

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

SUSAN MASON, through Power of Attorney held
by attorney-in-fact MARY MASON,
3720 Upton Street, N.W., # 237B
Washington, D.C. 20016

MARY MAYFIELD, through Guardian
IVAN MAYFIELD,
3720 Upton Street, N.W., # 256A
Washington, D.C. 20016

THOMAS TAYLOR
3720 Upton Street, N.W., # 204B
Washington, D.C. 20016

DONNA WILKES
3720 Upton Street, N.W., # 247B
Washington, D.C. 20016

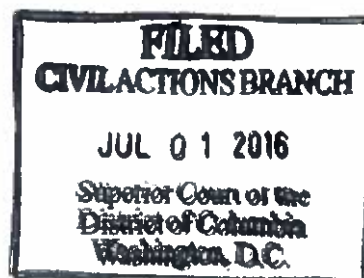
Plaintiffs,

v.

THE WASHINGTON HOME
3720 Upton Street N.W.
Washington, D.C. 20016
A District of Columbia
Non-profit corporation,

TIM COX, individually and in his
official capacity as Chief Executive
Officer of The Washington Home
3720 Upton Street N.W.
Washington, D.C. 20016

Defendants.



0004813-16

Civil Action No. _____

**ACTION INVOLVING
REAL PROPERTY**

VERIFIED COMPLAINT

Plaintiffs, Susan Mason through Power of Attorney held by attorney-in-fact Mary Mason,
Mary Mayfield through Guardian Ivan Mayfield, Thomas Taylor, and Donna Wilkes



("Plaintiffs"), by and through counsel, hereby file this Complaint against the Defendants, The Washington Home ("TWH") and Tim Cox, CEO, ("Defendants"), and allege as follows:

JURISDICTION AND VENUE

1. Subject matter jurisdiction of this Court is founded on D.C. Code § 11-921, as amended, and D.C. Code § 42-3405.03.

2. This Court has personal jurisdiction over Defendant TWH because it is a corporation which is authorized to conduct, and in fact does conduct, substantial business in the District of Columbia. The Defendant TWH has sufficient minimum contacts with the District of Columbia or otherwise intentionally avails itself of the consumer markets within the District of Columbia through the promotion, sale, marketing, and distribution of its services in the District of Columbia to render the exercise of jurisdiction by the District of Columbia courts permissible under the traditional notions of fair play and substantial justice.

3. Personal jurisdiction of this Court over Defendant Cox is founded on D.C. Code §§ 13-422 and 13-423.

4. Venue is proper in the District of Columbia as the acts upon which this action is based occurred in whole in the District. Plaintiffs all reside in the District, rented property and purchased services from Defendant TWH and were thereby injured and subjected to irreparable harm in this venue. Defendant TWH received substantial compensation and profits from renting and sales of services in the District. Thus, its liability arose in the District.

PRELIMINARY STATEMENT

5. This case involves the violation of the District of Columbia Rental Housing Conversion and Sale Act, D.C. Code §§ 42-3404.01 *et seq.*, specifically the Tenant Opportunity to Purchase Act ("TOPA"), through Defendant TWH's failure to provide notice of the sale of the

housing accommodation, TWH, located at 3720 Upton Street N.W., Washington, D.C. 20016, to Sidwell Friends School (“Sidwell”). More specifically, this action for damages and injunctive relief arises out of Defendant TWH’s failure to provide each tenant an offer of sale, consisting of a written copy of the offer of sale, sent by certified mail to each tenant and posted in a conspicuous place in common areas of the housing accommodation, all in violation of D.C. Code § 42-3404.03. Defendant TWH’s failure to provide an offer of sale resulted in a denial of the opportunity for Plaintiffs to exercise their statutory right to receive an offer of sale, to then organize and form a tenants’ organization, and then only after organizing proceed with negotiations with the owner to purchase or assign the right to purchase the housing accommodation at a price and on terms that represent a bona fide offer of sale in violation of D.C. Code § 42-3404.02(a).

6. Defendant Cox’s continued assurances, prior to the sale announcement, that TWH was not being sold constitute tortious fraudulent misrepresentations and omissions.

7. Defendant TWH violated standards intended to protect the safety of nursing home residents, including Plaintiffs, in violation of D.C. Code § 44-504(a)(3).

PARTIES

8. Plaintiff Mason, represented through Power of Attorney appointing daughter, Mary Mason, as her legal representative,¹ is a resident of the District of Columbia and lives at the housing accommodation, TWH located at 3720 Upton Street N.W., Washington, D.C. 20016. In 2009, Plaintiff Mason entered into a contract with TWH to rent a room and utilize its services and amenities. Plaintiff Mason entered TWH using her private funds.

