016.

Mr. Durazzo Exercises His Option

35. On January 6, 2016, Mr. Durazzo exercised his option to purchase apartment 4B at 107 Morton Street by sending, via certified mail, a purchase notice to BRG that included both Mr. Durazzo’s name and the name of his attorney.

36. On or about January 28, 2016, BRG sent a purchase contract to Mr. Durazzo’s attorney. Contrary to the requirements of the Lease Agreement and the Rider therein, BRG sent the purchase contract to Mr. Durazzo’s attorney via FedEx as opposed to certified mail or personal delivery as required.

37. Mr. Durazzo's attorney did not actually receive the purchase contract until February 12, 2016.

38. The purchase price on this purchase contract was \$494,975.59, which corresponds to the Year 10 purchase price of \$1,234.3531 per share set forth in the Rider to the Lease Agreement.

39. On February 19, 2016, a colleague of Mr. Durazzo's personally delivered a countersigned purchase contract and a check for the required amount of down payment to BRG. The check was drawn from the personal account of one of Mr. Durazzo's friends, Frank Falcinelli, who loaned Mr. Durazzo the necessary funds for the down payment while Mr. Durazzo obtained financing.

40. Mr. Durazzo was prepared and able to close on the sale of his apartment prior to March 9, 2016.

BRG Rejects Mr. Durazzo's Option Using Discriminatory Statements

41. By letter dated February 19, 2016, Srulowitz, BRG's attorney, wrote to Mr. Durazzo's attorney on behalf of BRG informing Mr. Durazzo that BRG would not honor the fully executed purchase contract delivered that same day.

42. Srulowitz's letter expressed disbelief that someone in Mr. Durazzo's condition—a stage-4 cancer patient—would be serious about purchasing the apartment. Srulowitz stated that a “stage-4 cancer patient” like Mr. Durazzo is “not the typical person buying an apartment to live in.”

43. Srulowitz made this statement in his capacity as attorney and agent for BRG.

44. Srulowitz's written statement on behalf of BRG expressed a preference, limitation, and/or discrimination regarding the sale of the apartment to Mr. Durazzo because of Mr. Durazzo's disability.

45. The discriminatory statement caused Mr. Durazzo significant mental and emotional pain and suffering.

46. BRG breached its Lease Agreement with Mr. Durazzo by failing to adhere to the purchase contract that was validly executed by Mr. Durazzo and BRG, and by failing to permit Mr. Durazzo to close on his apartment prior to March 9, 2016.

Mr. Durazzo Exercises His Option A Second Time

47. On February 26, 2016, Mr. Durazzo once again properly exercised his option to purchase his apartment by sending, via certified mail, a purchase notice to BRG that included both Mr. Durazzo's name and the name of his attorney.

48. On March 18, 2016, Srulowitz, on behalf of BRG, sent another purchase contract to Mr. Durazzo's attorney, *but this time it was sent via certified mail as required by the Lease Agreement*. This purchase contract listed the purchase price as \$1,403,500—nearly a \$1 million increase from the price listed in the January 28, 2016 purchase contract.

49. BRG breached its Lease Agreement with Mr. Durazzo by failing to offer Mr. Durazzo a purchase price of \$549,422.89 which would have been equal to an 11% increase from the Year 10 price per share listed in the Rider and is consistent with the Maximum Share Price Per Share Table set forth in the Plan.

50. Mr. Durazzo continues to desire to purchase Apartment 4B at 107 Morton Street, New York, New York.

51. As a result of BRG's breaches, Mr. Durazzo has been damaged because BRG has thwarted his attempts to exercise his purchase option in a manner consistent with the governing agreements.

COUNT I

Fair Housing Act:
Discrimination based on Disability
(42 U.S.C. § 3601 *et seq.*)

52. Plaintiff repeats and realleges the foregoing paragraphs of his complaint as though fully set forth herein.

53. BRG owns and leases dwellings, 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."

54. Srulowitz's February 19, 2016 statement constitutes making, printing, or publishing, or causing to be made, printed, or published a notice, statement, or advertisement, with respect to the sale 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).

55. BRG is liable for Srulowitz's statement because Srulowitz was acting as BRG's attorney and agent at the time he made his discriminatory statement.

56. Defendants' conduct, as described above, constitutes discrimination in the sale of a dwelling, or otherwise making unavailable or denying a dwelling, because of disability, in violation of Section 804(f)(1) of the Fair Housing Act, 42 U.S.C. § 3604(f)(1).

57. Plaintiff is an aggrieved person as defined in 42 U.S.C. § 3602(i). Plaintiff has been injured by Defendants' discriminatory conduct and has suffered damages as a result, including damages for emotional distress and lost housing opportunity.

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

59. Accordingly, under 42 U.S.C. § 3613(c), Plaintiff is entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

COUNT II

Breach of Lease Agreement Arising From
February 26, 2016 Purchase Notice

60. Plaintiff repeats and realleges the foregoing paragraphs of his complaint as though fully set forth herein.

61. BRG breached the Lease Agreement by failing to honor Mr. Durazzo's valid February 26, 2016 purchase notice, which entitles him to purchase his apartment for \$549,422.89, an 11% increase from the Year 10 purchase price set forth in the Rider to the Lease Agreement.

62. As a result of BRG's breach, Mr. Durazzo has suffered damages because he is not able to purchase his apartment at the price to which he is entitled under the Lease Agreement and the Plan.

COUNT III

Breach of Lease Agreement Arising From
January 28, 2016 Purchase Contract

63. Plaintiff repeats and realleges the foregoing paragraphs of his complaint as though fully set forth herein.

64. BRG breached the Lease Agreement by refusing to honor the January 28, 2016 purchase contract, which was signed by both parties.

65. BRG's breach is not excused by an alleged breach on the part of Mr. Durazzo because BRG failed to deliver the purchase contract to Mr. Durazzo via personal delivery or certified mail, as required by the Lease Agreement.

66. As a result of BRG's breach, Mr. Durazzo has suffered damages because he is not able to purchase his apartment at the price set forth in the purchase contract.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

- a. An Order requiring BRG to provide Mr. Durazzo with a purchase contract in response to the February 26, 2016 purchase notice that includes a purchase price of \$549,422.89;
- b. Compensatory damages in the amount of the difference between the purchase price set forth in the January 28, 2016 purchase contract and the purchase price to which Mr. Durazzo is entitled as a result of his February 26, 2016 purchase notice;
- c. Such other and further compensatory damages for BRG's contract breaches as the Court may deem just and proper;
- d. Compensatory and punitive damages against Defendants as a result of their unlawful, discriminatory statements and conduct;
- e. Reasonable attorneys' fees and costs under 42 U.S.C. § 3613(c); and
- f. Such other and further relief as the Court may deem just and proper.

Dated: March 25, 2016
New York, New York

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