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United States Court of Appeals,
 First Circuit.

HOGAR AGUA Y VIDA EN EL DESIERTO, INC., et al., Plaintiffs, Appellants,
 v.
 Jorge SUAREZ-MEDINA, etc., et al., Defendants, Appellees.

No. 93-2017.

Heard June 7, 1994.
 Decided Sept. 28, 1994.


Nonprofit organization which operated group homes for persons infected with Human Immunodeficiency Virus (HIV) brought action against owner of property, alleging discriminatory conduct in violation of Fair Housing Act (FHA) in connection with owners' alleged reneging on rental-sale agreement. The United States District Court for the District of Puerto Rico, Juan M. Perez-Gimenez, J., [829 F.Supp. 19](#), ruled that owners were exempt from liability under FHA, and plaintiff appealed. The Court of Appeals, Cyr, Circuit Judge, held that: (1) district court improperly adopted equitable exception in declining to consider house owned by defendants to be "single-family house" within meaning of FHA exemption on ground that defendants had been forced to vacate house due to neighborhood crime; (2) FHA defendants' current residence was "single-family house" within meaning of exemption; and (3) fact that residence was not for rent or sale did not preclude consideration of that residence as "single-family house" within meaning of exemption.

Vacated and remanded.


West Headnotes

[1] Statutes 236
[361k236 Most Cited Cases](#)


Presumption is that ambiguous language in remedial statute is entitled to generous construction consistent with its reformatory mission.

[2] Civil Rights 131
[78k131 Most Cited Cases](#)

Ambiguous exemptions from FHA liability are to be narrowly construed. Fair Housing Act, §§ 801-818, as amended, [42 U.S.C.A. §§ 3601-3617](#).

[3] Civil Rights 240(3)
[78k240\(3\) Most Cited Cases](#)

Burden of proving entitlement to FHA exemption rested with party seeking exemption. Fair Housing Act, §§ 801-818, as amended, [42 U.S.C.A. §§ 3601-3617](#).


[4] Civil Rights 131
[78k131 Most Cited Cases](#)

Entitlement to FHA exemption turns on highly fact-dependent inquiries, such that defendant seeking exemption was bound, for purposes of instant

litigation, to stipulations that specified properties qualified as "single-family houses" within meaning of exemption. Fair Housing Act, § 803(b)(1), as amended, [42 U.S.C.A. § 3603\(b\)\(1\)](#).

[5] Civil Rights 131
[78k131 Most Cited Cases](#)


District court improperly adopted equitable exception in declining to consider house owned by defendants to be "single-family house" within meaning of FHA exemption for owners of interests in less than four single-family homes on ground that defendants had been forced to vacate house due to neighborhood crime; Congress had elected not to endorse equitable exception when it undertook to narrow FHA liability. Fair Housing Act, § 803(b)(1), as amended, [42 U.S.C.A. § 3603\(b\)\(1\)](#).

[6] Civil Rights 131
[78k131 Most Cited Cases](#)


Exemptions from requirements of remedial statute such as FHA are to be construed narrowly to limit exemption eligibility. Fair Housing Act, §§ 801-818, as amended, [42 U.S.C.A. §§ 3601-3617](#).

[7] Civil Rights 131
[78k131 Most Cited Cases](#)


"Mrs. Murphy exemption" provides exemption from liability under FHA section prohibiting refusal to sell or rent after making bona fide offer, or otherwise making unavailable or denying dwelling to person because of race, color, religion, sex, family status, or national origin, and does not exclude structure from analysis under FHA section providing single-family house exemption. Fair Housing Act, §§ 803(b)(1), 804(b), as amended, [42 U.S.C.A. §§ 3603\(b\)\(1\)](#), [3604\(b\)](#).

[8] Civil Rights 131
[78k131 Most Cited Cases](#)

FHA defendant's current residence is "single-family house" within meaning of single-family house exemption. Fair Housing Act, § 803(b)(1), as amended, [42 U.S.C.A. § 3603\(b\)\(1\)](#).

[9] Civil Rights 131
[78k131 Most Cited Cases](#)

The four provisos of FHA section providing single-family house exemption do not give rise to four independent exemptions but, rather, represent four cumulative preconditions to single exemption set out in prefatory clause. Fair Housing Act, § 803(b)(1), as amended, [42 U.S.C.A. § 3603\(b\)\(1\)](#).

