

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

---

Ruth Adjartey, Ismail Abdelhamed, Vesta )  
Ballou, Mildred Collins, Jackeline )  
Cucufate, Marjorie Evans, Matthew )  
Griffin, Gerard Hughes, Donna Mejias- )  
Berrios, Janet Montgomery, Elizabeth )  
Norris, Luciano Oliveira, Mychelyne )  
Oliveira, Susan Osborne, Daniel )  
Peristere, Christy Raymond, Caitlin )  
Ryals, John Schumacher, Myron Swanston )  
Petitioner-Appellants )

Docket No. SJC-12380

v. )

Worcester Housing Court, )  
Original Respondent-Appellee, )  
Santander Bank, Midfirst Bank, )  
Nationstar Mortgage LLC, MRH Sub LLC, )  
Freddie Mac, Fannie Mae, U.S. Bank N.A. )  
As Trustee Of J.P. Morgan Acquisition )  
Trust 2006-WMC3, Lisa Y. Barron, HSBC )  
Bank USA N.A. As Trustee For Nomura )  
Asset Acceptance Corporation Mortgage )  
Pass Through Certificates Series )  
2005-AR3, HSBC Bank USA N.A. As Trustee )  
On Behalf Of Fremont Home Loan Trust )  
2006-C Mortgage-Backed Certificates )  
Series 2006-C, Savers Co-Operative Bank, )  
Deutsche Bank National Trust Co. Trustee )  
For Ameriquest Mortgage Securities Inc. )  
Asset-Backed Pass Through Certificates )  
Series 2003-13, US Bank N.A. As Trustee )  
For Bear Stearns Asset Backed Securities )  
Trust 2004-Ac4, U.S. Bank Trust N.A. )  
Trustee Of Volt 2012-NP11 Asset Holdings )  
Trust )  
Respondents-Appellees )

---

Christine Hilton, Ruth Adjartey, Ismail )  
Abdelhamed, Vesta Ballou, Lori Cairns, )  
Jackeline Cucufate, Marjorie Evans, )

Gerard Hughes, Maria Navedo, Paul Norris) )  
 John Schumacher, Jean Atkinson, Edna ) )  
 Austell, Annette Bent, Steven Bourassa, ) )  
 Samantha Farrar, Patricia Ferreira ) )  
 Bonilla, Kelly Johnson, Felix Kangaru, ) )  
 Heather Kozac, Cheryl Leblanc, Philippe ) )  
 Leblanc, William Marks, Deb Mccarthy, ) Docket # SJC-12406  
 Keith Mckenzie, Paulette McKenzie, ) )  
 Miranda Morgan, Joseph Nuzzolilo, ) )  
 Cynthia O'Gara, Mychelyne Oliveira, ) )  
 Susan Osborne, Thomas Saxe, Al Solitro, ) )  
 Sherry Stanley, Myron Swanston, Stefani ) )  
 Tubert, Tracey Tobin, Cynthia White, ) )  
 Nunciata Sullivan, Lila Ortiz, Carl ) )  
 Rellstab, Carey Souda, Patricia O'Dell, ) )  
 Linda Potter, Brian Potter, Jasmine ) )  
 Alvarez, ) )  
 Petitioner/Intervenor-Appellants ) )  
 vs. ) )  
 ) )  
 Worcester Housing Court, ) )  
 Defendant-Appellee, ) )  
 ) )

Petitioners' Reconsideration of SJC Decision of April 10, 2019  
as Relief is Needed, WHC Actions are Extreme Under the Law

NOW COMES Petitioner Ruth Adjarthey and requests this Honorable Court to amend and expand its decision in the *Adjarthey v. Worcester Housing Court* case given that the Worcester Housing Court's ("WHC") violations of recognized equal rights to access our courts are extreme. Her story is not unusual – it has simply been more clearcut. It is her case in which Petitioners briefed the clearcut violation of the American's with Disabilities Act, but she seeks relief for herself and all WAFT members with disabilities from the *still ongoing (see attached affidavit) and destructive discrimination by the WHC* and justice retroactive as the WHC was timely notified of their rights. They should not be

denied relief for a recognized right just because the WHC refuses to hear pro se defendants present opinions of this Court

#### STATEMENT OF RELEVANT FACTS

Petitioner Adjartey incorporates by reference the facts from the pleadings in this case. Much of these are attached here in one document for this Court's convenience.

On January 3<sup>rd</sup>, 2019, the purported purchaser of Adjartey's home, Santander, filed a new case against her, docket #19H85SP000005

Adjartey has already provided sworn evidence from herself and another witness no auction ever occurred on her home in the previous case<sup>1</sup> #15H85SP003985, filed 4/30/15.

