

**In the United States Court of Federal Claims**

**NOT FOR PUBLICATION**

**No. 10-283C**

**(Filed: May 24, 2010)**

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**ANTHONY G. CLARKE,**

**Plaintiff,**

**v.**

**THE UNITED STATES,**

**Defendant.**

\* \* \* \* \*

**ORDER DISMISSING COMPLAINT FOR LACK OF JURISDICTION**

On May 11, 2010, Anthony G. Clarke (“Mr. Clarke” or “the plaintiff”) filed a pro se complaint against the United States, the United States Department of Housing and Urban Development (“HUD”) and Shaun Donovan, Secretary of HUD (collectively, “the government” or “the defendants”). For the reasons that follow, the complaint is **DISMISSED** for lack of subject matter jurisdiction.

Mr. Clarke filed a complaint with HUD’s Office of Fair Housing and Equal Opportunity (“FHEO”) and the Office of the Inspector General of HUD (“HUD OIG”) in

1998 alleging that he was the victim of housing discrimination.<sup>1</sup> The Denver Regional Office of the FHEO closed the complaint later that year, finding that there were “no valid issues.” App. to Compl. 8 (electronic record pertaining to the closing of the complaint). See also App. to Compl. 1 (Letter from HUD OIG to Mr. Clarke (Apr. 9, 2010) (“[Y]our case was opened . . . on April 20, 1998[ ] and then closed on May 8, 1998.”)). During the intervening twelve years, Mr. Clarke has filed various lawsuits, Freedom of Information Act (“FOIA”) requests, and official and unofficial administrative complaints related to the FHEO’s decision to close his 1998 complaint. See Clarke v. Owens, No. 99-2271 (D. Colo. 1999); Clarke v. Colorado, No. 01-1596 (D. Colo. 2001); Clarke v. Obama, No. 09-944 (M.D. Tenn. 2009); App. to Compl. 11 (Letter from Denise Hernandez, HUD FOIA Liaison to Mr. Clarke (July 9, 2009) (informing Mr. Clarke that materials responsive to his FOIA request had been identified and requesting payment before delivery)); App. to Compl. 6, 7 (Letters from Michael R. Kirby, Acting Director, Program Integrity (Hotline) Division, HUD OIG, to Mr. Clarke (June 10, 2009 and Aug. 4, 2009) (regarding a complaint filed by Mr. Clarke regarding the handling of his 1998 complaint)); App. to Compl. 12 (Letter from Dennis A. Raschka, Assistant Inspector General for Office of Management and Policy, HUD OIG, to Mr. Clarke (Dec. 10, 2009) (responding to a letter from Mr. Clarke to Kenneth Donahue, Inspector General of HUD, and declining to take

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<sup>1</sup>Mr. Clarke states that he filed two complaints in 1998, but from information contained in the complaint and the attachments thereto, it appears that HUD treated these two complaints as one.

further action on a complaint from Mr. Clarke)). From the attachments to the complaint, it appears that earlier this year, Mr. Clarke requested that FHEO reopen his complaint and reassign it to a regional office other than that which originally examined it.<sup>2</sup> See App. to Compl. 1. While it is difficult to understand all of Mr. Clarke's complaint, his complaint makes no mention of money damages. Indeed, his complaint in this court, as well as his correspondence with the HUD OIG, suggest that he seeks review of the agency's determination not to reopen his 1998 complaint.

The court gleans from the complaint that Mr. Clarke believes that the government failed to satisfy a fiduciary duty to protect him from housing discrimination, an obligation he claims the defendants incurred when the government signed a Form HHS-690.

Specifically, Mr. Clarke states:

Each defendant denied equal protection of the law under an agreement and signed an assurance of compliance[.] Each agreed by affixing their signature on Form HHS-690 and is and were lawfully committed and obligated to such agreements. Each defendant failed in its f[i]duciary duty to provide assurances given involving program and services for persons with AIDS/HIV and each defendant violated the rights of the plaintiff/complainant [sic throughout] . . . .

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<sup>2</sup>In the April 9, 2010 letter from FHEO appended to the complaint, FHEO requested that Mr. Clarke submit his request in writing to the Director of the Enforcement Division of FHEO. App. to Compl. 1. The letter instructed Mr. Clarke to include in this request "an outline of the major facts surrounding your fair housing complaint" and "[a]n explanation of why, after some twelve years after your initial complaint was closed, FHEO should re-open your case." Id. Mr. Clarke does not indicate whether he made this request after receipt of this letter.

