

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAY 12 2009

JAMES M. MCCORMACK, CLERK
By: Heather Robinson
DEPUTY CLERK

**ROBERT G. FRANKE and
SARA FRANKE BOWLING,**

Plaintiffs,

vs.

Case No. 4:09-W-3416TE

**PARKSTONE LIVING CENTER, INC.
d/b/a FOX RIDGE AT NORTH
LITTLE ROCK,**

Defendant.

This case assigned to District Judge Eisele
and to Magistrate Judge JON W

COMPLAINT

Plaintiffs the Reverend Dr. Robert G. Franke (“Dr. Franke”) and Sara Franke Bowling (“Ms. Bowling”) (collectively, “Plaintiffs”) file this Complaint against Defendant Parkstone Living Center, Inc., d/b/a Fox Ridge at North Little Rock (“Defendant”) and allege the following:

PRELIMINARY STATEMENT AND JURISDICTION

1. This is an action brought under the Fair Housing Act (as amended by the Fair Housing Amendments Act of 1988) (42 U.S.C. § 3601 *et seq.*) (“FHA”); Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12181 *et seq.*) (“ADA”); the Arkansas Civil Rights Act of 1993 (Ark. Code Ann. §§ 16-123-101–16-123-108) (“ACRA”), and the Arkansas Fair Housing Act (Ark. Code Ann. §§ 16-123-201–16-123-348) (“AFHA”).

2. As explained more fully below, this action stems from Defendant’s discriminatory refusal to rent an apartment in an assisted living facility owned and

operated by Defendant to Dr. Franke – and to provide related services and facilities in connection with the rental of that apartment – because Dr. Franke is infected with the human immunodeficiency virus (“HIV”). In refusing to provide housing, and related services and facilities in connection with that housing, Defendant violated multiple statutes protecting the rights of people with disabilities to remain free from unwarranted discrimination.

3. This Court has jurisdiction over the subject matter of Plaintiffs’ claims under the FHA and the ADA pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. § 1367 because those claims are so related to Plaintiffs’ federal claims that they form part of the same case or controversy.

4. This action is authorized by 42 U.S.C. § 12188; 42 U.S.C. § 3613; Arkansas Code § 16-123-107(b); and Arkansas Code § 16-123-336. This court has jurisdiction to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

VENUE

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this judicial district and division. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendant resides in this judicial district and division.

PARTIES

6. Plaintiff the Reverend Dr. Robert G. Franke (“Dr. Franke”) is a 75-year-old retired professor, school administrator and minister. Dr. Franke currently resides in Little Rock, Arkansas.

7. Plaintiff Sara Franke Bowling ("Ms. Bowling") is the adult daughter of Dr. Franke. Ms. Bowling currently resides in North Little Rock, Arkansas.

8. Defendant Parkstone Living Center, Inc., d/b/a Fox Ridge at North Little Rock, provides housing and assisted living services for the elderly in Arkansas. Defendant is a corporation doing business in this state and in this judicial district. Defendant has its principal place of business in North Little Rock, Arkansas. Defendant may be served through its registered agent, President Rodney A. Thomason, whose address is 8060 Counts Massie Road, Maumelle, AR 72113.

FACTS

9. At all times relevant to this complaint, Dr. Franke has been infected with HIV. He has lived with HIV since approximately 1987.

10. Dr. Franke's HIV is a physical impairment that substantially limits one or more of his major life activities.

11. In addition, by February 10, 2009, Defendant regarded Dr. Franke as having a physical impairment (HIV) that substantially limits one or more of his major life activities.

12. As of early January 2009, Dr. Franke lived by himself on property he owns in Michigan.

13. Some time prior to February 2009, Dr. Franke decided to move back to Arkansas, where he had previously lived, in order to be closer to his daughter, Sara Franke Bowling, as he grew older and progressively less capable of living completely on his own.

