

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

Bonita Crowder, Fern Knowles, Sharon
Aslin, Maxine Gates, individually, and on
behalf of all persons similarly situated,

Civil: _____

Plaintiffs,

v.

**CLASS ACTION
COMPLAINT**

The Village of Kaufman, Ltd, a Texas
limited partnership, Apartment Investment
and Management Company, a Maryland
corporation and the United States
Department of Housing and Urban
Development,

Defendants.

I. INTRODUCTION

1. The Village of Kaufman, Ltd, and its general and managing partners, have been overcharging the 68 low-income tenant households of Village of Kaufman, (“Kaufman”), including the individual named plaintiffs, for years. These tenants have relied on defendants’ false certifications that they calculated tenant rents in accordance with the federal rules that govern the Village of Kaufman complex because of the federal rent subsidies which it receives.

2. Under the federal subsidy program, administered by the federal defendant, the United States Department of Housing and Urban Development (“HUD”), the rent charged to tenants, including utilities, generally cannot exceed 30% of a tenant’s income. Where, as at

Kaufman, tenants pay their own utilities, tenants are entitled to “Utility Allowances,” reducing the rent they would otherwise pay to the owners, to cover the costs of reasonable utility consumption. To ensure that the allowances remain adequate to cover the tenants’ utility costs, federal law requires annual reviews of the adequacy of Utility Allowances and adjustments whenever utility rates increase by 10% or more. Although utility rates have skyrocketed during recent years, defendants failed to adjust the allowances at Kaufman apartments for nearly a decade. As a result, the tenants of Kaufman have been significantly overcharged for rent.

3. The ownership and management of Kaufman is carried out by the private defendants who are all related to defendant Apartment Investment and Management Company, (“AIMCO”) one of the largest and most sophisticated owners of subsidized rental housing in the country. These defendants have repeatedly falsely and fraudulently certified to Kaufman tenants that their rents were properly calculated in accordance with federal law, leading tenants to continually pay excessive rents. Defendant United States Department of Housing and Urban Development (“HUD”), the federal agency charged with overseeing and implementing federal law related to subsidized housing and subsidized rental housing including Kaufman, failed to provide the Utility Allowances requested by the private defendants in 2008 in violation of federal law.

4. The plaintiffs, for themselves and the class of tenants they represent, seek declaratory and injunctive relief and equitable restitution, including but not limited to repayment of rent overcharges resulting from defendants’ violations of law and breaches of tenants’ rental agreements. They also seek treble damages for the private defendants’ unfair and deceptive actions in repeatedly overcharging residents for rent and falsely certifying that their rents were

properly calculated.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3). This action is authorized against the federal defendants by 5 U.S.C. § 702. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202. To the extent sovereign immunity is applicable to federal defendants, it has been waived by virtue of 5 U.S.C. §704 and 42 U.S.C. § 1404a.

6. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over plaintiffs' state law claims.

7. Venue is proper in this District under 28 U.S.C. § 1391(b) on the grounds that (a) all defendants reside in this District; and (b) the violations of law described herein occurred in this District and relate to property located in this District.

8. There is an actual controversy between plaintiffs and defendants within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57.

III. PARTIES

9. Plaintiff Bonita Crowder is a low income tenant who has resided at Kaufman since March 16, 2009. She brings this action on her own behalf and, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of all others who are similarly situated.

10. Plaintiff Fern Knowles is a low income tenant who has resided at Kaufman since 1989. She brings this action on her own behalf and, under Rule 23 of the Federal Rules of Civil

Procedure, on behalf of all others who are similarly situated.

11. Plaintiff Sharon Aslin is a low income tenant who has resided at Kaufman since 2005. She brings this action on her own behalf and, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of all others who are similarly situated.

12. Plaintiff Maxine Gates is a low income tenant who has resided at Kaufman since 1991. She brings this action on her own behalf and under Rule 23 of the Federal Rules of Civil Procedure, on behalf of all others who are similarly situated.

