



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

FORT NORFOLK RETIREMENT COMMUNITY,
INC., d/b/a/ HARBOR'S EDGE

Defendant.

Case No. 2:15 CV 200

**COMPLAINT AND JURY TRIAL
DEMAND**

COMES NOW the United States of America (hereinafter "the United States") and alleges as its complaint herein, the following:

1. This action is brought by the United States to enforce the Fair Housing Act, as amended, ("Act"), 42 U.S.C. §§ 3601 *et seq.*

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3614(a).

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the actions giving rise to the United States' claims occurred in this District; Defendant Fort Norfolk Retirement Community, Inc. ("Fort Norfolk") owns and operates a business that is located in this District; and Defendant Fort Norfolk, a Virginia corporation, has designated an agent for service of process in this District.

DEFENDANT AND SUBJECT PROPERTY

4. At all times relevant to this complaint, Defendant Fort Norfolk has done business as Harbor's Edge. Fort Norfolk, through the d/b/a name Harbor's Edge, owns and operates a continuing care retirement community called Harbor's Edge ("Harbor's Edge").

5. Harbor's Edge is located at 1 Colley Ave., Norfolk, Virginia 23510.

6. At all times relevant to this complaint, Fort Norfolk has sold and/or leased dwelling units at Harbor's Edge.

FACTUAL ALLEGATIONS

7. Harbor's Edge is a 246-unit continuing care retirement community, which provides four types of dwelling units: independent living, assisted living, nursing, and memory support units. The independent living units are located in a 17-story building called the "Residential Tower." The assisted living, nursing and memory support units are located in a four-story building called the "Healthcare Building." The Residential Tower and Healthcare Building are connected by an interior corridor on the first floor.

8. In order to live in the dwelling units located in the Healthcare Building, Harbor's Edge makes a determination that the resident has a disability¹ and needs assistance in caring for himself or herself.

9. At all times relevant to this Complaint, Harbor's Edge had two types of residents: a Lifecare resident and Direct Admit resident.

10. Lifecare residents pay a buy-in amount that entitles them to continuing care through all levels of care available at Harbor's Edge. They also pay a monthly fee. Lifecare residents

¹ Although the Act refers to the protected class as persons with "handicap[s]," the term "disabilities" is synonymous and generally preferred, see *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998), and will be used in this Complaint.

move into the Residential Tower and may later move into the Healthcare Building if they develop a disability and need assistance caring for themselves.

11. Direct Admit residents move directly into assisted living, nursing or memory support units in the Healthcare Building. Direct Admit residents pay a monthly fee but do not pay a buy-in amount.

12. Harbor's Edge operates several dining rooms in the Residential Tower and the Healthcare Building. The Residential Tower has four dining areas: the River Terrace, which is open daily for lunch and dinner and offers Sunday brunch and to-go orders; the Harbor Room, which is a fine dining restaurant that is open for dinner on Friday and Saturday nights; the Horizon's Lounge, which is open nightly for cocktails; and the Cafe Norfolk, a casual bistro style restaurant open daily for breakfast and lunch. Members of the public, including residents' family members and guests dine at these dining rooms with residents. Prospective residents also eat in these dining rooms as part of Harbor's Edge's marketing efforts.

13. The Healthcare Building has several dining rooms. The assisted living unit has two dining rooms. The nursing unit and the memory support unit each have one dining room.

14. Harbor's Edge hosts events and activities, including but not limited to, movies, fashion shows and exercise classes, for its residents. Harbor's Edge also hosts community events for residents and members of the public as marketing tools, including, for example, a party for the July 4th holiday and a party for the "Parade of Sail" to watch historical ships and navy vessels sail up the Chesapeake Bay.

A. Harbor's Edge's Dining Room and Community Events Policies

15. Prior to May 2011, all residents of the Healthcare Building were permitted to eat at dining rooms located in the Residential Tower and attend events with residents of the Residential Tower and members of the public.

16. Beginning in May 2011, and continuing to the present, Harbor's Edge has adopted a series of policies that prohibited, and then limited, residents living in the Healthcare Building from eating at dining rooms located in the Residential Tower and attending events with residents of the Residential Tower and/or the public. Harbor's Edge adopted these policies because it wanted to market its facility as a place for "young seniors" who wanted an active lifestyle.

17. As a result of these policies, spouses and friends who had dined and attended events together were no longer able to do so in the independent living areas.

18. Specifically, on or about May 13, 2011, Harbor's Edge adopted a policy prohibiting all Healthcare Building residents and their guests from eating at all four dining rooms located in the Residential Tower and from attending all events, including marketing events, in the Residential Tower.

19. On or about December 22, 2011, Harbor's Edge revised its dining and events policy ("December 2011 Policy"). The revised policy allowed Lifecare residents living in the assisted living units in the Healthcare Building to eat in the River Terrace and Harbor Room in the Residential Tower and to attend non-marketing events with independent living residents in the Residential Tower. In order to do so, Lifecare assisted living residents first had to pass a multi-page health and behavioral screening, obtain a physician's consent permitting them to eat at the River Terrace or Harbor Room or attend events, and sign a release of liability. Lifecare residents living in assisted living units also had to be a guest of an existing independent living resident to

eat at the Harbor Room. Lifecare residents living in assisted living were not allowed, *inter alia*, to host guests in independent living dining rooms, obtain to-go orders from independent living dining rooms, eat at Cafe Norfolk or Horizon's Lounge, and attend Sunday brunch, holiday meals or marketing events under the December 2011 policy. The December 2011 policy continued to prohibit all Direct Admit residents living in assisted living and all residents living in nursing or memory support units -- whether Lifecare or Direct Admit -- from eating in any of the four independent living dining rooms in the Residential Tower and from attending all independent living and marketing events.