The WHC had no evidence that an auction ever occurred provided by Santander in the record. The only relevant document could be an affidavit of sale attached to the foreclosure deed but the signatory to the document entitled that, the rest of the suite of registry documents recorded along with it show that signatory did not even claim to have been present or have personal knowledge or source of knowledge as to events at the Adjartey home that day.

There has been no evidence of weight to refute the real firsthand, sworn knowledge that Adjartey provided in the 1<sup>st</sup> Santander case. Adjartey is, therefore, separately before this Court as one of the petitioners whose been target of disparate treatment as to weight given affidavits by the WHC. This treatment has befallen all Petitioners and others similarly situated apparently as to being pro se and/or members of WAFT<sup>2</sup>.

---

<sup>1</sup> Adjartey has proof of other violations including significant origination violations but the WHC has never addressed Santander's lack of standing although requested in her Answer and in a further pleadings; by extension, it has never addressed her right to challenge to title as a defense under the proper standard of review.

<sup>2</sup>What appear to likewise be constitutionally guaranteed protection and equal treatment within our courts as to

On January 14, 2019, Adjartey timely filed her Answer and Discovery in this case. This included notice to the WHC that Plaintiff does not have standing.

In Hatcher, this Court reminded the Housing Courts of their own (sua sponte) obligation to address standing as per the HSBC v. Matt decision. So even when Adjartey cannot appear as to disability, the WHC has its own obligation to an evidentiary review as to Plaintiff's standing.

On January 14, 2019, when Adjartey filed answer, the Clerk-Magistrate made sure to remind her what violative treatment she can expect to continue in this case, by saying, "There she goes again," as if he was wasting his time.

#### STANDARD OF REVIEW

Petitioner timely (given request for enlargement) requests modification of this Honorable Court's decisions of April 10, 2019 in Adjartey v. Worcester Housing Court and Hilton v. Worcester Housing Court under applicable rule:

**"Appellate Procedure Rule 27: Motion for reconsideration or modification of decision**

Within 14 days after the date of the decision of the appellate court, any party to an appeal may file a motion for reconsideration or modification of decision unless the time is shortened or enlarged by order. It shall state with particularity the points of law or fact which it is contended the court has overlooked or misapprehended and shall contain such argument in support of the motion as the movant desires to present."

#### ARGUMENT

Adjartey herself has referenced *McDonough*, the petitioner probably since the Worcester Anti-Foreclosure Team first were advised of the existence of the decision by the leading

---

discrimination as pro se or political affiliation is (hopefully) addressed in other reconsideration motions.

Americans with Disabilities Act ("ADA") and disability law in general, in the summer of 2016. She consistently used the Reasonable Accommodation process and forms once she was re-traumatized by the Court and could no longer appear pro se without further harming herself.

This Court affirmed that WAFT members have been correctly using *McDonough, the Petitioner*. That use was, per advice, that it is settled law by the experts they spoke with; that it applied to their civil cases and to apply to them as litigants.

As this is settled law and this Court's decision in that case itself has been filed by Adjartey and other co-members of WAFT directly into their cases in the WHC, given this proper and settled law, Adjartey maintains that she and those similarly situated deserve relief. This top Court's decisions and their settle implications were available not just to the WAFT members but also by the WHC, both given its own obligation to know the law but also because it has been directly argued in front of the WHC a number of times.

Adjartey does not feel that this Court waiting to provide individual relief where the WHC has been apprised of settled law is sufficient. While this Court may understandably believe that affirming what WAFT members have been arguing all along will open the doors to their finding individual relief in relationship to the WHC. In actuality, for numerous reasons,

including the WHC's pattern of discrimination that is unlikely. (see Bent's Motion for Reconsideration submitted May 6, 2019.)

Further as Adjartey understands it, this is a constitutionally guaranteed right. This Honorable Court has affirmed the correct application of the article 114 of the amendments of the Massachusetts Constitution by WAFT members. It seems as if that has been an ongoing right or relief; the Court did not make its decision only "prospective", to apply in the future. In relationship to violation of that right is an established expectation: the Massachusetts inhabitants presumably can rely on this Court's enforcement of the settled interpretation of their Declaration of Rights under the Constitution.

Specifically here, Adjartey addresses the critical issue of "retaliation or coercion" that is explicitly addressed under the Americans with disabilities act, 28CFR section 35.134, (briefed in the appellant brief pages 53-54). The issue of discrimination and coercion or retaliation had been outlined in the facts and in the argument without the reference to the ADA in the initial petitions in the single justice section of this case. This court stated that the ADA had not "been adequately briefed" in the pleadings in our Adjarty v, Worcester Housing Court case.

