

UNITED STATES DISTRICT COURT  
DISTRICT OF NEBRASKA

HIGH PLAINS COMMUNITY )  
DEVELOPMENT CORP., INC., a )  
Nebraska Corporation, )  
)  
Plaintiff, )  
)  
v. )  
)  
DR. JOANN SCHAEFER, CHIEF )  
MEDICAL OFFICER, DIVISION OF )  
PUBLIC HEALTH, NEBRASKA )  
DEPARTMENT OF HEALTH AND )  
HUMAN SERVICES, )  
In her official capacity as administrator )  
)  
and )  
)  
TERRY HINN & )  
MARILYN HINN HAYES )  
Natural Persons )  
)  
and )  
)  
HINNS MOBILE HOMES, INC. )  
A Nebraska Corporation )  
)  
Defendants. )

Case No. 4:07CV3149

AMENDED COMPLAINT

COMES NOW Plaintiff, High Plains Community Development Corp., Inc., by and through its attorney, and pursuant to Fed.R.Civ.Proc 15(a) and 42 U.S.C.A. § 3601, *et. seq.* and Neb. Rev. Stat. § 20-301, *et. seq.*, and for its causes of action against Defendants hereby states and alleges the following:

**I. PRELIMINARY STATEMENT**

1. This Complaint is brought by Plaintiff for actual damages, injunctive and declaratory relief, and the costs of this action, including attorneys fees, against Defendants for violation of the Fair Housing Act, 42 U.S.C.A. § 3601, *et. seq.*, (hereinafter “FHA”), and the Nebraska Fair Housing Act, Neb. Rev. Stat. § 20-301, *et. seq.*, (hereinafter “NFHA”). In this action, Plaintiff alleges that Hinns Mobile Homes,

Inc., Terry Hinn and Marilyn Hinn Hayes have each violated the FHA and the NFHA by engaging in discriminatory housing practices in the terms, condition, or privileges of the rental of dwellings to Native American tenants in Chadron, Nebraska. These defendants have provided substandard housing to Native American tenants based on race. Plaintiffs further allege that defendant Dr. Joann Schaefer, as the chief administrator of the Public Health Division of the Department of Health and Human Services and in her official capacity, has violated the FHA and the NFHA by engaging in discriminatory housing practices in the terms, conditions or privileges of rental dwellings, or in the provision of services in connection therewith, based on race. This defendant has refused to enforce state laws and regulations controlling mobile home parks based on the race of the tenants living in these parks. As a result of Defendants' unlawful actions, Plaintiff has been harmed.

## **II. JURISDICTION**

2. The jurisdiction of this court for Plaintiff's first and third causes of action is invoked pursuant to the FHA, 42 U.S.C.A. §3613, and the federal question jurisdiction of 28 U.S.C. § 1331.

3. The jurisdiction of this court for Plaintiff's second and fourth causes of action is invoked pursuant pendant jurisdiction by 28 U.S.C. § 1367 and Fed R. Civ. P. 18(a) and through o the NFHA, Neb. Rev. Stat. § 20-342.

4. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b).

5. Plaintiffs request that trial be held in Lincoln, NE.

## **III. PARTIES**

6. Plaintiff High Plains Community Development Corporation is a Nebraska non-profit corporation organized and operated under the laws of Nebraska and doing business at 130 East Second Street, Chadron, Dawes County, Nebraska 69337.

7. Defendant Dr. Joann Schaefer, is the Chief Medical Officer of the Public Health Division of the Nebraska Department of Health and Human Services (hereinafter "Schaefer"). Schaefer is the chief executive officer of the Division of Public Health, Department of Health and Human Services, an administrative agency of the State of Nebraska, (hereinafter "DHHS") located at 301 Centennial Mall South, PO Box 95007, Lincoln, Lancaster County, Nebraska 68509-5007, and in that role is ultimately

responsible for the enforcement of laws and regulations controlling the inspection and licensing of mobile home parks within the State of Nebraska.

8. Defendants Terry Hinn and Marilyn Hinn Hayes are natural persons who are residents of the State of Nebraska. Defendant Terry Hinn and Marilyn Hinn Hayes are engaged in the business of owning and renting property for residential uses in the State of Nebraska. Upon information and belief, Defendants Terry Hinn and Marilyn Hinn Hayes own, operate and manage Defendant Hinn's Mobile Homes, Inc.

