

AMENDED HOUSING DISCRIMINATION COMPLAINT [MAY 28, 2014]

CASE NUMBER: 02-14-0400-8

(Title VIII)
(Section 109)
(Title VI)

1. Complainant

ERASE Racism
Elaine Gross, President
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Representing ERASE Racism:

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2. Other Aggrieved Persons

Low and moderate income residents of Nassau County who have been denied equal housing opportunity and subjected to discrimination or segregation by Nassau County or members of the Nassau Urban County Consortium on the basis of race or color, and residents of Nassau County who wish to live in integrated communities within Nassau County.

3. The following is alleged to have occurred or is about to occur:

The County discriminates on the basis of race and color, and perpetuates racial segregation by its actions or omissions with respect to: (a) its own funding of housing and community development activities in jurisdictions that are members of the Nassau Urban County Consortium; (b) its own decisions with respect to dedicating County-owned land for the development of affordable housing; and (c) failing or refusing to withhold funding or other County benefits from members of the Nassau Urban County Consortium that maintain zoning and land use laws, policies and practices with a discriminatory effect.

4. The alleged violation occurred because of:

Race and color.

5. Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):

Throughout Nassau County, New York.

6. Respondent

Nassau County, New York

c/o Edward P. Mangano,
County Executive
Office of the County Executive
1550 Franklin Avenue
Mineola, NY 11501

c/o John Sarcone, Director
Department of Community Development
40 Main Street, 1st Floor
Hempstead, NY 11550

7. The following is a statement of the facts regarding the alleged violation:

- a. Complainant, ERASE Racism Inc., is a private non-profit corporation, organized under the laws of the State of New York. Its mission is to identify and expose forms of racial discrimination and advocate for laws and policies that help eliminate racial disparities, particularly in the areas of housing, community/economic development, land use, public education and health. Its vision calls for transformed, integrated communities in which no person's access to opportunity is limited by race or color.
- b. Respondent, Nassau County (County), is a municipal corporation organized under the laws of the State of New York. Through the County's Office of Community Development, it receives funds under the Community Development Block Grant Program (CDBG) and the HOME Investment Partnerships Program (HOME) and other programs from the U.S. Department of Housing and Urban Development (HUD) and distributes those funds to members of the Nassau County Urban County Consortium (Consortium). The Consortium includes participating cities, towns and villages who, through a cooperation agreement, are eligible to receive these funds.¹
- c. According to the 2010 Census, the metropolitan area of which Nassau County is a part constitutes one of the most racially segregated housing markets in the country. While African Americans constitute 11.1% of the overall population

¹ The following municipalities are members of the Consortium: The Cities of Glen Cove and Long Beach, the unincorporated areas of the Towns of Hempstead, North Hempstead and Oyster Bay and the following 27 Incorporated Villages: Bayville, Bellerose, Cedarhurst, East Rockaway, Farmingdale, Floral Park, Flower Hill, Freeport, Great Neck, Great Neck Estates, Great Neck Plaza, Hempstead, Island Park, Lynbrook, Massapequa Park, Malverne, Manorhaven, Mineola, New Hyde Park, Rockville Centre, Roslyn, Sea Cliff, South Floral Park, Stewart Manor, Valley Stream, Westbury, and Williston Park. Nassau County Office of Community Development, Analysis of Impediments and Fair Housing Plan 3 (2010).

of Nassau County, the vast majority of the municipalities in the Nassau County Consortium have over time maintained disproportionately small or disproportionately large African-American populations, further suggesting that racial segregation persists in most municipalities.²

- d. From 2000 to the present, the County has exercised its authority and influence over the location of affordable housing for families with children, which in Nassau County is disproportionately needed and inhabited by African-American households,³ to areas with significant concentrations of African-American families.
- e. Contrary to its civil rights obligations, the County has awarded financial resources to members of the Consortium for affordable, family housing which reinforces patterns of racial segregation in the County.
 1. Funding for over half of the subsidized housing units for families have been awarded to members of the Consortium with African-American population shares that are three times the County's African-American population share.⁴ Since African-American families are much more likely to reside in affordable family housing, the County has thereby perpetuated racial segregation throughout the County.⁵
 2. In contrast, funding for 62% of the subsidized housing units for seniors have been awarded to Nassau Consortium members with

² See Exhibit 1.