[10] Civil Rights 131
[78k131 Most Cited Cases](#)

Fact that residence was not for rent or sale at time owner refused to sell other property, allegedly in violation of FHA, did not preclude consideration of that residence as "single-family house" within meaning of FHA exemption applicable to owners of interests in less than four single-family houses, despite claim that term "such single-family houses" in provisos of exemption related back to complete phrase "single-family house sold or rented by an owner" in prefatory clause. Fair Housing Act, § 803(b)(1), as amended, [42 U.S.C.A. § 3603\(b\)\(1\)](#).

*179 [Nora Vargas Acosta](#), with whom Sabana Litigation & Civil Rights Project, Ruth E. Harlow, William B. Rubenstein and American Civil Liberties Union Foundation were on brief for appellants.

David W. Roman, with whom Ramon A. Alfaro was on brief for appellee Suarez.

Peter J. Porrata, for appellee Dolittle.

Before CYR and STAHL, Circuit Judges, and PIERAS, [FN*] District Judge.

FN* Of the District of Puerto Rico, sitting by designation.

CYR, Circuit Judge.

Hogar Agua y Vida en el Desierto, Inc. ("HAVED"), a nonprofit organization which operates group homes for persons infected with the Human Immunodeficiency Virus ("HIV"), brought a civil action in the United States District Court for the District of Puerto Rico alleging discriminatory conduct by defendants-appellees in violation of the Fair Housing Act, 42 U.S.C. §§ 3601-3617 (1993) ("FHA"). The district court ruled that the principal defendants, Jorge Suarez Medina and Baudilla Albelo Suarez (hereinafter: "Suarez" or "Suarezes"), were exempt from liability under the FHA by virtue of the "private individual owner" provision which applies to persons who own less than four "single-family houses," see *id.* § 3603(b)(1). For the reasons discussed in this opinion, we vacate the district court judgment and remand for further proceedings.

I

BACKGROUND

In September 1992, appellant HAVED entered into an oral agreement with Suarez to rent, with option to buy, two houses located on an undivided lot in the Los Llanos section of Corozal, Puerto Rico. Upon learning that HAVED intended to use the site as a group home for persons infected with HIV, defendants Milton Dolittle and Antonio Padilla organized neighborhood opposition and threatened and coerced Suarez into reneging on the rental-sale agreement. HAVED, along with its directors and a prospective resident of the proposed group home, initiated the present action charging defendants Suarez, Dolittle and Padilla with violations of FHA §§ 3604 and 3617, and Suarez with breach of contract under P.R.Laws Ann. tit. 31, §§ 3371-3589 (1993). [FN1] HAVED demanded declaratory and injunctive relief as well as compensatory and punitive damages.

FN1. Section 3604 of the FHA provides, in pertinent part:

[E]xcept as exempted by sections [3603(b) and 3607], it shall be unlawful--

(a) To refuse to sell or rent *after making a bona fide offer*, or to refuse to negotiate for the sale or rental of, or *otherwise make unavailable or deny*, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

42 U.S.C. § 3604(a) (emphasis added). The FHA amendments enacted in 1988 extended comparable protection to persons with a "handicap," see, e.g., *id.* § 3604(f), including persons infected with HIV. See Stewart B. McKinney Found., Inc. v. Town Plan and Zoning Comm'n, 790 F.Supp. 1197, 1209-10 (D.Conn.1992) (citing H.R.Rep. No. 100-711, 100th Cong., 2d Sess. 13, reprinted in 1988 U.S.C.C.A.N. 2173, 2179). Section 3617 makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by [section 3603, 3604, 3605, or 3606].

42 U.S.C. § 3617.

Suarez moved to dismiss the complaint for lack of subject matter jurisdiction, citing FHA § 3603(b)(1):

(b) Nothing in ... [section 3604 of this title] (other than subsection (c)) shall apply to--

(1) any *single-family house* sold or rented by an owner:

[1] *Provided*, That such *private individual owner* does not own more than three such *single-family houses* at any one time:

***180** [2] *Provided further*, That in the case of the sale of any such *single-family house* by a *private individual owner not residing in such house* at the time of such sale or who was *not the most recent resident* of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period:

[3] *Provided further*, That such *bona fide private individual owner* does not own any *interest* in, nor is there owned or reserved on *his behalf*, under any *express or voluntary agreement*, title to or any right to all or a portion of the *proceeds* from the sale or rental of, more than three such *single-family houses* at any one time:

[4] *Provided further*, That after December 31, 1969, the sale or rental of any such *single-family house* shall be excepted from the application of this title *only if* such house is sold or rented

(A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings ... and

(B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of [section 3604(c) of this title]....

