

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CIVIL NO.
	:	
Petitioner,	:	
	:	
v.	:	(Judge)
	:	
ARISTO MARTIN	:	
	:	
Respondent.	:	

**PETITION TO ENFORCE SUBPOENA ISSUED BY THE UNITED STATES
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

Petitioner, United States of America, respectfully requests that this Court issue an Order directing that Respondent, Aristo Martin, produce documents requested in an administrative subpoena issued by the United States Department of Housing and Urban Development (“HUD”). This Petition is made pursuant to 42 U.S.C. § 3614(c).

In support of this Petition, the United States of America states as follows:

Parties

1. Petitioner is the United States of America.
2. Respondent is Aristo Martin, 536 Heartwood Road, Cherry Hill, NJ 08003 d/b/a “Arimar Properties,” 450 Madison Avenue, York, PA 17404. This Respondent maintains rental property and transacts business within this judicial district.

3. Arimar Properties is the property management company for the Elm Terrace Apartments located at 450 Madison Avenue, York, PA 17404 (“subject property”).

Jurisdiction

4. This Court has jurisdiction over this action under 42 U.S.C. § 3614(c), which provides that the Attorney General, on behalf of the Secretary of HUD, may enforce an administrative subpoena issued by HUD under the Fair Housing Act, 42 U.S.C. §§ 3601-3619.

5. Venue is proper in this Court under 28 U.S.C. §1391(b). Venue is also proper under 42 U.S.C. § 3614(c), which provides that an action to enforce an administrative subpoena issued by HUD may be brought “in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.” The subpoena was served on Aristo Martin at 450 Madison Avenue, York, PA 17404. Attached is a true and correct copy of the subpoena and the Return of Service.¹

¹ See Exhibit A, December 9, 2008, HUD Subpoena; Exhibit B, Declaration of Wayman C. Rucker, Jr.; and Exhibit C, Affidavit of Service.

Statutory Background

6. HUD is the federal agency charged with the administration and enforcement of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (“Fair Housing Act”). HUD is responsible for, *inter alia*, investigating charges of unlawful housing discrimination. 42 U.S.C. §§ 3610, 3611. In connection with such investigations, the Secretary of HUD may issue subpoenas.²

7. Title 42 U.S.C. § 3614(c) authorizes the Attorney General to seek judicial enforcement of administrative subpoenas issued by HUD through the initiation of appropriate proceedings before the United States district courts.

² 42 U.S.C. § 3611(a).

Factual Background

Facts Regarding the HUD Complaint.

8. HUD has initiated an investigation of the Respondent, based upon the administrative complaint captioned: Brianna Creamer v. Aristo Martin, No. 03-08-0198-8.³ The complaint alleges that Respondent discriminated against the Complainant, Brianna Creamer, because of her sex, in violation of the Fair Housing Act. The complaint further alleges that Respondent engaged in sexually harassing behavior, including unwanted kissing and groping while Complainant was employed by the Respondent and that the Complainant was subsequently served with an eviction notice after she refused his advances.⁴

9. HUD's investigation has revealed that Respondent owns the subject property.⁵

Facts Regarding the Issuance and Service of the HUD Subpoena.

10. Pursuant to 24 C.F.R. §§ 103.200 and 103.215, HUD Investigator Vivienne Cardullo repeatedly sought the voluntary cooperation of Respondent Martin through written correspondence and telephone calls with him and his attorneys, Farley Holt and Andrea Blouse.⁶

³ Exhibit D, Housing Discrimination Complaint.

⁴ Id.

⁵ Exhibit B, Declaration of Wayman C. Rucker, Jr., ¶ 4.

⁶ Id., at ¶ 6.

11. The above included Ms. Cardullo providing to Respondent's counsel an information request letter on August 26, 2008, outlining the documentation HUD was seeking for its fair housing investigation of Ms. Creamer's allegations.⁷

12. On or about September 19, 2008, after providing Martin and his counsel extra time to respond to the complaint and information request, Ms. Cardullo scheduled a September 25, 2008, on-site review of tenant files at the subject property.⁸

13. On or about September 25, Ms. Cardullo met with Mr. Martin and Ms. Blouse at the subject property in York, PA, and reviewed some of the requested documentation. Because the tenant files for the subject property were voluminous, it was agreed that Ms. Cardullo would return to review files a few days later.⁹

14. Subsequent to the September 25, 2008 visit to the subject property, counsel for Respondent advised Ms. Cardullo that the Respondent now refused to provide the additional documentation needed by HUD to complete its investigation or to allow HUD access to that documentation.¹⁰

⁷ Id., at ¶ 7.

⁸ Id., at ¶ 8.

⁹ Id., at ¶ 9.