³ In the year 2000, although only 14.8% of all households in Nassau County were African-American or Hispanic, 41.4% of "very low" income elderly renter households in the County were African-American and Hispanic, as were 53.1% of "very low" income non-elderly renter households). In 2000, African-American people comprised 88% of the waiting list in Nassau County for Section 8 housing. *MHANY v. Garden City*, No. 05-CV-2301, 2013 WL 6334107, at *2 (E.D.N.Y. 2013).

⁴ See Exhibit 2. The data for the chart was taken from Figure 31 titled "Existing Public/Assisted/Affordable Housing Resources" of a draft of a study by Economics Research Associates, prepared for the Nassau County Office of Housing and Intergovernmental Affairs (OHIA) and Office of Housing and Homeless Services. Econ. Research Assoc., Nassau County Affordable Housing Study App'x (2008). This study identifies the address, number of units and population served for public, assisted or otherwise affordable housing units as of the date of the draft.

⁵ The HUD online tool, "A Picture of Subsidized Households: 2000," shows the relative composition of HUD funded family versus senior housing projects in the Nassau-Suffolk Metropolitan areas as of 2000. See <http://www.huduser.org/picture2000/index.html> (last visited April 24, 2014). For senior housing (defined here as projects where more than half of the units contained a head of household or spouse is age 62 or older), the median minority share of residents was 14% minority. For family projects (defined here as projects in which half or less of the units contain a household head or spouse who is age 62), the median minority share of residents was 87%. Exhibit 3, submitted by Plaintiffs in conjunction with litigation in *MHANY v. Garden City*, *supra* note 3.

overwhelmingly white majorities, that is with African-American population shares that are less than the County average.⁶ As senior housing is typically populated by non-African Americans, the County has further reinforced patterns of segregation.⁷

3. The County has had a policy or practice of using federal funds, including HOME and CDBG funds, to concentrate affordable housing with high African-American population shares. The County 2000 and 2005 Consolidated Plans expressly state that “Nassau County currently targets its comprehensive community development efforts in a number of lower income and minority areas such as Roosevelt [African-American population share 63.1%], Inwood [24.2 %], Hempstead Village [48.3%], New Cassel [38.2%], and Freeport [33.3%].⁸ Likewise the County’s 2010 Consolidated Plan states that “Nassau County currently targets its comprehensive community efforts in several lower income areas such as Elmont [African-American population share 45.5%], Roosevelt, Inwood, Village of Hempstead, New Cassel and Freeport. Housing rehabilitation [activities], construction of affordable housing and housing redevelopment activities have been, and will continue to be, targeted [to] these areas.”⁹
4. Concurrently, the County has provided millions of dollars to highly segregated, members of the Consortium with predominantly White populations for purposes other than for integrative housing, even when such Consortium municipalities have long histories of racial segregation, very small minority populations and land use policies and practices that erect fair housing impediments for households of color and thereby perpetuate segregation.¹⁰

⁶ *Supra* note 2.

⁷ *Supra* note 4.

⁸ Nassau County Consolidated Strategy and Plan for Period Covering Federal Fiscal Years 2000-2004 II-4 (2000); Nassau County Consortium, Five Year (2005-2009) Consolidated Plan & Annual Action Plan 20 (2005).

⁹ Nassau Urban County Consortium Five Year (2010-2014) Consolidated Plan & Action Plan 22 (2010).

