

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
TERRY BANKERT,)
)
Defendant.)
_____)

FILED
NOV 22 1999
David W. Daniel, Clerk (3)
US District Court, EDNC
Case No. 99-CV-008
By: _____ Dep. Clerk
FIRST AMENDED COMPLAINT

The United States of America alleges:

1. This action is brought pursuant to Section 812(o) of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. § 3612(o) by the United States on behalf of Cary and Kimberly Bruton, and Isaac Woods.

Jurisdiction and Venue

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

3. Venue is proper in that the claims alleged herein arose in Johnston County, North Carolina, within the Eastern District of North Carolina.

Complainants and Defendants

4. Cary and Kimberly Bruton currently reside in Lancaster, South Carolina with their two minor children. During all times relevant to the complaint, the Brutons were attempting to purchase a modular home constructed by Jymco Development, Inc. d/b/a

Whitley Homes ("Jymco"). Mrs. Bruton and the couple's two children lived in South Carolina. Mr. Bruton moved to North Carolina in order to work in Raleigh. The Brutons intended to place the modular home on a lot located in Benson, North Carolina and thus, reunite their family. Benson is located within the Eastern District of North Carolina.

5. Isaac Woods is the president and owner of a mortgage company located in Durham, North Carolina called Unlimited Financial Resources, Inc ("UFR"). During all times material to this complaint Mr. Woods was attempting to process a loan application filed by the Brutons to purchase the modular home from Jymco. Mr. Woods is an African-American.

6. Jymco is a development company registered to do business in the state of North Carolina. Jymco is headquartered in Smithfield, North Carolina, which is located within the Eastern District of North Carolina. During all times relevant to the complaint, Jymco was involved in the sale of homes, including modular homes.

7. Jimmy Ray Whitley was at all times relevant to this complaint the president and owner of Jymco. Upon information and belief, he resides within the Eastern District of North Carolina. Whitley is Caucasian.

8. Defendant Terry Bankert was, at all times relevant to this complaint a sales manager at Jymco. He resides in Clayton,

North Carolina, which is located within the Eastern District of North Carolina. Defendant Bankert is Caucasian.

Factual and Legal Background

9. On or about May 6, 1996, Cary and Kimberly Bruton filed a timely complaint with the United States Department of Housing and Urban Development (hereinafter "HUD"), pursuant to Section 810(a) of the Fair Housing Act, as amended 42 U.S.C. § 3610(a). In their complaint, the Brutons alleged that Jymco, Whitley and Defendant Bankert had discriminated on the basis of the race of the owner of UFR, their financing company, in violation of the Fair Housing Act.

10. On or about May 6, 1996, Isaac Woods filed a timely complaint with the United States Department of Housing and Urban Development (hereinafter "HUD"), pursuant to Section 810(a) of the Fair Housing Act, as amended 42 U.S.C. § 3610(a). In his complaint, Mr. Woods alleged that Jymco, Whitley and Defendant Bankert had discriminated on the basis of his race in violation of the Fair Housing Act.

11. Pursuant to the requirements of 42 U.S.C. §§ 3610(a) and (b) the Secretary of HUD (hereinafter "Secretary") conducted and completed an investigation of the Brutons' and Woods' complaints, attempted conciliation without success, and prepared a final investigative report. Based on information gathered in the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1),

determined that reasonable cause exists to believe that discriminatory housing practices have occurred. Therefore, on April 6, 1999, the Secretary issued a Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging Jymco, Whitley and Defendant Bankert with engaging in discriminatory housing practices in violation of the Fair Housing Act.

12. On or about April 30, 1999, Jymco and Whitley elected to have the charge resolved in a federal civil action pursuant to 42 U.S.C. § 3612(a).¹

13. The Secretary has authorized the Attorney General to commence a civil action on behalf of Cary and Kimberly Bruton and Isaac Woods pursuant to 42 U.S.C. § 3612(o).

14. The modular home that the Brutons attempted to purchase and locate in Benson, North Carolina is a dwelling within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

15. In or around September 1995, the Brutons contacted Jymco about purchasing a modular home and placing it on a lot owned by Jymco.

16. Jymco referred the Brutons to UFR for financing. Upon information and belief, at the time of this referral, the employees and owner of Jymco were unaware of the race of the owner of UFR. Gene Summerlin, a Caucasian salesman from UFR, had made

¹Jymco and Whitley have entered into a tolling agreement which allow the complaint against these respondents to be filed on or before July 30, 1999.

the initial contact with Jymco on behalf of UFR. Prior to Mr. Summerlin's summer or fall 1995 contacts with Jymco, Jymco and UFR had not done business together.

