

RECEIVED
Apr 17, 2024
OAH – TACOMA

1
2
3
4
5
6
7 **BEFORE THE ADMINISTRATIVE LAW JUDGE**
8 **FOR A HUMAN RIGHTS COMMISSION HEARING**

9 WASHINGTON STATE HUMAN
10 RIGHTS COMMISSION, presenting the
11 case in support of the complaint filed by
12 JOSEPH MITCHELL,

13 Complainant,

14 v.

15 SUMMERWALK HOMEOWNERS
16 ASSOCIATION; J & M
17 MANAGEMENT, LLC; XIOMARA
18 MONTES,

19 Respondents.

WSHRC Case No. 27HR-0327-20-1

OAH Docket No.

NOTICE OF HEARING AND AMENDED
COMPLAINT

20 **TO:**

21 **Joseph Mitchell**
22 **5002 Andrew St SE**
23 **Lacey, WA 98503**

24 **J & M Management, LLC**
25 **2107 S Fruitland**
26 **Puyallup, WA 98371**

Summerwalk Homeowners Association
12919 94th Ave E.
Puyallup, WA 98373-5537

Xiomara Montes
17015 5th Ave E
Spanaway, WA 98387

Beau Sung
Assistant Attorney General
Office of the Attorney General
Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188

*Attorney for Washington State Human
Rights Commission*

1 **1. Notice**

2 You are hereby notified that the above case has been noted for hearing before an
3 administrative law judge who shall be assigned pursuant to Revised Code of Washington
4 (RCW) 34.05.410, *et seq.*, and RCW 49.60.250 to preside over the hearing. The contact
5 information for the administrative law judge is:

6 Office of Administrative Hearings
7 949 Market Street, Suite 500
8 Tacoma, WA 98402
9 Telephone: (253) 476-6888
10 Fax: (253) 593-2200

11 The Washington State Human Rights Commission has amended Complainant Joseph
12 Mitchell's Complaint and a copy of the Amended Complaint is served upon you with this notice.

13 **2. Date and Location**

14 The date, time, and place for the hearing are:

15 **Date:** (To be determined)

16 **Time:** (To be determined)

17 **Place:** (To be determined)

18 If the date, time, and place are not included above, you will be notified by the
19 administrative law judge of the date, time, and place for the hearing at least twenty (20) days
20 before the date set for hearing as required by RCW 34.05.434, Washington Administrative
21 Code (WAC) 10-08-040, RCW 49.60.250, and WAC 162-08-221.

22 **3. Purpose of Hearing**

23 The hearing will be for the purpose of determining whether or not the unfair practices
24 alleged in the Amended Complaint have been committed and, if so, what order is appropriate
25 to eliminate the unfair practices and prevent their recurrence. The unfair practices asserted,
26

1 the sections of the statute involved, and the relief requested is set forth in the attached copy
2 of the Amended Complaint, which is incorporated herein by reference.

3 **4. Statutory Authority**

4 This hearing will be held pursuant to the Washington State Law Against
5 Discrimination, and, in particular, RCW 49.60.250, and regulations promulgated thereunder,
6 in particular, WAC 162-08, *et seq.* In addition, procedures at the hearing are governed by
7 WAC 10-08, which sets out the uniform procedural rules for conduct of hearings in
8 adjudicative proceedings under RCW 34.05.

9 **5. Answer of Respondents**

10 To defend against this administrative adjudication, the Respondents must respond to
11 the Amended Complaint attached hereto by stating his, her, or its defense(s) in writing (called
12 an "Answer").

13 Respondents must file the Answer with the Office of Administrative Hearings identified
14 above and serve a copy upon the attorneys for the Washington State Human Rights Commission,
15 Beau Sung, Assistant Attorney General, **within twenty (20) days** after the service of this
16 notice, excluding the day of service. Respondents' Answer to the Amended Complaint must
17 state briefly and plainly the defenses to each claim asserted, and either admit or deny each
18 statement in the Amended Complaint. Any matter the Respondents wish to raise which asserts
19 lack of jurisdiction or an affirmative defense must be set forth as such in the Answer. For
20 further information on matters which must be stated as affirmative defenses, please refer to
21 WAC 162-08-251, a copy of which is included with this notice.

22 **6. Advice of Private Attorney**

23 If Respondents wish to seek the advice of an attorney in this matter, he/she/it should
24 do so promptly so that the written response, if any, may be timely prepared and served.
25
26

1 **7. Notice of Appearance**

2 If Respondents retain an attorney(s), Respondents' attorney(s) shall file a notice of
3 appearance with the Office of Administrative Hearings identified above and serve a copy upon
4 Beau Sung, Assistant Attorney General, attorney for the Washington Human Rights
5 Commission. See WAC 10-08-083 for further information on the Notice of Appearance.

6 **8. Default of Respondent**

7 If Respondents do not answer, a default order may be entered against Respondents.
8 A default order is one where Complainant is found to be entitled to the relief requested in the
9 Amended Complaint because the Respondents have not answered. For further information on
10 default orders, see WAC 162-08-255.

