

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No.

BRIAN SMOLNIK AND MARY HUNTER,

Defendants.

COMPLAINT

The United States of America (“United States”), for its complaint against Defendants Brian Smolnik and Mary Hunter (“Defendants”), alleges as follows:

NATURE OF ACTION

1. This is an action brought by the United States to enforce the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq* (“Fair Housing Act” or “Act”).

2. The United States brings this action for injunctive relief and monetary damages on behalf of Scotty Witham and Mary Beth Witham, pursuant to 42 U.S.C. § 3612(o).

3. The United States alleges that Defendants discriminated in the rental of a dwelling because of Mr. Witham’s disability¹ by imposing different terms and conditions related to the requirements for animals, by refusing to make a reasonable accommodation in rules, policies, practices or services, when such accommodation may be necessary to afford a person equal opportunity to use and enjoy a dwelling, by subjecting the Withams to severe or pervasive

¹ The Fair Housing Act uses the term “handicap,” see 42 U.S.C. § 3602(h), but consistently with modern usage, the government uses the term “disability” in this Complaint, and such usage is intended to cover the term “handicap” as used in the Act.

harassment, and by making housing unavailable, all based on disability in violation of the Fair Housing Act, 42 U.S.C. § 3604(f)(1), (f)(2) and (f)(3)(B). The United States further alleges that Defendants coerced, intimidated, threatened or interfered with the Withams in the exercise or enjoyment of, or on account of their having exercised or enjoyed, rights granted or protected by 42 U.S.C. § 3604, in violation of 42 U.S.C. § 3617. Finally, the United States alleges Defendant Smolnik made discriminatory statements based on disability, in violation of 42 U.S.C. § 3604(c).

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 Western District of Missouri pursuant to 28 U.S.C. § 1391 and 42 U.S.C. § 3612(o), and in the Southern Division thereof, because the alleged discrimination occurred there and the dwelling at issue is located there.

PARTIES

6. Plaintiff is the United States.

7. The Withams are “aggrieved persons” as defined in 42 U.S.C. § 3602(i).

8. Mr. Scotty Witham has disabilities within the meaning of 42 U.S.C. § 3602(h). In particular, he has intellectual disabilities that are apparent when speaking with him, and has depression and anxiety disorders that constitute disabilities. Mr. Witham’s mental health and intellectual disabilities substantially limit one or more of his major life activities, including his cognitive abilities and his ability to socially interact with others. He has sought and receives treatment from physicians for his disabilities. Ms. Mary Beth Witham is Scott Witham’s wife.

9. From approximately February 2013 through November 7, 2018, the Withams resided at 2588 County Road 4210, Lot 14, West Plains, Missouri 65775, in a trailer located in a

mobile home park (“the Subject Property”). The Subject Property is a dwelling, as defined by 42 U.S.C. § 3602(b).

10. At all times relevant to this Complaint, Brian Smolnik and Mary Hunter (“Defendants”) owned the mobile home park that included the Subject Property, and Brian Smolnik managed the subject property, and in such management and in his acts alleged herein acted as agent for Mary Hunter.

FACTS

11. The Withams signed an annual lease with Defendants in or around February 2013 that contained a provision permitting pets subject to a \$100 pet deposit. The pet policy had no weight limit.

12. In or around April 2015, the Withams acquired a mix Husky breed dog. They did not pay a deposit for the Husky; nor did they pay a deposit for their cat, which they owned when they moved to the subject property. Defendant Smolnik was aware of both the pet cat and the pet dog.

13. In or around November 2015, after the dog was barking at children, Defendant Smolnik demanded they remove the dog from the premises, stating it was over 25 pounds and it was “either them or the dog.” The Withams complied by removing the dog.

14. On or around August 2, 2016, Mr. Witham visited his primary care physician and informed him that his landlord had required him to get rid of his dog. Mr. Witham’s physician then prescribed him an emotional support animal. The physician’s letter stated:

“Mr. Scotty Witham is my patient and has been under my care since November 10, 2015. I am intimately familiar with his history and functional limitations imposed by his disability. He meets the definition of disability under the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973. Due to mental illness Mr. Witham has certain limitations regarding coping with his anxiety and depression. In order to help alleviate these difficulties, and to enhance his ability to live independently and to fully use and enjoy the dwelling unit you own

and/or administer, I am prescribing an emotional support animal that will assist Mr. Witham in coping with his disability.”

