

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
MSM BROTHERS, INC.)	
D/B/A WHITE CLIFFS AT DOVER, and)	
KIM HUGHES,)	
)	
Defendants.)	
)	

COMPLAINT

The United States of America (“United States”) 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 (“Fair Housing Act”), 42 U.S.C. §§ 3601-3619. It is brought on behalf of Kelsie Hoyne, pursuant to 42 U.S.C. § 3612(o).

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 all the events giving rise to this action occurred in this district, the real property concerned is located in this district, and all defendants reside within this district.

PARTIES AND SUBJECT PROPERTY

4. Kelsie Hoyne resides in Dover, New Hampshire. She has one minor child who, at the time of the alleged discriminatory acts described herein, was approximately three months old.

5. Defendant MSM Brothers, Inc., d/b/a White Cliffs at Dover (Defendant “MSM Brothers”) is a New Hampshire corporation whose business address is 6 Boutilier Lane in North Hampton, New Hampshire.

6. At all times relevant to this Complaint, Defendant MSM Brothers was the owner of the residential multi-unit apartment property, the White Cliffs at Dover, which includes eight, three-story buildings and 192 apartments comprised of one and two-bedroom units, located at 510 Martha’s Way in Dover, New Hampshire.

7. The White Cliffs at Dover (the “Subject Property”) is a “dwelling” as defined by 42 U.S.C. § 3602(b).

8. Defendant Kim Hughes (“Defendant Hughes”) is the operations manager for the Subject Property owned by MSM Brothers, Inc., and is responsible for the rental of this property.

9. At all times relevant to this Complaint, Defendant Hughes was acting as an agent of Defendant MSM Brothers, within the scope of her authority, and had actual or apparent authority from Defendant MSM Brothers to engage in the rental of the Subject Property.

DEFENDANTS’ DISCRIMINATORY HOUSING PRACTICES

10. Defendants have maintained and implemented a policy or practice of not renting second and third-floor apartment units at the Subject Property to families with children under ten years of age.

11. In or around October 2015, Ms. Hoyne called the Subject Property inquiring about available two-bedroom units. She was told that apartments were available and was encouraged to submit an application.

12. In or around October 2015, Ms. Hoyne traveled to the Subject Property to complete a rental application. Defendant Hughes greeted Ms. Hoyne and reviewed her completed application, which revealed that her infant son would be residing with her in the apartment.

13. Defendant Hughes informed Ms. Hoyne that the Subject Property has a policy to place families with children under the age of ten in first-floor units only and there were no first-floor apartments currently available. Defendant Hughes also stated that there was no availability on the waiting list for first-floor units, and Ms. Hoyne would need to call back in the future to inquire about availability.

14. At the time Ms. Hoyne sought to reside at the Subject Property, there were available two-bedroom units on the second and/or third floors of the Subject Property.

15. Ms. Hoyne was familiar with the Subject Property because she had family who lived there, and she preferred a second or third-floor unit.

16. Ms. Hoyne sought to live at the Subject Property in part because her family would be available to assist with child care.

17. Ms. Hoyne was anxious about her inability to rent a unit at the Subject Property because she was seeking to use a Housing Choice Voucher, which was scheduled to expire within approximately one month of her visit to the Subject Property.

18. In January and June, 2016, the New Hampshire Legal Assistance Fair Housing Project conducted testing at the Subject Property. Testing is a simulation of a housing transaction that compares responses given by housing providers to different types of home-seekers to determine whether illegal discrimination is occurring.

19. Tests conducted on January 8, 2016, and June 21, 2016, revealed evidence of discrimination on the basis of familial status, including through statements indicating a policy of limiting new tenants who are families with children under about ten years old to first-floor units.

HUD ADMINISTRATIVE PROCESS

20. On August 24, 2016, Ms. Hoyne timely filed a housing discrimination complaint with the United States Department of Housing and Urban Development (“HUD”), pursuant to 42 U.S.C. § 3610(a).

21. Pursuant to 42 U.S.C. §§ 3610(a) and (b), HUD conducted and completed an investigation of the complaint and attempted conciliation between the parties without success. Based on the information gathered during the investigation, the Secretary of HUD, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that Defendants had engaged in illegal discriminatory housing practices based on familial status. Accordingly, on May 5, 2017, the Secretary of HUD issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g).

22. The Secretary of HUD charged Defendants with violations of 42 U.S.C. §§ 3604(a), (b), and (c).

23. On or about May 22, 2017, Defendants timely elected to have these charges resolved in a federal court action, pursuant 42 U.S.C. § 3612(a). On or about May 24, 2017, Ms. Hoyne also timely elected to have these charges resolved in a federal court action, pursuant 42 U.S.C. § 3612(a). On or about May 25, 2017, an Administrative Law Judge issued a Notice of Election terminating the administrative proceeding from the docket pursuant to the Defendants’ timely election.

24. The Secretary of HUD subsequently authorized the Attorney General to file this action on behalf of Ms. Hoyne, pursuant to 42 U.S.C. § 3612(o).

CLAIM FOR RELIEF

25. Paragraphs 1 through 24 are realleged and incorporated by reference.

26. By the conduct referred to in the foregoing paragraphs, Defendants have:

- a. Refused to negotiate for the rental of, or otherwise made unavailable or denied, a dwelling because of familial status, in violation, 42 U.S.C. § 3604(a);
- b. Discriminated in the terms, conditions, or privileges of a rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status, in violation of 42 U.S.C. § 3604(b); and
- c. Made statements with respect to a dwelling that indicate a preference, limitation, or discrimination based on familial status, or an intention to make such preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c).

27. As a result of Defendants' conduct, Ms. Hoyne has suffered damages and is an aggrieved person within the meaning of 42 U.S.C. § 3602(i).

28. Defendants' conduct described above was intentional, willful, and taken in reckless disregard for the rights of Ms. Hoyne.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter judgment against Defendants and requests relief as follows:

- a) A declaration that Defendants' actions, policies and practices, as alleged herein, violate the Fair Housing Act;
- b) An injunction against Defendants, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from:

- i. Discriminating against any person on the basis of familial status in any aspect of the rental of a dwelling;
 - ii. Failing or refusing to take such steps as may be necessary to restore, as nearly as practicable, Ms. Hoyne to the position she would have been in but for the discriminatory conduct; and
 - iii. Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future to eliminate, to the extent practicable, the effects of Defendants' unlawful housing practices; and
- c) An award of monetary damages to Ms. Hoyne, pursuant to 42 U.S.C. §§ 3612(o) and 3613(c)(1).

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

Dated: July 20, 2017

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