¹⁰ Id., at ¶ 10.

15. On or about October 3, 2008, HUD sent a letter to Respondent and his counsel stating that if the Respondent did not produce the requested documentation that he had originally agreed to produce and that HUD had repeatedly requested, HUD would issue a subpoena compelling him to produce such documentation.¹¹

16. On December 9, 2008, HUD issued a Subpoena to Produce Documents to Respondent pursuant to 24 C.F.R. § 103.215(b).¹²

17. On December 16, 2008, Charles R. Tuer of Charles Tuer Investigations personally served the HUD subpoena on Respondent at the subject property.¹³

18. To date Respondent has failed to provide any responses to the subpoena.¹⁴

19. HUD now seeks an Order from this Court directing that Respondent provide complete responses to Requests 1-3 and 5-8¹⁵ contained within the December 9, 2008 subpoena. Those Requests are as follows:

- 1) Tenant rent payment records for Elm Terrace for the years 2005 - 2008.

¹¹ Id., at ¶ 11.

¹² Exhibit A, December 9, 2008, HUD Subpoena.

¹³ Exhibit C, Affidavit of Service.

¹⁴ Exhibit B, at ¶ 15.

¹⁵ Request No. 4, which sought the notarized affidavit signed by Jessica Shaffer indicating that no sexual harassment took place, has been obtained by HUD from a separate source.

- 2) Tenant files of current and prior tenants who resided at Elm Terrace between 2005 and the present.
- 3) Check registers evidencing payments made to tenants who performed work at Elm Terrace, 450 Madison Avenue, York, PA 17404 from January 1, 2005 to the present.
- 5) The application submitted by Brianna Creamer identifying her prior landlords.
- 6) The sexually explicit anonymous letter alleged to have been written by Brianna Creamer.
- 7) Landlord/Tenant Complaints filed by Aristo Martin in connection with Elm Terrace tenants for the period January 1, 2005 to the present.
- 8) Judgments issued in connection with the Landlord/Tenant Complaints described in 7, above.¹⁶

20. The above-referenced documents sought by the subpoena are not already in the possession of HUD's Office of Fair Housing and Equal Opportunity, nor are they available from any other source.¹⁷

21. It is necessary for HUD to obtain and examine the documents sought by the subpoena in order to properly investigate the fair housing complaint filed by Brianna Creamer, and the investigation is being conducted for a legitimate purpose.¹⁸

¹⁶ Exhibit A, December 9, 2008, HUD Subpoena.

¹⁷ Exhibit B, Declaration of Wayman C. Rucker, Jr., at ¶ 16.

¹⁸ Id., at ¶ 17.

22. By letter dated January 9, 2009, HUD referred this matter to the Housing and Civil Enforcement Section, Civil Rights Division, which in turn referred this matter to the Office of the United States Attorney for the Middle District of Pennsylvania. HUD requested that the Attorney General initiate appropriate proceedings to enforce the subpoena pursuant to 42 U.S.C. § 3614(c).

23. On February 3, 2009, the undersigned counsel spoke to Respondent's attorneys and was told that they were ceasing their representation of Respondent for lack of communication. As a result, undersigned counsel sent a letter to Respondent at both his York, PA and Cherry Hill, NJ addresses explaining that the government would have no choice but to file a petition to enforce the subpoena if he did not respond in a timely fashion.¹⁹ No response to the letter has been received.

¹⁹ Exhibit E, Letter from AUSA Cerutti to Respondent.

Law and Argument

Legal Standards for Enforcement of a HUD Administrative Subpoena.

24. The Attorney General of the United States is authorized to commence legal action to enforce administrative subpoenas issued by HUD in connection with a Fair Housing investigation.²⁰ HUD's authority to issue a subpoena is broad, as an administrative agency enjoys power "akin to that of a grand jury," which it may exercise "merely on the suspicion that the law is being violated, or even just because it wants assurance that it is not."²¹

25. An administrative subpoena, such as that at issue here, is entitled to enforcement so long as the investigation being conducted is within the authority of the agency and the demand is not too indefinite and the information sought is reasonably relevant.²²

26. When presented with a petition to enforce a subpoena such as this, the District Court "must enforce the subpoena unless the information is 'plainly incompetent or irrelevant to *any* lawful purpose....'"²³

HUD 's Investigation Is Within Its Statutory Authority.

²⁰ 42 U.S.C. § 3614(c).

²¹ United States v. Morton Salt Co., 338 U.S. 632, 642-43 (1950).

²² Id. at 652. See also U.S. v. Oncology Services Corp., 60 F.3d 1015, 1020 (3d Cir. 1995).

²³ Id. at 1020 (quoting Dole v. Trinity Industries, Inc., 904 F.2d 867, 872 (3d Cir. 1990)).