15. The Withams made copies of the physician’s letter, and Mr. Witham took it to Defendant Smolnik within days of receipt. Defendant Smolnik read the letter, told him it was “BS,” crumpled the letter, threw it in or near the trash, and informed Mr. Witham that if he wanted a dog he would need to pay a \$250 pet deposit.

16. Defendant Smolnik allowed other tenants to have animals without restrictions related to weight, and without requiring pet deposits or prior approval from Defendant.

17. Defendant Smolnik’s treatment of Mr. Witham included making fun of and humiliating Mr. Witham, calling him “gay,” “faggot,” “good for nothing,” and “retard,” accusing him of “playing with himself,” and falsely accusing him of creeping around homes.

18. While falsely accusing Mr. Witham of creeping around homes, Defendant stated, “Scotty how would you like it [if] people were creeping around your home? I’m going to shoot them right between the eyes,” winking at Mr. Witham when he said this. When Mr. Witham asked what this meant, Defendant Smolnik responded, “you can read between the lines.”

19. During an evening in January 2017, at approximately 10:30 p.m., Mr. Witham called Defendant Smolnik to report raccoons in a trap Defendant Smolnik had set within the vicinity of the Withams’ trailer.

20. Defendant Smolnik came to the trailer a few minutes later, waving a gun, yelling loudly for others to hear, and making loud accusations that Mr. Witham was on drugs.

21. Ms. Witham told Defendant to come into the house and unload the gun before coming in or she would call 911. Defendant did so, stated he would not shoot the raccoons at night, loaded the raccoons in the back of his truck and left.

22. The Withams were intimidated by Defendant Smolnik's unnecessary brandishing of a gun at their home.

23. In or around March 2018, the Withams found a dog online they believed would be a good assistance animal for Mr. Witham.

24. While paying rent in April 2018, Mr. Witham made a second request to Defendant Smolnik for an assistance animal, providing him another copy of his physician's letter. Defendant Smolnik again declined to discuss the matter, stating that he would require a \$250 pet deposit for the animal, and he would need to approve it. The Withams could not afford to pay this amount.

25. During their tenancy, in addition to calling Mr. Witham derogatory names, Defendant Smolnik called Ms. Witham a "fat cunt" and a "bitch" on multiple occasions.

26. Incidents of name calling, derogatory treatment, and harassment of the Withams by Defendant Smolnik were ongoing throughout their tenancy, and were exacerbated when Defendant Smolnik was intoxicated.

27. During their occupancy of the Subject Property, Defendant Smolnik harassed and intimidated the Withams, including by repeated use of such derogatory slurs as "faggot" and "retard" toward Mr. Witham and "fat cunt" and a "bitch" towards Ms. Witham. He further harassed them by refusing to permit Mr. Witham to have an assistance animal, despite allowing other tenants to have pets at the property.

28. Defendant Smolnik subjected the Withams to abusive treatment, and did so because of Mr. Witham's disability. Defendant Smolnik's unwelcome ongoing harassment of the Withams was sufficiently severe or pervasive to interfere with their use and enjoyment of their home, causing them to feel intimidated, harassed, scared, anxious and depressed. On October 5, 2018, as a direct and proximate result of the abusive, harassing, and intimidating conduct of Defendant

Smolnik towards the Withams, as set forth in the foregoing paragraphs, Ms. Witham gave Defendant Smolnik written notice that they would vacate their trailer by November 30, 2018.

29. As a result of further harassing treatment by Defendant Smolnik, the Withams vacated their trailer on November 7, 2018.

PROCEDURAL BACKGROUND

30. The Withams filed a complaint with the U.S. Department of Housing and Urban Development (HUD) on or about November 13, 2018, alleging they were discriminated against based on Mr. Witham's disability. The complaint was subsequently amended.

31. As required by the Fair Housing Act, 42 U.S.C. § 3610(a) and (b), the Secretary of HUD conducted an investigation of the complaint made by the Withams, attempted conciliation without success, and prepared a final investigative report.

32. Based on the information gathered in the investigation, the Secretary of HUD, pursuant to 42 U.S.C. § 3610(g), determined that reasonable cause exists to believe that illegal discriminatory housing practices occurred.

33. On September 29, 2020, the Secretary of HUD issued a Determination of Reasonable Cause and Charge of Discrimination pursuant to 42 U.S.C. § 3610(g), charging Defendants with discrimination under the Fair Housing Act.