As the Court states: "instead we rely on MERA, on the Massachusetts constitution, and on our own superintendents' power to confirm Massachusetts courts obligation to provide

reasonable accommodations."<sup>3</sup> It appears from research that relying on the Massachusetts Equal Rights Amendment may make further sense as a priority by this court. See *Guckenberger v. Boston University*, 957 F. Supp. 306 (D. Mass. 1997):

"although the amendment is modeled after section 504 of the Federal Rehabilitation Act, see *Layne v. Superintendent, Mass. Correctional Inst.*, 406 Mass. 156, 159 (1989), the susceptibility of individuals to liability under the state constitution is seemingly greater than individual vulnerability under the federal anti-discrimination provision.... Rather, the amendment appears to sweep broadly, "'secur[ing]' the right of handicapped persons against discrimination," *Grubba*, 803 F.2d at 747, perpetrated by any private person or entity. Cf. *Layne*, 406 Mass. at 160, ("We have no difficulty in concluding in this case that the plaintiffs would have been entitled to a declaration of right ... and to injunctive relief as long as any rights under art. 114 were denied to them.").

Adjarthey suggests as *Guckenberger* does as it continues:

"... "Because of the seemingly unlimited anti-discrimination obligation that Article 114 imposes, and in light of the Supreme Judicial Court's finding that "a person whose constitutional rights have been interfered with may be entitled to judicial relief" directly under the state constitution, *Phillips v. Youth Dev. Program, Inc.*, 390 Mass. 652, 657-58, 459 N.E.2d 453, 457 (1983),"

This Court has recognized that if any of their equal rights [herein to the court] have been found as violated that they are entitled to "a Declaration of Right[s]" "and to injunctive relief".

---

<sup>3</sup> This Honorable Court honored us by using almost down the line our quotes from our brief in this section of its decision (only one citation we had not used.)

Adjarthey's situation in relationship to the WHC was briefed extensively and the WHC never denied any of the Adjarthey sworn facts. With affirmation by this Court as to her rights as a disabled (and indigent) person, she therefore, believes she is certainly positioned for relief.

In her case, the briefs addressed the specific relief provided under the ADA as to retaliation or coercion. Further retaliation has continued. In 2019 the plaintiff in the lower court case briefed here, commenced a new eviction case against Adjarthey. The psychological and physical impact of the trauma from the last case was conjured again for Adjarthey even as she filed her Answer, because no relief has been provided to all the violations of her rights from the last 6 attempts to evict her and her children from their home. None of which would have occurred if she had been allowed any "reasonable" option to participate fully in her case; most of which occurred as a direct retaliation by the WHC in putting down judgments and issuing execution as punishment for standing up for her ADA rights. She had refused to violate Dr.'s orders and relied upon her properly filed reasonable accommodation requests.

Under *McDonough*, once she had notified the court of her disability (filed for Reasonable Accommodation), the burden had shifted to the court to find resolution to protect her and still allow her to participate if there was any such reasonable means.



Instead the court outright denied with no findings of fact, and no alternative negotiation. It laid all the burden on her and refused to participate in any constructive way.

The urgency for relief therefore remains a live issue. Adjarthey is barely in her house having been unconstitutionally stripped of her appeal, both given indigency, the unfair denial of the audio tapes and the court's clearly discriminatory ruling; she paid use and occupancy and fulfilled all her requirements to prosecute her appeal, but the plaintiff was still allowed a dismissal of her timely and proper notice of appeal. If as the case law appears to show the MERA is stronger than the ADA, then Adjarthey's ADA citations<sup>4</sup> as to relief given retaliation or coercion, means surely this court can provide that as well.

Given the WHC's not just acts that discriminate but to "coerce, intimidate, threaten and interfere" with her "exercise or enjoyment of" ..."any right guaranteed or protected by this act", Adjarthey's traumatic reaction to a new filing by Plaintiff

---

<sup>4</sup>28 CFR § 35.134 (a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part. (b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.

Santander, is anything but surprising. She is constitutionally protected from this entire situation even given the lack of these explicit sections under the MERA even though Adjartey did brief the ADA.

Adjartey deserves and urgently needs recognition of the violations of her rights and relief. In this new case the Clerk-Magistrate intentionally invoked the previous case, the violent discrimination and its continuation in this new case. Adjartey reminds the court "once retraumatized in the [previous] case that she consistently participated filing pleadings for every single hearing ... every single time she put in a request for reasonable accommodation, every hearing that actually had content, she attempted to get her CD so that she could accurately and consistently participate, she got affidavits from witnesses to hearings and the CD's weren't provided, to ensure that she could accurately reflect back to the court what had happened in the hearings. She used every little bit of reasonable accommodation given to her to find an attorney; she did, in fact, find and employ an attorney who was prepared to represent her until lied to by the Clerk-Magistrate to a history of "having attorneys on and off this case" and scared off her attorney from representing her. Adjartey attempted to contact and get the intervention of the Courts' statewide ADA.