¹ Susan Mason signed a legally binding Power of Attorney document appointing her daughter, Mary Mason, as her legal representative with unlimited power and authority to act on behalf of Susan, including for the purposes of claims and litigation, on April 20, 2008.

9. Plaintiff Mary Frances Mayfield, represented by her court-appointed Guardian, daughter Ivan Mayfield,² is a resident of the District of Columbia, and lives at the housing accommodation, TWH, located at 3720 Upton Street N.W., Washington, D.C. 20016. In 2009, Plaintiff Mayfield entered into a contract with TWH to rent a room and utilize its services and amenities.

10. Plaintiff Thomas Taylor is a resident of the District of Columbia, and lives at the housing accommodation, TWH, located at 3720 Upton Street N.W., Washington, D.C. 20016. In 1995, Plaintiff Taylor entered into a contract with TWH to rent a room and utilize its services and amenities.

11. Plaintiff Donna Wilkes is a resident of the District of Columbia, and lives at the housing accommodation, TWH, located at 3720 Upton Street N.W., Washington, D.C. 20016. In 1993, Plaintiff Wilkes entered into a contract with TWH to rent a room and utilize its services and amenities.

12. Defendant TWH, is a non-profit corporation organized and existing under the laws of the District of Columbia with its principal place of business located at 3720 Upton Street N.W., Washington, D.C. 20016.

13. Defendant Tim Cox, is the Chief Executive Officer of co-defendant non-profit corporation TWH, and was active in that position at all times relevant to this Complaint. Defendant Cox is sued upon in his individual and official capacity.

² The Superior Court of the District of Columbia Office of Register of Wills Probate Division granted a Permanent General Guardianship to Ivan Mayfield on behalf of her mother, Mary Mayfield, with the powers and duties set forth in D.C. Code § 21-2047 (a) and (b), on May 28, 2014.

BACKGROUND

14. TWH has provided long-term, special care and housing to elderly, chronically, and terminally ill people for over 125 years. Many of the current tenants have lived at TWH for years. Some tenants have lived there for decades. All of the tenants are elderly and/or disabled and some qualify for Medicare/Medicaid and disability benefits. In addition, many of the tenants are African-American. A significant portion of the tenants require the assistance of a wheelchair or other apparatus to move about.

15. TWH contains approximately 192 private residential rooms.

16. Approximately 120 rooms were occupied in September 2015. Defendant TWH's license to accept tenants who paid through Medicare/Medicaid had been suspended by the Centers for Medicaid & Medicare Services ("CMS") and the occupancy level had been declining, due to its failure for a number of years to comply with CMS's sprinkler requirements. Defendant TWH ultimately corrected its violation only after the sale was announced and did not continue to accept new tenants.

17. Approximately 50 rooms are currently occupied. The number of tenants is rapidly decreasing weekly due to the Defendants' plan to push the tenants out of TWH with expediency as opposed to care.

18. Residents of TWH, including Plaintiffs, do not maintain another residence other than their room at TWH. Plaintiffs pay a standard room and board rate separate from their medical and other services, they live in their rooms replete with their personal belongings and furniture, and visitors have 24-hour unlimited access. Non-payment is a ground upon which the tenant can be removed from TWH, a determination a tenant can challenge in court. Upon entering TWH, the Plaintiffs planned to live there for the remainder of their lives.

19. On the Defendant TWH's brochure provided to Mary Mason and Ivan Mayfield, prior to Plaintiffs Mason and Mayfield moving into TWH, they were told, "This is Home." In the question and answer section of the brochure, Defendant TWH stated that residents may move their own furniture into their room and "[r]esidents are encouraged to bring photographs, artwork, and other special personal belongings to truly make TWH their home." The brochure also provided a list of amenities available, which like many other housing accommodations, include cable television and telephone access, 24-hour security, housekeeping, and beautiful garden areas.

20. When Plaintiff Wilkes first toured TWH with her family and friends the staff who met with her encouraged her to think of the TWH as "[her] home." TWH explained that she was allowed to decorate, hang pictures, bring in her television, and arrange her private room with her own furniture. Since the day Plaintiff Wilkes moved into TWH, she was able to come and go as she pleased. A handicapped van that was donated to her family was used for her to travel locally, go out to dinner on some evenings, go out after church on Sundays, or for someone's birthday. The ability to make TWH look like "home" and the independent living arrangement contributed to Plaintiff Wilkes' selecting it among her many other options.

21. On the Defendant TWH's Contract and Agreement for Long-Term Care provided to tenants upon their application to live at TWH, the unit in which they live is referred to as a "room," the contract states that a security deposit is required prior to move-in, and it provides the right to continue to keep the room even in one's absence. Applicants are also told they have a right to select a physician of their choosing outside of TWH which disconnected the residency rights from the need for medical care.

