

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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Nails Construction Company, Newell  
Abatement Services, Inc., and Lead  
Investigative Services, Inc., and Derrick  
Woodson, on behalf of themselves and all  
others similarly situated,

Court File No.

**COMPLAINT**

Plaintiffs,

vs.

The City of Saint Paul,

**Demand For Jury Trial**

Defendant.

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Plaintiffs, for their Complaint and causes of action against Defendant, states and allege as follows:

**I.**

**The Parties**

1. Plaintiff Nails Construction Company ("Nails Construction") is a corporation organized and in good standing under the laws of the State of Minnesota.
2. Nails Construction is in the business of providing carpentry services.
3. Nails Construction is a "Section 3 Business Concern" as defined herein.
4. Plaintiff Newell Abatement Services, Inc. ("Newell Abatement") is a corporation organized and in good standing under the laws of the State of Minnesota.

5. Newell Abatement, originally established in 1995, has been registered as a Minnesota Corporation since 1999.
6. Newell Abatement is in the business of performing lead and asbestos abatement, class B demolition, and lead risk assessment and inspection.
7. Newell Abatement has in the past performed lead abatement services for the City of St. Paul.
8. Newell Abatement is a "Section 3 Business Concern"
9. Plaintiff Lead Investigative Services, Inc. ("Lead Investigative") is a corporation organized and in good standing under the laws of the State of Minnesota.
10. Lead Investigative is in the business of hazardous waste remediation, Brownfield clean-up and lead risk assessment.
11. Lead Investigative is a "Section 3 Business Concern." Nails Construction, Newell Abatement and Lead Investigative are collectively referred to herein as the "Newell Plaintiffs."
12. Derrick Woodson ("Woodson") is a low income or very low income individual residing in the City of Saint Paul and qualifies as a Section 3 Resident.
13. Defendant City of Saint Paul is a municipality located in the State of Minnesota.
14. The Newell Plaintiffs have employed Section 3 Residents and intend on employing Section 3 Residents in the future.

## II.

### Jurisdiction, Venue and Class Certification

15. This action arises from, and implicates the provisions of, 24 U.S.C. §1701, et seq., HUD Statute of 1968, and the regulations promulgated by the Department of Housing and Urban Development contained at 24 C.F.R. Part 135.
16. Jurisdiction is conferred by 28 U.S.C. § 1331.
17. Venue is proper because Plaintiffs, Woodson, and Defendant reside in the Federal District of Minnesota.
18. Class certification of Plaintiffs' claims as a class action is appropriate because:
  - a. the class of potential plaintiffs is numerous that joinder of all members is impracticable;
  - b. there are questions of law and fact common to the class;
  - c. the claims and defenses of the representative parties are typical of the claims and defenses of the class; and
  - d. the representative parties will fairly and adequately protect the interests of the class.

## III.

### Facts

19. In 1968, the United States Congress passed the Housing and Urban Development Act ("Act") requiring recipients of HUD funds and contractors employed by these recipients would utilize certain HUD funds to benefit low-income persons "to the greatest extent feasible."
20. In 1994, the United States Congress amended the Act extending application of Section 3 to all federal housing programs, creating a priority system for awarding Section 3 contracts and clarifying standards of compliance applicable to Section 3 recipients.

21. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing law, be directed to low and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low income persons. 24 CFR § 135.1.
22. Section 3's dictates apply to any recipient that receives over \$200,000.00 in HUD funding for certain construction-related projects including housing rehabilitation, lead abatement, housing construction and other public construction.
23. Section 3 specifically applies to Community Block Development Block Grants, Fair Housing Assistance, Section 811 Programs and numerous other federal funding programs.
24. Section 3 also mandates that any recipient's subcontractors that receive contracts of \$100,000.00 or more must also comply with Section 3.
25. HUD regulations require recipients of Section 3 funds "to provide, to the greatest extent feasible, training, employment, and contracting opportunities generated by the expenditure of this assistance to the low- and very low-income persons and business concerns, or which employ low- and very low-income persons." 24 C.F.R. §135.3 (d).
26. A Section 3 Resident is an individual that is either:
  - a. a public housing resident,
  - b. a low income person, or
  - c. a very low income person.

