

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	
DUNNWOOD ACRES APARTMENTS, LLC,)	
IREMCO, INC. and SUE WOOD,)	
)	
)	
Defendants.)	
_____)	

COMPLAINT

The United States of America alleges as follows:

NATURE OF ACTION

1. The United States brings this action to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619 (“Fair Housing Act” or “FHA”). This action is brought on behalf of Donella Smith and her minor children, R.E., and D.H., under 42 U.S.C. § 3612(o).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3612(o).
3. Venue is proper in this District under 28 U.S.C. § 1391(b) because the events or omissions giving rise to the United States’ claims occurred there and because the Defendants reside there.

THE PARTIES AND THE SUBJECT PROPERTY

4. Dunnwood Acres Apartments (“the Subject Property”) is a multi-family residential rental property complex consisting of approximately 193 units. The units are located in separate buildings at different street addresses in Hazelwood, Missouri, in the Eastern District of Missouri.
5. The units at the Subject Property are “dwellings” within the meaning of 42 U.S.C. § 3602(b).
6. Dunnwood Acres Apartments, LLC is a limited liability company organized under the laws of Missouri. Its principal office address is 6577 Cortena Drive, Hazelwood, Missouri 63042.
7. At relevant times, Dunnwood Acres Apartments, LLC owned the Subject Property.
8. Defendant IREMCO, Inc. is a domestic corporation incorporated under Missouri law. Its principal office address is 15510 Olive Boulevard., Suite 200, Chesterfield, Missouri 63017.
9. At relevant times, IREMCO, Inc, managed the Subject Property on behalf of Dunnwood Acres Apartments, LLC .
10. At relevant times, IREMCO, Inc. employed Defendant Sue Wood (“Ms. Wood”) as the on-site property manager at the Subject Property. Ms. Wood was acting within the scope of her employment with respect to her actions described herein.

FACTUAL ALLEGATIONS

11. Ms. Smith began living at the Subject Property in or about September 2016. She resided in a two-bedroom apartment, located at 6568 Serenity Circle, Apartment D (“the Subject Unit”). Ms. Smith continued to reside at the Subject Unit until approximately March 2018.
12. At relevant times, Ms. Smith’s minor children, R.E. and D.H., resided at the Subject Unit with Ms. Smith. R.E. and D.H.’s father, Rasheed Elamin, was also a signatory to the lease and initially lived at the Subject Unit. Mr. Elamin moved out of the Subject Unit in approximately December 2016.
13. Some ground-floor units at the Subject Property are only accessible by paths with multiple steps, while other ground floor units and basement units have no more than one or two steps.
14. The Subject Unit has both north and south entrances. The north entrance has nine steps leading up to the front door in addition to two other steps (one over a curb and another at the unit’s threshold). The north entrance is closer to the Subject Unit and, thus, was the entrance that Ms. Smith’s family primarily used. The south entrance is further from the Subject Unit and has five steps between the parking lot and the Subject Unit in addition to two steps (one over a curb and another at the unit’s threshold). Neither the steps at the north entrance nor the steps at the south entrance has a handrail. The Subject Unit also has a north entrance from a patio, but there is no accessible path from the parking lot to the patio, which is situated at the top of a grassy hill.
15. The Subject Property has ground floor units and basement units that do not have steps leading to their entrances. For instance, there are units at the Subject Property that only

have a single step into the unit from the parking lot curb and/or a single step at the threshold leading into the unit and do not require any other significant level changes to enter the unit.

16. R.E. is a person with a disability as defined by the FHA, 42 U.S.C. § 3602(h).
17. In or about February 2017, when R.E. was 12 years old, R.E. was diagnosed with a serious medical condition. On or about February 16, 2017, R.E. underwent surgery. Between approximately February 16, 2017 and April 17, 2017, R.E. alternated between staying at a local hospital and staying at a rehabilitation center.
18. As a result of the surgery, R.E. has substantial physical limitations, including a mobility impairment, a visual impairment, dizzy spells, and difficulty with balance. Her disability substantially limits major life activities, including her ability to climb more than five steps.
19. In or about April 2017, Ms. Smith approached Defendant Wood in person and advised her that R.E. had undergone surgery that resulted in a significant mobility impairment. She apprised Ms. Wood that R.E. required a transfer to a more accessible unit than the unit the family was then living in.
20. In response, Defendant Wood stated that the Defendants did not have any units that did not have any steps at all and that there was nothing she could do to assist. Defendant Wood did not mention the possibility that other units with fewer steps may become available in the future, or offer to discuss the possibility of finding a different way to assist Ms. Smith's family.

