

06-80879

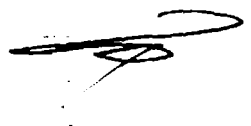
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CIV-HURLEY

Case No. _____ - CIV - _____

7 HOPKINS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
CITY OF BOCA RATON,)
)
Defendant.)
_____)



COMPLAINT

1. This action is brought by the United States of America to enforce the provisions of the Fair Housing Act, as amended, 42 U.S.C. § 3601 et seq.
2. This Court has jurisdiction over this action under 28 U.S.C. § 1345 and 42 U.S.C. § 3614(a).
3. Defendant, the City of Boca Raton (the "City"), is a municipal corporation established and organized under the laws of the State of Florida.
4. The City of Boca Raton is located in Palm Beach County, within the Southern District of Florida. Venue is proper because the claims alleged herein arose in the Southern District of Florida.

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5. The City of Boca Raton, through its Mayor, Deputy Mayor, and City Council, exercises zoning and land use authority over land within its boundaries. The City of Boca Raton Code of Ordinances contains the City's zoning and land use regulations.

6. Regency Properties of Boca Raton, Inc. and Awakenings of Florida, Inc. are two Florida corporations whose principal place of business is in Boca Raton. Regency Properties and Awakenings own or operate housing units, known as "Boca House" and "Awakenings" respectively, that they rent to persons in recovery from alcohol or drug dependency.

7. Boca House rents apartment units to men in recovery at several locations in Boca Raton, including two apartment buildings and several townhouse-style buildings. Awakenings rents apartment units to women in recovery in one apartment building. Upon information and belief, all the Boca House facilities and the Awakenings facility are located in areas zoned for multifamily use.

8. To ensure an alcohol and drug free environment that is critical to recovery for persons who have a history of alcohol and/or drug dependency, Boca House and Awakenings require residents to undergo drug and alcohol testing.

9. On May 29, 2002, the Boca Raton City Council, including its Mayor and Deputy Mayor, held a public hearing concerning proposed legislation to regulate the location of "substance abuse treatment facilities" within the city. Persons from the community appeared at the hearing and expressed opposition to Boca House and its residents. At the end of the meeting the City Council voted unanimously to pass the proposed Ordinance- Ordinance No. 4649. Ordinance No. 4649 added a new land use category to the zoning code - "substance abuse

treatment facilities" ("SATFs") - and imposed various restrictions on the siting of SATFs within the city.

10. On April 8, 2003, the City passed a new local ordinance, Ordinance No. 4701, that amended Ordinance No. 4649 and modified the definition of "substance abuse treatment facility."

11. The City of Boca Raton's current zoning regulations, as amended by Ordinances 4649 and 4701, define "Substance Abuse Treatment Facility" ("SATF") to include all service providers or facilities that are (1) licensed or required to be licensed under Florida law, or (2) "used for room and board only and in which treatment and rehabilitation activities are provided at locations other than the primary residential facility, whether or not the facilities used for room and board and for treatment and rehabilitation are operated under the auspices of the same provider." The regulations further state:

For the purposes of this paragraph (2), service providers or facilities which require tenants or occupants to participate in treatment and rehabilitation activities, or perform testing to determine whether tenants or occupants are drug and/or alcohol free, as a term or condition of, or essential component of, the tenancy or occupancy shall be deemed to satisfy the "treatment and rehabilitation activities" component of the definition contained in this section.

12. "Perform[ing] testing to determine whether tenants or occupants are drug and/or alcohol free," and requiring tenants to participate in treatment and rehabilitation activities, are common practices in housing intended to serve persons in recovery from alcohol and/or drug dependency.

13. The City of Boca Raton's current zoning regulations impose conditions and prohibitions on housing for persons with disabilities that are not imposed on housing for an equal

or greater number of persons without disabilities. Such conditions and prohibitions include:

- a. Prohibiting SATFs in any and all residential areas of the City, including all single-family and multifamily residential zones;
- b. Requiring housing providers and developers to obtain "conditional use approval" to construct and/or operate housing for persons with disabilities in certain sections of the city;
- c. Prohibiting housing providers and developers from constructing and/or operating housing for persons with disabilities in certain sections of the city within a radius of 1,000 feet of another such facility; and
- d. Requiring existing SATFs to cease operations in residential areas of the city within eighteen (18) months of the effective date of the Ordinance.¹

14. As a result of the zoning amendments, the only zones in which housing that meets the definition of "substance abuse treatment facility" may exist as a matter of right are zones designated for hospital and medical center uses.

15. If the zoning amendments become effective, Boca House and all other SATFs currently housing persons with disabilities in residential areas of the City of Boca Raton will be forced to cease operations at their current locations. If they seek to relocate within Boca Raton

¹ After a private lawsuit was filed against the City of Boca Raton challenging the City's amendments to its zoning code in Ordinance No. 4649, the City passed Ordinance No. 4701. Through Ordinance No. 4701 the City changed the deadline for SATFs to comply with the restrictions to 18 months after the effective date of Ordinance No. 4649 or sixty (60) days after the conclusion of the private litigation, whichever is later.

they will be limited to particular locations in Motel/Business zones, if they can obtain conditional approval from the City, and hospital zones.

