

No. 18-1407

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IN THE  
**Supreme Court of the United States**

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ANITA M. BARROW,

*Petitioner,*

v.

B. GRANT WILLIS; MARGARET GIFFORD; SOTHEBY  
INTERNATIONAL REALTY, INC.; HERBERT A. BARROW, JR.;  
WILLINDA POWELL GRAY; MICHELLE MALDONADO, ESQ.;  
GEORGE J. MACKOUL, ESQ.; BRIAN MOONEY;  
MOONEY PLANNING COLLABORATIVE, LLC;  
MICHAEL C. HARLOW; SDSB INVESTMENT GROUP, LCC;  
MUTUAL BANK; BRUCE DUPHILLY; JOHN AND JANE DOE;  
JENNIFER S. D. ROBERTS; DOUGLAS AZARIAN;  
FALMOUTH REALTY INVESTMENTS, LLC;  
DAVID H. BENTON; BARNSTABLE COUNTY  
DEPARTMENT OF HEALTH AND ENVIRONMENT;  
KENDALL AYRES; KINLIN GROVER REAL ESTATE,

*Respondents.*

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**On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the First Circuit**

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**PETITION FOR REHEARING**

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ANITA M. BARROW  
*Pro Se Petitioner*  
101 Lakeshore Drive  
Oakland, New Jersey 07436  
(201) 337-7426  
taybaran@aol.com

November 1, 2019

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## TABLE OF CONTENTS

	Page
TABLE OF CONTENTS .....	i
TABLE OF AUTHORITIES.....	vi
PETITION FOR REHEARING.....	1
INTRODUCTION .....	1
RULE 29.4 STATEMENT .....	3
ENFORCEMENT OF THE MANDATE IS- SUED BY THE FIRST CIRCUIT CREATES CONSTITUTIONAL CRISIS BY IGNORING CONGRESSIONAL INTENT AND WELL ESTABLISHED FEDERAL CONTROLLING LAW.....	3
CONSTITUTIONALLY DUE PROCESS UN- FAIRLY NOT AFFORDED TO APPELLANT IN THE STATE ACTION.....	7
INACCURATE FACT FINDING AND INADE- QUATE CONSIDERATION OF FRAUD UPON THE COURT RESULTING IN DISCRIMINA- TION .....	9
CONCLUSIONS.....	12
CERTIFICATE OF COUNSEL.....	13

## TABLE OF CONTENTS—Continued

APPENDIX	Page
APPENDIX A Mass Appellate Courts – Docket Entries.....	1a
APPENDIX B Commonwealth of Massachusetts Appeals Court – Motion for Reconsideration of Memorandum and Order Issued on 4/22/2019, Item # 61 .....	5a
APPENDIX C Commonwealth of Massachusetts, The Trial Court Probate and Family Department- Judgement (Amended).....	14a
APPENDIX D Commonwealth of Massachusetts, Barnstable, ss., Probate and Family Court Dept. – Motion for Permission to File a Complaint for Contempt, 6/30/2019....	17a
APPENDIX E Letter from George J. MacKoul to Anita M. Barrow Regarding Payment of Attorney's Fees, May 2, 2019.....	20a
APPENDIX F Commonwealth of Massachusetts Appeals Court – Memorandum and Order Pursuant to Rule 1:28 .....	22a
APPENDIX G Commonwealth of Massachusetts Transcript Cover Captions, February 9, 2015 through December 9, 2015 .....	31a
APPENDIX H Commonwealth of Massachusetts, Barnstable, ss., The Trial Court Probate and Family Court Department – Hearing, February 9, 2019 .....	39a

## TABLE OF CONTENTS—Continued

	Page
APPENDIX I Commonwealth of Massachusetts, Barnstable, ss., The Trial Court Probate and Family Court Department – Hearing, April 15, 2019 .....	58a
APPENDIX J Commonwealth of Massachusetts, Barnstable, ss., The Trial Court Probate and Family Court Department – Hearing, May 1, 2019 .....	65a
APPENDIX K Commonwealth of Massachusetts, Barnstable, ss., The Trial Court Probate and Family Court Department – Hearing, June 18, 2019 .....	86a
APPENDIX L Commonwealth of Massachusetts, Barnstable, ss., The Trial Court Probate and Family Court Department – Hearing, October 15, 2019 .....	92a
APPENDIX M Commonwealth of Massachusetts, Barnstable, ss., The Trial Court Probate and Family Court Department – Hearing, November 12, 2019 .....	95a
APPENDIX N Commonwealth of Massachusetts, Barnstable, ss., The Trial Court Probate and Family Court Department – Hearing, November 30, 2019 .....	97a
APPENDIX O Commonwealth of Massachusetts, Barnstable, ss., The Trial Court Probate and Family Court Department – Hearing, December 9, 2019 .....	126a