Compl. 4C.<sup>3</sup> Form HHS-690, Assurance of Compliance, is a form in which an applicant for HUD funding or assistance provides HUD with an assurance that it is in compliance with various federal nondiscrimination laws.<sup>4</sup> While it is not clear which organization

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<sup>3</sup>It is difficult to discern from his complaint and the attachments thereto what actions or inactions constitute the discrimination Mr. Clarke alleges, or who exactly he claims discriminated against him. Mr. Clarke attached an eight-page, handwritten statement to his complaint, detailing problems with Continental Divide Corporation and/or Northeast Denver Housing, from which he leased a public housing unit. See App. to Compl. 15-22. The gist of this statement is that he was told by the building management company that he was eligible for subsidies but was charged the full rent. The statement also lists a number of problems in obtaining repairs and details several unpleasant encounters with the building management staff. However, Mr. Clarke also attached to his complaint an excerpt from a HUD OIG Audit Report that explains the following:

Brothers Redevelopment is a nonprofit organization that has been approved by HUD to participate in the [Federal Housing Administration (“FHA”)] Single Family Insurance Programs. Brothers Redevelopment was authorized by HUD to carry[ ]out the program in conformity with its Affordable Housing Program. Under this program, Brothers Redevelopment purchased HUD properties at a discount, rehabilitated the structures as needed and resold the houses at market value to qualifying homebuyers. Brothers Redevelopment did not pass on any benefits realized from the discounted property purchases from HUD to the low- and moderate-income homebuyer as intended by HUD.

We found that Brothers Redevelopment . . . allowed an outside independent Contract Developer to administer all phases of its Affordable Housing Program. The Contract Developer operated the program to realize the maximum profit possible. As a result, no discounts were passed on to the ultimate homebuyer as intended by the program.

App. to Compl. 3-5. Most of these sentences are underlined by hand, presumably by Mr. Clarke, and several stars are drawn in the margins next to this passage. The court takes this to indicate that the above-quoted passage has something to do with his complaint. Further, Mr. Clarke claims that his original 1998 complaint to FHEO was one of two that prompted this audit. Compl. 4. However, the connection between Brothers Redevelopment, which sold properties purchased from HUD, and the discrimination of which Mr. Clarke complains, which he faced when renting an apartment from a company other than Brothers Redevelopment, is unclear.

<sup>4</sup>The court notes that Mr. Clarke has not provided the court with a copy of any Form HHS-690, signed or otherwise. However, a copy of a blank form was readily available on the

Mr. Clarke believes submitted the form, the court will assume for purposes of this order that it was whichever entity discriminated against him. Additionally, Mr. Clarke claims that the government also violated 18 U.S.C. § 241 (2007), 18 U.S.C. § 242 (2007), 18 U.S.C. § 245 (2007), 42 U.S.C. § 3631 (2007), 42 U.S.C. § 14141 (2007), as well as “Department of Justice Regulations at 28 CFR Pt 35 A,B,C,D,F [and] Community Development Block Grant Laws; 508, 6103, Community Development Block Grant Law (CDBG [sic throughout].” He does not identify the relief he seeks.

While pro se plaintiffs are held to a lower standard of pleading than those represented by counsel, all those seeking to invoke the court’s subject matter jurisdiction ultimately retain the burden of establishing that the jurisdictional requirements are met. Keener v. United States, 551 F.3d 1358, 1361 (Fed. Cir. 2009). Accordingly, the burden is on Mr. Clarke to establish that this court has jurisdiction to hear his complaint.

The United States Court of Federal Claims is a court of limited jurisdiction. Under the Tucker Act, the Court of Federal Claims has jurisdiction to hear claims that are “founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a) (2008). What this means with regard to Mr. Clarke’s case is that in order for this court to exercise jurisdiction, Mr. Clarke must identify a federal law or a contract with the

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HUD website and was reviewed by this court as a public document.

United States that would entitle him to seek money from the government.

None of the statutes or regulations cited by Mr. Clarke provide this court with jurisdiction. 18 U.S.C. §§ 241, 242 and 245, as well as 42 U.S.C. § 3631, are criminal statutes that provide no basis for a civil action in any court. 42 U.S.C. § 14141 permits the U.S. Attorney General to bring a civil action for civil rights violations committed by law enforcement and thus has no relationship to the plaintiff's claims. While the plaintiff does not identify which of the multiple subsections of 28 C.F.R. § 35 the defendants allegedly violated, none of these subsections, all of which concern nondiscrimination on the basis of disability in state and local government services, provide this court with jurisdiction. While the court cannot determine what "Community Development Block Grant Laws; 508, 6103, Community Development Block Grant Law (CDBG [sic throughout]," Compl. 4D, refers to, these incompletely cited laws follow a laundry list of civil-rights-related statutes and regulations in a complaint that focuses exclusively on alleged civil rights violations. The court therefore assumes that these laws also concern civil rights. It is well-established that the United States District Courts have exclusive jurisdiction over claimed civil rights violations. That is, such cases may only be heard in the United States District Courts and not in other federal courts, such as the United States Court of Federal Claims. Pursuant to 28 U.S.C. § 1343 (2007), "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person . . . [t]o recover damages or to secure equitable or other relief under any Act of

