

10CV1030  
DSD/AJB

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

John Stoick,

Plaintiff,

Civil Action No. \_\_\_\_\_

vs.

**COMPLAINT**

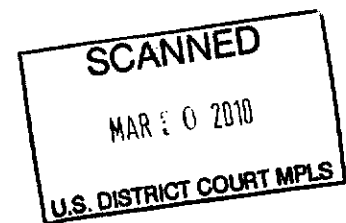
Cora McCorvey, in her official capacity as  
Executive Director of the Minneapolis  
Public Housing Authority (MPHA), and,  
Minneapolis Public Housing Authority  
(MPHA), in and for the City of  
Minneapolis, a public body corporate and  
politic,

Defendants.

**INTRODUCTION**

1. Plaintiff brings this action because the Minneapolis Public Housing Authority (MPHA) illegally denied him eligibility for Public Housing, illegally denied his reasonable accommodation request, and provided an unlawful hearing to contest the MPHA's denial of his application for Public Housing and denial of his request for a reasonable accommodation.

2. In determining whether Mr. Stoick was eligible for housing, the MPHA relied on unpublished standards, applied those standards arbitrarily and capriciously, and made discriminatory assertions about his disability of alcoholism in its Statement of Policies (SOP) and correspondence with Mr. Stoick in violation of the law.



3. The MPHA refused to grant Mr. Stoick's request for a reasonable accommodation and made illegal discriminatory assertions about his disability of alcoholism.

4. Finally, when Mr. Stoick sought review of MPHA's illegal decisions through a hearing process, the MPHA deprived Mr. Stoick of due process under the law. The MPHA failed to provide an impartial hearing panel, allowed the MPHA's counsel to advise the panel during the hearing, failed to provide Mr. Stoick any opportunity to confront or examine any MPHA witnesses, employed unpublished rules to govern the hearing, failed to provide two separate hearings for his two separate appeals as required by their SOP, failed to notify Mr. Stoick how he could make a record of his hearing, and ultimately illegally denied Mr. Stoick reasonable accommodation and eligibility for Public Housing.

5. These actions by the MPHA have injured Mr. Stoick. Mr. Stoick seeks declaratory and injunctive relief, damages and attorneys' fees.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) (2010). This Court has jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367 (2010).

7. The facts related to Plaintiff's claims took place in Minnesota. All parties live or conduct business in Minnesota. Therefore, pursuant to 28 U.S.C. § 1391 (2010), this matter is properly venued in this Court.

**PLAINTIFF**

8. John Stoick is a fifty-five (55) year old man living in Hennepin County, Minnesota. He was homeless when he applied for MPHA Public Housing. He now rents a room for \$450 per month.

9. Mr. Stoick is a veteran of the United States Marine Corps, and has been diagnosed with social anxiety, severe depression and chemical dependency including alcoholism.

10. Mr. Stoick currently receives \$985 a month from the Veteran's Administration as his total monthly income. He has a pending application for Supplemental Security Income (SSI) and Retirement Survivors Disability Insurance (RSDI) benefits from Social Security based on his disabilities.

**DEFENDANTS**

11. Defendant Cora McCorvey is sued in her official capacity as Executive Director of the Minneapolis Public Housing Authority (MPHA). In that capacity, Ms. McCorvey is responsible for administration and management of the MPHA's Public Housing Program, including creation, implementation and supervision of the MPHA's policies, practices and procedures, including, but not limited to Public Housing admission and eligibility. Defendant McCorvey acts under the authority and "color of state law" under 42 U.S.C. § 1983 (2010) in her official and supervisory capacities as employee and officer of the MPHA.

12. Defendant Minneapolis Public Housing Authority (MPHA) in and for the City of Minneapolis is a public body corporate and politic created under the laws of the

State of Minnesota. The principle place of business for the MPHA is 1001 Washington Avenue North, Minneapolis, Minnesota. The MPHA owns and operates the federally supported Low-Income Public Housing Program within the City of Minneapolis, which the MPHA terms its Low-Rent Public Housing Program (Public Housing), pursuant to the United States Housing Act (USHA), as amended, 42 U.S.C. §§ 1437-1440 (2010). Federal funds are provided to the MPHA through its Annual Contribution Contract (ACC) and its Amended and Restated Moving to Work Agreement with the United States Department of Housing and Urban Development (HUD). The MPHA is directly responsible for the creation and implementation of policies, practices and procedures regarding Public Housing, including but not limited to Public Housing admission and eligibility.

13. Defendant MPHA acts under the authority and “color of state law” under 42 U.S.C. § 1983 (2010) when it operates its Public Housing program.

### **FACTUAL ALLEGATIONS**

#### **The MPHA Denied Mr. Stoick Eligibility for Public Housing**

14. Mr. Stoick applied for MPHA Public Housing on December 29, 2008. *See* Ex. 2, Stoick Application for Public Housing, Dec. 29, 2008 (Hr’g Ex. AD-2).

15. Part IV, Question 9 of the MPHA’s application form asks: “Have you . . . EVER committed, been arrested, found guilty of or plead guilty to a misdemeanor, or felony, or an equivalent crime or an offense anywhere?” *Id.*

16. Mr. Stoick responded “Yes” to this question. *Id.*

17. Question 9 of the MPHA's application form goes on to ask: "If so, where?" and "What for," leaving blank spaces for applicants to fill in. *Id.*

18. Mr. Stoick wrote "see attached" and attached a complete copy of his MNCIS report dated December 29, 2008, that he obtained for the MPHA application process from the Hennepin County District Court. *Id.*

19. Mr. Stoick disclosed his criminal history as required by the MPHA to the best of his ability.

20. The MPHA interviewer Elaine Theissen, in a December 29, 2008 interview, confirmed Mr. Stoick's answers to Question 9 on the application form by circling the answers Mr. Stoick provided. *Id.*

21. Ms. Theissen acknowledged receipt of Mr. Stoick's MNCIS criminal history printout in his application file case notes. Ex. F, Stoick MPHA Application Case Notes (Hr'g Ex. AD-F).

