

NEW YORK STATE SUPREME COURT  
COUNTY OF ROCKLAND

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ALFRED BRANDON and JUDAH BROWN, on behalf  
of themselves and all others similarly situated,

Index No. **030859/2015**

Plaintiffs,

v.

**CLASS ACTION**  
**COMPLAINT**

LOEB HOUSE, INC.,

Defendant.

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Plaintiffs ALFRED BRANDON and JUDAH BROWN, on behalf of themselves and all others similarly situated, bring this complaint for damages against Loeb House, Inc. for breach of contract, unjust enrichment, and deceptive business practice, and hereby allege as follows:

**PARTIES**

1. Plaintiff Alfred Brandon is a resident of the State of New York. Mr. Brandon resides at 153 Ramapo Road, Apt. 3, Garnerville, New York.
2. Plaintiff Judah Brown is a resident of the State of New York. Mr. Brown resides at 44B S. Rockland Avenue, Congers, New York.
3. The Defendant, Loeb House, Inc., provides housing services for individuals with psychiatric disabilities. Defendant's administrative offices are located at One Blue Hill Plaza, Pearl River, NY 10965.

**FACTS**

4. Plaintiffs have "serious and persistent mental illness" ("SPMI") as defined by the New York State Office of Mental Health ("OMH").

5. Mr. Brandon has participated in Defendant's supported housing program since April 2009.

6. Mr. Brown participated in Defendant's supported housing program from July 2011 through November 2012, and from October 2013 through the present.

7. Mr. Brandon, Mr. Brown, and all other Loeb House supported housing recipients live on limited incomes consisting primarily of Supplemental Security Income (SSI), Social Security Disability Insurance benefits (SSD), or some combination of SSI and SSD.

8. Supported housing is an OMH-funded program that provides financial assistance and support services for individuals with SPMI to secure and maintain affordable housing in the community.

9. In 1990, OMH began to implement supported housing on a statewide basis in order to increase affordable, permanent housing options for individuals with SPMI.

10. As part of this statewide program, OMH appropriates state funding for rent subsidies for supported housing recipients.

11. The OMH-funded rent subsidy is provided when other governmental subsidies are not available and the rent for the unit is beyond the recipient's financial means.

12. OMH-appropriated funds for rent stipends are provided to local housing agencies pursuant to contracts between the local agencies and the county or OMH regional office.

13. Defendant receives OMH-appropriated funds for supported housing rental assistance pursuant to an annual contract with Rockland County.

14. Pursuant to its contract with Rockland County, Defendant must provide a rent stipend to recipients of its supported housing services.

15. Recipients of supported housing rental stipends are the intended beneficiaries of each annual supported housing contract executed between Defendant and Rockland County.

16. From 2009 through 2012, an estimated 35 to 50 individuals each year have received supported housing rental stipends pursuant to annual contracts executed between Rockland County and Defendant.

**Defendant's Breach of Contract April 1, 2009 Through December 31, 2009**

17. Defendant and Rockland County executed a contract on April 24, 2009 covering services to be rendered by Defendant from January 1, 2009 to December 31, 2009. The contract is appended hereto as Exhibit A.

18. Pursuant to the contract, Defendant promised to provide services for adults with SPMI as set forth in Schedule "A," which was annexed to and made part of the contract.

19. In consideration for such services, Rockland County promised to pay Defendant \$527,260.00.

20. According to Schedule A, Defendant's supported housing program provides financial support and linkages for support services for adults with SPMI who have the skills to live independently in the community.

21. Individuals with SPMI who receive supported housing services from Defendant are thus the intended beneficiaries of Defendant's contract with Rockland County.

22. Also according to Schedule A, Defendant's supported housing program uses OMH's Tenant Rental Worksheet to determine the portion of rent the individual and Defendant pay based on the individual's income.

23. OMH's Tenant Rental Worksheet is attached to OMH's "Supported Housing Program Implementation Guidelines," ("Guidelines,") issued by OMH in 1990, as Attachment C-1.

(Guidelines with attachments are appended hereto as Exhibit B.)

