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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

GRETCHEN G. HIGGINS and
PALEY MANAGEMENT CORP.,

Defendants.

COMPLAINT

19 Civ. ____ (____)

Plaintiff the United States of America, by its attorney Geoffrey S. Berman, United States Attorney for the Southern District of New York, alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action for declaratory relief, injunctive relief, and monetary damages under the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.* (the "FHA"), brought by the United States of America on behalf of Ahmed Maky ("Complainant" or "Mr. Maky"), to redress discrimination on the basis of disability.
2. As alleged more fully below, defendants Gretchen G. Higgins ("Higgins") and Paley Management Corporation ("Paley") (collectively, "Defendants") unlawfully discriminated

against Complainant, a retired law enforcement officer and September 11th first responder who requires an emotional support dog to assist him with his disabilities. Specifically, Defendants sought to evict Complainant for living with an emotional support dog and, after Defendants discontinued the eviction action with prejudice and with each side to bear its own attorney's fees, retaliated and harassed Complainant by continuing to assert a claim for legal fees related to their failed eviction attempt.

3. Defendants' conduct violates the FHA and should be declared unlawful and enjoined, and appropriate monetary damages should be awarded.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3612(o).

5. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) because the events or omissions giving rise to the United States' claims occurred there, and the property that is the subject of this suit is located there.

PARTIES AND PROPERTY

6. Plaintiff is the United States of America.

7. Complainant Ahmed Maky is an individual with a disability, 42 U.S.C. § 3602(h), and is an "aggrieved person" within the meaning of the Act, 42 U.S.C. § 3602(i).

8. Defendant Higgins is the landlord and owner of 225 East 84th Street, an apartment building in New York, New York.

9. Defendant Paley is a property management company that serves as the property manager for 225 East 84th Street.

10. The residential units at 225 East 84th Street are “dwelling[s],” as defined by 42 U.S.C. § 3602(b).

FACTUAL ALLEGATIONS

11. From 1996 to 2008, Mr. Maky was employed by the City of New York and assigned as a liaison employee to federal law enforcement, specifically, to the federal High Intensity Drug Trafficking Areas program (“HIDTA”). Mr. Maky was a first responder to the events of September 11, 2001, and worked for several months at the World Trade Center site. He was subsequently deputized as a United States Marshal, received a Top Secret security clearance, and worked with the Joint Terrorism Task Force (“JTTF”). His responsibilities included managing the Cyber Unit at HIDTA, which shared information with JTTF and other federal agencies regarding potential terrorist threats.

12. Mr. Maky retired in 2008 due to the stress of his work.

13. Mr. Maky has received psychiatric treatment for depression since 2008. In June 2013, Mr. Maky began receiving treatment for his psychiatric conditions from Dr. William Weiss, a board-certified psychiatrist.

14. Mr. Maky began living at 225 East 84th Street in 1993. At the time he moved into his apartment at 225 East 84th Street, he brought with him a dog, a German Shepherd named Asad. After Asad, two more German Shepherds lived with Mr. Maky, dogs named Ty and Zaza. Mr. Maky had only one dog at a time.

15. In February 2016, Mr. Maky acquired a German Shepherd named Zorro, and brought him to his apartment.

16. On or about May 16, 2016, Defendants issued a “Notice to Cure,” dated May 11, 2016, alleging that Mr. Maky violated a substantial obligation of his lease by keeping Zorro in

his apartment. Rule 9 in the rider to Mr. Maky's lease states that "[d]ogs or animals of any kind shall not be kept or harbored in the Apartment, unless in each instance it be expressly permitted in writing by Owner."

17. Although Mr. Maky had kept a dog in his apartment from time to time over the twenty-three years prior to 2016, at no point had Defendants sought to evict him for keeping a dog.

18. Defendants do not have any policy or procedure for evaluating requests made by their tenants to reside with assistance animals.

19. Mr. Maky did not remove Zorro from his apartment in response to the Notice to Cure.

20. On or about June 1, 2016, Defendants served Mr. Maky with a "Notice of Termination" demanding that he vacate his apartment by June 14, 2016.

21. By letter dated June 14, 2016, Mr. Maky advised Defendants that he had psychiatric conditions and requested that Defendants provide him with a reasonable accommodation that would allow him to keep Zorro in the apartment. Mr. Maky included a letter from Dr. Weiss, which stated that Mr. Maky has a chronic and disabling condition, but that Zorro "has already proven to be of great benefit to his emotional well-being." (Exh. A (Letter from Dr. William Weiss, June 6, 2016 (partly redacted)).) Specifically, Dr. Weiss explained that pets like Zorro "can powerfully raise self-esteem and improve self-respect. They offer companionship, are a buffer against loneliness and also provide an opportunity for patients to develop empathic skills." Dr. Weiss concluded that "[i]n my medical opinion, Mr. Maky's mental state has been powerfully enhanced by the opportunity to live with his dog, and I have therefore endorsed his continued caretaking involvement with Zorro." (*Id.*)

22. Mr. Maky's letter of June 14, 2016 further documented that Mr. Maky had been receiving Social Security Disability payments since May 2008.