27. With respect to any Section 3 project, Defendant is required to ensure that at least 10% of all new hires are Section 3 residents.
28. With respect to public housing projects, Defendant is required to ensure that at least 30% of all new hires are Section 3 residents.
29. With respect to community development projects, Defendant is required to ensure that at least 30% of all new hires are Section 3 residents.
30. Woodson is a Section 3 Resident.
31. A "Section 3 Business Concern" means a business that is either
  - a. 51% or more owned by section 3 residents
  - b. whose permanent, full-time employees include persons, at least 30% of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents, or
  - c. that provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in Paragraphs 12(a) and 12(b). See 24 C.F.R. §135.5.
32. Each Newell Plaintiff is a "Section 3 Business Concern" as defined by 24 C.F.R. §135.5.
33. Defendant is the "Recipient" of Section 3 covered assistance from HUD within the meaning of that term as set forth at 24 C.F.R. §135.5.
34. A recipient of HUD funds, such as Defendant, may demonstrate compliance with Section 3 by committing to award to Section 3 Business Concerns the sum of at least 10% of all Section 3 covered contracts for public housing and 3% of the total dollar amount of all Section 3 covered contracts.

35. Defendant is responsible pursuant to federal law for the administration of Section 3 funds in conformity with federal law as set forth in the Act and at 24 C.F.R. Part 135.
36. Defendant has, as a matter of policy, failed and refused to implement Section 3 in conformity with federal law in the following respects:
- a. Defendant has not, to the greatest extent feasible, awarded a sufficient percentage of HUD contracts to Section 3 Business Concerns.
  - b. Defendant has not, to the greatest extent feasible, exercised oversight over those contractors hired with HUD funds to ensure that, to the greatest extent feasible, those contractors provide training, employment and contracting opportunities to Section 3 residents and Section 3 Business Concerns.
  - c. Defendant has not met its reporting requirements with respect to assuring its compliance with the Act and Section 3 by both notifying contractors of Section 3 requirements and informing all units of Defendant of Section 3 requirements. See 24 C.F.R. §135.32.
  - d. Defendant has not met its obligation to seek out and identify Section 3 Business Concerns about contracting opportunities.
  - e. Defendant has not met its obligation to notify Section 3 Residents about training and/or employment opportunities.
  - f. Defendant has failed to train and employ Section 3 Residents.
  - g. Defendant has failed to provide preference to Section 3 Residents in training and contracting opportunities.

- h. Defendant has failed to provide preferences for Section 3 Business Concerns in contracting opportunities.
  - I. Defendant has failed to meet its obligation to file, among other forms, the form HUD-60002 entitled "Section 3 Summary Report."
37. According to documents entitled "Contract and Subcontract Activity" prepared by the Defendant, during fiscal year 2001, October 1, 2000, through September 30, 2001, it appears that Defendant awarded no HUD financial assistance to entities designated by the Defendant as Section 3 Business Concerns.
38. According to documents entitled "Contract and Subcontract Activity" prepared by the Defendant, during fiscal year 2002, October 1, 2001, through September 30, 2002, Defendant awarded a total of \$231,619.00 in HUD financial assistance to entities designated by the Defendant as Section 3 Business Concerns.
39. According to documents entitled "Contract and Subcontract Activity" prepared by the Defendant, during fiscal year 2003, October 1, 2002, through September 30, 2003, Defendant awarded no HUD financial assistance to entities designated by the Defendant as Section 3 Business Concerns.
40. The Newell Plaintiffs and Woodson now bring suit to enjoin Defendant from further distribution of Section 3 HUD funds until Defendant has instituted policies and procedures ensuring that said distribution of Section 3 HUD funds is accomplished in conformity with federal law.
41. Plaintiffs have retained legal counsel, and incurred legal fees and associated expenses, to seek redress for Defendant's violation of its Section 3 obligations.

42. Plaintiffs seek monetary damages and an award of costs and attorneys' fees.

**Count I**

**Federal Declaratory Judgment Act - 28 U.S.C. § 2201**

43. Plaintiffs reallege the preceding paragraphs as if set forth fully herein.

44. A controversy has arisen with respect to the obligation of Defendants pursuant to the Act, Section 3, and applicable HUD regulations.

45. Plaintiffs contend that the Act requires Defendant to award Section 3 contracts to Plaintiffs and others similarly situated.

46. Plaintiffs contend that Defendant has been awarding HUD funded contracts without adherence to the Act and Section 3.

47. Defendant has acted in a manner consistent with the position that Defendant has no particular obligations under HUD's Section 3 program other than to append certain form language to its contractor agreements.

48. 28 U.S.C. § 2201 provides that Plaintiff may obtain a declaration of the parties rights and obligations pursuant to the Act and applicable regulations.