22. Defendant Cox is the current CEO of Defendant TWH, a position he entered in 2011. Prior to his work with TWH, Mr. Cox worked as Senior Vice President of Sunrise Senior Living from 1998 to 2001, then worked as the COO for the Armed Forces Retirement Home (“AFRH”) from 2001 to 2011.

23. Upon information and belief, Defendant TWH, with the leadership of Defendant Cox, has been preparing for a sale since at least when Mr. Cox was hired in 2011.

24. Defendant Tim Cox has been a defendant in a number of lawsuits that are relevant to his conduct, oversight, and administration of TWH. “In 2003, [Mr. Cox] introduced a series of cost-saving measures that Plaintiffs, a group of full-time residents at the AFRH, claim led to a severe decrease in the quality of medical care. The alleged deficiencies include unavailability of physicians and dentists, neglect of patients, and delays in obtaining prescription drugs.” *Cody v. Cox*, 509 F.3d 606 (D.C. Cir. 2007). Mr. Cox was also the defendant in a lawsuit for age discrimination after firing elderly residents from a work-placement program in 2004 and then telling them “you didn't come here to work, you came here to retire.” The D.C. Court of Appeals reversed the summary judgment granted in favor of the defendants, and held that the “statements indicate the sort of ‘inaccurate and stigmatizing stereotypes’ that led Congress to enact the ADEA...” *Wilson v. Cox*, 753 F.3d 244 (D.C. Cir. 2014).

The Tenant Opportunity to Purchase Act

25. Its introductory language makes clear that City Council adopted the Rental Housing Conversion and Sale Act, D.C. Code §§ 3401.01 *et seq.*, including TOPA, to address the “continuing housing crisis in the District of Columbia” and the “severe shortage of rental housing available to citizens of the District of Columbia.” D.C. Code § 42-3401.01(a)(1)-(2). The purpose of the Conversion and Sale Act is to “preserve rental housing which can be afforded

by lower income tenants in the District,” “discourage the displacement of tenants through conversions or sale of the rental property,” “prevent lower income elderly and disabled tenants from being involuntarily displaced when their rental housing is converted,” and “strengthen the bargaining position of tenants toward that end.” *Id.* § 42-3401.02(1)-(3)(emphasis added).

26. TOPA achieves these purposes by first requiring that the owner make an “offer of sale” to each tenant. “Before an owner of a housing accommodation may sell the accommodation ... the owner shall give the tenant an opportunity to purchase the accommodation at a price and terms which represent a bona fide offer of sale.” D.C. Code § 42-3404.02(a). The Sale Act specifies both the content of the “offer of sale” and the procedures the owner must follow in making the offer. The “offer of sale,” which must be written, must include the owner’s “asking price and material terms of the sale,” must inform the tenants that they have “the right to purchase the accommodation” and of “tenants’ rights and sources of technical assistance,” must tell the tenants whether “a contract with a third party exists for sale of the accommodation,” and must inform the tenants of the types of information that the tenants have a right to obtain from the owner. D.C. Code § 42-3404.03(1)-(4). The owner must provide the offer of sale to “each tenant ... by first class mail,” and must also “post a copy of the offer of sale in a conspicuous place in common areas of the housing accommodation[.]” D.C. Code § 42-3404.03.

27. After the owner provides the written offer of sale to each tenant, any of the tenants, acting individually, may then request additional information from the owner. This information includes a copy of any existing third-party contract, a floor plan of the building, a statement of the building’s expenses over the preceding two years, the most recent rent roll, and a list of vacant apartments. D.C. Code § 42-3404.03(3)-(4). The owner must provide that information within seven days of receiving such a request. *Id.*

28. The tenants must organize and form a tenant organization for the purpose of responding to the owner's offer of sale within a specified time period. Then, "[t]he owner shall afford the tenant organization a reasonable period to negotiate a contract of sale," D.C. Code § 41-3404.11(2), and "[t]he owner shall afford the tenant organization a reasonable period prior to settlement in order to secure financing and financial assistance," D.C. Code § 42-3404.11(3).

29. The tenants' organization also has a right to assign its TOPA rights to anyone in its sole discretion. *Id.* § 42-3404.06. The tenants' organization is afforded a right of first refusal of any valid contract to purchase by a third party. *Id.* § 42-3404.08.

TWH's Misrepresentations Before The Sale Announcement

30. Upon information and belief, on or around August 2014, Sidwell Friends School began to evaluate at least four buildings for possible purchase, including Fannie Mae's properties at 3900 Wisconsin Ave. and 3939 Wisconsin Ave, which is the Fannie Mae-owned Johnson Building, the Friendship Post Office, which is owned by TWH, and TWH at 3720 Upton Street N.W., Washington, D.C. 20016.