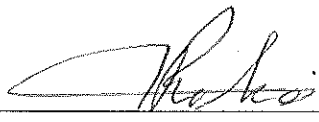
### PRAYER FOR RELIEF

For all the above reasons, Petitioner Adjartey requests her right to relief as already recognized by this Court when violations to Constitutional Rights as to disability are violated and especially as to having a disability; she requests the relief on the basis explicitly outlined in the Americans with Disabilities Act or under the MERA with the promise that the State obligation is at least as strong.

She has a right to be removed from the discrimination, retaliation and coercion of the WHC — as to Clerk-Magistrate, Judges and the condoning of the violative behavior of the lawyers against her. Petitioners have suggested being transferred to another venue, recusal or the stop of their eviction cases.

She has a right to repair of the previous Santander case — as to her tapes, as to her evidence being evenhandedly reviewed, as to a proper test as to Santander having standing, reasonable accommodation, a repair of the scaring of her attorney by misrepresentation; and, further, as to her right to appeal with Summary Process protection against eviction if a proper handling to the first Summary Process case given the list of just articulated repairs fails. No new case should yet be able to exist if the previous (Adjartey believes Constitutionally-guaranteed) relief is provided at this point.

Respectfully submitted:



---

Ruth Adjartey  
32 Rodney St. & 35 Laurel St.  
Worcester, MA 01605 & 01608

Date: 5/8/19

CERTIFICATE OF SERVICE

I, the below signed, hereby certify that a true and correct copy of the above and foregoing has been furnished to all opposing parties by pre-paid First Class Mail, U.S.P.S.

Worcester Housing Court's Attorney

Maryanne Reynolds

Assistant Attorney General

Government Bureau

Office of the Attorney General

10 Mechanic St., Suite 301

Worcester, MA 01608

774-214-4407

508-795-1991 (fax)

[Maryanne.reynolds@state.ma.us](mailto:Maryanne.reynolds@state.ma.us)

Re: Docket# 16H85SP001387, Barron, Lisa Y. v. Montgomery

Henry Raphaelson, Esq.

Raphaelson & Raphaelson

430 Main St.

Worcester, MA 01608

Re: Docket #16H85SP004125, MR II Sub I, LLC v. Cucufate

Tracey A Kish, Esq.

Korde & Associates

900 Chelmsford St. Suite 102

Lowell, MA 01851

Re: Docket#14H85SP000710, U.S. Bank National Association Trustee  
of J.P. Morgan Mortgage Acquisition Trust v. Berriós

Adam M. Hamel, Esq.

Andrew Hamilton, Esq.

Shiva Karimi, Esq.

McLane Middleton Professional Association

300 Trade Center Suite 7000

Woburn, MA 01801

Re: Docket#16H85SP000150, Nationstar Mortgage, LLC v. Ballou

Neil W. Heiger, Esq.

Shechtman Halperin Savage, LLP

1080 Main St.

Pawtucket, RI 02860

Re: Docket #16H85SP002533, HSBC Bank, USA, National Association  
v. Oliveira, et al

Andrew B. Delory, Esq.

Law Office of Paul A. Delory

365 Broadway

Everett, MA 02149

Re: Docket #16H85SP000940, Savers Co-operative Bank D/B/A Savers  
Bank v. Peristere

Howard P. D'Amico, Esq.

Howard B. D'Amico, P.C.

33 Waldo St.

Worcester, MA 01608

RE: Docket #16H85CV000234, Norris, Elizabeth v. HSBC Bank USA,  
National Association as Trustee

Re: Docket #10H85SP001207, U.S. Bank, N.A. as Trustee v.  
Schumacher

K & L Gates, LLP

Michael Robert Murphy, Esq.

Morgan T. Nickerson, Esq.

State Street Financial Center

One Lincoln Street

Boston, MA 02111-2950

Re: Docket #15H85SP004099, Federal Home Loan Corporation v.  
Evans Patrick Beaton

Doonan, Graves & Longoria

100 Cummings Center, Suite 225D

Beverly, MA 01915

Re: Docket #16H85SP002415, Fannie Mae A/K/A Federal National  
Mortgage Association v. Hughes

William Lawson

McCarter & English

265 Franklin Street

Boston, MA 02110

Re: Docket #15H85SP003985, Santander Bank, N.A. v. Adjartey,

Re: Docket #16H85SP001313 MidFirst Bank v. Abdelhamed,

Re: Docket #16H85SP004400 MidFirst Bank v. Raymond,

Re: Docket #15H85SP003287, #15H85SP003288, #16H85SP003289,

U.S. Bank Trust, N.A. Trustee of VOLT 2012-NPL1 Asset Holdings  
Trust v. Swanston,

Re: Docket # 14H85SP000755 Fannie Mae v. Osborne,

Re: Docket #13H85CV000283, Fannie Mae v. Griffin

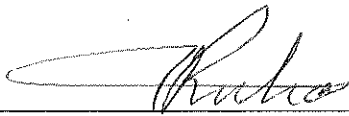
Steven Michael Stoehr, Esq.

