

part, from: a) attempting to evict any tenants who have complied with HUD approved lease requirements, unless the eviction arises from the lease term; b) altering the HUD approved leases currently in force; c) violating § 236 of the National Housing Act, **12 U.S.C. 17152-1.** and 24 C.F.R. s 236; and, d) acting in any managerial capacity involving VDNA contrary to the terms of a settlement agreement between HUD and the Defendants, dated January 22, 1992. A copy of the Injunction is attached to the Memorandum Brief as Exhibit "A". The Settlement Agreement is found at Plaintiffs' Exhibit A-2 of the original proceeding.

3. Pursuant to the Injunction, all management duties, rights and responsibilities were assigned to Sovereign Management Corporation ("Sovereign"), by contract, dated October 20, 1993. Under this agreement, tenants of VDNA paid all rents to Sovereign, entered into new leases, in conformance with HUD regulatory requirements, through Sovereign, and performed any and all other tenant obligations solely through Sovereign. (Exhibit 1'B¹¹)

4. On or about June 10, 1995, a letter dated June 1, 1995 and signed by Benjamin J. Roscoe was sent to all residents of VDNA (Exhibit "C-1") notifying all tenants that effective May 18, 1995, Mr. Roscoe had terminated VDNA's management agreement with Sovereign, and instructing all tenants to sign new leases with and make all future rent payments to King's Property Management, Inc. (Exhibit "C-2")

Upon information and belief, Defendant Roscoe has a substantial ownership interest in King's Property Management, Inc. By this letter, Defendants further informed tenants that their current lease was to be "superseded by a new month to month lease attached to this notice".

5. On June 15, 1995, Robert L. Salazar, Albuquerque Multifamily Outstation Branch, Department of Housing and Urban Development, sent a letter to Benjamin and Geraldine Roscoe regarding VDNA and their recent actions (Exhibit 'ID'). HUD informed Defendants that their attempts to replace Sovereign had not been approved by HUD and that their actions violated the Injunction of this Court. By this letter, HUD further advised the Roscoes that they were still ineligible to manage the project under a continuing HUD suspension of participation.

6. HUD sent a copy of this June 15, 1995 letter to all tenants and thereby advised them to "disregard your [Roscoe's] instructions to sign new leases...and...continue to pay...rents to . . . Sovereign". (See Affidavits of Martinez, Lovato and Mares, Exhibits 'IF', 'IG', and 'HI'.)

7. On June 26, 1995, an Opinion issued from Administrative Law Judge Thomas C. Heinz, HUD ALJ 93-2007-DB, entered a decision In the Matter of Benjamin J. Roscoe, Geraldine M. Roscoe, Respondents, for the United States Department of Housing and Urban Development. This proceeding arose pursuant to 24 C.F.R. s 24.700 & seq. as a result of

action taken by HUD on March 23, 1993, suspending and proposing debarment¹ of Defendants from participating in HUD covered transactions as participants or principals at HUD and throughout the Executive Branch of the Federal Government for a period of five years, beginning on October 5, 1992. ALJ Heinz' Opinion determined that good cause exists to debar Defendants from participating in covered transactions with HUD and throughout the Executive Branch of the Federal Government for a period of five years. 24 C.F.R. §i 24.115. (Exhibit 1111)

8. Contrary to the Permanent Injunction entered herein and in contravention of the Order of Debarment entered on June 26, 1995, Defendants Roscoe filed an eviction proceeding against Plaintiff Sylvia Martinez in Bernalillo County Metropolitan Court claiming non-payment of rent for July, 1995. Ms. Martinez is not in default of her rental obligation for July, but did refuse to make any rent payment to Defendants pursuant to HUD's letter dated June 15, 1995.

9. Ms. Martinez vacated her apartment at VDNA on July 3, 1995, and has no continuing possessory interest in the premises; however, she is subject to a claim by Defendants for rent and damages in violation of the Injunction. (Affidavit attached in Support, Exhibits "F-1" and "F-2".)

¹The purpose of debarment is to protect the public interest by precluding persons who are not "responsible" from conducting business with the federal government.

10. In a proceeding in Metropolitan Court on July 25, 1995, before The Honorable Mark Macaron, the Court entered an Order of Continuance upon Motion of Defendant until August 1, 1995, to allow for the filing of her Motion for Contempt and Restraining Order in the U.S. District Court, District of New Mexico, and to allow for guidance from the federal court in this matter.