24. The calculated worksheet sum is then incorporated into the "OMH Supported Housing Program Rental Stipend Worksheet," appended as Attachment C-2 to the Guidelines.

25. According to the OMH worksheet, the calculation for a supported housing recipient's rental payment is equal to the recipient's monthly net income multiplied by 30 percent.

26. The OMH worksheet includes a certification at the bottom of the worksheet for the recipient and agency staff.

27. The certification states that the information is accurate, that documentation of income and expenses is attached to the form, that the form will be completed annually as the basis for the rent stipend calculation, and that the recipient will inform the contract agency of any changes in income or adjustments at the time they occur.

28. When Mr. Brandon began participating in Defendant's supported housing program in April 2009, Defendant was not using the OMH worksheet as required by its contract with Rockland County.

29. Defendant used a monthly worksheet with a rent formula that required all supported housing recipients to contribute more than 30 percent of their income toward the monthly rent.

30. Defendant's rent formula was as follows:

"Step 1: 30% of Income up to \$540 per month = TOTAL 1

Step 2: 50% of Income from \$541 to \$699 = TOTAL 2

Step 3: 75% of Income from \$700 to \$1,183 = TOTAL 3

Step 4: 100% of Income over \$1,183 up to full amount of rent = TOTAL 4

Step 5: Add Totals 1, 2, 3, & 4 to yield Resident's share of rent.”

The remaining portion is paid by Defendant.

31. Defendant used this rent formula from April 2009 through December 2009 to calculate Mr. Brandon's monthly rental contribution.

32. Defendant thereby assessed to Mr. Brandon, and Mr. Brandon paid to Defendant, an amount greater than 30-percent of Mr. Brandon's monthly net income for each month from April 2009 through December 2009.

33. By failing to use the OMH worksheet, and by charging Mr. Brandon a monthly rental contribution in excess of 30 percent of his net income, Defendant breached its contract with Rockland County.

34. By reason of the facts stated above, for each month from April 2009 through December 2009, Defendant caused Mr. Brandon damages equal to the difference between (a) the amount he actually paid to Defendant, and (b) 30 percent of his monthly net income.

**Defendant's Breach of Contract January 1, 2010 Through December 31, 2010**

35. Defendant and Rockland County executed a contract on April 30, 2010 covering services to be rendered by Defendant from January 1, 2010 to December 31, 2010. The contract is appended hereto as Exhibit C.

36. Pursuant to the contract, Defendant promised to provide services as set forth in Schedule "A," which was annexed to and made part of the contract.

37. In consideration for such services, the county promised to pay Defendant \$552,185.00.

38. The allegations of paragraphs 20-27 are repeated herein.

39. From January 1, 2010 through December 31, 2010, Defendant did not use the OMH worksheet as required by its contract with Rockland County.

40. Defendant instead used a different monthly worksheet and applied the rent formula set forth above in paragraph 30. Defendant thereby required Mr. Brandon to contribute more than 30 percent of his net income toward his monthly rental contribution.

41. By failing to use the OMH worksheet, and by charging Mr. Brandon a monthly rental contribution in excess of 30 percent of his net income, Defendant breached its contract with Rockland County.

42. By reason of the facts stated above, for each month from January 2010 through December 2010, Defendant caused Mr. Brandon damages equal to the difference between (a) the amount he actually paid to Defendant, and (b) 30 percent of his monthly net income.

**Defendant's Breach of Contract January 1, 2011 Through December 31, 2011**

43. Defendant and Rockland County executed a contract on March 28, 2011 covering services to be rendered by Defendant from January 1, 2011 to December 31, 2011. The contract is appended hereto as Exhibit D.

44. Pursuant to the contract, Defendant promised to provide services as set forth in Schedule "A," which was annexed to and made part of the contract.

45. In consideration for such services, the county promised to pay defendant \$630,185.00.

46. The allegations of paragraphs 20-27 are repeated herein.

47. From January 1, 2011 through December 31, 2011, Defendant did not use the OMH worksheet as required by its contract with Rockland County.

48. Defendant instead used a different monthly worksheet and applied the rent formula set forth above in paragraph 30. Defendant thereby required Mr. Brandon and Mr. Brown to contribute more than 30 percent of their monthly net incomes toward their monthly rental contributions.