11 **9. Attorneys for Washington State Human Rights Commission**

12 The Attorney General's Office (by the Assistant Attorney General identified above)
13 represents the Washington State Human Rights Commission in presenting the case in support
14 of the Amended Complaint. Complainant may retain independent counsel, as allowed under
15 RCW 49.60.250, and participate in the hearing as a party presenting any issues and testimony
16 that the Washington State Human Rights Commission has chosen not to pursue.

17 **10. Participation by Complainant, Notice of Independent Appearance**

18 If Complainant wishes to submit testimony or otherwise participate in the hearing as a
19 party and not leave the case in support of the complaint to be presented solely by counsel
20 for the Washington State Human Rights Commission, the Complainant must serve on all
21 parties and file a Notice of Independent Appearance **within ten (10) days** after the Notice
22 of Hearing is served, in accordance with WAC 162-08-261. The Independent Notice of
23 Appearance shall state the address where notices and other documents filed in the case should
24 be sent, and further state whether the Complainant intends to prove additional charges as
25 provided in WAC 162-08-261(2), a copy of which is included with this notice.
26

1 **11. Record of Hearing**

2 The Washington State Human Rights Commission will arrange for a court reporter to
3 be present to record all testimony at the hearing unless you are notified otherwise.

4 **12. Interpreter**

5 If a limited-English-speaking or deaf or hard of hearing party or witness needs an
6 interpreter, a qualified interpreter will be appointed and there will be no cost to the party or
7 witness. If you or your witness(es) require an interpreter, please complete the attached form
8 **at least seven (7) days** before the hearing date and return the completed form to the attorney for
9 the Washington State Human Rights Commission, Beau Sung, Assistant Attorney General.

10 **13. Accommodation Needs**

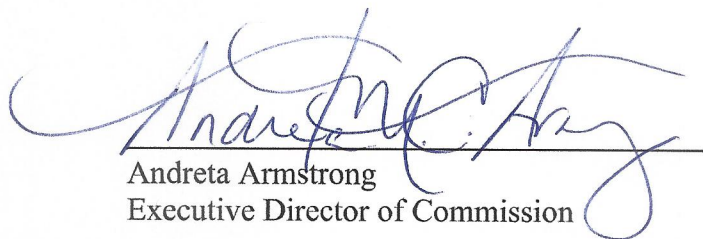
11 If you or a witness for you requires an accommodation because of a disability, please
12 complete the attached form **at least seven (7) days** before the hearing date and returning the
13 completed form to the attorney for the Washington State Human Rights Commission, Beau
14 Sung, Assistant Attorney General, at the address listed above.

15 **14. Questions**

16 Any questions regarding this hearing should be directed to counsel for the Washington
17 State Human Rights Commission:

18 Beau Sung, WSBA #55826
19 Assistant Attorney General
20 Office of the Attorney General
21 Wing Luke Civil Rights Division
22 800 Fifth Avenue, Suite 2000
23 Seattle, WA 98104-3188
24 (206) 389-2407
25 sam.sung@atg.wa.gov

26 Dated 4-16-2024.


Andreta Armstrong
Executive Director of Commission

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**BEFORE THE ADMINISTRATIVE LAW JUDGE
FOR A HUMAN RIGHTS COMMISSION HEARING**

WASHINGTON STATE HUMAN
RIGHTS COMMISSION, presenting the
case in support of the complaint filed by
JOSEPH MITCHELL,

Complainant,

v.

SUMMERWALK HOMEOWNERS
ASSOCIATION; J & M
MANAGEMENT, LLC; XIOMARA
MONTES,

Respondents.

WSHRC Case No. 27HR-0327-20-1
OAH Docket No.

AMENDED COMPLAINT

Complainant Washington State Human Rights Commission (the Commission) submits
this amended complaint and states as follows:

I. UNFAIR PRACTICES ALLEGED

1. This is an action under the Washington Law Against Discrimination (WLAD)
to correct unlawful and discriminatory practices in the terms and conditions related to real
estate transactions and to provide appropriate relief to Mr. Joseph Mitchell, who was adversely
affected by Respondents' unfair practices.

2. The Commission alleges that Respondents, J & M Management, LLC,
Summerwalk Homeowners Association, and Xiomara Montes racially discriminated against
Mr. Mitchell, an African American homeowner who resides in Summerwalk Duets

1 Development, through its unequal treatment in the terms and conditions of Mr. Mitchell's
2 housing in violation of RCW 49.60.222. Respondents also created a hostile housing
3 environment for Mr. Mitchell that interfered with his enjoyment of his property in violation of
4 RCW 49.60.2235.