14. David Franke (“David”), one of Dr. Franke’s two sons, assisted Dr. Franke with his move to Arkansas by accompanying him there on or about January 31, 2009. (Dr. Franke, Ms. Bowling and David are collectively referred to herein as “the Franke family.”)

15. Within a few days of Dr. Franke’s arrival in Arkansas, the Franke family visited several assisted living facilities in the North Little Rock area in order to find an assisted living facility into which Dr. Franke could move.

16. Defendant Parkstone Living Center, Inc., d/b/a Fox Ridge at North Little Rock (“Defendant”) owns and/or operates Fox Ridge at North Little Rock, located at 17 Parkstone Circle, North Little Rock, Arkansas, 72116 (“Fox Ridge”).

17. Defendant leases apartments at Fox Ridge to individuals who are seeking assisted living services. The services provided by Defendant at Fox Ridge include, but are not limited to: meals, 24-hour supervision, linen service, laundry service, housekeeping, assistance with medication, assistance with activities of daily living (*e.g.*, eating, bathing, grooming) and social, recreational and other activities.

18. After visiting Fox Ridge, and meeting with members of the staff there, the Franke family chose Fox Ridge as the most appropriate option for Dr. Franke.

19. On or about February 3, 2009, Ms. Bowling and Dr. Franke visited Fox Ridge a second time and acquired the application materials for Dr. Franke to be admitted as a resident.

20. During this visit, a member of the Fox Ridge staff told Ms. Bowling it was very important that the medical forms in the application packet be completed by a medical doctor and returned to Fox Ridge prior to Dr. Franke’s admission.

21. On or about February 4, 2009, Ms. Bowling took Dr. Franke to see a physician who could evaluate Dr. Franke's health and complete the medical forms that Fox Ridge required prior to admitting Dr. Franke. Dr. Franke met with the physician and left the medical forms with the physician so they could be fully completed and signed before being returned to Fox Ridge.

22. Between February 4, 2009 and February 7, 2009, Ms. Bowling and Dr. Franke reviewed and completed the remainder of the materials in the admission packet.

23. One of the documents Ms. Bowling and Dr. Franke reviewed as part of the admission packet materials was an Occupancy Admission Agreement ("OAA"), which by its terms served as both a lease for the apartment at Fox Ridge and an agreement regarding the assisted living services that Defendant would be providing to Dr. Franke after he became a resident of Fox Ridge.

24. Dr. Franke signed the OAA as the "Resident," and Ms. Bowling signed as the "Resident's Responsible Party," which, under the terms of the OAA, is a person who guarantees performance of all financial obligations under the OAA.

25. On February 6, 2009, Ms. Bowling picked up the medical forms from the physician who evaluated Dr. Franke. The diagnosis section of the medical forms clearly stated that Dr. Franke has a diagnosis of "HIV+."

26. On February 7, 2009, Ms. Bowling hand delivered to Fox Ridge the completed admission packet and medical evaluation forms.

27. On February 8, 2009, Ms. Bowling and her husband purchased a bed on Dr. Franke's behalf for use in his new apartment and arranged to have it delivered to Fox Ridge.

28. On February 9, 2009, one of Defendant's staff members telephoned Ms. Bowling to inform her that the bed had been delivered and that Dr. Franke could move into Fox Ridge that very same day. On the afternoon of February 9, 2009, Ms. Bowling moved Dr. Franke and his personal belongings into his apartment at Fox Ridge.

29. On February 10, 2009, Ms. Bowling received a phone call from Deyon McMillan, who, upon information and belief, is an employee of Defendant who serves as the administrator at Fox Ridge. McMillan requested that Ms. Bowling come to McMillan's office when Ms. Bowling came to visit her father at Fox Ridge later that day.

30. When Ms. Bowling met with McMillan in her office later that day, McMillan told her that McMillan had been given instructions by her superiors to discharge Dr. Franke from Fox Ridge because he has HIV.