9. Defendant Hinn's Mobile Homes, Inc. is a Nebraska corporation. The nature of Defendant Hinn's Mobile Homes' business is providing for sale and rental mobile homes for residential use within the state of Nebraska and adjoining states. Defendant Hinn's Mobile Homes, Inc. is regularly engaged in the business of providing housing and owns more than three rental units within the state. (Defendants Terry Hinn, Marilyn Hinn Hayes and Hinn's Mobile Homes Inc. are collectively referred to as "Hinn's" herein.)

#### **IV. STANDING**

10. Plaintiff, a non-profit fair housing organization, has standing to sue as a fair housing organization in its own right under the Fair Housing Act for violations of 42 U.S.C. § 3604.

11. Plaintiff has suffered a concrete and demonstrable injury in fact caused by Defendants actions. During all relevant times of this complaint, Plaintiff has devoted resources to identify and counteract unfair, unlawful and discriminatory housing practices in and around Chadron, Nebraska, and has expended resources directly to counteract the effect of Defendants' discriminatory actions. Plaintiff has suffered an injury-in-fact by the consequent drain on its resources and frustration of purpose.

#### **V. FACTUAL BACKGROUND COMMON TO ALL CLAIMS**

12. At all relevant times, Plaintiff has been a non-profit corporation whose purpose is to implement activities that will foster fair housing and civil rights, community development and self sufficiency for members of minority groups and low to moderate income residents of Nebraska's Panhandle region by securing public and private resources which will provide and promote fair housing access and using these resources in accordance with its mission as a fair housing organization.

13. At all relevant times, DHHS has been an administrative agency of the State of Nebraska. Schaefer serves as its chief executive of the Division of Public Health with ultimate responsibility for enforcing relevant DHHS regulations. The Division of Public operates within the DHHS and regulates, licenses, and investigates mobile homes parks in Nebraska. Mobile home parks operated in the State of Nebraska must obtain a license from DHHS. DHHS is mandated to approve applications for permits to construct, expand and operate mobile home parks within the State of Nebraska.

14. Under Nebraska law, DHHS may only issue a license to operate a mobile home park if the mobile home park complies with certain published standards, Neb. Rev. Stat. 71-4631.

15. DHHS, pursuant to Neb. Rev. Stat. § 71-4631, issued an operating permit to Hinns in March 2002 allowing these defendants to operate a mobile home park in Chadron, NE, and has continuously renewed this permit annually since that time.

16. During all relevant times, the Hinns defendants have owned and managed a mobile home park containing at least six mobile homes near the intersection of 5<sup>th</sup> and Maple Streets in Chadron, Nebraska.

17. Upon information and belief, the Hinns defendants are engaged in the business of renting dwellings, as defined in 42 U.S.C. § 3603(c) and as part of this business regularly engage in the rental of mobile homes within the City of Chadron, Nebraska.

18. Upon information and belief, the Hinns defendants have engaged in a practice of renting mobile home units in Chadron, Nebraska to Native Americans under terms and conditions that are discriminatory.

19. Upon information and belief, the Hinns defendants have knowingly and willfully discriminated against Native American tenants by setting terms and conditions that applied only to Native American tenants.

20. During all relevant times, the Hinns defendants have knowingly and willfully provided substandard rental housing to Native American tenants in their mobile home park located at approximately 5<sup>th</sup> and Maple Streets in Chadron, Nebraska, by providing rental housing which failed to meet minimum housing quality standards under state law, including, but not limited to, the follow conditions:

- a. Substandard plumbing, heating and utility services resulting in flooding in the units, water pipes to units attached by garden hoses, and lack of available water to units within the mobile home park;
- b. Over-crowded units with multiple families being subjected to living in one unit;
- c. Infestation of rats, rodents, snakes, and cockroaches;
- d. Exposed electrical wires; and
- e. Mobile home units without potable water.

21. DHHS, issued Mobile Home Park Inspection Reports dated September 19, 1995, June 1, 1995, July 24, 1996, April 24, 1996, June 12, 2002, June 19, 2002, July 2, 2003, August 5, 2003, November 14, 2003, April 13 2004, April 14, 2004, June 16, 2005, November 8, 2005, and April 11, 2006 related to the Hinn's mobile home park in Chardon Nebraska. Each of these reports stated that the Hinn's mobile home park was in violation and non-compliance of the regulatory codes set out by DHHS and with state law.

22. DHHS sent Hinns a series of certified letters dated October 4, 1995, August 13, 1996, May 24, 1996, May 2, 1996, June 17, 1997, April 29, 1997, May 30, 2001, June 11, 2001, June 25, 2002, January 27, 2003, July 10, 2003, September 4, 2003, April 21, 2004, May 28, 2004, June 28, 2005, November 17, 2005, and April 20, 2006, notifying the Hinn's defendants of multiple violations that made the inspected properties unfit for habitation and which required immediate corrective action.