13. Defendant The Village of Kaufman, Ltd, a Texas limited partnership, is the owner of record of Kaufman. Upon information and belief, The Village of Kaufman, Ltd is comprised of a number of subsidiary corporations and limited partnerships which are all related to and wholly owned subsidiaries of defendant AIMCO, a Maryland corporation. AIMCO, GP, Inc, a Delaware corporation is the general partner of AIMCO GP LA, L.P., a Delaware limited partnership which is the general partner of LAC Properties Operating Partnership, L.P., a Delaware limited partnership which is the managing member of LAC Properties GP I LLC, a Delaware limited liability company, which is the general partner of LAC Properties GP I Limited Partnership, a Delaware limited partnership, which is the general partner of The Village of Kaufman, Ltd. In records filed with the Texas Secretary of State, all of these entities list the same principal office located at 4582 S. Ulster St Pkwy, Suite 1100, Denver, CO, which upon information and belief is the headquarters of defendant Apartment Investment and Management Company (“AIMCO”), one of the nation’s largest and most sophisticated owners of federal subsidized rental housing. The private defendants will be jointly referred to herein as the “Owner” and are jointly and severally liable herein.

14. Defendant United States Department of Housing and Urban Development (“HUD”) is the federal agency charged with funding, regulating and administering the National Housing Act and the federal Section 8 Loan Management rent subsidy program in effect at Kaufman and established by Congress to provide decent, safe and affordable housing for low income families and individuals.

IV. CLASS ALLEGATIONS

15. Plaintiffs seek to represent a class defined as all present and past Kaufman tenants who paid excessive rent because defendants failed properly and timely to update the Kaufman Utility Allowances, dating from the current time back to the expiration of the applicable statute of limitations.

16. The class is so numerous that joinder of all members is impracticable.

17. There are questions of law and/or fact common to the class, as set forth below.

18. Plaintiffs’ claims are typical of the claims of the class as a whole.

19. Plaintiffs will fairly and adequately represent the interest of the class. Plaintiffs know of no conflicts of interest among members of the class.

20. Plaintiffs are represented by attorneys who are experienced class action litigators and will adequately represent the interest of the entire class.

21. A class action is appropriate in this case pursuant to R. Civ. P. 23(b)(2) because

a. Defendants have acted on grounds generally applicable to the class, making appropriate injunctive or declaratory relief with respect to the class as a whole.

b. Questions of law and fact common to the plaintiffs’ class include:

- i. Whether the defendants failed to annually review the Utility Allowances and recalculate Utility Allowances where a utility rate change would have resulted in a cumulative increase of 10 percent or more in the most recently approved Utility Allowance;
- ii. The extent of the increases in utility rates since defendants last adjusted the allowances;
- iii. The amounts of the adjustments that should have been made to correspond with utility rate increases;
- iv. Whether defendants violated the National Housing Act and Kaufman tenant leases by providing tenants with inadequate Utility Allowances;
- v. Whether defendants engaged in unfair or deceptive practices when they overcharged Kaufman tenants for rent and falsely certified that the rents were properly calculated;
- vi. Whether defendants fraudulently concealed their responsibilities under and failure to comply with federal and state laws;
- vii. Whether defendants fraudulently certified that the rents for Kaufman tenants were properly calculated.

V. STATUTORY FRAMEWORK

22. Under the National Housing Act, the assisted tenant's total payment for rent and utilities for tenants residing in Section 8 Loan Management developments cannot exceed a

certain percentage, generally 30%, of a tenant's income. This payment, based on 30% of income, is called the Total Tenant Payment. 42 U.S.C. § 1437a(a)(1); 24 C.F.R. § 5.628(a).

23. If the tenant pays for utilities, then a portion of the Total Tenant Payment is called the Utility Allowance. It is established by HUD based on an estimate of the cost of a reasonable monthly consumption of the tenant-paid utilities. 24 C.F.R. § 5.603(a).

24. The remainder of the Total Tenant Payment, after deduction of the Utility Allowance, is called "Tenant Rent" and is paid as rent to the owner. 24 C.F.R. §§ 5.603(a), 5.634(a).