5 **II. JURISDICTION**

6 3. The Commission has jurisdiction to prosecute this case. RCW 49.60.240, .250.
7 RCW 49.60.240(1)(a) requires the Commission to evaluate and investigate complaints of
8 discrimination and, if it makes a finding of reasonable cause to believe discrimination has
9 occurred, to seek relief for such discrimination. If an agreement to eliminate the unfair practice
10 is not reached, RCW 49.60.250(1) directs the Commission to request appointment of an
11 administrative law judge to hear its complaint. If the administrative law judge determines that
12 Respondents have engaged in unfair housing practices under the WLAD, they have jurisdiction
13 to eliminate any such unfair practices by ordering injunctive or other equitable relief, actual
14 damages, and civil penalties. RCW 49.60.225.

15 **III. FACTUAL BASIS FOR ALLEGATIONS**

16 4. Mr. Mitchell is an African American man who owns and resides in a townhome
17 (Townhome) in the Summerwalk Duets Development (Summerwalk) located at 5002 Andrew
18 St. SE in Lacey, Washington. Mr. Mitchell owned the Townhome and resided there at the time
19 the alleged discrimination occurred.

20 5. Summerwalk homeowners are subject to Covenants, Conditions & Restrictions
21 (CC&Rs).

22 6. Respondent J & M Management, LLC (J & M) managed and governed
23 Summerwalk at the time of the alleged discrimination on behalf of the Summerwalk
24 Homeowners Association (HOA)

25 7. Respondent J & M's principal place of business is 2107 S Fruitland, Puyallup,
26 WA, 98371.

1 8. Respondent HOA's principal place of business is 12919 94th Avenue E,
2 Puyallup, WA 98373-5537.

3 9. Respondent J & M's governing and management of Summerwalk included
4 enforcing the CC&Rs.

5 10. Respondent Ms. Xiomara Montes was the J & M Account Manager of
6 Summerwalk and the HOA Representative at the time the alleged discriminatory actions
7 occurred.

8 11. As part of her duties, Ms. Montes sent out CC&R violation notices to
9 Summerwalk homeowners.

10 12. Before construction was completed, Mr. Mitchell purchased the Townhome on
11 January 1, 2020. Mr. Mitchell timely paid his homeowner's fees on January 9, 2020, and on
12 January 31, 2020, Mr. Mitchell moved into his Townhome.

13 13. At the time of purchase, Mr. Mitchell was provided information about the
14 managing and policy enforcement bodies at Summerwalk.

15 14. As part of his purchase and included in the closing documents from the sale of
16 the Townhome, Mr. Mitchell was bound by Summerwalk's CC&Rs, which were enforced by
17 Respondent J & M on behalf of the HOA.

18 15. The CC&Rs include the following nuisance policy: "No noxious, harmful or
19 offensive thing or use shall be permitted or maintained upon any Lot or upon any other portion
20 of the Property, nor shall anything be done thereon which may be or may become an annoyance
21 or nuisance to any Owner."

22 16. The CC&Rs provide procedures for when a violation of a term of the CC&Rs
23 occurs. First, a homeowner must be notified of any alleged violation, and that notice must
24 contain:

1 (i) a reference to the Covenant restriction or rule that the Owner allegedly
2 violated; (ii) a short statement of the evidence of the rule violation; (iii) the name
3 of a person with firsthand knowledge of the facts that support the determination
4 that the violation occurred; (iv) a short statement of the action that the association
5 intends to take, including the amount of any fine, subject to the Owner's right to
6 request a hearing; (v) a statement that if the Owner wishes to contest or explain
7 the violation, he or she must submit a written request for a hearing to the
8 association within 15 days of delivery of the notice of violation; (vi) a statement
9 of the Owner's rights to a hearing, to attend the hearing, to be represented by
10 counsel, and to review the evidence supporting the alleged violation....

7 17. On April 4, 2020, at 11:27 PM, the City of Lacey Police Department responded
8 to a loud music complaint that was made against the Townhome. The responding officer spoke
9 to Mr. Mitchell and warned him about the noise, but no further action was taken.

10 18. On April 27, 2020, Respondents sent Mr. Mitchell a CC&R violation notice for
11 nuisance noise, alleging that he was playing music too loudly after 10:00 PM.

12 19. In the opening paragraph of the violation notice, Respondents wrote, "One of
13 the responsibilities of your Homeowner's Association is to enforce the [CC&R's]. Maintaining
14 the standards set forth in your Covenants helps protect everyone's property values and, [sic]
15 having a policy with established procedures, assures that everyone will be treated equally and
16 fairly."

17 20. While this was the first violation notice that Respondents issued to Mr. Mitchell
18 for alleged noise after 10:00 PM, Respondents threatened to "call the police if this do [sic] not
19 stop."

20 21. The April violation notice did not provide evidence to support that the nuisance
21 noise came from the Townhome.

22 22. Contrary to the notice requirements outlined in the CC&Rs, the April 27
23 violation notice issued to Mr. Mitchell was silent as to his appeal rights provided under the
24 CC&Rs, including his rights to request a hearing, the hearing process itself, and a review of
25 the evidence that supported the alleged violation.
26

1 23. Additionally, the violation notice did not include the name of a person with
2 firsthand knowledge of the facts that support the determination that the violation occurred as
3 provided under the CC&Rs.