16. The residents and prospective residents of Boca House and Awakenings and of other housing that the City of Boca Raton has classified or attempted to classify as SATFs, including persons recovering from alcohol and/or drug dependency, are persons with disabilities who are "handicapped" within the meaning of 42 U.S.C. § 3602(h).

17. Housing for persons with disabilities that the City of Boca Raton has classified or attempted to classify as SATFs, including the housing operated by Boca House and Awakenings, constitutes a "dwelling" within the meaning of 42 U.S.C. § 3602(b).

**COUNT I:
THE CITY OF BOCA RATON'S ZONING REGULATIONS, AS AMENDED,
INCLUDE ZONING CLASSIFICATIONS BASED ON DISABILITY
IN VIOLATION OF 42 U.S.C. §§ 3604(f)(1) & (2)**

18. Paragraphs 1 through 17 are hereby re-alleged and incorporated by reference.

19. The City of Boca Raton's zoning regulations discussed above are classifications based on disability that, on their face and as applied, violate the Fair Housing Act by making dwellings unavailable on the basis of disability in violation of 42 U.S.C. § 3604(f)(1) and by imposing different terms, conditions, or privileges in housing on the basis of disability in violation of 42 U.S.C. § 3604(f)(2).

20. The conduct of the City of Boca Raton in enacting its discriminatory zoning regulations and imposing such regulations on persons and entities within its boundaries

constitutes (a) a pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. § § 3601 et seq., or (b) a denial of rights to a group of persons that raises an issue of general public importance.

21. The City's conduct was intentional, willful, and taken in disregard of the rights of others.

**COUNT II:
DISCRIMINATION ON THE BASIS OF DISABILITY
IN VIOLATION OF 42 U.S.C. §§ 3604(f)(1) & (2)**

22. Paragraphs 1 through 17 are hereby re-alleged and incorporated by reference.

23. The City's actions in passing the zoning amendments described above, including but not limited to its efforts to exclude Boca House, Awakenings, and residents of the housing operated by both entities from living in any residential area of the City, violate the Fair Housing Act by making housing unavailable on the basis on disability in violation of 42 U.S.C. § 3604(f)(1) and by imposing different terms, conditions, or privileges in housing on the basis of disability in violation of 42 U.S.C. § 3604(f)(2).

24. The conduct of the City of Boca Raton in enacting its discriminatory zoning regulations constitutes (a) a pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. § § 3601 et seq., or (b) a denial of rights to a group of persons that raises an issue of general public importance.

25. The City's conduct was intentional, willful, and taken in disregard of the rights of others.

26. Boca House and Awakenings, residents of Boca House and Awakenings, and

others who have been, or who may have been, victims of the Defendant's discriminatory conduct are "aggrieved persons" as defined in 42 U.S.C. § 3602(i).

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

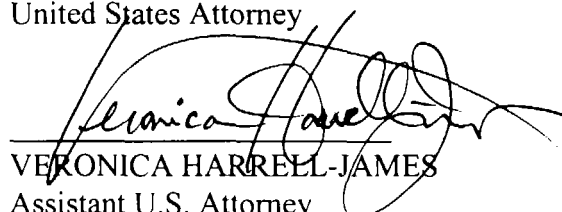
1. Declares that the actions of the City of Boca Raton described herein constitute a violation of the Fair Housing Act;
2. Enjoins the City of Boca Raton, its agents, employees, assigns, successors, and all other persons in active concert or participation with it, from enforcing Ordinances 4649 and 4701 and otherwise violating any provision of the Fair Housing Act by discriminating on the basis of disability;
3. Enjoins the City of Boca Raton, its agents, employees, assigns, successors, and all other persons in active concert or participation with them, from failing to make reasonable accommodations in their policies, practices, rules or services as required by the Fair Housing Act, including accommodations that permit the establishment and operation of housing for persons with disabilities;
4. Requires such action by the City of Boca Raton as may be necessary to restore all persons aggrieved by the City's discriminatory housing practices to the position they would have occupied but for such discriminatory conduct;
5. Awards each person aggrieved by the City of Boca Raton's discriminatory housing practices appropriate monetary damages, pursuant to 42 U.S.C. § 3614(d)(1)(B); and


6. Assesses a civil penalty against the City of Boca Raton in an amount of money authorized by 42 U.S.C. § 3614(d)(1)(C), in order to vindicate the public interest.


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

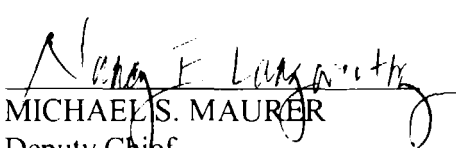
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