

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
DYERSBURG APARTMENTS, LTD.)	
AND MACO MANAGEMENT COMPANY,)	
INC.,)	
)	
Defendants.)	JURY DEMAND

COMPLAINT

Plaintiff, the United States of America, alleges:

1. The United States brings this action to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (the “Fair Housing Act” or “FHA”), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 to 3619.
2. The United States brings this action under 42 U.S.C. § 3612(o) on behalf of Lee Clark.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3612(o)(1).
4. Venue is proper under 28 U.S.C. § 1391 because the events giving rise to the claims occurred in this District, the subject property is located in this District, and the defendants do business in this District.

THE DEFENDANTS AND SUBJECT PROPERTY

5. Defendant Dyersburg Apartments, Ltd. (“Dyersburg”) is a limited partnership with its principal address at 111 North Main Street, in Clarkton, Missouri, 63837-9241. Dyersburg owns the subject property, a 50-unit rental apartment complex, located at 625 U.S. Highway 51 Bypass East, in Dyersburg, Tennessee. Dyersburg owns at least one other rental property in the Dyersburg area.

6. Defendant MACO Management Company, Inc. (“MACO”) is a limited liability company with its principal address at 111 North Main Street, in Clarkton, Missouri, 63837-9241. MACO manages and operates the subject property. MACO manages and operates at least one other rental property in the Dyersburg area.

7. The units at the subject property are “dwellings” within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

FACTUAL ALLEGATIONS

8. At all times relevant to this action, Defendant MACO imposed a policy of rejecting an application for tenancy if any member of the household had a felony conviction within the past 10 years. In addition, MACO’s Resident Selection Guidelines stated, in relevant part, “Management has established a policy to reject all applicants where the applicant or any household member has engaged in certain criminal activity[,]” including “[a]ny conviction or adjudication other than acquittal for the sale, distribution, or manufacture of any controlled or illegal substance[.]” and “[a]ny conviction or adjudication other than acquittal, for any sexual offense.”

9. At all times relevant to this action, Defendant MACO imposed a policy of conducting a check of each applicant’s criminal record. MACO’s Rules and Regulations stated, however, that where a rental application is rejected because of the criminal history of a member of the

applicant's household, "consideration shall be given to favorable changes in the household's pattern of behavior, a lapse of years since occurrence of an offense[,] and to other extenuating circumstances."

10. In or around January 2012, Lee Clark, who is Black, moved into the subject property with his ex-wife, Tiffany Taylor, who is also Black, and their two children.

11. In November 2012, Clark completed an application to be added as an occupant on Taylor's lease.

12. On Clark's application, Clark answered "yes" to the question, "Have you ever been convicted of a felony?" In addition, Clark wrote "writing a hot check" on the application.

13. Clark pleaded guilty in 2008 to writing a bad check and to two counts of forgery, and was sentenced to a maximum of 30 and 36 months, respectively. On information and belief, he previously pleaded guilty to or was convicted of other criminal offenses.

14. About one week after Clark submitted his application, Janet Smith, the resident manager of the subject property, told Clark that his application for tenancy had been denied. Smith told Clark that it was because he had a felony conviction. Smith asked Clark to leave the property immediately.

15. On or about November 13, 2012, Smith sent Clark a notice that his application for housing was rejected because of his criminal record.

16. On or about November 13, 2012, Clark asked Smith whether he would be able to visit his children, who would still live at the property. Smith said no and told Clark that he could not come to the property at all.

17. Clark immediately removed his belongings and left the property.

18. On or about June 7, 2013, Larry Childers, the property manager of the subject property, sent Clark a “Letter of Banishment,” copying the local police department, and banning Clark from the property “effective immediately.”

19. As a result of Clark’s being denied housing and being forced to vacate the property, Clark’s relationship with his children suffered. Clark was also unable to find permanent housing for over a year.

20. In September 2011, Joseph Seiber, who is white, completed an application to live in the subject property.

21. On Seiber’s application, Seiber answered “yes” to the question, “Have you ever been convicted of a felony?” In addition, Seiber wrote “sexual battery in 2005” on the application.

22. Seiber pleaded guilty to sexual battery by an authority figure in 2003 and was sentenced to a maximum of 36 months’ probation in 2006. At all relevant times, Seiber was on the Tennessee sex offender registry.

23. Defendant MACO conducted a check of Seiber’s criminal record online on or about September 2, 2011. The report produced by the criminal record check contained a criminal records section stating, “1 Possible Match(es)” and “Returned.”

24. On or about September 12, 2011, Defendant MACO approved Seiber’s application for tenancy. Seiber signed a lease and moved into the subject property.

25. On or about October 7, 2012, Seiber completed an application to rent a unit at a property across the street from the subject property. Defendant Dyersburg owned and Defendant MACO operated both properties.

26. Defendant MACO again conducted an online check of Seiber’s criminal record and received the same result it received in 2011.

27. Defendant MACO again approved Seiber’s application to rent a unit.

28. On or about November 2, 2012, Seiber moved out of the subject property. On the next day, he signed a lease for, and moved into, the unit across the street.

