

51,124
D
4p.
1017239

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SYLVIA MARTINEZ, et al
Plaintiffs,

RECEIVED

vs.

I N o . CV-93-1156 LH/DJS

BENJAMIN J. and GERALDINE
M. ROSCOE,

Defendants' ? " < - " 1 i. 1, 1

PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES

Plaintiffs, by counsel, respectfully move this Court for an Order granting an award of reasonable attorneys' fees, pursuant to the "bad faith" exception to the American rule. On August 22, 1995, this Court entered a Permanent Injunction, enjoining Defendants from performing various actions ("Permanent Injunction¹"). Plaintiffs seek attorneys' fees for the litigation of that matter. As grounds therefore, Plaintiffs state:

1. On October 8, 1993, this Court entered an Order Certifying Class Membership and Granting Permanent Injunction ("Injunction") against Benjamin and Geraldine Roscoe ("Defendants") which, among other things, prohibited the Defendants from assuming managerial duties at VDNA, substituting leases which are not HUD approved leases,

demanding rents from, and seeking to evict tenants, and violating the various rules and regulations implementing § 236 of the National Housing Act.

2. In June 1995, Defendant Benjamin Roscoe sent a letter to VDNA tenants, stating that the HUD-approved manager for the property was terminated and that Roscoe's own management company was taking over management. Permanent Injunction, ¶ I(1). He also informed tenants that the current leases were being superseded by a new lease, and filed eviction proceedings in Bernalillo County Metropolitan Court against three VDNA tenants, claiming non-payment of rent. Permanent Injunction, ¶ I(1) and I(2).

3. Plaintiffs retained the Legal Aid Society of Albuquerque, Inc. to obtain injunctive relief to enjoin the Defendants from further violating the Injunction entered October 1993. On August 22, 1995, this Court entered a second Permanent Injunction in this action based, in part, on its finding that Defendants engaged in illegal actions that violated this Court's Injunction of October 1993, the Settlement Agreement, the Regulatory Agreement, the terms of Defendants' suspension by HUD, HUD's Final Determination of Debarment, and other HUD law and regulations. Permanent Injunction, ¶ I.

4. Plaintiffs are the prevailing parties in this action.

5. As more fully set forth in the Memorandum in Support of Plaintiffs' Motion for Award of Attorneys' Fees filed herewith ("Memorandum"), Defendants' actions were in bad faith, vexatious, wanton, and for oppressive reasons, necessitating Plaintiffs' recourse to this Court to enjoin Defendants from further violating the October 1993 Injunction.

6. Plaintiffs seek attorneys' fees in the total amount of \$28,200.00 for efforts required to force compliance with the Court's Injunction.

7. Defendants do not concur in this Motion. Plaintiffs' Memorandum, together with supporting affidavits, is filed herewith.

WHEREFORE, Plaintiffs respectfully request that this Court grant an award of Plaintiffs' reasonable fees, as set forth in the Memorandum and affidavits filed herewith.

Respectfully submitted,

LEGAL AID SOCIETY OF ALBUQUERQUE, INC.

By: _____
Karen J. Meyers
Alma Rosa Delgado
Attorneys for Plaintiffs
121 Tijeras, N.E., Suite 3100
Albuquerque, New Mexico 87102

MAILING CERTIFICATE

I HEREBY CERTIFY that a true and correct copy (one each) of the foregoing Plaintiffs' Motion For Award of Attorneys' Fees, Memorandum in Support of Plaintiffs' Motion for Award of Attorneys' Fees, with attached Affidavits by Karen J. Meyers,

Alma Rosa Delgado, James Orgass, Gabrielle L. Marks and Philip B. Davis, was mailed to opposing Defendants, Benjamin J. Roscoe and Geraldine M. Roscoe at 5328 Montgomery Boulevard, N.E., Albuquerque, New Mexico 87109, on this _____ day of August 1995.

Respectfully submitted,

LEGAL AID SOCIETY OF ALBUQUERQUE, INC.

By: _____

Karen J. Meyers
Alma Rosa Delgado
Attorneys for Plaintiffs
121 Tijeras, N.E., Suite 3100
Albuquerque, New Mexico 87102
(505) 243-7871