31. Upon hearing highly specific rumors that TWH was being considered for purchase by Sidwell, the Family Council³ made inquiries to the administration. On April 25, 2015, Janine Finck-Boyle, TWH's Administrator, told the Family Council's chairs Ivan Mayfield and Mary Mason, legal representatives of Plaintiffs, and other tenants present at the Family Council meeting that she was unaware of any rumored sale.

³ "The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility" has been established by federal law. 42 USCS § 1396r. "When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility." 42 CFR 483.15. TWH Family Council meets several times a year lead by two co-chairs, Mary Mason and Ivan Mayfield.

32. Still, rumors of the sale persisted. In response to which, beginning in approximately May 2015, Ivan Mayfield and Mary Mason, legal representative of Plaintiffs, requested access to Defendant TWH's board meeting minutes to confirm that there were no plans to sell the home.

33. On May 8, 2015, Mary Mason, legal representative of Plaintiff Mason, requested to discuss the long-term plans for TWH with Defendants. Previously, in 2013, Defendants attended a meeting with the Family Council, including Plaintiffs, to discuss the long term strategy and planning for TWH.

34. On May 15, 2015, Ivan Mayfield and Mary Mason, legal representatives of Plaintiffs, met with Defendant Cox. Defendant Cox assured them that there was no plan to sell Defendant TWH's residential building or close its services. That oral conversation was memorialized in an email from Mary Mason to Defendant Cox, dated May 18, 2015.⁴

35. Also at the May 15, 2015, meeting, legal representative Mary Mason asked to view board of director meeting minutes and at that meeting Defendant Cox promised that those minutes could be viewed by both Mary Mason and Ivan Mayfield. Subsequent attempts by Mary Mason to receive those minutes from the main office were unsuccessful.

36. On June 17, 2015, at a meeting with legal representatives Ivan Mayfield and Mary Mason, Defendant Cox again stated that there was no planned sale of TWH. Mary Mason and Ivan Mayfield were also told, at the same meeting, by Defendant Cox that their request for the board meeting minutes would be denied on the advice of counsel.

37. Had Ivan Mayfield and Mary Mason been made aware of Defendants' plan to sell, or been able to confirm through the minutes, they would have had at least four additional months to

⁴ In the email to Tim Cox dated May 18, 2015, Mary Mason reiterated that it was "confirmed that there [wa]s currently no plan to sell the residential building and/or close its services (nor does Sidwell currently have any first right of refusal or the like) ...He [Tim Cox] promised that the Family Council would be active partners in the dialogue, if it appeared that serious consideration was going to be given to moving [TWH] out of residential care."

receive an offer of sale, organize themselves in accordance with TOPA, and place their names on waiting lists at other homes.

38. On June 27, 2015, at a Family Council meeting, Ivan Mayfield and Mary Mason, legal representatives of Plaintiffs, were told by Defendant Cox again that TWH was not being sold. He also told everyone present that TWH was in no financial or other trouble. Upon information and belief, Defendant Cox's statements were intended to leave the clear impression that no sale was contemplated. Forty to fifty individuals attended this meeting.

39. Just 10 days later, on July 7, 2015, Defendant TWH entered into a sale agreement with Sidwell Friends School ("Sidwell") in which Defendant agreed to sell the real property located at 3720 Upton St. N.W., Washington, D.C. 20016. A true and correct copy of the Memorandum of Agreement reflecting the sale agreement between Defendant TWH and Sidwell is attached hereto as Exhibit A.

40. Upon information and belief, the sale is scheduled to close in December 2016.

41. It was not until two months after the sale agreement, on September 15, 2015, that the tenants were made aware of the sale. On that date, Plaintiffs, along with other tenants and family members, were told that they had to move out by December 2016.

42. After the sale announcement, in a memorandum dated September 15, 2015, the concerned Family Council chairs, Ivan Mayfield and Mary Mason, legal representatives of Plaintiffs, made inquiries regarding the sale. Defendant Cox replied in a letter on September 28, 2015, in which he confirmed that the discussions with Sidwell about the sale had been "conducted off and on over a period of many months." He also stated, "Once the decision was made to explore a sale in response to the inquiry from Sidwell Friends, by necessity and by contract these matters had to be kept confidential until a final agreement was reached."

43. Prior to the public announcement of the sale on September 15, 2015, Defendant TWH did not disclose its plans to sell, nor did any staff member announce it to the Resident's Council. Plaintiff Wilkes, who is a member and officer of the Resident's Council, learned of the sale of TWH from her Unit Supervisor on September 15, 2015, who came to tell her individually because Plaintiff Wilkes goes to bed before the time at which the meeting to announce the sale to residents was being held.

44. After the sale was announced, Plaintiffs immediately initiated the process of placing their names on waiting lists for other nursing homes.

