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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH
~~NORTHERN DIVISION~~
CENTRAL

UNITED STATES OF AMERICA,

Plaintiff,

v.

FOX POINT AT REDSTONE
ASSOCIATION, INC., PROPERTY
MANAGEMENT SYSTEMS, INC., and
DEREK PETERSON,

Defendants.

COMPLAINT

Case No. 2:11CV01069

Judge: Paul M. Warner

The United States of America ("United States") alleges as follows:

NATURE OF THE ACTION

1. This action is brought by the United States to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (Fair Housing

Act'), 42 U.S.C. §§ 3601-3631. It is brought on behalf of Thomas Burton pursuant to 42 U.S.C. § 3612(o).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 3612(o).

3. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendants reside there and because a substantial part of the events or omissions giving rise to the United States' claims occurred there.

DEFENDANTS AND THE SUBJECT PROPERTY

4. Defendant FOX POINT AT REDSTONE ASSOCIATION, INC. ('Association'), is a Utah corporation that governs Fox Point at Redstone ('Fox Point'), a 251-unit condominium community in Park City, Utah. The Association is governed by a Board of Trustees consisting of unit owners elected by the Association's members. A number of Fox Point unit owners are not permanent residents of Fox Point and rent out their units to long-term and short-term tenants.

5. Defendant PROPERTY MANAGEMENT SYSTEMS, INC. is a Utah corporation that the Association has retained and delegated to manage Fox Point. Property Management Systems' responsibilities include the enforcement of the Association's pet policies and evaluating requests for reasonable accommodations, including requests for service and support animals.

6. Defendant DEREK PETERSON is employed by Property Management Systems as the on-site manager of Fox Point.

FACTUAL ALLEGATIONS

7. In or about December 2008, Thomas Burton leased a two-bedroom unit at Fox Point located at 1618 West Redstone Avenue, Apartment E, Park City, Utah, from Brad Carter, a resident of California. Mr. Burton leased the unit through Coalition Management, which Mr.

Carter retained to manage units he owns at Fox Point. Mr. Burton renewed his lease with Mr. Carter for one year in or about September 30, 2009. Mr. Burton lived at Fox Point with his wife, Maria Burton.

8. Mr. Burton is a combat veteran of the Gulf War and has psychiatric disabilities that include depression and anxiety disorder. While living at Fox Point, Mr. Burton was under treatment for these disabilities by mental health professionals, including a psychiatrist and licensed therapist, with the Veterans' Administration in Salt Lake City, Utah. His treatment included weekly counseling sessions and medication.

9. In or about March 2010, Maria Burton returned to her native Argentina to await approval of her application for permanent residency status in the United States. Thereafter, Mr. Burton found it more difficult to cope with his psychiatric disabilities while living alone. Mr. Burton's treating professionals at the Veterans Administration determined that an emotional support animal could assist Mr. Burton in overcoming the effects of his depression and controlling his anxiety, thus allowing him to continue to live independently.

10. Pursuant to this recommendation, in or about May 2010, Mr. Burton obtained a small dog, which he intended to use in his home and elsewhere as an emotional support animal. Mr. Burton found that the dog helped him control the effects of his depression and anxiety, which had been exacerbated by his temporary separation from his wife.

11. From August 2005 until May 2010, the Association's policy was to prohibit all Fox Point residents from owning dogs. However, the policy exempted certain service and support animals for persons with disabilities. The policy did not require owners of service animals to pay fees or obtain liability insurance as a condition of owning the service or support animal.

12. On or about May 26, 2010, the Association enacted a "Pet Restriction Resolution" as well as a new pet policy. Under the new policy, unit owners could own dogs and cats, but renters could not. Furthermore, owners who wished to own a dog or cat as a pet were subject to, inter alia, payment of a \$150 pet registration fee, a \$35 annual re-registration fee, and maintenance of a \$100,000 general liability policy covering animals. Although the policy did not prohibit service and support animals, it also stated that such animals would be regarded as "pets" and therefore subject to the same requirements and restrictions, including the registration fees and insurance requirement.

13. Under the Association's pet policies and procedures, Property Management Systems is responsible for evaluating and gathering information for service and support animal requests, including medical information related to a resident's disability. Although the policies state that the Association's Board of Trustees may decide such requests, in practice the Board does not do so and delegates this responsibility to Property Management Systems.

