

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

United States of America,)
)
 Plaintiff,)
)
 v.) Civil Action No. 8:08-cv-489
)
 The Latvian Tower Condominium)
 Association, Inc. and Karl Tegtmeyer,)
)
 Defendants.)
 _____)

COMPLAINT

The United States of America 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. §§ 3601-3619. It is brought on behalf of James A. Brown and Jeffrey S. Daubman pursuant to Section 812(o) of the Fair Housing Act, 42 U.S.C. § 3612(o), and Section 814(a) of the Fair Housing Act, 42 U.S.C. § 3614(a).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. § 1345, and 42 U.S.C. §§ 3612(o) and 3614(a).

3. Pursuant to 28 U.S.C. § 1391(b), venue is proper because the claims alleged herein arose in the District of Nebraska.

PARTIES

4. Defendant The Latvian Tower Condominium Association, Inc. (“LTCA”) is a non-profit corporation organized under the laws of the State of Nebraska. The LTCA was organized in 1979, and is the governing body for all unit owners in Latvian Tower, a seven-story condominium complex located at 3003 Paddock Plaza, Omaha, Nebraska. Latvian Tower is separated into twenty units occupied as residences.

5. The units at Latvian Tower are dwellings within the meaning of 42 U.S.C. § 3602(b).

6. Defendant Karl Tegtmeyer, a resident of the state of Nebraska, has resided in Latvian Tower since 1978, and has served as President of the LTCA since May 2007.

7. James A. Brown and Jeffrey S. Daubman (“Complainants”) owned as joint tenants Unit 722 of Latvian Tower, 3003 Paddock Plaza, Omaha, Nebraska from 2002 until on or about February 22, 2008.

FACTUAL ALLEGATIONS

8. At all times relevant to this Complaint, the LTCA was responsible for the maintenance, repair, replacement, administration, and operation of Latvian Tower, pursuant to Declaration 6 of the Amended Master Deed and Declaration for The Latvian Tower Condominiums.

9. At all times relevant to this Complaint, Unit 722 was subject to the Amended Master Deed and Declaration of The Latvian Tower Condominiums and the By-Laws of the LTCA.

10. At all times relevant to this Complaint, the Amended Master Deed and Declaration, ¶ 19(l), stated that “No Unit shall be sold or leased for any period of time to any person who, at the date of said purchase or lease, has children who will occupy or reside in the Unit one hundred eighty (180) days or more in any one calendar year. For the purposes of this paragraph 19 (l) ‘Children’ shall mean persons under the age of sixteen (16) years or such younger age as may be established by the Board of Directors.”

11. Article V § 1 of the LTCA’s By-Laws implements ¶ 19(l) of the Amended Master Deed and Declaration on residents of Latvian Tower by providing that “[e]ach Unit Owner shall comply with the use and occupancy restrictions set forth in the Declaration.”

12. The Amended Master Deed and Declaration and By-Laws have been in effect since 1979.

13. In 2003, Complainants decided to sell Unit 722, and, on or about December 12, 2003, Complainants listed Unit 722 with a real estate agent for \$479,950.

14. Between March 2005 and December 2007, at least three potential buyers were discouraged from purchasing Unit 722 because of the adults-only provision of the Amended Master Deed and Declaration and the Defendants’ enforcement of that provision.

15. Each potential buyer was a family with one or more individuals under the age of eighteen domiciled with a parent within the meaning of 42 U.S.C. § 3602 (k).

16. On or about September 6, 2007, Karl Tegtmeier told Complainants’ real estate agent that “he knew about the fair housing laws and that he could exclude children under the age of 16 years of age . . . and [that he] could do anything he wanted,” or words to that effect.

17. Subsequent to the September 6, 2007 conversation with Complainants' real estate agent, Karl Tegtmeyer removed the agent's "For Sale" sign from the yard of Latvian Tower.

18. The LTCA held a special meeting on or about September 8, 2007 without providing notice as required by the By-Laws. At the meeting, the LTCA discussed whether it could maintain Latvian Tower "for adults only," and a majority of those present voted to seek legal counsel.

19. The LTCA failed to amend the Master Deed or the By-Laws to permit children on or about September 8, 2007, nor did it reconvene at a later date to adopt such an amendment. The LTCA did not communicate to Complainants that the policy would not be enforced.

20. On or about November 8, 2007, Complainants' attorney wrote Mr. Tegtmeyer and the LTCA a letter informing them that "[t]he actions of the Board and its Officers are in clear violation of the *Fair Housing Act* as amended to include 'familial status[,]'" (emphasis in original) and asking that the adults-only provision be eliminated. Neither the LTCA nor Mr. Tegtmeyer responded to this letter.

21. At a special meeting on or about December 12, 2007, the LTCA discussed the anticipated filing by Complainants of a "federal complaint" against Latvian Tower, and the LTCA's plans to "chang[e] to a 55+ building."

