

Michael R. Peacock, Esquire
Attorney ID #: 011302010
NEHMAD PERILLO & DAVIS, P.C.
4030 Ocean Heights Avenue
Egg Harbor Township, NJ 08234
(609) 927-1177

Counsel for Plaintiffs

STEVEN G. POLIN
3034 Tennyson Street, NW
Washington, D.C. 20015
(202) 331-5848
(pro hac vice application pending)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

OXFORD HOUSE, INC., a Delaware)
not for profit corporation; DAVID TAURO;)
and SEAN STEWART)
)
Plaintiffs,)
)
v.)
)
BOROUGH OF RUMSON, NEW JERSEY,)
a New Jersey municipal corporation; and,)
THOMAS S. ROGERS, Borough of Rumson)
Municipal Clerk/Administrator, in his personal and)
official capacity)
)
Defendants.)

CIVIL ACTION NO.

COMPLAINT

PRELIMINARY STATEMENT

In this fair housing action, Plaintiffs, David Tauro, Sean Stewart and Oxford House, Inc. claim that Defendants, the Borough of Rumson, New Jersey (“Borough”) and

Rumson Borough Clerk/Administrator Thomas S. Rogers (“Rogers”) have interfered with operation and occupancy of dwellings for disabled persons recovering from alcoholism and substance abuse, in violation of the Fair Housing Act, the Americans With Disabilities Act as well as in violation of New Jersey state law. Plaintiffs David Tauro and Sean Stewart are residents of the subject Oxford House in the Borough of Rumson, located at 61 South Ward Avenue. The Borough’s interference with the operation of the Oxford House was in response to community opposition to the presence of the Oxford House in one of the Borough’s single-family residential neighborhoods. Specifically, the Borough has commenced an action for injunctive relief in state court to enjoin the use of the property as an Oxford House on the basis that the house is not following the “rules” for the operation of an Oxford House, and that its continued presence constitutes a danger to the Borough, thereby placing the residents of the entire area in danger. This action by the Borough effectively demands the eviction of Plaintiffs Tauro and Stewart, as well as all other current residents, from the Oxford House.

The Plaintiffs seek declaratory, temporary, preliminary and permanent injunctive relief to enjoin the Defendants’ conduct, as well as monetary damages, costs of suit and reasonable attorneys’ fees.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action under 28 U.S.C. Sections 1331 and 1343, 42 U.S.C. Section 3613, and 42 U.S.C. Section 12133.

2. Declaratory and injunctive relief is sought pursuant to 28 U.S.C. Section 2201, 42 U.S.C. Section 3613(c)(1) and 42 U.S.C. Section 12133, as well as Rules 57 and 65 of the Federal Rules of Civil Procedure.

3. Supplemental jurisdiction for all New Jersey state claims under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 and 10:6-2, is proper pursuant to 28 U.S.C. Section 1367.

4. Venue is proper in the United States District Court for the District of New Jersey as all acts complained of occurred within this District.

PARTIES

5. Plaintiff, Oxford House, Inc. (“OHI”) is a Delaware not-for-profit Corporation, with a principal place of business in Silver Springs, Maryland. Oxford House, Inc. is the umbrella organization serving all individual Oxford Houses throughout the United States, and has exclusive authority for chartering individual Oxford Houses. It assists in the establishment of affordable housing and support for individuals recovering from substance abuse and/or alcoholism. All Oxford Houses are required to follow three rules: each chartered Oxford House must: (1) be financially self-supported, (2) be democratically self-run, and (3) immediately expel anyone who relapses into drug and/or alcohol use.

6. Plaintiff, David Tauro, currently lives at 61 South Ward Avenue, Rumson, New Jersey, and is a resident of Oxford House-South Ward. Tauro is a person with a disability within the meaning of the Fair Housing Act, the Americans With Disabilities Act and the New Jersey Law Against Discrimination.

7. Plaintiff, Sean Stewart, currently lives at 61 South Ward Avenue, Rumson, New Jersey, and is a resident of Oxford House-South Ward. Stewart is a person with a disability within the meaning of the Fair Housing Act, the Americans With Disabilities Act and the New Jersey Law Against Discrimination.

