

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION  
Case No.: 2016-013848-CA-01 (32)

ERIC BASON

Plaintiff

vs.

NJZ ENTERPRISES, INC.,  
RENTERS' PARADISE REALTY, INC., and  
WILFREDO RODRIGUEZ

Defendants.

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**PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED  
COMPLAINT TO ADD PUNITIVE DAMAGES**

Pursuant to Fla. R. Civ. P. 1.190(g) and Fla. Stat. § 768.72, Plaintiff Eric Bason (Mr. Bason"), moves this Court to file his First Amended Complaint against Defendants, NJZ Enterprises, Inc., Renter's Paradise Realty, Inc., and Wilfredo Rodriguez (collectively referred to as the "Defendants") to include a demand for punitive damages, and in support thereof states as follows:

**I. THE REQUISITE SHOWING THAT MUST BE MADE TO ALLOW A CLAIM FOR PUNITIVE DAMAGES**

In order to plead a claim for punitive damages, a plaintiff must comply with Fla. R. Civ. P. 1.190(f). The rule provides that:

"A motion for leave to amend a pleading to assert a claim for punitive damages shall make a reasonable showing, by evidence in the record or evidence to be proffered by the claimant that provides a reasonable basis for recovery of such damages. The motion to amend can be filed separately and before the supporting evidence or proffer, but each shall be served on all parties at least 20 days before the hearing."

*See also* Fla. Stat. § 768.72(1) (stating the same).

Fla. Stat. § 768.72(2) allows for a plaintiff to seek an award of punitive damages when a defendant is shown to be “personally guilty of intentional misconduct or gross negligence.” “[I]ntentional misconduct” means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result, and despite that damage, intentionally pursued that course of conduct, resulting in injury or damage.” Fla. Stat. § 768.72(2)(a).

A proffer is “merely a representation of what evidence the defendant proposes to present and is not actual evidence.” *Grim v. State*, 841 So.2d 455, 462 (Fla. 2003) cert. denied, 540 U.S. 892 (2003). Generally, a reasonable showing of evidence in the record would include depositions, interrogatories, and request of admission. However, a punitive damage claim can be supported by a proffer of evidence. *See Solis v. Calvo*, 689 So.2d 366, 369 n.2 (Fla. 3rd DCA 1997).

In determining whether the proffers meet the requirements of Fla. Stat. § 768.72, the Court should apply a motion to dismiss standard and treat all allegations raised by the proffer as true. *See Despain v. Avante Group, Inc.*, 900 So.2d 637 (Fla. 5th DCA 2005) (stating that the motion to dismiss standard applies when determining whether a reasonable basis has been shown to plead for punitive damages, and as a result, the proffer of evidence will be viewed in the light most favorable to the plaintiff and accepted as true).

Plaintiff brought this action for violations of Miami-Dade County’s Civil and Human Rights Ordinance (“Human Rights Ordinance”). It is analogous to the Federal Fair Housing Act; in that it also prohibits housing discrimination based on color, race, religion, or national origin, but the County’s Human Rights Ordinance extends its protections to include individuals who are

facing housing discrimination based on their source of income. Human Rights Ordinance. Chapter 11A, Article II § 11A-12(1)(a)(g). The ordinance specifically defines source of income to include Section 8 Housing Choice Vouchers. Human Rights Ordinance. Chapter 11A, Article II § 11A-11(12). The importance of source of income being considered a protected class was stressed by Professor Norrinda Brown Hyat who stated:

“overtly racist conduct designed to intimidate black newcomers in historically all white suburbs became illegal with the passage of the Fair Housing Act (FHA). In its place, facially neutral terms and policies have come into use, including “Section 8,” to serve the same purpose. Simply put, *Section 8 is the new n-word.*” (Emphasis added).

Norrinda Brown Hyat, *Section 8 is the New N-Word: Policing Integration in the Age of Black Mobility*, 51 Wash. U.J.L. & Pol’y 61, 64 (2016).

Furthermore, both the Human Rights Ordinance and the federal Fair Housing Act authorizes an award of punitive damages to persons who have suffered discriminatory housing practices. “[I]f . . . the court finds that a discriminatory practice has occurred or is about to occur it may issue an order . . . providing affirmative relief . . . including . . . punitive damages.” Human Rights Ordinance. Article II § 11A-15(3). *See also.* Fair Housing Act. 42 U.S.C.A § 3613(c)(1) (1968) (authorizing punitive damages).

There are no reported cases involving punitive damages under the Human Rights Ordinance. But, in determining whether punitive damages are appropriate in housing discrimination cases brought under the federal Fair Housing Act, the Courts look at the defendant’s intentional misconduct. *See. Fenwick-Schafer v. Sterling Holmes*, 774 F. Supp. 361, 366 (D. Md. 1991) (holding that a claim for punitive damages would not be struck when evidence showed that the defendant had knowledge that publishing all-white advertisements was a violation of law but still continued to publish the complained-of ads) *See also. Tyus v. Urban Search Management*, 102 F. 3d 256, 266 (7th Circuit 1996) (reversing the district court’s

decision to grant judgment as a matter of law to the defendants on the plaintiff's claim for punitive damage when evidence showed that the defendant had knowledge of the law and intentionally disregarded it by implementing a discriminatory advertising campaign). Similarly, as explained in the proffer below, Defendants continued to advertise "No Section 8" even after it was on notice of the violation of law.