Congress providing for the protection of civil rights.” See also Sindram v. United States, 67 Fed. Cl. 788, 794 (2005) (“[T]he United States District Courts have exclusive jurisdiction over claims for alleged civil rights violations.”). Thus, the appropriate U.S. District Court, and not the U.S. Court of Federal Claims, would have jurisdiction over this complaint.<sup>5</sup>

Finally, the court turns to the issue of whether the Form HHS-690 provides this court with a basis for exercising jurisdiction. Mr. Clarke seems to claim that Form HHS-690 establishes a contract in which the government agrees to keep the organization that signed it from violating various federal antidiscrimination laws.<sup>6</sup> His complaint seeks a determination that HUD failed to enforce that “contract” on his behalf. However, Mr. Clarke does not seek any payment from the government. Rather, he appears to be seeking an order to compel HUD to take some action to determine whether his rights were violated in contravention of the statutes identified in Form HHS-690. Thus, Mr. Clarke’s complaint requests only equitable relief without any monetary claim. This court does not

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<sup>5</sup>Indeed, Mr. Clarke has filed complaints in both the U.S. District Court for the District of Colorado, where the alleged discrimination took place, and the U.S. District Court for the Middle District of Tennessee. See Clarke v. Owens, No. 99-2271 (D. Colo. 1999) (dismissed Feb. 18, 2000), appeal dismissed for lack of prosecution, No. 00-1082 (10th Cir. 2000); Clarke v. Obama, No. 09-944 (M.D. Tenn. 2009) (dismissed Oct. 22, 2009 for improper venue).

<sup>6</sup>Form HHS-690, entitled “Assurance of Compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975,” states that “[t]he Applicant provides this assurance [that it will comply with these laws] in consideration of and for the purpose of obtaining Federal grants, loans, contracts, property, discounts or other Federal financial assistance from the Department of Health and Human Services.”

have jurisdiction to consider Mr. Clarke's claim for review of HUD's enforcement of the laws identified in Form HHS-690.

It is well-settled that the Court of Federal Claims may only hear a claim brought against the United States if Congress has specifically and unambiguously waived the government's sovereign immunity for such a suit. United States v. Testan, 424 U.S. 392, 397-98 (1976). The jurisdiction of the Court of Federal Claims is set forth in the Tucker Act, 28 U.S.C. § 1491 (2008). Under the Tucker Act, this Court may hear only claims seeking primarily monetary relief against the United States based upon the money-mandating provisions of "the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1491(a)(1). In construing the Tucker Act, courts have held that this waiver of sovereign immunity permits the court of Federal Claims to render money judgments against the United States, but does not give the court the ability to award general equitable relief. See, e.g., Bowen v. Massachusetts, 487 U.S. 879, 905 (1988) (holding that the Court of Federal Claims does not have general jurisdiction to grant injunctive relief); United States v. King, 395 U.S. 1, 5 (1969) (holding that a suit for declaratory judgment falls outside the jurisdictional purview of the Tucker Act); Brown v. United States, 105 F.3d 621, 624 (Fed. Cir. 1997) (holding that claims for declaratory and injunctive relief were outside the jurisdiction of the Court of Federal Claims); Stephanatos v. United States, 81 Fed. Cl.

440, 445 (2008) (holding that “the Court of Federal Claims has no authority to grant equitable relief ‘unless it is tied and subordinate to a money judgment’” (quoting James v. Caldera, 159 F.3d 573, 580 (Fed. Cir. 1998) (further quotation removed))). Because Mr. Clarke seeks purely equitable relief, the court is not able to exercise jurisdiction over his claim based on Form HHS-690.

The court does not express an opinion today on whether or not Mr. Clarke was the victim of housing discrimination. Rather, this court finds that because it does not have subject matter jurisdiction, it is not permitted to hear this case. Accordingly, Mr. Clarke’s complaint must be **DISMISSED**.<sup>7</sup>

**IT IS SO ORDERED.**

s/Nancy B. Firestone  
NANCY B. FIRESTONE  
Judge

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<sup>7</sup>The plaintiff has filed an application to proceed in forma pauperis. The application is approved for the limited purpose of filing the complaint.