4 24. Even though the CC&Rs state that homeowners have 15-days to dispute
5 violation notices, this violation notice required Mr. Mitchell to dispute its allegations within
6 48 hours of receiving it.

7 25. On May 5, 2020—within the 15-day appeal period provided by the CC&Rs—
8 Mr. Mitchell appealed this violation notice in an email to Respondents. He reported to
9 Respondents that he addressed the noise issue alleged in the notice by monitoring his television
10 noise levels with a decibel meter. He also assured Respondents that he maintained compliance
11 with local permissible noise levels for residential areas.

12 26. As part of his appeal, Mr. Mitchell requested evidence from Ms. Montes to
13 support the alleged CC&R violation. He asserted that if no evidence could be provided to him
14 in support of this nuisance noise violation, then the complaint was “racially harassing” him
15 because he is African American, and his neighbors “don’t want [him] in this neighborhood.”

16 27. Ms. Montes replied to this email, and stated that the noise complaints were from
17 homeowners that lived close to Mr. Mitchell. These homeowners were not identified.
18 Respondents J & M and Ms. Montes also claimed they were unaware that Mr. Mitchell was
19 African American, and that his race was not mentioned in the homeowners’ noise complaints.

20 28. Respondents were aware of Mr. Mitchell’s race after receiving his appeal of the
21 first CC&R violation notice and his complaint of racial discrimination and harassment.

22 29. Respondents did not contact or follow up with Mr. Mitchell regarding his appeal
23 of the violation notice, or his complaint of racial discrimination.

24 30. On May 13, 2020, Mr. Mitchell emailed Ms. Montes to follow up on his appeal
25 of the violation notice he received on April 27, 2020. He asked to be contacted by phone if
26

1 Respondents received further complaints so that he could provide evidence of his compliance
2 with the CC&Rs.

3 31. Ms. Montes informed Mr. Mitchell that no additional complaints had been
4 made. She also assured Mr. Mitchell that she would contact him by phone if Respondent
5 received further noise complaints alleged against him.

6 32. On May 14, 2020, at 10:54 AM, City of Lacey Police responded to a noise
7 complaint due to loud weight lifting allegedly coming from the Townhome. Mr. Mitchell did
8 not own any weight lifting equipment.

9 33. The responding officer was unable to locate the reported loud noise, and the
10 noise complaint was noted as unfounded.

11 34. On May 15, 2020, at 10:18 AM, police responded to another complaint of loud
12 weight lifting at the Townhome. The responding officer did not hear any noise when he arrived
13 at the Townhome, and logged the complaint as resolved.

14 35. Two hours later, the police responded to a third complaint of loud weight lifting
15 at the Townhome. This complaint was also resolved, as the responding officer did not hear any
16 noise when he arrived at the Townhome.

17 36. On July 12, 2020, at 10:27 PM, the police responded to another noise complaint
18 that alleged loud bass was coming from the Townhome. Like the previous complaints, the
19 responding officer could not locate any loud noise when he arrived on scene, and logged this
20 noise complaint as unfounded.

21 37. Respondents sent a second nuisance noise violation notice on July 13, 2020 to
22 Mr. Mitchell for “several” noise complaints that alleged Mr. Mitchell was playing music too
23 loud after 10:00PM.

24 38. The July 13 violation notice stated: “If a property has two non-compliance
25 issues in the same article and section number recorded in a 12-month period a fine of \$50.00
26

1 will be assessed. You are asked to pay \$50.00 to your HOA within 15 days of the date on this
2 letter.”

3 39. Respondents also threatened Mr. Mitchell that they would call the police for
4 continued noise violations.

5 40. The July 13 violation notice asserted: “It has been brought to our attention,
6 several times, [sic] that you are playing your music too loud after 10:00 PM every night, this
7 situation is causing problems in your area.” It threatened further that Respondents would be
8 “enforced [sic] to call the police if this do [sic] not stop.”

9 41. Similar to the first notice, Respondents stated that Mr. Mitchell had 48 hours to
10 dispute the CC&R violation. Once again, this notice did not outline how to dispute this
11 violation notice, Mr. Mitchell’s rights to a hearing, or the hearing process provided under the
12 CC&R’s.

13 42. On July 18, 2020, well within the 15-day appeal period allowed by the CC&Rs,
14 Mr. Mitchell appealed the second notice by email. He indicated that he was monitoring and
15 complying with residential noise limits.

16 43. In this same appeal, Mr. Mitchell also submitted his racial harassment
17 complaint to Respondents:

18 I am being racially harassed by my next door neighbors and they are using you to
19 do it by making false complaints and having you send me nuisance notices. This
20 is simply another case of racist, white people using the system to harass law
21 abiding, innocent black people like me who are simply trying to live our lives in
22 peace. I have had enough of this. I am making a formal complaint of racial
23 harassment against the Summerwalk Village Homeowners Association and
24 against the people making these false allegations. Consider this email as my racial
25 harassment complaint.