¹⁰ *See, e.g.*, Nassau Urban County Consortium, End of The Year Reporting Narratives 29-35 (2012) (describing, *inter alia*, CDBG funding for streetscape improvements in Franklin Square, traffic calming medians in New Hyde Park, restoration of a dock in Manorhaven, sidewalks in Bethpage, a VFW hall in Farmingdale, landscaping in Hicksville, and improvements to senior centers in Bellerose, Malverne, Sea Cliff and Stewart Manor. While individual expenditures may comply with CDBG program requirements, these ten Consortium members have very small African-American populations (ranging between 0.6% and 3.5%), and nine of them do not have a single unit of affordable family housing within their boundaries. *See* Exhibit 2.

- f. Further, the County, through its housing agencies, claims to have been involved in the construction or rehabilitation of 1,565 units of affordable housing, of which 62% were located in municipalities with African-American percentages approximately twice the county average. Moreover, 100% of units identified as new construction were located in such jurisdictions.¹¹
- g. Contrary to its civil rights obligations, through its disposition of County-owned parcels of land to developers, the County has incentivized the development of affordable multi-family housing in areas with large concentrations of African-American families that are also characterized as low opportunity areas. In *MHANY*, 2013 WL 6334107, at *1, private litigation against Nassau County over the placement of affordable housing by Nassau County, plaintiffs presented evidence that of the 39 properties which the County owned that were sold for the purpose of development of affordable housing, 95% were located in municipalities with minority shares that were over twice the County average, and 69% were located in areas with minority shares over three times the County average.¹² Simultaneously, the County has failed or refused to use the parcels it owns in high opportunity areas for affordable multifamily housing that would have an integrative effect.¹³
- h. The County also retains a measure of influence over the exercise of zoning authority by Consortium members,¹⁴ and uses that authority, together with funding and disposition of County-owned parcels, to steer the development of affordable multifamily housing to areas with large concentrations of African-American families.
- i. While the County's most recent (July 21, 2010) Analysis of Impediments and Fair Housing Choice ("AI") acknowledges that "the Nassau-Suffolk PMSA ranks as the third most segregated suburban region" in the country (p. 22, n. 6 and accompanying text), it does not identify impediments flowing from such segregation, and proposes no appropriate actions to overcome such impediments.

¹¹ See Exhibit 4, Nassau County Office of Housing & Homeless Services Tracking, Copy of Revised Units Tracking 2002-2006. This document was provided by Nassau County in conjunction with the litigation in *MHANY v. Garden City*, *supra* note 3.

¹² Exhibit 3, Declaration of Nancy McArdle (signed September 12, 2008), *supra* note 3, at ¶ 55.C.

¹³ See Exhibit 4.

¹⁴ See Nassau County Office of Comm. Dev., Analysis of Impediments and Fair Housing Plan 70 (2010) ("In Nassau County, the Planning Commission plays an important role in the review of certain zoning actions and other development applications....Any city, town, or village located in Nassau County must, before taking final action on specific proposed zoning changes, refer the proposed changes to the Planning Commission for review.")

- j. While the County’s AI identifies “Local Opposition” to integrative, affordable, multi-family housing as an impediment to fair housing choice (2010 AI, at p. 40-44), identifies only 36% of municipalities that “permit multifamily residential uses,” *id.* at 69, and only five municipalities whose “existing regulations [are] designed explicitly to target or encourage affordability,” *id.*, it proposes no appropriate actions to actually overcome such impediments as required by federal regulations, at 24 C.F.R. § 91.225. In fact, the County proposes only that Consortium members participate in the Nassau County Planning Federation (described as a “voluntary membership organization”), to have the County Planning Commission review certain municipal zoning changes, require all municipalities to sign an AFFH certification (which is already required pursuant to the Cooperation Agreements), and to have “Fair Housing advocates and others [] educate the public about the benefits of economic integration of affordable housing....” *Id.* at 71.
- k. Each year, the Nassau County Office of Community Development allocates millions of dollars of federal, state and local housing, community development, infrastructure and other funding to members of the Consortium, much of it through Cooperation Agreements with municipal members of the Consortium.
- l. These Cooperation Agreements obligate the County and members of the Consortium to comply with federal civil rights obligations, including those arising under Title VI of the Civil Rights Act of 1964 (“Title VI”), Section 109 of the Housing and Community Development Act of 1974 (“Section 109”), the Fair Housing Act (“FHA”) and the duty to affirmatively further fair housing (“AFFH”). HUD requires that such Cooperation Agreements “contain a provision prohibiting urban county funding for activities in or in support of any cooperating unit of general local government that does not affirmatively further fair housing within its own jurisdiction or that impedes the county's actions to comply with the county's fair housing certification. This provision is required because noncompliance by a unit of general local government included in an urban county may constitute noncompliance by the grantee (i.e., the entire urban county) that can, in turn, provide cause for funding sanctions or other remedial actions by the Department.”
- m. Despite the obligations in federal law and in the Cooperation Agreements executed with its Consortium municipalities, the County has failed or refused to enforce the civil rights obligations of those municipalities and has continued to fund them without effective monitoring of their individual land use policies and practices. As a consequence, a number of municipalities have engaged in discriminatory land use policies and/or practices that constitute fair housing impediments, and subject members of protected classes to discrimination and segregation. Among the most obvious of these are:
 1. Municipal Zoning Ordinances That Restrict Multifamily Housing):

