

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT

<p>JOHN B. CRUZ CONSTRUCTION CO., INC., Plaintiff,</p> <p>v.</p> <p>BEACON COMMUNITIES CORP., BEACON COMMUNITIES SERVICES LLC, BEACON LENOX LLC, and BEACON LENOX 2 LLC, Defendants.</p>
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CIVIL ACTION NO. 23-1956

**COMPLAINT**

**PARTIES**

1. Plaintiff John B. Cruz Construction Co., Inc. ("Cruz") is a Massachusetts corporation with a place of business at One John Eliot Square, Roxbury, MA 02119. Established in 1948, Cruz is a 100% black-owned general contractor and a certified minority business enterprise.
2. Defendant Beacon Communities Corp. is a Massachusetts corporation with a place of business at 2 Center Plaza, Suite 700, Boston, MA 02108.
3. Defendant Beacon Communities Services LLC is a Massachusetts limited liability company with a place of business at 2 Center Plaza, Suite 700, Boston, MA 02108. On information and belief, Beacon Communities Corp. is the manager of Beacon Communities Services LLC.
4. Defendant Beacon Lenox LLC ("Beacon Lenox") is a Massachusetts limited liability company with a place of business at 2 Center Plaza, Suite 700, Boston, MA 02108. On information and belief, Beacon Communities Corp. is the managing member of Beacon Lenox

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which, on information and belief, is the general partner of BC Lenox Limited Partnership, a Massachusetts limited partnership with a place of business at 2 Center Plaza, Suite 700, Boston, MA 02108.

5. Defendant Beacon Lenox 2 LLC (“Beacon Lenox 2”) is a Massachusetts limited liability company with a place of business at 2 Center Plaza, Boston, MA 02108. On information and belief, Beacon Communities Corp. is the managing member of Beacon Lenox 2 which, on information and belief, is the general partner of BC Lenox 2 Limited Partnership, a Massachusetts limited partnership with a place of business at 2 Center Plaza, Suite 700, Boston, MA 02108.

### **FACTS**

6. In or about early 2016, Beacon Communities Corp. and/or Beacon Communities Services LLC (“Beacon”) sought and obtained from the Boston Housing Authority (“BHA”) designation as the developer for the rehabilitation and improvement of the existing 367 affordable housing units in the Lenox/Camden Apartments on Lenox Street and Camden Street in Roxbury (“Lenox/Camden Project” or “Project”). The Project was to be done in two phases – Camden and Lenox. The Camden phase was to improve and preserve the 72 units of affordable housing on Camden Street. The Lenox phase involved the renovation of the 295 affordable housing units on Lenox Street. On information and belief, Beacon subsequently created Beacon Lenox and Beacon Lenox 2 as the single purpose entities by which Beacon would develop the Lenox phase of the Project.

7. In or about July 2016, Beacon asked Cruz to participate as the general contractor member of Beacon’s Lenox/Camden Project Team – a team comprising the architectural, engineering, environmental, construction and other professionals Beacon assembled to do the Camden-Lenox Project (“Project Team”). Beacon represented to Cruz that Cruz was being

solicited to be the general contractor on the Camden and Lenox phases of the Project. Cruz agreed to participate in reliance upon Beacon's representations and with the expectation and understanding that Cruz would be the general contractor on the Camden and Lenox phases. Among other things, Cruz attended and participated in Project Team meetings, performed general contractor tasks and team assignments, reviewed drawings, submitted budget and cost estimates, participated in value engineering meetings, performed and submitted matrix analyses, and otherwise provided various and extensive pre-construction general contractor expertise and services. Cruz did so in response to and in reliance upon Beacon's solicitation, request and encouragement and with the understanding and expectation that Cruz was the general contractor member of the Project Team for the entire Project, *i.e.*, the Camden phase and the Lenox phase. Beacon never informed or advised Cruz otherwise.

