

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

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**HISPANIC AIDS FORUM,**

**Index No. 01/112428**

**Plaintiff,**

**– against –**

**SECOND AMENDED  
COMPLAINT**

**ESTATE OF JOSEPH BRUNO; THE TRUST  
UNDER ARTICLE SEVENTH OF THE LAST  
WILL AND TESTAMENT OF JOSEPH  
BRUNO; LOUISE HILDRETH, in her official  
capacity as Trustee; JOSEPHINE JOY GAPE,  
in her official capacity as Trustee; JOY L.  
HILDRETH, in her official capacity as Trustee;  
LOUISE E. GAPE, in her official capacity as  
Trustee; and DOE DEFENDANTS 1-10.**

**Defendants.**

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Plaintiff, Hispanic AIDS Forum, by its attorneys, Frankfurt Kurnit Klein & Selz, P.C. and the American Civil Liberties Union Foundation, as and for its complaint, alleges as follows:

**INTRODUCTION**

1. Choosing to cater to prejudice instead of to follow the law, Defendants, the Estate of Joseph Bruno (the “Estate”), the Trust under Article Seventh of the Last Will and Testament of Joseph Bruno (the “Trust”), Louise Hildreth, Josephine Joy Gape, Joy L. Hildreth, Louise E. Gape, and Doe Defendants 1-10, in their official capacities as co-trustees and/or successor co-trustees of the Trust (the “Trustees”) (collectively “Defendants” or “the Landlord”), refused to renew the Hispanic AIDS Forum’s (“HAF’s”) commercial lease for office space in Queens.

2. Defendants had negotiated and drafted a five-year renewal lease for HAF’s offices and had accepted HAF’s signed copy of the new lease, but when HAF asked for a copy of

the new lease, Defendants gave HAF an ultimatum. Defendants refused to continue renting to HAF unless HAF agreed to participate in gender and disability discrimination against its own clients. Defendants' discrimination was blatant; they told HAF the lease would not be renewed unless HAF prevented its transgendered clients from using common areas in the building, including the main entrance and the bathrooms.

3. Defendants made no effort to accommodate HAF's clients and were unwilling to negotiate a compromise. When it became clear that HAF would not participate in Defendants' discrimination against transgendered people affected by HIV or AIDS, Defendants initiated eviction proceedings, and HAF was forced to relocate to a more expensive, less desirable location. To pay for the cost of the move, associated expenses, and higher rent at the new location, HAF was forced to spend money that could otherwise have been used to provide services to Latinos affected by HIV/AIDS.

### **BACKGROUND**

4. HAF is New York City's only Latino-run HIV/AIDS organization offering treatment education and innovative prevention services to the city's Latino population. HAF's mission is to reduce HIV transmission and to secure timely and quality support services for Latinos affected by HIV/AIDS.

5. HAF fulfills its mission by offering multi-faceted and integrated programs. HAF offers prevention and education programs that foster an increased awareness and knowledge of HIV/AIDS in Latino communities and address attitudes, beliefs and behaviors that place Latinos at risk. HAF provides risk-reduction counseling to individuals and couples, and offers wellness and support services that help Latinos affected by HIV/AIDS receive the maximum benefit from available resources and services. HAF's support services provide emotional support and

empowerment opportunities to individuals living with HIV/AIDS. HAF also runs research, policy and development programs that document the health-related needs of Latinos in order to impact the formulation of public health programs and policies that are truly responsive to the needs of Latino communities in New York City and nationwide.

6. In order to better serve Latinos affected by HIV and AIDS, HAF operates three community-based offices in some of New York City's largest Latino neighborhoods: Lower Manhattan, Western Queens and the South Bronx. HAF's principal office is located in New York County at 213 West 35th Street, Floor 12, New York, NY 10001. Accordingly venue is proper in this county pursuant to C.P.L.R. § 503.

7. Jackson Heights has the highest incidence of HIV/AIDS among Latinos in Queens and one of the highest concentrations of transgendered Latinas and Latinos in the United States. Jackson Heights is often the first destination for new immigrants from Central and South America. Nearly half of the people living in Jackson Heights are Latino.

8. Recognizing that Jackson Heights is an epicenter for Latinos affected by HIV/AIDS, HAF spent several months in late 1990 and early 1991 searching for adequate commercial rental space in the neighborhood.