**The MPHA Used Unpublished "Screening Guidelines" to Keep Mr. Stoick out of Public Housing**

22. The MPHA denied Mr. Stoick's public housing application on July 8, 2009, in a letter from Mary Zanmiller, MPHA Quality Control Specialist, alleging:

- a. "You indicated on your application that you had committed, were arrested for, were found guilty of, or had plead guilty to the following:  
You attached a copy of Hennepin County criminal records – MNCIS to your application;

- b. Based on your criminal history, MPHA has determined that you were arrested for, were charged with, plead guilty to, or were convicted of twenty incidents which you did not disclose on your application;
- c. You were on probation for indecent exposure until 9/12/2009. Based on MPHA's criteria for admission you would not be eligible to be considered for housing until 8/26/2013, or after;
- d. You have a pattern of criminal behavior;
- e. You did not disclose on your application the use of the following alias names: (a) John Dwight Stack; (b) Michael Steven Perra; (c) John Stoick;
- f. You did not provide true or accurate information about your criminal history or other information on your application or during your interviews.”

Plaintiff's Ex. AA, MPHA Original Eligibility Denial Letter, July 8, 2009 (Hr'g Ex. AD-A).

23. Mr. Stoick did not fail to disclose any “alias” names because he does not have any.

24. “John Stoick” is Mr. Stoick's legal name.

25. “John Dwight Stack” is a misspelling of Mr. Stoick's legal name.

26. Michael Steven Perra is the name Mr. Stoick was given when he was adopted at or around age three. Mr. Stoick's adoptive parents did not change his legal name to Michael Steven Perra. Mr. Stoick did not know that his name was “John Dwight

Stoick” until he entered the Marine Corps at age 18. Mr. Stoick has gone by “John Stoick” ever since he was 18. *See* Hr’g. Tr. pp. 74-79.

27. The names “John Dwight Stack” and “Michael Steven Perra” did not appear as names used by Mr. Stoick in connection with any crime in any of the records obtained by the MPHA. *Id.*

28. The MPHA relied upon its “Screening Guidelines” in its decision to deny Mr. Stoick eligibility for Public Housing.

29. Ms. Zanmiller was referring to the MPHA’s “Screening Guidelines” when she wrote, “[b]ased on MPHA’s criteria for admission you would not be eligible to be considered for housing until 8/26/2013, or after,” in the MPHA’s July 8 letter, as cited in paragraph 22.c. *supra.*

30. The MPHA’s “Screening Guidelines” were not contained in the MPHA’s Statement of Policies (SOP) which were in effect on December 29, 2008 when Mr. Stoick applied to Public Housing; and they are not currently contained in the MPHA’s SOP. *See* Pl.s Ex. U, MPHA, Public Housing SOP, Part II: Requirements for Admission (Oct. 15, 2009); *see also* Ex. 9, MPHA “Screening Guidelines” (Hr’g Ex. AD-9).

31. The MPHA’s “Screening Guidelines” were not provided to Mr. Stoick until February 1, 2010, in response to a direct request from Mr. Stoick’s counsel to the MPHA’s counsel. This was more than a year after Mr. Stoick applied for Public Housing and more than six months after he was denied based on those “Screening Guidelines.”

32. Indecent exposure is not listed anywhere on the MPHA’s “Screening Guidelines.” *See* Ex. 9.

**The MPHA Changed Its Bases for Denying Mr. Stoick's Eligibility for Public Housing**

33. On September 24, 2009, in a letter from Betty Battle, MPHA Manager of Leasing and Occupancy, the MPHA changed some of the reasons it had given in Ms. Zanmiller's July 8, 2009 letter, for denying Mr. Stoick's eligibility for Public Housing, including:

- a. The MPHA changed its July 8, 2009, allegation that Mr. Stoick failed to disclose twenty charges, arrests or convictions, instead alleging that Mr. Stoick only failed to disclose nine such incidents;
- b. The MPHA stated that despite indecent exposure not appearing on MPHA's "Screening Guidelines," the MPHA had "determined that an appropriate length of time after completion of [his] probation is two (2) years . . . based on MPHA's ['S]creening [G]uidelines['] for other gross misdemeanor crimes, the repetitive nature of [his] conduct and the length of [his] probation;" and
- c. The MPHA changed the disqualification date based on its "Screening Guidelines" from Aug 26, 2013 to September 12, 2010.

*See* Ex. 1, Amended Denial Letter, September 24, 2009, (Hr'g Ex. RA-1/AD-1).

34. The MPHA provided no explanation for the changes in its bases for denial in Ms. Battle's September 24, 2009, letter. *Id.*



**The MPHA Published and Relied Upon Discriminatory Statements Regarding the Disability of Alcoholism to Keep Mr. Stoick Out of Public Housing**

35. The MPHA's SOP asserts that "[f]or the purposes of qualifying for Public Housing, ['disabled person'] does not include a person whose disability is based solely on drug or alcohol dependence." Pl.'s Ex. Q, MPHA, Public Housing SOP, Part I: Definitions (Oct. 15, 2009) ¶ 17(c).

36. The MPHA's SOP asserts that "for purposes of eligibility for low-income housing a person does not have a disability based solely on any drug or alcohol dependence." Ex. 5, MPHA, Public Housing SOP, Part XXI: Reasonable Accommodation Policy (Oct. 15, 2009) (Hr'g Ex. RA-5) § 3.4.

37. The MPHA relied upon these policies in its SOP denying Mr. Stoick eligibility for Public Housing.

38. The MPHA's September 24, 2009, Amended Denial letter stated the "MPHA does not agree that alcoholism is a disability for purposes of admission to housing." Ex. 1, p. 5.

**The MPHA Denied Mr. Stoick Reasonable Accommodation**

39. On September 1, 2009, Mr. Stoick made a timely request that the MPHA modify its application criteria as a reasonable accommodation based on his disabilities. Ex. A, Reasonable Accommodation Request including Letter from Dr. James Bunde, Sept. 1, 2009 (Hr'g Ex. RA-A).

40. Mr. Stoick's September 1, 2009, letter informed the MPHA that he is a qualified individual with the disabilities of major depression, anxiety and consequent substance dependence including the disability of alcoholism.