Seven members of the consortium do not permit the building of multifamily housing in any zone, which is one of the most cost effective ways of creating affordable housing (and providing housing choice for African-American households in high opportunity areas).¹⁵ All of these municipalities have African-American population shares substantially below the county average of 11.1%:

Consortium Member	African-American %	# Affordable Family Units
Bayville*	0.28	0
Flower Hill*	0.73	0
Great Neck Estates	0.80	0
Massapequa Park	0.33	1
Sea Cliff*	2.36	22
Stewart Manor*	2.48	1
Williston Park*	0.88	2

*The County’s 2010 AI, at Map 5, identifies these five Consortium members as “Not Permitting Multifamily Housing.” See Exhibit 5. While that same map suggests that Great Neck Estates and Massapequa Park have designated “Zoning Districts Permitting Multifamily Housing,” Complainant’s review of the zoning ordinances for those municipalities suggests that they do not.

Another six members of the consortium, who also have African-American population shares substantially below the County average, each have restrictive zoning ordinances that effectively prevent the development of affordable multifamily units that would expand housing choice for African-American households (by providing no by-right development, subjecting approvals to special review, or establishing multifamily districts with little or no developable land):

Consortium Member	African-American %	# Affordable Family Units
Floral Park	1.35	27
Hicksville	2.28	0
Lynbrook	3.69	0
Malverne	3.30	1
Mineola	2.00	0
Syosset	0.83	0

¹⁵ A wider study of all Nassau County municipalities by Economics Research Associates found that “... approximately 38 of the 69 municipalities [in Nassau County] have no multifamily zoning districts.” Nassau County Affordable Housing Study (2008), *supra* note 4, at 4.

Because of these zoning and land use provisions and practices, collectively, these 13 Consortium members provide a tiny fraction of the County's affordable housing units. Such restrictive ordinances violate the Cooperation Agreements entered into by each of these Consortium members, and have the effect of limiting affordability and fair housing choice for African-American households. The County had a duty under the Cooperation Agreements to terminate funding on those grounds, but it has continued to fund these Consortium members, providing substantial housing and community development funding from 2008 to the present.