31. Ms. Bowling became agitated and distraught. She did not understand why her father would be ejected from Fox Ridge on this basis and immediately asked that her brother, David, be included in the conversation via telephone. Ms. Bowling telephoned David, and McMillan stated to both David and Ms. Bowling that Defendant was evicting Dr. Franke from Fox Ridge because he has HIV.

32. On information and belief, Murry Reagor, Defendant's Director of Operations, and/or Rodney Thomason, Defendant's owner and President, made the decision to evict Dr. Franke or otherwise played a direct role in that decision. On information and belief, in doing so, Reagor and Thomason were acting in their official capacities on behalf of and in the course and scope of their employment with Defendant.

33. Ms. Bowling returned to Dr. Franke's apartment at Fox Ridge but did not immediately tell her father what she had been told by McMillan because Ms. Bowling

was concerned about her father's emotional and physical reaction to the news that he was going to have to leave Fox Ridge.

34. In order to give herself time to think – and the ability to communicate freely with her husband and brother regarding the crisis caused by Defendant's actions – Ms. Bowling returned to her home.

35. In a subsequent conversation via telephone later that day, McMillan informed Ms. Bowling that Dr. Franke's personal things could remain in the apartment for the time being, but that the "body" needed to be out of Fox Ridge almost immediately. McMillan threatened that Defendant would turn Dr. Franke over to Adult Protective Services if he was not out of Fox Ridge by the end of the day.

36. From New York, David called Reagor and left a message on his voicemail. When Reagor called David back later that same day, Reagor confirmed that Defendant was evicting Dr. Franke from Fox Ridge.

37. Later that night, Ms. Bowling returned to Fox Ridge with her husband, moved Dr. Franke and some of his belongings out of his apartment and transported her father back to her home. Several days later, she told her father the reason the Defendant had given for forcing him to leave Fox Ridge.

38. Ms. Bowling attempted to convince Defendant to reverse its decision and, when that failed, she attempted to find Dr. Franke a different assisted living facility into which he could move. During that time, Ms. Bowling provided her father with a place to sleep and attempted to provide some of the services he would have received at Fox Ridge – including, but not limited to, making meals available, ensuring he received his medications at appropriate times, and providing social stimulation and companionship.

The lodging and services Ms. Bowling was able to provide, however, were not equal to those Dr. Franke could have received at Fox Ridge. For example, Dr. Franke did not have a separate bedroom and slept on a small bed in the family's kitchen. Ms. Bowling had responsibilities to her job and her husband and children and was unable to provide her father with attention, care and social interaction throughout the day. Ms. Bowling struggled to balance the needs of her husband, children and job with the additional responsibilities resulting from Defendant's wrongful conduct.

39. Approximately seven weeks after being forced to leave Fox Ridge, Dr. Franke moved into a different assisted living facility in the Little Rock area. The new facility does not fully and adequately replace Fox Ridge, due at least in part to Fox Ridge's closer proximity to Ms. Bowling's residence.

40. At all relevant times (including presently), all of Dr. Franke's needs could be met at Fox Ridge, and he had and has no need for services beyond those that Fox Ridge is licensed to provide.

41. Because Dr. Franke continues to need and desires to live in an assisted living facility in the North Little Rock area, there exists an actual threat of future injury if Defendant is not enjoined from discriminating against Dr. Franke based on HIV status.

FIRST CLAIM FOR RELIEF
(By Dr. Franke and Ms. Bowling)

VIOLATION OF SECTION 804(F) OF THE FAIR HOUSING ACT
(Unlawful Discrimination in the Sale or Rental of Housing and in the Provision of Services or Facilities in Connection with the Sale or Rental of Housing)

42. Plaintiffs re-allege paragraphs 1 – 41 of this Complaint as if fully set forth herein.

43. As a result of his HIV, Dr. Franke has a physical impairment that substantially limits one or more of his major life activities such that he is an individual with a handicap within the meaning of the FHA.