26 44. Despite the CC&Rs explicit provision that a possible violation of these rules
may be identified by a homeowner’s written complaint, Respondents took no action on Mr.
Mitchell’s racial harassment complaint.

1 45. Mr. Mitchell was not contacted by Respondents to discuss his complaint, and
2 Respondents' records did not show his complaint was investigated.

3 46. Mr. Mitchell also did not receive any response or communication from
4 Respondents regarding either of his appeals to the CC&R violations.

5 47. On July 18, 2020, Mr. Mitchell wrote to the City of Lacey Mayor Ryder to alert
6 the city of discriminatory practices occurring at Summerwalk.

7 48. In an effort to investigate, address, and resolve his racial harassment claim
8 against Respondents, Mr. Mitchell retained counsel.

9 49. On July 30, 2020, Mr. Mitchell's counsel sent a letter on Mr. Mitchell's behalf
10 to Respondent. The letter requested that Respondent send copies of the bylaws and
11 antidiscrimination policy for Summerwalk.

12 50. To resolve Mr. Mitchell's complaints, the letter also requested an apology from
13 Respondent and that both nuisance notices be rescinded so that Mr. Mitchell would have a
14 clean slate with no complaints.

15 51. Respondents did not respond to this letter.

16 52. On the same day, Mr. Mitchell's counsel also sent a letter to Mayor Ryder,
17 reiterating the sentiments in the letter Mr. Mitchell had sent to Mayor Ryder on July 18, 2020.

18 53. The letter from Mr. Mitchell's counsel also alleged that Respondent was
19 engaging in unfair business practices, recited the perceived unequal treatment Mr. Mitchell had
20 experienced thus far, and requested action by the City of Lacey.

21 54. As a result of these letters, the City of Lacey Police Department's Interim Chief
22 of Police Robert Alamada directed his staff to conduct an analysis of the calls for police service
23 to the Mitchell townhome from January 31, 2020, through July 18, 2020.

24 55. The police report showed that five calls were made for police service to the
25 Townhome during the specified time frame.
26

1 56. Mr. Mitchell did not receive any response from Respondents regarding the
2 status of his appeals of the CC&R violations notices, nor his racial harassment complaints
3 submitted in 2020.

4 57. A review of violation notices issued from January 18, 2019, through August 23,
5 2021, show that Respondent issued four violation notices for nuisance noise.

6 58. Two of these notices were issued to Mr. Mitchell.

7 59. During the same period, Respondent J & M sent three violation notices that
8 referenced calling the police on homeowners residing at Summerwalk.

9 60. Two out of the three violation notices that threatened police action were sent to
10 Mr. Mitchell.

11 61. The remaining violation notice that threatened police action was sent to
12 Nicholas & Cherry Moore due to their barking dogs. In that notice, Respondents stated, “we
13 contacted animal services and the Lacey Police.”

14 **A. Respondents Treated Mr. Mitchell Differently than His Neighbors**

15 62. While Respondents swiftly issued nuisance violations to Mr. Mitchell, it
16 required additional information and was overall slow to respond or investigate complaints he
17 made against other neighbors.

18 63. For instance, on June 20, 2021, Mr. Mitchell emailed Respondent after
19 observing his neighbor’s cat repeatedly digging in the landscaped areas on his property.

20 64. Mr. Mitchell made it clear in this email to Respondent that this was a complaint
21 against his neighbor for violating the pet policy under the CC&Rs, which states, “[a]nimals
22 shall not be allowed to roam loose, outside the limits of any Lot in which they are kept.”

23 65. Mr. Mitchell requested Respondents inform the cat owner, Ms. Bethan Brown,
24 a white homeowner, that it was a violation of the pet policy in the CC&Rs to allow her cat to
25 roam freely on his and other homeowners’ property.
26

1 66. In response to this complaint, Respondents requested the address of the
2 neighbor whom Mr. Mitchell believed owned the cat, and stated that they would “be happy to
3 send [the neighbor] a letter and make it formal for you.”

4 67. Mr. Mitchell provided the address for Ms. Brown in response to Respondents’
5 request. Respondents did not confirm with Mr. Mitchell that a notice was issued to Ms. Brown,
6 follow up with him, or assure him that any action took place in response to his complaint.

7 68. From June 20, 2021 through December 30, 2021, Mr. Mitchell emailed
8 Respondents additional complaints of cats roaming on his property. His complaints included
9 video evidence of his neighbor’s cat on his property.

10 69. Respondent J & M’s records show that Ms. Brown did not receive any CC&R
11 violation notices from January 18, 2019 through August 23, 2021.

12 70. On January 21, 2022, several months after Mr. Mitchell sent Respondent
13 numerous complaints regarding cats on his property, Respondents sent Ms. Brown a violation
14 notice regarding her cat seen on Mr. Mitchell’s property.