## TABLE OF CONTENTS—Continued

	Page
APPENDIX P Commonwealth of Massachusetts, Barnstable, ss., The Trial Court Probate and Family Court Department – Ex parte Motion for Temporary Restraining Order and Short Order of Notice, December 09, 2015 .....	139a
APPENDIX Q Massachusetts, Barnstable Probate and Family Court – Docket Report..	146a
APPENDIX R Anita Barrow, Respondent and Plaintiff-In Counterclaim First Set of Requests for Admissions of Facts to Willinda Powell Gray, Petitioner, March 7, 2015 .....	158a
APPENDIX S Commonwealth of Massachusetts, Barnstable, ss., Probate and Family Court – Respondent’s Motion to Request Documents and Records for the Re-Assembly of the Appeal, 9/8/2017.....	164a
APPENDIX T Commonwealth of Massachusetts, Barnstable, ss., Probate and Family Court – Description of Land Partition, October 26, 2014 .....	167a
APPENDIX U General Docket – Third Circuit Court of Appeals .....	172a
APPENDIX V Report .....	194a
APPENDIX W Commonwealth of Massachusetts, Barnstable, ss., Probate and Family Court – Anita Barrow, Respondent and Plaintiff-In Counterclaim First Set of Requests for Admissions of Facts to Willinda Powell Gray, Plaintiff.....	200a

## TABLE OF CONTENTS—Continued

	Page
APPENDIX X Anita Barrow, Respondent and Plaintiff-In Counterclaim First Set of Requests for Admissions of Facts to Willinda Powell Gray, Plaintiff- March 7, 2015.....	203a
APPENDIX Y Requests for Copies of Exhibits .....	209a
APPENDIX Z Barnstable Probate and Family Court- Respondent's Answer to Petitioner's First Set of Interrogations and Respondent's Answer to Petitioner's Request for Production of Documents, July 17, 2015 .....	212a
APPENDIX AA Commonwealth of Massachusetts Appeals Court – On Procedural Errors Of Law In the Barnstable County Probate Court, January 31, 2018.....	214a
APPENDIX BB Commonwealth of Massachusetts – Notice of the Assembly of the Record on Appeal – Supplemental Appellate Court Entry Statement.....	223a
APPENDIX CC Excerpts of the Last Will and Testament of Emma M. Barrow .....	231a
APPENDIX DD Excerpts of Executor Deed for 260 Sippewissett Road.....	235a
APPENDIX EE Standard Purchase and Sale Agreement [#503] ( <i>With Contingencies</i> ), April 10, 2015 and May 4, 2015.....	238a

## TABLE OF AUTHORITIES

CASES	Page(s)
<i>Adams v. United States ex rel. McCann</i> , 317 U.S. 269, 272-73 (1942).....	4
<i>Ho v. Donovan</i> , 569F.3d 677, 2009 U.S. App. LEXIS 13367 .....	5
<i>McClellan v. Carland</i> , 217 U.S. 268, 280 (1910).....	6
<i>Durfee v. Duke</i> , 375 U.S. 106 (1963).....	7
<i>Marshall v. Marshall</i> , 547 U.S. 293 (2006).....	7, 8
STATUTES	
Sup.Ct. R. 44.....	1
Sup. Ct. R. 44(2) .....	1, 13
14 Stat. 27-30, enacted April 9, 1866 (Civil Rights Act of 1866).....	2, 3, 7
28 U.S.C. § 165(a).....	1
28 U.S.C. § 1331 .....	3
28 U.S.C. § 1651(a).....	1, 4
28 U.S.C. § 2201 .....	3
28 U.S.C. § 2403(a).....	3
42 U.S.C. § 1367 .....	3
42 U.S.C. § 3601 <i>et. seq.</i> (Fair Housing Act Amended) .....	2, 3, 6, 9
42 U.S.C. § 3603 .....	2