44. In addition, as of the time Defendant engaged in the discriminatory conduct alleged herein, Defendant regarded Dr. Franke as an individual with a handicap within the meaning of the FHA.

45. The apartment into which Dr. Franke moved and from which he was subsequently removed at Fox Ridge is a "dwelling" within the meaning of the FHA.

46. Defendant discriminated in the rental of, or otherwise made unavailable or denied, a dwelling to Dr. Franke because of his handicap.

47. By discriminating against Dr. Franke in the rental of, or otherwise making unavailable or denying, a dwelling to Dr. Franke because of his handicap, Defendant violated Section 804(f) of the FHA, 42 U.S.C. § 3604(f)(1).

48. As a result of Defendant's unlawful discrimination, Dr. Franke was denied not only the ability to rent the dwelling owned by Defendant but also was denied the services and facilities provided by Defendant in connection with the rental of that dwelling, in violation of Section 804(f) of the FHA, 42 U.S.C. § 3604(f)(2).

49. Defendant acted willfully and wantonly with intentional, reckless and/or callous disregard of Plaintiffs' civil rights.

50. As a result of Defendant's discriminatory housing practices, Dr. Franke suffered actual harm, including economic harm, mental anguish, loss of dignity and other intangible injuries.

51. As a result of Defendant's discriminatory housing practices, Ms. Bowling suffered actual harm, including economic harm, mental anguish, loss of dignity and other intangible injuries.

SECOND CLAIM FOR RELIEF
(By Ms. Bowling)

**VIOLATION OF SECTION 817 OF THE FAIR HOUSING ACT
(Unlawful Coercion and Intimidation of, and/or Interference
with, an Individual Aiding and Encouraging Another in the
Enjoyment of Rights under 42 U.S.C. § 3604)**

52. Plaintiffs re-allege paragraphs 1 – 41 of this Complaint as if fully set forth herein.

53. As a result of his HIV, Dr. Franke has a physical impairment that substantially limits one or more of his major life activities such that he is an individual with a handicap within the meaning of the FHA.

54. In addition, as of the time Defendant engaged in the discriminatory conduct alleged herein, Defendant regarded Dr. Franke as an individual with a handicap within the meaning of the FHA.

55. In engaging in the actions described above, Dr. Franke was attempting to exercise and/or enjoy his rights to fair housing under 42 U.S.C. § 3604.

56. Ms. Bowling aided and/or encouraged Dr. Franke in the exercise and/or enjoyment of his rights under 42 U.S.C. § 3604.

57. Defendant coerced, intimidated, threatened and/or otherwise interfered with Ms. Bowling because she was aiding and/or encouraging Dr. Franke in the exercise and/or enjoyment of his rights under 42 U.S.C. § 3604.

58. Defendant acted willfully and wantonly with intentional, reckless, and/or callous disregard of Ms. Bowling's civil rights.

59. As a result of Defendant's actions, Ms. Bowling suffered actual harm, including mental anguish, loss of dignity and other intangible injuries.

THIRD CLAIM FOR RELIEF
(By Dr. Franke)

VIOLATION OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT
(Unlawful Discrimination in Public Accommodations)

60. Plaintiff Dr. Franke re-alleges paragraphs 1 – 41 of this Complaint as if fully set forth herein.

61. As a result of his HIV, Dr. Franke has a physical impairment that substantially limits one or more of his major life activities such that he is an individual with a disability within the meaning of the ADA.

62. In addition, as of the time Defendant engaged in the discriminatory conduct alleged herein, Defendant regarded Dr. Franke as an individual with a disability within the meaning of the ADA.

63. Fox Ridge is a place of public accommodation within the meaning of the ADA.

64. Defendant owned and/or operated Fox Ridge within the meaning of the ADA.

65. Defendant denied Dr. Franke the full and equal enjoyment of the services, facilities and/or advantages of Fox Ridge on the basis of his disability.