42 U.S.C. § 3603(b)(1) (emphasis added; clause numbers added; indentation altered from original).

A. The Suarez Properties

At the time of the September 1992 rental-sale agreement with HAVED, Suarez owned four separate parcels of land on which were located five structures. *First*, the "Los Llanos Property," the subject of the abortive rental-sale agreement, consists of one undivided lot containing two unattached residences. Suarez holds undisputed title to the entire lot and one residence (House A) where the Suarezes once resided. Their son built the second house on the lot (House B) as a residence for his own family. However, Mr. Suarez, Sr., was robbed while residing in House A, and the Suarezes and their son moved away from Los Llanos. Houses A and B remained unoccupied at the time of the HAVED- Suarez rental-sale agreement.

Second, the "Guarico Residence," located in the Guarico section of Corozal, was designed as a two-story house with a separately equipped, single-family apartment on each floor. Suarez held title to the lot and the house. At the time of the rental-sale agreement, the Suarezes resided primarily in the second-floor apartment, and the son and his family resided in the first-floor apartment. Due to his physical impairments, however, Mr. Suarez, Sr., sometimes lived "interchangeably" with his son's family in the first-floor apartment. The district court ruled that the Guarico Residence constituted one single-family house.

Third, the "Guarico Rental" is a two-story, single-family structure located near the Guarico Residence but on a separate lot. At the time of the rental-sale agreement, Suarez held title to the house and the lot, and the house was being rented to a single family.

The *fourth* real estate parcel, the "La Aldea Rental," is a single lot in the La Aldea section containing a one-story structure which Suarez purchased in April 1991, and rented to a single family (Apartment 1). Prior to the rental-sale agreement, however, Suarez renovated the basement of the building into a separate apartment (Apartment 2), and it was rented to another tenant.

B. The District Court Proceedings

Following an evidentiary hearing, the district court dismissed the HAVED complaint for lack of "subject matter jurisdiction," citing [Fed.R.Civ.P. 12\(b\)\(1\) and \(6\)](#). Pursuant to Provisos 1 and 3 of FHA [§ 3603\(b\)\(1\)](#), the court ruled that at the time of the rental-sale agreement with HAVED in September 1992, Suarez had a bona fide ownership interest in only three "single-family houses" (hereinafter: "SFH" or "SFHs"): (i) the Guarico Rental, (ii) the La Aldea Rental (Apartment *181 1), and (iii) the La Aldea Rental (Apartment 2). [\[FN2\]](#)

[FN2.](#) The district court also found, under Proviso 4 and [42 U.S.C. § 3603\(c\)](#), that Suarez did not qualify as a "person in the business of selling or renting dwellings," *id.*, because he had not participated in more than two real estate transactions between September 1991 and September 1992. Because Suarez must satisfy all four provisos in order to qualify for the [§ 3603\(b\)\(1\)](#) exemption, we need not reach this issue.

Thus, the district court explicitly declined to treat three abodes as SFHs. First, the court ruled that the Guarico Residence is not a SFH under FHA [§ 3603\(b\)\(1\)](#) because only SFHs that are "sold or rented" can be counted toward the four-SFH threshold. In other words, in the district court's view a defendant's *current residence* is not counted as an SFH under Provisos 1 and 3 unless it is the subject of the sale or rental transaction giving rise to the cause of action under the FHA, or it is "on the market" at the time of the challenged transaction. See [Hogar Agua y Vida en el Desierto, Inc. v. Suarez](#), 829 F.Supp. 19, 22 (D.P.R.1993) (citing [Lamb v. Sallee](#), 417 F.Supp. 282, 285 (E.D.Ky.1976)). Second, since Suarez, Sr., had been forced to vacate House A at the Los Llanos Property after the robbery, and to acquire the Guarico Residence, the district court concluded that it would be "inequitable" to treat House A as a SFH under either Proviso 1 or 3. [Id. at 22-23.](#) Finally, relying on the same equitable grounds noted in relation to House A, the district court ruled that House B on the Los Llanos Property should not be treated as a SFH. The court ruled, in the alternative, that House B should not be treated as a SFH because the Suarezes's son, who constructed House B, was its *bona fide* owner under Puerto Rico law; whereas the Suarezes simply held an unexercised "right of accession" based on their ownership of the land on which House B is situated. [Id. at 23](#) (citing [Castro Anquita v. Figueroa](#), 103 P.R.Dec. 847, 850-51, 3 Official Translations 1188-89 (1975)). [\[FN3\]](#)

[FN3.](#) The district court implicitly concluded as well that HAVED's claims against codefendants Dolittle and Padilla under FHA [§ 3617](#) should be dismissed because the Suarezes are exempt from liability under FHA [§ 3604](#). See *supra* note 1. Although this ruling is contested by HAVED, we need not reach it.