## TABLE OF AUTHORITIES—Continued

	Page(s)
42 U.S.C. § 3613 .....	3
42 U.S.C. § 3617 .....	5
Federal Rule of Appellate Procedure 41(a) .	3
Federal Rule of Appellate Procedure 41(b) .	4
Judiciary Act of 1789, 1 STAT. 81 (1789)....	4
24 C.F.R. § 180.420 .....	4, 5, 6
24 C.F.R. § 100.600 Quid Pro.....	5
24 C.F.R. § 180 .....	6
Rule 4 of Massachusetts Appellate Rules Civil for Appeal .....	9

## CONSTITUTIONAL PROVISIONS

Constitution of the United States of America (Article II, Fourteenth Amend- ment) .....	7
Constitution of the United States of America (Article III) .....	7
Constitution of the Commonwealth of Massachusetts (Article CVI) .....	7

## **PETITION FOR REHEARING**

### **INTRODUCTION**

Pursuant to Sup.Ct. R. 44, petitioner Anita M. Barrow (“petitioner” or “Ms. Barrow”) respectfully petitions this Court for an order:

- (1) granting rehearing;
- (2) granting stay of Mandate to maintain the status quo pending resolution of panel rehearing;
- (3) vacating the Court’s October 07, 2019, order denying certiorari;
- (4) re-disposing of this case by granting the petition for a writ of certiorari and vacating: (a.) the First Circuit’s December 07, 2018 Order dismissing Petitioner’s appeal *with prejudice* and (b.) the Orders on appeal to this Court issued by the US District Court of Massachusetts, “MDC”, which if not vacated, would permit court engagement in egregious acts prohibited by the Constitution of the United States of America and well established rule of law causing unjust and irreparable harm to Petitioner.
- (5) Lastly, Petitioner requests the Court consider issuing a Writ of Mandamus to the MDC to facilitate engagement in actions agreeable to the usages and principles of law pursuant to 28 U.S.C. § 1651(a).

This Petition is being made fully mindful of the restrictions and requirements of Sup. Ct. R. 44(2). The proceedings in the courts below have not been stayed. Absent stay and hearing by this Court, proceedings continue to progress in the lower court permitting Defendants to continue circumvention and repudiation of Petitioner’s inalienable federal civil rights based in equity to due process established by Congress

to stop discrimination in the sale of housing pursuant to 42 U.S.C. § 3603; and rights guaranteed to Petitioner under the Civil Rights Act of 1866 to enforce contracts, own property, sue in court, and enjoy the full protection of federal law. Since the docketing of Petitioner's Writ for Certiorari on May 08, 2019, intervening circumstances of a substantial or controlling affect have occurred. The Appeals Court of the Commonwealth of Massachusetts, "Mass Appeals Court," ordered rescript of the Probate Court's December 26, 2016 Order under appeal in this Court. Significantly, the Mass Appeals Court's Memorandum and Order Pursuant to Rule 1:28 (App.5a) allowed Petitioner's motion to expand the record to include documents filed in the MDC and takes judicial notice that in the Federal District Court Petitioner filed suit against the Commissioner, as well as her siblings and numerous siblings connected with the property. The Mass Appeals Court took judicial notice at on the date its Memorandum and Order was filed on January 29, 2019; the MDC had dismissed the case in late 2016 and the appeal from that decision was dismissed by the United States Court of Appeals in the First Circuit in late 2018. Absent this Court Order vacating the mandate and MDC Orders on file; the Mass Appeals Court cannot reconsider rescript of its Memorandum and Order based on documents on file in the MDC. Intervening circumstances of a controlling nature did not permit Petitioner to file a supplementary brief in this Court because she was required to write briefs in a case before the Third Circuit Court of Appeals, Case No: 19-1846, where she is *pro se*. This case involves application of the FHA amended to discrimination in foreclosure processes in New Jersey. Hearing of Petitioner's request for consideration of broadening the application of the Fair Housing Act, recently

amended in October 2016, to include to partition and sale of heirs properties owned as co-tenants in common to protected and non-protected classes when discrimination occurs.

*In Bank of America v. City of Miami, Florida*, 137 S.Ct. 1296 (2017).

#### **RULE 29.4 STATEMENT**

This petition draws into question the constitutionality of certain applications of a federal statute, as interpreted by the state courts below. The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2201, 42 U.S.C. § 3613, and the Court's supplemental jurisdiction over Plaintiff's state law claims under 42 U.S.C. § 1367. Original jurisdiction over this action pursuant to 28 U.S.C. § 1331 (Federal question). 28 U.S.C. § 2403(a) may apply and the Fair Housing Act as amended and the 1866 Civil Rights Act. Judgments under appeal from the lower Courts, United States District Court of Massachusetts and the Barnstable County Probate Court as written clearly violate the United States Constitution, Congressional Intent, the FHA and other civil rights laws formulated by Congress and based in equity to ensure fairness and due process in the sale by realtor of a residential property owned protected classes.