21. Shortly thereafter, Ms. Smith went into Defendant IREMCO, Inc.'s management office to pay her rent. While at IREMCO, Inc.'s office, Ms. Smith advised Tracy Wakelam,¹ an IREMCO, Inc. account supervisor, of R.E.'s serious medical condition and resulting disability, and of the family's need for a reasonable accommodation transfer to a unit with no steps or fewer steps. Ms. Wakelam informed Ms. Smith that no such units were available at that time, but that IREMCO, Inc. would try to work with her to find a suitable unit.
22. For months following her release from the hospital, R.E. struggled with the steep steps that were required to access her home. On at least three occasions after her release from the hospital, R.E. tripped and fell while trying to navigate the nine steps leading from the north apartment entrance to the parking lot curb without a handrail. R.E. needed significant help from Ms. Smith to physically support her and guide her down the steps whenever she had to leave the apartment to attend medical appointments or go to school or anywhere else, or return to the apartment.
23. During the period after R.E.'s release from the hospital in April 2017, Defendants did not approve Ms. Smith's request to transfer to a different unit, nor offer to make any other accommodations to alleviate the difficulties R.E. was having accessing the family's apartment.
24. On or around July 5, 2017, Ms. Smith obtained a letter supporting her request for an accommodation that was written by R.E.'s oncology social worker. The letter, typed on the letterhead of Cardinal Glennon Children's Hospital ("Children's Hospital letter"), states in relevant part:

¹ Ms. Wakelam died on August 28, 2019.

[R.E.'s] illness has significantly affected her mobility. Due to her physical restrictions, it would be best for the family to have a ground floor apartment. Any efforts accommodating this request would be greatly appreciated by both the family and [R.E.'s] medical care team. Please contact me at [phone number] if additional information is needed.

25. On or about July 5, 2017, the social worker sent the Children's Hospital letter requesting a reasonable accommodation transfer on R.E.'s behalf to IREMCO, Inc. by facsimile.

26. On July 5, 2017, Henry Brown, a friend and neighbor of Ms. Smith, emailed Ms.

Wakelam with the subject line reading, "Information from Donnella [sic] N. Smith."

Relevant portions of the email state:

Cardinal Glennon is donating support equipment to aid [R.E.'s] recovery and rehabilitation, Ms. Smith was informed that [R.E.] needed to be in an apartment that had all of the living quarters on one floor, and that the steps leading up to her current apartment located at 6568D Serenity Circle, represented a danger to [R.E.] and her recovery . . .

Ms. Smith is asking that her rent not be increased, and if it is possible that she could move to an apartment that is on a lower or basement level, allowing her and her daughters to live without the danger of steps, giving [R.E.] the safety of a residence without the danger of steps.

27. Mr. Brown's July 5, 2017, email message provided the names and contact information of medical and social professionals for verification of R.E.'s treatment and needs, including R.E.'s optometrist, her oncologist at St. Louis University, her chemotherapist, and her pediatric social worker.

28. Within approximately one week of obtaining it, Ms. Smith and Mr. Brown jointly delivered the Children's Hospital letter to Ms. Wakelam in person at Defendant IREMCO, Inc.'s office.

29. On July 12, 2017, Ms. Wakelam responded by email to Mr. Brown's July 5, 2017, email with, "Thank you. [T]here will be no rent increase. I will need to discuss with Sue regarding the transfer."
30. In the months following the delivery of the Children's Hospital letter, Ms. Smith continued to request that Ms. Wakelam grant a reasonable accommodation transfer based on R.E.'s disability. Ms. Smith visited Defendant IREMCO's, Inc.'s office numerous times and asked Ms. Wakelam for an update as to her reasonable accommodation request. After R.E. was released from the hospital in April 2017, Ms. Smith brought up her request with Ms. Wakelam in person approximately ten times during her residency at Dunnwood Acres.
31. Although Ms. Smith lived at Dunnwood Acres for close to a year after making her initial request for a reasonable accommodation, and she repeatedly reiterated her request to Defendants, Defendants never granted her reasonable accommodation request.
32. Defendants did not engage in an interactive process to discuss ways to accommodate R.E.'s disability.
33. Defendants did not contact R.E.'s medical team to verify the basis for her reasonable accommodation request.
34. At relevant times, the Defendants had a written policy that governed requests by residents at the Subject Property to transfer to other units at the Subject Property based on medical need ("the Medical Transfer Policy").

35. The Medical Transfer Policy provided:

Any tenant requests to transfer due to medical needs will be honored at time of written request. A letter from the tenant's physician must be submitted with details of the type of accommodation required. If there are no apartments available to meet those needs, the tenant may terminate Lease without penalty at any time to move to another property which can accommodate those needs.

36. During the time frame in which Ms. Smith was seeking a reasonable accommodation transfer, at least two units at the Subject Property that had five or fewer steps became available. These units would have satisfied the specifications identified by R.E.'s social worker and physical therapist as meeting her impaired mobility needs.

37. Defendants did not offer these or any other units to Ms. Smith. Instead, when apartments with fewer steps became available, Defendants approved applications from prospective tenants who subsequently moved in. Defendants did not inform Ms. Smith that units that could have better met her daughter's needs were or would be available. At one point, Defendants offered to release Ms. Smith from her lease as an "accommodation."