8. Defendant, Borough of Rumson, New Jersey, is a municipal corporation organized and existing pursuant to the laws of the State of New Jersey. The Borough is responsible for the acts of its agents and employees, and is responsible for the enforcement of its zoning, building and property maintenance codes. The City is a public entity under the Americans with Disabilities Act, 42 U.S.C. 12131.

9. Defendant, Thomas S. Rogers is the Borough of Rumson Municipal Clerk/Administrator. His duties include serving as Secretary to the Mayor and Council, Secretary to the municipal corporation, Chief Registrar of Voters and local election official, custodian of public records, and chief administrative officer of licenses and permits.

STATUTORY AND REGULATORY FRAMEWORK

10. In 1988, Congress amended the Fair Housing Act, 42 U.S.C. Section 3601 et seq., to extend the guarantee of fair housing to handicapped individuals. Congress also authorized the Secretary of the United States Department of Housing and Urban Development to promulgate regulations to implement the Fair Housing Act. 42 U.S.C. Section 3614a.

11. Under the Fair Housing Act, the term "handicap" means, with respect to a person, a "physical or mental impairment which substantially limits one or more of such person's major life activities, a record of such an impairment, or being regarded as having such an impairment." 42 U.S.C. Section 3602(h). The term "physical or mental impairment" includes "alcoholism" and "drug addiction (other than addiction caused by current, illegal use of a controlled substance)." 24 C.F.R. Section 100.201.

12. Under the Fair Housing Act, it is unlawful to discriminate against or otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of that buyer, renter, or person residing in or intending to reside in that dwelling after it is sold, rented, or made available. 42 U.S.C. Section 3604(f)(1).

13. The Fair Housing Act further provides that it is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of that person or persons residing in or intending to reside in that dwelling after it is sold, rented, or made available. 42 U.S.C. Section 3604(f)(2).

14. The federal regulations implementing the Fair Housing Act specifically prohibit, as a discriminatory activity, providing municipal services differently because of handicap. 24 C.F.R. 100.70 (d)(4).

15. The federal regulations implementing the Fair Housing Act further make it unlawful, because of a handicap, "to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to . . . discourage or obstruct choices in a community, neighborhood or development." 24 C.F.R. Section 100.70(a).

16. The Americans With Disabilities Act requires that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, program, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. Section 12132.

17. The federal regulations implementing the Americans With Disabilities Act prohibit a public entity from administering a licensing program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees that subject qualified individuals with disabilities to discrimination on the basis of disability. 28 C.F.R. Section 35.130(6).

18. The federal regulations implementing the Americans With Disabilities Act also make it unlawful for a public entity, in determining the site or location of a facility, to make selections that have the purpose or effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination. 28 C.F.R. Section 35.130(4)(I).

STATEMENT OF FACTS

I. OXFORD HOUSE-WARD AVENUE

19. In 2001, the State of New Jersey contracted with Oxford House, Inc. to manage the New Jersey Recovery Home Start-up Revolving Loan Fund and to provide technical assistance to recovering individuals to open Oxford Houses throughout the state. The contract has been renewed yearly since it was originally executed.

20. One of the purposes of the contract was to provide a cost-effective means of providing a disciplined, supportive, open-ended, alcohol and drug-free living environment for recovering individuals. The New Jersey Oxford Houses are intended to serve men and women who have completed detoxification and short-term substance abuser treatment or recovering individuals who have been discharged from a correctional facility.

21. Today there are 106 Oxford Houses operating in the State of New Jersey.

22. On or about August 1, 2013, Triplets Realty, LLC, rented 61 South Ward Avenue to Oxford House-South Ward for use as an Oxford House to provide safe and sober housing for a maximum of nine (9) men.

23. 61 South Ward Avenue is located in a single family zoning district within the Borough of Rumson.

24. The residents of 61 South Ward Avenue, known as Oxford House-South Ward, have access to the entire house and all of the household facilities, and live in the house as any

other group of unrelated persons functioning as a single housekeeping unit. The residents of the house share all household responsibilities. The residents live together purposefully to create a "family" atmosphere, where all aspects of domestic life are shared by the residents. There are no special locks on the doors of the bedrooms.

25. In October, 2013 a resident of Oxford House-South Ward died of a heroin overdose.

26. The unfortunate death of the Oxford House resident resulted in complaints by neighbors of 61 South Ward Avenue who complained to Borough officials that the presence of an Oxford House in their neighborhood was placing the neighborhood at risk. They further complained that no one had notified them that the Oxford House was opening or even existed in the neighborhood. The neighbors demanded that Borough officials take legal action to close Oxford House-Rumson.