14. On May 24, 2010, Derek Peterson notified Brad Carter that Mr. Burton had a dog in his unit, in violation of the Association's policy prohibiting renters from owning pets. Mr. Carter forwarded this notice to Coalition Management, which asked Mr. Burton to remove the dog.

15. Mr. Burton responded that his dog was an emotional support animal and that an exception to the Association's prohibition on pets should be made. On or about May 28, 2010, Mr. Burton sent Coalition Management a copy of a note from his treating psychiatrist at the Veterans Administration, dated May 14, 2010, recommending that Mr. Burton obtain an emotional support dog.

16. Mr. Burton also completed and forwarded a "pet registration form" for the Association. On the form, Mr. Burton answered all questions requesting information concerning his emotional support dog. He furthermore attached the dog's inoculation records and proof of its registration with Summit County, where Park City is located. However, Mr. Burton disputed the Association's \$150 "pet registration fee," its \$35 annual re-registration fee, and its requirement that Mr. Burton obtain a \$100,000 general liability insurance policy covering animals. Mr. Burton did not believe it was legal or appropriate to charge such fees for his emotional support animal, which he did not regard as an optional pet but, rather, as a necessary accommodation to ameliorate the effects of his psychiatric disabilities. Mr. Burton agreed, however, that he would be responsible for the dog's behavior, clean-up and any damage the dog might in fact cause.

17. On May 28, 2010, Coalition Management forwarded Mr. Burton's pet registration form to Derek Peterson and Brad Carter, along with Mr. Burton's e-mails identifying his dog as a support animal and referencing the note from his treating psychiatrist. Coalition Management directed Mr. Burton to speak with Mr. Peterson concerning his request.

18. On or about June 1, 2010, Mr. Burton provided Mr. Peterson with a second letter from his treating therapist at the Veterans Administration, Mark Cappel, that further verified Mr. Burton's disability and explained his need for an emotional support dog. In the letter, Mr. Cappel invited recipients to call with any questions or for further information concerning Mr. Burton's disability and need for the accommodation. Mr. Burton confirmed that Mr. Peterson could contact Mr. Cappel if he had further questions regarding Mr. Burton's need for an emotional support dog. However, due to the sensitive nature of the information as well as the potential stigmatization that could result from disclosure of Mr. Burton's psychiatric disabilities to his neighbors, Mr. Burton requested that Mr. Peterson not share Mr. Cappel's letter with the

Association's Board of Trustees. This request was consistent with the Association's procedures concerning requests for emotional support animals, which delegated responsibility for obtaining medical information and speaking with medical providers to Property Management Systems.

19. Mr. Peterson did not call Mr. Cappel or request further information concerning Mr. Burton's disability or need for an emotional support animal.

20. On June 3, 2010, two days after Mr. Burton provided Mr. Cappel's letter to Mr. Peterson, the Association's counsel, Lincoln Hobbs, wrote to Mr. Burton. Mr. Hobbs erroneously accused Mr. Burton of refusing to provide any information concerning his emotional support dog, "in violation of the Association's pet policy." Furthermore, notwithstanding the Association's procedures, Mr. Hobbs demanded that Mr. Burton authorize Mr. Peterson to share information concerning Mr. Burton's psychiatric disabilities with the Association's Board and its "authorized representatives," whom Mr. Hobbs did not identify. Mr. Burton responded that he had already completed and submitted the registration form and provided information concerning his disability and need for an emotional support animal to Mr. Peterson.

21. On June 22, 2010, Mr. Hobbs wrote to Mr. Burton and again erroneously asserted that Mr. Burton was refusing to provide information concerning his disability or need for an emotional support dog. Mr. Hobbs also claimed, falsely, that Mr. Burton was refusing to register the dog with the Association. He therefore told Mr. Burton that he would recommend the Association would recommend "the imposition of a fine" for Mr. Burton's possession of an emotional support dog.

22. On July 2, 2010, Property Management Systems fined Brad Carter \$150 because of Mr. Burton's emotional support dog. Coalition Management requested that Mr. Burton pay the fine or remove his animal.

23. On July 6, 2010, Mr. Peterson wrote to Mr. Hobbs and stated that unless he registered his emotional support dog by July 12, 2010, the Association "will start fining your owner for every day the registration is not turned in."