15 71. On January 31, 2022, Ms. Brown, emailed an appeal to the violation notice
16 stating that the household was unaware of the rule regarding pets, as there were three other cats
17 who roamed the neighborhood, and regardless, Ms. Brown no longer owned a cat.

18 72. In response to Ms. Brown’s appeal, Respondents immediately rescinded her
19 CC&R violation on February 7, 2022.

20 73. Respondents replied to Ms. Brown’s appeal, confirmed the violation was
21 rescinded, and stated, “I am sorry for the notice if the animal is not yours, it was reported to
22 have been coming from your house and I will remove it.”

23
24
25
26

1 **IV. FIRST CAUSE OF ACTION**

2 **(Violation of the Washington Law Against Discrimination – Unequal Treatment in Terms**
3 **and Conditions Connected with Housing)**

4 74. The Commission realleges and incorporates by reference the allegations set
5 forth in each of the preceding paragraphs of this Amended Complaint.

6 75. Individuals have a right to engage in real estate transactions without
7 discrimination. RCW 49.60.030(1)(c), RCW 49.60.222(1).

8 76. Here, Mr. Mitchell complied with the Summerwalk CC&R's that were enforced
9 by Respondents.

10 77. However, Respondents' enforcement of the CC&Rs and procedures against Mr.
11 Mitchell differed from how they enforced the CC&Rs against other homeowners.

12 78. In enforcing the CC&Rs, Respondents treated Mr. Mitchell worse than other
13 white homeowners, such as Ms. Brown, for alleged CC&R violations.

14 79. Further, Respondents acted swiftly in responding to white homeowners' CC&R
15 complaints, while ignoring and taking no action on Mr. Mitchell's similar CC&R complaints,
16 appeals of CC&R violations, and racial harassment and discrimination complaint.

17 80. Respondents failed to include the homeowners' appeal rights, as outlined in the
18 CC&Rs, in the violation notices issued to Mr. Mitchell.

19 81. Mr. Mitchell was the only homeowner who Respondents threatened more than
20 once with police action for an alleged noise violation.

21 82. Respondents failed to respond to Mr. Mitchell's appeals to the violation notices,
22 or include his rights to a hearing as provided under CC&R 2.4.3.

23 83. Respondents failed to provide Mr. Mitchell evidence that the alleged violation
24 occurred, which ran counter to the procedure provided under the CC&R 2.4.6.
25
26

1 84. Respondents failed to clarify and confirm with Mr. Mitchell that the violation
2 notices were rescinded and removed from his record, leading Mr. Mitchell to believe he was
3 on the verge of receiving more severe violation notices, or at risk of losing his Townhome.

4 85. Respondents failed to investigate Mr. Mitchell's racial harassment complaint.

5 86. Respondents knew Mr. Mitchell was experiencing racial harassment and
6 discrimination based upon his submitted complaint.

7 87. Respondents failed to timely respond to Mr. Mitchell's complaints regarding
8 his white neighbors' violations of the CC&Rs. CC&R 2.1.

9 88. At the same time Respondents timely responded to Ms. Brown's complaints of
10 alleged noise violations against Mr. Mitchell.

11 89. Respondents also timely responded to Ms. Brown's appeals of her alleged
12 CC&R violations against her.

13 90. Respondents provided clear communication to Ms. Brown that her disputed
14 CC&R violations would be rescinded and cleared from her record.

15 91. Respondents never afforded such communication or attempts to work with Mr.
16 Mitchell as Respondents did for Ms. Brown.

17 92. As a result, Respondents applied adverse terms and conditions to Mr. Mitchell,
18 which resulted in disparate treatment from Respondents in comparison to how they treated
19 white homeowners at Summerwalk.

20 93. Respondents treated Mr. Mitchell, who is African American, worse than they
21 treated similarly-situated White homeowners, like Ms. Brown.

22 94. In doing so, Respondents violated the WLAD. RCW 49.60.222(1)(b)
23 (prohibiting any person from "discriminat[ing] against a person [based on race] in the terms,
24 conditions, or privileges of a real estate transaction or in the furnishing of facilities or services
25 in connection therewith[.]")
26

1 **VI. REQUEST FOR RELIEF**

2 101. The Commission requests an order declaring that Respondents have engaged in
3 the racial discriminatory conduct complained of herein, and that the conduct violated the
4 Washington Law Against Discrimination, RCW 49.60.222(1)(b), .2235.

5 102. Damages awarded to Mr. Mitchell for lost opportunity to use and enjoy the full
6 benefits of his housing caused by the unlawful discriminatory property management practices;
7 inconvenience caused by participating in this investigation and prosecution of his
8 discrimination complaint; pain and suffering; financial hardship; embarrassment; emotional
9 distress; and other damages proved at hearing;

10 103. Respondents must attend Fair Housing training approved by the Commission
11 and the Attorney General's Civil Rights Division.