Orlans Moran PLLC

PO Box 540540

Waltham, MA 02454





---

Ruth Adjartey

32 Rodney St. & 35 Laurel St.  
Worcester, MA 01605 & 01608

Date: 5/8/19

# EXHIBIT A

**Ruth Adjartey**  
**32 Rodney St. & 35 Laurel St.**  
**Worcester, MA 01605 & 01608**

I, Ruth Adjartey, am of legal age and live at 35 Laurel Street, Worcester, MA, 01608. I, being duly sworn, do hereby depose and swear of my own personal knowledge the following statement:

- 1) In and about 2015, Santander Bank supposedly foreclosed on my home at 32 Rodney Street, Worcester 01605.
- 2) Then it sued me in the Central Division of the Housing Court Department for eviction.
- 3) During that eviction case, going into the courtroom or even having my case called, and going into the Clerk's Office, gave me extremely painful migraines.
- 4) My doctor gave me a note saying that your disability prevented me from going into the courtroom.
- 5) Before a hearing, the lawyer Santander asked me out in the hallway why I was talking with a friend. I got panicky and shaky.
- 6) I went into the courtroom but I was confused. I could not speak.
- 7) I asked for the reasonable accommodation of being able to be available in the hallway, outside the courtroom, when my case was called.
- 8) The court ruled for Santander, and ordered me and my family evicted from our home.
- 9) When I was in the Clerk's Office talking with Chief Clerk-Magistrate Moudios, he seemed to be excited that I was going to be evicted.
- 10) Eviction was scheduled for December 11, 2017.
- 11) The constable broke in the front door. He pushed me and a friend, Lori Cairns, over on the fence on my front porch.
- 12) That morning, however, my son got the Bankruptcy Court to stay the eviction.
- 13) After that, Santander Bank wanted me to buy back our home. But eventually it did not respond to me.
- 14) Then, this year, I came home and found that Santander had put a padlock on the front door and put a Notice on the door.

- 15) Santander gave my home to a realtor. The realtor called me about when I would move out.
- 16) But the court said that Santander had waited too long to evict me. It dismissed the case.
- 17) Santander then started a new case.
- 18) Between three weeks and a month ago, I went to file my Answer and Discovery request at the Clerk's Office.
- 19) Lori Cairns went with me.
- 20) Mr. Moudios took my Answer and Discovery form, and a new note from my doctor saying that my disability meant that I could not go into the courtroom.
- 21) Mr. Moudios read my papers.
- 22) Then he said, "There she goes again," as if he was wasting his time.
- 23) The moment he said this, all my hope was gone. I was so confused. It was so overwhelming.
- 24) I thought that Mr. Moudios was going to ruin my life.
- 25) Lori Cairns was with me. She saw me give my papers to Mr. Moudios, and heard what he said.
- 26) She tried to comfort me, and told me not to worry.
- 27) Since that day, I have experience extreme anxiety even thinking about the Worcester Housing Court and my case.
- 28) In the last 24 hours since I knew I was coming to the WAFT office and must talk about my case, I was unable to sleep last night; I experienced such heart problems my doctor immediately put me on new medication; when I try to sleep I have this sensation of my brain falling out; I broke out in a rash when I arrived at the office.

Subscribed to and sworn under the pains and penalties of perjury this \_\_\_ day of

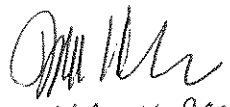
5/8/19, 2019

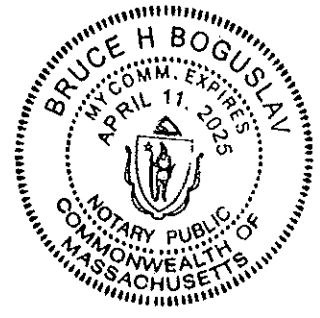
Signed: 

Printed Name: Ruth Adjartey

WORCESTER COMMONWEALTH OF MASSACHUSETTS  
(County), ss.

On this 8<sup>th</sup> day of MAY, 20 19, before me, the undersigned notary public, personally appeared RUTH ADJARTY who proved to me through \_\_\_\_\_ (mark an X) satisfactory evidence of identification, which was \_\_\_\_\_ or was X (mark an X) known to me to be the person(s) who signed the preceding document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her/their knowledge and belief.