8. On or about December 10, 2018, Cruz entered into a contract with BC Camden Limited Partnership, acting by and through Beacon Camden LLC, its general partner, to be the general contractor on the Camden phase of the Project. Beacon Camden LLC was acting by and through Beacon Communities Corp., its sole member, which was acting by and through Pamela Goodman, President of Beacon Communities Corp. Thereafter, Cruz successfully performed and completed the Camden phase general contractor work and services, including change orders. As of February 27, 2021, Beacon referred to "the recently completed Camden Street Apartments complex" in a City of Boston press release.

9. In response to Beacon's request and solicitation, at the same time Cruz was successfully performing its Camden phase general contractor work and services, Cruz was participating as the general contractor member of the Project Team in preparation to start work on the Lenox phase. Among other things, Cruz attended and participated in Lenox phase Project Team

meetings at which Beacon representatives were present, performed general contractor tasks and assignments and contributed its general contractor knowledge, skill and expertise including, but not limited to, providing value engineering insights and recommendations based in part on Cruz's experience in performing its Camden phase general contractor work. Beacon never told or otherwise informed Cruz that it was not the general contractor member of the Project Team for the Lenox phase.

10. As a result of Boston's history of not including minority-owned businesses in such projects, the BHA and the City of Boston communicated to Beacon the importance of including a minority-owned business as a significant member of the Project Team. Notwithstanding this fact, from the outset of Cruz's participation, Beacon treated Cruz differently from the way Beacon treated the white-owned members of the Project Team and otherwise made it clear that Beacon resented Cruz's involvement and was unhappy at having been – from Beacon's perspective – pressured to include a minority-owned business as a member of the Project Team. Among other things, Beacon claimed to have "communication" issues with Cruz and required Cruz to engage a white consultant, which Cruz did, to improve "communication" between Cruz and Beacon. On information and belief, Beacon never claimed to have "communication" issues with the white-owned members of the Project Team and never required any of them to engage a consultant to improve "communication" with Beacon. In addition, Goodman and at least one person who reported to her at Beacon falsely accused Cruz of wrongdoing, blamed Cruz regarding matters for which Cruz was not at fault and made false and disparaging comments about Cruz's owner and staff. For example, Goodman blamed Cruz for delays on the Camden phase that were Beacon's responsibility. As another example, Beacon's Director of Capital and Special Projects stated that Cruz was "fucking up," referred to a Cruz representative as "a fucking wormy bastard," and falsely

accused a Cruz staff person of being a thief. Cruz is informed and believes that no one at Beacon made such comments about or accusations against the white-owned members of the Project Team.

11. Without warning or notice, on or about September 18, 2019, after Cruz had participated as the general contractor member of the Project Team for more than three years, Goodman summoned Cruz's President, John B. Cruz, III, to her office at 2 Center Plaza, Boston, and informed him that Cruz (a) would no longer be the general contractor on the Lenox phase, and (b) would not be allowed or permitted to bid, negotiate or otherwise compete for the Lenox phase general contractor work. Goodman never provided any reason or justification for her action in removing Cruz as the general contractor on the Lenox phase and denying Cruz the opportunity to bid, negotiate or otherwise compete to do the Lenox phase general contractor work. On information and belief, Beacon then engaged D.F. Pray, a white-owned entity headquartered in Toronto, Ontario, Canada, with an office in Seekonk, Massachusetts, to do the Lenox phase general contractor work. Beacon never compensated Cruz for the work Cruz did as the general contractor member of the Lenox Project Team before September 18, 2019.

12. At the time Goodman informed Cruz that it was no longer the general contractor on the Lenox phase and would not be permitted to bid, negotiate or otherwise compete for the Lenox general contractor work, Cruz was performing its obligations under the December 2018 Camden contract, which Cruz subsequently successfully completed. Goodman never stated any reason for her actions in removing Cruz as the Lenox general contractor, refusing to permit Cruz to bid, negotiate or otherwise compete for the Lenox general contractor work, and giving that work to D.F. Pray, a white-owned firm. Based on Beacon's dealings with Cruz throughout Cruz's involvement with the Project, Cruz is informed and believes that Beacon treated Cruz differently from the way Beacon treated D.F. Pray because of Cruz's status as a black-owned company and

because Beacon resented having to involve Cruz as the general contractor member of the Project Team in response to pressure from the BHA and the City of Boston.