27. On or about December 15, 2013 a second resident of Oxford House-Rumson overdosed from the use of heroin. Fortunately, the overdose was not fatal; however, emergency medical assistance was required.

28. The Borough responded to the second heroin overdose by filing for an order to show cause in the Superior Court of New Jersey, Chancery Division, Monmouth County seeking a temporary and permanent injunction that would prohibit the use of 61 South Ward Avenue as an Oxford House (Case Number C-209-13), which would effectively evict the individual Plaintiffs from the subject Oxford House. The complaint for injunctive relief was filed on December 18, 2013.

II. HEROIN EPIDEMIC IN NORTHERN NEW JERSEY

29. A documented heroin epidemic exists in the State of New Jersey. The problem was so pervasive that in 2012 the Governor's Council on Alcoholism and Drug Abuse

established a Task Force on Heroin and Other Opiate use by New Jersey's Youth and Young Adults ("Task Force").

30. According to the press release that announced the creation of the Task Force, the use of prescription pills is becoming more prevalent among teenagers and is leading to heroin addiction, according to the Task Force

31. According to the press release prescription pills are easily accessible and are a "gateway drug" to heroin, according to the Task Force.

32. The Task Force held a hearing in Monmouth County on August 29, 2012.

33. Barry Johnson, Director of Monmouth County's Office of Addiction Services made the following statement concerning the hearings: "Many Monmouth County families are impacted each day by heroin and other opiate drugs," We encourage Monmouth County residents to testify at the public hearing about their experiences with these powerful and dangerous drugs."

34. According to the Monmouth County Acting Prosecutor, Christopher J. Gramiccioni, at a public meeting held at the Colts Neck Library on October 28, 2013, a grisly "epidemic" of heroin addiction "has crushed any illusion of immunity to society's ills" and it is affecting young people in Monmouth County.

35. Through December 17, 2013, there have been 45 heroin-related deaths in Monmouth County, which is more than the 24 highway fatalities and 13 homicides in the County according to the County prosecutor's office.

36. According to the New Jersey Department of Human Services, Division of Mental Health and Addiction Services, Monmouth County leads the state in treatment center admissions for substance abuse in 2012. There were 7,276 residents checking into drug abuse treatment in

2012. Of that total, 3,012 of the admissions were for abuse of heroin or other opiates (oxycodone, morphine, codeine, etc.).

37. Only Ocean and Essex counties had more heroin and opiate related treatment center admissions in 2012.

38. Mr. Gramiccioni also stated at the Colts Neck Library meeting that Monmouth County's heroin crisis is not confined to less affluent municipalities. He stated that heroin addiction does not discriminate based on wealth, gender, race or family background.

39. He further stated that "I am trying to get parents to realize that this is something that is going on in your household, in your communities, and not just in the Asbury Parks, the Newarks, and the Camdens of the world."

40. In 2012, in partial response to the statewide heroin epidemic, Governor Christie signed into law the "Overdose Protection Act." This legislation provides immunity from prosecution to those that seek medical assistance, and provides immunity from prosecution to the victims of drug overdoses. N.J. Stat. §2C:35-30, et seq.

III. COMMUNITY REACTION TO THE PRESENCE OF OXFORD HOUSE-SOUTH WARD AT THE BOROUGH COUNCIL MEETINGS

41. On or about October 15, 2013, a 25 year old resident of Oxford House-South Ward died from a heroin overdose. The deceased was from Holmdel, New Jersey, which is located in Monmouth County, New Jersey.

42. The community reaction to this news was swift and vociferous.

43. At a Borough Council meeting held on October 22, 2013, Oxford House-South Ward and the unfortunate death of the resident were addressed.

44. Borough Attorney Martin Barger began the discussion of Oxford House by stating "That he knew everyone present would like him to report that the group home residents at

Oxford House at 61 South Ward Avenue would be leaving tomorrow and the issue would be ended, but unfortunately that was not the case.”

45. Attorney Barger also stated that Oxford Houses are protected by federal legislation, and that there are other Oxford Houses located in other municipalities in Monmouth County.

46. He also stated that Oxford House is a permitted use in the Borough, but the residents must comply with all the rules and regulations that are applicable to all Borough residents.

