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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- against -

CV-90-0992

COMPLAINT

Civil Action
No. CV-90-

CONSTANTINO, J.
ROSS, M.

THE INCORPORATED VILLAGE OF
ISLAND PARK, MICHAEL A. PARENTE,
Individually and in his capacity
as Mayor of the Incorporated Village
of Island Park, JAMES G. BRADY,
Individually and in his capacity
as Trustee of the Incorporated
Village of Island Park, FRANCIS
R. MCGINTY, Individually and in
his capacity as Trustee of the
Incorporated Village of Island
Park, MICHAEL MASONE, GERALDINE
MCGANN, HAROLD SCULLY, DANIEL
MCGANN, EILEEN MCGANN, ANTHONY
CICCIMARRO, JANET CICCIMARRO,
JOSEPH RUOCCO, DEBRA RUOCCO,
MARY ELLEN GUERIN, DENNIS GUERIN,
JOSEPH DiDOMENICO, MARIA DiDOMENICO,
DONNA MOORE and KENNETH MOORE,

Defendants.

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Plaintiff United States of America, by its
attorney Robert L. Begleiter, Chief, Civil Division, Office
of the United States Attorney, Eastern District of New York,
M. Lawrence Noyer, Jr., Assistant United States Attorney, of
counsel, for its complaint against defendants in this action
alleges on information and belief as follows:

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FILED

1. Plaintiff brings this action against defendants the Incorporated Village of Island Park, New York, Michael A. Parente, Mayor of the Village of Island Park, James G. Brady, Trustee of the Village of Island Park, Francis R. McGinty, Trustee of the Village of Island Park, Michael Masone, Superintendent of Public Works of the Village of Island Park, Geraldine McGann, former Trustee of the Village of Island Park and former Special Assistant to the Regional Commissioner for Region II of the United States Department of Housing and Urban Development, and Harold Scully, former Clerk of the Village of Island Park, seeking a declaratory judgment that said defendants conspired to and did defraud the United States and the Department of Housing and Urban Development (H.U.D.) by manipulating the availability of housing in the Village of Island Park, which housing was funded in part by H.U.D. This manipulation discriminated against persons seeking such housing because of race, color and national origin, thereby violating the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601 et seq. Plaintiff also seeks damages for these defendants' knowing submission and causing the submission of false and fraudulent claims for payment to the plaintiff; and for defendants' wrongful and fraudulent conduct in manipulating the availability of said housing so as to favor relatives friends and associates, and employees of the Village of Island Park, injunctive relief to remedy

the discriminatory effect of these defendants' actions, and civil penalties for each such violation committed by these defendants. Plaintiff further seeks damages from defendants Geraldine McGann and Harold Scully based upon their breaches of fiduciary duty owed to the United States of America and to H.U.D.

2. Plaintiff also brings this action against defendants Daniel McGann, Eileen McGann, Anthony Ciccimarro, Janet Ciccimarro, Joseph Ruocco, Debra Ruocco, Mary Ellen Guerin, Dennis Guerin, Joseph DiDomenico, Maria DiDomenico, Donna Moore and Kenneth Moore, seeking legal and equitable relief against said defendants, based upon their improper and wrongful conduct, unjust enrichment and aiding and abetting breaches of fiduciary duty in connection with their applications for, and acquisition of, the aforesaid H.U.D. subsidized housing in Island Park, New York.

3. Plaintiff brings this action on behalf of itself and the United States Department of Housing and Urban Development, an agency of the United States of America established pursuant to 42 U.S.C. § 3532. H.U.D. is the federal agency responsible for, inter alia, implementing and enforcing federal legislation respecting housing, and developing programs designed to insure that affordable housing is made available to persons in need of such housing.

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343 and 1345, 31 U.S.C. §§ 3729-3733, and 42 U.S.C. § 3614.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

The Defendants

6. At all times relevant to this action, defendant Incorporated Village of Island Park (the Village) was a municipal corporation of the State of New York, with its principal place of business at 127 Long Beach Road, Island Park, New York. The Village is situated in the Town of Hempstead, County of Nassau, within this judicial district. The responsibility for conducting the business of the Village is vested in a Mayor and Board of Trustees, which determines by majority vote all matters respecting the business of the Village, including participation in H.U.D. programs such as the Section 235 Housing Program discussed herein.

7. At all times relevant to this action, the defendant Michael A. Parente was the Mayor of the Village, and a resident of this judicial district.

8. At all times relevant to this action, the defendant James G. Brady was a Trustee of the Village, and was a resident of this judicial district.

9. At all times relevant to this action, the defendant Francis R. McGinty was a Trustee of the Village, and was a resident of this judicial district.

10. At all times relevant to this action, the defendant Michael Masone was the Superintendent of Public Works in the Village, and was a resident of this judicial district.

11. At all times relevant to this action, the defendant Geraldine McGann was a resident of this judicial district. From on or about October 19, 1981 until the present, the defendant Geraldine McGann was employed by H.U.D. During that time, and until in or about August 1989, she served as Special Assistant to Joseph Monticciolo, the H.U.D. Regional Administrator for Region II. From on or about August 19, 1982, until in or about June 1989, she simultaneously served as a paid Trustee of the Village.

12. At all times relevant to this action, the defendant Harold Scully was the Clerk of the Village, and was a resident of this judicial district.

13. At all times relevant to this action, the defendant Daniel McGann was a resident of this judicial district.

14. From on or about September 26, 1982, and continuing at all times relevant to this action, the defendant Eileen McGann was the wife of the defendant Daniel McGann, and was a resident of this judicial district.