22. Unit 722 was ultimately sold in February 2008 for \$239,500 to an individual with no children.

23. As of August 1, 2008, the LTCA maintained a policy that prohibits the sale or lease of a unit to any person who has children who will occupy or reside in the unit for 180 days

or more in a calendar year.

24. At no time relevant to the Complaint did Mr. Tegtmeier or the LTCA indicate to Complainants that Defendants would not enforce the adults-only policy.

HUD INVESTIGATION AND CHARGE

25. On February 6, 2008, Complainants filed a complaint with the United States Department of Housing and Urban Development (HUD) alleging that Karl Tegtmeier and the LTCA discriminated against them in violation of the Fair Housing Act by interfering with the sale of their condominium because of the familial status of the potential buyers.

26. As required by the Fair Housing Act, 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD conducted an investigation of the Complainants' complaint, attempted conciliation without success, and prepared a final investigative report. Based on the information gathered in this investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g), determined that reasonable cause exists to believe that illegal discriminatory housing practices had occurred. Therefore, on or about September 24, 2008, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination pursuant to 42 U.S.C. § 3610(g), charging the Defendants with discrimination on the basis of race in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3604(a), (c), and (d).

27. On September 29, 2008, Complainants elected to have the claims asserted in HUD's Charge of Discrimination resolved in a federal civil action pursuant to 42 U.S.C. § 3612(a).

28. On September 30, 2008, the Administrative Law Judge issued a Notice of

Election and terminated the administrative proceeding on the HUD complaint filed by Complainants.

29. Following this Notice of Election, the Secretary of HUD authorized the Attorney General to commence a civil action, pursuant to 42 U.S.C. § 3612(o).

FIRST CLAIM FOR RELIEF

30. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-29, above.

31. By the actions and statements referred to in the foregoing paragraphs, Defendants Karl Tegtmeyer and the LTCA have:

- (a) Refused to allow the sale or negotiations for the sale, or otherwise made unavailable, a dwelling because of familial status, in violation of 42 U.S.C. § 3604(a);
- (b) Made, printed, or published one or more notices, statements, or advertisements, with respect to the sale of a dwelling that indicated a preference, limitation, or discrimination based on familial status, in violation of 42 U.S.C. § 3604(c); and
- (c) Represented that, because of familial status, a dwelling is not available for inspection or sale when such dwelling is in fact so available, in violation of 42 U.S.C. § 3604(d).

32. Complainants have suffered damages as a result of Defendants' discriminatory conduct.

33. Defendants' actions described in the preceding paragraphs were intentional,

willful, and taken in disregard for the rights of the Complainants.

SECOND CLAIM FOR RELIEF

34. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-33, above.

35. Defendants' 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. §§ 3604(a), 3604(c), and 3604(d), in violation of 42 U.S.C. § 3614(a); or
- (b) A denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3604(a), 3604(c), and 3604(d), which raises an issue of general public importance, in violation of 42 U.S.C. § 3614(a).

36. In addition to Complainants, there are other victims of Defendants' discriminatory actions and practices who are "aggrieved persons" as defined in 42 U.S.C. § 3602(i), including but not limited to the potential buyers for whom housing was made unavailable and the real estate agents who lost or received reduced commissions. These persons may have suffered actual injury and damages as a result of Defendants' discriminatory conduct.

37. Defendants' actions were intentional, willful, and taken in disregard for the rights of others, including but not limited to the Complainants, the persons for whom housing was made unavailable, and the real estate agents who lost or received reduced commissions because of familial status.

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

1. Declares that Defendants Karl Tegtmeyer and the LTCA's policies and practices, as alleged herein, violated the Fair Housing Act;
2. Declares that Defendants Karl Tegtmeyer and the LTCA have engaged in a pattern or practice of discrimination in violation of the Fair Housing Act, or have denied rights under the Fair Housing Act to a group of persons raising an issue of general public importance;
3. Enjoins Defendants Karl Tegtmeyer and the LTCA, their officers, employees, agents, successors and all other persons in active concert or participation with any of them, from discriminating on the basis of familial status in violation of the Fair Housing Act;
5. Awards monetary damages, pursuant to 42 U.S.C. §§ 3612(o)(3), 3613(c)(1), and 3614(d)(1)(B) to all persons harmed by the Defendants Karl Tegtmeyer and the LTCA's discriminatory practices; and
6. Assesses a civil penalty against Defendants Karl Tegtmeyer and the LTCA in an amount authorized by 42 U.S.C. § 3614(d)(1)(C) and 28 C.F.R. § 85.3(b)(3) to vindicate the public interest.

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

The United States of America hereby requests that trial of the above and foregoing action should be held in Omaha, Nebraska, and that the case be calendared accordingly.

Dated: October 29, 2008

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