41. Mr. Stoick's reasonable accommodation request specifically asked the MPHA to accommodate his depression, anxiety and chemical dependency disabilities by modifying its criteria concerning criminal history because his criminal history resulted from his untreated mental health disabilities which have now been and continue to be effectively treated. Ex. A.

42. Mr. Stoick included a letter from his health care provider, Dr. James Bunde to support his reasonable accommodation request. This included the MPHA's Health Provider's Verification Form which Dr. Bunde filled out. *Id.* pp. 4-6.

43. Dr. James Bunde is a professional psychotherapist and formerly a Psychology Fellow with Hennepin Faculty Associates. Mr. Stoick met with Dr. Bunde in individual psychotherapy sessions between November 2007 and November 2009. *Id.*; Hr'g Tr. pp. 48-49, 55-56, 115.

44. Dr. Bunde told the MPHA in Mr. Stoick's request for reasonable accommodation that:

- a. "It is my opinion that Mr. Stoick's legal history is a direct result of many years of untreated major depression, manifesting itself in substance dependence and related difficulties. Recently, through various forms of treatment, Mr. Stoick has been able to deal directly with substance-related and mental health issues;"

- b. “Currently he reports sobriety from drugs and alcohol, and I have no reason to doubt this assertion. His psychological stability has improved markedly, with good correspondence between behavior and report, and he has experienced no substance-related cravings in recent months;”
- c. “Mr. Stoick’s prior legal difficulties occurred in the context of untreated depressive relapse and consequent substance abuse. Given his current involvement with mental health treatment, his increased psychological stability, and his commitment to (and evidence of) sobriety, it is unlikely that Mr. Stoick’s behavior will be of future concern;”
- d. “[T]he acquisition of stable housing would be invaluable in Mr. Stoick’s efforts to maintain sobriety and psychological health, as well as obtain gainful employment and engage in healthy social interactions.”

*Id.*

45. The accommodation by the MPHA of modifying its admission criteria was necessary in order to permit Mr. Stoick to have equal use and enjoyment of Public Housing for which he is otherwise qualified.

46. On September 24, 2009, in a letter from Betty Battle, MPHA Manager of Leasing and Occupancy, the MPHA denied Mr. Stoick’s request for reasonable accommodation. *See* Ex. 1.

47. Ms. Battle asserted that the MPHA’s denial of Mr. Stoick’s reasonable accommodation was based on several reasons, including:

- a. "There is no evidence that Dr. Bunde reviewed your criminal records or that he has the foundation to state that your specific conduct on a specific date was due to depression and/or substance abuse;"
- b. "There is no evidence that Dr. Bunde knew whether during each criminal incident you were experiencing symptoms of depression or were under the influence of alcohol or another substance;"
- c. "There is not a sufficient nexus between your disability and your criminal history;"
- d. "Dr. Bunde's assertion that your criminal activity is the result of untreated depression is not credible, nor is your assertion that you are not drinking alcohol;"
- e. "Under MPHA's Reasonable Accommodation Policy, MHPA agrees that your diagnosis of depression is a disability;"
- f. "MPHA does not agree that alcoholism is a disability for purposes of admission to housing;"
- g. "You have a history of criminal activity that is not explained by your disability and you were arrested for similar activity after you had been receiving treatment for over a year;" and
- h. "Aside from not complying with Sections 3.8, 5.2 and 16 of MPHA's Reasonable Accommodation Policy, MPHA also denies your request for reasons stated in Section 5.3 which include:

- i. (b) your accommodation would fundamentally change the nature of the public housing program, which prohibits criminal activity and requires honesty in providing information;
- ii. (c) the accommodation would pose a direct threat to others' health and safety when you have a history of arrests . . .
- iii. (d) you cannot meet the essential eligibility requirements of the program which include no criminal activity and honesty in providing information;
- iv. (f) your request is not a request for a reasonable accommodation and (j) is based upon a personal preference in that you want MPHA to waive your criminal history and lack of honesty; and
- v. (h) there is a lack of documentation that you were experiencing symptoms of depression and alcohol dependence on the dates of your criminal incidents.”

Ex. 1, pp. 4-6.

48. The MPHA's Reasonable Accommodation Health Provider's Verification Form did not list criteria which the MPHA relied upon to evaluate the reasonableness of Mr. Stoick's request, including:

- a. Evidence that the health provider reviewed the applicant's records;

- b. Evidence that the health provider has the foundation to state that the applicant's specific conduct on specific dates was caused by the applicant's disabilities;
- c. Evidence establishing the health provider's medical qualifications;
- d. Evidence establishing the health provider's credibility.

49. The MPHA did not correspond with Mr. Stoick regarding his reasonable accommodation in any form other than this September 24, 2009, letter.

50. The MPHA did not inquire about or discuss other possible actions that would reasonably accommodate Mr. Stoick's disabilities.

51. The MPHA did not provide any other information, explanation or correspondence regarding how Mr. Stoick's reasonable accommodation would "fundamentally change the nature of the public housing program."

52. The MPHA did not provide any other information, explanation or correspondence regarding how Mr. Stoick's reasonable accommodation would be a "direct threat to others' health and safety."

**The MPHA's Hearing Process to Review both Mr. Stoick's Reasonable Accommodation and Eligibility Denial**

**Mr. Stoick Had to Demand Separate Hearings for His Reasonable Accommodation and Eligibility Denial Appeals**

53. Part II of the MPHA's SOP, Requirements for Admission, provides a set of procedures for eligibility denial hearings, including the right to representation at the applicant's expense and to question witnesses. Pl.'s Ex. U.

54. Mr. Stoick on August 11, 2009 made a timely request for an informal hearing under the MPHA's SOP, Part II to contest the MPHA's July 8, 2009 denial of eligibility for Public Housing.

55. Mr. Stoick on October 1, 2009 again made a timely request for an informal hearing under the MPHA's SOP, Part II to contest the MPHA's September 24, 2009 amended denial of eligibility for Public Housing.

56. The MPHA's Reasonable Accommodation Policy in its SOP affords applicants a hearing under Part XII of its SOP to contest the MPHA's denial of reasonable accommodation. Ex. 5, § 16.