15. At all times relevant to this action, the defendant Anthony Ciccimarro was a resident of this judicial district.

16. At all times relevant to this action, the defendant Janet Ciccimarro was the wife of the defendant Anthony Ciccimarro, and was a resident of this judicial district.

17. At all times relevant to this action, the defendant Joseph Ruocco was a resident of this judicial district. From in or about 1982 and continuing until the present, the defendant Joseph Ruocco has been the Justice of the Village.

18. At all times relevant to this action, the defendant Debra Ruocco was the wife of the defendant Joseph Ruocco, and was a resident of this judicial district.

19. At all times relevant to this action, the defendant Mary Ellen Guerin was a resident of this judicial district.

20. At all times relevant to this action, the defendant Dennis Guerin was the husband of the defendant Mary Ellen Guerin, and was a resident of this judicial district.

21. At all times relevant to this action, the defendant Joseph DiDomenico was a resident of this judicial district.

22. At all times relevant to this action, the defendant Maria DiDomenico was the wife of the defendant Joseph DiDomenico, and was a resident of this judicial district.

23. At all times relevant to this action, the defendant Donna Moore was a resident of this judicial district.

24. At all times relevant to this action, the defendant Kenneth Moore was the husband of the defendant Donna Moore, and was a resident of this judicial district.

H.U.D.'s Section 235 Housing Program

25. Section 801 of the Fair Housing Act (the Act), 42 U.S.C. § 3601, provides that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

26. One of the many programs administered by H.U.D. and subject to the Act was known as the Section 235 Housing Program. The purpose of the Section 235 Housing Program was to provide housing to lower income families through federally subsidized mortgages. The Section 235 Housing Program was funded in part by Community Development Block Grant (CDBG) funds provided by H.U.D., and in part by mortgage subsidies paid by H.U.D.

27. Pursuant to 24 C.F.R. §§ 200.610, it is the policy of H.U.D. to administer all housing programs subject to the Act, including the Section 235 Housing Program,

affirmatively in order to achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion, sex or national origin. Each applicant for participation in H.U.D.'s subsidized and unsubsidized housing programs is required to pursue affirmative fair housing marketing policies in soliciting buyers and tenants, in determining their eligibility, and in concluding sales and rental transactions.

28. Since in or before 1980, defendant Village has been a member of the Nassau County Consortium, composed of approximately 24 towns and villages within Nassau County. Through this membership, the Village began to participate in H.U.D.'s Section 235 Housing Program, and to receive CDBG funds which were channeled to defendant Village through the Nassau County Office of Housing and Intergovernmental Affairs.

29. As of on or before September 2, 1980, and continuing at all relevant times thereafter, defendant Village was party to a cooperation agreement with Nassau County (the Cooperation Agreement). Pursuant to paragraph 4 of the Cooperation Agreement, defendant Village and Nassau County agreed as follows:

The parties agree that they will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352); that no person shall on the ground of race, color, sex or national origin be excluded from

participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity for which the parties receive federal financial assistance and will at all times take any measure necessary to effect this Agreement.

By resolution of its Mayor and the Board of Trustees, duly adopted, defendant Village recognized the obligations imposed upon it by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, in connection with the Village's performance under the Cooperation Agreement.

30. As a participant in the Section 235 Housing Program, defendant Village (through the Cooperation Agreement) was to purchase and improve blighted land using both CDBG and Village funds. The improved land was to be sold by the Village to a private developer in order to build single-family homes. These homes would then be sold to qualified purchasers under the Section 235 Housing Program.

31. Each applicant for participation in the Section 235 Housing Program is required by 24 C.F.R. § 200.625 to submit to H.U.D. for approval an Affirmative Fair Housing Marketing Plan (AFHMP), H.U.D. Form 935.2. This plan must include, inter alia, a statement as to the number of housing units to be built; the minority groups to whom marketing will be targeted; the media and community groups that will be used to notify the applicable minorities of the availability of housing; and the anticipated minority

occupancy goals for the project for which the AFHMP is being submitted.

32. Pursuant to the Village's participation in the Section 235 Housing Program, 44 single-family homes were built in three phases over a period of four years commencing in 1980. Five homes were built in the first phase (Phase One); 22 in the second (Phase Two); and the remaining 17 in the third (Phase Three).

33. All of the lots in question were sold by defendant Village to the builders at \$500 each, with the stipulation that the builders construct the Section 235 housing. These homes were then sold by the builders to various purchasers, including the individual homeowner defendants named herein, at prices ranging approximately from \$40,000 to \$63,700.

The Unlawful Conspiracy

34. From in or about 1980 and continuing until the present, defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Geraldine McGann and Harold Scully, together with others known and unknown, knowingly and intentionally conspired to and did manipulate the availability of Section 235 housing in Island Park in the manner set forth in paragraphs 38-96 hereafter, and thereafter to conceal that manipulation. This conspiracy and scheme was intended to and did:

(a) defraud the United States and H.U.D. of money, and of their right to have the Section 235 Housing Program administered fairly and honestly, according to law; and
(b) exclude Blacks and Hispanics from housing in Island Park, which persons were among the intended recipients of Section 235 Housing.

35. In or about late 1979 or early 1980, defendants Village, Parente, Brady, McGinty, Masone and Scully, together with others known and unknown, agreed that they would manipulate the Section 235 Program so that houses would not be awarded to Blacks, Hispanics and other minorities, but would instead be given to favored relatives, friends and associates, and employees of defendant Village, including but not limited to the individual homeowner defendants named herein.