34. On October 1, 2020, the Withams 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).

35. On October 1, 2020, a HUD Administrative Law Judge issued a Notice of Election and terminated the administrative proceedings on the HUD complaint filed by the Withams. Following the 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 VIOLATIONS

COUNT I (Section 3604(f)(1))

36. The United States incorporates the allegations contained in Paragraphs 1 through 35 above as if fully set forth herein.

37. Defendants violated section 3604(f)(1) of the Fair Housing Act by making housing unavailable to the Withams because of Mr. Witham's disability when Defendant Smolnik subjected them to severe or pervasive harassment, including derogatory slurs based on disability, threats, and physical intimidation, and refused to permit them to acquire an assistance animal, thereby causing the Withams to move from the property. 42 U.S.C. § 3604(f)(1).

COUNT II (Section 3604(f)(2))

38. The United States incorporates the allegations contained in Paragraphs 1 through 35 above as if fully set forth herein.

39. Defendants violated section 3604(f)(2) of the Fair Housing Act because Defendant Smolnik discriminated in the terms, conditions, or privileges of the rental of their dwelling because of disability, by subjecting the Withams to severe or pervasive harassment and by imposing requirements on their request for an assistance animal, such as a weight limit, a \$250 pet deposit, and specific approval from Defendants, that were not placed on tenants without disabilities who had pets. 42 U.S.C. § 3604(f)(2).

COUNT III (Sections 3604(f)(2) and 3604(f)(3)(B))

40. The United States incorporates the allegations contained in Paragraphs 1 through 35 above as if fully set forth herein.

41. Defendants violated sections 3604(f)(2) and (f)(3)(B) of the Fair Housing Act by refusing, because of Mr. Witham's disability, to allow Mr. Witham to live at the Subject Property

with an emotional support animal, and to the extent that permitting him to do so were deemed a request for a reasonable accommodation, by refusing to make such an accommodation when such accommodation was reasonable and was necessary to afford him an equal opportunity to use and enjoy the dwelling. 42 U.S.C. § 3604(f)(2)(A) and (f)(3)(B).

COUNT IV (Section 3617)

42. The United States incorporates the allegations contained in Paragraphs 1 through 35 above as if fully set forth herein.

43. Defendants violated 42 U.S.C. § 3617 in that Defendant Smolnik coerced, intimidated, threatened, or interfered with the Withams in their exercise or enjoyment of, rights granted or protected 42 U.S.C. §§ 3603-3606.

COUNT V (Section 3604(c))

44 The United States incorporates the allegations contained in Paragraphs 1 through 35 above as if fully set forth herein.

45. Defendants violated section 3604(c) of the Fair Housing Act by making statements with respect to their rental of the dwelling that indicated discrimination when Defendant Smolnik made derogatory comments based on disability. 42 U.S.C. § 3604(c).

46. The Withams have suffered economic loss, emotional distress and lost housing opportunities as a result of Defendants' discriminatory actions as set forth in each of the counts stated above.

47. Defendants' discriminatory actions as set forth in each of counts stated above were intentional, willful, and taken in disregard of the rights of the Withams.

REQUEST FOR RELIEF

WHEREFORE, the United States requests that this Court:

48. Declare that Defendants' discriminatory housing practices as set forth above violate the Fair Housing Act;

49. Enjoin and restrain Defendants, their officers, employees, agents, successors, and all other persons or corporations in active concert or participation with Defendants, from:

- A. Making statements with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on disability, in violation of 42 U.S.C. § 3604(c);
- B. Discriminating in the sale or rental, or otherwise making unavailable or denying, a dwelling to any buyer or renter because of disability, in violation of 42 U.S.C. § 3604(f)(1);
- C. Discriminating against any person 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 dwelling, because of disability, in violation of 42 U.S.C. § 3604(f)(2);
- D. 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, in violation of 42 U.S.C. § 3604(f)(3)(B); and
- E. Coercing, intimidating, threatening or interfering with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by the Fair Housing Act, in violation of 42 U.S.C. § 3617.

50. Order Defendants to take such affirmative steps as may be necessary to restore, as nearly as practicable, the Withams to the position they would have been in but for the discriminatory conduct;

51. Order Defendants to take such actions as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of their unlawful conduct, including implementing policies and procedures to ensure that no applicants or residents are discriminated against because of disability;

52. Award monetary damages to the Withams pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1); and

53. Order such additional relief as the interests of justice require.

Respectfully submitted,

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