Decline In Care Following Sale Announcement

45. Since the announcement of the sale of TWH in September 2015, Plaintiffs have experienced a decline in care.

46. Plaintiff Mason's care at TWH has declined in the following ways:

- a. Since the sale announcement, she has been taken care of by nursing and CNA staff that have not been oriented to her needs. The staff has, on multiple occasions, placed her in the wrong position in her chair, and has not placed her hand and leg braces in the proper position.
- b. On December 10, 2015, Plaintiff Mason was improperly medicated when she was provided an unnecessary medication. TWH staff later told Mary Mason that that the nurse assigned to Plaintiff Mason was unfamiliar with how non-routine medications were administered on the unit. Upon information and belief, the Long-Term Care Ombudsman filed a complaint with TWH surrounding this incident, which was forwarded to the Department of Health.

- c. During the two weeks Mary Mason was out of the country in February 2016, Plaintiff Susan Mason's fingernails were not trimmed by Defendant TWH's staff to the appropriate length, which caused her to scratch herself.
- d. In March 2016, Mary Mason had to prompt Defendant TWH to plan Plaintiff Mason's care conference because she had not been given one in five months. Care conferences are scheduled to take place once every three months.
- e. On April 13, 2016, Mary Mason found Plaintiff Mason improperly placed in her chair with a seatbelt restraining her. It has been several years since Plaintiff Mason has been mobile enough to get out of her chair, so a seatbelt is, upon information and belief, an inappropriate restraint. A nurse informed Mary Mason that a staff member who was unfamiliar with Plaintiff Mason must have used the seatbelt.
- f. On May 9, 2016, Mary Mason found that Plaintiff Susan Mason had been placed in bed to sleep for the night and her TV was turned off, both hours earlier than was usual, in contravention of the care plan that the nurses and CNA staff are supposed to follow.
- g. On June 4, 2016, Mary Mason came to visit Plaintiff Mason around 1:00 pm and she was not out of bed. TWH staff then got her out of bed and brought her to Mary Mason around 1:30 pm. Plaintiff Mason's care plan states that she should be out of bed by 11:00 am so this was in contravention of the care plan.

47. Plaintiff Mayfield's care at TWH has declined in the following ways:

- a. On February 5, 2016, Plaintiff Mayfield's belongings from her closet had been packed and prepared for move-out. The many picture frames that hang on her walls had been taken down. The charge nurse informed Plaintiff Mayfield's legal representative, Ivan Mayfield, that Plaintiff Mayfield had been in her bed watching the staff pack her belongings. Upon information and belief, Defendants' staff had confused her with another tenant who was being moved out.
- b. On April 6, 2016, Ivan Mayfield found Plaintiff Mayfield sitting in her wheelchair with urine soaked clothing and seat cushion, for the second time that week. Upon information and belief, Defendants' staff had not been making the mandatory two-hours diaper checks and changes, an issue that has occurred more frequently since the sale announcement.
- c. On April 16, 2016, Plaintiff Mayfield was not provided the correct meal in accordance with her diet plan.

48. Plaintiff Tom Taylor's care at TWH has declined in the following ways:

- a. On or around a morning in early April 2016, Plaintiff Taylor cut his leg, which caused it to bleed. By early evening no medical professional had either noticed or treated this cut. Instead, Plaintiff Taylor was left to attempt to control the bleeding with his own bare hands. He was not properly bandaged until, during a visit later that same day, his visitor prompted a nurse to help him.
- b. After the sale announcement, some of Plaintiff Taylor's belongings were packed by Defendant TWH's staff in anticipation of his move although

Plaintiff Taylor had not yet secured alternative housing and there are several months left until TWH closes.

49. Plaintiff Wilkes' care at TWH has declined in the following ways:

- a. Since the announcement of the sale, her shower is not clean and the housekeepers are not cleaning as well as they did before the announcement.
- b. Since the announcement of the closure, a number of the apparatuses including lifts, blood pressure, temperature, pulse, and oxygen, have fallen into disrepair and not been promptly repaired or replaced.
- c. Since the closure announcement, the staff has taken to helping Plaintiff Wilkes out of bed very late in the day, sometimes as late as 11:30 am, which limits the amount of time in the day for her to accomplish her daily activities.
- d. Also, there is an active investigation regarding possible theft of Plaintiff Wilkes' wet wipes, which are required for her medical condition and covered by her insurance.

50. As a result of the sale of TWH, Plaintiffs will be forced to relocate into facilities that do not provide the level of care they need, are unsafe, and/or or will be forced to move to another state, away from their loved ones and health care providers. TWH staff is also packing Plaintiffs' belongings in preparation for the sale.

