

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION at GREENEVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:04-CV-329
)	
BRUCE HURLEY, INVESTMENT)	Civil Complaint
MANAGEMENT, CORP., and WESTERN)	
HILLS, LTD., d/b/a WESTERN HEIGHTS)	
APARTMENTS.)	
)	
Defendants.)	

COMPLAINT

The United States of America alleges as follows:

NATURE OF ACTION

1. This action is brought by the United States on behalf of Taft Lynn Hutchins to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601, et seq.

JURISDICTION & VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o). Venue is proper in this judicial district pursuant to 42 U.S.C. § 1391(b) and 42 U.S.C. § 3612(o) as defendants are located in this judicial district and the events or omissions giving rise to the claim occurred in this judicial district.

PARTIES

3. Defendant Bruce Hurley (“Mr. Hurley”) upon information and belief is the property manager and owner of Western Heights Apartments and his business is located at 200 Arrow Head Drive, Rogersville, Tennessee 37857.

4. Defendant Investment Management Corp. is the manager of Western Heights Apartment and is located at 116 East Main Street, P.O. Box 1799, Morristown, Tennessee 37816-1799.

5. Defendant Western Hills, Ltd. is the owner of Western Heights Apartments and is located at 116 East Main Street, P.O. Box 1799, Morristown, Tennessee 37816-1799.

6. Defendants are responsible for general overall maintenance, management and operation of the multiple dwellings and common areas which constitute Western Heights Apartments (“Western Heights”), located at 200 Arrow Head Drive, Rogersville, Tennessee 37857.

7. The units at Western Heights Apartments are "dwellings" within the meaning of 42 U.S.C. § 3602(b).

8. Taft Lynn Hutchins (“Mr. Hutchins”) is an individual with cerebral palsy, hypertension, osteoarthritis and lower back pain that have left him partially paralyzed on his left side. Mr. Hutchins’ physical impairments substantially limit his strength on his left side and his ability to walk. Mr. Hutchins is a person with a disability within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(h).

FACTUAL ALLEGATIONS

9. In April 1998, Mr. Hutchins moved into unit F-38, a two-bedroom, second floor apartment at the Western Heights Apartments in Rogersville, Tennessee. Mr. Hutchins had requested a ground floor apartment and was assured that after he moved in he would receive a ground floor unit as soon as one became available. At that time, Mr. Hutchins was receiving rental assistance through the Rural Development Rental Assistance program, which is administered by the U.S. Department of Agriculture (USDA).

10. In 1999, Mr. Hutchins learned there was a ground floor apartment available (Unit E-35), which he requested, but instead was offered a different ground floor apartment (Unit F-39). This apartment contained a set of stairs and an embankment to the parking lot. For these reasons, Mr. Hutchins declined the apartment.

11. From April 1998 until August 2001, Mr. Hutchins had to navigate several stairs from the second floor to the ground floor and from the ground floor to the parking lot to access his automobile.

12. After numerous requests for a ground floor apartment, in August 2001, Mr. Hutchins was offered Unit E-35. After moving in, Mr. Hutchins requested “handicapped” parking spaces for himself and his roommate who was also disabled and was told by Mr. Hurley to park in the two parking spaces closest to his apartment unit.

13. During the summer of 2002, Mr. Hutchins’ neighbors and other visitors began parking in the spaces that Mr. Hutchins was directed to park in by Mr. Hurley. Mr. Hutchins verbally requested that Mr. Hurley designate two reserved handicap parking spaces for himself and his roommate.

14. On September 6, 2002, Mr. Hurley told Mr. Hutchins that he could not reserve handicapped spaces because there were not enough spaces in the apartment complex to designate assigned or reserved spaces. Mr. Hurley continued to have difficulty reaching his apartment when he was required to park farther away from his unit.

15. On October 3, 2002, Mr. Hutchins wrote Mr. Hurley a letter requesting two “handicapped” parking spaces, which Mr. Hurley acknowledged receiving on October 4, 2002.