25. The owner of a Section 8 Loan Management development is entitled to a certain amount of rent to operate each unit (called the "Contract Rent"), which is set by a "Housing Assistance Payment Contract" between the owner and the HUD. 24 C.F.R. §886.102. To ensure that the owner receives the full contract rent for operation of a subsidized unit, HUD pays the owner, as a subsidy, the difference between the tenant's portion of the rent (the Tenant Rent) and the Contract Rent. 24 C.F.R. § 886.109.

26. Owners can apply for adjustments to the Contract Rent at least annually. 24 C.F.R. § 886.112. Each time the Contract Rents for a Section 8 Loan Management development are adjusted, the owner is required to complete and submit an analysis of the adequacy of Utility Allowances in light of the relevant changes since the allowances were last adjusted (e.g., changes in utility rates). 24 C.F.R. § 886.126.

27. Where utility rates increase by 10 percent or more since the most recently approved utility allowance, the owner must report the increase and request an increase in the Utility Allowances to ensure that tenants are not charged more than 30 percent of their income

for rent. *Id.*

28. As a direct result of this regulatory scheme, if utility costs go up by at least 10% but the owner fails to request a Utility Allowance increase, the tenants Total Tenant Payment will exceed the maximum permitted percentage of income. The owner then directly benefits at the tenant's expense because the Tenant Rent paid to the owner is not reduced by an increase in the Utility Allowance.

29. The Texas Deceptive Trade Practices and Consumer Protection Act, Texas Bus. & Comm. Code § 17.41, et. seq. (the "State Act") prohibits unconscionable actions or courses of action and false, misleading and deceptive trade practices as defined therein.

VI. FACTUAL ALLEGATIONS

30. Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

31. Kaufman is a 68 unit multifamily rental housing complex located in Kaufman, Texas and owned by private defendant, The Village of Kaufman, Ltd and operated by AIMCO, the other private defendant. Kaufman is federally subsidized under the federal low income rental subsidy program, the Section 8 Loan Management program administered by the federal defendant HUD.

32. Plaintiff Bonita Crowder has been a tenant at Kaufman since March 16, 2009. She resides in a one bedroom unit pursuant to a rental agreement with the owner.

33. Fern Knowles has been a tenant at Kaufman since 1989. She resides in a one bedroom unit pursuant to a rental agreement with the owner.

34. Plaintiff Sharon Aslin has been a tenant at Kaufman since 2005. She resides in a one bedroom unit pursuant to a rental agreement with the owner.

35. Plaintiff Maxine Gates has been a tenant at Kaufman since 1991. She resides in a one bedroom unit pursuant to a rental agreement with the owner.

36. Plaintiffs are informed and believe, and on that basis allege, that the rental agreements for all Kaufman tenants are the same as, or materially similar.

37. Each year, the named individual plaintiffs and the other Kaufman tenants go through a “recertification” process in which their incomes, and therefore their Total Tenant Payments and Tenant Rents are redetermined by defendants. As part of the process, the defendant owner prepares a “Form HUD 50059—Certification and Recertification of Tenant Eligibility” on which the owner certifies that each tenants’ rent has been computed in accordance with HUD regulations and procedures. The Form HUD 50059 informs tenants what their rent and Utility Allowance is, and is incorporated by reference in the tenants’ rental agreements.

38. As residents of Kaufman, the individual named plaintiffs pay their own electric and gas utilities. Tenant Rents to the owners are based on a monthly utility allowance to the individual named plaintiffs, in amounts based on the size of their units. Prior to July 2009, the amounts of the monthly Utility Allowances were \$33 for a 1 bedroom unit, \$47 for a 2 bedroom unit and \$53 for a 3 bedroom unit. The amounts of the Utility Allowance were deducted from each tenant’s Total Tenant Payment (generally 30% of income) to arrive at the Tenant Rent paid to the owner.

39. Upon information and belief the Utility Allowances for Kaufman have not been adjusted since at least 2000, even though utility rates have increased well in excess of 10 percent

since the Utility Allowances were last updated. In fact, if private defendants had acted in compliance with utility allowance requirements, they would have almost certainly been obligated to seek repeated utility allowance increases during the period between 2000 and the present time, and perhaps even earlier than 2000.