## **II. PLAINTIFF'S PROFFER TO SUPPORT A CLAIM FOR PUNITIVE DAMAGE**

1. NJZ Enterprises, Inc. ("NJZ") owns and operates the apartment building at 776 NE 127 St, North Miami, Florida (the "Property"), which is the subject of this action.

2. Renters' Paradise is the management company for the Property.

3. Francis Jacob is the registered agent for both Renters' Paradise and NJZ.

4. Wilfredo Rodriguez ("Mr. Rodriguez") is the realtor associate for Renter's Paradise who listed the Property for rent.

5. The Property is owned by NJZ, it is managed by Renters' Paradise, and Mr. Rodriguez is a realtor for Renters' Paradise.

6. Mr. Bason is a participant in the Section 8 Housing Choice Voucher Program operated by the Housing Authority of the City of Miami Beach.

7. Mr. Bason began searching on Craigslist for apartments to rent using his Section 8 voucher. He saw that Mr. Rodriguez and Renters' Paradise listed advertisements for several properties with the language "NO SECTION 8." This language was found on the title of the listing and/or the body of the listing. Despite this Mr. Bason called for more information.

8. On September 14, 2015 and September 21, 2015, Mr. Bason contacted Mr. Rodriguez and asked about renting the Property.

9. Mr. Rodriguez refused to take Mr. Bason's rental application because Mr. Bason wanted to use his Section 8 voucher to rent the Property and the owner of the Property did not accept Section 8 vouchers.

10. On October 8, 2015, Mr. Bason filed an administrative complaint against Defendants with Miami-Dade County's Office of Human Rights and Fair Employment Practices for source of income discrimination.

11. Despite being put on notice of their violation by the administrative complaint, Defendants continued to violate the law by continuing to advertise apartments for rent with the discriminatory language of "NO SECTION 8." This constitutes "intentional misconduct" for purposes of Fla. Stat. § 768.72(1).

12. Defendants engaged in intentional misconduct by refusing to accept Section 8 Housing Choice Vouchers and advertising apartments for rent with the discriminatory language of "NO SECTION 8."

WHEREFORE, the Plaintiff's respectfully request the Court to:

- A. Grant Plaintiff's leave to file the attached First Amended Complaint which includes a demand for punitive damages; and
- B. Grant any further relief this Court deems just and proper.

Respectfully submitted,

LEGAL SERVICES OF GREATER MIAMI

BY: /s/ Jeffrey Hearne

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Plaintiff's Motion to for Leave to File First Amended Complaint was sent via electronic filing on June 16, 2017 to Bruce Botford, P.A., 1615 SW 2<sup>nd</sup> Avenue, Fort Lauderdale, FL 33315, Counsel for Defendant, at [service@botsfordlegal.com](mailto:service@botsfordlegal.com); [paralegal@botsfordlegal.com](mailto:paralegal@botsfordlegal.com).

/s/ Jeffrey M. Hearne  
Jeffrey M. Hearne

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**FIRST AMENDED COMPLAINT**

Plaintiff, Eric Bason ("Mr. Bason"), by and through undersigned counsel, sues Defendants, NJZ Enterprises, Inc. ("NJZ"), Renters' Paradise Realty, Inc. ("Renters' Paradise"), and Wilfredo Rodriguez ("Mr. Rodriguez") (collectively referred to as "Defendants"), and as grounds states:

**PARTIES AND VENUE**

1. This is an action for declaratory relief, injunctive relief, and damages as a result of Defendants' discrimination against Mr. Bason based on his source of income. The damages exceed \$15,000 and are within the jurisdiction of this court.

2. Mr. Bason is and has been a resident of Miami-Dade County, Florida, during the events in this lawsuit.

3. NJZ is the owner of the property located at 776 NE 127 St, North Miami, Florida (“Property”). Its registered agent is Francis Jacob and its principal address is 14340 Biscayne Blvd. North Miami, Florida 33181.

4. Renters’ Paradise is the management company for the Property. Its registered agent is Francis Jacob and its principal address is 14340 Biscayne Blvd., North Miami, Florida 33181.

5. Mr. Rodriguez is the realtor associate for Renters’ Paradise who listed the Property for rent.

6. The Property is owned by NJZ, it is managed by Renters’ Paradise, and Mr. Rodriguez is a realtor for Renters’ Paradise.

7. At all times pertinent to this complaint, Mr. Rodriguez acted both as an agent for NJZ and Renters’ Paradise and individually as a realtor.

8. NJZ and Renters’ Paradise are for profit corporations, incorporated in the State of Florida, with the same registered agent and address, and doing business in Miami-Dade County, Florida.

9. Venue is appropriate in Miami-Dade County, Florida as Mr. Bason resides in Miami-Dade County, Defendants all conduct business in Miami-Dade County, and the cause of action occurred in Miami-Dade County.