#### **ENFORCEMENT OF THE MANDATE ISSUED BY THE FIRST CIRCUIT CREATES CONSTITUTIONAL CRISIS BY IGNORING CONGRESSIONAL INTENT AND WELL ESTABLISHED FEDERAL CONTROLLING LAW**

The Mandate issued by the First Circuit on December 14, 2018 pursuant to Federal Rule of Appellate Procedure 41(a) was issued prematurely and *in lieu* of any consideration of Petitioner's timely filed petition

for hearing in banc. Federal Rule of Civil Procedure 41(b) requires mandate to be issued (7) days ("after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later.")

Subsequently, thereto, *none* of Petitioner's pleadings on appeal in the First Circuit, including her brief, petition for en banc hearing, and motion pleadings alleging, *inter alia*, fraud and quid pro quo harassment under the Fair Housing Act amended, "FHA," by Defendants were considered on the merits.

An Order vacating the Mandate and permitting Stay and/or issuance of Writ of Mandamus is needed to aid the First Circuit which otherwise might be defeated by the unauthorized actions and judgments of the US District Court of Massachusetts and Probate Court below. ("The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a) (1946). This provision is derived directly from the Judiciary Act of 1789, 1 STAT. 81 (1789). See *Ex parte Peru*, 318 U.S. 578, 582 (1943); *Adams v. United States ex rel. McCann*, 317 U.S. 269, 272-73 (1942)).

The rulings of the MDC Judgments to dismiss Petitioner's Complaint for failure to state a claim and award attorneys' fees to Defendants are not supported by the evidence or record of fact before the MDC. In issuing said Judgements the MDC abused its discretion by permitting Defendants to further discriminate against Petitioner. Defendants were not required to respond to Petitioner's Complaint as Congress intended under 24 CFR § 180.420 which mandates an

answer by Defendants which shall admit or deny every allegation alleged against them in the Complaint. Failure to answer within 30 days and/or admit or deny each allegation as charged in the Complaint shall be deemed admitted.

**§ 180.420 Answer.**

**(a)** Within 30 days after service of the charge or notice of proposed adverse action, a respondent may file an answer. The answer shall include:

**(1)** A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny, each allegation made. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed to be admitted.

**(2)** A statement of each affirmative defense and a statement of facts supporting each affirmative defense.

**(b)** Failure to file an answer within the 30-day period following service of the charge or notice of proposed adverse action shall be deemed an admission of all matters of fact recited therein and may result in the entry of a default decision.

Granting awards of attorneys' fees to Defendants would permit further discrimination and violation of the FHA specifically, as asserted in Petition's Writ of Certiorari, under Section 3617 Retaliation and Section 24 CFR § 100.600 Quid Pro Quo and Hostile Environment Harassment. In *Ho v. Donovan*, 569 F.3d 677, 2009 U.S. App. LEXIS 13367, the United States Court

of Appeals for the Seventh Circuit upheld failure to file an answer to the Complaint as set forth in See 24 C.F.R. § 180.420(b) shall be deemed an admission of all matters of fact recited therein. (defaults. A regulation provides that Administrative Law, Agency Adjudication Fair Housing Rights, Enforcement Actions HN6 See 24 C.F.R. § 180.420(b). “[f]ailure to file an answer ... [to the complaint] shall be deemed an admission of all matters of fact recited therein”). Further, no Defendant disputed any material of fact alleged against him/her in any document of the voluminous Exhibits filed in support of the Complaint.

No federal law permits awards of attorneys' fees to Defendants deemed to admit all matters of discrimination recited therein in a Fair Housing Complaint when they fail to answer the Complaint according to the specified mandates of 24 C.F.R. § 180.

The Supreme Court has held that the power to issue writs of mandamus or extraordinary writs can be exercised insofar as such writs are in aid of existing appellate jurisdiction to defeat unauthorized actions of a court below. (“There are expressions in opinions of this court to the effect that such writs issue in aid of a jurisdiction actually acquired.” *McClellan v. Carland*, 217 U.S. 268, 280 (1910). In *McClellan*, the ex-tension was explicitly recognized: We think it is the true rule that where a case is within the appellate jurisdiction of the higher court, a writ of mandamus may issue in aid of the appellate jurisdiction which might otherwise be defeated by the unauthorized action of the court below.”)