Phase One Section 235 Housing

36. Phase One of the Village's Section 235 Housing consisted of five houses, which were constructed on Warwick Road (four houses), and at 75 Quebec Road, within the Village.

37. On behalf of defendant Village, Halandia Properties, Inc., using information supplied by the Village, submitted to H.U.D. in February 1980 the required Affirmative Fair Housing Marketing Plan for Phase One (the Phase One AFHMP).

38. The Phase One AFHMP stated that five units were to be built, that members of the Black and Hispanic communities would be targeted as potential purchasers, and that specified media and community groups would be contacted in an effort to notify these targeted potential purchasers of the availability of Section 235 housing in Island Park.

39. The Phase One AFHMP stated that the anticipated occupancy goal for Phase One was four White and one Black or Hispanic households, i.e., 20% minority.

Phase One Purchaser Selection

40. The Phase One AFHMP required defendant Village to make an extensive outreach to the minority population of the Village and surrounding communities through commercial media and community organizations, and defendant Village represented that it would comply with the Phase One AFHMP.

41. These representations were false, and were made by defendant Village knowingly and willfully, with knowledge of their falsehood.

42. Defendants Parente, Brady, McGinty, Masone and Scully knew and approved of the representations, and knew of their falsehood.

43. Defendants Village, Parente, Brady, McGinty, Masone and Scully, and others known and unknown, advised certain persons, including defendants Joseph and Debra Ruocco, and Anthony and Janet Ciccimarro, before any notice

was given to the general public, that they would receive Phase One Section 235 housing.

44. On or about March 26, April 5 and April 10, 1980, advertisements of the availability of Stage One Section 235 houses appeared in various newspapers. The advertisements stated that persons interested in participating in the Section 235 Program were to write to defendant Village. The advertisements further contained a symbol identifying the Section 235 Housing Program as an Equal Housing Opportunity program.

45. Due to the illegal acts and conspiracy of defendants Village, Parente, Brady, McGinty, Masone and Scully and others known and unknown, as set forth above, the recipients of the Phase One Section 235 houses had already been selected before the publication of the aforesaid advertisements, thus insuring that Blacks, Hispanics and other minorities would not receive notice of the availability of Phase One Section 235 houses until all of the houses had been awarded.

46. Defendants Joseph and Debra Ruocco, and Anthony and Janet Ciccimarro, knew before being selected to purchase houses that if they requested Phase One Section 235 housing on or about March 25 or 26, 1980, they would receive said housing.

47. Before March 25, 1980, defendants Joseph and Debra Ruocco, and Anthony and Janet Ciccimarro, were

selected by defendant Village to receive Phase One Section 235 houses.

48. Although the Phase One AFHMP required an affirmative outreach to attract minority residents, the community groups designated in the plan, including those referred to above, were not contacted until after defendants had selected the purchasers for Phase One.

49. In order to effect the objects of the conspiracy and scheme to defraud the United States and to deny H.U.D.-funded housing to Blacks, Hispanics and other minorities, defendants Village, Parente, Brady, McGinty, Masone and Scully, and others known and unknown, circumvented the requirements of the Phase One AFHMP, and awarded houses to favored relatives, friends and associates, and employees of defendant Village, including but not limited to defendants Joseph and Debra Ruocco, and Anthony and Janet Ciccimarro.

50. In or about June 1980, defendants Joseph and Debra Ruocco purchased a Section 235 house from Halandia Properties, Inc. at 82 Warwick Road, Island Park, New York.

51. In or about June 1980, defendants Anthony and Janet Ciccimarro purchased a Section 235 house from Halandia Properties, Inc. at 75 Quebec Road, Island Park, New York.

Phase Two Section 235 Housing

52. Phase Two of the Village's Section 235 housing consisted of 22 houses, which were constructed by

Ocean Park Properties, Inc. on Waterford Road (seven houses), Parente Lane South (seven houses), Parente Lane North (seven houses), and 562 Long Beach Road, within the Village.

53. On behalf of defendant Village, Ocean Park Properties, Inc. using information supplied by the Village, submitted to H.U.D. an Affirmative Fair Housing Marketing Plan for Phase Two (the Phase Two AFHMP).

54. The Phase Two AFHMP stated that 24 units of Section 235 housing were to be built. It further stated that advertising for the housing would start on approximately November 2, 1981, and that members of the Black and Hispanic communities would be targeted as potential purchasers. The Phase Two AFHMP stated that specified media and community groups would be contacted in an effort to notify these targeted potential purchasers of the availability of Section 235 housing in Island Park, including El Diario, the Amsterdam News, the National Association for the Advancement of Colored People and the Alliance of Minority Group Leaders, Inc.

55. The Phase Two AFHMP stated that the anticipated occupancy goal for Phase Two was three White, seventeen Black and four Hispanic households, i.e., 87.5% minority.

Phase Two Purchaser Selection

56. The Phase Two AFHMP required defendant Village to make an extensive outreach to the minority population of the Village and surrounding communities through commercial media and community organizations, and defendant Village represented that it would comply with the Phase Two AFHMP.

57. In addition to the above representations, defendant Village represented that "[s]pecial efforts will be made to conduct most outreach towards minority organizations."

58. These representations were false, and were made by defendant Village knowingly and willfully, with knowledge of their falsehood.

59. Defendants Parente, Brady, McGinty, Masone and Scully knew and approved of the representations, and knew of their falsehood.

60. As alleged above, defendants Village, Parente, Brady, McGinty, Masone and Scully, together with others known and unknown, had previously agreed that the Section 235 houses would be given to favored relatives, friends and associates, and employees of defendant Village.

