

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

21-CV-1259

HOWITT-PAUL ROAD, LLC d/b/a
GREENWOOD TOWNHOMES,
MIDLAND MANAGEMENT, LLC,
and AMY KELLS,

Defendants.

COMPLAINT

The United States of America, for its complaint against Howitt-Paul Road, LLC d/b/a Greenwood Townhomes (“Greenwood”), Midland Management, LLC (“Midland”), and Amy Kells, alleges as follows:

NATURE OF ACTION

1. This is an action brought by the United States to enforce the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.* (“FHA”).
2. The United States brings this action for injunctive relief and monetary damages on behalf of Complainant Oksana Dubilevskaya pursuant to the Fair Housing Act. 42 U.S.C. § 3612(o).
3. The United States alleges that Defendants discriminated in the rental of a dwelling and in the terms and conditions of tenancy because of a tenant’s disability¹ by

¹ The FHA uses the term “handicap,” *see* 42 U.S.C. § 3602(h), but consistent with modern usage, the government uses the term “disability” in this Complaint.

refusing to make reasonable accommodations in rules, policies, practices or services when such accommodations were necessary to afford a person equal opportunity to enjoy a dwelling, in violation of the Fair Housing Act, 42 U.S.C. § 3604(f)(1), (f)(2), and (f)(3)(B).

JURISDICTION AND VENUE

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

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 42 U.S.C. § 3612(o).

PARTIES

6. Plaintiff is the United States of America.

7. This action is commenced on behalf of Oksana Dubilevskaya (“Complainant” or “Ms. Dubilevskaya”), who currently resides in Monroe County, New York. Complainant is a person with a disability within the meaning of 42 U.S.C. § 3602(h).

8. At all times relevant to this Complaint, Defendant Greenwood owned 8 Mia Terrace, a townhouse located in the Greenwood Townhomes community, a 110-unit complex located in Rochester, New York (the “Subject Property”).

9. At all times relevant to this Complaint, Defendant Midland managed the Subject Property and implemented the rental policy for the Subject Property.

10. At all times relevant to this Complaint, Defendant Amy Kells was the rental office manager for Midland at the Subject Property.

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

FACTS

12. Complainant has anxiety, depression, and Post Traumatic Stress Disorder.

13. Complainant's psychiatric conditions substantially limit one or more of her major life activities, including her ability to interact with others, work, focus, sleep, leave the house, maintain social relationships, cook, clean, and generally care for herself.

14. Beginning in February 2017, Complainant had a dog, a Cane Corso named Boris, which she relied upon as her assistance animal.

15. Both Complainant and Pedro De Jesus Sanchez, her boyfriend, observed that having an assistance animal helped to calm her and enabled her to participate in activities, exercise, and visit locations outside her house, which she would not be able to do if the dog could not accompany her.

16. On August 9, 2018, Jeanette Z. Denker, Psy. D., wrote a letter that stated, in pertinent part:

Ms. Oksana Dubilevskaya is my patient, and has been under my care since August 2018. I am familiar with her history and with the functional limitations imposed by her medical, emotional and mental related illness Due to her emotional disability, Ms. Dubilevskaya has certain limitations related to [her disability]. In order to alleviate these difficulties, and to enhance her ability to function independently it is of essence for Ms. Dubilevskaya to be accompanied by her emotional support dog . . . because its presence will mitigate the symptoms she is currently experiencing.

Defendants' Refusal to Accommodate Complainant's Disability

17. Defendants permitted tenants to have pets at the Subject Property; however, they required Pet Forms and medical information for all animals on the property. Once a

pet had been approved, a pet addendum was prepared and added to the pet owner's lease upon initial execution or renewal. For those tenants with pets, Defendants charged an extra security deposit and an extra monthly pet fee.

18. Defendants did not have a formal reasonable accommodations policy, but in practice required tenants requesting to keep an assistance animal to submit a Pet Form and a Reasonable Accommodation Verification Form. If a request to keep an assistance animal was approved, Defendants waived all pet fees.

19. On March 9, 2019, Complainant and her boyfriend viewed the Subject Property and agreed with Defendant Kells to meet on March 30, 2019, to sign a lease for the Subject Property.

20. On March 30, 2019, Complainant signed the lease and, during the meeting, disclosed to Defendant Kells that she had a 115-pound Cane Corso assistance dog that would need to reside with her.

21. At the meeting on March 30, 2019, Defendant Kells stated that Complainant must provide medical documentation to support this request. While still at the meeting, Complainant emailed Dr. Denker's August 9, 2018 letter to Defendant Kells.

22. At the meeting on March 30, 2019, Defendant Kells responded that the letter was problematic because Dr. Denker had a Florida, rather than a New York, address, although the letter indicated that Dr. Denker was licensed in New York.

23. At the meeting on March 30, 2019, Defendant Kells gave Complainant a Pet Form to complete and a Reasonable Accommodation Verification Form for her medical

provider to complete. Defendant Kells told Complainant that both forms needed to be returned by the scheduled move-in date of May 10, 2019.