23. The Hinns defendants knowingly and willfully disregarded these Inspection Reports and violations thereof, and continued with their pattern of discriminatory housing practices by providing housing which failed to meet minimum state housing standards to tenants based upon their race.

24. Despite numerous, continuous and uncorrected code violations, DHHS continued to issue mobile home permits to the Hinns defendants, with permits dated April 11, 2002, March, 3, 2003, January 12, 2004, March 15, 2005, January 9, 2006, and December 19, 2006.

25. DHHS, with actual knowledge of the Hinns defendants' violations, continued to support and encourage this discriminatory housing practice by continuously licensing Hinn's mobile home park, during the relevant period.

26. DHHS received actual knowledge of Hinns discriminatory animus, intent and contempt toward Native American tenants, as early as March 2002, yet continued to support and encourage Hinns discriminatory housing practice by continuing to license Hinns Mobile Homes, Inc. even though the licensed property did not comply with minimum housing standards required by state law.

27. DHHS received actual knowledge of Hinns continuous discriminatory substandard housing practices from Plaintiff's letters dated March 8, 2002, and December 4, 2002, and continued to support and encourage the discriminatory substandard housing practice by continuing to license Hinn's Mobile Homes, Inc. even though the licensed property did not comply with minimum standards required by state law.

28. Upon information and belief, DHHS decided not to enforce Nebraska mobile home licensing standards due, in whole or part, to the fact that Native Americans are housed in the Hinn's Defendants rental property.

29. On March 1, 2002 DHHS communicated to Plaintiff stating that to deal with discriminatory housing practices would be "opening a Pandora's box in terms of the many related issues that exist around housing issues, like a living wage (people rent or buy what they can afford) and the fact that sometime the local slum-lords are also local elected officials."

30. DHHS and Schaefer have engaged in continuous willful indifference, support, and encouragement of the Hinns' pattern of discriminatory substandard housing practices resulting in discriminatory housing practices and direct injury to Plaintiff.

31. DHHS and Schaefer have engaged in a race-based application of state licensing law that violates the FHA and NFHA. Plaintiff has suffered a concrete and demonstrable injury to its activities with a consequent diversion of resources to address Defendants' discriminatory housing practices.

32. The Hinns defendants have engaged in a practice of discrimination in the terms and conditions of rental housing based on race and this practice has resulted in direct injury to Plaintiff.

**VI. FIRST CAUSE OF ACTION:**

**VIOLATION OF FAIR HOUSING ACT 42 U.S.C. § 3601, *et. seq.***

33. Plaintiff incorporates the foregoing paragraphs by reference as if fully restated herein.

34. Schaefer's actions are discriminatory under the Fair Housing Act, 42 U.S.C. § 3601 and 42 U.S.C. § 3604.

35. As shown above, Schaefer has knowingly and willfully adopted a policy or practice, whether written or unwritten, of refusing to apply Nebraska licensing and regulatory requirements to Defendant Hinn's Mobile Homes, Inc., Terry Hinns and Marilyn Hinns Hayes, and has refused to enforce existing state regulations applicable to these Defendants on the basis of the race of those individuals housed in the Hinns mobile rental units, in violation of 42 U.S.C. § 3604.

36. Schaefer's discriminatory actions, policies and practices have contributed to Plaintiff's injuries as Hinn's Mobile Homes, Inc. would not have been able to continue its discriminatory business practices without licensure from Defendants.

37. Schaefer's conduct has been knowingly and willfully engaged in and shows a reckless or callous disregard of or indifference of Plaintiff's rights and defendants obligations under the FHA.

38. As a direct result of Schaefer's discriminatory actions against Plaintiff, Plaintiff has suffered a concrete and demonstrable injury to its activities with a consequent diversion of its resources.

39. Plaintiff has suffered such further damages as will be shown at trial.

**VII. SECOND CAUSE OF ACTION:**

**VIOLATION OF THE NEBRASKA FAIR HOUSING ACT,**

**NEB. REV. STAT. § 20-301, *et. seq.***

40. Plaintiff incorporates the foregoing paragraphs by reference as if fully restated herein.

41. Schaefer's actions are discriminatory under the Nebraska Fair Housing Act, Neb. Rev. Stat. § 20-301, *et. seq.* Specifically, defendants' actions violate Neb. Rev. Stat. § 20-318 of the Nebraska Fair Housing Act.