61. Defendants Village, Parente and Scully, and others known and unknown, advised certain persons, including but not limited to defendants Mary Ellen Guerin, Dennis Guerin, Joseph DiDomenico, Maria DiDomenico, Donna Moore and

Kenneth Moore, of the availability of Phase Two Section 235 housing before any notice was given to the general public.

62. On or about November 19, November 25, December 5 and December 12, 1981, advertisements of the availability of Phase Two Section 235 houses appeared in various newspapers. The advertisements stated that persons interested in participating in the Section 235 Program were to write to defendant Village. The advertisements further contained a symbol identifying the Section 235 Housing Program as an Equal Housing Opportunity program.

63. Due to the illegal acts and conspiracy of defendants Parente, Brady, McGinty, Masone and Scully, and others known and unknown, as set forth above, the recipients of the Phase Two Section 235 houses had already been selected before the publication of the aforesaid advertisements, thus insuring that Blacks, Hispanics and other minorities would not receive notice of the availability of Phase Two Section 235 houses until all of the houses had been awarded.

64. Defendants Mary Ellen Guerin, Dennis Guerin, Joseph DiDomenico, Maria DiDomenico, Donna Moore and Kenneth Moore knew before being selected to purchase houses that if they requested Phase Two Section 235 housing on or about November 19, 1981, they would be selected to receive said housing.

65. Before November 19, 1981, defendants Mary Ellen Guerin, Dennis Guerin, Joseph DiDomenico, Maria DiDomenico, Donna Moore and Kenneth Moore were selected by defendant Village to receive Phase Two Section 235 houses.

66. Although the Phase Two AFHMP required an affirmative outreach to attract minority residents, the community groups designated in the plan, including those referred to above, were not contacted until after defendants had selected the purchasers for Phase Two.

67. In order to effect the objects of the conspiracy and scheme to defraud the United States and to deny H.U.D.-funded housing to Blacks, Hispanics and other minorities, defendants Village, Parente, Brady, McGinty, Masone, Scully and others known and unknown, circumvented the requirements of the Phase Two AFHMP, and awarded houses to favored relatives, friends and associates, and employees of defendant Village, including but not limited to defendants Mary Ellen Guerin, Dennis Guerin, Joseph DiDomenico, Maria DiDomenico, Donna Moore and Kenneth Moore.

68. There were approximately 120 letters of interest and applications for Phase Two Section 235 Housing delivered to the Office of the Village Clerk after publication of the aforesaid advertisements, including letters from prospective Black and Hispanic purchasers. However, because of the illegal agreement among defendants

Village, Parente, Brady, McGinty, Masone, Scully and others set forth above, none of these letters was ever given consideration.

69. On or about August 6, 1982, defendants Mary Ellen and Dennis Guerin purchased a Section 235 house from Ocean Park Properties, Inc. at 32 Waterford Road, Island Park, New York. On or about November 1, 1989, they sold the Section 235 house at a substantial profit.

70. On or about August 5, 1982, defendants Joseph and Maria DiDomenico purchased a Section 235 house from Ocean Park Properties, Inc. at 38 Waterford Road, Island Park, New York.

71. On or about December 16, 1982, defendants Donna and Kenneth Moore purchased a Section 235 house from Ocean Park Properties, Inc. at 207 Parente Lane South, Island Park, New York.

Phase Three Section 235 Housing

72. Phase Three of the Village's Section 235 Housing consisted of 17 houses, which were built by Ocean Park Properties, Inc. and Marino General Contracting on Nassau Lane (eleven houses), D'Amato Drive (five houses) and Parente Lane North (one house), within the Village.

73. Defendant Village did not publicly advertise, promote or otherwise market the availability of Phase Three Section 235 Housing.

74. Defendant Village was advised by the Nassau County Office of Housing and Intergovernmental Affairs to select recipients of Phase Three Section 235 houses from the pool of applicants for Phase Two.

75. However, in order to further effect the objects of the conspiracy and scheme to defraud the United States and H.U.D. and to deny housing to Blacks, Hispanics and other minorities, defendants Village, Parente, Brady, McGinty, Masone, Geraldine McGann and Scully selected purchasers to receive Phase Three Section 235 Housing who had not been among the 120 persons who unsuccessfully requested Phase Two Housing. Among these were defendant Daniel McGann, the son of defendant Geraldine McGann, and defendant Eileen McGann.

76. Defendant Daniel McGann hand-wrote and hand-delivered to the office of defendant Scully, the Village Clerk, an undated letter of interest with respect to Phase Three Section 235 Housing.

77. Defendant Daniel and Eileen McGann were selected by defendant Village to receive a Section 235 house even though they were not eligible to receive such a house.

78. Prior to the awarding of the Phase Three Section 235 houses, defendant Geraldine McGann and other Village officials reviewed a list of residents deemed by them to be qualified to receive houses.

79. Defendant Daniel McGann was selected as a purchaser of a Phase Three house at the insistence of defendant Geraldine McGann during the time that she was serving both as Special Assistant to Joseph Monticciolo, the H.U.D. Regional Administrator for Region II, and as a paid Trustee of the Village.

80. In or about December 1983, defendants Daniel and Eileen McGann purchased a Phase Three Section 235 house from Ocean Park Properties, Inc. at 169 Nassau Lane, Island Park, New York.

Wrongful Conduct by Geraldine McGann

81. On or about August 19, 1982, defendant Geraldine McGann became a paid Trustee of the Village. At all relevant times thereafter, she served simultaneously in that capacity and as Special Assistant to Joseph Monticciolo, the H.U.D. Regional Administrator for Region II.