38. In August 2017, Ms. Smith renewed her lease while she waited for Defendants to grant her reasonable accommodation transfer request. Ms. Smith wished to stay at Dunnwood Acres Apartments in order to remain in her daughters' school district, which accommodated R.E.'s needs, and to be able to access the family's support network at the Subject Property. The Subject Unit was also close to both the emergency room that treated R.E. and Ms. Smith's place of employment.

39. In early 2018, Mr. Elamin insisted that R.E. leave the Subject Unit, in part because the unit was not suitable for R.E. due to her disability. At that point, R.E. moved in with her father and never returned to the Subject Unit.

40. Ms. Smith's daughter D.H. suffered loss, emotional distress, anxiety, and fear resulting from her sister R.E.'s struggles to access the Subject Unit in the months following her surgery.

41. In or about March 2018, Defendants initiated a summary eviction proceeding against Ms. Smith alleging that she failed to pay rent. Ms. Smith moved out of the subject unit at the end of March 2018.

HUD COMPLAINT AND CHARGE OF DISCRIMINATION

42. On or about April 5, 2018, Ms. Smith filed a timely complaint regarding the Defendants' actions with the U.S. Department of Housing and Urban Development ("HUD").

43. In accordance with 42 U.S.C. § 3610, 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 the investigation, the Secretary, in accordance with 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe the Defendants violated the Fair Housing Act.

44. On September 30, 2019, the Secretary issued a Charge of Discrimination, in accordance with 42 U.S.C. § 3610(g)(2)(A), charging the above-named Defendants with engaging in discriminatory housing practices on the basis of disability. Specifically, HUD's Charge of Discrimination charged the above-named Defendants with violating 42 U.S.C. §§ 3604(f)(2)(A), 3604(f)(2)(B) and (f)(3)(B) by refusing to grant Ms. Smith's medical transfer request.

45. On October 11, 2019, Ms. Smith elected to have the claims asserted in the HUD Charge resolved in a civil action filed in federal district court in accordance with 42 U.S.C. §

3612(a). On October 15, 2019, the HUD Administrative Law Judge issued a Notice of Election to Proceed in United States Federal District Court.

46. Following the Notice of Election, on October 17, 2019, the Secretary of HUD authorized the Attorney General to commence a civil action in accordance with 42 U.S.C. § 3612(o). The Defendants and the United States entered written tolling agreements on November 5, 2019, and January 9, 2020, extending the deadline for the United States to commence a civil action until February 25, 2020.

FAIR HOUSING ACT VIOLATIONS

47. The allegations described above are hereby incorporated by reference.

48. By the actions set forth above, the Defendants have:

- a. Discriminated in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of a disability, in violation of 42 U.S.C. § 3604(f)(2)(A) and (B); and
- b. Refused to make reasonable accommodations in rules, policies, practices, or services, when such an accommodation was necessary to afford a person with a disability equal opportunity to use and enjoy her dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).

49. As a result of the Defendants' conduct, Ms. Smith and her minor children R.E. and D.H. have been injured and are "aggrieved person[s]" as defined by 42 U.S.C. § 3602(i).

50. The discriminatory actions of the Defendants were intentional, willful, and taken in reckless disregard of the rights of others.

PRAYER FOR RELIEF

WHEREFORE, the United States requests that the Court enter an Order that:

- a. Declares that the Defendants' discriminatory conduct violates the Fair Housing Act;
- b. Enjoins the Defendants, their agents, employees, successors, and all other persons in active concert or participation with any of them from:
 - i. Discriminating on the basis of disability, in violation of the Fair Housing Act;
 - ii. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, Ms. Smith and her minor children R.E. and D.H. to the position they would have been in but for the discriminatory conduct; and
 - iii. Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future;
- c. Awards monetary damages to Ms. Smith individually and in her representative capacity on behalf of her minor children R.E. and D.H., in accordance with 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1); and
- d. Awards such additional relief as the interests of justice may require.

Dated: June 17, 2020

Respectfully submitted,

WILLIAM P. BARR
Attorney General

S/ Eric S. Dreiband
ERIC S. DREIBAND
Assistant Attorney General
Civil Rights Division

JEFFREY B. JENSEN
United States Attorney

S/ Sameena Shina Majeed
SAMEENA SHINA MAJEED
Chief

S/ Nicholas P. Llewellyn
Nicholas P. Llewellyn MO43839
Assistant United States Attorney
Chief, Civil Division
Thomas F. Eagleton U.S. Courthouse
111 S. 10th Street, 20th Floor
St. Louis, MO 63102
Phone: (314) 539-7637
Fax: (314) 539-2287
Nicholas.Llewellyn@usdoj.gov

S/ Lori K. Wagner
Catherine A. Bendor
Deputy Chief
Lori K. Wagner NY2124857
Trial Attorney
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
150 M Street, NE
Washington, DC 20002
Phone: (202) 305-3107
Fax: (202) 514-1116
Lori.Wagner@usdoj.gov

Attorneys for Plaintiff
United States of America