20. On or about February 29, 2012, Harbor's Edge revised its dining and community events policy a second time ("February 2012 Policy"). The policy allowed all Lifecare residents -- including all residents in the assisted living, memory support and nursing units in the Healthcare Building -- to eat at all four independent dining rooms in the Residential Tower and attend non-marketing events open to independent living residents. To do so, they had to pass a health screening, obtain a physician's consent and sign a release of liability. The February 2012 policy continued to prohibit all Direct Admit residents from eating in all independent dining rooms in the Residential Tower and from attending independent living events and marketing events at the Residential Tower.

21. On or about March 5, 2012, Harbor's Edge revised its dining and events policy a third time ("March 2012 Policy"). The policy allowed all residents of the Healthcare Building to dine in the independent living dining rooms and attend non-marketing events with independent living residents in the Residential Tower if they passed a health screening, obtained a physician's consent and signed a release of liability. The March 2012 policy prohibited all residents living in

the Healthcare Building from attending any events designated by Harbor's Edge as marketing events.

22. Following the adoption of the first dining room policy in May 2011, and continuing until at least after adoption of the March 2012 Policy, residents and their family members voiced opposition to Harbor's Edge's dining and events policies. They wrote letters to Harbor's Edge's management and Board of Directors, met with the Virginia Long-Term Care Ombudsman and circulated a petition to the Board of Directors asking that the policies be rescinded. Beginning in May 2011 and continuing until at least March 2012, Harbor's Edge's management threatened to sue residents and/or family members who complained about the dining and event policy changes.

B. Harbor's Edge's Motorized Wheelchair and Scooter Policy

23. Beginning in or about 2006 and continuing at least until April 2013, Harbor's Edge maintained a policy requiring any resident who used a motorized wheelchair or scooter at Harbor's Edge to obtain prior approval from Harbor's Edge's staff, obtain liability insurance and pay a \$300 non-refundable deposit before using a motorized wheelchair or scooter at Harbor's Edge.

FAIR HOUSING ACT CLAIMS

24. Plaintiff re-alleges and hereby incorporates by reference the allegations set forth in paragraphs 1-23, above.

25. Harbor's Edge is a "dwelling" within the meaning of 42 U.S.C. § 3602(b).

26. Residents, applicants and prospective residents at Harbor's Edge who live in the Healthcare Building are people with disabilities within the meaning of 42 U.S.C. § 3602(h).

27. Residents, applicants and prospective residents at Harbor's Edge who require the use of a motorized wheelchair or scooter are people with disabilities within the meaning of 42 U.S.C. § 3602(h).

28. Defendant has and employs policies that prohibit and limit Healthcare Building residents with disabilities and prospective residents with disabilities from eating at dining rooms in the Residential Tower.

29. Defendant has and employs policies that prohibit and limit Healthcare Building residents with disabilities and prospective residents with disabilities from attending events with residents of the Residential Tower and the public.

30. Defendant has and employs policies that set conditions on persons with disabilities who use motorized mobility aids.

31. Defendants, through the actions described in paragraphs 16 through 23, above, have:

- a. Discriminated in the terms, conditions, or privileges of sale or rental of a dwelling, and in the provision of services or facilities in connection with such a dwelling, because of disability, in violation of 42 U.S.C. § 3604(f)(2);
- b. Coerced, intimidated, threatened, or interfered 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 the Fair Housing Act, in violation of 42 U.S.C. § 3617.

32. Defendant's conduct, described above, constitutes:

- a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*; and/or
- b. A denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, which denial raises an issue of general public importance.

33. There are persons who are victims of Defendant's discriminatory housing practices who are "aggrieved persons" as defined in 42 U.S.C. § 3602(i) and who may have suffered injuries and damages as a result of Defendant's actions and practices described above.

34. Defendant's conduct, described above, was intentional, willful, and taken in disregard of the Fair Housing Act and the rights of others.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an ORDER that:

1. Declares that Defendant's discriminatory policies and practices, as alleged herein, violate the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*;
2. Enjoins Defendant, its officers, agents, employees, and successors, and all other persons in active concert or participation with them from:
 - a. Discriminating on account of disability against any person in any aspect of the sale, rental or services of a dwelling;
 - b. Interfering with or threatening to take any action against any person in the exercise or enjoyment of rights granted or protected by the Act;
 - c. Failing or refusing to take such affirmative 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' discriminatory practices; and

- d. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of Defendant's past unlawful practices to the position they would have been in but for the discriminatory policies and practices.

3. Awards monetary damages to all persons harmed by Defendant's discriminatory practices for injuries caused by Defendant's discriminatory conduct, pursuant to 42 U.S.C. § 3614(d)(1)(B);

4. Assesses a civil penalty against Defendant in order to vindicate the public interest, pursuant to 42 U.S.C. § 3614(d)(1)(C) and 28 C.F.R. § 85.3(b)(3).

The United States further prays for such additional relief as the interests of justice may require.

The United States requests trial by jury.

Respectfully submitted,

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