82. Defendant Geraldine McGann owed a fiduciary duty to H.U.D. not to act in any manner inconsistent with the interests of H.U.D., and not to have any interest that conflicted, directly or indirectly, with the interests of H.U.D.

83. Defendant Geraldine McGann breached the aforesaid fiduciary duty to H.U.D. in her conduct as a paid

Trustee of the Village, including but not limited to the following:

- (a) On or about December 9, 1982, while acting as a Trustee of the Village, she voted in favor of the Village purchasing property for use in the Section 235 housing program, which purchase was funded in whole or in part with CDBG funds as more fully alleged below;
- (b) Also on or about December 9, 1982, while acting as Trustee of the Village, she voted in favor of the Village selling land to Ocean Park Properties, Inc., which land was used to construct Phase Two Section 235 housing;
- (c) In or about February 1983, while acting as a Trustee of the Village, she voted in favor of the Village selling land to Ocean Park Properties, Inc., which land was used to construct Phase Three Section 235 housing;
- (d) Also in or about February 1983, while acting as a Trustee of the Village, she voted in favor of the Village accepting bids for site improvements respecting property used for Section 235 housing, which improvements were paid for in whole or in part by CDBG funds as more fully alleged below; and
- (e) At numerous different times relevant to this action, she reviewed and approved for payment vouchers submitted by contractors for improvements to Section 235 property, which improvements were paid for in

whole or in part by CDBG funds
as more fully alleged below.

84. Defendant Geraldine McGann, while acting as a paid Trustee of the Village, voted in matters respecting the expenditure by the Village of H.U.D. funds for the purchase, sale and improvement of the property that was eventually purchased by her son, defendant Daniel McGann, and her daughter-in-law, defendant Eileen McGann.

85. Defendant Geraldine McGann knew and approved of the manipulation of Phases One and Two of the Section 235 Program by defendants Village, Parente, Brady, McGinty, Masone and Scully, and others known and unknown, as alleged above, and failed to disclose said manipulation to H.U.D.

86. Defendant Geraldine McGann did these acts, and others, with knowledge that defendants Village, Parente, Brady, McGinty, Masone and Scully, and others known and unknown were illegally manipulating the Section 235 housing program in the manner set forth above.

Financial Losses to H.U.D.

87. During the illegal conspiracy set forth above, and in furtherance of that conspiracy, defendant Village spent approximately \$324,600 in CDBG funds to purchase privately-owned land for use in the Section 235 Housing Program as follows:

<u>Phase</u>	<u>Number of Sites</u>	<u>Acquisition Cost</u>
One	5	\$127,500
Two	15	\$62,100
Three	<u>11</u>	<u>\$135,000</u>
Totals	31	\$324,600

88. Defendant Village spent \$135,000 of the above-referenced funds on 11 parcels of land for use in Phase Three without first obtaining a review or second appraisal, in violation of 24 C.F.R. § 42.109.

89. Defendant Village spent approximately \$320,000 in additional CDBG funds for improvements to the above-referenced properties, including landfill, sidewalks, driveways, fences and road construction, making the total expenditures of CDBG funds by defendant Village an amount in excess of \$644,600.

90. As a proximate result of the conspiracy and scheme by defendants Village, Parente, Brady, McGinty, Masone, Geraldine McGann and Scully to defraud the United States and H.U.D., H.U.D. has expended in excess of \$900,000, the exact amount of which is unknown and will be

proved at trial, in mortgage subsidies paid by H.U.D. in behalf of Section 235 homeowners, including but not limited to defendants Daniel and Eileen McGann, Anthony and Janet Ciccimarro, Joseph and Debra Ruocco, Mary Ellen and Dennis Guerin, Joseph and Maria DiDomenico and Donna and Kenneth Moore.

Concealment of the Conspiracy

91. From in or about 1980 and continuing through 1983, defendants Village, Parente, Brady, McGinty, Masone and Scully concealed the existence of the conspiracy to manipulate the selection of Section 235 Housing purchasers by advising prospective minority purchasers who had sought Section 235 houses that none were then available, but that they would be notified if any more houses became available, when in fact said defendants had no intention of making Section 235 housing available to minorities.

92. Defendants Village, Parente, Brady, McGinty, Masone and Scully concealed the existence of the conspiracy by falsely denying to plaintiff and its agents, and to investigators of the Nassau County District Attorney's Office, in 1984 and 1989, that defendants had preferentially selected the persons, including the individual homeowner defendants named herein, who were permitted to purchase Section 235 Houses.

93. Defendants Daniel and Eileen McGann, Anthony Ciccimarro, Joseph and Debra Ruocco, Dennis Guerin and Donna

Moore knowingly and intentionally made false statements to plaintiff and its agents, in June and July 1989, in which they concealed the true facts regarding their receipt of Section 235 houses.

94. Defendant Geraldine McGann concealed the existence of the conspiracy by attempting in 1984 to alter, or to have altered, minutes of official meetings of the Mayor and Board of Trustees of the Village.

95. Defendant Geraldine McGann further concealed the existence of the conspiracy by drafting and causing to be drafted, in 1984, letters to H.U.D. which were sent to H.U.D. by defendant Village, and which letters contained materially false and misleading statements concerning the administration of the Section 235 Program and her conduct as a Village Trustee.

96. Defendant Geraldine McGann further concealed the existence of the conspiracy by falsely denying to plaintiff and its agents, in 1989, that she had voted as a Village Trustee in matters affecting H.U.D.

Discriminatory Effect of
Defendants' Wrongful Conduct

97. As of the taking of the 1980 decennial census, defendant Village had a minority population of 3.3%, consisting in part of 23 Black residents and 345 Hispanic residents, out of a total reported population of 4,847.