66. By denying Dr. Franke the full and equal enjoyment of the services, facilities and/or advantages of a public accommodation on the basis of his disability, Defendant violated the ADA.

67. As a result of Defendant's discriminatory housing practices, Dr. Franke suffered actual harm, including economic harm, mental anguish, loss of dignity and other intangible injuries.

68. There exists an actual threat of future injury to Dr. Franke if Defendant is not enjoined from discriminating against him based on his HIV.

FOURTH CLAIM FOR RELIEF
(By Dr. Franke and Ms. Bowling)

VIOLATION OF SECTION 314 OF THE
ARKANSAS FAIR HOUSING ACT
(Unlawful Discrimination in the Sale or Rental of Housing and in the Provision of
Services or Facilities in Connection with the Sale or Rental of Housing)

69. Plaintiffs re-allege paragraphs 1 – 41 of this Complaint as if fully set forth herein.

70. As a result of his HIV, Dr. Franke has a physical impairment that substantially limits one or more of his major life activities such that he is an individual with a disability within the meaning of the Arkansas Fair Housing Act ("AFHA").

71. In addition, as of the time Defendant engaged in the discriminatory conduct alleged herein, Defendant regarded Dr. Franke as an individual with a disability within the meaning of the AFHA.

72. The apartment into which Dr. Franke moved and from which he was subsequently removed at Fox Ridge is a "dwelling" as that term is defined in the AFHA.

73. Defendant discriminated in the rental of, or otherwise made unavailable or denied, a dwelling to Dr. Franke because of his disability.

74. By discriminating against Dr. Franke in the rental of, or otherwise making unavailable or denying, a dwelling to Dr. Franke because of his disability, Defendant violated Section 314 of the AFHA, Ark. Code Ann. § 16-123-314(a).

75. As a result of Defendant's unlawful discrimination, Dr. Franke was denied not only the ability to rent the dwelling owned and/or operated by Defendant but also was denied the services and facilities provided by Defendant in connection with the rental of that dwelling, in violation of Section 314 of the AFHA, Ark. Code Ann. § 16-123-314(b).

76. Defendant acted willfully and wantonly with intentional, reckless and/or callous disregard of Plaintiffs' civil rights.

77. As a result of Defendant's discriminatory housing practices, Dr. Franke suffered actual harm, including economic harm, mental anguish, loss of dignity and other intangible injuries.

78. As a result of Defendant's discriminatory housing practices, Ms. Bowling suffered actual harm, including economic harm, mental anguish, loss of dignity and other intangible injuries.

FIFTH CLAIM FOR RELIEF

(By Ms. Bowling)

**VIOLATION OF SECTION 344 OF THE ARKANSAS FAIR HOUSING ACT
(Unlawful Intimidation of, and/or Interference
with, an Individual Aiding and Encouraging Another in the
Enjoyment of Rights under the AFHA)**

79. Plaintiffs re-allege paragraphs 1 – 41 of this Complaint as if fully set forth herein.

88. As a result of his HIV, Dr. Franke has a physical impairment that substantially limits one or more of his major life activities such that he is an individual with a disability within the meaning of the Arkansas Civil Rights Act (“ACRA”).

89. Fox Ridge is a place of public resort, accommodation, assemblage or amusement, within the meaning of the ACRA.

90. Defendant intentionally denied Dr. Franke his right to the full enjoyment of the accommodations, advantages, facilities, or privileges of Fox Ridge on the basis of his disability.

91. By denying Dr. Franke the right to the full enjoyment of the accommodations, advantages, facilities, or privileges of Fox Ridge on the basis of his disability, Defendant violated Section 107 of the ACRA, Ark. Code Ann. § 16-123-107.

92. Defendant acted willfully and wantonly with intentional, reckless and/or callous disregard of Dr. Franke’s civil rights.