51. In preparation for the sale, Defendants have taken steps to relocate Plaintiffs even though they have no home to move to because other nursing homes have not accepted Plaintiffs from their waiting lists. After the sale was announced in September 2015, Plaintiff Tom Taylor's belongings were packed in boxes by Defendant TWH's staff supposedly for the purpose of doing

inventory. On February 5, 2016, Plaintiff Mary Mayfield's entire room and closet with all of her belongings, were wrongfully prepared for a move by Defendant TWH's staff.

52. Since the sale was announced in September 2015, Defendants' have made statements that indicate a deadline for move-out much sooner than December 2016. At the December 18, 2015, Family Council meeting attended by both legal representatives Ivan Mayfield and Mary Mason, Defendant Cox stated that the move-out date is October 2016. On February 10, 2016, at a Family Council meeting attended by both Ivan Mayfield and Mary Mason, Defendant Cox not only again stated the October deadline, but also stated The Washington Home was prepared to close by June 2016.

53. Over the last several months, Plaintiff Taylor heard from several of Defendant TWH's employees that Defendant TWH is preparing to move tenants out in October 2016. Upon hearing this earlier deadline, Plaintiff Taylor has experienced sickness, nausea, stomach pains, headaches, and has a constant fearful feeling that is continuous and almost unbearable.

54. Even assuming that TWH will not close until it is scheduled to in December 2016, Plaintiff Wilkes feels a tremendous amount of stress because she does not know where she will go once TWH closes. There are many days when Plaintiff Wilkes finds herself getting upset, frustrated, and very agitated about the sale and Defendants' failure to disclose its plans earlier. Plaintiff Wilkes recently learned from TWH's beautician that her hair is falling out at the roots. When she discussed this with her nurse, she stated that she was not surprised given the amount of stress that Plaintiff Wilkes is under.

TWH Failed to Provide An Offer of Sale in Violation of TOPA

55. To date, Defendant TWH has failed to provide Plaintiffs with an offer of sale.

56. In the absence of notice and as result of the Defendants' concealment of the fact of the sale, Plaintiffs were not made aware of their rights under TOPA or their right to form a tenants' organization. The time period for forming a tenants' organization allowed under TOPA was never disclosed, and has never been triggered. There is no tenants' organization in existence at TWH.

57. TOPA defines a "sale" of a housing accommodation to include the execution of an agreement pursuant to which the owner of the housing accommodation agrees to relinquish possession of the property.

58. The sale agreement between Defendant and Sidwell signed on July 7, 2015, constitutes a "sale" of a housing accommodation under TOPA.

59. Defendant frustrated rights Plaintiffs are afforded under TOPA by failing to provide them with the:

- a. offer of sale prior to the final sale agreement with a third party;
- b. asking price and material terms of the sale;
- c. right of first refusal on the contract;
- d. right to inspect the contract; and
- e. required time period to allow the tenants to form a tenants' organization to negotiate a contract for the purchase of the accommodation in connection with the July 7, 2015, sale agreement.

60. Defendants knew of the sale to Sidwell Friends School even while it was telling the Family Council that there were no such plans to sell.

61. Based on the Defendants' misrepresentation that TWH was not being sold to Sidwell and closing, Plaintiffs could not organize themselves in a way that would have allowed them to

exercise their TOPA rights nor did they begin reaching out to other nursing homes to be placed on their waiting lists.

62. The long waiting lists to move to other comparable nursing homes makes it highly unlikely that Plaintiffs will find an appropriate place to live prior to the closing date in December 2016. For example, on March 23, 2016, Knollwood, a retirement community in Northwest D.C., sent a letter to Mary Mason on behalf of Plaintiff Mason, and to Ivan Mayfield on behalf of Plaintiff Mayfield, stating that “[i]t is highly unlikely that we will be able to accommodate all the people currently on our waiting list by the time TWH closes.” Additionally, on May 12, 2016, Nancy Borger, Plaintiff Mason’s social worker, told Mary Mason that the residential nursing facility Little Sisters of the Poor was not optimistic that a bed would become available for Plaintiff Mason this year. She has also been told the same thing with respect to Forest Hills.

63. Plaintiff Wilkes’ application for admission has been rejected by multiple nursing homes, including Bethesda Health and Rehabilitation Center and Manor Care Chevy Chase; Knollwood and Ingleside would not even consider her. These homes either allege that she is too young or the facility allegedly cannot accommodate her health needs. For example, Little Sisters of the Poor will not accept an application from her because it only takes applications from people 65 years of age or over. Plaintiff Wilkes remains on the waiting list for Carroll Manor, Forest Hills, and Manor Care of Bethesda. Yet, she has very little hope of getting into one of these homes because she knows other residents are being turned away from these very same homes because they are full.

64. If he cannot remain at TWH, Plaintiff Taylor prefers to live in an apartment as opposed to another nursing home. He is currently on the waiting list for Section 8 housing, and Money

Follows the Person, a non-profit organization that connects people with disabilities to appropriate and accessible housing. He is currently number 90 on that waiting list.

