

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**
Civil No. 16-_____

United States of America,

Plaintiff,

v.

COMPLAINT

Garden Grove, LLC,
Oak Grove Capital, Inc. d/b/a
Oak Grove Realty Services, Inc.,

Defendants.

The United States of America, for its complaint against Defendants Garden Grove, LLC and Oak Grove Capital, Inc. d/b/a Oak Grove Realty Services, Inc., alleges:

NATURE OF ACTION

1. This is an action brought by the United States to enforce the provisions of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 through 3619 (Fair Housing Act or Act).

2. The United States brings this action for injunctive relief and monetary damages on behalf of Jane Poeschel pursuant to the Fair Housing Act. 42 U.S.C. § 3612(o).

3. The United States alleges that Defendants engaged in discriminatory refusal to rent; discrimination in the terms and conditions of tenancy; refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may

be necessary to afford a person equal opportunity to enjoy a dwelling; and unlawful retaliation in the form of interference with the enjoyment of a dwelling on account of the exercise of protected rights, in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(f)(1)(A), (f)(2)(A), (f)(3)(B) and 3617.

STATEMENT OF 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. Defendant Garden Grove, LLC and Defendant Oak Grove Capital, Inc., d/b/a Oak Grove Realty Services, Inc. own and manage a multifamily residential rental property located at 760 Fifth Street, New Brighton, Minnesota, commonly known as the Garden Grove Apartments (Garden Grove).

8. Defendant Oak Grove Capital employed and directed Jessica Jorissen Carroll as the property manager of Garden Grove, with the responsibility of managing the day-to-day operations of the property.

9. Complainant Jane Poeschel was a tenant of Garden Grove. Ms. Poeschel has been diagnosed with mental and physical disabilities. Her disabilities substantially limit major life activities, including but not limited to: sleeping, focusing, interacting socially, and caring for herself.

10. Ms. Poeschel is, therefore, a person with disabilities under the Act, 42 U.S.C. § 3602(h).

FACTS

11. Ms. Poeschel has been diagnosed with and treated for mental, emotional, and physical disabilities for at least thirty years. She qualified for Supplemental Security Income due to her disabilities as of February 2012.

12. In April 2012, Ms. Poeschel's treating psychologist, Dr. Jana Reinhart, provided a letter indicating that a small dog would be good therapy for Ms. Poeschel's mental disabilities.

13. In early 2013, Ms. Poeschel was homeless for about six months.

14. In or around May 2013, Ms. Poeschel was approved to receive rental subsidies from Mental Health Resources, a nonprofit organization that provides services to adults recovering from mental illness.

15. On or about June 1, 2013, Ms. Poeschel took possession of unit 202 at Garden Grove. At that time, Defendants were aware that Ms. Poeschel received Supplemental Security Income and housing subsidies from Mental Health Resources.

A. Defendants' Dog Policy

16. Any Garden Grove tenant may have a dog in his/her unit with prior management approval, payment of a pet deposit and additional \$25.00 per month in rent, and execution of a pet addendum. Tenants with approved service or companion animals are not required to pay the pet deposit or additional pet rent.

17. Defendants' pet addendum has no general prohibition against dogs or puppies. Garden Grove's website indicates that "dogs and cats are welcome."

B. Plaintiff's Request for Reasonable Accommodation

18. On or about June 1, 2013, Ms. Poeschel informed Garden Grove property manager Penny Farah that she anticipated obtaining a dog as a companion animal in the future. Ms. Poeschel provided Ms. Farah with the April 2012 letter from Dr. Reinhart, prescribing a small dog as therapy for her mental disabilities.

19. Ms. Poeschel and Ms. Farah signed a "Pet Addendum to Lease" on June 1, 2013. The executed pet addendum shows a checkmark next to the following phrase: "I have read and understand the pet policy. At this time I have an approved companion animal. I understand that there will be no pet deposit or pet rent charged however all other rules

and regulations still apply. I also understand that I will be held liable for any damages to my unit, the property or any other person caused by or resulting from my companion animal.”

20. In late March of 2014, Ms. Poeschel selected a companion animal, a three-week old female Shih-tzu named “Trudy,” and placed a deposit with the breeder.

21. On or about April 3, 2014, Ms. Poeschel submitted another pet addendum to Defendants indicating, like the previous addendum, that she had an approved companion animal. In the margin, she noted, “see letter Shih Ztu mid May no shedding Total weight 9-10 lb.” She again attached the April 11, 2012 note from Dr. Reinhart.

22. In response, Garden Grove property manager Jessica Jorrisen Carroll sent a letter to Ms. Poeschel requiring her to complete an authorization form, a pet addendum and a “reasonable accommodation/modification request verification” form, stating that a companion pet would not be approved until all documentation was received by the office, and that “This does take time.”

23. On April 22, 2014, Dr. Reinhart signed the reasonable accommodation/modification request verification form, stating that Ms. Poeschel was a person with a disability, that she needed the requested accommodation of a companion dog in order to have the same opportunity as individuals without disabilities to use and enjoy

the apartment community, and there was no other accommodation “that may be easier than the requested accommodation which [Dr. Reinhart] could suggest.”