9. After a long search, HAF finally found office space in the Bruson Building located at 74-09 37<sup>th</sup> Avenue, Jackson Heights, NY 11372. The Estate and the Trust, which owned the Bruson Building, were at all relevant times managed by the Trustees. The Trustees are responsible for the daily management, maintenance, collection of rents, issuance of leases, settlement of landlord/tenant disputes, and other services and management required to operate the Bruson Building.

10. In March of 1991, HAF negotiated a two-year lease with Defendants. During initial discussions about HAF's tenancy, the Trustees informed HAF that they did not want the ground floor directory to list HAF's full name - Hispanic AIDS Forum - because they did not want the word "AIDS" in the directory. HAF agreed to this condition and listed its full name only on its office doors. The 1991 lease was later renewed without dispute.

11. By 1995, HAF needed more space, and on March 15, 1995 HAF and Defendants negotiated and signed a lease for Suite 306 on the third floor of the Bruson Building (the "1995 Lease"). On December 15, 1995, HAF and Defendants negotiated and signed a lease for the neighboring office, Suite 305 (the "Suite 305 Lease"). Both the 1995 Lease and the Suite 305 Lease expired April 30, 2000.

12. HAF shared the third floor common areas, including the bathrooms located in the main hallway, with other tenants on the floor, including two other social service agencies, Safe Horizon and Western Queens Consultation, and several private attorneys. Although the third floor bathrooms were often unlocked, each tenant had keys to both the women's and men's bathrooms.

13. In 1996 or 1997, a travel agency, Carboni Travel, opened down the hall from HAF. There were only two employees at Carboni Travel.

14. HAF had always provided services to transgendered clients in its Queens office, but in late-1999 HAF responded to the increasing need for HIV/AIDS services among transgendered Latinas and began working with prominent community members to determine how they could better serve transgendered clients. In approximately November 1999, the number of transgendered clients visiting HAF's Queens office began to increase. Upon

information and belief, HAF's transgendered clients have or are perceived to have a medically diagnosable condition known as Gender Identity Disorder.

15. In November or December of 1999, one of HAF's transgendered clients informed HAF's administrative assistant, Blanca Carranza, that an employee for Carboni Travel had approached her in the bathroom and asked why she was using the women's bathroom.

16. Shortly thereafter, one of the two women who worked at Carboni Travel, Lucy Delgado, told Carranza that the two Carboni employees did not like "those men that look like women using the bathroom." Carranza explained why transgendered Latinas use the women's bathroom.

17. In the first few months of 2000, HAF brought in a well-known transgendered Latina to work as a volunteer peer-educator with a new support group for transgendered clients. The number of transgendered clients increased, and approximately 5 or 6 transgendered clients regularly attended the bi-monthly support group.

18. In March and April 2000, HAF and the Landlord negotiated a new five-year lease for Suite 306 and agreed that HAF would renovate Suite 306. HAF hired an architect and began investing in the planned renovations. HAF decided not to renew the separate lease for Suite 305, and the Landlord agreed that HAF could vacate Suite 305 by July 31, 2000.

19. On March 31, 2000, the Landlord sent HAF a renewal lease for Suite 306 (the "Renewal Lease"). The Renewal Lease was to take effect on May 1, 2000. HAF's Executive Director Heriberto Sanchez Soto signed the Renewal Lease, and on April 24, 2000 HAF mailed the signed Renewal Lease to the Landlord.

20. On or before May 5, 2000, HAF's administrative assistant, Carranza, hand-delivered to the Landlord's office manager and agent, Dorothy Novotny, a check for the first

month's rent, the supplemental security deposit, and the required insurance documents. Novotny accepted the rent, security deposit and insurance documents and then mentioned that other tenants were complaining because "men who think they're women are using the women's bathroom."

21. Toward the end of May, Sanchez Soto called Novotny and told her that he had not yet received a fully-executed copy of the Renewal Lease and that he needed a copy to send to HAF's funders. Novotny told Sanchez Soto that he would need to meet with the Trustees and that the Landlord was not going to sign the Renewal Lease because the Trustees had received complaints from other tenants and had issues with "men who think they're women using the women's bathrooms" and "women who think they're men using the men's bathrooms."

22. Sanchez Soto then spoke with the Landlord's property manager and agent, Jeff Henry, who explained that there were problems with HAF's clients using the bathrooms. After some discussion, Sanchez Soto deduced that Henry was talking about HAF's transgendered clients. Sanchez Soto thought the issue would be easily resolved, and he explained to Henry that legal, moral and ethical obligations to its clients prevented HAF from relying on traditional gender stereotypes to determine which bathroom a particular client would be allowed to use. When Henry continued to assert that transgendered women could not use the women's bathroom, Sanchez Soto said he was sure the issue could be worked out and that he would contact HAF's attorney, Leon Quintero.