27. Section 810 of the Fair Housing Act authorizes the Secretary of Housing and Urban Development to investigate allegations of housing discrimination pursuant to the complaint of an aggrieved person, or upon the Secretary's own complaint.²⁴

28. Section 811(a) of the Fair Housing Act authorizes the Secretary of HUD to “issue subpoenas and order discovery in aid of investigations and hearings under this subchapter. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the United States district court for the district in which the investigation is taking place.”²⁵

29. Here, HUD has been conducting an investigation of Respondent for discrimination in the terms, conditions or privileges of rental of a dwelling on the basis of sex in violation of Section 804(b) of the Fair Housing Act, codified at 42 U.S.C. § 3604(b). This investigation is clearly within HUD's purview under the Fair Housing Act.

The Demand Is Not Indefinite and Is Relevant.

30. The information HUD has subpoenaed is specific, clearly identified and relevant to the allegations contained in the complaint filed by Brianna Creamer.

²⁴ 42 U.S.C. § 3610(a)(1)(B)(iv).

²⁵ 42 U.S.C. § 3611(a).

31. HUD seeks tenant rent payment records for Elm Terrace for the years 2005 through 2008 as comparative evidence that it will use to determine whether the Respondent evicted other tenants. The documents are also needed to determine whether there were other tenants who worked for the Respondent as the Complainant did during her residence at Elm Terrace.

32. HUD seeks the tenant files of current and prior tenants who resided at Elm Terrace between 2005 and the present in order to determine whether: (a) any other tenants worked for the Respondent, (b) those tenants failed to pay rent, and (c) whether they received eviction notices. This evidence may also produce comparators for the Complainant.

33. HUD seeks check registers evidencing payments made to tenants who performed work at Elm Terrace from January 1, 2005 to the present in order to identify other tenants who, like the Complainant, may have worked for the Respondent during their residency at Elm Terrace.

34. HUD seeks the rental application for Elm Terrace submitted by the Complainant that identifies her prior landlords as the Respondent has asserted that he contacted her other landlords and was told that the Complainant accused them of sexual harassment as well.

35. HUD seeks the sexually explicit anonymous letter alleged to have been written by the Complainant because it relates directly to the Complainant's credibility and the nature of her relationship with the Respondent.

36. HUD seeks the landlord/tenant complaints filed by Aristo Martin in connection with Elm Terrace tenants for the period of January 1, 2005 to the present as comparative evidence to be used in determining whether the Respondent filed landlord/tenant complaints against other tenants and, if so, the number of landlord/tenant complaints filed against the tenant(s), and whether the Respondent evicted the tenant(s).

37. HUD seeks copies of any judgments issued in connection with the Landlord/Tenant Complaints described above in order to determine whether the Respondent prevailed in the court actions filed against the tenant(s) and whether the tenant(s) were evicted.

38. As is demonstrated above, the seven sets of documents requested by HUD seek specific information regarding potential witnesses, past complaints of wrongdoing on the part of Respondent, and information which would assist HUD in assessing the credibility of the parties and witnesses. As such, these requests are both relevant and definite, as required by applicable case law.

Relief Requested

39. For the foregoing reasons, the subpoena is proper and should be enforced by this Court. Accordingly, the United States of America respectfully requests as follows:

a. That Respondent Aristo Martin be ordered to produce complete responses to the information requested in request nos. 1-3 and 5-8 of the subpoena, within fourteen (14) days after being served with an appropriate Order from this Court; or

b. If Respondent does not produce timely and complete responses to request nos. 1-3 and 5-8, that he be ordered to appear and show cause before this Court why he should not be held in contempt for failing to produce the information ordered by this Court; and

c. That the Court grant the United States of America such other and further relief as may be necessary and proper to effectuate the Court's Order.

Respectfully submitted,

MARTIN C. CARLSON
UNITED STATES ATTORNEY

BY: s/ STEPHEN R. CERUTTI
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April 22, 2009

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CIVIL NO.
	:	
Petitioner,	:	
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v.	:	(Judge)
	:	
ARISTO MARTIN	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on this Wednesday, April 22, 2009, she served a copy of the attached via certified mail

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by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the places and addresses stated below, which is the last known addresses, and by depositing said envelope and contents in the United States Mail in Harrisburg, Pennsylvania.

Addressee:

Mr. Aristo Martin
Arimar Properties, LLC
536 Heartwood Road
Cherry hill, NJ 08003

Mr. Aristo Martin
Arimar Properties, LLC
450 Madison Ave.
York, PA 17404

Dated: April 22, 2009

s/ Cindy Long
CINDY LONG
United States Attorney's Office