98. The intent of the AFHMP requirement was defeated by defendants Village, Parente, Brady, McGinty, Masone, Geraldine McGann and Scully, and others known and unknown, who arranged the selection process respecting Section 235 Housing applicants in the manner set forth above, with the result that all but three of the Section 235 Houses went to white persons, including the individual homeowner defendants named herein, and other relatives, friends and associates of defendants, and employees of defendant Village.

99. Notwithstanding the goals of the Section 235 Housing Program as set forth above, the aforesaid illegal conspiracy by defendants Village, Parente, Brady, McGinty, Masone, Geraldine McGann and Scully denied to Blacks, Hispanics and other minorities the opportunity to purchase Section 235 Housing in the Village of Island Park, in that Section 235 Housing in the Village was allocated as follows:

Street	Number of Purchasers	White	Black	Hispanic
PHASE ONE				
Warwick Road	4	3	0	1
Quebec Road	1	1	0	0
PHASE TWO				
Waterford Road	7	7	0	0
Parente Lane So.	7	6	0	1
Parente Lane No.	7	6	0	1
562 Long Beach Rd.	1	1	0	0
PHASE THREE				
Nassau Lane	11	11	0	0
D'Amato Court	5	5	0	0
Parente Lane No.	1	1	0	0
TOTALS	44	41	0	3

FIRST CLAIM FOR RELIEF
(VIOLATION OF FALSE CLAIMS ACT)

100. Plaintiff repeats and realleges paragraphs 1 through 99 as if more fully set forth herein.

101. By virtue of their conduct set forth above, defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Geraldine McGann and Harold Scully, in or about and between 1980 and 1984, did knowingly present, and cause to be presented, to an officer and/or employee of the United States of America, false and fraudulent claims for payment or approval.

102. By virtue of their conduct set forth above, defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Geraldine McGann and Harold Scully, in or about and between 1980 and 1984, did knowingly conspire to present and cause to be presented, to an officer and/or employee of the United States of America, false and fraudulent claims for payment or approval.

103. By virtue of their conduct set forth above, defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Geraldine McGann and Harold Scully, in or about and between 1980 and 1984, did knowingly make and use, and cause to be made and used, false records and statements to get false and fraudulent claims paid or approved by plaintiff.

104. By virtue of their conduct set forth above, defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Geraldine McGann and Harold Scully, in or about and between 1980 and 1984, did knowingly conspire to make and use, and to cause to be made and used, false records and statements to get false and fraudulent claims paid or approved by plaintiff.

105. As a result of the conspiracy and/or the false and fraudulent claims, plaintiff has been damaged in an amount in excess of \$1,500,000, the exact amount of which is presently unknown and will be proved at trial.

106. Pursuant to 31 U.S.C. § 3729, defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Geraldine McGann and Harold Scully are liable to plaintiff for three times the \$1,500,000 in damages sustained by plaintiff, for a total of \$4,500,000.

107. Pursuant to 31 U.S.C. § 3729, defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Geraldine McGann and Harold Scully are liable to plaintiff for a civil penalty of \$10,000 for each false and fraudulent claim submitted, the exact amount of which penalties is presently unknown.

108. Pursuant to 31 U.S.C. § 3729, defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Geraldine McGann and

Harold Scully are liable to plaintiff for the costs of this civil action, including but not limited to costs and attorney's fees incurred during the investigation and prosecution of this action, the exact amount to be proved at trial.

SECOND CLAIM FOR RELIEF
(FRAUD)

109. Plaintiff repeats and realleges paragraphs 1 through 108 as if more fully set forth herein.

110. As more fully set forth above, defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Geraldine McGann and Harold Scully knowingly made material false representations to plaintiff, intending to induce plaintiff to expend money for the administration of the Section 235 Program in the Village. Plaintiff relied upon said representations, and, in reliance upon them, expended in excess of \$1,500,000 to fund the Section 235 Program in Island Park.

111. By virtue of their conduct set forth above, defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Geraldine McGann and Harold Scully defrauded and conspired to defraud the United States of America and the Department of Housing and Urban Development.

112. As a result of the foregoing, plaintiff has been damaged in an amount in excess of \$1,500,000, the exact

amount of which is unknown and will be proved at trial, plus prejudgment interest, and postjudgment interest at the appropriate rate.

THIRD CLAIM FOR RELIEF
(VIOLATION OF TITLE VIII)

113. Plaintiff repeats and realleges paragraphs 1 through 112 as if fully set forth herein.

114. By virtue of the aforesaid conduct, defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Geraldine McGann and Harold Scully conspired to and did manipulate the Section 235 Housing Program. In so doing, these defendants have engaged in a pattern or practice of discrimination against persons on the basis of race, color and national origin, and have denied rights granted by Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3631, to groups of persons, which denial raises issues of general public importance. Specifically, defendants have implemented this pattern of conduct and denial of rights by:

(a) refusing to negotiate for the sale of, and otherwise making unavailable or denying, dwellings in the Village of Island Park, to wit, the aforesaid Section 235 Housing, to persons because of their race, color and national origin, in violation of 42 U.S.C. § 3604(a);

(b) discriminating against persons in the terms, conditions and privileges of sale of a dwelling in the Village of Island Park, to wit, the aforesaid Section 235 Housing, because of their race, color and national origin, in violation of 42 U.S.C. § 3604(b);

(c) making, printing or publishing, and causing to be made, printed or published, notices, statements or advertisements with respect to the sale of dwellings that

indicated a preference, limitation or discrimination based upon race, color and national origin, and an intention to make such a preference, limitation or discrimination, in violation of 42 U.S.C. § 3604(c); and

(d) representing to persons because of their race, color and national origin that a dwelling, to wit, the aforesaid Section 235 Housing, was unavailable for sale when such dwellings were in fact so available, in violation of 42 U.S.C. § 3604(d).