47. He further told the assembled that the “Borough cannot get rid of the facility and the organization has a two year lease; and, that any eviction proceeding would have to be brought about by the landlord.”

48. One of residents who spoke in opposition to Oxford House-South Ward raised two legal issues: Whether Oxford House would need to appear before the Zoning Board of Adjustment for a variance, and whether the Police Department can enforce Oxford House rules as opposed to Borough ordinances.

49. Attorney Barger responded to these issues by stating that the Courts have ruled that Oxford Houses are considered “families” and a municipality cannot discriminate against them, and must treat them the same as they would any family, and therefore could force Oxford House to get a variance.

50. He stated that the Borough would enforce the Construction and Zoning codes.

51. He also stated that the use of the third floor as a bedroom was legal since it had been used in the past as a bedroom as it was a nonconforming use.

52. Mr. Barger also stated that enforcement of the Oxford House rules was internal and could not be enforced by the Police Department.

53. A total of 21 residents of Rumson, most of whom live in close proximity appeared at the Borough Council meeting to express their opposition to Oxford House-South Ward.

54. One neighbored urged that the Borough enforce the Fire Subcode requirements for sprinklers. Mr. Barger responded that he would take up this issue with the Code Enforcement Official and the Construction Code Official.

55. One resident wanted the Borough to require supervision of the Oxford House.

56. Another resident wanted the Borough to close the house because of the death from the heroin overdose.

57. Another neighbor pointed out that the Oxford House was in close proximity to an elementary school, and that the Borough should put up “Drug Free Zone” signs.

58. Another neighbor requested that the Borough provide an increased police presence in the neighborhood. This same neighbor wanted the Borough to call the owner of the Oxford House every time a police call was made to Oxford House-South Ward.

59. One neighbor stated that as a result of the presence of Oxford House-South Ward she feels unsafe and now locks her doors. She also stated, to applause, that the neighbors of the Oxford House are now in fear for their safety when they walk out of their houses.

60. Another neighbor expressed concern that the drug overdose was just the tip of the iceberg and that she was concerned about drug dealing in the neighborhood.

61. Another neighbor stated that the residents of Oxford House-South Ward sit on the porch drinking and making comments as people walk by, but she doesn't call the police for every little incident because the police get tired of the calls. This neighbor claimed she was in recovery from alcoholism for 26 years and that she understood that people just out of a thirty-day program and given a free rein were going to have a party, especially young men.

62. Another resident stated that part of the Oxford House charter was for the residents to seek out other available houses in the area and that was a big concern. Defendant Rogers, the Borough's administrator and municipal clerk, agreed with the comment.

63. All comments had a common theme that the neighbors were not notified when Oxford House-South Ward opened.

64. On or about November 4, 2013, Rumson Police Chief Scott Paterson made comments concerning the death of the Oxford House resident in the face of unconfirmed perceptions by many Rumson residents.

65. Chief Paterson cautioned that there is a distinct difference between facts and unconfirmed perceptions.

66. He stated that "thwarted perceptions" based on unknowns is something that he has grappled with in the face of what he called primarily an "unfortunate tragedy" since the death was reported.

67. "I really would like to have seen more sympathy from the community surrounding the loss of life of a young man," he said. "There have been presumptuous conclusions drawn when all the facts are not yet in."

68. Chief Paterson also responded to the allegation of the neighbors that they have called in complaints concerning violations of Borough ordinances by residents of Oxford House-South Ward. He stated that the complaints have been "minor in nature up to this one unfortunate tragedy . . . It's safe to say that underage parties in Rumson have caused much more of a disturbance than any activity at this house (not including the death)".

69. Finally, Chief Paterson stated that "it's pointless for those not supportive of Oxford House in Rumson to bemoan the house's existence. "Its irrelevant," he said. "Whether

or not we knew in advance that an Oxford House was coming to this location doesn't matter now. It's here and it's legal."

70. On November 6, 2013, the Borough held a regularly scheduled meeting of the Borough Council. Once again, more than 20 members of the community appeared to express their opposition to the use of 61 South Ward Avenue as an Oxford House, and to press the Borough Council for legal action against Oxford House.

71. Councilman Broderick stated that logistically or geographically, he did not think that Rumson was the right place for Oxford House, mainly because of the lack of transportation.