40. This failure to receive required Utility Allowance adjustments is directly attributable to the defendant owner's failure to complete and submit an analysis of the adequacy of Utility Allowances and to request increases in the Utility Allowances for Kaufman in connection with requests for adjustments of the contract rents for Kaufman, as required by the federal regulations.

41. As a result, upon information and belief since at least 2000 and until September 2009, the plaintiffs and the class they seek to represent have been required to pay to the owner an amount for rent which results in Total Tenant Payments in excess of 30% of their income.

42. On or about August 4, 2009, by letter, plaintiffs' counsel demanded that the Kaufman Utility Allowances be increased and further notified the defendants that the residents had been paying excessive rent and that the residents were seeking compensation from the defendants for excessive rent paid. Plaintiffs' counsel requested a meeting to discuss the amount of the compensation.

43. In August 2009, plaintiffs' attorney received an email from Michael Backman, a Dallas employee of HUD, stating that the Utility Allowances at Kaufman were being changed in the following amounts: 1 bedroom units from \$33 to \$75; 2 bedroom units from \$47 to \$155; 3 bedroom units from \$53 to \$161. Mr. Backman's email stated that the adjustments were to be effective as of July 1, 2009 but would not be implemented until September 1, 2009. None of the

plaintiffs have received notice from the defendants adequately explaining the change in the Utility Allowances and the effect on their Tenant Rent. Upon information and belief the tenants were not provided credit for the retroactive adjustment until November 1, 2009.

44. The utility allowance adjustments announced by Mr. Backman to plaintiffs' attorneys in August 2009 are not sufficient to account for the increases in utility rates since the last adjustment, which upon information and belief was prior to 2000.

45. On or about August 26, 2009, plaintiffs' counsel spoke with counsel for the private defendants by telephone and again requested a meeting to determine the amount of past compensation due to the residents resulting from the excessive rent they paid. Defendants' counsel refused to meet and indicated the private defendants were unwilling to consider payment of such compensation to the residents.

46. With knowledge of the falsity of their statements, or in reckless disregard of whether the statements were true or false, and upon information and belief the defendant owner has repeatedly certified that the rents for the members of the plaintiff class were calculated in accordance with HUD regulations and procedures, even while knowingly failing to comply with those procedures.

47. With knowledge of the falsity of their statements, and with the intention that plaintiff class members rely thereon, the private defendants have repeatedly concealed from plaintiff class defendants' obligation to accurately review and adjust the utility allowances and to comply with federal laws requiring the same and defendants' failure to so comply.

48. The private defendants have repeatedly and continuously failed to disclose to members of the plaintiff class information concerning rent and utility allowances adjustments

required by law, which these defendants knew and which they intended to induce the members of the class into continuing their leases and payments of unadjusted rent and not challenging the defendants' failure to comply with federal law, which the plaintiffs would not have done had the correct information been provided by defendants.

49. In reliance on defendants' statements, plaintiffs and the plaintiff class paid rents in excess of what they should have paid.

50. Upon information and belief in 2008 the defendant owner may have applied to HUD for an increase in the Utility Allowances which HUD denied.

51. HUD knew or should have known in 2008 that the Utility Allowances for Kaufman had not been adjusted since at least 2000 and that the utility rates had increased 10% or more since the Utility Allowances were last adjusted.

52. HUD's refusal to grant a request for an increase in the Utility Allowances for Kaufman resulted in the plaintiffs and proposed class members paying rent in excess of what they should have paid. In refusing to grant an increase in the Utility Allowances, HUD acted arbitrarily and capriciously and in violation of the National Housing Act ,42 U.S.C. § 1441 and 42 U.S.C. § 1437a(a)(1) entitling plaintiffs and the proposed class to declaratory and injunctive relief pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201.