COUNT I

VIOLATION OF TOPA

(Asserted by Plaintiffs against Defendant TWH)

65. Plaintiffs hereby re-allege and incorporate by reference the allegations contained in the preceding paragraphs of this Complaint, and further charge:

66. By reason of the foregoing, Defendant TWH violated TOPA and deprived Plaintiffs, as tenants of the housing accommodation TWH, of their rights under TOPA, including their right to receive an offer of sale and then purchase the property by means of forming a tenants' organization.

67. Because Defendant TWH did not meet their obligations under TOPA, and Plaintiffs were not afforded their rights under TOPA, the sale of the property was in violation of TOPA.

68. Plaintiffs seek enforcement of their rights under TOPA to form a tenants' organization and bargain in good faith with Defendant TWH for the purposes of purchasing the building pursuant to D.C. Code § 42-3405.03.

69. Plaintiffs seek actual damages for their injuries caused by these violations in an amount to be determined at trial.

70. Defendant TWH's willful acts and conduct, as described above, entitle Plaintiffs to an award of attorneys' fees pursuant to D.C. Code § 42-3405.03.

COUNT II

FRAUDULENT MISREPRESENTATION

(Asserted by Plaintiffs against Defendants TWH and Cox)

71. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs of this Complaint, and further charge:

72. Defendants made false representations and omissions to Plaintiffs, the elderly and disabled tenants of TWH, their guardians, and family members. Such representations and omissions had the practical and foreseeable effect of denying them the opportunity to locate suitable and appropriate alternative accommodations and substantially reduced the time in which they had to do so.

73. The Defendants' false representations made on May 15, June 17, and June 27, 2015, to legal representatives Ivan Mayfield and Mary Mason, that TWH was not being sold were material misrepresentations of a fact that a reasonable person would consider important to know in deciding whether to begin searching for suitable and appropriate alternative accommodations.

74. Defendants' false representations that TWH was not being sold were material to Ivan Mayfield and Mary Mason's assent to the fact that there was no sale, guiding their course of action to not take steps to begin searching for suitable and appropriate alternative accommodations for Plaintiffs Mayfield and Mason.

75. Defendants' statement that TWH was not being sold is an assertion and omission not in accord with the fact that Defendants had been in negotiations with Sidwell for a period of months and at least since March 2015.

76. Defendants knew that its representations were false.

77. Defendants' false representations and omissions were willful, wanton, and malicious.

78. Defendants made these representations and omissions to conceal facts from Plaintiffs with the intent to deceive. Defendants did in fact deceive and induce Plaintiffs to refrain from locating suitable alternative accommodations, learn of their TOPA rights by receiving an offer of

sale, and then refrain from organizing a tenants' organization, which could negotiate to purchase or assign their right to purchase to a nursing home provider so they could remain at the property.

79. Plaintiffs reasonably relied on these representations and omissions to their detriment. Defendants' misrepresentations significantly reduced the amount of time in which Plaintiffs had to find suitable, comparable, and appropriate alternative accommodations. Plaintiffs were also not given an offer of sale and were not aware of their right to form a tenants' organization that could then negotiate for the purchase of the property or assign their right to purchase the property to a nursing home provider so that they could then remain at the property.

80. As a result of the Defendants' misrepresentation, Plaintiffs suffered physical and mental pain.

81. Defendants are liable for damages suffered by Plaintiffs in an amount to be proven at trial.

COUNT III

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(Asserted by Plaintiff Taylor Against Defendants TWH and Cox)

82. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs of this Complaint, and further charge:

83. Defendants engaged in extreme and outrageous conduct when Defendants told Plaintiffs that the date in which they would have to be moved out of TWH was in December 2016. Defendants then proceeded to change that deadline twice to an earlier date in October 2016 and to June 2016, without regard to the December date approved by the Department of Health and without regard to Plaintiffs' vulnerable physical conditions.

84. The aforementioned conduct by Defendants was extreme and flagrantly disregarded their most basic obligations. Such conduct showed complete disregard for the health, safety, and lives of vulnerable disabled and elderly individuals.

85. Defendants intentionally and recklessly caused Plaintiff Taylor severe emotional distress.

86. A reasonable person would know that the aforementioned conduct would result in emotional distress.

87. Plaintiff Taylor lives in fear of being involuntarily removed from TWH to an unknown place where his family will not be able to visit him, if he cannot find an alternative comparable accommodation by an impending, and moving deadline. As a result, Plaintiff Taylor suffered severe emotional distress, including feelings of fear, sickness and nausea, stomach pains and headaches that is continuous and almost unbearable.