72. One of the residents alleged that his property's value would be lowered because of the Oxford House.

73. The Borough met with the owner of the property, Charles Farkouh, and his attorney. Defendant Rogers reported that Mr. Farkouh's attorney would review the lease, and if there was a way to terminate it, then they would do so. In addition, the Borough wanted Mr. Farkouh to have a plan of action in place prior to the end of the lease concerning extending the lease, and that the use of the property as an Oxford House did not extend beyond two years. Mr. Rogers also stated that Mr. Farkouh understood from the meeting that if he did not do these things it would not be looked upon favorably by the Borough.

74. One resident stated that she felt that Oxford House was behind "ADA protections," and that the overdose death of the one resident and relapse of other residents should result in the denial of those protections.

75. Councilman Broderick stated that "we have to be creative in handling the matter but also have to be careful not to get the Borough into a lawsuit."

76. Defendant Rogers agreed that there wasn't one solution and that he was going to help Mr. Farkouh in any way to try to figure out how he could cancel the lease. He also stated

the Borough was putting ordinances in place to start to correct the situation and also police investigations.

77. Councilman Rubin stated that “if we were given a legal opinion that there was some litigation that we could move against them on a solid basis then the Council would be for that and that we were trying to identify what those remedies might be.”

78. In response to questions concerning the placement of school bus stops, which were in close proximity to Oxford House-South Ward, the Borough Administrator stated that he would request that the bus stop be moved.

79. One resident stated that she was opposed to a second Oxford House opening in Rumson, and that she sympathized with the neighbors who lived by Oxford House-South Ward.

80. The Borough’s Construction Official, Dennis Peras, in response to the idea of opening of a second Oxford House in Rumson, that “we had to think it through with the Borough Attorney and other attorneys put something in place so that other organizations didn’t try to put the same types of facilities in Rumson”

81. Mr. Peras also stated that he understood the public’s concern because “I would be concerned if my [Peras’] children’s bus stop was located in front of such a facility.” He also stated that he told Defendant Rogers that “we had to get something in the Borough ordinances and then we could build on it”. He encouraged citizen participation on this point.

82. Defendant Rogers stated that he wanted to require every bed to have a mattress, box spring and frame. He stated that “If the Inspectors visited the facility and didn’t see it was set up as a real house with everything required, we would shut it down.”

83. Another neighbor stated that the house was located in West Park, and if “property values were affected in the neighborhood they would be affected in the whole town.”

84. Chief Paterson stated that aside from the tragic death, the complaints about Oxford House had been minor. He added that there had been reports of the residents drinking, but the Police could not do anything about adults drinking on private property.

IV. THE BOROUGH'S RESPONSE TO THE SECOND HEROIN OVERDOSE

85. On December 15, 2013, medical assistance was provided to a second heroin overdose at Oxford House-South Ward. Fortunately, the resident survived the overdose.

86. In response to the reported overdose at the Oxford House, the Borough filed for a temporary and permanent injunction in the Superior Court of New Jersey, Chancery Division seeking to remove all residents of 61 South Ward Avenue and enjoining the use of 61 Ward Avenue as an Oxford House.

87. The Borough alleged that Oxford House-South Ward was operating in violation of its temporary Oxford House charter as the result of the two heroin overdoses. The complaint further alleges, without any supporting facts, that the Oxford House is a "serious danger to the resident of the area and the entire neighborhood."

88. Mayor John Ekdahl stated in response to the filing of the request for injunctive relief that "We understand the hearing is probably three or four weeks away; but, in the meantime, we want them out of the house until we have a chance to present our case."

89. Mayor Ekdahl also stated that "The injunction is well founded, despite federal Americans with Disabilities protections, since the Borough's issue is based more on local law."

90. On December 19, 2013, the Borough withdrew its request for a temporary restraining order.

91. A hearing on the Borough's request for injunctive relief is scheduled for January 17, 2014.

IV. BOROUGH CLERK/ADMINISTRATOR THOMAS ROGERS

92. On or about December 3, 2013, the Borough enacted a new “Certificate of Occupancy” ordinance which requires the Borough to inspect a dwelling before the issuance of a “Certificate of Occupancy.” The new ordinance requires the registration of all rental property in the Borough before a Certificate of Occupancy can be issued. Once a property is registered, the Borough then would undertake an inspection of the property before a Certificate of Occupancy could be issued.