57. Part XII of the MPHA's SOP provides a set of procedures for hearings, including the right to a transcript at the party's expense and the right to confront and cross-examine all witnesses upon whose testimony or information MPHA relies. Pl.'s Ex. T, MPHA, Public Housing SOP, Part XII: Tenant Grievance Procedures (Oct. 15, 2009) ¶¶ 2(E), 2(F), 2(F)(7).

58. Mr. Stoick on October 1, 2009, made a timely request for a grievance hearing under the MPHA's SOP, Part XII to appeal the denial of his reasonable accommodation request.

59. On January 19, 2010, the MPHA sent notice that they scheduled a single hearing for Mr. Stoick to appeal both his reasonable accommodation denial and his Public Housing eligibility denial. Pl.'s Ex. S, MPHA Hearing Notice, Jan. 19, 2010.

60. The MPHA's SOP provides separate hearing procedures for reasonable accommodation decision hearings and eligibility denial hearings.

61. On January 26, 2010, Mr. Stoick, through his counsel, objected to the MPHA holding a single hearing for both his reasonable accommodation and eligibility denials. Pl.'s Ex. R, Letter from Brian Rochel, Jan. 26, 2010.

62. Mr. Stoick objected because “[i]t would affront Mr. Stoick’s due process rights to an objective determination on the merits to have the same panel decide both his [reasonable accommodation] request and his denial of admission to public housing. If Mr. Stoick prevails on his [reasonable accommodation] appeal, then he should be declared eligible and offered housing based on date and time of application and relevant preference points. If there were any bases for denial of eligibility after his [reasonable accommodation] is granted, which we do not believe there will be, then Mr. Stoick has a right to be heard by a panel that has not been made privy to the MPHA’s negative characterization of his criminal history, since it would not be relevant and would be unfairly prejudicial.” *Id.*

63. After several conversations between Mr. Stoick’s counsel and the MPHA’s counsel, the MPHA ultimately agreed to hold a single, bifurcated hearing in which Mr. Stoick’s reasonable accommodation appeal would be heard and decided first. Only if there were any remaining issues to be decided, then Mr. Stoick’s eligibility denial appeal would be heard and decided second.

64. The MPHA held Mr. Stoick’s single, two-part hearing before a single hearing panel on February 4, 2010.

65. The first hearing session challenged the MPHA’s denial of Mr. Stoick’s reasonable accommodation request.



66. The second hearing session commenced after the panel's decision on reasonable accommodation was rendered. It addressed any remaining issues concerning Mr. Stoick's challenge of the MPHA's denial of his eligibility for Public Housing.

**The MPHA Failed to Notify Mr. Stoick Whether the MPHA Would Record or Whether He Could Obtain Any Record of His Hearing**

67. The MPHA records some eligibility denial hearings, but not all of them. The MPHA does not inform applicants whether their hearing will be recorded or how to obtain a copy of the record.

68. Mr. Stoick was not informed whether his hearing would be recorded.

69. Mr. Stoick's informal hearing was not recorded by the MPHA. Mr. Stoick did not know that his hearing would not be recorded by the MPHA until he arrived at the hearing.

70. Mr. Stoick brought a court reporter to transcribe both hearing sessions at his own expense.

71. The MPHA's counsel said the MPHA would allow Mr. Stoick to have a court reporter transcribe the hearing this one time, but that the MPHA would not alter its policy of not allowing applicants to bring court reporters at their own expense.

**The MPHA Hearing Panel**

72. The hearing panel consisted of two Public Housing tenants and a Public Housing leasing manager.

73. The same panel heard both sessions of the hearing.

74. The MPHA's counsel advised the panel regarding what evidence they could or could not accept, as well as the weight the panel should give to certain evidence, when she stated, for example:

- a. In response to Mr. Stoick's counsel objecting to the Applicant Hearing Rules and asking the panel to accept Mr. Stoick's written Memo, "[w]e'll go ahead and accept your memorandum. And just point out to the panel that it's not evidence. It's argument by counsel . . . take it for what it's worth. And – and the panel understands it's not an exhibit," Hr'g Tr. p. 8;
- b. In response to Mr. Stoick's explanation of what Dr. Bunde told him, "[w]ell, the panel can take it for what its worth. He – he [Mr. Stoick] can tell you what his opinion is;" *id.* at p. 28;
- c. In response to Mr. Stoick's counsel requesting the panel take notice to correct a flaw in an MPHA exhibit, "[w]ell, I'm not going to – now, hold on. That's my exhibit and so I'm not going to instruct the panel to strike something from my exhibit;" *id.* at pp. 41-42;
- d. In response to the panel's inquiry into Mr. Stoick's probation, "[a]nd so he may still be on probation for the '09 incident, but I would like to instruct the panel to not consider that;" *id.* at p. 91. *See also id.* at pp. 19-20, 66.

75. The MPHA's counsel referred to the panel as "we" when deciding what evidence the panel could accept. She stated "[w]e'll go ahead and accept your memorandum." Hr'g Tr. p. 8.

76. The panel referred to the MPHA and the MPHA's counsel as "we" when defending the MPHA's use of illegal "Screening Guidelines." One panel member, Ms. Kunz, stated that without the "Screening Guidelines" "we [would] have to list every crime there is in the whole world. And we can't do that or it would be 500 pages." The MPHA's counsel responded to the panel, "Right." Hr'g Tr. p. 83.

**The MPHA Used Unpublished Hearing Rules that Were Not Provided  
to Mr. Stoick Prior to the Hearing**

77. Immediately upon the commencement of each part of Mr. Stoick's hearing, MPHA employee Ms. Deedee Folsom read a list of "Applicant Hearing Rules" the MPHA's counsel said would govern each part of the hearing. Hr'g Tr. pp. 5-7, 64-66. The MPHA had placed a copy of the Rules on the table at each chair. *See* Pl,'s Ex. Z, Applicant Hearing Rules, Dec. 10, 2007 (provided at Feb. 4, 2010 Hr'g).