17. On or about October 4, 1995, the Brutons applied to UFR for a mortgage loan insured by the Department of Housing and Urban Development ("HUD").

18. On or about October 9, 1995, the Brutons executed a sales contract with Jymco to purchase a modular home and a lot in Benson, North Carolina for \$80,000. At this time, the Brutons dealt with Defendant Bankert, a salesman for Jymco. The Brutons paid Jymco \$1000 in earnest money. Closing was scheduled to occur on or before November 30, 1995.

19. In or around October 1995, upon information and belief, the employees and/or owner of Jymco learned that the owner of UFR was African-American. Upon information and belief, among other things, either an employee or the owner of Jymco was given or shown a UFR business card which contains a photograph of the owner, Mr. Woods. Upon further information and belief, Gene Summerlin, who had been recently fired by UFR, made racially derogatory comments about UFR to Defendant Bankert and/or other persons affiliated with Jymco.

20. Thereafter, on several occasions, Whitley and Defendant Bankert made racially derogatory statements about UFR and its African-American owner and employees to both Mr. Woods and/or the

Brutons. Jymco, its agents, Whitley and/or Defendant Bankert also took steps to delay and discourage the processing of the Brutons' loan, including, but not limited to, failing to respond to several of UFR's requests for information that was necessary to process the FHA loan. Notwithstanding these problems, the Brutons wanted to do business with UFR.

21. Defendant Bankert and/or others affiliated with Jymco informed the Brutons that the delay in processing their loan application was because of UFR. After being told by Ms. Bruton that the Brutons did not want to do business with Jymco because of the company's discriminatory attitude toward UFR, Defendant Bankert refused to return their earnest money deposit to the Brutons.

22. Without notice to or approval from the Brutons, Defendant Bankert or others affiliated with Jymco contacted Centura Bank about moving the Brutons' loan from UFR to Centura Bank. Defendant Bankert then encouraged the Brutons to move their loan from UFR to Centura Bank.

23. On or about November 10, 1995, Defendant Bankert contacted UFR and demanded that the Brutons' loan application be transferred to Centura Bank for processing.

24. Ultimately, the loan was transferred from UFR to Centura Bank for processing. However, in part because of the manner in which Jymco treated UFR and in part because transferring the loan

application to another lender increased the cost of the loan, the Brutons decided not to purchase a home and lot from Jymco. Jymco did not return the earnest money deposit to the Brutons.

25. At or around the end of October 1995, after Jymco and its owner and agents had learned that the owner of UFR was African-American, Jymco also failed to take final steps to close a deal with Shannon and Carolyn Seagrove, another couple who sought to purchase a modular home and lot from Jymco with financing through UFR.

26. Defendant Bankert, through the actions referred to in Paragraphs 15 through 25, above, have engaged in discriminatory conduct on the basis of race in violation of the Fair Housing Act. More specifically, Defendant has:

- a. Discriminated in the sale, or otherwise made unavailable or denied, dwellings to buyers because of race, in violation of 42 U.S.C. § 3604 (a);
- b. Discriminated in the terms, conditions, or privileges of the sale of a dwelling, or in the provision of services in connection with such a dwelling, because of race in violation of 42 U.S.C. § 3604 (b); and
- c. Made discriminatory statements in a real estate transaction on the basis of race in violation of 42 U.S.C. § 3604(c).

d. Discriminated in making available a residential real estate-related transaction or in the terms or conditions of such a transaction because of race.

27. Cary and Kimberly Bruton and Isaac Woods have suffered damages as the result of Defendant's conduct described above.

28. The discriminatory actions of Defendant Bankert were intentional, willful, and taken in disregard for the rights of Cary and Kimberly Bruton and Isaac Woods.

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

1. Declares that Defendant's housing practices, as alleged herein, violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601-3619;

2. Enjoins Defendant, his employees, and agents, and all other persons in active concert or participation with any of them, from discriminating based on race in any aspect of the sale of a dwelling or in a residential real estate-related transaction;

3. Awards such damages as would fully compensate Cary and Kimberly Bruton and Isaac Woods for injuries caused by Defendant's discriminatory conduct, pursuant to 42 U.S.C. § 3612(o)(3) and 42 U.S.C. § 3613(c); and

4. Awards punitive damages to Cary and Kimberly Bruton and Isaac Woods, pursuant to 42 U.S.C. § 3612(o)(3) and 42 U.S.C. § 3613(c).

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

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