16. From October 2002 until February 2003, Mr. Hutchins continued to verbally request a “handicapped” space. It was not until March 7, 2003 that a “handicapped” space was painted with a wheelchair emblem – five days before a United States Department of Agriculture inspection of the apartment complex was scheduled to occur, on March 12, 2003.

17. On approximately March 11, 2003, Mr. Hutchins sent a letter to Mr. Hurley notifying him that other tenants were parking in the “handicapped” spaces. Again on March 27, 2003, Mr. Hutchins sent a letter to Mr. Hurley requesting that reserved handicapped signs be placed in front of the handicapped spaces and that he be given permission to have cars towed from the handicapped spaces. Mr. Hurley took no action on these requests.

18. On March 28, 2003, Mr. Hutchins encountered Mr. Hurley in the parking lot near the apartment complex’s mailboxes. Mr. Hurley questioned Mr. Hutchins about a rumor that he had heard that Mr. Hutchins was intending to move. Mr. Hutchins responded that he had no plans to move. Mr. Hurley replied that “you may be moving.”

19. On April 21, 2003, Mr. Hutchins filed a complaint with the United States Department of Housing and Urban Development (“HUD”) alleging discrimination on the basis of disability by Mr. Hurley.

20. On April 22, 2003, Mr. Hutchins received a letter from the manager of Western Heights Apartments, Vickie Andrews, scheduling an appointment to re-certify his status as a recipient of rental assistance.

21. On approximately May 20, 2003, Mr. Hutchins received a letter dated May 19, 2003, from Mr. Hurley's attorney Philip L. Boyd ("Mr. Boyd") requesting additional information from Joyce Larkins, Mr. Hutchins' roommate, who did not mention any cash income she may have received since 1998.

22. In or about June 2003, because he felt threatened and intimidated by Mr. Hurley's comment about moving and the letter from Mr. Hurley's attorney, Mr. Hutchins moved out of his apartment in the Western Heights Apartment complex.

23. Pursuant to the requirements of 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD conducted and completed an investigation of the complaint, attempted conciliation without success, and prepared a final investigative report. Based upon the information gathered in its investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that illegal discriminatory housing practices had occurred at the defendant's property. Therefore, on July 28, 2004, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging that the defendant had engaged in discriminatory practices, in violation of the Fair Housing Act, as amended, 42 U.S.C. § 3604.

24. On August 13, 2004, defendants made a timely election to have the claims asserted in HUD's Charge of Discrimination decided in a civil action pursuant to 42 U.S.C. § 3612(a).

25. On August 14, 2004, the Chief Administrative Law Judge issued a Notice of Election and terminated the administrative proceeding on the complaint filed by Mr. Hutchins.

26. 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).

FAIR HOUSING ACT CLAIMS

27. Defendants, through the actions referred to above, have:

- a. discriminated against Taft Lynn Hutchins in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of his disability, in violation of 42 U.S.C. § 3604(f)(2); and
- b. refused to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may have been necessary to afford Taft Lynn Hutchins, a person with a disability, equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B);
and
- c. coerced, intimidated, threatened, or interfered with Taft Lynn Hutchins 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 under this title, in violation of 42 U.S.C. § 3617.

28. Taft Lynn Hutchins is an aggrieved person, as defined in 42 U.S.C. § 3602(i), and has suffered damages as a result of the defendants' discriminatory conduct as described above.

29. The discriminatory actions of the defendants were intentional, willful, and taken in disregard for the rights of Mr. Hutchins.

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays for relief as follows:

1. A declaration that the conduct of defendants as set forth above violates the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, et seq.
2. An injunction against defendants, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating on the basis of disability in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, et seq.
3. An award of monetary damages to Taft Lynn Hutchins, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1).

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

Dated: September 13, 2004

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s/ Elizabeth A. Singer by Helen Smith with permission

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