78. These Applicant Hearing Rules, Ex. Z, are not published in the MPHA's SOP.

79. These Applicant Hearing Rules, Ex. Z, are not made publicly available on the MPHA's website.

80. These Applicant Hearing Rules, Ex. Z, are not mailed, delivered or otherwise made available to applicants prior to hearings.

81. These Applicant Hearing Rules, Ex. Z, were not provided to Mr. Stoick in his July 8, 2009, denial letter, in his September 24, 2009, amended denial letter, or after he filed his appeals on August 11, 2009, and October 1, 2009.

82. Despite Mr. Stoick's objections through counsel, the MPHA insisted that these Applicant Hearing Rules, Ex. Z, governed both sessions of his February 4, 2010 hearing. Hr'g Tr. pp. 5-7, 64-66.

**Mr. Stoick Had No Opportunity to Confront or Examine Any  
Witnesses**

83. The MPHA produced no witnesses at the hearing.

a. Ms. Zanmiller, who wrote the July 8, 2009 denial letter, was not present;

b. Ms. Battle, who wrote the September 24, 2009, reasonable accommodation and eligibility denial letter, was not present;

84. Mr. Stoick could not compel any witnesses to appear because parties do not have subpoena power for MPHA hearings.

85. Ms. Elizabeth Kragness, the MPHA's counsel, presented documents from Mr. Stoick's application file. *See* Pl.'s Ex. CC, Hr'g Ex. Lists, Feb. 4, 2010.

86. Ms. Kragness testified for the MPHA at both sessions of the hearing. *See, e.g.*, Hr'g Tr. pp. 16, 20-21, 41-42, 80-84, 91-92, 98-99, 112-13.

87. Ms. Kragness refused to answer questions after providing testimony for the MPHA at both sessions of the hearing. *See, e.g.*, Hr'g Tr. pp. 20-21, 79-84.

**The Hearing Panel's Decision Denied Mr. Stoick Reasonable  
Accommodation and Eligibility for Public Housing**

88. The MPHA's hearing panel upheld the MPHA's September 24, 2009, decision denying Mr. Stoick's request for reasonable accommodation after the first session of the hearing. Pl.'s Ex. Y, MPHA's Hr'g Panel Reasonable Accommodation Decision, Feb. 4, 2010.

89. The panel's February 4, 2010 decision states: "MPHA does not believe that alcoholism is a disability for purposes of admission to housing. Mr. SToick [sic] has relapsed and continued to [sic] criminal activity from 1985 to 2009. He stated it would be unreasonable not to expect him to relaps [sic]. Accomoting [sic] Mr. Stoick's [sic] would pose a direct threat to others' health and safety when he has a history of arrests. Mr. Stoick has stoped [sic] using methadone for 2 weeks. He did this on his own and is not under any current care." Pl.'s Ex. Y ¶ F.

90. The MPHA's panel then upheld the MPHA's September 24, 2009, denial of Mr. Stoick's eligibility for Public Housing after the second session of the hearing. Pl.'s Ex. X, MPHA's Hr'g Panel Eligibility Decision, Feb. 4, 2010.

91. The panel's February 4, 2010 decision states: "Mr. Stoick has relapsed under doctors [sic] care showing that his history does not demonstrate capability of compliance with the terms of the lease. Does not pass screening [sic]. Gross misdemeanor [sic]. 2 years after sentence is complete [sic]. Will be eligible Aug [sic] 26, 2010." Pl.'s Ex. X ¶ F.

92. Mr. Stoick presented oral testimony and documentary evidence at the hearing. *See* Hr'g Tr.; Pl.'s Ex. CC.

93. Mr. Stoick's counsel presented oral and written argument on Mr. Stoick's behalf at the hearing. *See* Hr'g Tr.; Pl.'s Ex. BB, Stoick's Hr'g Memo, Feb. 4, 2010.

94. The panel's decision lists no evidence presented by Mr. Stoick at all as evidence considered in reaching their decision. *See* Pl.'s Ex. X ¶¶ C, F.

95. At all relevant times Defendant McCorvey had actual or constructive knowledge of the illegality of Defendant MPHA's policies and practices regarding reasonable accommodation and Public Housing eligibility decisions and hearings.

### **INJURY**

96. Mr. Stoick's permanent disabilities have contributed to his homelessness and have made it difficult for him to obtain gainful employment.

97. Mr. Stoick wants to live in MPHA Public Housing

98. Mr. Stoick has been and continues to be gravely, immediately and irreparably harmed by the unlawful acts of the Defendants. Mr. Stoick has been injured by:

- a. Being denied his right to have his application for MPHA Public Housing properly reviewed;
- b. Being denied his right to a legal process providing an opportunity to have his appeals properly heard;

- c. The MPHA's continued use of admission criteria that categorically deny Mr. Stoick eligibility for MPHA Public Housing because the disability of alcoholism is one of his permanent disabilities;
- d. Continued homelessness after applying for and being denied MPHA Public Housing; and,
- e. Paying more for rent than he would have paid for MPHA Public Housing when he was able to obtain market rate rental housing.

99. Unless enjoined, the Defendants will continue to engage in the unlawful acts and pattern and practice of discrimination described herein.

100. Mr. Stoick has no adequate remedy at law in that an award of compensatory damage will not make whole the injuries he is currently suffering due to the actions of Defendants which have violated Mr. Stoick's rights to procedural due process and civil rights in his application for Public Housing and request for reasonable accommodation.

#### **PUBLIC HOUSING STATUTORY AND REGULATORY BACKGROUND**

101. Public Housing units are owned and operated by local public housing authorities (PHAs), such as Defendant MPHA, created pursuant to state enabling legislation. Public Housing can be occupied only by low-income persons whose rents are generally limited to thirty (30) percent of their adjusted gross income. Tenant rents do not cover the costs of development, operation and maintenance of Public Housing, so HUD contributes principle and interest payments on bonds as well as operating subsidies to PHAs through ACCs and other agreements.

102. To apply for Public Housing an applicant must meet basic eligibility requirements. 42 U.S.C. § 1437a (2010); 24 C.F.R. § 5.603 (2010).