II

DISCUSSION

Since the only dispute on appeal concerns the legal sufficiency of undisputed jurisdictional facts, we review the [Rule 12\(b\)\(1\)](#) dismissal *de novo*. See

Heno v. FDIC, 20 F.3d 1204, 1205 (1st Cir.1994). We conclude, as a matter of law, that the Suarezes's claim to exemption is precluded by the FHA. See FDIC v. Keating, 12 F.3d 314, 316 (1st Cir.1993) (statutory interpretations reviewed de novo).

[1][2] We employ traditional tools of statutory interpretation, particularly the presumption that ambiguous language in a remedial statute is entitled to a generous construction consistent with its reformatory mission. See, e.g., Cia. Petrolera Caribe, Inc. v. Arco Caribbean, Inc., 754 F.2d 404, 428-29 (1st Cir.1985) (noting that this canon of construction represents an "especially reliable and legitimate" indicator of congressional intent); see generally 3 Norman J. Singer, Sutherland on Statutory Construction § 60.01 (5th ed. 1992) [hereinafter Sutherland]. This presumption has been relied on consistently by the courts in interpreting the omnibus remedial provisions of the Civil Rights Act of 1968, which prominently include the Fair Housing Act itself. See Casa Marie, Inc. v. Superior Court of Puerto Rico, 988 F.2d 252, 257 n. 6 (1st Cir.1993) (citing Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 211-12, 93 S.Ct. 364, 367-68, 34 L.Ed.2d 415 (1972)); see also City of Edmonds v. Washington State Bldg. Code Council, 18 F.3d 802, 804 (9th Cir.1994). An important corollary for present purposes is that ambiguous exemptions from FHA liability are to be narrowly construed. See, e.g., id.; Elliott v. City of Athens, Georgia, 960 F.2d 975, 978-79 (11th Cir.) cert. denied, 506 U.S. 940, 113 S.Ct. 376, 121 L.Ed.2d 287 (1992); United States v. Columbus Country Club, 915 F.2d 877, 882-83 (3d Cir.1990) (collecting cases), cert. denied, 501 U.S. 1205, 111 S.Ct. 2797, 115 L.Ed.2d 971 (1991).

*182 [3][4] From this appellate perspective we consider which Suarez properties were "single-family houses" within the meaning of Provisos 1 and 3 of FHA § 3603(b)(1). The parties agree that two properties--the Guarico Rental and the La Aldea Rental--qualify as "single-family houses" within the meaning of the exemption. [FN4] Thus, given the four-SFH limen established in section 3603(b)(1), the FHA exemption cannot stand if the Suarezes were bona fide "owners" of two SFHs in addition to the Guarico Rental and the La Aldea Rental.

[FN4]. Absent appellate briefing, we hazard no view on the correctness of their stipulation. The burden of proving entitlement to an FHA exemption rested with Suarez. See Massaro v. Mainlands Section 1 & 2 Civic Ass'n, 3 F.3d 1472, 1475 (11th Cir.1993) (FHA); Columbus Country Club, 915 F.2d at 882 (FHA); Singleton v. Gendason, 545 F.2d 1224, 1226 (9th Cir.1976) (FHA); see also 2A Sutherland § 47.11, at 165 (general rule of construction). Whatever its legal elements, entitlement to an FHA exemption turns on highly fact-dependent inquiries (e.g., the structural design or usage of each dwelling), such that Suarez is bound to these stipulations for purposes of the present litigation. Cf. Railway Co. v. Ramsey, 89 U.S. (22 Wall.) 322, 327, 22 L.Ed. 823 (1874) ("Consent of parties cannot give the courts of the United States [subject matter] jurisdiction, but the parties may admit the existence of facts which show jurisdiction, and the courts may act judicially upon such an admission."). By the same token, no precedential significance should be ascribed to our acceptance of these stipulations.

A. Los Llanos Property, House A

[5] First, HAVED argues that the district court exceeded its authority by fashioning an "equitable" exception which resulted in the exclusion of Los Llanos, House A, from the four-SFH calculus on the ground that the Suarezes had been forced to vacate the Los Llanos area due to neighborhood crime. See In re Shoreline Concrete Co., 831 F.2d 903, 905 (9th Cir.1987) ("Courts of equity are bound to follow express statutory commands to the same extent as

are courts of law.") (citing Hedges v. Dixon County, 150 U.S. 182, 192, 14 S.Ct. 71, 74, 37 L.Ed. 1044 (1893)).