49. A real controversy exists between the parties regarding the import of the Act and applicable regulations.

Plaintiffs seek a declaration that Defendant has violated the Act by failing to:

- a. to the greatest extent feasible, award a sufficient percentage of HUD contracts to Section 3 Business Concerns such as Plaintiffs,
- b. to the greatest extent feasible, exercise oversight over those contractors hired by Defendant with HUD funds to ensure that, to the greatest extent feasible, those

Questions of Fact 50.





- contractors provide training, employment and contracting opportunities to Section 3 Business Concerns such as Plaintiffs,
- c. report to the Assistant Secretary of the United States Department of Housing and Urban Development on its compliance with the Act; and,
  - d. notify Defendant's contractors of Section 3 requirements, and inform appropriate units of St. Paul City government about Section 3 requirements.

**Count II**

**42 U.S.C. §1983**

- 51. Plaintiffs reallege the preceding paragraphs as if set forth fully herein.
- 52. Defendant has, under the color of state law, deprived plaintiffs of property by denying Plaintiffs access to HUD funds as required by the Act and Section 3.
- 53. Defendant has intentionally, negligently and with deliberate indifference and callous disregard for Plaintiffs' rights, failed to appoint, supervise, train its employees and agents to comply with the Act and Section 3.
- 54. Defendant has also failed to otherwise provide for Defendant's compliance with the Act and Section 3.
- 55. Defendant has deprived Plaintiffs of their Constitutional rights in violation of the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.
- 56. As a direct and proximate result of Defendant's deprivation of Plaintiffs' constitutional rights, Plaintiffs have been injured in an amount in excess of \$100,000.00 to be established at trial.

### Count III

#### Injunctive Relief

57. Plaintiffs reallege the preceding paragraphs as if set forth fully herein.
58. Plaintiffs have a strong likelihood of success on the merits of this lawsuit because Defendant is in violation of federal law.
59. Plaintiffs will potentially be irreparably harmed if Defendant is not enjoined from continuing to violate federal law because it is unlikely the Defendant will be able to recoup such distributed funds.
60. Defendant has no interest in continuing to distribute Section 3 funding in violation of federal law.
61. Plaintiffs are entitled to injunctive relief to enjoin Defendant from further improper administration of HUD funds.
62. Plaintiffs seek an Order appointing a neutral third party to oversee Defendant's compliance with the requirements of the Act and Section 3.

**WHEREFORE**, Plaintiffs pray for:

1. Judgment in their favor on all counts of their Complaint,
2. An Order certifying this lawsuit as a class action,
3. An award of damages to be determined at trial and believed to exceed \$100,000.00,

4. An Order enjoining the City of St. Paul from further distribution of Section 3 HUD funds until the City of St. Paul institutes sufficient policies and procedures to ensure its compliance with federal law,
5. An Order mandating that the City of St. Paul designate for re-distribution an amount equal to those HUD Funds administered by the City of St. Paul in violation of the law,
6. An Order appointing and empowering a neutral third party to oversee the City of St. Paul's administration of Section 3 HUD funds. The appointed third party should, by Court Order, be vested with subpoena power so that it may obtain those documents and testimony necessary to effectuate the Court's Order. The appointed third party should report publicly to the Court regarding the City of St. Paul's compliance, or lack thereof, with the mandates of the Section 3 program,
7. An Order declaring that pursuant to the Act and the regulations thereunder, the City of St. Paul must:
  - a. to the greatest extent feasible, award a sufficient percentage of HUD contracts to Section 3 Business Concerns such as Plaintiffs;
  - b. to the greatest extent feasible, exercise oversight over those contractors hired by Defendant with HUD funds to ensure that, to the greatest extent feasible, those contractors provide training, employment and contracting opportunities to Section 3 Business Concerns such as Plaintiffs;
  - c. report to the Assistant Secretary of the United States Department of Housing and Urban Development on its compliance with the Act;
  - d. notify Defendant's contractors of Section 3 requirements;
  - e. inform all units of Defendant of Section 3 requirements;
  - f. implement a program to seek out and identify Section 3 Business Concerns with respect to contracting opportunities in the City of St. Paul;

- g. implement a program to seek out, identify and notify Section 3 Residents with respect to training and/or employment opportunities;
  - h. to train and employ Section 3 Residents;
  - i. to provide preference to Section 3 Residents in training and contracting opportunities; and,
  - j. to provide preferences for Section 3 Business Concerns in contracting opportunities.
- 8 An award of costs and attorneys' fees pursuant to 42 U.S.C. §1988; and,
9. Any further relief the Court deems just and proper.

Dated: August 18, 2006.

**BONNER & BORHART LLP**

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