

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

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No. 09-\_\_\_\_\_

THE SECRETARY, UNITED STATES DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT, ON BEHALF OF  
CARLOS GARCÍA-GUILLÉN AND SONIA VÉLEZ-AVILÉS,

Petitioner

v.

ASTRALIS CONDOMINIUM ASSOCIATION,

Respondent

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APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE UNITED  
STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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Pursuant to Rule 15(b)(1) of the Federal Rules of Appellate Procedure and Section 812(j) of the Fair Housing Act, 42 U.S.C. 3612(j), the Secretary of the United States Department of Housing and Urban Development (Secretary or HUD) files in response to Astralis Condominium Association's Petition for Review<sup>1</sup> this Application to Enforce Agency Order issued in *HUD on behalf of Carlos García-Guillén and Sonia Vélez-Avilés v. Astralis Condominium Association*, HUDALJ 08-071-FH, on September 10, 2009. A copy of the final

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<sup>1</sup> The Petition for Review is docketed in this Court as No. 09-2497.

decision and order is attached to this Application. See Order 9/10/2009, Att. A.

### **PROCEEDINGS**

At the end of February 2007, Carlos García-Guillén and his wife Sonia Vélez-Avilés filed a fair housing complaint with HUD against the Astralis Condominium Association. Att. A at 10.

On September 11, 2008, HUD filed a charge of discrimination on behalf of complainants García-Guillén and Vélez-Avilés against the Astralis Condominium Association. Att. A at 1. The charge alleged that the Association unlawfully discriminated on the basis of disability in violation of Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601 *et seq.* (the Fair Housing Act). The charge alleged that the Association failed to provide a reasonable accommodation to García-Guillén and Vélez-Avilés, in violation of 42 U.S.C. 3604(f)(2)(A) and 42 U.S.C. 3604(f)(3)(B). Specifically, HUD charged that the Association “denied Complainants exclusive use of handicapped accessible parking spaces, though such spaces were available close to their condominium unit and were rarely used by handicapped residents or visitors.” Att. A at 1. HUD also alleged that the Association “harassed, intimidated and threatened Complainants when they exercised or tried to exercise their right to a reasonable accommodation,” in violation of 42 U.S.C. 3617. Att. A at 1-2.

On September 10, 2009, an Administrative Law Judge (ALJ) issued an Initial Decision and Order, concluding that the Astralis Condominium Association violated 42 U.S.C. 3604(f)(2)(A), 42 U.S.C. 3604(f)(3)(B), and 42 U.S.C. 3617. Att. A at 24. The ALJ ordered the Association to pay \$25,000 in damages to García-Guillén and Vélez-Avilés to compensate “for the humiliation, embarrassment and emotional distress they suffered as a result of [the Association’s] actions.” Att. A at 27, 29. The ALJ assessed a civil penalty of \$10,000. Att. A at 28, 29. The ALJ also ordered the Association to provide García-Guillén and Vélez-Avilés with exclusive use of the parking spaces they requested, refrain from further discrimination on the basis of disability, and undergo disability training to be provided by HUD. Att. A at 29.

Pursuant to 42 U.S.C. 3612(h)(1) and 24 C.F.R. 180.680(b)(2), the ALJ’s decision became the final agency decision on October 10, 2009, because the Secretary of HUD did not issue a decision before that date.

On November 2, 2009, pursuant to 42 U.S.C. 3612(j), the Association filed in this Court a Petition for Review of the ALJ’s September 10, 2009, Initial Decision and Order.

### **FACTS UPON WHICH VENUE IS BASED**

Carlos García-Guillén and Sonia Vélez-Avilés resided in the Astralis Condominium Complex located in Carolina, Puerto Rico, at all times relevant to these proceedings. Att. A at 4. The Astralis Condominium Association is an organization of condominium owners located in Carolina, Puerto Rico.

As stated above, HUD's charge alleged, and the ALJ found, that the Astralis Condominium Association unlawfully discriminated on the basis of disability by failing to provide a reasonable accommodation to Carlos García-Guillén and Sonia Vélez-Avilés, in violation of 42 U.S.C. 3604(f)(2)(A) and 42 U.S.C. 3604(f)(3)(B), and by retaliating against them in violation of 42 U.S.C. 3617. See Att. A at 24.

Accordingly, venue properly lies in this Court. See 28 U.S.C. 41; 42 U.S.C. 3612(j)(1).

### **RELIEF REQUESTED**

Pursuant to 42 U.S.C. 3612(j), the Secretary requests this Court to enter an order enforcing the ALJ's September 10, 2009, Decision and Order.

**CONCLUSION**

This Court should grant HUD's Application to Enforce Agency Order.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that on November 18, 2009, one copy of the foregoing APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT was served by Federal Express courier on the following counsel of record:

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