[6] Although courts have on occasion engrafted equitable exceptions where rigid adherence to literal legislative language clearly would disserve legislative intent, see, e.g., Zipes v. Trans World Airlines, 455 U.S. 385, 398, 102 S.Ct. 1127, 1135, 71 L.Ed.2d 234 (1982) (equitable tolling of filing deadlines), generally courts are loath "to announce equitable exceptions to legislative requirements or prohibitions that are *unqualified* by the statutory text." Guidry v. Sheet Metal Workers Nat'l Pension Fund, 493 U.S. 365, 376, 110 S.Ct. 680, 687, 107 L.Ed.2d 782 (1990) (emphasis added). Moreover, "[w]here Congress *explicitly enumerates* certain exceptions to a general prohibition, additional exceptions are *not* to be implied, in the absence of contrary legislative intent." Andrus v. Glover Constr. Co., 446 U.S. 608, 616-17, 100 S.Ct. 1905, 1910, 64 L.Ed.2d 548 (1980) (emphasis added). Further, exemptions from the requirements of a *remedial statute*--like the FHA--are to be construed narrowly to limit exemption eligibility. See Badaracco v. Commissioner, 464 U.S. 386, 398, 104 S.Ct. 756, 764, 78 L.Ed.2d 549 (1984) (rejecting taxpayer plea for "nonliteral reading" of tax statute "on grounds of equity to the repentant taxpayer," and noting that, faced with a statute "which must receive a strict construction," "[c]ourts are not authorized to rewrite [the] statute because they might deem its effects susceptible of improvement."); *supra* p. 181.

For the foregoing reasons, we decline to endorse the equitable exception adopted by the district court, especially since Congress elected not to do so when it undertook to narrow FHA liability in 42 U.S.C. § 3603(b). Nothing in section 3603(b), nor in its legislative history, manifests a congressional intent to temper either the inflexible four-SFH formula or the categorical "ownership" standard. Thus, we believe these FHA provisions reflect the sort of "considered congressional policy choice" that elevates the "effectuation of certain broad social policies ... over the desire to do equity between particular parties." Guidry, 493 U.S. at 376, 110 S.Ct. at 687. Guidry cautions against creating equitable exceptions to comprehensive remedial statutes in an effort to protect individual defendants from occasional inequities, even inequities attributable to misfeasance by the plaintiffs. Id. (holding that the district *183 court had no equitable power to contravene ERISA's *unqualified* anti-garnishment provision by imposing a constructive trust upon pension benefits payable to a former union official who embezzled union funds). The Guidry admonition holds even stronger sway where, as here, defendant-Suarez's misfortunes were in no sense due to HAVED's conduct. The Court recognized in Guidry that any attempt to calibrate the precise point at which an individual defendant's vicissitudes are so " 'especially ' inequitable" as to outweigh the broad prophylactic policies underlying the congressional decision to protect the plaintiff class would immerse the courts in an inappropriate and "impracticab[le]" task. Id. (emphasis added). [FN5]

FN5. The cases Suarez cites in support of the equitable exception fashioned by the district court, see, e.g., FTC v. Security Rare Coin & Bullion Corp., 931 F.2d 1312, 1314 (8th Cir.1991), concerned the equitable remedies a district court may impose *after* a defendant has been found in violation of a statutory prohibition. For example, if the statute empowers the court to restrain violations, and neither expressly nor "by a necessary and inescapable inference [] restricts the court's jurisdiction in equity," Porter v. Warner Holding Co., 328 U.S. 395, 398, 66 S.Ct. 1086, 1089, 90 L.Ed. 1332 (1946), the court could utilize all its traditional equitable powers or even desist from extending any equitable relief to the plaintiff where the equities warrant. See Williams v. Jones, 11 F.3d 247, 256 (1st Cir.1993). Nonetheless, the latter rubric provides no basis for *extending* an FHA exemption by withholding from HAVED *all relief* against Suarez's alleged

discriminatory refusal to sell or rent the Los Llanos Property. Moreover, even if the court were permitted to withhold injunctive relief, Suarez would be answerable for *legal damages* (actual and punitive) for any FHA violation. See 42 U.S.C. § 3613(c). More importantly, however, Suarez could have asserted no cognizable equitable defense in light of the fact that his misfortunes while residing in Los Llanos were in no sense attributable to HAVED.