24. The Reasonable Accommodation Verification Form required the healthcare provider to fill in her contact information, professional title, and the type of animal required and then to sign to certify that the tenant “is a disabled person pursuant to the . . . definition from the Fair Housing Act” and that the tenant “has a disability-related need for a service animal to assist with the day-to-day functional limitations relating to the disability.”

25. At the meeting on March 30, 2019, Complainant gave Defendant Kells a check for \$1,450 to cover the first month’s rent.

26. Sometime between March 30 and April 1, 2019, Complainant spoke to Dr. Denker about completing the Reasonable Accommodation Verification Form. Dr. Denker declined to complete the form, explaining to Complainant that it was not necessary because the information requested by the form was already contained in her August 9, 2018 letter.

27. On April 1, 2019, Complainant’s check for \$1,450 was cashed.

28. On April 1, 2019, at 8:57 a.m., Complainant emailed Defendants and told them that Dr. Denker would not complete the Reasonable Accommodation Verification Form because she had already provided the same information in her letter. She then invited Defendants to contact her if they had any questions.

29. Defendants did not respond to Complainant’s email.

30. On April 1, 2019, at 3:13 p.m., Defendant Kells called Complainant and told her that her lease would not be executed because she did not indicate that she had a pet on her rental application and because of the breed and size of the dog. Complainant told Kells

that she believed Defendants were violating her right to keep an assistance animal under the FHA and then asked what would happen with her cashed deposit check. Defendant Kells responded that she did not know.

31. On April 1, 2019, at 4:10 p.m., Complainant called the corporate office, hoping to speak with Wendy Howitt, the property manager, about the situation. Ms. Howitt was not available, but the person answering the phone said that someone would call her back.

32. On April 2, 2019, Complainant received a call back from the corporate office from someone on Ms. Howitt's behalf. The caller reiterated that Defendants' decision not to execute the lease stood because Complainant had failed to indicate she had a dog on her rental application and Dr. Denker was not in New York. Complainant responded that she had an assistance animal, not a pet. The caller then stated that the deposit check would be refunded to her.

33. Defendants' abrupt decision not to execute the lease deprived Complainant of the opportunity to complete the Pet Form and return it to Defendants.

34. On April 8, 2019, Ms. Howitt sent a letter to Complainant with a refund check expressing her regret that Defendants were unable to execute the lease because she had failed to disclose that she had an assistance animal during the application process and that, if she had, she would have been made aware of Defendants' required policies and procedures for assistance animals.

35. In order to secure alternative housing, Complainant was forced to renew her lease at her current residence.

36. On or about June 3, 2019, Complainant's assistance dog passed away.

37. Between June 3, 2019, and June 29, 2019, when Complainant acquired Yuri, another Cane Corso, Complainant was without an assistance animal. During this period, Dr. Denker and Mr. Sanchez noticed a significant deterioration in Complainant's condition.

38. During the U.S. Department of Housing and Urban Development's ("HUD") investigation into this matter, Ms. Howitt acknowledged that Dr. Denker's letter was a sufficient substitute for the Reasonable Accommodation Verification Form.

PROCEDURAL BACKGROUND

39. On or about May 13, 2019, Ms. Dubilevskaya filed a complaint with HUD alleging that she was discriminated against on the basis of her disability by Defendants.

40. 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 Complainant, attempted conciliation without success, and prepared a final investigative report.

41. Based on the information gathered in the HUD investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g), determined that reasonable cause exists to believe that illegal discriminatory housing practices by the Defendants occurred. On April 22, 2021, 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 under the Fair Housing Act.

42. On May 11, 2021, Defendants Midland and Greenwood 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).

43. On May 11, 2021, a HUD Administrative Law Judge issued a Notice of Election and terminated the administrative proceedings on the HUD complaint filed by Complainant. 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).

44. The United States now timely files this Complaint pursuant to the Fair Housing Act, 42 U.S.C. § 3612(o).

FAIR HOUSING ACT VIOLATIONS

45. Defendants Midland, Greenwood, and Amy Kells violated 42 U.S.C. § 3604(f)(1) and (f)(3)(B) by making housing unavailable to Complainant on the basis of her disabilities when they declined her request to keep an assistance animal and refused to execute her lease.

46. Defendants Midland, Greenwood, and Amy Kells violated 42 U.S.C. § 3604(f)(2) and (f)(3)(B) by refusing to make reasonable accommodations to their rules, policies, practices, or services when such accommodations were necessary to afford Complainant an equal opportunity to use and enjoy housing at the Subject Property.

47. As a result of Defendants' conduct, Complainant is an "aggrieved person" as defined in 42 U.S.C. § 3602(i) and has suffered injuries.

48. Defendants' discriminatory actions were intentional, willful, and taken in disregard of Complainant's rights.

REQUEST FOR RELIEF

WHEREFORE, the United States requests that this Court:

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

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

A. 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);

B. 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); and

C. 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).

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

4. 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;

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

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

DATED: December 3, 2021
Buffalo, New York

TRINI E. ROSS
United States Attorney
Western District of New York

BY: s/MARY E. FLEMING
Assistant United States Attorney
U.S. Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
(716) 843-5867
mary.pat.fleming@usdoj.gov