103. In addition to screening for basic eligibility requirements, PHAs may screen applicants based on their suitability for Public Housing. 42 U.S.C. § 1437a (2010); 24 C.F.R. §§ 960.202, 960.203 (2010). These additional screening criteria may include an applicant's history of meeting financial obligations, disturbing neighbors and criminal history. *Id.*

104. All tenant selection policies must be (1) duly adopted and implemented; (2) publicized by posting in each office where applications are received and by furnishing copies to applicants upon request; and (3) non-discriminatory. 42 U.S.C. § 1437a (2010); 24 C.F.R. § 960.202(c) (2010).

105. Tenant selection criteria to be established and information to be considered by PHAs shall be reasonably related to individual attributes and behavior of an applicant and shall not be related to those which may be imputed to a particular group or category of persons of which an applicant may be a member. 24 C.F.R. § 960.203(a) (2010).

106. PHAs publish a Public Housing Admission and Continued Occupancy Policy (ACOP) (sometimes called a "Statement of Policies" or "SOP") as part of their Administrative Plans. The ACOP/SOP contains details about a PHA's eligibility, selection, tenancy and reasonable accommodation criteria, policies, practices and procedures.



107. When a PHA denies an applicant based on ineligibility it must provide the applicant prompt notice stating the basis for the determination of ineligibility. 42 U.S.C. § 1437a (2010); 24 C.F.R. § 960.208 (2010).

108. The PHA must provide denied applicants an informal hearing to contest the determination. *Id.* The hearing must provide the opportunity for applicants to contest meaningfully the basis for any unfavorable decision. *Id.*

109. PHAs must have all applicable hearing procedures written and published in their Annual Plan. 42 U.S.C. § 1437c (2010); 24 C.F.R. § 903.7(f).

110. When unfavorable information is received with respect to an applicant, a PHA shall consider the time, nature, and extent of the applicant's conduct, including the seriousness of the offense. 42 U.S.C. § 1437a (2010); 24 C.F.R. § 960.203(d) (2010). The PHA may also consider “factors which might indicate a reasonable probability of favorable future conduct” and evidence of rehabilitation in determining eligibility. *Id.*

111. The MPHA has published an Annual Plan. *See* MPHA, Moving to Work Annual Plan, Revised 2010 (Dec. 30, 2009).

112. The MPHA has published an ACOP, which it titles its “Statement of Policies” (SOP). *See* MPHA, Public Housing SOP (Oct. 15, 2009).

113. The MPHA is governed by the MPHA Board of Commissioners. The Board of Commissioners approves the MPHA’s policies, practices and procedures, including its Annual Plan and SOP.

**CAUSES OF ACTION RESULTING FROM DEFENDANTS' DENIAL OF  
ELIGIBILITY FOR PUBLIC HOUSING**

114. Plaintiff realleges and incorporates by reference Paragraphs 1 through 113 of the Complaint herein.

**Violations of the United States Housing Act**

115. Defendants relied upon unpublished and unadopted "Screening Guidelines" when they denied Mr. Stoick eligibility for Public Housing in violation of 42 U.S.C. § 1437a (2010).

116. Defendants relied upon unpublished and unadopted "eligibility requirements" that are contrary to federal law when they categorically denied Mr. Stoick eligibility for Public Housing because he did not demonstrate "no criminal activity," in violation of *id.* See also 24 C.F.R. § 960.203(c).

117. Defendants established and considered tenant selection criteria that was not reasonably related to Mr. Stoick's individual attributes and behavior, but instead established and considered tenant selection criteria that was imputed to a particular group or category of persons of which Mr. Stoick is a member, in violation of 42 U.S.C. § 1437a (2010).

**Violations of Due Process**

118. Mr. Stoick possesses a property interest entitling him to procedural due process in his application for MPHA Public Housing in accord with all relevant statutes, regulations, regulatory guidance from HUD, HUD Handbooks and Guidebooks, HUD Notices and the MPHA's SOP.

119. Defendants' use of unpublished and unadopted "Screening Guidelines" in his application process violates his right to procedural due process under the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution pursuant to 42 U.S.C. §1983 (2010).

**Violations of the Fair Housing Amendments Act**

120. Defendants discriminated in the rental of or otherwise made a dwelling unavailable to Mr. Stoick because of his handicap, in violation of 42 U.S.C. 3604(f) (2010).

121. Defendants' statements in its SOP that (1) "disability does not include a person whose disability is based solely on drug or alcohol dependence" for eligibility for Public Housing, and (2) "for purposes of eligibility for low-income housing a person does not have a disability based solely on any drug or alcohol dependence," discriminate in the rental of or otherwise make Public Housing unavailable to individuals with a disability or a class of individuals with disabilities in violation of *id.*

**Violation of the Americans with Disabilities Act**

122. Defendants illegally screened out Mr. Stoick based on his disability, in violation of 42 U.S.C. § 12132 (2010).

123. Defendants' statements in its SOP that (1) "disability does not include a person whose disability is based solely on drug or alcohol dependence" for eligibility for Public Housing, and (2) "for purposes of eligibility for low-income housing a person does not have a disability based solely on any drug or alcohol dependence," screen out or tend

to screen out individuals with a disability or a class of individuals with disabilities from fully and equally enjoying Public Housing in violation of *id.*

**Violation of the Rehabilitation Act of 1973**

124. Defendants discriminated based on disability in rental and dwelling terms of conditions by refusing to recognize alcoholism and chemical dependency as disabilities for purposes of Public Housing in violation of 29 U.S.C. § 794 (2010).

125. Defendants' statements in its SOP that (1) "disability does not include a person whose disability is based solely on drug or alcohol dependence" for eligibility for Public Housing, and (2) "for purposes of eligibility for low-income housing a person does not have a disability based solely on any drug or alcohol dependence," discriminated based on disability in rental and dwelling terms of conditions in violation of *id.*

**Violations of the Minnesota Human Rights Act**

126. Defendants refused to sell, rent, or lease or otherwise deny to or withhold any real property because of disability in violation of Minn. Stat. § 363A.09, subdiv. 1(1) (2010).