88. Defendants aforementioned conduct was willful, wanton, and malicious, justifying an award of punitive damages.

COUNT IV

Violation of D.C. Code § 44-504(a)(3)

(Asserted by Plaintiffs Against TWH)

89. Plaintiffs re-allege and incorporate by reference the allegations contained in the preceding paragraphs of this Complaint, and further charge:

90. By virtue of the acts described above, Defendant TWH and its agents/employees violated District of Columbia regulations, including but not limited to:

- a. 22-B DCMR § 3211(a) (Failure to provide Plaintiff Mason sufficient nursing time to ensure her medications are received as prescribed);

- b. 22-B DCMR § 3225.1 (Failure to administer to Plaintiff Mason only medication that has been ordered by a physician);
- c. 22-B DCMR § 3211(c) (Failure to provide Plaintiff Mason sufficient nursing time to ensure assistance in daily personal grooming so that she is comfortable, clean, and neat as evidenced by cleaned and trimmed nails)
- d. 22-B DCMR § 3216.1 (Failure to ensure the right of Plaintiff Mason to be free from physical restraints is observed and protected)
- e. 22-B DCMR § 3229.5 (Failure to review quarterly Plaintiff Mason's plan of care);
- f. 22-B DCMR § 3210.4(c) (Failure to review Plaintiff Mason's plan of care for appropriate approaches to care)
- g. 22-B DCMR § 3211(d) (Failure to provide sufficient nursing time to ensure Plaintiff Taylor's protection from accident or injury)
- h. 22-B DCMR § 3211(i) (Failure to provide sufficient nursing time to ensure Plaintiff Mayfield receives assistance with daily hygiene)
- i. 22-B DCMR § 3218.1 (Failure to ensure Plaintiff Mayfield receives her diet as prescribed)
- j. 22-B DCMR § 3256.4 (Failure to ensure for Plaintiff Wilkes that the facility is free from accumulations of dirt)
- k. 22-B DCMR § 3210.4(c) (Failure to review Plaintiff Wilkes' plan of care for appropriate approaches to care)

91. The above referenced regulations and/or statutes were enacted pursuant to D.C. Code § 44-504(a)(3) and (4), and/or were incorporated by reference into said regulations by 22 DCMR § 3100.1.

92. D.C. Code § 44-1004.03 creates a private right of action for violation of any standard or resident's right established pursuant to D.C. Code § 44-504 (a)(3).

93. As a consequence of Defendant TWH's violation of these standards, Plaintiffs suffered severe emotional distress, including sleeplessness, depression, anxiety, mental anguish, embarrassment, and hopelessness. Plaintiffs claim actual damages pursuant to D.C. § 44-1004.03.

94. Defendants aforementioned conduct was willful, wanton, and malicious, justifying an award of punitive damages, which Plaintiffs claim pursuant to D.C. Code § 44-1004.03.

95. Plaintiffs also claim attorney's fees against Defendant TWH pursuant to D.C. Code § 44-1004.04.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. enjoin the sale of TWH 3720 Upton St. N.W., Washington, D.C. 20016, property to Sidwell Friends School unless and until Plaintiffs are served with a valid offer of sale pursuant to the Tenant Opportunity to Purchase Act;
2. enjoin the sale and closure of TWH residential nursing home and its operations until Plaintiffs have been accepted and have moved into appropriate alternative housing accommodations;
3. enjoin TWH from violating the nursing home care standards or resident's rights established pursuant to D.C. Code §§ 44-504(a)(3) and (4).


4. an award of emotional distress and other monetary damages in an amount to be determined at trial;
5. punitive damages due to Defendants' willful disregard for Plaintiffs rights, health, and safety;
6. reasonable attorney's costs and fees; and
7. such other relief as the Court deems proper.

JURY DEMAND

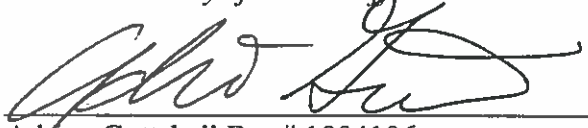
Plaintiffs demand a trial by jury of all issues so triable.

Respectfully submitted,

Dated: June 30, 2016



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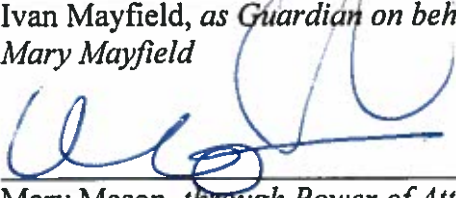
Attorneys for Plaintiffs

I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of June 2016.



Ivan Mayfield, as *Guardian on behalf of Plaintiff,*
Mary Mayfield



Mary Mason, *through Power of Attorney on*
behalf of Plaintiff, Susan Mason



Tom Taylor, *Plaintiff*



Donna Wilkes, *Plaintiff*