

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT

16-2433

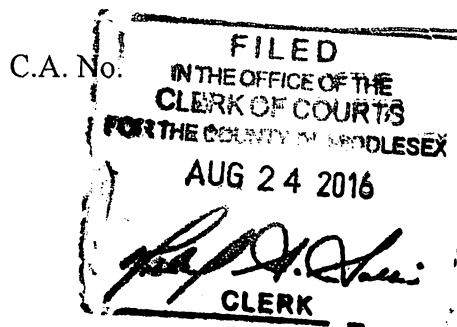
JAMES M. RYAN, Executor of the ESTATE
OF JULIA W. RYAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

MARY ANN MORSE HEALTHCARE CORP.,
d/b/a HERITAGE AT FRAMINGHAM

Defendant.



CLASS ACTION COMPLAINT

I. INTRODUCTION

1. Plaintiff, James M. Ryan, Executor of the Estate of Julia W. Ryan (“Plaintiff”), on behalf of himself and all others similarly situated, submits the following Class Action Complaint against Mary Ann Morse Healthcare Corporation, d/b/a Heritage at Framingham (“Heritage”).

2. Plaintiff brings this class action to recover amounts paid by current and former tenants of Heritage towards so-called “community fees,” which were payments required by Heritage prior to the commencement of a tenancy. These payments fail, in numerous respects, to comply with the Security Deposit Statute and constitute unfair and deceptive business practices.

II. PARTIES

3. Plaintiff James M. Ryan is an individual who resides in Adams, Massachusetts.

4. James M. Ryan is the Executor of the Estate of Julia W. Ryan, now deceased, who was a former tenant of Heritage.

5. Defendant, Mary Ann Morse Healthcare Corporation is a Massachusetts

corporation, with its principal place of business at 747 Water Street, Framingham, Middlesex County, Massachusetts.

6. Defendants were the lessors of residential real property to Plaintiff, Julia W. Ryan, and other members of the putative class.

III. FACTS

7. In 2013, the Plaintiff entered into a lease agreement with Heritage for the apartment located at 747 Water Street, Unit 150, Framingham, Massachusetts (the “Premises”).

8. Heritage charged the Plaintiff rent in the amount of \$4,000.00 per month.

9. Heritage required payment of the first month’s rent prior to the commencement of the tenancy. In addition, Heritage required payment of last month’s rent in the amount of \$4,000.00 plus a “community fee” in the amount of \$2,800.00.

10. The “community fee” paid by the Plaintiff was not held in an interest-bearing account for the benefit of the Plaintiff and was non-refundable at the end of the tenancy.

11. The “community fee” was not used as first month’s rent.

12. The “community fee” was not designated as last month’s rent.

13. The “community fee” was not used to purchase and install a key and lock.

14. The “community fee” otherwise failed to comply with the Security Deposit Statute. *See* G. L. c. 186, § 15B.

15. Heritage assessed a “community fee” to all tenants in the putative class.

IV. CLASS ALLEGATIONS

16. The conduct complained of herein – namely, the payment of a “community fee” at the inception of a lease to reside in an apartment owned by Heritage – affected numerous other Massachusetts consumers and tenants.

17. Accordingly, Plaintiff brings this action on behalf of a class of all other persons similarly situated, pursuant to MASS. R. CIV. P. 23.

18. The class consists of any tenant who paid to Heritage a “community fee” at the inception of any tenancy with Heritage (the “Class”).¹

19. There are questions of law and fact common to the Class, of which common issues predominate over any issues peculiar to individual class members. The principal common questions include:

- a) whether the “community fees” required by Heritage violate the Security Deposit Statute, G. L. c. 186, § 15B;
- b) whether Heritage’s actions constitute violations of G. L. c. 93A;
- c) whether Heritage’s actions are unfair and deceptive in violation of G. L. c. 93A;
- d) the appropriate amount of damages and other relief to be granted to Plaintiff and the Class; and
- e) whether the Heritage’s actions were willful and knowing violations of G. L. c. 93A.

20. The only individual questions concern the identification of Class members and the computation of relief to be afforded each Class member, and can be determined by a ministerial examination of the relevant files.

21. Notice can be provided to the class by various means of communication.

22. Plaintiff’s claims are typical of the claims of Class members. All are based on the same legal and remedial theories.

23. Plaintiff will fairly and adequately protect the interests of all Class members in the prosecution of this action and in the administration of all matters relating to claims stated herein. Plaintiff is similarly situated with, and has suffered similar injuries as, the Class

¹ Plaintiff reserves the right to amend the class definition based on facts gleaned during discovery.

members he seeks to represent. Plaintiff has retained counsel experienced in handling Class action lawsuits involving unfair business practices and the Security Deposit Statute. Neither the named Plaintiff nor his counsel has any interest that might cause them not to vigorously pursue this action.

24. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, in that:

- a) the losses suffered by the Class members are such that prosecution of individual actions is impractical or economically unfeasible;
- b) by contrast, the illegal profits obtained by Heritage as a result of the unlawful practices are substantial;
- c) the forms of proof required are such that prosecution of individual actions is impractical or economically unfeasible;
- d) in the absence of the class action device, Plaintiff and Class members would be left without an adequate remedy for the wrongful acts alleged as individual damages are minimal;
- e) the prosecution of separate lawsuits by individual Class members could create the risk of inconsistent adjudications with respect to individual Class members, which would establish incompatible standards of conduct for Heritage, making concentration of the litigation concerning this matter in this Court desirable;
- f) the claims of the representative Plaintiff are typical of the claims of the Class; and
- g) no unusual difficulties are likely to be encountered in the management of this action as a class action.

25. The Class is so numerous as to make it impracticable to join all members of the Class as Plaintiffs.

V. CAUSES OF ACTION

COUNT ONE **VIOLATIONS OF THE MASSACHUSETTS SECURITY DEPOSIT STATUTE** **G. L. c. 186, § 15B**

26. Plaintiff adopts and realleges the previous paragraphs as if fully restated herein.

27. The payments of so-called “Community Fees” violate the express and unambiguous terms of the Massachusetts Security Deposit Statute by, among other reasons: (a) the funds were not held in an interest-bearing account for the benefit of the Plaintiff and the Class; (b) the funds were not refundable to the Plaintiff and Members of the Class at the end of the tenancy; (c) the Plaintiff and Members of the Class were not provided with proper statements of conditions; (d) the funds were not designated as first month’s rent, last month’s rent, or used to purchase and install a key and lock.

28. The Plaintiff and members of the Class have incurred financial damage as a result of the violations of the Security Deposit Statute as set forth herein.

29. Accordingly, the Plaintiff and members of the Class are entitled to treble damages, attorneys’ fees and costs.

COUNT TWO
VIOLATIONS OF THE MASSACHUSETTS CONSUMER PROTECTION ACT
G. L. c. 93A, §§ 1, *et seq.*

30. Plaintiff adopts and realleges the previous paragraphs as if fully restated herein.

31. The above-enumerated acts and practices, including the violations of the Security Deposit Statute set forth above, constitute per se violations of the Massachusetts Consumer Protection Act.

32. Heritage’s attempt to circumvent the Security Deposit Statute is unfair and deceptive conduct prohibited by the Consumer Protection Act.

33. As a result of the unfair and deceptive conduct set forth herein, Plaintiff and members of the Class have been damaged in an amount to be determined at trial.

34. Heritage performed the actions described herein willfully and knowingly within the meaning of G. L. c. 93A, § 9.

35. On May 13, 2016, the Plaintiff served a demand letter upon Heritage in accordance with G. L. c. 93A, § 9.

36. Heritage failed to tender a reasonable offer of settlement.

COUNT THREE
INJUNCTIVE RELIEF

37. Plaintiff adopts and realleges the previous paragraphs as if fully restated herein.

38. Plaintiff and the Class seek injunctive relief enjoining Heritage's unfair and deceptive conduct in violation of the Security Deposit Statute, as alleged herein.

VI. PRAYER FOR RELIEF

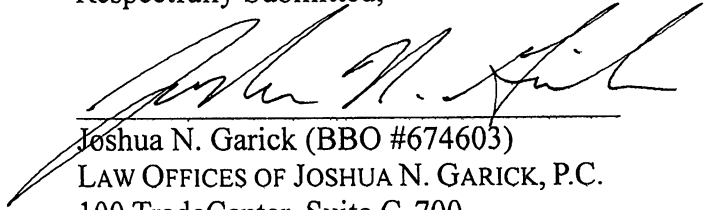
WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

- A. Enter an Order certifying the Class as requested herein;
- B. Award damages, in the amount to be proven at trial;
- C. Award treble and other punitive damages;
- D. Award costs of this action;
- E. Award attorneys' fees and expenses;
- F. Enter an Order enjoining Heritage from continuing to engage in the unlawful conduct alleged herein; and
- G. Grant any other relief this Court deems just and proper.

VII. JURY DEMAND

Plaintiff and the putative Class demand a trial by jury on all claims so triable.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Joshua N. Garick", is written over a horizontal line.

Joshua N. Garick (BBO #674603)
LAW OFFICES OF JOSHUA N. GARICK, P.C.
100 TradeCenter, Suite G-700
Woburn, Massachusetts 01801
Phone: (617) 600-7520
Joshua@GarickLaw.com

Counsel for Plaintiff and the Class

Dated: August 22, 2016