127. Defendants' statements in its SOP that (1) "disability does not include a person whose disability is based solely on drug or alcohol dependence" for eligibility for Public Housing, and (2) "for purposes of eligibility for low-income housing a person does not have a disability based solely on any drug or alcohol dependence," directly or indirectly limits, or intends to limit, the prospective purchase, rental, or lease of real property because of disability, in violation of Minn. Stat. § 363A.09, subdiv. 1(3) (2010).

**CAUSES OF ACTION RESULTING FROM DEFENDANTS' DENIAL OF  
REASONABLE ACCOMMODATION**

128. Plaintiff realleges and incorporates by reference Paragraphs 1 through 113 of the Complaint herein.

**Violation of Due Process**

129. Defendants failed to notify Mr. Stoick regarding the criteria by which they evaluated his reasonable accommodation request, in violation his right to procedural due process under the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution pursuant to 42 U.S.C. §1983 (2010).

**Violations of the Fair Housing Amendments Act**

130. Defendants' discriminated in the rental of or otherwise made a dwelling unavailable to Mr. Stoick by refusing to reasonably accommodate him when it is necessary to afford him equal opportunity to use or enjoy Public Housing in violation of 42 U.S.C. § 3604(f) (2010).

131. Defendants' statements responding to Mr. Stoick's reasonable accommodation request (1) on September 24, 2009, that "MPHA does not agree that alcoholism is a disability for purposes of admission to housing;" and (2) on February 4, 2010, that "MPHA does not believe that alcoholism is a disability for purposes of admission to housing," discriminated against Mr. Stoick in violation of *id.*

132. Defendants' discriminated in the rental of or otherwise made a dwelling unavailable to Mr. Stoick by refusing to engage in an "interactive process" after he requested reasonable accommodation in violation of *id.*

**Violations of the Americans with Disabilities Act**

133. Defendants refused to make a reasonable accommodation with respect to their rental policies, practices or procedures that may have been necessary to avoid discriminating against Mr. Stoick in violation of 42 U.S.C. § 12132 (2010).

134. Defendants' statements responding to Mr. Stoick's reasonable accommodation request (1) on September 24, 2009, that "MPHA does not agree that alcoholism is a disability for purposes of admission to housing;" and (2) on February 4, 2010, that "MPHA does not believe that alcoholism is a disability for purposes of admission to housing," discriminated against Mr. Stoick in violation of *id.*

**Violation of the Rehabilitation Act of 1973**

135. Defendants' statements responding to Mr. Stoick's reasonable accommodation request (1) on September 24, 2009, that "MPHA does not agree that alcoholism is a disability for purposes of admission to housing;" and (2) on February 4, 2010, that "MPHA does not believe that alcoholism is a disability for purposes of admission to housing," discriminated against Mr. Stoick in violation of 29 U.S.C. § 794 (2010).

**Violations of the Minnesota Human Rights Act**

136. Defendants refused to make a reasonable accommodation with respect to their rental policies, practices or services that may have been necessary for Mr. Stoick to have equal use and enjoyment of Public Housing in violation of Minn. Stat. § 363A.10, subdiv. 1(2) (2010).

137. Defendants' statements responding to Mr. Stoick's reasonable accommodation request (1) on September 24, 2009, that "MPHA does not agree that alcoholism is a disability for purposes of admission to housing;" and (2) on February 4, 2010, that "MPHA does not believe that alcoholism is a disability for purposes of admission to housing," discriminated against Mr. Stoick in violation of *id.*

138. Defendants' statements responding to Mr. Stoick's reasonable accommodation request (1) on September 24, 2009, that "MPHA does not agree that alcoholism is a disability for purposes of admission to housing;" and (2) on February 4, 2010, that "MPHA does not believe that alcoholism is a disability for purposes of admission to housing," directly or indirectly limits, or intends to limit, the prospective purchase, rental, or lease of real property because of disability, in violation of Minn. Stat. § 363A.09, subdiv. 1(3) (2010).

#### **CAUSES OF ACTION RESULTING FROM DEFENDANTS' HEARING**

139. Plaintiff realleges and incorporates by reference Paragraphs 1 through 113 of the Complaint herein.

#### **Violations of the United States Housing Act**

140. Defendants' failure to provide Mr. Stoick with the hearing process required by law and provided under its SOP to contest meaningfully the MPHA's denial of his eligibility for Public Housing violates the United States Housing Act of 1937 (USHA), 42 U.S.C. § 1437a (2010).

141. Defendants' hearing policies, practices and procedures violated USHA, *id.*, by, including but not limited to:

- a. Failing to demonstrate analysis of the "time, nature, and extent of the [Mr. Stoick's] conduct;"
- b. Failing to demonstrate whether and to what extent the panel considered Mr. Stoick's "reasonable probability of favorable future conduct."

**Violations of Due Process**

142. The MPHA's hearing procedures and decision violated Plaintiff's rights to procedural due process under the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution pursuant to 42 U.S.C. §1983 (2010) by, including but not limited to:

- a. Failing to provide an impartial hearing panel to decide his reasonable accommodation and eligibility denial appeals;
- b. Allowing the MPHA's counsel to advise the hearing panel on evidentiary matters in Plaintiff's reasonable accommodation and eligibility denial appeals;
- c. Failing to provide an opportunity to confront or examine any MPHA employees who made final decisions denying Plaintiff's eligibility for Public Housing;
- d. Failing to provide an opportunity to confront or examine any MPHA employees who made final decisions denying Plaintiff's reasonable accommodation;



- e. Using Applicant Hearing Rules that are unpublished, not incorporated in the MPHA's SOP, not approved by the MPHA's Board of Commissioners and not provided to applicants before either reasonable accommodation or eligibility denial hearings;
- f. Directing the hearing panel to rely upon illegal "Screening Guidelines" in both reasonable accommodation and eligibility denial hearings;
- g. Directing the hearing panel to rely upon illegal standards and statements regarding the disability of alcoholism during the reasonable accommodation and eligibility denial hearings;
- h. Sanctioning the panel's failure to accurately record the evidence presented in rendering its eligibility denial hearing decision.