23. Quintero and Henry had several conversations in which Henry insisted that HAF agree in writing that its clients would no longer use the public bathrooms in the building. Henry told Quintero that the Landlord needed such an agreement because other tenants were complaining about "the type of clientele" coming in and out of the building and using the

bathrooms. Specifically, Henry complained about “men dressed as women coming into the building and using the bathrooms.” When Quintero asked whether Henry was referring to transgendered clients, Henry responded, “I don’t care what they are. They can’t use the wrong restrooms.”

24. Quintero explained that transgendered clients were not using the “wrong” restrooms – they were using the appropriate restrooms for their gender identities. Quintero also told Henry that HAF could not legally restrict its transgendered clients’ use of the building entrance, hallways, or bathrooms. Henry told Quintero that the Landlord would not renew HAF’s lease unless HAF agreed that transgendered clients would not be permitted to use the bathrooms. In the course of his conversations with Quintero, Henry made several offensive comments and ridiculed HAF’s clients, explaining, among other things, that he just needed to get rid of “all these Queens.”

25. When Quintero was unable to negotiate a compromise, Sanchez Soto scheduled a meeting for June 6, 2000 and went to the Landlord’s business office in Queens to meet with Henry and the Trustees. After waiting for over two hours, Sanchez Soto had to leave for another meeting and asked Novotny to have Henry and the Trustees call to reschedule. A new meeting was set for June 20, 2000, and although Sanchez Soto again went to Queens to try to resolve the conflict, Defendants did not show up for the meeting.

26. On June 30, 2001, HAF received an eviction notice from the Landlord demanding that HAF vacate Suite 306 by July 31<sup>st</sup>. A few days later, the Landlord cashed HAF’s June rent check, but returned the additional security deposit HAF had paid under the Renewal Lease. Defendants then filed an eviction action in the Civil Court of the City of New York, Queens.

27. The housing court in Queens indicated that it would not consider HAF's counterclaims and defenses based on discrimination, and the parties then entered into a stipulation of settlement in which HAF agreed to vacate the premises by January 31, 2001 and agreed not to file an action seeking to remain in possession. In return, the Landlord agreed that HAF's counterclaims would be discontinued without prejudice, and that HAF retained all rights to bring an action against the Landlord.

28. HAF moved out of the Bruson Building in accordance with the stipulated settlement and was forced to relocate to an area farther away from its primary client base. To pay for the move, HAF had to spend money that could otherwise have gone to treatment and education programs for HAF's clients.

29. Although HAF spent several months searching for a new location, HAF's new site in Queens has woefully insufficient office space, which limits the services HAF is able to provide to its clients and requires HAF to use its more expensive office space in Manhattan for several new programs. Over the next five years HAF will have to pay substantially more in rent than it would have paid under the Renewal Lease that Defendants drafted but ultimately refused to sign. Because HAF's old furniture would not fit in the new location, HAF had to purchase new furniture for the new site. Once HAF exercises its option to lease additional space in the new location, HAF will have to do major renovations to make the offices functional.

30. Most important, of course, is the impact of Defendants' discriminatory eviction on HAF's ability to serve its clients. HAF was unable to find office space in Jackson Heights, and has had trouble retaining former clients at the new location. Defendants' eviction of HAF has undermined HAF's very mission, hampering HAF's ability to provide HIV/AIDS services to the Latino, new immigrant, and transgender communities centered in Jackson Heights.



31. A copy of this complaint has been served upon the City Commission on Human Rights and the Corporation Counsel in accordance with the New York Administrative Code § 8-502(c).

**AS AND FOR A FIRST CAUSE OF ACTION**

**(Sex Discrimination – New York Human Rights Law § 290, *et seq.*)**

**(Against All Defendants)**

32. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 31 of this complaint as if more fully set forth at length herein.

33. Defendants' unlawful discriminatory practice of refusing to rent or lease and otherwise denying or withholding from HAF the right to continue renting Suite 306 of the Bruson Building violated New York Human Rights Law § 290, *et seq.*, including, *inter alia*, §§ 296(5)(b)(1) and (2) and 297(9), which Defendants violated both by refusing to rent commercial space to HAF because of the sex and/or gender of its transgendered clients and by discriminating against HAF because of the sex and/or gender of its transgendered clients in the terms, conditions or privileges of the rental or lease of commercial space, including in the furnishing of facilities or services in connection with the rental or lease of commercial space.