93. At a Borough Council meeting held on November 19, 2013, Defendant Rogers explained to those in attendance that the ordinance would be applied prospectively, i.e., only to new leases or new property ownership after the effective date of the ordinance.

94. At a Borough Council meeting held on November 6, 2013, Defendant Rogers stated that if Mr. Farkouh renews the lease with Oxford House he would have to file an application for a new lease and “at that point we would be able to go in the house for required inspections.”

95. The Borough Attorney stated at the same meeting that before Oxford House came to Rumson, the Borough did not have a “Certificate of Occupancy” ordinance, but as a result of what occurred at the house, the Borough decided to enact such an ordinance.

96. On or about December 18, 2013, the Borough filed its lawsuit against OHI in the Chancery Division of the Superior Court of New Jersey.

97. On or about December 20, 2013, OHI retained counsel to defend it against the allegations in the Borough’s complaint.

98. On or about December 23, 2013, counsel for OHI advised counsel for the Borough of Rumson that Oxford House had retained counsel.

99. On or about January 6, 2014, Defendant Rogers contacted Oxford House employee, George Kent, concerning the newly enacted Certificate of Occupancy ordinance. He made the call knowing that Mr. Kent was an employee of OHI, and that OHI was represented by counsel. He inquired of Mr. Kent as to whether there are any residents residing at Oxford House-South Ward. He also told Mr. Kent that he had to get Oxford House-South Ward registered with the Borough due to the enactment of the new ordinance. Mr. Kent replied that the lease was still in force and the new ordinance did not apply to existing leases. Mr. Rogers told Mr. Kent that “he [Rogers] needed to get the names, and that he needed to get them for the lawyers.”

100. On or about January 6, 2013, Rogers called Charles Farkouh, the contact for the owner of the property. Rogers told Mr. Farkouh that “You have this problem [Oxford House], now solve the problem.” He told Mr. Farkouh that he wanted to get into the Oxford House to “re-inspect.” Mr. Farkouh replied that he [Rogers] should be having this conversation with his attorney.

101. Mr. Farkouh has advised OHI of this conversation. He stated that felt the purpose of the conversation was to intimidate and coerce him into terminating the lease with Oxford House.

102. The effect of Defendants’ actions have been to prevent the Plaintiffs from residing at the dwelling of their choice or in any other home zoned for single family use in Borough of Rumson.

103. Plaintiffs are aggrieved persons as they are disabled persons or associated with disabled persons under the Fair Housing Amendments act of 1988, 42 U.S.C. Section 3602(d) and (I) who have been injured by Defendants’ discriminatory conduct and have suffered damages, economic loss and a loss of civil rights as a result of the Defendants’ conduct.

104. 61 South Ward Avenue is a dwelling within the meaning of section 802(b) of the Fair Housing Act, 42 U.S.C. Section 3602(b).

105. The effect of the Defendants' actions is to deny needed housing opportunities to recovering alcoholics and substance abusers within the Borough of Rumson.

106. The effect of the conduct of the Defendants is to limit the housing opportunities of unrelated disabled persons by denying them the right to live together as a group in any residential zoning district in within the Borough.

107. The Borough of Rumson is treating the residents of the aforementioned dwelling in a discriminatory fashion, and is utilizing its police powers on this group of unrelated disabled individuals living together as a single housekeeping unit than it imposes upon individuals living together who are related by blood or marriage or other groups of unrelated disabled persons.

108. By arbitrarily and illegally describing the residents of 61 South Ward Avenue as a danger to the community, the Borough of Rumson is making single family housing unavailable to persons recovering from drug and alcohol addiction.

109. The Borough of Rumson has acted under color of state law in failing to affirmatively further fair housing in its code enforcement activities with the purpose and effect of discriminating against Plaintiffs solely because of their handicap, and applying those codes so as to deny Plaintiffs the residential opportunities available to persons related by blood, marriage or adoption, or other groups of similarly situated unrelated disabled persons.

110. Plaintiffs are living in fear of losing their home and are suffering anxiety, emotional distress, pain, setbacks in their efforts at recovery, and other irreparable harm as a result of Defendant's actions. They have no adequate remedy at law.

111. The Borough of Rumson has denied Plaintiffs due process of law by the arbitrary manner in it has declared that the use of 61 South Ward Avenue constitutes a danger to the

community and is seeking to use its municipal powers to prevent the plaintiffs from living within residential zones within the Borough of Rumson.