24. The reasonable accommodation form asked “[w]hether [Dr. Reinhart] would be willing to testify in any court action or related proceeding as to resident’s need for the reasonable accommodation,” to which Dr. Reinhart replied “No.”

C. Defendants’ Denial of Ms. Poeschel’s Request for Accommodation

25. In a letter from Oak Grove Realty Services to Ms. Poeschel dated May 5, 2014, Defendants denied her request for a companion dog. Defendants acknowledged the health provider’s determination that Ms. Poeschel met the definition of disability and that an emotional support animal would be beneficial, but Defendants suggested that Ms. Poeschel obtain a cat instead.

26. Ms. Poeschel responded by letter to Oak Grove on May 5, 2014 that a cat did not satisfy her request for a reasonable accommodation.

27. On May 7, 2014, Defendants again denied the requested accommodation, stating that there is “little documentation that show puppies of any breed are acceptable as companion animals.” Defendants also argued that puppy behaviors, like chewing, barking, and whining, “are not acceptable in multi-family housing due to damage, and other residents may have specific aversions to puppy behaviors and may be disturbed by the puppy’s behaviors.” Defendants stated that Ms. Poeschel could have a companion dog

only if it was at least twelve months of age and had been housebroken and “socialized,” among other requirements.

28. On May 8, 2014, Dr. Reinhart wrote to Defendants again, supporting Ms. Poeschel’s need to have a companion dog for her mental illness and expressing her professional opinion that a dog would be beneficial to Ms. Poeschel’s mental health because it would give her interaction as well as assist with activity in and out of her apartment.

29. On May 13, 2014, Dr. Jonathon Uecker, M.D., Ms. Poeschel’s treating psychiatrist, wrote a letter that was provided to Defendants stating that Ms. Poeschel was under his psychiatric care, that she met the definition of disability under the Act, and that he was prescribing an emotional support hypo-allergic dog to assist her in coping with her disability by alleviating limitations associated with social interactions, stress, and anxiety.

30. On May 19, 2014, Ms. Poeschel’s attorney wrote to Ms. Carroll that, under the Fair Housing Act, Ms. Poeschel was entitled have her companion animal because she is a person with a disability and because she provided medical documentation showing that the companion animal would help her cope with the symptoms of her disability. The letter further expressed that Defendants’ insistence on a dog older than twelve months was arbitrary and that they had not shown that allowing the dog in the subject property would

create any undue financial or administrative burden, or would constitute a fundamental program alteration under the Act.

31. On May 27, 2014, Dr. Uecker again wrote a letter that was provided to Defendants, stating that he was prescribing an emotional support puppy to assist Ms. Poeschel in coping with her disability.

32. Sometime in May 2014, Ms. Poeschel moved Trudy into her unit at Garden Grove.

33. On July 3, 2014, July 29, 2014 and August 21, 2014, Ms. Carroll issued Notices of Infraction to Ms. Poeschel citing “Unauthorized pet” as the only basis for the infraction.

34. On August 22, 2014, Ms. Poeschel filed a complaint with HUD. Also on August 22, 2014, Ms. Poeschel’s attorney sent a letter to Defendants’ attorney informing him that she had filed a fair housing complaint with HUD on Ms. Poeschel’s behalf.

D. Defendants’ Retaliation Against Ms. Poeschel

35. On September 3, 2014, Ms. Carroll sent a letter to Ms. Poeschel to advise her of three “additional lease violations.” First, Ms. Carroll stated that Ms. Poeschel had an unauthorized resident in her unit named Derek Myers, and requested proof that Mr. Myers was not living in her unit. Second, Ms. Carroll stated that Ms. Poeschel had painted a wall in her apartment, and requested a list of all “alterations” in her unit. Finally, Ms. Carroll

accused Ms. Poeschel of allowing her dog to interfere with Defendants' repair attempts by being "constantly in the way in a harassing manner," which she characterized as "a serious and material lease violation."

36. Ms. Poeschel had painted a walkway and an accent wall when she moved into her unit in 2013. Defendants had inspected her apartment and entered the apartment for maintenance prior to Ms. Poeschel requesting a reasonable accommodation, but made no mention of the painted walls until after Ms. Poeschel filed her fair housing complaint.

37. On September 5, 2014, Ms. Poeschel's attorney sent a letter, identifying Mr. Myers as Ms. Poeschel's personal care assistant and including a copy of his paycheck that reflected his separate address. The letter further stated that Defendants had placed Ms. Poeschel under added scrutiny because of her filing of a fair housing complaint, which was exacerbating her mental health symptoms.

38. On September 23, 2014, counsel for Defendants wrote to Ms. Poeschel's attorney, requesting "any reliable medical data regarding puppies as emotional support animals" in addition to Dr. Ueker and Dr. Reinhart's curricula vitae with releases so that he could interview them.

39. On September 29, 2014, Pro-Health Care, Inc. sent a letter to Defendants verifying that Mr. Myers was its employee and a trained and certified personal care

assistant. The letter further stated that Mr. Myers was providing assistance to Ms. Poeschel, with funding provided from the State of Minnesota.