13. On or about December 11, 2019, after informing Cruz on September 18, 2019, that Cruz would no longer be the Lenox phase general contractor and would not be allowed or permitted to bid, negotiate or otherwise compete for the Lenox work (see ¶ 11 above), Beacon submitted a Project Notification Form to the Boston Redevelopment Authority, d/b/a Boston Planning and Redevelopment Agency (“BPDA”), in which Beacon falsely identified “Cruz Construction” as the “Construction Management” member of the Lenox phase “Project Team.”

14. Beacon’s identification of “Cruz Construction” as the “Construction Management” member of the Lenox “Project Team” was without Cruz’s knowledge or approval and was false and misleading because Beacon knew that Cruz had been told three months earlier that Cruz would no longer be the Lenox general contractor; that Beacon had prohibited Cruz from bidding, negotiating or otherwise competing for the Lenox general contractor work; and that Beacon had given or was in the process of giving the Lenox general contractor work to the white-owned D.F. Pray. Cruz is informed and believes that Beacon falsely identified Cruz as the “Construction Management” member of the Lenox “Project Team” in order to improve Beacon’s prospects for obtaining the BPDA approval required to facilitate finalizing the financing package needed to complete the Lenox phase of the Project.

15. Beacon acted in bad faith, misled Cruz, took unfair advantage of Cruz’s reliance upon Beacon’s solicitation and inclusion of Cruz as the general contractor member of the Project Team, and used Cruz to obtain BPDA approval of the Lenox phase after Beacon removed Cruz as the Lenox general contractor and refused to allow or permit Cruz to bid, negotiate or otherwise compete for the Lenox general contractor work. Beacon did so without any good faith reason or

justification at the time Cruz was successfully completing the Camden contract. In giving the Lenox general contractor work to D.F. Pray, Beacon denied Cruz, a black-owned entity, the opportunity and right to contract that Beacon provided to D.F. Pray, a white-owned entity, and did so because Cruz is a 100% black-owned company.

16. As a result of Beacon's illegal and bad faith conduct in terminating Cruz as the Project general contractor and preventing Cruz from doing the Lenox phase general contractor work, Cruz's rights have been violated and Cruz has been wrongfully deprived of (a) its right to contract, (b) the benefit of the pre-construction and construction services and work Cruz provided as the general contractor member of the Project Team, and (c) the profit Cruz would have realized as the general contractor on the Lenox phase of the Project.

17. As a direct and proximate result of Beacon's illegal and bad faith conduct, Cruz, a black-owned entity, has been deprived of and denied the same right to contract Beacon provided to D.F. Pray, a white-owned entity, and has been denied the Lenox phase general contractor work Beacon gave to D.F. Pray.

18. By its illegal and bad faith conduct, Beacon (a) violated Cruz's right to contract, (b) obtained the value of the pre-construction and other work and services Cruz provided as the general contractor member of the Project Team in connection with the Lenox phase of the Project without compensating Cruz, and (c) deprived Cruz of the profit Cruz would have realized on the \$125 million Lenox phase of the Project.

**COUNT I**  
**(Breach of Implied Contract)**

19. Cruz repeats and realleges paragraphs 1 through 18 as if they were fully set forth here.

20. As a result of the course of dealing between Beacon and Cruz, including, but not limited to, the conduct of Beacon in (a) entering into the contract with Cruz to be the Camden phase general contractor, (b) soliciting and identifying Cruz as the black-owned general contractor member of the Project Team and utilizing Cruz's pre-construction and construction work and services in seeking and obtaining approval of the Lenox phase by the BPDA, and (c) accepting the benefit of Cruz's services with knowledge that Cruz expected to be compensated for its services by doing the Lenox general contractor work, an implied contract existed between Beacon and Cruz under which Cruz expected and intended that Cruz would be the general contractor on the larger Lenox phase of the Project.