Notary Public   
Printed Name: BRUCE H. BOGUSLAV  
My Commission Expires: APRIL 11, 2025



# EXHIBIT B

ADJARTEY DISABILITY-RELATED QUOTES FROM ALL PLEADINGS IN THE  
RECORD

pp. 10-11

**STATEMENT OF FACTS/HISTORY OF CASES:**

Ruth Adjarthey - SANTANDER BANK, N.A. v. DOKU, ERIC et al.; Docket#15H85SP003985 (APP155, APP157)

3/16/16 Request for electronic recording  
8/22/16 Motion to waive costs of CDs-TUA-DENIED ON  
8/23/16 Motion DENIED  
8/22/16 Request for electronic recording  
8/30/16 Request for electronic recording - Indigency DENIED  
8/30/16 Motion to waive costs of CDs - Denied on  
9/01/16 Motion DENIED  
9/26/16 Notice of Appeal including CD request  
3/07/17 Notice of Appeal including CD request  
3/28/17 Notice of Appeal including CD request

Ruth Adjarthey and her five children are still in their home. She has limited English and a disability of which she informed the Court.

On 3/16/16, Adjarthey was prepared to argue her Pretrial Memorandum, however, before the hearing, Plaintiff's attorney *bullied* her in the hallway.

In court, she said that she needed the Pooling and Servicing Agreement and then "froze," unable to speak.

She immediately filed for the CD as she had "frozen" and events had moved far too fast for her to fully understand or remember.

Heard that afternoon, the Judge demanded that she tell right then what she did not understand. Adjarthey replied:

- (i) The lawyer had used language and arguments that she did not completely grasp;
- (ii) He had stated untruths; and
- (iii) She needed the CD to review and prepare her presentation.

The Judge argued with Adjarthey to pinpoint what she had not understood -which was exactly why Adjarthey asked for the CD.

For the next 36 hours, as a physiological response to the stress, Adjarthey could not function. She was unable to work and was unable to care for her family.

In August 2016, with the WHC's new requirement of

hearings to waive CD fees, Adjartey had to appear again, pro se. The Judge denied her the CD both for her own review and for her new LAR attorney. The Judge then set the summary judgment motion for a time that her attorney could not make.

Adjartey decided to comply with her doctor's strict order that she not appear in Court and sat in the hallway. Court staff came out more than once and pressured her to enter the courtroom. She refused, and later cried in someone's arms in relief that she had refused.

Given her doctor's order to avoid the courtroom, and the WHC's requirement to physically appear to argue one's need for the CDs, Adjartey is in an insuperable Catch-22 and can never know exactly what happened in her hearings.

Adjartey also requested her CDs with her Notice of appeal. She paid use and occupancy four times as ordered pending appeal, but the WHC never acknowledged the CD 12 request nor assembled the record. WHC then dismissed her appeal for lack of prosecution based on its own inaction.

Adjartey also filed a Single Justice appeal to stop a subsequent eviction. This new judgment issued outside of rule as part of a threat by Judge Theophilis for not entering the courtroom against her doctor's orders. The WHC Clerk told the Appeals Court that the execution issued by mistake and would be recalled. It never was.

pp. 30-31

C. Did the Single Justice err in not recognizing the WHC regular practice disparate based on indigency is discriminatory; includes an element of public shaming; and violates the concept of not having to pay for justice, and the *Reade v. Galvin* decision that an access issue that somebody with more money can cross the hurdle of it, but if you are indigent, you can't, that that is unconstitutional, statutorily prohibited, and against our jurisprudence, specifically, by allowing the WHC create multi-step process requiring a hearing and still deny a fee waiver for Compact Discs (CDs) of Petitioners' WHC hearings:

i. When explicitly needed for appeals, both full and interlocutory?

See Adjartey, Berrios-Mejias, Cucufate, Evans, Montgomery, Norris, Elizabeth, Ryals, Swanston (Full),  
See Adjartey, Ballou, Collins, Evans, Montgomery,



Schumacher (Interlocutory)

ii. When a necessary, reasonable accommodation was denied/ignore or in general their disability barred them from being at a hearing?

Petitioners believe, where applicable, the WHC should followed second step in *McDonough*. It never has: "(2) where there is a dispute concerning such a witness' request for accommodation, a judge should conduct a hearing to resolve the dispute, preferably before trial, and the witness should be provided with reasonable accommodation, if available, during the pretrial hearing..."

In fact, in contrast, the novel CD hearing upon which the WHC insists has, in almost all cases, been held in open Court, before the public, and with, amazingly, equal participation by Plaintiffs. The records of such Judicial conduct resides in the CD's denied to Petitioners.