29. Defendant MACO sent Seiber a Notice of Intent to Terminate Tenancy on or about May 15, 2013, stating that his lease would be terminated in 30 days. The notice states that the reason for the termination of lease is, “It was brought to our attention your name is on the national sex offenders list. Also, false information on application.”

30. Seiber vacated the property on or about June 9, 2013.

31. Defendant MACO did not send Seiber a Letter of Banishment.

32. In November 2012, Ashley Orchard, who is white, completed an application to live in the subject property with her husband and child, who are also white.

33. On Orchard’s application, Orchard answered “yes” to the question, “Have you ever been convicted of a felony?” In addition, Orchard wrote on her application, “Ashley Orchard currently [sic] on judicial diversion-probation ending May 2013—Record will be cleared.”

34. Orchard pleaded guilty to selling counterfeit controlled substances, an E Class felony, and the court entered an Order of Judicial Diversion on May 31, 2011. As a result, if she satisfied the conditions of her two-year probation, the court would discharge her and dismiss the proceedings.

35. Defendant MACO conducted an online check of Orchard’s criminal record on or about November 26, 2012. The report produced by the criminal record check contained a criminal records section stating, “1 Possible Match(es)” and “Returned.”

36. On or about November 27, 2012, Defendant MACO approved Orchard’s application for tenancy.

37. On or about December 5, 2012, Orchard signed a lease for a unit; she moved into the subject property shortly thereafter.

38. Orchard voluntarily moved out of the property on good terms with the defendants on or about October 23, 2013.

39. Defendant MACO did not send Orchard a Letter of Banishment.

40. Defendant Dyersburg is liable for the conduct of its agent, Defendant MACO.

HUD ADMINISTRATIVE PROCESS

41. Clark filed a timely complaint with the Department of Housing and Urban Development (“HUD”) on September 13, 2013.

42. In accordance with 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD conducted and completed an investigation of Clark’s complaint, attempted conciliation without success, and prepared a final investigative report. Based upon the information gathered in the investigation, the Secretary determined, under 42 U.S.C. § 3610(g)(1), that reasonable cause existed to believe that the above-named defendants engaged in illegal discriminatory housing practices against Clark. Therefore, on August 27, 2018, the Secretary issued a Charge of Discrimination, under 42 U.S.C. § 3610(g)(2)(A), charging the defendants with engaging in unlawful discrimination against Clark, in violation of 42 U.S.C. §§ 3604(a) and (b).

43. On September 6, 2018, Clark elected to have the claims asserted in the Charge of Discrimination resolved in a civil action pursuant to 42 U.S.C. § 3612(a).

44. On September 7, 2018, an Administrative Law Judge issued a Notice of Election to Proceed in United States Federal District Court and terminated the administrative proceeding on the Charge of Discrimination.

45. Following this Notice of Election, on September 11, 2018, the Secretary authorized the Attorney General to commence a civil action pursuant to 42 U.S.C. § 3612(o).

CAUSE OF ACTION

46. Plaintiff realleges and incorporates by reference herein the allegations described above.

47. By the conduct described in the foregoing paragraphs, the defendants have:
- a. Denied housing or otherwise made housing unavailable because of race, in violation of 42 U.S.C. § 3604(a);
 - b. Discriminated in the terms, conditions, or privileges of the rental of dwellings, or in the provision of services or facilities in connection therewith, because of race, in violation of 42 U.S.C. § 3604(b);

48. Clark is an “aggrieved person” as defined in 42 U.S.C. § 3602(i), and has suffered damages as a result of the defendants’ discriminatory conduct.

49. The defendants’ discriminatory conduct was intentional, willful, and taken in reckless disregard of the rights of Clark.

PRAYER FOR RELIEF

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

1. Declares that the defendants’ actions, policies, and practices, as alleged herein, violate the FHA;
2. Enjoins the defendants, their agents, employees, and successors, and all other persons in active concert or participation with them, from:
 - a. Discriminating on the basis of race in any aspect of the rental or lease of a dwelling;
 - b. Discriminating in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of race;
 - c. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of the defendants’ past unlawful practices to the position they 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 the defendants' unlawful housing practices; and
3. Awards monetary damages to Clark in accordance with 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1).

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

Dated: October 9, 2018

Respectfully submitted,

JEFFERSON B. SESSIONS III
Attorney General

/s John M. Gore
JOHN M. GORE
Acting Assistant Attorney General
Civil Rights Division

/s D. Michael Dunavant
D. MICHAEL DUNAVANT
United States Attorney
Western District of Tennessee

/s Sameena Shina Majeed
SAMEENA SHINA MAJEED
Chief

/s David Brackstone
DAVID BRACKSTONE (#27989)
Assistant United States Attorney
Western District of Tennessee
167 North Main Street, Suite 800
Memphis, Tennessee 38103
Phone: (901) 544-4231
dbrackstone@usa.doj.gov

/s Abigail A. Nurse
MICHAEL S. MAURER
Deputy Chief
ABIGAIL A. NURSE
Trial Attorney
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W. -- NWB
Washington, D.C. 20530
Phone: (202) 353-9732
Fax: (202) 514-1116
abigail.nurse@usdoj.gov