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Southern District of New York
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRIEDMAN RESIDENCE, LLC, BREAKING
GROUND (formerly known as Common Ground
Management Corp.), and THE ACTORS FUND OF
AMERICA,

Defendants.

17 Civ. _____

COMPLAINT

Jury Trial Demanded

Plaintiff, the United States of America, by its attorney, Preet Bharara, 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 “Act”), brought by the United States of America on behalf of Moshe Romatski (“Complainant”), to redress discrimination on the basis of disability.

2. As alleged more fully below, defendants Friedman Residence, LLC, Breaking Ground, and The Actors Fund of America (“Defendants”) are the owner, manager, and sponsor

of the Dorothy Ross Friedman Residence, which provides supportive housing to special low-income groups, including seniors, working professionals, and persons living with HIV/AIDS. Defendants unlawfully discriminated against Complainant, a resident of the Dorothy Ross Friedman Residence, on the basis of his disability by refusing to grant him a reasonable accommodation that would permit him to live with an assistance animal.

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

JURISDICTION, VENUE, AND PARTIES

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. The Dorothy Ross Friedman Residence (the "Residence") is located at 475 West 57th Street, New York, New York. The Residence provides supportive housing to special low-income groups, including seniors, working professionals, and persons living with HIV/AIDS. The Residence includes 178 shared living units and 27 single occupancy units.

8. Defendant Friedman Residence, LLC ("Friedman"), is a New York limited liability company with an office at 729 Seventh Avenue, 10th Floor, New York, New York. Friedman owns the Residence.

9. Defendant Breaking Ground, formerly Common Ground Management Corporation (“Breaking Ground”), is a property management company with a principal place of business at 475 West 57th Street, New York, New York. Breaking Ground is the Residence’s property manager and provides maintenance, security, marketing, intake, and administrative services for the Residence.

10. Defendant The Actors Fund of America (“The Actors Fund”) is a not-for-profit corporation with a principal place of business at 729 Seventh Avenue, 10th Floor, New York, New York. The Actors Fund serves as a sponsor of the Residence, which includes developing and approving administrative policies and providing on-site social services for the Residence.

11. Complainant is a tenant of the Residence and is an “aggrieved person” within the meaning of the Act, 42 U.S.C. § 3602(i).

12. The residential units at the Residence are “dwelling[s],” as defined by 42 U.S.C. § 3602(b).

FACTUAL ALLEGATIONS

13. On May 11, 2004, Complainant Moshe Romatski entered into a lease for a shared apartment at the Residence. The lease grants Complainant sole and exclusive possession of one Rooming Unit within the apartment and a one-half undivided interest in the common areas of the apartment. Complainant shares the common areas of the apartment with a roommate.

14. Paragraph 6 of the lease requires Complainant to comply with the Residence’s rules, which include a rule prohibiting pets (the “no pet” policy). The Residence does not have any written or other policy allowing for exceptions to the “no pet” policy if needed as a reasonable accommodation for a person with a disability.

15. Complainant has depression. In the past, Complainant's depression has affected his ability to work, to interact with others, and to care for himself on a day-to-day basis.

16. In November 2010, Complainant began treatment with Megan Eliot, Ph.D., a Licensed Clinical Psychologist, for his depression. Complainant continued to meet with Dr. Eliot regularly thereafter.

17. After Complainant began treatment with Dr. Eliot, Dr. Eliot referred him to a psychiatrist. The psychiatrist prescribed antidepressant medication for Complainant. Complainant took the medication and met monthly with the psychiatrist for approximately one year.

18. Around August 2011, Complainant adopted a small female dachshund named Shelly.

19. Dr. Eliot observed that Shelly caused improvement in Complainant's symptoms. At Dr. Eliot's recommendation, Complainant registered Shelly with the National Service Animal Registry.

20. On August 29, 2012, Dr. Eliot submitted a letter in support of Complainant's registration of Shelly. She explained that Complainant's depression impaired his activities of daily living and that Complainant's condition had improved since having Shelly. In her letter, Dr. Eliot stated that Shelly is a "necessary form of support" for Complainant.