## CONSTITUTIONALLY DUE PROCESS UNFAIRLY NOT AFFORDED TO APPELLANT IN THE STATE ACTION

An intervening circumstances of a substantial or controlling affect may be seen in *Durfee v. Duke*, 375 U.S. 106 (1963), cited in *Marshall v. Marshall*, 547 U.S. 293 (2006), the Supreme Court ruled, in consideration of asserting jurisdiction over a state court's final judgment in a probate action, ruled jurisdiction of the federal system over a state action is appropriate so long as the jurisdictional issue was fully and fairly litigated in the state court that rendered the judgment. The Marshall Court upheld that a state court ordinarily determine its own jurisdiction unless the litigation process itself evokes a federal question. (**“determining its own jurisdiction ordinarily qualifies for full faith and credit, so long as the jurisdictional issue was *fully and fairly* litigated in the court that rendered the judgment. See 375 U.S., at 111, 115.”**)

*Marshall v. Marshall*, 547 U.S. \_\_ (2006), requires federal courts to not decline to exercise its jurisdiction over a matter commenced in a state court when federal jurisdiction in a case such as Appellant's is “premised in Article III of the Constitution and Acts of Congress, under the FHA and Civil Rights Act of 1866, (“**Federal jurisdiction in this case is premised in Article III of the Constitution and Acts of Congress, under the FHA, Civil Rights Act of 1866 ....**”), as asserted in Appellant's affirmative defenses and counterclaims germane to the foreclosure action.

In *Marshall* Justice Ginsberg delivered the opinion of the Court quoting Justice Thurgood Marshall: “In *Cohens v. Virginia*, Chief Justice Marshall famously cautioned: “It is most true that this Court will not take

jurisdiction if it should not: but it is equally true, that it must take jurisdiction, if it should .... We have no more right to decline the exercise of jurisdiction, which is given, than to usurp that which is not given." 6 Wheat. 264, 404 (1821) [**Emphasis Added**]. *Marshall v. Marshall*, 547 U.S. \_\_\_\_ (2006).

Judgments on appeal of the Appellate Court of the Commonwealth of Massachusetts and the Barnstable Probate Court in Ms. Barrow's Petition for Writ of Certiorari, demonstrate unfairness and inaccurate fact finding. The record of fact in the MDC and First Circuit Court of Appeals proves, as a matter of law and direct evidence of fact, undisputed by all Defendants; the validity of Petitioner's discrimination claims alleged against all Defendants. Further, an intervening circumstance of a controlling affect occurred in the Appeals Court of the Commonwealth of Massachusetts, "Mass Appeals Court," after the filing of the petition for writ of certiorari on May 08, 2019. Following the Mass Appeals Court Order to rescript on February 27, 2019 (App.1a); the Probate Court issued an amended Judgment on July 31, 2019 (App.14a).

The Massachusetts Appellate and Probate Courts unfairly awarded attorney fees to Defendants' and Petitioner's attorney, George MacKoul: in the amount of \$ 37,314,314 for the Appeal and \$29,5505.96 legal fees reimbursement to Herbert and Willinda pursuant to the Court's Amended Decree of December 29, 2016 currently on appeal in this Court.

The aforementioned amended Probate Court Judgment closed the constructive trust account held by the Probate Court, at 5 Cents Bank and further unfairly distributed \$ 127,365.76 to Herbert; \$ 107,645.76 to Willinda, and \$ 9,638.87 in additional payment to the Commissioner according to its amended Decree of

December 29, 2016 (App.15a).and currently under appeal to this Court as presented in Ms. Barrow's Petition for Writ of Certiorari. The \$ 9,638.87 paid to the Commissioner is in addition to the \$ 23,340.57 paid to the Commissioner undisputed in the MDC, Exhibit D, Document 7, filed on 08/10/16, Page 299 of 623. Said July 31, 2019 amended Judgment declared Petitioner was awarded \$ 18,088.84 (App.16a), the balance of funds Plaintiffs petitioned the Court to hold for them to pay their legal fees in the federal district court because the Probate Court as a matter of law lacked jurisdiction to enforce an Order from the federal district court. Funds still under dispute by the Appellant in this appeal were dispersed to Petitioners/ Defendants as set forth above at the issuance of the Judgement on July 31, 2019 and prior to the time permitted under Rule 4 of Appellate Rules Civil for Appeal.