93. As a result of Defendant’s discriminatory housing practices, Dr. Franke suffered actual harm, including economic harm, mental anguish, loss of dignity and other intangible injuries.

SEVENTH CLAIM FOR RELIEF
(By Ms. Bowling)

VIOLATION OF SECTION 108 OF THE ARKANSAS CIVIL RIGHTS ACT
(Unlawful Interference, Coercion or Intimidation
with an Individual Aiding and Encouraging Another in the
Enjoyment of Rights under the ACRA)

94. Plaintiffs re-allege paragraphs 1 – 41 of this Complaint as if fully set forth herein.

95. As a result of his HIV, Dr. Franke has a physical impairment that substantially limits one or more of his major life activities such that he is an individual with a disability within the meaning of the ACRA.

96. In engaging in the actions described above, Dr. Franke was attempting to exercise and/or enjoy his rights under the ACRA.

97. Ms. Bowling aided and/or encouraged Dr. Franke in the exercise and/or enjoyment of his rights under the ACRA.

98. Defendant coerced, intimidated, threatened and/or otherwise interfered with Ms. Bowling because she was aiding and/or encouraging Dr. Franke in the exercise and/or enjoyment of his rights under the ACRA.

99. Defendant acted willfully and wantonly with intentional, reckless, and/or callous disregard of Ms. Bowling's civil rights.

100. As a result of Defendant's actions, Ms. Bowling suffered actual harm, including mental anguish, loss of dignity and other intangible injuries.

REQUEST FOR DECLARATORY JUDGMENT

101. Plaintiffs re-allege paragraphs 1 – 100 of this Complaint as if fully set forth herein.

102. An actual and present controversy exists between Plaintiffs and Defendant relating to their respective legal rights and duties:

- a. Plaintiffs contend that Defendant has discriminated against Dr. Franke on the basis of his disability in violation of the FHA, the ADA, the AFHA, and the ACRA; that Defendant has violated rights of Ms. Bowling under

the FHA, the AFHA, and the ACRA; and that Plaintiffs have been harmed thereby and, as a result, are entitled to relief from this Court; and

- b. On information and belief, Defendant denies these contentions and avers that its treatment of Plaintiffs does not violate federal or state law.

103. A judicial declaration among the parties is necessary and appropriate at this time in order that they promptly may ascertain and enforce their respective rights and obligations.

104. Plaintiffs are entitled to a declaratory judgment that Defendant has discriminated against Dr. Franke on the basis of disability; that Defendant has violated Dr. Franke's rights under the FHA, the ADA, the AFHA, and the ACRA; that Defendant has violated Ms. Bowling's rights under the FHA, the AFHA, and the ACRA; and that Plaintiffs have been harmed thereby and, as a result, are entitled to relief from this Court.

WHEREFORE, Dr. Franke and Ms. Bowling request the following relief:

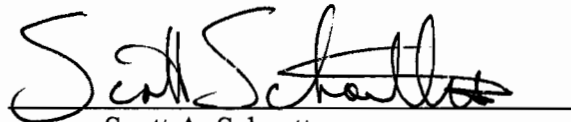
- a) that this Court enter a declaratory judgment that Defendant has discriminated against Dr. Franke on the basis of disability; that Defendant has violated Dr. Franke's rights under the Fair Housing Act, the Americans with Disabilities Act, the Arkansas Fair Housing Act, and the Arkansas Civil Rights Act; that Defendant has violated Ms. Bowling's rights under the Fair Housing Act, the Arkansas Fair Housing Act, and the Arkansas Civil Rights Act; and that Plaintiffs have been damaged thereby and, as a result, are entitled to relief from this Court;
- b) a permanent injunction against Defendant, its agents and employees, enjoining

them from: refusing to rent, or otherwise making unavailable or denying, an apartment to Dr. Franke; refusing to provide, or otherwise making unavailable or denying, services and facilities to Dr. Franke; refusing to rent, or otherwise making unavailable or denying, an apartment to individuals because they have HIV; refusing to provide, or otherwise making unavailable or denying, services and facilities to individuals because they have HIV; and unlawfully discriminating against Dr. Franke and others similarly situated based on HIV status;