21. In breach of the implied contract between the parties, at a time when Cruz was ready, willing and able to complete the Lenox phase, Beacon wrongfully and in bad faith failed and refused to perform the balance of the contract by (a) preventing Cruz from serving as general contractor on the Lenox phase, and (b) denying Cruz the opportunity to negotiate, bid or otherwise compete to be the general contractor on the larger Lenox phase (despite later falsely representing that Cruz was the construction manager member of the Project Team), thereby depriving Cruz of the profit Cruz would have realized from doing so.

22. As a direct and proximate result of Beacon's breach of the implied or quasi contract between Beacon and Cruz, Cruz has been damaged in an amount to be determined at trial and demands judgment against all defendants for all such damages.



**COUNT II**  
**(Promissory Estoppel)**

23. Cruz repeats and realleges paragraphs 1 through 22 as if they were fully set forth here.

24. By soliciting, involving and identifying Cruz as a member of the Project Team and utilizing Cruz's pre-construction and construction services and work, Beacon made representations to Cruz or engaged in conduct amounting to representations intended to induce a course of conduct by Cruz, *i.e.*, participating and contributing as the general contractor member of the Lenox/Camden Project Team as Beacon successfully pursued approval of the Project by the BPDA.

25. In reliance upon Beacon's representations and conduct amounting to representations, Cruz participated and contributed as the general contractor member of the Project Team, including, but not limited to, providing pre-construction and construction services and work that enabled Beacon to obtain the BPDA approval needed to finalize the financing of the Lenox phase of the Project.

26. As a result of Beacon's wrongful and bad faith removal of Cruz as the general contractor on the Lenox portion of the Project and exclusion of Cruz from bidding, negotiating or otherwise competing for the Lenox general contractor work, Cruz suffered a detriment as a consequence of participating and contributing as the general contractor member of the Project Team.

27. As a direct and proximate result of Beacon's representations and conduct amounting to representations, Cruz has suffered damages in an amount to be determined at trial and demands judgment against all defendants for all such damages.

**COUNT III**  
**(Quantum Meruit)**

28. Cruz repeats and realleges paragraphs 1 through 27 as if they were fully set forth here.

29. As a result of Beacon's soliciting, involving and identifying Cruz as a member of the Project Team and utilizing Cruz's pre-construction and construction services and work, (a) Cruz conferred a measurable benefit upon Beacon with the reasonable expectation of compensation from Beacon in the form of the profit to be realized by Cruz as the general contractor on both phases of the Project, and (b) Beacon accepted the benefit of Cruz's pre-construction and construction services and work with knowledge, actual or chargeable, of Cruz's reasonable expectation of such compensation.

30. As a direct and proximate result, Cruz has suffered damages in an amount to be determined at trial and demands judgment against all defendants for all such damages.

**COUNT IV**  
**(Breach of Implied Covenant of Good Faith and Fair Dealing)**

31. Cruz repeats and realleges paragraphs 1 through 30 as if they were fully set forth here.

32. Inherent in the implied contract between Beacon and Cruz was the obligation on the part of Beacon to act in good faith and not to do anything that would deprive Cruz of the benefit of the implied contract.

33. In breach of its obligation of good faith and fair dealing, Beacon solicited and identified Cruz as the minority-owned general contractor member of the Project Team, utilized Cruz's pre-construction and construction services and work, and misled Cruz into believing and expecting that Cruz would be the general contractor on the Lenox phase of the Project. Beacon

then without reason or justification and in bad faith removed Cruz as the general contractor member of the Lenox Project Team, denied Cruz the opportunity to bid, negotiate or otherwise compete for the Lenox phase general contractor work, and prevented Cruz from serving as the Lenox general contractor.