**AS AND FOR A SECOND CAUSE OF ACTION**

**(Gender Discrimination – New York City Administrative Code)**

**(Against All Defendants)**

34. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 33 of this complaint as if more fully set forth at length herein.

35. Defendants' unlawful discriminatory practice of refusing to rent or lease and otherwise denying or withholding from HAF the right to continue renting Suite 306 of the

Bruson Building violated the New York Administrative Code, including, *inter alia*, §§ 8-107(4)(a), 8-107(5)(b) and 8-502.

36. Defendants, as owners, proprietors, managers, agents or employees of a place or provider of public accommodation, violated the Administrative Code by directly or indirectly refusing or withhold from or denying HAF and its clients accommodations, advantages, facilities or privileges because of the actual or perceived sex and/or gender of HAF's clients.

37. Defendants, as owners, lessees, managing agents or other persons having the right of ownership or possession or the right to rent or lease, or to approve the rental or lease of commercial space, violated the Administrative Code by refusing to rent Suite 306 of the Bruson Building to HAF because of the actual or perceived sex and/or gender of HAF's transgendered clients and by discriminating against HAF because of the actual or perceived sex and/or gender of its transgendered clients in the terms, conditions or privileges of the rental or lease of commercial space, and in the furnishing of facilities or services in connection with the rental or lease of commercial space.

38. Defendants refused to rent or lease, or to approve the rental or lease of, commercial space to HAF with malice, with knowledge that their actions violated the Administrative Code, and/or with reckless disregard for whether their actions violated the Administrative Code.

**AS AND FOR A THIRD CAUSE OF ACTION**

**(Disability Discrimination – New York Human Rights Law § 290, et seq.)**

**(Against All Defendants)**

39. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 38 of this complaint as if more fully set forth at length herein.

40. Defendants' unlawful discriminatory practice of refusing to rent or lease and otherwise denying or withholding from HAF the right to continue renting Suite 306 of the Bruson Building violated New York Human Rights Law § 290, et seq., including, *inter alia*, §§ 296(5)(b)(1) and (2) and 297(9), which Defendants violated by refusing to rent commercial space to HAF because of the actual or perceived disability of its transgendered clients and by discriminating against HAF because of the actual or perceived disability of its transgendered clients in the terms, conditions or privileges of the rental or lease of commercial space, including in the furnishing of facilities or services in connection with the rental or lease of commercial space.

**AS AND FOR A FOURTH CAUSE OF ACTION**

**(Disability Discrimination – New York City Administrative Code)**

**(Against All Defendants)**

41. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 40 of this complaint as if more fully set forth at length herein.

42. Defendants' unlawful discriminatory practice of refusing to rent or lease and otherwise denying or withholding from HAF the right to continue renting Suite 306 of the Bruson Building violated the New York Administrative Code, including, *inter alia*, §§ 8-107(4)(a), 8-107(5)(b) and 8-502.

43. Defendants, as owners, proprietors, managers, agents or employees of a place or provider of public accommodation, violated the Administrative Code by directly or indirectly refusing or withhold from or denying HAF and its clients accommodations, advantages, facilities or privileges because of the actual or perceived disability of HAF's clients.

44. Defendants, as owners, lessees, managing agents or other persons having the right of ownership or possession or the right to rent or lease, or to approve the rental or lease of commercial space, violated the Administrative Code by refusing to rent Suite 306 of the Bruson Building to HAF because of the actual or perceived disability of HAF's transgendered clients and by discriminating against HAF because of the actual or perceived disability of its transgendered clients in the terms, conditions or privileges of the rental or lease of commercial space, including in the furnishing of facilities or services in connection with the rental or lease of commercial space.

45. Defendants refused to rent or lease, or to approve the rental or lease of, commercial space to HAF with malice, with knowledge that their actions violated the Administrative Code, and/or with reckless disregard for whether their actions violated the Administrative Code.

**WHEREFORE**, Plaintiff demands judgment as follows:

On each and every cause of action, judgment against Defendants jointly and severally for compensatory, exemplary and punitive damages in an amount to be ascertained at trial, together with interest thereon; an order directing Defendants to pay applicable civil fines and penalties;

costs and disbursements, including attorneys' fees; and such other and further relief as the Court deems just and proper.

Dated: New York, New York  
October \_\_, 2003

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: \_\_\_\_\_

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