12 104. Respondents must post Commission-approved notices in the J & M
13 Management rental office and HOA office stating compliance with the WLAD, RCW 49.60,
14 and the Federal Fair Housing Act, 42 U.S.C. 3601.

15 105. Respondents must pay a civil penalty of ten thousand dollars (\$10,000) as
16 provided by RCW 49.60.225(1)(a).

17 106. Respondents are enjoined from discriminating against, retaliating against,
18 and/or harassing persons based on race and should be required to change their policies and
19 procedures to comply with this injunction.

20 107. Other equitable relief that this tribunal finds necessary to eliminate the effects
21 of past discrimination, to prevent future discrimination, and to restore Mr. Mitchell as closely
22 as possible to the position he would have been in, but for Respondents' discrimination. This
23 includes retaining jurisdiction, if necessary, to fully effectuate this tribunal's order.

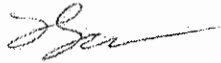
24
25 //

26 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 17th day of April 2024.

ROBERT W. FERGUSON
Attorney General



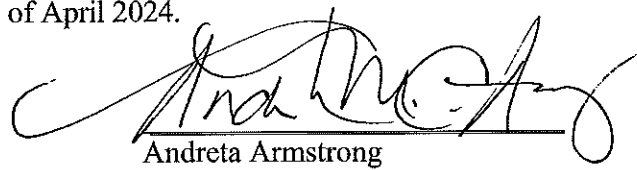
BEAU SUNG, WSBA #55826
Assistant Attorney General
Office of the Attorney General
Wing Luke Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
206-389-2407

*Attorney for Complainant Washington State
Human Rights Commission*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I, Andreta Armstrong, Executive Director of the Washington State Human Rights Commission, verify that I have reviewed the above amended complaint and that the unfair practices charged, the factual allegations set forth, and the relief requested are true, correct and appropriate to the best of my knowledge and belief.

Signed this 15 day of April 2024.



Andreta Armstrong
Executive Director
Washington State Human Rights Commission

WAC 162-08-251 Answer. (1) **Required.** Every respondent shall file an answer to the amended complaint attached to the notice of hearing, and to any subsequent amendments or complaints that are filed.

(2) **Content.** The answer shall set out and assert every defense, in law or fact, to the claims of the complaint being answered.

(3) **Waiver of defenses not pleaded.** Defenses not pleaded in an answer are waived.

(4) **Time for filing.** An answer shall be filed within twenty days after notice of hearing is served, unless an extension of time is granted in writing by the administrative law judge.

(5) **Form of defenses and denials.** A respondent shall state in short and plain terms its defenses to each claim asserted and shall admit or deny each averment of the amended complaint. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a respondent intends in good faith to deny only a part or a qualification of an averment, the respondent shall specify so much of it as is true and material and shall deny only the remainder.

(6) **Affirmative defenses.** A respondent who wishes to raise any matter constituting an avoidance or affirmative defense, including those required to be set forth affirmatively by CR 8(c), must plead the matter as an affirmative defense in the respondent's answer. Among the matters which must be pleaded as affirmative defenses are the following:

(a) A bona fide occupational qualification;

(b) Business necessity that justifies a practice that has a discriminatory effect; and

(c) That another statute or rule of law precludes or limits enforcement of the law against discrimination, or regulations or precedents of the commission.

(7) **Statutory steps.** Any defense that the hearing cannot be held because the respondent has been prejudiced because statutory steps prior to hearing have not been taken, or because of some irregularity in statutory procedure, must be pleaded in the answer by specific negative averment, which shall include such supporting particulars as are within the answering respondent's knowledge or could reasonably have been learned by the answering respondent.

(8) **Obligation of good faith.** The assertion of denials and defenses is subject to the obligation of good faith set out in WAC 162-08-241(3) and CR-11.

(9) **Reply.** Unless the administrative law judge orders that a reply to an answer be filed, none shall be necessary. Averments in an answer shall be deemed denied or avoided.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-251, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-251, filed 9/2/77; Order 7, § 162-08-251, filed 1/19/68.]

WAC 162-08-261 Complainant's participation. (1) **Notice of independent appearance.** A complainant or aggrieved person under RCW 49.60.040(15) who desires to submit testimony or otherwise participate in the hearing as a party and not to leave the case in support of the complaint to be presented solely by counsel for the commission, must serve and file a notice of independent appearance within ten days after the notice of hearing is served on that complainant. The notice shall state the address where notices to the complainant shall be sent and it shall state whether the complainant elects to prove additional charges as provided in subsection (2) of this section.