### **FACTS**

10. Mr. Bason is a participant in the Section 8 Housing Choice Voucher Program operated by the Housing Authority of the City of Miami Beach.

11. Mr. Bason began searching on Craigslist for apartments to rent using his Section 8 voucher. He saw that Mr. Rodriguez and Renters’ Paradise listed advertisements for several



properties with the language “NO SECTION 8.” This language was found on the title of the listing and/or the body of the listing. Despite this Mr. Bason called for more information.

12. On September 14, 2015 and September 21, 2015, Mr. Bason contacted Mr. Rodriguez and asked about renting the Property.

13. Mr. Rodriguez refused to take Mr. Bason’s rental application because Mr. Bason wanted to use his Section 8 voucher to rent the Property and the owner of the Property did not accept Section 8 vouchers.

14. Defendants engaged in unlawful conduct by discriminating against Mr. Bason in violation of Miami-Dade County’s Civil and Human Rights Ordinance (“Human Rights Ordinance”) codified as Chapter 11A of the Miami-Dade County Code. This caused Mr. Bason to suffer embarrassment, frustration, humiliation, and emotional distress.

15. The Human Rights Ordinance states the following:

It is hereby declared to the policy of Miami-Dade County, in the exercise of its police power for the public safety, health, and general welfare, to **eliminate and prevent discrimination in** employment, family leave, public accommodations, credit and financing practices, and **housing accommodations** because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, gender identity, gender expression, sexual orientation, or actual or perceived status as a victim of domestic violence, dating violence or stalking. **It is further hereby declared to be the policy of Miami-Dade County to eliminate and prevent discrimination in housing based on source of income.** (Emphasis added) *See also* Chapter 11A, Article I § 11A-2(8).

16. Section 11A-11 and 11A-12 of the Human Rights Ordinance applies to any person, owner, financial institution, real estate broker, real estate agent or any of their representatives who is in the business of selling, purchasing, renting, leasing, financing, or negotiation housing in Miami-Dade County. Chapter 11A, Article II § 11A-12 (1).

17. The Human Rights Ordinance states that it is unlawful for any of the parties mentioned above to refuse to rent or to publish material which discriminates based on a person's source of income. Chapter 11A, Article II § 11A-12 (1) (a) (g).

18. "Source of income" is defined to specifically include Section 8 Housing Choice Vouchers. Chapter 11A, Article II § 11A-11(12).

19. On October 8, 2015, Mr. Bason filed an administrative complaint against Defendants with the Office of Human Rights and Fair Employment Practices for source of income discrimination.

20. The Offices of Human Rights and Fair Employment Practices offered a mediation that occurred on February 24, 2016. The parties did not reach an agreement during mediation.

21. Despite being put on notice of the unlawfulness of the Defendants' advertisements for apartment rentals with the discriminatory language "NO SECTION 8", by the administrative complaint, the Defendants engaged in intentional misconduct by continuing to advertise apartments for rent with the same discriminatory language.

### **CLAIMS FOR RELIEF**

#### **COUNT I: VIOLATION OF CHAPTER 11A OF THE MIAMI-DADE COUNTY CODE OF ORDINANCES**

22. Plaintiff realleges and reincorporates paragraphs 1-21 above.

23. Defendants refused to rent a dwelling to Mr. Bason solely because of his source of income, a Section 8 voucher, in violation of Chapter 11A, Article I, § 11A-12 (1) (g) of the Miami-Dade County Code of Ordinances.

24. Defendants' actions are in direct violation of Chapter 11A, Article II of the Miami-Dade County Code of Ordinances.

25. Despite being put on notice of their violation by the filing of Mr. Bason's administrative complaint, Defendants continued to violate the law by continuing to advertise apartments for rent with the discriminatory language of "NO SECTION 8."

26. Defendants' discriminatory practices caused damages to Mr. Bason, which include, but are not limited to, emotional distress, humiliation, frustration, and embarrassment.

WHEREFORE, Mr. Bason respectfully requests that this Court:

- A. Declare that Defendants discriminated against Mr. Bason based on his source of income, a Section 8 voucher, in violation of Miami-Dade County Code of Ordinances, Chapter 11A, Article I and Article II;
- B. Enjoin Defendants from continuing their discriminatory practices in the renting of dwellings based on source of income;
- C. Enjoin Defendants from continuing their discriminatory advertisements in the renting of dwellings based on source of income;
- D. Award Mr. Bason his damages pursuant to Miami-Dade Code of Ordinances, Chapter 11A, Article II, § 11A-15(3);
- E. Award Mr. Bason punitive damages pursuant to Florida Statute § 768.72 and Miami-Dade Code of Ordinances, Chapter 11A, Article II, § 11A-15(3);
- F. Award attorney's fees and costs pursuant to Miami-Dade Code of Ordinances, Chapter 11A, Article II, § 11A-15(3); and
- G. Grant such further relief as the Court deems necessary and proper.

Respectfully submitted,

LEGAL SERVICES OF GREATER MIAMI

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