42. Schaefer has knowingly and willfully continued to support and encourage discriminatory substandard housing practices by continuing to license Hinn's Mobile Homes, Inc., during the relevant period, in violation of Neb. Rev. Stat. §20-318.

43. Schaefer has knowingly and willfully adopted a policy or practice, whether written or unwritten, of refusal to apply Nebraska licensing and regulatory requirements to Defendant Hinn's Mobile Homes Inc., and has refused to enforce existing state regulations applicable to Hinns Mobile Homes, Inc. on the basis of the race of those individuals housed in Defendant Hinns Mobile Homes Inc.'s rental units, in violation of Neb. Rev. Stat. §20-318.

44. Schaefer's discriminatory actions are a proximate cause of Plaintiff's injuries.

45. Schaefer's conduct shows a reckless or callous disregard of or indifference of Plaintiff's rights and defendant's obligations under the Nebraska Fair Housing Act.

46. As a direct result of Schaefer's discriminatory actions, Plaintiff has suffered a concrete and demonstrable injury to its activities with a consequent drain on its resources.

47. Plaintiff has suffered such damages as will be shown at trial.

#### **VIII. THIRD CAUSE OF ACTION:**

##### **VIOLATION OF FAIR HOUSING ACT 42 U.S.C. § 3601, *et. seq.***

48. Plaintiff incorporates the foregoing paragraphs by reference as if fully restated herein.

49. The Hinns Defendants' actions are discriminatory under the Fair Housing Act, 42 U.S.C. § 3601, *et. seq.*, and specifically 42 U.S.C. § 3604 of the Fair Housing Act.

50. The Hinns Defendants have during the relevant period, knowingly and willfully discriminated in the provision of rental housing on the basis of race by providing substandard, unlawful, and uninhabitable rental housing to tenants who are Native American due to the race of these tenants, in violation of 42 U.S.C. § 3604.

51. The Hinns Defendants discriminatory actions have contributed to Plaintiff's injuries.

52. The Hinns Defendants' conduct shows a reckless or callous disregard of or indifference of Plaintiff's rights.

53. As a direct result of Defendants' discriminatory actions against Plaintiff, Plaintiff has suffered a concrete and demonstrable injury to its activities with a consequent drain on its resources.

54. Plaintiff has suffered such damages as will be shown at trial.

**IX. FOURTH CAUSE OF ACTION:  
VIOLATION OF THE NEBRASKA FAIR HOUSING ACT,  
NEB. REV. STAT. § 20-301, et. seq.**

55. Plaintiff incorporates the foregoing paragraphs by reference as if fully restated herein.

56. The Hinns Defendants' actions are discriminatory under the Nebraska Fair Housing Act, Neb. Rev. Stat. § 20-301, et. seq. Specifically, Defendants' actions fall under Neb. Rev. Stat. § 20-318 of the Nebraska Fair Housing Act.

57. As shown above, the Hinns Defendants knowingly and willfully discriminated in the provision of rental housing on the basis of race by providing substandard, unlawful, and uninhabitable rental housing to tenants who are Native American due to the race of these tenants, in violation of Neb. Rev. Stat. §20-318.

58. As shown above, the Hinns Defendants' discriminatory actions are the proximate cause of Plaintiff's injuries.

59. Defendants' conduct shows a reckless or callous disregard of or indifference to Plaintiff's rights.

60. As a direct result of Defendants' discriminatory actions against Plaintiff, Plaintiff has suffered a concrete and demonstrable injury to its activities with a consequent drain on its resources.

61. Plaintiff has suffered such damages as will be shown at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff makes the following prayer for relief:

A. Enter a permanent injunction, ordering Schaefer to immediately cease use of any discriminatory policy, practice or custom that determines the application of licensure requirements based, in whole or part, on race;

B. Enter a declaratory judgment that each Defendant has violated the Fair Housing Act;

C. Enter a declaratory judgment that each Defendant has violated the Nebraska Fair Housing Act;

D. Award Plaintiff an award of compensatory damages and punitive damages from Defendant Terry Hinn, Marilyn Hinn Hayes and Hinn's Mobile Homes, Inc., as shall be shown at trial;

E. Grant Plaintiff an award of reasonable costs, expenses and attorney's fees; and,

F. Such other relief as this Court deems just and proper.

HIGH PLAINS COMMUNITY  
DEVELOPMENT CORP., INC., Plaintiff

BY: /s/ Steven M. Virgil

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 7, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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