21. Shelly alleviates the symptoms of Complainant's disability. The responsibility of caring for Shelly motivates Complainant to get out of bed in the morning, to leave the house, and to sustain a life that will enable him to continue caring for her. Since having Shelly, Complainant has returned to school to complete his GED and has applied to work as a support counselor for youth.

22. On February 13, 2013, Defendants provided Complainant with a “Notice to Cure,” which stated that Complainant had violated a substantial obligation of his tenancy by keeping Shelly in his unit.

23. After receiving the Notice to Cure, Complainant met with Richard Pimentel, then-Director of Property Management at the Residence. Complainant informed Mr. Pimentel that Shelly was a registered assistance animal and that Shelly helped alleviate the symptoms of his psychiatric disability. Complainant provided Defendants with a certificate showing Shelly’s registration with the National Service Animal Registry and with the August 29, 2012 letter from Dr. Eliot. Complainant requested a reasonable accommodation that would allow him to keep Shelly in his apartment.

24. Complainant also met with Ellen Celnik, an employee of The Actors Fund and the Director of Housing and Program Services at the Residence. Ms. Celnik pointed out to Complainant that the Residence had a therapy program in which a dog was brought to the building to interact with residents. Ms. Celnik suggested that Complainant have Shelly trained as a therapy dog by a program approved by the Residence, after which he might be permitted to keep Shelly. Complainant investigated Ms. Celnik’s suggestion and learned that such training would cost several hundreds of dollars.

25. Despite Complainant’s request for a reasonable accommodation, on or about March 5, 2013, Defendants provided Complainant with a Notice of Termination based on his failure to cure the breach identified by the February 13, 2013 Notice to Cure. The Notice of Termination instructed Complainant to vacate his apartment by March 18, 2013.

26. On or about March 20, 2013, Defendants served Complainant with a petition seeking a final judgment of eviction against him. The parties later agreed to stay the eviction proceedings pending the investigation of Complainant's allegations of discrimination.

27. There is a visually impaired tenant at the Residence who is permitted to keep a service dog in his unit. The visually impaired tenant lives in one of the Residence's single units. Complainant inquired about the possibility of living in a single unit. Defendants informed Complainant that they could not accommodate Complainant's need to live with Shelly by moving Complainant into a single unit because the single units are reserved for persons who are severely ill.

PROCEDURAL BACKGROUND

28. On or about June 19, 2013, Complainant filed a complaint with the United States Department of Housing and Urban Development ("HUD") alleging discrimination on the basis of disability.

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

30. Based on the 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.

31. On September 29, 2015, 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.

32. On October 19, 2015, Defendants timely elected to have the charge decided in a federal civil action, pursuant to 42 U.S.C. § 3612(a). Following Defendants' election, the

Secretary authorized the Attorney General to file this action on Complainant's behalf, pursuant to 42 U.S.C. § 3612(o)(1).

CLAIM FOR RELIEF

33. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 32 of this Complaint as if fully set forth in this paragraph.

34. Defendants violated the Fair Housing Act, 42 U.S.C. § 3604(f)(1)(A), by making unavailable or denying a dwelling to Complainant because of his disability.

35. Defendants violated the Fair Housing Act, 42 U.S.C. § 3604(f)(2)(A), 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.

36. 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.

37. Defendants' discriminatory actions were intentional and taken in disregard of Complainant's rights.

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

1. Declaring that Defendants' policies and practices 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 sale or rental of, 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 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);
- (c) failing or refusing to make reasonable accommodations as required by 42 U.S.C. § 3604(f)(3)(B); and
- (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;
- (e) failing or refusing 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;

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

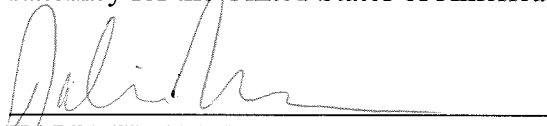
4. Granting such further relief as this Court may deem just and proper.

The United States requests trial by jury.

Dated: New York, New York
January 18, 2017

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