40. On October 22, 2014, Defendants filed an eviction action in Ramsey County District Court against Ms. Poeschel, citing Ms. Poeschel's "unauthorized animal on the premises" as well as "unauthorized occupant," "making alterations to the premises," interfering with the repairs "due to the animal," and "refusing or not allowing maintenance into the unit."

41. The court dismissed the eviction action on December 12, 2014.

42. On February 10, 2015, Ms. Carroll sent a letter to Ms. Poeschel stating that a property inspection of her unit revealed excess clutter that made the unit dangerous.

43. On February 12, 2015, Defendants' attorney wrote Ms. Poeschel's attorney demanding that Ms. Poeschel remove a portable dishwasher from her unit. The dishwasher had been present in Ms. Poeschel's apartment since around the time she moved into the unit in June 2013.

44. Prior to filing her fair housing complaint, Ms. Poeschel had passed all of Defendants' unit inspections, and no lease infractions were ever issued for clutter, fire hazards, poor housekeeping, failure to comply with maintenance, unauthorized painting of walls or maintaining appliances without approval, failure to comply with maintenance, or any other lease infractions.

45. On March 13, 2015, Ms. Carroll sent a letter to Ms. Poeschel informing her that her lease would not be renewed and that she had to vacate her unit by May 31, 2015.

46. On June 25, 2015, Defendants sent a letter to Ms. Poeschel stating that she would be permitted to reside in the unit until August 31, 2015 on a month-to-month basis, but that Defendants would not accept her rent payment for September of 2015.

47. On or about September 3, 2015, Defendants initiated a second eviction action against Ms. Poeschel in Ramsey County District Court.

48. On October 6, 2015, the Ramsey County District Court dismissed Defendants' eviction action, finding that Ms. Poeschel established an affirmative defense under Minn. Stat. § 363A.09, which prohibits unfair discriminatory practices in housing. The court relied on HUD guidance in determining that Defendants retaliated against Ms. Poeschel in violation of the state statute. The court reasoned there was no evidence that Trudy had caused any damage to the unit, Defendants had never conducted an individualized assessment of Trudy, and to the extent there would be any damage, Defendants could charge the cost of repairs to Ms. Poeschel.

49. Due to Defendants' retaliation, which was causing her mental conditions to worsen, Ms. Poeschel decided that she needed to move out of Garden Grove. The housing court's order noted her intent and stated that she would vacate her unit by October 31, 2015.

50. On or about October 31, 2015, Ms. Poeschel vacated the subject property, leaving behind her furniture and various other possessions.

51. Defendants never returned any portion of the security deposit to Ms. Poeschel.

52. Ms. Poeschel was unable to find another affordable apartment and ultimately purchased a used camper vehicle, where she has been living ever since.

53. In or around February 2016, because Ms. Poeschel was unable to find alternate housing, she lost her \$500 per month MHR subsidy.

PROCEDURAL BACKGROUND

54. 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 Ms. Poeschel, attempted conciliation without success, and prepared a final investigative report.

55. Based on the information gathered in his investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g), determined that reasonable cause exists to believe that illegal discriminatory housing practices occurred. On September 8, 2016, 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 under 42 U.S.C. §§ 3604(f)(1)(A), (f)(2)(A), (f)(3)(B) and 3617.

56. On September 13, 2016, Ms. Poeschel timely 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).

57. On September 13, 2016, a HUD Administrative Law Judge issued a Notice of Election and terminated the administrative proceedings on the HUD complaint filed by Ms. Poeschel. 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).

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

FAIR HOUSING ACT VIOLATIONS

59. The United States incorporates by reference the preceding paragraphs of this Complaint.

60. Defendants discriminated against Ms. Poeschel in the rental of a dwelling by denying her the opportunity to renew her lease because of her disabilities in violation of 42 U.S.C. § 3604(f)(1)(A).

61. Defendants discriminated against Ms. Poeschel in the terms, conditions, or privileges of rental of a dwelling because of her disabilities, in violation of 42 U.S.C. § 3604(f)(2)(A).

62. Defendants refused to make a reasonable accommodation in rules, policies, practices, or services, when such an accommodation was 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).

63. Defendants terminated Ms. Poeschel's tenancy in retaliation for her exercise of her right to a reasonable accommodation in the form of an assistance animal, in violation of 42 U.S.C. § 3617.

64. Ms. Poeschel is an aggrieved person as defined in 42 U.S.C. § 3602(i) and has suffered injuries as a result of Defendants' actions.

65. Defendants' discriminatory actions were intentional, willful, and taken in disregard of the rights of Ms. Poeschel.

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);
- 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); and
- D. Coercing, intimidating, threatening or interfering with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by the Fair Housing Act, in violation of 42 U.S.C. § 3617.

3. Order Defendants to take such affirmative steps as may be necessary to restore, as nearly as practicable, Ms. Poeschel 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 Ms. Poeschel 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.

DATE: October 13, 2016

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