112. The Borough of Rumson, has failed to affirmatively further fair housing in the administration through its efforts to prevent the use of 61 South Ward Avenue as a residence for recovering alcoholics and substance abusers.

113. The Borough of Rumson has utilized its police powers to threaten, intimidate, harass and coerce the Plaintiffs after they have exercised their rights under the Federal Fair Housing Act.

114. The Borough is intentionally and maliciously harassing, intimidating and interfering with the plaintiffs and persons associated with the plaintiffs with the intent of preventing from Oxford House-South Ward from existing in single family neighborhoods.

V. CLAIMS FOR RELIEF

COUNT I
FAIR HOUSING ACT (Borough of Rumson)

115. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 114 above.

116. Defendant, The Borough of Rumson, is violating Plaintiffs' rights under the Fair Housing Act, 42 U.S.C. Sections 3601, *et. seq*, and its implementing regulations by:

a. denying and otherwise making housing unavailable to the Plaintiffs because of their disability;

b. using its police powers as a pretext to exclude the Plaintiffs because of their disability;

c. interfering with the right of the Plaintiffs to live in the dwelling of their choice;
and,

- d. retaliating against Plaintiffs because of their exercise their fair housing rights.

COUNT II
AMERICANS WITH DISABILITIES ACT (Borough of Rumson)

117. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 116 above.

118. The Plaintiff, OHI is associated with, and/or providing housing to people with disabilities as defined in 42 U.S.C. 12102(2).

119. Plaintiffs Tauro and Stewart are individuals with a disability, as defined in 42 U.S.C. § 12102(2), and are residents of Oxford House-South Ward.

120. The Defendant, the Borough of Rumson, New Jersey, is a public entity under 42 U.S.C. 12131(1).

121. The actions of the Defendant, the Borough of Rumson, New Jersey, to exclude 61 South Ward Avenue from residential zones violate the rights of the Plaintiffs under the Americans With Disabilities Act, 42 U.S.C. 12132 *et. seq.*, and the regulations promulgated thereunder by:

- a. denying the individual residents of the Plaintiffs who are in recovery from alcoholism and substance abuse the opportunity to participate in or benefit from the supportive housing program offered by OHI:

- b. using municipal police powers and methods of administering those powers with the purpose of subjecting the Plaintiffs to discrimination on the basis of their handicap;

- c. subjecting the Plaintiffs, on the basis of their disability, to discrimination;

- d. denying the individual residents of Oxford House-South Ward, an opportunity to participate in a program in the most integrated setting appropriate to their needs;

e. denying the individual Plaintiffs and residents of Oxford House-South Ward, who people with disabilities, an equal opportunity to participate in or benefit from services and programs equal to those of people without disabilities;

f. utilizing municipal code enforcement services that are not equal to groups of related non-disabled persons and groups of unrelated disabled persons who are not recovering alcoholics and drug addicts.

COUNT III
42 U.S.C. SECTION 1983 (Borough of Rumson)

122. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 121 above as if fully set forth herein.

123. The Borough, acting under color of state law, is violating Plaintiffs' civil rights under 42 U.S.C. Section 1983 by:

a. utilizing its police powers and its method of administering those powers with the purpose of subjecting Plaintiffs and Plaintiff's residents to discrimination solely on the basis of their handicap;

b. subjecting Plaintiffs and Plaintiff's residents, solely on the basis of their handicap, to discrimination under its police powers; and,

c. by denying Plaintiffs the equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution by applying its police powers in such a manner as to arbitrarily and irrationally deny Plaintiffs, because of the handicap of the residents of 61 South Ward Avenue, the residential opportunities afforded to groups of related non disabled persons and unrelated disabled persons who reside with the boundaries of the Borough of Rumson.

COUNT IV
FAIR HOUSING ACT (Thomas S. Rogers)

124. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 123 above.

125. Defendant, Thomas S. Rogers, is violating Plaintiffs' rights under the Fair Housing Act, 42 U.S.C. Sections 3617, and its implementing regulations by retaliating or otherwise interfering against Plaintiffs because of their exercise of their fair housing rights.

COUNT V
NEW JERSEY LAW AGAINST DISCRIMINATION (All Defendants)

126. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 125 above.