11. Contrary to the Injunction entered herein and in contravention of the Order of Debarment entered on June 26, 1995, Defendants Roscoe filed an eviction proceeding against Plaintiff Yvonne Lovato in Bernalillo County Metropolitan Court claiming non-payment of rent for July, 1995. Ms. Lovato paid her July rent to Sovereign Management, is not in default of her rental obligation for July, but did refuse to make **any** rent payment to Defendants pursuant to HUD's letter dated June 15, 1995.

12. Ms. Lovato has a continuing possessory interest in the premises, is threatened with eviction by the acts of Defendants and is subject to a claim by Defendants, for rent and damages in violation of the Injunction. (Affidavit attached in Support, Exhibit "G".) A hearing in the Metropolitan Court proceeding is scheduled for Monday, July 31, 1995, before The Honorable Judge Mark Shapiro.

13. Contrary to the Injunction entered herein and in contravention of the Order of Debarment entered on June 26, 1995, Defendants Roscoe filed an eviction proceeding against

class member Elsie Mares in Bernalillo County Metropolitan Court claiming non-payment of rent for July, 1995. Ms. Mares paid her July rent to Sovereign Management, is not in default of her rental obligation for July, but did refuse to make any rent payment to Defendants pursuant to HUD's letter dated June 15, 1995.

14. Ms. Mares has a continuing possessory interest in the premises, is threatened with eviction by the acts of Defendants and is subject to a claim by Defendants for rent and damages in violation of the Injunction. (Affidavit attached in Support, Exhibit "HI'.) A hearing in the Metropolitan Court proceeding is scheduled for Monday, July 31, 1995, before the Honorable Judge Mark Shapiro.

15. An Affidavit by Sovereign Management corroborating tenants' allegations is attached as Exhibit "I".

16. Defendants' attempts to unilaterally assume managerial duties at VDNA, including to require residents to sign leases that have not been approved by HUD and that do not contain the same protections as Plaintiffs' current HUD-approved leases, and to demand rents from tenants, and to seek the eviction of Plaintiffs or other members of the class constitute violations of the Injunction, and violate federal law and regulations governing the management of property under the National Housing Act, 12 U.S.C. 17152-1, and the regulations 24 C.F.R. § 24.200, & m., and 24 C.F.R. § 236, et q.

17. On July 26, 1995, Robert L. Salazar, Supervisor/HUD, Albuquerque Multi-Family Outstation Branch, sent a letter to Defendants further advising them that they are barred from managerial functions for VDNA and that their actions in attempting to interfere with the tenancies of residents of VDNA appears to violate this Court's Injunction. (Exhibit

" J ")

18. As a result of Defendants Roscoe's illegal actions, Plaintiffs' payment of rent to anyone other than King's Property Management, Inc. places Plaintiffs in imminent threat of eviction and involuntary displacement. Payment of rent to any entity other than that designated by HUD would also place them in imminent threat of eviction by Sovereign Management Corp. They could be made homeless unless a temporary restraining order is entered.

19. As a result of Defendants illegal actions, Plaintiffs and members of the class may suffer irreparable harm from the loss of their possessory interest in their federally subsidized apartments.

20. Granting this Motion will only enjoin Roscoe from engaging in managerial activities at VDNA, from pursuing any efforts to evict members of the class, and from altering HUD approved leases until such time as this Court rules on Plaintiffs' Motion for Contempt. This relief maintains the status quo prior to the commencement of Defendants Roscoe's illegal actions.

WHEREFORE, Plaintiffs pray this Court to enter a Temporary Restraining Order and Preliminary Injunction enjoining Roscoe from:

1. Acting in any managerial capacity involving the Valle Del Norte Apartments, including demanding or collecting rent from VDNA tenants and requiring tenants to sign new leases;
2. Attempting to evict or seek damages from any tenants;
3. Altering the HUD approved leases currently in force;
4. Further violating the Order Certifying Class Membership and Granting Permanent Injunction, and federal statutes and regulations;
5. For costs and attorneys fees; and
6. For any and all relief deemed just and equitable in the premises.

Respectfully submitted,

LEGAL AID SOCIETY OF ALBUQUERQUE, INC.

By: _____
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2. Attempting to evict or seek damages from any tenants;
3. Altering the HUD approved leases currently in force;
4. Further violating the Order Certifying Class Membership and Granting Permanent Injunction, and federal statutes and regulations.
5. For one award of costs and attorneys fees in the amount of _____

Entered in Albuquerque, New Mexico this -7" day of July 1995.

UNITED STATES DISTRICT COURT JUDGE

Submitted By:

LEGAL AID SOCIETY OF ALBUQUERQUE, INC.

By: _____
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