

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:15-cv-685
)	
PAULA ANDERSON,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America alleges as follows:

NATURE OF THE ACTION

1. This action is brought by the United States 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 (“the Fair Housing Act”).

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 under 28 U.S.C. § 1391(b), because the claims alleged herein arose in the District of New Mexico.

DEFENDANT AND THE SUBJECT PROPERTY

4. Defendant Paula Anderson owns a single-family home with two bedrooms located at 143 Sombrio Drive, Santa Fe, New Mexico (“Subject Property”). In August 2013, Ms. Anderson owned four single-family homes.

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

FACTUAL ALLEGATIONS

6. On or about March 30, 2013, Ms. Anderson placed an online advertisement for the rental of the Subject Property. The advertisement stated “No Pets” and the advertised rent was \$1,600/month.

7. On or about June 1, 2013, Kimberly Nicolaides leased and began to occupy the Subject Property. She moved into the Subject Property with a cat that serves her as an assistance animal.

8. The lease signed by Ms. Nicolaides for the Subject Property was for a term of 18 months, included a rental rate of \$1,500/month, listed Ms. Nicolaides as the occupant, and stated nothing prohibiting pets or restricting the number of occupants.

9. Ms. Nicolaides has been diagnosed with a psychiatric disability. At all times relevant to this complaint, she was under the care of a licensed psychiatrist and took medication to treat this condition. Because of this condition, Ms. Nicolaides was and is substantially limited in one or more major life activities.

10. Ms. Nicolaides is a person with a disability within the meaning of the Fair Housing Act.

11. On or about July 10, 2013, Ms. Anderson sent a written notice to Ms. Nicolaides that pets were not allowed at the Subject Property and instructed Ms. Nicolaides to vacate the property.

12. On or about July 11, 2013, Ms. Nicolaides, through her representative, asserted that the lease did not prohibit pets, and requested that Ms. Nicolaides’ adult daughter move into the Subject Property with Ms. Nicolaides commencing in August 2013.

13. Between about July 11 and August 8, 2013, Ms. Nicolaides, through her representative, and Ms. Anderson engaged in negotiations regarding revised terms of the lease for the Subject Property regarding Ms. Nicolaides’ assistance animal and daughter. They were unable to agree on revised lease terms.

14. On or about August 8, 2013, Ms. Nicolaides, through her representative, requested that Ms. Anderson allow her to keep her cat as an assistance animal and that her daughter be permitted to remain in the residence as a reasonable accommodation because of her disability. Attached to her representative's e-mail was a letter from Ms. Nicolaides' treating psychiatrist, Dr. Beth Reich, stating Ms. Nicolaides' need for the cat as a "therapy animal" and the need for her daughter's presence "to stabilize [her] emotional status."

15. On August 24, 2013, Ms. Nicolaides sent Ms. Anderson a second request for a reasonable accommodation. That request stated, "I am now on medical leave and disability. I am requesting a reasonable accommodation based on my medical needs. I have given notice through [my former attorney] that my daughter . . . is not only a daughter, but an aide to me." This letter referenced the August 8 e-mail from her representative.

16. On August 29, 2013, Mr. Richard Lees, Ms. Anderson's attorney, sent a letter to Ms. Nicolaides denying her request to maintain her assistance animal and her daughter as a reasonable accommodation, and instructed Ms. Nicolaides to confirm that she had "rid the property" of both by September 5, 2013, or else he would go forward with eviction proceedings on behalf of Ms. Anderson.

17. On September 3, 2013, Ms. Nicolaides e-mailed Mr. Lees additional medical documentation from Dr. Reich. Also on September 3, 2013, Ms. Nicolaides called Mr. Lees to discuss the matter. During that conversation, Mr. Lees expressed skepticism about whether the requested accommodation was medically necessary, and, even it was, whether it "trumped" Ms. Anderson's prohibition on pets. Concluding that Ms. Anderson was unlikely to grant the accommodation and desiring not to continue to reside in the Subject Property under the threat of eviction, Ms. Nicolaides offered to terminate her lease early. Ultimately, Ms. Anderson agreed to allow her to do so.

18. On September 15, 2013, Ms. Nicolaides vacated the Subject Property.

HUD ADMINISTRATIVE PROCESS

19. On or about October 29, 2013, Ms. Nicolaides filed a timely complaint with HUD.

20. Pursuant to 42 U.S.C. § 3610(a) and (b), the Secretary of HUD investigated Ms.

Nicolaides' complaint, attempted conciliation without success, and prepared a final investigative report. Based on the information gathered in this investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g), determined that reasonable cause existed to believe that the Defendant violated the Fair Housing Act by engaging in a discriminatory housing practice. Accordingly, on April 22, 2015, pursuant to 42 U.S.C. § 3610(g)(2)(A), the Secretary issued a Charge of Discrimination against the Defendant.

21. On May 6, 2015, Ms. Anderson timely elected to have the claims asserted in the HUD Charge resolved in a civil action pursuant to 42 U.S.C. § 3612(a).

22. The Secretary of HUD subsequently authorized the Attorney General to commence this action pursuant to 42 U.S.C. § 3612(o).

FAIR HOUSING ACT VIOLATIONS

23. The United States re-alleges and incorporates by reference the allegations set forth above.

24. By the conduct described above, Defendant has discriminated in the rental, or otherwise made unavailable or denied a dwelling to a renter because of a disability of that renter, in violation of 42 U.S.C. §§ 3604(f)(1) and (f)(3)(B).

25. By the actions and statements referred to in the foregoing paragraphs, Defendant has refused to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with disabilities equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. §§ 3604(f)(2) and 3604(f)(3)(B).

26. Ms. Nicolaides has suffered damages as a result of Defendant's actions and is an "aggrieved person" pursuant to 42 U.S.C. § 3602(i).

27. Defendant's actions, as set forth above, were intentional, willful and/or taken in reckless disregard for the rights of Ms. Nicolaides.

WHEREFORE, the United States prays that the Court enter an order that:

1. Declares that Defendant's conduct as set forth above violates the Fair Housing Act;
2. Enjoins Defendant, her agents, employees and successors, and all other persons in active concert or participation with her, from:
 - a. discriminating because of a disability;
 - b. refusing to make reasonable accommodations in rules, policies, practices, or services as required by the Fair Housing Act;
 - c. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victim of Defendant's unlawful practices to the position she would have been in but for the discriminatory conduct; and
 - d. failing or refusing to take such affirmative steps 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 Defendant's unlawful housing practices; and
3. Awards monetary damages, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1), to Kimberly Nicolaides.

The United States further prays for such additional relief as the interests of justice may require.

Dated: August 6, 2015

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Attorney General

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/s/ Vanita Gupta
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/s/ Electronically filed August 6, 2015

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