115. As a result of the foregoing, plaintiff is entitled to a declaratory judgment that said defendants violated Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601 et seq., injunctive relief as more fully prayed for herein, and civil penalties against said defendants as more fully prayed for herein.

FOURTH CLAIM FOR RELIEF
(BREACH OF FIDUCIARY DUTY)

116. Plaintiff repeats and realleges paragraphs 1 through 115 as if fully set forth herein.

117. By virtue of her conduct set forth above, defendant Geraldine McGann breached her fiduciary duty to H.U.D.

118. Harold Scully, who at all times relevant to this action was the CDBG Administrator for the Section 235 Housing Program in the Village of Island Park, owed a fiduciary duty to H.U.D. to see that the Program was administered honestly, fairly and in a manner that would insure that the remedial intent of the Section 235 Housing Program was achieved. Harold Scully breached that duty by making available to certain persons, including the

defendants herein, material nonpublic information regarding the availability of Section 235 Housing in the Village of Island Park, and by manipulating the Section 235 Housing Program in the manner set forth above.

119. As a result of the foregoing, plaintiff has been damaged in an amount in excess of \$1,500,000, the exact amount of which is unknown and will be proved at trial, plus prejudgment interest, and postjudgment interest at the appropriate rate.

FIFTH CLAIM FOR RELIEF
(AIDING AND ABETTING BREACH OF FIDUCIARY DUTY)

120. Plaintiff repeats and realleges paragraphs 1 through 119 as if fully set forth herein.

121. Geraldine McGann and Harold Scully, by virtue of their conduct set forth above, breached their fiduciary duties to H.U.D.

122. By virtue of their fraudulent conduct set forth above, and their wrongful acquisition of Section 235 Houses, defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Daniel McGann, Eileen McGann, Anthony Ciccimarro, Janet Ciccimarro, Joseph Ruocco, Debra Ruocco, Mary Ellen Guerin, Dennis Guerin, Joseph DiDomenico, Maria DiDomenico, Donna Moore and Kenneth Moore knowingly and intentionally participated in and aided and abetted the breaches of

fiduciary duty and trust of Geraldine McGann and Harold Scully.

123. As a result of the foregoing, plaintiff has been damaged in an amount in excess of \$1,500,000, the exact amount of which is unknown but will be proved at trial, plus prejudgment interest, and postjudgment interest at the appropriate rate.

SIXTH CLAIM FOR RELIEF
(UNJUST ENRICHMENT)

124. Plaintiff repeats and realleges paragraphs 1 through 122 as if fully set forth herein.

125. By virtue of the manner in which defendants Daniel McGann, Eileen McGann, Anthony Ciccimarro, Janet Ciccimarro, Joseph Ruocco, Debra Ruocco, Mary Ellen Guerin, Dennis Guerin, Joseph DiDomenico, Maria DiDomenico, Donna Moore and Kenneth Moore received advance notice of the availability of Section 235 Housing, and by virtue of their relationship to and association with defendants Village, Parente, Brady, McGinty, Masone, Geraldine McGann, Scully and other officials of defendant Village, said defendants obtained their Section 235 Houses and mortgage subsidies wrongfully and their retention of these houses and mortgage subsidies constitutes unjust enrichment.

126. As a result of the foregoing, said defendants have been unjustly enriched at the expense of plaintiff in an amount presently unknown and to be proved at trial,

including prejudgment interest, and postjudgment interest at the appropriate rate.

SEVENTH CLAIM FOR RELIEF
(CONSTRUCTIVE TRUST)

127. Plaintiff repeats and realleges paragraphs 1 through 126 as if fully set forth herein.

128. As a result of the foregoing acts of defendants Daniel McGann, Eileen McGann, Anthony Ciccimarro, Janet Ciccimarro, Joseph Ruocco, Debra Ruocco, Mary Ellen Guerin, Dennis Guerin, Joseph DiDomenico, Maria DiDomenico, Donna Moore and Kenneth Moore, a constructive trust should be impressed upon the Section 235 houses owned by said defendants in favor of plaintiff; title to the properties should be declared to be held by said defendants in trust for the use and benefit of plaintiff; and said defendants should be directed to convey the properties to plaintiff by a good and sufficient deed, free of any encumbrances whatsoever. A constructive trust should also be impressed upon the proceeds and profits of such properties and the disposition thereof, and said defendants should be required to disgorge to plaintiff said proceeds and profits, including prejudgment interest, and postjudgment interest at the appropriate rate.

EIGHTH CLAIM FOR RELIEF
(ERRONEOUS PAYMENT OF FUNDS)

129. Plaintiff repeats and realleges paragraphs 1 through 128 as if fully set forth herein.

130. As a result of defendants' wrongful and fraudulent conduct and conspiracy to defraud plaintiff and to manipulate the Section 235 Program, breaches of fiduciary duty, aiding and abetting breaches of fiduciary duty, and unjust enrichment, all as more fully set forth above, plaintiff wrongfully and erroneously paid money from the public treasury to fund the Section 235 Program.