49. By failing to use the OMH worksheet, and by charging Mr. Brandon and Mr. Brown monthly rental contributions in excess of 30 percent of their monthly net incomes, Defendant breached its contract with Rockland County.

50. By reason of the facts stated above, for each month from January 2011 through December 2011, Defendant caused Mr. Brandon damages equal to the difference between (a) the amount he actually paid to Defendant, and (b) 30 percent of his monthly net income.

51. By reason of the facts stated above, for each month from July 2011 through December 2011, Defendant caused Mr. Brown damages equal to the difference between (a) the amount he actually paid to Defendant, and (b) 30 percent of his monthly net income.

**Defendant's Breach of Contract January 1, 2012 Through June 30, 2012**

52. Defendant and Rockland County executed a contract on April 23, 2012 covering services to be rendered by Defendant from January 1, 2012 to December 31, 2012. The contract is appended hereto as Exhibit E.

53. Pursuant to the contract, Defendant was to provide services as set forth in Schedule "A," which was annexed to and made part of the contract.

54. In consideration for such services, the county promised to pay Defendant \$618,673.00 .

55. The allegations of paragraphs 20-27 are repeated herein.

56. From January 1, 2012 through June 30, 2012, Defendant did not use the OMH worksheet as required by its contract with Rockland County.

57. Defendant instead used a different monthly worksheet and applied the rent formula set forth above in paragraph 30. Defendant thereby required Mr. Brandon and Mr. Brown to contribute more than 30 percent of their monthly net incomes toward their monthly rental contributions.

58. By failing to use the OMH worksheet, and by charging Mr. Brandon and Mr. Brown monthly rental contributions in excess of 30 percent of their monthly net incomes, Defendant breached its contract with Rockland County.

59. By reason of the facts stated above, for each month from January 2012 through June 2012, Defendant caused Mr. Brandon damages equal to the difference between (a) the amount he actually paid to Defendant, and (b) 30 percent of his monthly net income.

60. By reason of the facts stated above, for each month from January 2012 through June 2012, Defendant caused Mr. Brown damages equal to the difference between (a) the amount he actually paid to Defendant, and (b) 30 percent of his monthly net income.

61. Effective July 1, 2012, Loeb House began charging supported housing recipients 30 percent of their net monthly income as their contribution towards monthly rent, consistent with the OMH worksheet.

### **CLASS ALLEGATIONS**

62. Plaintiffs bring this class action pursuant to Article 9 of the New York Civil Practice Law and Rules on behalf of all supported housing recipients participating in Defendant's supported housing program from April 1, 2009 through June 30, 2012.

63. The class is so numerous that joinder of all members is impractical.

64. There are questions of law and fact common to the class that predominate over questions affecting only individual members, including, but not limited to:

- a. whether Defendant breached its contracts with Rockland County when it used the rent formula set forth in paragraph 30 to determine the monthly rental contribution charged to Plaintiffs and the class members;



- b. whether Plaintiffs and the class members are third-party beneficiaries of the contracts between Defendant and Rockland County;
- c. whether Defendant was unjustly enriched by its actions.

65. The claims of the Plaintiffs are typical of the claims of the class members because Defendant has subjected each of the class members to overcharges for their monthly rental contribution.

66. Supported housing recipients, including Plaintiffs and class members, all receive SSI, SSD, or a combination of SSI and SSD benefits.

67. From 2009 through 2011, the maximum SSI monthly payment amount for an eligible individual was \$674.00, plus \$87.00 from New York State through the State Supplement Program, providing a maximum total monthly benefit of \$761.00.

68. In 2012, the maximum SSI monthly payment amount for an eligible individual was \$698.00, plus \$87.00 from New York State through the State Supplement Program, providing a maximum total monthly benefit of \$785.00.

69. Upon information and belief, all of the class members received SSI equal to the amounts described in paragraphs 67 and 68, or a combination of SSI and SSD benefits equal to or greater than the SSI amounts stated in paragraphs 67 and 68, or SSD benefits greater than the amounts described in paragraphs 67 and 68.