*McDonough, the Petitioner* "In resolving a witness's request for accommodation, a judge should give primary consideration to the accommodation requested. Cf. 28 C.F.R. § 35.160 (b)(2) (2009)"

pp. 49

Except for initially in Adjartey's case, the acceptance of a proposed reasonable accommodation or the renegotiation has not occurred. The WHC focus has been the legitimacy of the medical necessity and refusal of party's suggested accommodations. Without WHC engagement, parties with disabilities have been denied the only proposed accommodations they could think of, such as:

compliance with existing WHC rules (See, Norris ); or continuances, such as the WHC frequently grants to Plaintiff banks for much more extended time to reply to pro se WAFT members' timely filed discovery requests. Notification of a disability itself appears to have worsened some WHC actions.

Nor do those disabilities mentioned or discussed in Court fare better – not appearing on docket or in written decisions with required reason for denial of reasonable accommodation. Petitioners lack the CDs to document this. Where the WHC has denied Petitioners the reasonable accommodations, it then decides against the party with the disability. (See Adjartey, Evans, Norris, Astley.)

The attempted exercise of those rights – again where parties with disabilities participated extensively in their cases always at least being present in the Courthouse, through extensive written filings, etc. – has been the *only written reason given for imposing a default judgment*, see

pp. 51

Adjarthey, Evans, Griffin, and Astley<sup>19</sup>. Not having been present, the denial of the CDs for these Petitioners with disabilities is especially damaging; they have the additional, critical need to appeal effectively and show that the Court's judgment against them was not properly a default; they had participated as fully as they could, but were given no consideration or negotiation of a reasonable accommodation. Even more damaging, in Summary Process, the erroneous entry of a judgment as "by default" leaves the defendant outside of Summary Process Rules' protection from eviction pending appeal! Evans, Adjarthey, Hughes and others desperately

pp 54

In Adjarthey's case, the Judge in open court ordered Court personnel to go out and tell Adjarthey to come in or she, the Judge, would rule against Adjarthey for refusing to appear – in direct contradiction of doctor's orders in her case file. The Judge did so rule but the CD evidence of this Adjarthey cannot obtain even after CD requests.

pp. 55-56

Adjarthey had an eviction scheduled for Mon, Oct. 17, 2016. On Oct. 14, Adjarthey was denied by Chief Judge Horan her emergency stay of eviction, summarily, because the Judge refused to look at her submitted documents since her disability prevented her from making healthful entry into the courtroom.

When Adjarthey then filed her emergency stay appeal with the single justice, the single justice order of Oct. 17 explained that no stay was necessary because WHC informed them that the execution had been given out in error and thus it would be recalled. While no longer an order as such, the WHC avoided the entry of an order with the promise that the execution would be recalled, however it wasn't recalled. Instead, the execution hung over Adjarthey's family's head unfairly, and contradicting the earlier agreed status by

both Courts.

pp.2

In fact, Petitioner Adjartey faces imminent dismissal of her full appeal of the *judgment in her case because even though she is paying monthly use and occupancy, she cannot have the WHC compile the record in her case; having been denied the audio recordings in her case she cannot review them and get any transcription necessary to her appeal and get it entered into the record so her appeal can go up.*

...

The urgency of immediate action from the Court cannot possibly be properly expressed here.

We throw ourselves on the urgent mercy of this Honorable Court. We pray you require that the WHC follow Summary and Civil Process Rules on provision of audio recordings, that they end disparate treatment based on indigence, for many of these Petitioners, based on having a disability, and, Petitioners suspect, being *pro se*.

In some Petitioners' cases where the need for CDs is especially acute given disabilities that affect Petitioners' ability to fully participate without reasonable accommodations (also overwhelmingly denied), Petitioners are cornered into losing or having lost at least for now, possession of their homes; as homeowners also having a right to challenge the underlying foreclosure in their defense and needing this as their only affordable court option for challenging their foreclosure. This can also spell an end to their one apparent opportunity to *prove and reverse* an illegal foreclosure of their home.

Pp. 6

1. Ruth Adjartey is a home health aide She speaks limited English and has a disability. Adjartey and her ex-husband Eric Doku, have owned their home since May 1, 2006, at 32 Rodney Street in Worcester, where they resided with their 5 children. They signed mortgages on May 1, 2006 with Sovereign Bank. The date of purported foreclosure was June 23, 2015 by Santander Bank FKA Sovereign Bank. On September 30, 2015 a Summary Process case was filed at the WHC. Adjartey is considered indigent under the Court Indigency Laws, Section A. Adjartey has a medical disability which she has informed the Court about under Title II of the Americans with Disabilities Act ("ADA Adjartey is a single Mother; she and her 5 children are still in their home.