**VII. FIRST CLAIM FOR RELIEF:
VIOLATION OF THE NATIONAL HOUSING ACT AND
ITS SUPPORTING REGULATIONS**

53. The plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

54. Defendants have failed to comply with the federal regulations governing project-based Section 8 housing that require them to annually review and to increase, or request increases to, utility allowances where utility rates have increase by 10 percent or more since the utility allowances were last revised, with the possible exception of a 2008 application to HUD.

55. Defendants, as a result of their failure to update utility allowances at Kaufman, have charged the plaintiff class rents in excess of those permitted by the National Housing Act, 42 U.S.C. § 1437a(a)(1) and its supporting regulations.

56. As a direct result of defendant's actions in violations of the National Housing Act and its supporting regulations, plaintiffs and the class they represent have been damaged in an amount to be determined at trial. Additionally, plaintiffs and the class they represent are entitled to declaratory and injunctive relief to enforce compliance with the National Housing Act and its supporting regulations, and to prevent irreparable harm resulting from their evictions or other adverse actions.

57. HUD's refusal to grant a request for an increase in the Utility Allowances for Kaufman resulted in the plaintiffs and proposed class members paying rent in excess of what they should have paid. In refusing to grant an increase in the Utility Allowances, HUD acted arbitrarily and capriciously and in violation of the National Housing Act ,42 U.S.C. § 1441 and 42 U.S.C. § 1437a(a)(1) entitling plaintiffs and the proposed class to declaratory and injunctive relief pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201.

VIII. SECOND CLAIM FOR RELIEF: BREACH OF RENTAL AGREEMENT

58. Plaintiffs reallege and incorporate by reference each and every allegation

contained in the above paragraphs.

59. The rental agreement for Kaufman tenants requires defendants to calculate tenant rents in accordance with the HUD requirements.

60. Section 4 of the rental agreement for Kaufman tenants provides, in part, that “[t]he Landlord agrees to implement changes in the Tenant’s rent or assistance payment only in accordance with the time frames and administrative procedures set forth in HUD’s handbooks, instructions, and regulations related to administration of multifamily subsidy programs.”

61. Section 27 of the rental agreement for Kaufman tenants incorporates into the terms of the lease by reference Form HUD-50059, Certification and Recertification of Tenant Eligibility. Form HUD-50059 includes an “Owner’s Certification” section in which the owner must certify, in part, to the following: “I certify that this Tenant’s eligibility, rent and assistance payment have been computed in accordance with HUD’s regulations and administrative procedures...”

62. Additionally, since existing law is part of a contract where there is no stipulation to the contrary, the National Housing Act and the supporting HUD procedures and regulations are implied into the terms of the rental agreements between the plaintiff class and defendants.

63. Defendants’ actions, with the possible exception of a 2008 application to HUD, with regard to the calculation of tenant rents and their failures to revise the utility allowances have not been in accordance with the National Housing Act and the supporting HUD regulations and procedures, thereby breaching the rental agreements with the members of the plaintiff class.

64. As a direct result of defendants’ breaches, plaintiffs and the class they seek to represent have been damaged in an amount to be determined at trial.

65. Additionally, on information and belief, defendants may have taken action to evict members of the plaintiff class from their apartments for alleged rent delinquencies. Plaintiffs and the class they seek to represent are entitled to declaratory and injunctive relief to enforce the terms of the rental agreement and defendants' corresponding obligations pursuant to the National Housing Act and HUD requirements, and to prevent irreparable harm resulting from their evictions or other adverse actions resulting from the payment of excessive rent.

**IX. THIRD CLAIM FOR RELIEF:
TEXAS DECEPTIVE TRADE PRACTICES ACT**

66. Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

67. Plaintiffs and each member of the class they seek to represent is a "person" and "consumer" as those terms are defined in the Texas Deceptive Trade Practices Act, Tex. Bus. & Comm. Code §17.45 (3)(4) ("State Act") and the above-described acts and practices involved "trade or commerce," as that term is defined in the State Act, *Id.*, §17.45(6)

68. The private defendants' actions and/or conduct constitute false, misleading or deceptive acts or practices in violation of the State Act, Tex. Bus. & Comm. Code, §17.46(b)(3), (12) and (24), including but not limited to:

a. Repeatedly certifying that the private defendants had properly calculated the rents for plaintiffs and each member of the class they seek to represent when in fact the private defendants had not;

b. Charging rents in excess of those permitted by the rental agreements

between defendants and plaintiffs and each member of the class they seek to represent;
and

c. Charging rents in excess of those permitted by federal law.