70. Accordingly, each individual class member's monthly income was at least \$761.00 from 2009 through 2011, and at least \$785.00 in 2012.

71. Defendant did not use the rental contribution formula set forth in the OMH Tenant Rental Worksheet to calculate the class members' monthly rental contribution, but instead used the formula set forth in paragraph 30.

72. The rent formula set forth in paragraph 30 required program participants to contribute more than 30 percent of their monthly income in excess of \$540. Because, upon information and belief, each class member's monthly income exceeded \$540 during the relevant period, each class member was charged an amount greater than 30 percent of their monthly net income as their monthly rental contribution.

73. By pursuing their interests in relief, the Plaintiffs will advance the interests of all class members.

74. Plaintiffs will fairly and adequately protect the interests of the class. There are no conflicts of interest between Plaintiffs and class members, and Plaintiffs will vigorously prosecute this action on behalf of the class.

75. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Pursuing these claims on an individual basis is neither practical nor efficient.

76. Without a class action, Defendant will likely retain the benefits of its wrongdoing.

## **CLAIMS**

### **First Claim – Breach of Contract**

77. Plaintiffs repeat and re-allege paragraphs 4 through 61 and paragraphs 66 through 72.

78. For each year from 2009 through 2012, Defendant entered into a contract with Rockland County pursuant to which Defendant promised to provide supported housing services to individuals with SPMI.

79. Each annual contract between Defendant and Rockland County was made to benefit Plaintiffs and the class.

80. Defendant breached its obligations under the contracts by charging Plaintiffs and members of the class more than 30 percent of their monthly net income during each month from April 2009 through June 2012.

81. As a result of Defendant's breach, Plaintiffs and the class have been damaged in an amount to be determined at trial.

82. Plaintiffs and the class, as third party beneficiaries of Defendant's contracts with Rockland County, are entitled to relief for Defendant's breach of its contractual obligations.

### **Second Claim – Unjust Enrichment**

83. Plaintiffs repeat and re-allege paragraphs 4 through 61 and paragraphs 66 through 72.

84. Defendant, by using a rent formula that charged Plaintiffs and members of the class more than 30 percent of their monthly net income for each month between April 2009 and June 2012, increased its revenues, retained earnings, and/or net assets.

85. Defendant received a benefit when it charged and received inflated payments from its supported housing recipients based on Defendant's use of an incorrect rent formula.

86. It is inequitable and unjust for Defendant to reap the benefit of these overcharges.

87. Plaintiffs and the class are entitled to relief for this unjust enrichment in an amount equal to the benefits unjustly retained by Defendant, plus interest on these amounts.

### **Third Claim – Violation of N.Y. Gen. Bus. Law § 349**

88. Plaintiffs repeat and re-allege paragraphs 4 through 61 and paragraphs 66 through 72.

89. Defendant violated section 349(a) of New York General Business Law ("GBL"), which prohibits deceptive acts or practices in the conduct of any business, trade, or commerce, or in the furnishing of any service in the state.

90. Defendant engaged in acts and practices in the State of New York that were deceptive or misleading in a material way, and that injured Plaintiffs and the other members of the class. These acts and practices were likely to mislead a reasonable consumer acting reasonably under the circumstances existing at all relevant times.
91. Defendant's violations of GBL § 349 were willful.
92. Plaintiffs and the members of the class have been damaged by Defendant's violations of GBL § 349.
93. Plaintiffs and the members of the class seek recovery of the actual damages they have suffered in an amount to be determined at trial, or fifty dollars, whichever is greater.
94. Plaintiffs and the class members also seek treble damages and an award of attorney's fees pursuant to GBL § 349(h).

WHEREFORE, Plaintiffs, on behalf of themselves and the class, respectfully request that the Court grant the following relief:

- A. allow this action to proceed as a class action under CPLR Article 9 for all claims alleged;
- B. designate Plaintiffs as the representatives of the class and the undersigned counsel as counsel for the class;
- C. declare that Plaintiffs and each member of the class are intended beneficiaries of the contracts between Defendant and Rockland County, that Defendant breached its contracts with Rockland County, and that Defendant engaged in deceptive business practices;