STATEMENT OF FACTS/HISTORY OF CASES:

Ruth Adjarthey

SANTANDER BANK, N.A. formerly known as SOVEREIGN BANK N.A.,  
Formerly known as SOVEREIGN BANK v. DOKU, ERIC et al;  
Docket#15H85SP003985

On 3/16/16, Adjarthey had been prepared to argue her extensive and complicated pre-trial memorandum, despite the challenges as a *pro se* litigant. Adjarthey was unable to do more than state that she needed the pooling and servicing agreement as she "froze," basically unable to speak, based on having just been bullied in the hallway by the plaintiff's attorney.

Adjarthey went back that afternoon and requested again that her motion to compel be scheduled as she requested. The Judge refused claiming that Adjarthey had already been heard even though she had been unable to speak.

She also immediately requested the audio recording as she had been frozen in Court and unable to remember what happened; it was denied.

In August 2016, because of the WHC's imposition of this new requirement that you have to put yourself on public display if you are indigent and need to ask for Court recordings, Adjarthey had to appear before the judge in an indigency hearing to request her recordings. Of course, the attorney for the plaintiff was not present since it was an indigency matter. Adjarthey was not allowed to get the recording for her own review and hopefully for the review of her new attorney. After the pre-trial conference Adjarthey requested the Court recording because she did not understand everything that transpired during the conference, because she froze, and the events had moved way too fast for her to fully understand. The Judge demanded that she tell right there and then what she didn't understand. Adjarthey eloquently expressed to the Judge that the lawyer had used language and arguments that she did not completely grasped and that he had said things that were untrue and that she needed the recording to review and prepare her presentation. But alas, she was denied by the judge.

While the Petitioner of course, did not have the CD from her hearing, the Judge apparently proceeded to get into an argument with her about whether she had in fact understood everything that had happened in the morning hearing and wanted to know what it was she had not understood at the time exactly so that Adjarthey was asking for the CD.

Adjartey then experienced a 36 hour period during which she could not function, because of the physiological response to the stress of the Court. She could not work and could not take care of her family.

So, when the summary judgment motion was required to go forward at a time her attorney could not make, Adjartey decided to honor the medical orders that she was under, especially given the serious health incident that had happened after the previous Court appearance, although she was pressured more than once by Court personnel to go into the courtroom. With support, she sensibly refused and eventually cried in someone's arms in relief that she had not forced herself to go into the courtroom, even under repeated pressure by Court personnel.

Although Judge Theophilis and the Court did, twice, take special action to provide Adjartey with the reasonable accommodation that she needed to function in the Courtroom given her severe post-traumatic stress, the argument over the tape and other incidents earlier eventually left Adjartey unable to appear in Court without such serious health consequences that she was under strict doctor's orders not to appear. The practice supported by the Worcester Anti-Foreclosure team is that even disabled are encouraged to participate up to their safe limit in the Court process. Therefore, Adjartey has always been in the Courthouse and has always submitted written materials and requested the Court to read her pleadings as part of the hearing process and deliberation of the Court.

This has made her much more dependent on getting the CD's so she knows what has occurred during public hearing and made this new absolute requirement by the Court that one physically appear to one's need for the audio recordings, a circular process that guarantees her inability to have accurate information about what has happened in Court in her case.

The one time that other members of the Worcester Anti-Foreclosure were in Court and swore out affidavits as to what has happened, they were then admonished that they got it wrong, but Adjartey continues to have no access to the audio recording to verify what did or didn't happen in that and the other hearings that have occurred.

Having been denied more than once the audios for her entire case Adjartey is now confronted with the problem that she can't get her CDs to prosecute her appeal. Although she is paying use and occupancy as ordered pending her appeal, she cannot compile the record and go forward with her appeal, the plaintiff has scheduled to have the appeal dismissed for non-prosecution and Adjartey may lose her home.

## APPELLANT BRIEF

pp. 53-54

Petitioners reluctantly raise this final violation of the ADA, but it reflects their experience:  
28 CFR § 35.134 Retaliation or coercion.

(a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

(b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.

For Petitioners whose disability (without a Court accommodation) means that they cannot appear, WAFT members still do their best to participate by, for instance staying available in the courthouse hallway, and having other WAFT members in the courtroom to observe. This practice has allowed very unfortunate behavior where Court personnel approach those with such medically documented limitations and tell them, often repeatedly, and sometimes as direct messages from Judges - that they must come in from the hallway and appear.

In Adjartey's case, the Judge in open court ordered Court personnel to go out and tell Adjartey to come in or she, the Judge, would rule against Adjartey for refusing to appear - in direct contradiction of doctor's orders in her case file. The Judge did so rule but the CD evidence of this Adjartey cannot obtain even after CD requests.