Dispersal of disputed funds to the Herbert, Willinda, and Mr. MacKoul, does not render this appeal or the federal action moot. The Fair Housing Act amended and effective in October 2016 permits damages, re-dress, and protection against on-going discrimination asserted under 42 U.S.C. § 3601, *et seq.* for "any aggrieved party."

**INACCURATE FACT FINDING AND  
INADEQUATE CONSIDERATION OF  
FRAUD UPON THE COURT  
RESULTING IN DISCRIMINATION**

The Appendices to this petition establish as a record of fact that Petitioner was denied due process in the Probate Court and Massachusetts Court of Appeals. Inaccurate fact finding based largely on hearsay and fraud by Herbert, Willinda, and Mr. MacKoul; cast Petitioner in a false light. The record of fact in the

MDC and Probate Court demonstrate the Judges in the MDC and Probate abused their discretion: in the dismissing the MDC Complaint for failure to state a claim and awarding attorney fees to Defendants; and in the Probate Court for processing the partition in violation of Petitioner's due process rights and in violation of state law which permitted the September 12, 2016 hearing to be stayed until Petitioner's counterclaims were resolved in the court of proper jurisdiction.

The voluminous Appendix below, Appendices A-EE, serve as a record of fact of the discrimination that occurred. Irregular applications of standard procedures during the partition and sale of the property in violation of the FHA as amended: The Transcripts of the record herein show that Appellant was unfairly accused of missing hearings. The June 18, 2015, October 15, 2015 and November 12, 2015 initiated by Mr. MacKoul in violation of the FHA to interfere with and thwart a fair hearing. The Transcripts of the Record show and other Appendices show Attorney MacKoul falsely accusing Petitioner of refusing to complete discovery when it was Plaintiff who refused to complete discovery and the Probate Court refused to hear or docket these motions. The records below show that the Probate Court issued a Notice of Appeal falsely stating there were no Transcripts of the Record proving Petitioner's claims and failed to send them to the Appellate Court. The record of fact in the Appendices below demonstrates other applications of irregular standards and procedures during the partition including and not limited to: Willinda and Herbert committing fraud upon the Court by filing a Partition for Partition and willfully and intentionally, failing to disclose to Probate Court or Petitioner of eminent seizing by Mutual Bank of the property on or

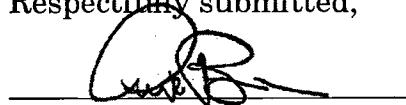
about February 13, 2015; intentionally permitted further waste to the property after filing the partition to discourage buyers; the Probate Court failing to consider waste to the property in light of the fact the property was worth \$ 625,000.00 by their own account in 2010 when it should have been sold due to Willinda's default on the Betterment lien resulting in waste to Petitioner's share of her inheritance. Significantly, the record demonstrates fraud by Willinda, Herbert, and Mr. MacKoul upon the Probate Court by asking it to accept the Executor's Deed as the controlling document of the sale and abusing its discretion to accept Willinda, Herbert's, and the Executrix right to place a lien on the Property in violation of the terms of the will; and permitting the Commissioner to sell the property in violation of the terms of the will over Petitioner's expressed objections.

Significantly, the Probate Orders issued after the September 12, 2016 hearing were based on hearsay as the witness, Mr. Neal Mitchell, relied upon for determination of the value and condition of the property failed to appear. The Probate Court scheduled the September 12, 2016 'trial.' with no regard for Petitioner's availability or permission to appear telephonically.

**CONCLUSIONS**

In sum, unless this Court grants rehearing and remedies as outline above in the Introduction; Petitioner will be unjustly and egregiously harmed. Besides losing all of the rights afforded to her for a fair sale of the Property under the FHA, US Constitution, and Congressional intent; Appellant will be unjustly required to continue to pay for all Defendants' attorney fees. Appellees have not filed any reply briefs or answered to their actions in any Court as mandated under the FHA.

Respectfully submitted,



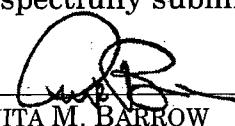
ANITA M. BARROW  
*Pro Se Petitioner*  
101 Lakeshore Drive  
Oakland, New Jersey 07436  
(201) 337-7426  
taybaran@aol.com

November 1, 2019

**CERTIFICATE OF COUNSEL**

As counsel for the petitioner, *pro se*, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

Respectfully submitted,



ANITA M. BARROW

*Pro Se Petitioner*  
101 Lakeshore Drive  
Oakland, New Jersey 07436  
(201) 337-7426  
taybaran@aol.com

November 1, 2019

**Additional material  
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Clerk's Office.**