**Violation of the Fair Housing Amendments Act**

143. Defendants' hearing procedures and decisions discriminated in the rental of or otherwise made a dwelling unavailable to Mr. Stoick by failing to demonstrate any analysis of "reasonableness" in Mr. Stoick's reasonable accommodation hearing, in violation of 42 U.S.C. § 3604(f) (2010).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Assume original jurisdiction over this action.
2. Pursuant to 28 U.S.C. §§ 2201 and 2002 (2010), and Rule 57 of the Federal Rules of Civil Procedure, declare that Defendants' policies, practices, procedures, acts

and omissions have deprived Plaintiff John Stoick of his rights under the United States Constitution, the United States Housing Act (USHA), the Fair Housing Amendments Act (FHAA), the Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973, and the Minnesota Human Rights Act (MHRA) as enumerated *supra* and declare that:

- a. Defendants are legally obligated to comply fully with the practices, policies and procedures set out in federal statutes and implementing regulations and its SOP in providing hearings;
- b. Defendant's statements in its SOP that (1) "disability does not include a person whose disability is based solely on drug or alcohol dependence" for eligibility for Public Housing, and (2) "for purposes of eligibility for low-income housing a person does not have a disability based solely on any drug or alcohol dependence," are illegal;
- c. Defendants cannot categorically deny applicants with the disability of alcoholism;
- d. Defendants can only deny applicants with the disability of alcoholism if Defendants:
  - i. Demonstrate reasonable cause to believe that such applicants may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents; and
  - ii. Demonstrate consideration of such applicants' rehabilitation.
- e. Alcoholism is a disability for purposes of the MPHA's reasonable accommodation obligations.

- f. Parties cannot be prevented from making a record of their MPHA hearings at their own expense.

3. Pursuant to Rule 65 of the Federal Rules of Civil Procedure enter preliminary and permanent injunctive and equitable relief ordering and directing that Defendants McCorvey and the MPHA:

- a. Immediately stop using "Screening Guidelines" that are not adopted by the MPHA's Board of Commissioners and published in the MPHA SOP:
  - i. As bases for denying eligibility for Public Housing;
  - ii. As bases for denying reasonable accommodation requests;
  - iii. As bases for hearing panel eligibility denial hearing decisions; and,
  - iv. As bases for hearing panel reasonable accommodation hearing decisions.
- b. Immediately stop using any Applicant Hearing Rules that are not adopted by the MPHA's Board of Commissioners and published in its SOP;
- c. Immediately stop using any Applicant Hearing Rules that are not provided to hearing participants with their notices scheduling their hearings;
- d. Immediately require the MPHA's hearing procedures to provide that any person who testifies at an eligibility denial or reasonable accommodation hearing is subject to examination by adverse parties;
- e. Immediately require the MPHA's hearing procedures to provide an opportunity to confront or examine any MPHA employees who made final decisions denying an applicant's eligibility for Public Housing;

- f. Immediately require the MPHA's hearing procedures to provide an opportunity to confront or examine any MPHA employees who made final decisions denying an applicant's reasonable accommodation request;
- g. Immediately provide the following for applicants appealing denial of their reasonable accommodation requests:
  - i. a hearing addressing only issues relating to reasonable accommodation held prior to any eligibility denial hearing; and
  - ii. provide those applicants a second hearing addressing only remaining issues concerning eligibility for Public Housing if any exist, after a decision on reasonable accommodation has been rendered.
- h. Provide notice of the MPHA's intent to record a hearing and how an applicant may obtain a copy of the record with the MPHA's notice to the applicant scheduling a hearing.
- i. Immediately ensure that the MPHA's hearing panel decisions:
  - i. Accurately record the evidence presented at its disposition;
  - ii. Demonstrate analysis of "reasonableness" in reasonable accommodation hearings;
  - iii. Demonstrate analysis of the "time, nature, and extent of the applicant's conduct" in eligibility denial hearings;
  - iv. Demonstrate analysis of "reasonable probability of favorable future conduct" whenever the MPHA's hearing panel has considered such probability in eligibility denial hearings.

4. Pursuant to Rule 65 of the Federal Rules of Civil Procedure enter enjoin and direct Defendants McCorvey and the MPHA to provide Plaintiff John Stoick:

a. A new determination of eligibility based on his December 29, 2008, application pursuant to the provisions of this Order within 15 (fifteen) calendar days of this Order; and,

b. If Mr. Stoick's eligibility is denied:

i. Provide Mr. Stoick with a new reasonable accommodation hearing pursuant to the provision of this Order within 15 (fifteen) calendar days of the determination in Paragraph 4.a. *supra*;

ii. if there are any remaining issues after reasonable accommodation has been decided, provide Mr. Stoick with new eligibility denial hearing pursuant to the provisions of this Order within 15 (fifteen) calendar days of Paragraph 4.a. (i) *supra*.

5. Order Defendants to ensure that the MPHA's Public Housing operations will not violate applicants' due process rights by ordering the MPHA to develop, file with this Court and fully implement, through approval by its Board of Commissioners, within 90 days of this Order, written policies in its SOP, and any and all agency procedures and protocols, which conform to ¶ 3 *supra*, Prayer for Relief.

6. Order Defendants to pay Mr. Stoick damages pursuant to 42 U.S.C. § 3613(c) (2010) for:

- a. The difference in rent he has paid per month since July 8, 2008, and the rent he would have paid for a MPHA Public Housing unit based on 30 percent of his Adjusted Gross Income (AGI);
- b. Damage suffered resulting from violating his rights to procedural due process;
- c. Additional damages he may suffer from any further discrimination after the date of filing of this Complaint.

7. Award John Stoick his costs and disbursements herein to his counsel, the Legal Aid Society of Minneapolis, pursuant to 42 U.S.C. § 1988 (2010) and 42 U.S.C. § 3613(c)(2) (2010).

8. Award reasonable attorneys' fees to Mr. Stoick's counsel, the Legal Aid Society of Minneapolis, pursuant to *id.*

9. Retain jurisdiction until the Court finds that Defendants have complied with the Court's injunction and contents of its Order herein.

10. Order and direct any and all other relief it deems proper.

**LEGAL AID SOCIETY OF MINNEAPOLIS**

Dated: March 30, 2010

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