2. Local Residence Preference in Village of Oyster Bay (2009-present): The Town of Oyster Bay ("Oyster Bay") is a member of the Consortium, and periodically enters into Cooperation Agreements with the County as a precondition to receiving housing and community development funds. From 2008 to the present, the Town has received in excess of \$5 million in such funds from the County. In 1993 and 2004, respectively, Oyster Bay amended its zoning code to provide local residence preferences for affordable homes in Oyster Bay. By virtue of existing patterns of segregation in Oyster Bay (according to the 2010 Census, African-Americans represent just 2.3% of the population), these preferences have a discriminatory effect on minority home seekers, act as fair housing impediments, and tend to perpetuate racial segregation in Oyster Bay. The legality of these preferences has been a matter of public interest since the N.Y. State Division of Human Rights filed a complaint against Oyster Bay in 2009, making these very allegations. More recently, the U.S. Department of Justice has filed suit against Oyster Bay,¹⁶ challenging the residency provisions of the Town's "Next Generation" and "Golden Age" housing programs as race discrimination under the Fair Housing Act. The County has taken no steps to condition or terminate housing and community development funds, and continues to provide at least \$1 million per year to Oyster Bay, in violation of the Cooperation Agreement and federal law, and in violation of the County's own civil rights certifications.
3. Local Residence Preference in Other Consortium Municipalities: The County has also failed or refused to enforce the civil rights obligations of other municipal members of the Consortium—such as Glen Cove (where African Americans comprise just 7.2% of the population) and Great Neck Plaza (where African Americans comprise just 1.5%)—that adopt, advertise and enforce local residence preferences for affordable housing units. Glen Cove's published 2009 explicitly provides that "[i]n all cases, preference for the affordable units should be marketed to young professionals and given to people who currently

¹⁶ *United States v. The Town of Oyster Bay, et al.*, No. 14-CV-2317 (E.D.N.Y. filed April 10, 2014).

live or work in Glen Cove, with a further preference for seniors.”
Master Plan for the City of Glen Cove, Chapter 3, at p. 54, available at http://www.glencove-li.us/images/pdfs/Projects_And_Studies/Master_Plan/Master_Plan_Final_Version_Chapter_3.PDF. The Village of Great Neck Plaza publishes the criteria for its Affordable (Workforce) Housing Program which explicitly provides preferences for certain people who live or work in the Village.

4. Lack of County Oversight: The County has established insufficient oversight of Consortium members with respect to their compliance with applicable civil rights laws incorporated into the Cooperation Agreements. The County has not audited, withheld or proposed to withhold federal funding from the above-referenced Consortium members for their failure to comply with civil rights requirements.
 - n. As a consequence of these actions, the County has reinforced patterns of segregation in areas where affordable multi-family housing is located and in areas where it is not located, which remain predominantly white.
 - o. The County’s violations of Title VI, the Housing and Community Development Act of 1974 and the separate obligation to affirmatively further fair housing have caused concrete injury to ERASE Racism by frustrating its mission and requiring it to divert its resources from programs designed to advance that mission in order to identify, investigate and attempt to counteract the violations outlined below. These actions are continuing.
 - p. By its actions and inactions, with respect to its own policies and decisions and those of its municipal Consortium members, the County has failed to take appropriate and effective actions to overcome the effects of impediments to fair housing within Nassau County that are open, obvious and publicly known to be impediments to equal housing opportunity for African-American residents.
 - q. By acting and failing to act as described in this Complaint, the County has intended to and has: discriminated against African-American residents of Nassau County; and prevented residents and potential residents of the County from living in integrated communities free of discrimination.
 - r. By acting and failing to act as described in this Complaint, the County has caused a disparate impact on equal housing opportunities of African-American residents of Nassau County and has prevented residents and potential residents of the County from living in integrated communities free of discrimination.

8. The most recent date on which the alleged discrimination occurred:

Ongoing as of the date this Complaint was submitted.

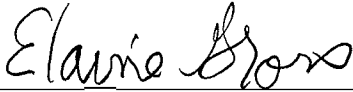
9. Types of Federal Funds identified:

Community Development Block Grant; HOME Investment Partnership;
Emergency Solutions Grant; Neighborhood Stabilization Program;
American Recovery and Reinvestment Act funds

10. The acts alleged in this complaint, if proven, may constitute a violation of the following:

- Sections 804(a) and 804(b) of the Civil Rights Act of 1968 (also known as the Fair Housing Act).
- Title VI of the Civil Rights Act of 1964.
- Section 109 of the Housing and Community Development Act of 1974.

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.



Elaine Gross, President
For ERASE Racism

5/28/2014

(Date)