B. The Guarico Residence

HAVED next contends that the district court committed reversible error in not treating the Guarico Residence as a SFH under Provisos 1 and 3 of FHA § 3603(b)(1). HAVED argues that nothing in FHA § 3603(b)(1) excludes "owner-occupied" houses from the term "single-family house." Furthermore, HAVED notes, Proviso 2 explicitly qualifies the term SFH ("any such single-family house by a private individual owner *not residing in such house* at the time of such sale"), a qualification that would be entirely unnecessary if the term "SFH" itself excluded *owner-occupied* houses.

[7] On the other hand, Suarez says that the Guarico Residence is excluded from consideration under Provisos 1 and 3 because the prefatory clause in FHA § 3603(b)(1) (exempting "any single-family house *sold or rented* by the [defendant]" in a discriminatory manner) suggests that Congress did not intend that any property of the defendant count toward the four-SFH threshold unless that property itself was up for *sale or rent* at the time of the allegedly discriminatory transaction. [FN6] Suarez argues that this must be so because the references to "*such* [SFHs]" in Provisos 1 and 3 can only relate back to the prefatory clause, and incorporate the requirement that only "sold or rented" SFHs are to be included in calculating the four-SFH threshold. Thus, Suarez says, a defendant's residence normally would not be included as a SFH unless it were on the market at the time of the alleged discriminatory sale or rental. Suarez discounts the value of Proviso 2 as a tool for interpreting the prefatory clause in FHA § 3603(b)(1), since Proviso 2 creates a considerably "narrower" and altogether independent exemption that allows one discriminatory *sale* (but *not* a rental) of an *owner-occupied* SFH to be excluded within any two-year period. Proviso 1, on the other hand, creates a "broader exemption" for owners who own no more than three SFHs that are either for *sale or rent by the owner*. [FN7]

FN6. As with his other concessions, see *supra* note 4, Suarez stipulates that the Guarico Residence would qualify as a "single-family house" in all respects, *but for* its status as his current, off-market residence. We take no position respecting the basis for Suarez's stipulation, but confine our consideration to the two issues briefed by the parties.

FN7. Alternatively, Suarez argues that the Guarico Residence is excluded under the so-called "Mrs. Murphy" exemption in FHA § 3603(b)(2), which exempts "rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, *if the owner actually maintains and occupies one of such living quarters as his residence*." 42 U.S.C. § 3603(b)(2) (emphasis added). The "Mrs. Murphy" exemption is totally inapposite, however. It provides an exemption from section 3604 liability. It does *not* exclude a *structure* from the Proviso 1 and 3 analyses under FHA § 3603(b)(1). See *id.* § 3604(b) ("nothing in section [3604] ... shall apply to ... rooms and units...."). Thus, the "Mrs. Murphy" exemption could have relevance only if, for example, Suarez had refused to sell or rent one unit in *the Guarico Residence* to HAVED.

*184 The present dispute prompts two inquiries. The first is whether a defendant's current residence is excluded from the threshold four-SFH calculus under Provisos 1 and 3 simply because it is his primary or current residence, even though all other SFHs owned but not occupied by the defendant are included without regard to whether they were concurrently "on the market." The second inquiry is whether Congress meant to exclude from the threshold four-SFH calculus all SFHs owned by the defendant (including the primary residence) not on the market at the time the defendant--for discriminatory reasons--refused to sell or rent a different SFH to the plaintiff. We turn to these questions.

1. Exclusion for Residence Qua Residence

[8] As its prefatory clause makes clear, the FHA § 3603(b)(1) exemption--assuming its four provisos are satisfied--applies to any "single-family house sold or rented by the owner" in a discriminatory manner. For section 3603(b)(1) purposes, therefore, the relevant SFHs in this case are Houses A and B, located on the Los Llanos Property Suarez refused to rent or sell to HAVED. Section 3603(b)(1) neither defines the term "SFH," nor does its prefatory clause expressly limit the term "SFH" to structures in which the defendant does not reside. Conversely, as Suarez acknowledges, if the Suarezes had refused to rent or sell their Guarico Residence to HAVED, the prefatory clause would not have debarred the Suarezes from a section 3603(b)(1) exemption merely because the property being rented or sold was their residence.

[9] The statutory context in which the prefatory clause appears undermines the Suarez contention as well. See Skidgel v. Maine Dep't of Human Servs., 994 F.2d 930, 937 (1st Cir.1993) (meaning of particular statutory language assessed in light of entire statute). The four FHA § 3603(b)(1) provisos do not give rise to four independent exemptions, as Suarez suggests, but represent four cumulative preconditions to the single exemption set out in the prefatory clause. If any of the four provisos is not satisfied, no section 3603(b)(1) exemption is appropriate.