131. Plaintiff is entitled to recover from defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Geraldine McGann, Harold Scully, Daniel McGann, Eileen McGann, Anthony Ciccimarro, Janet Ciccimarro, Joseph Ruocco, Debra Ruocco, Mary Ellen Guerin, Dennis Guerin, Joseph DiDomenico, Maria DiDomenico, Donna Moore and Kenneth Moore all sums expended by plaintiff in furtherance of the Section 235 Program, which sums are in excess of \$1,500,000, the exact amount of which is unknown and will be proved at trial.

WHEREFORE, plaintiff United States of America demands that:

1. Judgment be entered in favor of plaintiff against defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Geraldine McGann and Harold Scully on the First Claim for Relief, jointly and severally, for damages sustained in an amount in excess of \$1,500,000, the exact amount of which is unknown and will be proved at trial, which damages are to be

trebled according to law, plus prejudgment interest, and postjudgment interest at the appropriate rate, as a result of defendants' knowingly presenting, causing to be presented, and conspiring to present and cause to be presented, to an officer and/or employee of the United States of America, false and fraudulent claims for payment and approval, and defendants' knowingly making and using, and causing to be made and used, and conspiring to make and use and to cause to be made and used, false records and statements to get false fraudulent claims paid or approved by plaintiff;

2. Judgment be entered in favor of plaintiff against defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Geraldine McGann and Harold Scully on the Second Claim for Relief, jointly and severally, for damages sustained in an amount in excess of \$1,500,000, the exact amount of which is unknown and will be proved at trial, plus prejudgment interest, and postjudgment interest at the appropriate rate, as a result of said defendants' fraud against the United States and the Department of Housing and Urban Development;

3. Judgment be entered in favor of plaintiff against defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Geraldine McGann and Harold Scully on the Third Claim for Relief, declaring that said defendants conspired to and did

violate Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3631, in the administration of the Section 235 Housing Program, ordering defendant Village of Island Park to make available such sufficient housing in the Village of Island Park to minority persons as would have been available had said defendants not committed the aforesaid violations, and assessing a civil penalty against defendants in an amount of money as authorized by 42 U.S.C. § 3614(d)(1)(C), in order to vindicate the public interest;

4. Judgment be entered in favor of plaintiff against defendants Geraldine McGann and Harold Scully on the Fourth Claim for Relief, jointly and severally, for damages sustained in an amount in excess of \$1,500,000, the exact amount of which is unknown and will be proved at trial, plus prejudgment interest, and postjudgment interest at the appropriate rate, as a result of said defendants' breaches of fiduciary duty and trust;

5. Judgment be entered in favor of plaintiff against defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Daniel McGann, Eileen McGann, Anthony Ciccimarro, Janet Ciccimarro, Joseph Ruocco, Debra Ruocco, Mary Ellen Guerin, Dennis Guerin, Joseph DiDomenico, Maria DiDomenico, Donna Moore and Kenneth Moore on the Fifth Claim for Relief, for their acts of aiding and abetting the breaches of fiduciary duty and trust of Geraldine McGann and Harold Scully, for

damages sustained in an amount in excess of \$1,500,000, the exact amount of which is unknown but will be proved at trial, plus prejudgment interest and postjudgment interest at the appropriate rate;

6. Judgment be entered in favor of plaintiff against defendants Daniel McGann, Eileen McGann, Anthony Ciccimarro, Janet Ciccimarro, Joseph Ruocco, Debra Ruocco, Mary Ellen Guerin, Dennis Guerin, Joseph DiDomenico, Maria DiDomenico, Donna Moore and Kenneth Moore, jointly and severally, on the Sixth Claim for Relief, for damages sustained in an amount unknown but to be proved at trial, plus prejudgment interest and postjudgment interest at the appropriate rate, as a result of each defendant's wrongful conduct and unjust enrichment at the expense of the United States;

7. Judgment be entered in favor of plaintiff against defendants Daniel McGann, Eileen McGann, Anthony Ciccimarro, Janet Ciccimarro, Joseph Ruocco, Debra Ruocco, Mary Ellen Guerin, Dennis Guerin, Joseph DiDomenico, Maria DiDomenico, Donna Moore and Kenneth Moore on the Seventh Claim for Relief, impressing a constructive trust upon the Section 235 Houses owned by said defendants and the proceeds and profits of said properties and the disposition thereof, declaring the title to the properties owned by the defendants to be held by said defendants in trust for the use and benefit of plaintiff; and directing said defendants

to convey the properties to plaintiff by a good and sufficient deed, free of any encumbrances whatsoever, and impressing a constructive trust upon the proceeds and profits of such properties and the disposition thereof, plus prejudgment interest and postjudgment interest at the appropriate rate, and requiring all defendants to disgorge to plaintiff said proceeds and profits;

8. Judgment be entered in favor of plaintiff against defendants Village of Island Park, Michael A. Parente, James G. Brady, Francis R. McGinty, Michael Masone, Geraldine McGann, Harold Scully, Daniel McGann, Eileen McGann, Anthony Ciccimarro, Janet Ciccimarro, Joseph Ruocco, Debra Ruocco, Mary Ellen Guerin, Dennis Guerin, Joseph DiDomenico, Maria DiDomenico, Donna Moore and Kenneth Moore on the Eighth Claim for Relief, for the wrongful and erroneous payment by plaintiff in furtherance of the Section 235 Program, for damages sustained in an amount in excess of \$1,500,000, the exact amount of which is unknown but will be proved at trial, plus prejudgment interest and postjudgment interest at the appropriate rate; and

9. Plaintiff be awarded its attorney's fees and costs of this action and such other and further relief as to this Court seems just and proper.

Dated: Brooklyn, New York
March 22, 1990

ROBERT L. BEGLEITER
Chief, Civil Division
United States Attorney's Office
Eastern District of New York

By:



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