

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.

368 E 148TH STREET ASSOCIATES, LLC,
a New York Limited Liability Company,
and SINGER ISLAND HEALTH, LLC, a
Florida limited liability company,

Plaintiffs,

v.

CITY OF RIVIERA BEACH, a
Florida municipal corporation,

Defendant.

COMPLAINT

Plaintiffs, 368 E 148TH STREET ASSOCIATES LLC, a New York Limited Liability Company, and SINGER ISLAND HEALTH, LLC, a Florida Limited Liability Company, (“Plaintiffs” or “368 East” and “Singer Island Health,” respectively), file this action seeking declaratory, injunctive and monetary relief against Defendant, CITY OF RIVIERA BEACH (“City” or “Riviera Beach”), and allege:

1. Plaintiffs assert claims under Florida law for estoppel and under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (“ADA”), Federal Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (“FHA”), and § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 793 (“Section 504”) (collectively, the “Acts”). Specifically, the City is estopped from nullifying the reasonable accommodations it granted to 368 East in 2018 to allow sober living and substance use disorder treatment at contiguous properties in the City (the “Property”), because 368 East invested hundreds of thousands of dollars in reliance on those reasonable accommodations. The City also

violated the Acts when it discriminated against Plaintiffs by: (a) refusing to approve business tax receipts (“BTRs”) for three of the nine properties whose addresses are listed below in ¶14 for which reasonable accommodations had been granted; (b) arbitrarily and discriminatorily manufacturing and imposing a 1,200-foot spacing requirement without basis in state law or City ordinance; (c) engaging in a pattern of ignoring its obligations under the ADA, FHA and Section 504; (d) engaging in intentional discrimination under those laws; (e) reneging on a settlement of a lawsuit to grant a reasonable accommodation for three of the eight properties for which reasonable accommodations were granted; and (f) engaging in bad faith attempts to resolve this dispute. Such illegal discrimination resulted (and continues to result) in both irreparable harm and pecuniary damage to the Plaintiffs.

2. Plaintiffs offer housing for residents suffering from substance use disorders at 1166 East Blue Heron Boulevard, Riviera Beach, Florida, and also provide substance use disorder treatment at that Property.

3. Plaintiffs’ residents are persons recovering from substance use disorders who need quality housing and treatment befitting their needs during their transition from rehabilitation to integrated community living. As people in active recovery, Plaintiffs’ residents are disabled under, and entitled to the protections of, the Acts.

4. Plaintiffs also challenge the City’s refusal to grant their request for a zoning verification or a reasonable accommodation to allow them to provide housing to their disabled residents.

JURISDICTION AND VENUE

5. This action is brought pursuant to Florida law, the ADA, FHA and Section 504 of the Rehabilitation Act.

6. This Court has jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1331, 1337, 1343(a) and 1391(b)(2), 29 U.S.C. § 794(a) and 42 U.S.C. § 12182(a) and over the Florida law estoppel claim pursuant to 28 U.S.C. § 1367.

7. Venue lies in the Southern District of Florida pursuant to 28 U.S.C. § 1391.

PARTIES

8. Plaintiff, 368 E 148th Street Associates LLC, is a New York limited liability corporation.

9. Plaintiff, Singer Island Health Health, LLC, is a Florida limited liability corporation.

10. Singer Island Health is a treatment provider that meets the standards for inpatient and outpatient treatment and will be licensed in accordance with Chapter 397, Fla. Stat., by the Florida Department of Children & Families (“DCF”) to provide substance use disorder services. As a condition of licensure, DCF requires Singer Island Health and other licensees to provide proof that their facilities are properly zoned.

11. Plaintiffs sue on their own behalf and on behalf of their residents.

12. The City of Riviera Beach is a Florida municipal corporation.

13. The City receives federal financial assistance for its programs and activities and has the capacity to sue and be sued under the federal anti-discrimination statutes relied upon by Plaintiffs.

FACTS

14. 368 East owns property in Palm Beach County, Florida that is within the municipal limits of the City and bears the street address of 1166 East Blue Heron Boulevard. In addition, it owns eight other adjacent properties located at 2621 Park Avenue, 2631 Park Avenue, 2633 Park

Avenue, 2622 West Way, 2634 West Way, 2636 West Way, 1165 Cabana Road, and 1191 Cabana Road (collectively, the “Property”).

15. The City is responsible for regulating all land use and development within its boundaries pursuant to § 163.3167(1), Fla. Stat.

16. In 2017, 368 East was approached by multiple tenants who were interested in developing the Property to offer “residential treatment” and/or “detoxification services” as the terms are defined in §§ 397.311(26)(a)(9) and 397.311(26)(a) (4), Fla. Stat., respectively. Although the tenants had conversations with the City’s Zoning Staff regarding developing the Property to offer a residential treatment and/or detoxification services land use, the tenants were not able to confirm whether these land uses were permitted at the Property.

**368 East’s 2018 Requests for Accommodation, Prior Federal Litigation,
the Settlement of that Litigation with the Granting of the Requests,
and the City’s Zoning Verifications to DCF**

17. On January 29, 2018, Plaintiffs’ zoning attorney (not the undersigned) electronically transmitted a letter, attached and incorporated as **Exhibit A** (the “First Letter”), on behalf of 368 East to the City’s counsel and requested the opportunity to discuss, amongst other things, whether a residential treatment and detoxification services land use could be permitted at 1166 East Blue Heron Boulevard. The City did not respond to 368 East’s First Letter.

18. The City’s then Acting Director of Community Development, Jeff Gagnon, thereafter, indicated that the proposed use (Residential Detox) was prohibited from operating within 1000 feet of another residential drug and alcohol facility, based upon the separation requirements set forth in Chapter 419, Fla. Stat., which applies to Community Residential Homes. That assertion was incorrect for two reasons. First, it was plainly incorrect because § 419.001(1)(a), Fla. Stat., defines a Community Residential Home as applying to residents who are

clients of DCF, which Plaintiffs' residents are not. See *Exhibit A at 002-006*. Second, separation requirements that apply only to people with disabilities but not to the non-disabled are discriminatory on their face under the Acts.

19. Zoning confirmation letters are typically requested by property owners and third parties from local governments for title insurance, due diligence in real estate transactions, and statutory purposes (the Department of Children and Families, which licenses substance use disorder treatment facilities to provide proof of zoning verification from a local government such as the City confirming that the use is allowed at a site for the issuance of a license) in order to confirm that specific land uses may lawfully occur at properties within the local government's jurisdiction.

20. On February 20, 2018, Plaintiffs' zoning counsel electronically transmitted another letter on behalf of 368 East to the City's then attorney (the "Second Letter") and formally requested confirmation of whether residential treatment and detoxification services, a recovery residence, or a professional (medical) office (the "Proposed Uses") were permissible at the Property. Confirmation was requested in the form of a zoning confirmation letter. The Second Letter stated that if the City did not reply within ten days of receipt, 368 East would consider its request denied. The City did not respond to the Second Letter.

21. On March 19, 2018, the undersigned attorney sent the City a request for reasonable accommodation under the ADA and FHA, which is attached hereto as *Exhibit C* ("Reasonable Accommodation Request").

22. The City did not respond to, or acknowledge, the Reasonable Accommodation Request, effectively denying 368 East's requests. (The City did ask for a draft zoning verification letter, which 368 East provided, but the City did not act on that either.)

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