34. As a direct and proximate result of Beacon's violation of its duty of good faith and fair dealing, Cruz has suffered damages in an amount to be determined at trial and demands judgment against all defendants for all such damages.

**COUNT V**  
**(Violation of Chapter 93A)**

35. Cruz repeats and realleges paragraphs 1 through 34 as if they were fully set forth here.

36. After soliciting and involving Cruz as the minority-owned general contractor member of the Project Team, utilizing Cruz's pre-construction and construction expertise and services, and misleading Cruz into understanding, believing and expecting that Cruz was the general contractor for the Lenox phase of the Project, Beacon engaged in unfair or deceptive acts or practices in violation of G.L. c. 93A, §§ 2 and 11, by removing Cruz as the general contractor member of the Project Team, prohibiting Cruz from bidding, negotiating or otherwise competing for the Lenox phase general contractor work, and replacing Cruz as the general contractor with the white-owned D. F. Pray, all without justification and in a bad faith effort to deprive Cruz of the rights and benefits to which it was entitled.

37. As a direct and proximate result of Beacon's violation of c. 93A, Cruz has suffered a loss of money or property in the form of (a) its right to contract, (b) the funds and resources expended as a result of being misled into participating as the minority-owned general contractor member of the Project Team until Beacon wrongfully and in bad faith removed Cruz as the general

contractor, and (c) the profit Cruz would have realized as the general contractor on the Lenox phase of the Project.

38. As a direct and proximate result of Beacon's intentional and bad faith conduct, Cruz has suffered damages and is entitled to recover from all defendants triple, but not less than double, the amount of the actual damages to which Cruz is determined to be entitled at trial, plus Cruz's reasonable attorneys' fees.

**COUNT VI**  
**(Violation of 42 U.S.C. § 1981)**

39. Cruz repeats and realleges paragraphs 1 through 38 as if they were fully set forth here.

40. Under 42 U.S.C. § 1981, Cruz, as a 100% black-owned entity, had the same right to make and enforce contracts as was enjoyed by D.F. Pray, the white-owned entity that was allowed to bid, negotiate or otherwise obtain the Lenox general contractor work that Cruz was denied the opportunity to bid, negotiate or otherwise compete for and/or obtain.

41. In removing Cruz as the general contractor member of the Lenox Project Team and denying Cruz the opportunity to bid, negotiate or otherwise compete for the Lenox general contractor work because of Cruz's status as a black-owned company, Beacon violated Cruz's right to make and perform contracts and deprived Cruz of the enjoyment of all the benefits, privileges, terms and conditions of the contractual relationship provided to D.F. Pray, a white-owned company.

42. In removing Cruz from the Lenox Project Team and denying Cruz the opportunity to bid, negotiate or otherwise compete for the Lenox general contractor work, Beacon treated Cruz differently from the way Beacon treated D.F. Pray, a white-owned entity, and did so because of Cruz's status as a 100% black-owned entity.

43. As a direct and proximate result of Beacon's conduct, Cruz has suffered damages in an amount to be determined at trial and demands judgment against all defendants for all such damages, including punitive damages, plus reasonable attorneys' fees.

**DEMAND FOR JUDGMENT**

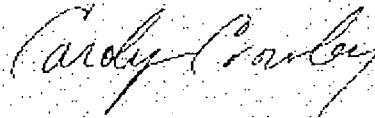
WHEREFORE, Cruz demands judgment against Beacon as sought in Counts I, II, III, IV, V, and VI, including multiple damages, attorney's fees, interest and costs, plus such other and further relief as the Court deems warranted and appropriate.

**DEMAND FOR JURY TRIAL**

Cruz demands a trial by jury on all issues so triable.

Respectfully submitted,  
JOHN B. CRUZ CONSTRUCTION CO., INC.,

By its attorneys,



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Dated: August 30, 2023