24. On July 8, 2010, Mr. Peterson acknowledged that he had received Mr. Burton's completed registration form--which had, in fact, been e-mailed to Mr. Peterson nearly six weeks earlier. However, he again demanded payment of the \$150 pet registration fee and proof of a \$100,000 liability insurance policy.

25. In a separate e-mail to Coalition Management that same day, Mr. Peterson recommended that Coalition Management deduct the \$150 fee from Mr. Burton's security deposit.

26. On July 12, 2010, Mr. Burton again requested in writing to Mr. Peterson that he be permitted to have an emotional support animal as a reasonable accommodation to his psychiatric disabilities.

27. On July 29, 2010, Mr. Burton, who had recently lost his job and was unemployed, purchased a general liability insurance policy and provided Mr. Peterson with confirmation of this policy. Mr. Burton's lease did not otherwise require him to purchase such a policy, and Mr. Burton did not believe that he could or should be required to purchase liability insurance as a condition for allowing an emotional support animal. Nevertheless, he decided to do so in advance of a conference call the parties were having that day to attempt to resolve this matter.

28. Following the conference call, and despite Mr. Burton's willingness to comply with the Association's insurance requirement, Mr. Peterson informed Mr. Burton that the Association was still refusing to waive its registration fees. Accordingly, no resolution was reached.

29. Thereafter, the Association, via Property Management Systems, levied an additional \$225 in fines against Mr. Carter. Two of these fines—one for \$100 and one for \$75—were levied on two consecutive days, September 15 and 16, 2010. Mr. Peterson informed Mr. Carter that he could ask the Association to waive these fines “once he’s gone,” referring to Mr. Burton.

30. Mr. Burton’s lease expired on September 30, 2010. Mr. Burton informed Coalition Management that he wished to renew his lease for another year. Mr. Carter, however, refused to renew Mr. Burton’s lease unless he paid the fines and the pet registration fees demanded by the Association. Mr. Burton therefore moved out on or about September 30, 2010.

31. After Mr. Burton moved out of Fox Point, the Association waived all but \$150 in fines against Mr. Carter. The \$150 fine, which was equal to the Association’s pet registration fee, was deducted from Mr. Burton’s security deposit.

32. On June 24, 2011, Mr. Burton filed a complaint of discrimination with the U.S. Department of Housing and Urban Development (HUD), pursuant to 42 U.S.C. § 3610(a).

33. Pursuant to 42 U.S.C. § 3610(a) and (b), the Secretary of HUD investigated these complaints, attempted conciliation without success, and prepared a final investigative report. Based on the information gathered in the course of this investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g), determined that reasonable cause existed to believe that Defendants violated the Fair Housing Act by refusing to make a reasonable accommodation and by

34. On October 20, 2011, the Association timely elected to have these charges resolved in a federal civil action, pursuant to 42 U.S.C. § 3612(a).

35. The Secretary of HUD subsequently authorized the Attorney General to file this action on behalf of Thomas Burton, pursuant to 42 U.S.C. § 3612(o).

CLAIM FOR RELIEF

36. The United States re-alleges and incorporates by reference the allegations set forth in paragraphs 1-35, supra.

37. By the actions and statements referred to in the foregoing paragraphs, Defendants have:

- a. Refused to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B); and
- b. Otherwise made unavailable or denied housing on the basis of disability, in violation of 42 U.S.C. § 3604(f)(1).

38. Thomas Burton has suffered damages as a result of Defendants' violations of 42 U.S.C. §§ 3604(f)(1) and 3604(f)(3)(B) and is an 'aggrieved person' pursuant to 42 U.S.C. § 3602(i).

39. Defendants' actions, as set forth above, were intentional, willful and/or taken in reckless disregard for the rights of others.

WHEREFORE, the United States prays that this Court enter an order that:

1. Declares that Defendants' actions, policies and practices, as alleged herein, violate the Fair Housing Act;

2. Enjoins Defendants, their agents, employees and successors, and all other persons in active concert or participation with them, from

- a. discriminating on the basis of disability;
- b. refusing to make reasonable accommodations in rules, policies, practices, or services, including the imposition of fees and insurance requirements as a condition of approving such reasonable accommodations; and
- c. failing or refusing to take such steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of Defendants' unlawful housing practices.

3. Award monetary damages, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1), to Thomas Burton.