(2) **Election to prove additional charges.** A complainant or aggrieved person under RCW 49.60.040(15) who has filed a notice of independent appearance stating an intention to prove additional charges in accordance with RCW 49.60.250(2), may at the hearing offer proof of averments included in the original complaint or in amendments to the original complaint made by the complainant, whether or not the averments are included in the amended complaint under which counsel for the commission is proceeding. For purposes of this section, the complainant may amend the original complaint without regard to intervening amendments made by the commission. The complainant may serve and file an amended complaint with a notice of independent appearance, or thereafter as provided by these rules. If no amended complaint is served with a notice of independent appearance that states an intention to prove additional charges, the clerk shall promptly place the original complaint in the file for the administrative law judge. Nothing done by the complainant under this rule shall place any duty on counsel for the commission to seek to prove matters not averred in the amended complaint accompanying the notice of hearing, or subsequent amendments by the commission.

(3) **Appearance without election.** If the complainant or aggrieved person under RCW 49.60.040(15) files a notice of independent appearance which does not state that he or she elects to prove additional charges, then the complainant's participation in the hearing shall be confined to the matters raised by the amended complaint filed with the notice of hearing, and subsequent amendments made by the commission.

(4) **When no independent appearance.** If the complainant or aggrieved person under RCW 49.60.040(15) does not file a notice of independent appearance as provided by this rule, the case in support of the complaint shall be presented solely by counsel for the commission.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-261, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-261, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-261, filed 9/2/77; Order 7, § 162-08-261, filed 1/19/68.]



WASHINGTON STATE HUMAN RIGHTS COMMISSION
REQUEST FOR OFFICE OF ADMINISTRATIVE HEARING SERVICES

| | | |
|-------------------------|--------------------|--------------------------------------------------------------------------------------------------------------------------------|
| DATE OF REQUEST: | | REQUESTED BY: |
| April 17, 2024 | | Andreta Armstrong, Executive Director of the Washington State Human Rights Commission Beau Sung, Counsel for the Commission |
| PHONE NUMBER: | FAX NUMBER: | EMAIL ADDRESS: |
| (206) 389-2407 | (206) 464-6451 | Andreta.Armstrong@hum.wa.gov Sam.Sung@atg.wa.gov |

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| CASE NAME: | WSHRC CASE NUMBER: |
| WASHINGTON STATE HUMAN RIGHTS COMMISSION, presenting the case in support of the complaint filed by JOSEPH MITCHELL, v. SUMMERWALK HOMEOWNERS ASSOCIATION; J & M MANAGEMENT, LLC; XIOMARA MONTES | WSHRC: 27HR-0327-20-1 |

| | |
|---------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| LOCATION OF COMPLAINANT: | LOCATION OF RESPONDENT: |
| Joseph Mitchell 5002 Andrew St SE Lacey, WA 98503 | J&M Management, LLC 2107 S. Fruitland Puyallup, WA 98371 Summerwalk Homeowners Association 12919 94th Ave E Puyallup, WA 98373-5537 Xiomara Montes 17015 5th Ave E Spanaway, WA 98387 |

| |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| BRIEF DESCRIPTION OF CASE: |
| The Human Rights Commission alleges that Respondents Summerwalk Homeowners Association, J&M Management, LLC, and Xiomara Montes, discriminated against Complainant, Joseph Mitchell, an African American homeowner, through the Respondents' unequal treatment in the terms and conditions, and the furnishing of services related to real estate transactions, in violation of RCW 49.60.222. |

THE INFORMATION BELOW IS TO BE COMPLETED BY OFFICE OF ADMINISTRATIVE HEARINGS:

| | | |
|------------------------------------------|--------------------|-----------------------|
| NAME OF ADMINISTRATIVE LAW JUDGE: | | ADDRESS: |
| | | |
| PHONE NUMBER: | FAX NUMBER: | EMAIL ADDRESS: |
| | | |
| OAH CASE NUMBER: | | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

**BEFORE THE ADMINISTRATIVE LAW JUDGE
FOR A HUMAN RIGHTS COMMISSION HEARING**

WASHINGTON STATE HUMAN RIGHTS COMMISSION, presenting the case in support of the complaint filed by JOSEPH MITCHELL,

Complainant,

v.

SUMMERWALK HOMEOWNERS ASSOCIATION; J & M MANAGEMENT, LLC.; XIOMARA MONTES,

Respondents.

WSHRC Case No. 27HR-0327-20-1
OAH Docket No.

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that Beau Sung, Assistant Attorney General, hereby appears in the above-entitled action on behalf of the WASHINGTON STATE HUMAN RIGHTS COMMISSION and requests that notice of any and all further pleadings, papers, and proceedings in said action be served upon the undersigned attorney at the address stated below

Beau Sung
Assistant Attorney General
Office of the Attorney General
Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
Telephone: (206) 389-2407
Email: sam.sung@atg.wa.gov

1 DATED this 17th day of April 2024.

2
3 ROBERT W. FERGUSON
Attorney General

4 

5 _____
6 BEAU SUNG, WSBA #55826
7 Assistant Attorney General
8 Office of the Attorney General
9 Wing Luke Civil Rights Division
10 800 Fifth Avenue, Suite 2000
11 Seattle, WA 98104-3188
12 (206) 389-2407
13 sam.sung@atg.wa.gov
14
15
16
17
18
19
20
21
22
23
24