69. Defendants' false, misleading or deceptive acts and practices as enumerated herein were committed knowingly or intentionally and relied on by plaintiffs and each member of the class they seek to represent.

70. Defendants' actions and conduct described herein, further constitute unconscionable actions or course of action pursuant to the State Act §17.50(a)(3).

71. Defendants' actions and practices as described herein were a producing cause of injury, including economic damages to plaintiffs and each member of the class they seek to represent. Pursuant to the State Act § 17.50(b)(1) the economic damages herein found by the trier of fact to have been knowingly or intentionally caused should be trebled.

X. FOURTH CLAIM FOR RELIEF: FRAUD

72. Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

73. Federal law requires that private defendants annually certify to Kaufman tenants that their rents are properly calculated.

74. Private defendants repeatedly, intentionally and continuously provided false certifications to Kaufman tenants that their rents were properly calculated, leading tenants to continually pay excessive rents.

75. The representations made by defendants were material and false. When

defendants made the representations, defendants knew the representations were false or alternatively, made the representations recklessly, as a positive assertion, and without knowledge of the truth.

76. Defendants made the representations with the intent that the plaintiffs and each member of the class they seek to represent act on such representations. Plaintiffs and each member of the class they seek to represent did act and rely on such representations causing injury to plaintiffs and class members.

**XI. FIFTH CLAIM FOR RELIEF:
FRAUD BY NONDISCLOSURE**

77. Defendants concealed and/or failed to disclose facts and circumstances regarding Utility Allowances, as described herein, from plaintiffs and each member of the class they seek to represent.

78. Defendants had a duty to the plaintiffs and the proposed class members that required defendants to disclose information regarding Utility Allowances to plaintiffs and proposed class members. The information which was not disclosed was material.

79. Defendants knew or should have known plaintiffs and the proposed class members were ignorant of such information and would not have an equal opportunity to discover such information. Defendants were thus deliberately silent when they had a duty to speak.

80. By failing to disclose the information, defendants intended to induce plaintiffs and the proposed class members to continue as tenants and to refrain from seeking adjustments for Utility Allowances.

81. Plaintiffs and the proposed class members relied on defendants' nondisclosure and were injured, sustaining economic damages as a result of acting without the knowledge of the undisclosed information regarding Utility Allowances.

XII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

- 1) Certify the plaintiff class.
- 2) Declare that defendants have violated plaintiffs' rights as set forth herein.
- 3) Enter preliminary and permanent injunctions requiring defendants to comply with the terms of the rental agreements of the plaintiff class, the National Housing Act and HUD requirements, and barring the private defendants from initiating or proceeding with eviction actions against members of the plaintiff class based on rent delinquencies until rent overcharges resulting from defendants' unlawful actions are credited to the tenants' rent payments.
- 4) Order monetary relief as follows:
 - i. Award against the private defendants damages and pre-judgment interest to each member of the plaintiff class, for amounts charged for rent by the private defendants in excess of 30% of tenant income resulting from inadequacies in the utility allowances.
 - ii. Award equitable restitution against HUD for amounts charged for rent by the private defendants in excess of 30% of tenant income resulting from refusal to permit utility allowance adjustments.

iii. Award treble damages against the private defendants, pursuant to State Act § 17.50 (b)(1).

- 5) Award plaintiffs' costs and attorneys' fees as authorized by 28 U.S.C. § 2412 against HUD and Texas Bus. & Comm. Code, § 17.50(d) against the private defendants.
- 6) Grant plaintiffs and the plaintiff class such other relief as may be just and proper.

Dated: November 13, 2009

/s/Timothy Thompson

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