127. Defendants, the Borough of Rumson and Thomas S. Rogers, are violating Plaintiffs' rights under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., by their actions as set forth above, including, but not limited to:

a. denying and otherwise making housing unavailable to the individual Plaintiffs because of their handicap;

b. committing unlawful discrimination against Plaintiffs because of their handicap by filing a Verified Complaint and Order to Show Cause in New Jersey Superior Court-Chancery Division, Monmouth County, in bad faith seeking to illegally evict Plaintiffs and to prevent Plaintiffs from exercising their state and federal fair housing rights as well as their right to live in the dwelling of their choice;

c. coercing, intimidating, and threatening Plaintiffs because of Plaintiffs' handicap by and through their landlord to discourage Plaintiffs from exercising their state and federal fair housing rights as well as their right to live in the dwelling of their choice;

d. illegally regulating land use and housing in the Borough of Rumson in a manner that discriminates against Plaintiffs on the basis of the individual Plaintiffs' handicap.

COUNT VI
NEW JERSEY CIVIL RIGHTS ACT (All Defendants)

128. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 127 above.

129. Defendants, the Borough of Rumson and Thomas S. Rogers, are violating Plaintiffs' rights under the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 through 10:6-2, by their actions as set forth above, including but not limited to:

a. acting under color of law to unlawfully deprive Plaintiffs of their state and federal fair housing rights and their right to live in the dwelling of their choice because of the individual Plaintiffs' handicap;

b. acting under color of law to unlawfully interfere with Plaintiffs' exercise of their state and federal fair housing rights and their right to live in the dwelling of their choice through threats, intimidation and coercion because of the individual Plaintiffs' handicap.

RELIEF SOUGHT AS TO ALL COUNTS

WHEREFORE, Plaintiffs pray that the Court award them the following relief:

1. Enter a temporary restraining order and/or preliminary and permanent injunctions restraining Defendants, the Borough of Rumson, New Jersey and Borough Clerk/Administrator Thomas S. Rogers from taking actions either directly or indirectly which would interfere in any way with Plaintiffs' current use of the dwelling located at 61 South Ward Avenue, Rumson, New Jersey;

2. Enter a declaratory judgment that Defendants, the Borough of Rumson, New Jersey and Borough Clerk/Administrator Thomas S. Rogers have illegally discriminated against

Plaintiffs by arbitrarily and capriciously utilizing its police powers to the occupancy of 61 South Ward Avenue by a group of recovering alcoholics and addicts, thereby interfering with the Plaintiffs' equal opportunity to use and enjoy a dwelling on the basis of handicap, in violation of the Fair Housing Act, the Americans With Disabilities Act and New Jersey law;

3. Enter a temporary restraining order and/or preliminary and permanent injunctions enjoining Defendant, the Borough of Rumson, its officers, employees, agents, attorneys and successors, including Borough Clerk/Administrator Thomas S. Rogers, and all persons in active concert or participating with any of them, from interfering with the operation of 61 South Ward Avenue as a home for recovering alcoholics and substance abusers, and/or from interfering in any way with the rights of the Plaintiffs to reside in those premises;

4. Enter a temporary restraining order and/or preliminary and permanent injunctions enjoining the Borough of Rumson, its officers, employees, agents, attorneys and successors, including Borough Clerk/Administrator Thomas S. Rogers and all persons in active concert or participating with any of them from actively assisting the Defendants, in its efforts to interfering with the rights of recovering alcoholics or substance abusers to reside at 61 South Ward Avenue.

5. Award compensatory & punitive damages;

6. Grant an award of reasonable costs and attorneys' fees pursuant to N.J.S.A. 10:5-27.1 and N.J.S.A. 10:6-2; and,

7. Order other such other relief as the Court deems just and proper.

Respectfully submitted,

/s/Michael R. Peacock (MP)

Michael R. Peacock
NEHMAD PERILLO & DAVIS, P.C.
4030 Ocean Heights Avenue
Egg Harbor Township, NJ 08234
mpeacock@npdlaw.com
Telephone: 609.927.1177
Facsimile: 609.926.9721

STEVEN G. POLIN
3034 Tennyson Street, NW
Washington, D.C. 20015
spolin2@earthlink.net
Telephone: 202.331.5848
Facsimile: 202.537.2986
(pro hac vice application pending)

COUNSEL FOR PLAINTIFFS