- c) compensatory and actual damages in an amount to be determined at trial;
- d) punitive damages pursuant to the Fair Housing Act, 42 U.S.C. § 3613; the Arkansas Fair Housing Act, Ark. Code Ann. § 16-123-338; and the Arkansas Civil Rights Act, Ark. Code Ann. § 16-123-107(b);
- e) costs and reasonable attorneys' fees; and
- f) such other and further relief as this Court deems just and proper.

Dated: May 12, 2009.

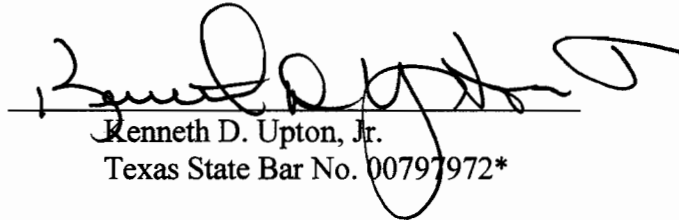
Respectfully submitted,



Scott A. Schoettes
Illinois State Bar. No. 6282105*

ATTORNEY FOR PLAINTIFFS ROBERT G.
FRANKE AND SARA FRANKE BOWLING

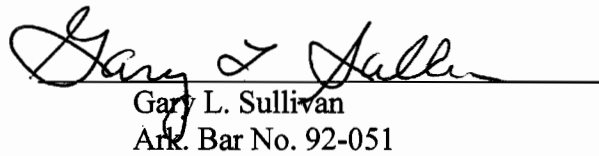
LAMBDA LEGAL DEFENSE &
EDUCATION FUND, INC.
11 East Adams, Suite 1008
Chicago, IL 60603-6303
(312) 663-4413 (tel.)
(312) 663-4307 (fax)
sschoettes@lambdalegal.org



Kenneth D. Upton, Jr.
Texas State Bar No. 00797972*

ATTORNEY FOR PLAINTIFFS ROBERT G.
FRANKE AND SARA FRANKE BOWLING

LAMBDA LEGAL DEFENSE &
EDUCATION FUND, INC.
3500 Oak Lawn Avenue, Suite 500
Dallas, TX 752196722
(214) 219-8585 (tel.)
(214) 219-4455 (fax)
kupton@lambdalegal.org



Gary L. Sullivan
Ark. Bar No. 92-051

ATTORNEY FOR PLAINTIFFS ROBERT G.
FRANKE AND SARA FRANKE BOWLING

TRIPCONY LAW FIRM, P.A.
415 N. McKinley, Suite 180
Little Rock, AR 72205
(501) 296-9999 (tel.)
(501) 296-9997 (fax)
gsullivan@tripconylawfirm.com

*Application for admission to Eastern District of Arkansas filed separately.

AO 398 (Rev. 01/09) Notice of a Lawsuit and Request to Waive Service of a Summons

UNITED STATES DISTRICT COURT

for the Eastern District of Arkansas

Robert G. Franke and Sara Franke Bowling,

Plaintiff

v.

Parkstone Living Center, Inc.

Defendant

Civil Action No. 4:09-W-341 bTE

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: Pres. Rodney A. Thomason, Registered Agent, Parkstone Living Center, Inc., d/b/a Fox Ridge at North Little Rock (Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days (give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 05/12/2009

Gary L. Sullivan Signature of the attorney or unrepresented party

Gary L. Sullivan Printed name

Tripcony Law Firm, P.A. 415 N. McKinley, Suite 180 Little, Rock, AR 72205 Address

gsullivan@tripconylawfirm.com E-mail address

501-296-9999 Telephone number