23. Defendants never responded to Mr. Maky's request for a reasonable accommodation.

24. On or about June 28, 2016, Defendants commenced eviction proceedings against Mr. Maky.

25. On January 25, 2017, the parties settled the eviction proceeding. The stipulation of settlement provides: "1. The instant proceeding is discontinued with prejudice, including the petition and the respondent's counterclaim for legal fees; and 2. Each party bears its own attorney fees." (Exh. B (Stipulation of Settlement, Jan. 25, 2017).)

26. Nevertheless, notwithstanding the settlement of the eviction action and the express terms of the settlement agreement, Defendants have billed Mr. Maky for the legal fees incurred by Defendants in the eviction proceeding.

27. Specifically, since the settlement of the eviction action, Mr. Maky's rental invoices have contained a line for "ARREARS," in increasing amounts, and included these "arrears" in the "Amounts Due." The invoice dated March 23, 2017 includes a claim for "arrears" in the amount of \$8,375; the invoice dated April 25, 2017 includes a claim for "arrears" in the amount of \$8,500; and the invoice dated January 25, 2019 includes a claim for "arrears" in the amount of \$9,788.47. (Copies of these invoices are attached as Exh. C (partly redacted).)

28. Mr. Maky has not paid these "arrears," but Defendants continue to assert their claim for these "arrears."

29. In response to an inquiry from the United States Department of Housing and Urban Development ("HUD"), Counsel for Defendants explained that:

Although not collectible at this time, the attorneys fees are retained on the ledger or invoice as they may be collectible under certain circumstances [sic] – for example, the even [sic] it is necessary to restore the proceeding or in the event the proceeding is restored, in the event that the landlord commences a “chronic litigancy” holdover against the tenant, etc.

(Exh. D (Email from Dean Dreiblat to Belinda Boxer, Feb. 6, 2018) (partly redacted).) As the attachment to Exhibit D demonstrates, the “arrear” are the legal fees incurred by Defendants in the eviction proceeding.

30. The settlement of the eviction action, which Defendants improperly brought in violation of Mr. Maky’s rights under the FHA, expressly discontinued the action “with prejudice” and expressly provided that “[e]ach party bears its own attorney fees.” (Exh. B.) Defendants’ continued assertion of a claim for attorneys’ fees, therefore, is baseless and constitutes harassment of Mr. Maky in retaliation for the exercise of his rights under the FHA.

31. Defendants’ actions have resulted in exacerbation of Mr. Maky’s psychiatric conditions, as well as emotional distress.

32. Defendants’ discriminatory actions were intentional, willful, and taken in disregard of the rights of Mr. Maky.

PROCEDURAL BACKGROUND

33. On October 31, 2016, four months after Defendants commenced the eviction proceeding, Mr. Maky filed a complaint with HUD alleging discrimination on the basis of disability.

34. The Secretary of HUD (the “Secretary”) investigated the administrative complaint according to the requirements of 42 U.S.C. § 3610(a) and (b).

35. Based on HUD's investigation of the administrative complaint, the Secretary determined that there was reasonable cause to believe that Defendants discriminated against Complainant on the basis of disability.

36. On February 4, 2019, the Secretary issued a Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2), charging Defendants with engaging in discriminatory housing practices in violation of the Act.

37. On February 5, 2019, Defendants timely elected to have the charge decided in a federal civil action, pursuant to 42 U.S.C. § 3612(a) (*see* Exh. E), and agreed to toll the filing date. Following Defendants' election, the Secretary authorized the Attorney General to file this action on Complainants' behalf, pursuant to 42 U.S.C. § 3612(o)(1).

CLAIM FOR RELIEF

38. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 37 of this Complaint as if fully set forth in this paragraph.

39. Defendants violated the Fair Housing Act, 42 U.S.C. § 3604(f)(2), by discriminating against Complainant in the terms, conditions, and privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of his disability.

40. Defendants violated the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(B), by refusing to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling.

41. Defendants violated the Fair Housing Act, 42 U.S.C. § 3617, by coercing, intimidating, threatening, and interfering with Complainant on account of his having exercised or enjoyed his rights under the Act.

WHEREFORE, Plaintiff the United States requests that the Court enter judgment:

1. Declaring that Defendants' policies, practices and/or conduct as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*;

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

- (a) discriminating in the terms, conditions, or privileges of sale or rental of a dwelling, or 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) failing or refusing to make reasonable accommodations as required by 42 U.S.C. § 3604(f)(3)(B);
- (c) coercing, intimidating, threatening, and interfering with Complainant on account of his having exercised or enjoyed his rights, in violation of 42 U.S.C. § 3617;
- (d) failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, Complainant to the position he would have been in but for the discriminatory conduct; and
- (e) failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future.

3. Awarding monetary damages to Complainant, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1); and

4. Granting such further relief as this Court may deem just and proper.

The United States respectfully requests trial by jury.

Dated: New York, New York

April 5, 2019

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