Proviso 2 refers specifically to a discrete subset of the "discriminatory" SFH sales focused upon in the section 3603(b)(1) prefatory clause, namely, sales of SFHs in which the defendant is *not residing*. If the unqualified term "SFH" in the prefatory clause were intended to embrace only SFHs in which the defendant is not residing, no such further qualification would be needed in Proviso 2. See Mosquera-Perez v. INS, 3 F.3d 553, 556 (1st Cir.1993) (court should avoid interpretations which render any part of statute meaningless). Thus, if the term "SFH," as used in the prefatory clause, applies to residences *and* nonresidences, the pendent references to "such [SFHs]" in Provisos 1 and 3 also necessarily encompass the Suarezes's Guarico Residence qua residence.

Finally, the legislative history discloses no basis for second-guessing the "plain language" of section 3603(b)(1). See Laracuente v. Chase Manhattan Bank, 891 F.2d 17, 23 (1st Cir.1989) ("Absent a clearly expressed legislative intention to the contrary, the plain language of the statute is conclusive").

As initially introduced in Congress, the FHA contained few significant exemptions from liability, see, e.g., *supra* note 7 (describing "Mrs. Murphy" exemption), and the breadth of the FHA's coverage caused vigorous Senate opposition. See generally Jean E. Dubofsky, *Fair Housing: A Legislative History and a Perspective*, 8 Washburn L.J. 149 (1969). Senator Everett M. Dirksen proposed to assuage opposition by exempting sales and rentals of "any single-family house sold or rented by an owner residing in such house at the time of such sale or rental, or *185 who was the most recent resident of such house prior to such sale or rental." See 114 Cong.Rec. 4571 (1968). Yet

even the "Dirksen substitute," later modified and enacted as Proviso 2, failed to gain enough Senate support. To break the deadlock, Senator Robert C. Byrd proposed the expanded four-part exemption, later codified as present [section 3603\(b\)\(1\)](#). During floor debate, Senator Byrd offered two illuminating hypotheticals to demonstrate the coverage which would be provided under his proposal, but not under the Dirksen substitute:

A widow owns and *lives in* a single-family dwelling. She also owns a single-family dwelling across the street, the tenant therein being her daughter. The daughter moves to another State. The widow cannot qualify for exemption under the Dirksen substitute because she neither resides in the house across the street--of which she is the owner--nor is the "most recent resident" of such dwelling prior to a subsequent sale or rental. An individual *lives in* his own single-family dwelling located on a three-quarter-acre lot. He decides to build a second house on the lot. Ten years later misfortune forces him to parcel the lot and *sell the house thereon*. He does not qualify under the Dirksen substitute exemption because he is neither "residing in" the adjacent dwelling nor was he the "most recent resident" thereof.
114 Cong.Rec. 5640 (1968) (emphasis added).

Asked why "it was necessary to raise the number of houses owned by one party to three," Senator Byrd referred to these two hypotheticals, and noted that he had "already discussed situations in which there would be at least two [single-family] houses involved." *Id.* (emphasis added). *Significantly, both hypotheticals assumed that the houses in which the seller currently resided would be counted toward the four-SFH threshold in Provisos 1 and 3. See Rice v. Rehner, 463 U.S. 713, 728, 103 S.Ct. 3291, 3300, 77 L.Ed.2d 961 (1983)* (noting that interpretation of statute by sponsor is "'authoritative guide to the statute's construction' ") (citation omitted); see also [Brock v. Pierce County, 476 U.S. 253, 263, 106 S.Ct. 1834, 1840, 90 L.Ed.2d 248 \(1986\)](#) (sponsor's statements credited if consistent with statutory language). Other senators likewise recognized that the "more than three" threshold would include houses in which the seller resided. See 114 Cong.Rec. 5641 (1968) ("I know we have people who have a summer home or a winter home.... One could easily have three homes.") (statement of Senator Jordan). Since this legislative history, at the very least, precludes our finding "a clearly expressed legislative intention to the contrary," [Laracuate, 891 F.2d at 23](#), we must conclude that a defendant's residence, *qua* residence, is not to be excluded under Provisos 1 and 3 of [section 3603\(b\)\(1\)](#). [FN8]

[FN8](#). The legislative history contains a reference arguably supportive of the Suarez interpretation of Provisos 1 and 3. Senator Byrd suggested that he chose "three" as the threshold figure under Provisos 1 and 3 to match the "Mrs. Murphy exemption," see *supra* note 7, which provides an exemption to a resident landlord of multi-family quarters (containing not more than four family quarters) who refuses to rent any family quarters in the building. Senator Byrd noted that "Mrs. Murphy" must live in one of the four family quarters, so as to confine the "protective reach" of the "Mrs. Murphy" exemption "to three units *other than the one in which she lives*. In my amendment, therefore, I use 'three' as the number, in order to have parallel construction." 114 Cong.Rec. 5640.

We note two sound reasons for devaluing this statement. First, as noted, see *supra* p. 185, *inconsistent* expressions of sponsor intent are insufficient to override the plain import of the statutory language. Second, Senator Byrd's more generalized statements concerning a rough numerical symmetry in statutory construction were *preceded* by his detailed recitation of the two fact-specific hypotheticals discussed above. See [supra](#) p. 18.

2. Exemption for "Off Market" SFHs

[10] Suarez proposes to exclude the Guarico Residence under Provisos 1 and 3 because it was neither for rent nor sale at the time he refused to sell the Los Llanos Property to HAVED. See Lamb v. Sallee, 417 F.Supp. 282, 285 (E.D.Ky.1976). The theory is that the term "such [SFHs]" in Provisos 1 and 3 unambiguously relates back to the complete phrase--"single-family house sold or rented by an owner"--in the section 3603(b)(1) prefatory clause. The language of *186 the statute is not dispositive on this issue, and the interpretation proposed by Suarez is at least plausible.

Although it is conceivable that Congress's choice of the indeterminate modifier "such" was intended only to require the counting of residences *qua* residences under Provisos 1 and 3--in direct contrast to the more constricted scope of the term "SFH" under Proviso 2--Provisos 1 and 3 reasonably might be read to impose the additional, distinct requirement that any SFH, regardless whether it is the defendant's "residence," be counted under Provisos 1 and 3 only if it is a "single-family house sold or rented by an owner." Indeed, Congress's choice of words--"sold or rented"--in the section 3603(b)(1) prefatory clause is a most curious usage. In order for liability to attach under FHA § 3604, a defendant need never have consummated the discriminatory rental or sale of the SFH to which the section 3603(b)(1) prefatory clause adverts. Rather, FHA liability attaches as soon as the defendant "refuses to sell or rent after [the plaintiff makes] a bona fide offer," see *supra* note 1, without regard to whether the SFH is ever "sold" or "rented" to anyone. With these linguistic difficulties in mind, it seems arguable at least, in keeping with the structure and language of the statute, that the term "such," as used in Provisos 1 and 3, imports the same "on the market" qualification necessarily implicit in the section 3603(b)(1) prefatory clause.

As noted earlier, however, normally latent ambiguity in a statutory modifier like "such" should be construed in furtherance of the statute's remedial goals. See Cia. Petrolera, 754 F.2d at 428. ("When Congress uses broad generalized language in a remedial statute, and that language is not contravened by authoritative legislative history, a court should interpret the provision generously so as to effectuate the important congressional goals.") Not only does the authoritative legislative history not contravene the HAVED interpretation, see *supra* Section II.B.1, it contradicts the Suarez contention. Most importantly, neither hypothetical advanced by Senator Byrd assumed or intimated that the seller's residence was "on the market" at the time the discriminatory sale of the second house took place, yet Senator Byrd included both these SFHs under Provisos 1 and 3. Notwithstanding a conceivable vestige of literal ambiguity, therefore, we are persuaded to the view that the Guarico Residence must be included in the four-SFH calculus under section 3603(b)(1) consistent with the FHA's legislative history and its broad remedial design. [FN9]

[FN9]. The only case to address this precise issue, see Lamb v. Sallee, 417 F.Supp. 282 (E.D.Ky.1976), reached the opposite conclusion, without reference to the legislative history and without analysis. Id. at 285 ("The Court has found no authority construing [section 3603(b)(1)] and counsel for the respective parties have cited none.").

III CONCLUSION

At the time HAVED was denied the opportunity to acquire the Los Llanos Property, allegedly on discriminatory grounds, Suarez held an undisputed ownership interest in "more than three" "single-family houses": the Guarico Rental, the La Aldea Rental, the Los Llanos Property, House A, and the Guarico

Residence. Since Suarez cannot satisfy either Proviso 1 or Proviso 3, the alleged discriminatory refusal to proceed with the HAVED rental-sale agreement relating to the Los Llanos Property did not qualify for exemption under FHA [§ 3603\(b\)\(1\)](#).

The district court judgment is vacated. The case is remanded for further proceedings consistent with this opinion. Costs to appellant.

36 F.3d 177, 6 A.D.D. 857

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