

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:15-cv-8782
)	
LINCOLNSHIRE SENIOR CARE, LLC,)	
d/b/a SEDGEBROOK and)	
LIFE CARE SERVICES, LLC)	
)	
Defendants.)	

COMPLAINT

COMES NOW the United States of America (hereinafter “the United States”) and alleges as its complaint herein, the following:

1. This action is brought by the United States to enforce the Fair Housing Act, as amended, (“Act”), 42 U.S.C. §§ 3601 *et seq.*

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3614(a).

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the actions giving rise to the United States’ claims occurred in this District; Defendants own and/or operate a business that is located in this District; and Defendant Lincolnshire Senior Care, LLC, d/b/a Sedgebrook, a Delaware corporation, has designated an agent for service of process in this District.

DEFENDANTS AND SUBJECT PROPERTY

4. At all times relevant to this complaint, Defendant Lincolnshire Senior Care, LLC, d/b/a Sedgebrook (“Senior Care”) has owned a continuing care retirement community (“CCRC”) located at 800 Audubon Way, Lincolnshire, Illinois 60069. The independent living portion of the CCRC is called Sedgebrook and the assisted living and nursing portions are called Radford Green.

5. At all times relevant to this complaint, Defendant Life Care Services, LLC (“LCS”) has managed Sedgebrook and Radford Green on behalf of Senior Care.

6. At all times relevant to this complaint, Senior Care has sold and/or leased apartment units at Sedgebrook.

FACTUAL ALLEGATIONS

7. Sedgebrook contains 467 one- and two-bedroom apartments in five buildings. The buildings are interconnected through interior hallways that connect to a central clubhouse. The clubhouse contains, *inter alia*, activity rooms, two dining facilities, known as the Shoreline Restaurant and Monarch Café, and a private dining room.

8. The apartments at Sedgebrook and the associated common use facilities are “dwellings” within the meaning of 42 U.S.C. § 3602(b).

9. Radford Green, the 88-unit assisted living and nursing care facility within the CCRC, is located in a separate building, unconnected to either the independent living areas or the central clubhouse.

10. Prior to being permitted to move into Sedgebrook, prospective residents must pass a series of health assessments conducted by Sedgebrook staff to determine if they are able to live independently with or without reasonable accommodations.

11. Sedgebrook residents pay a buy-in amount that entitles them to continuing care through all levels of care available at the CCRC. Sedgebrook residents also pay a monthly fee that covers, *inter alia*, one meal a day at either the Shoreline Restaurant or Monarch Café. When Sedgebrook residents come to require more care, they may employ personal service providers to care for them in their independent living units or they may transfer into Radford Green, either temporarily or permanently. Residents are responsible for contracting with personal service providers themselves; Sedgebrook does not provide medical, nursing, or other regular care to its independent living residents.

12. The Shoreline Restaurant is open for dinner seven days a week and seats approximately 260 people. The Shoreline Restaurant is a full-service sit-down restaurant with wait staff. There is also a private dining room adjacent to the Shoreline Restaurant that residents may reserve without a fee for parties of up to 18 people.

13. The Monarch Café is open for breakfast and lunch Monday through Saturday and dinner seven days a week. The Monarch Café seats approximately 150 people. The Monarch Café is a cafeteria-style restaurant where residents pick up food and carry it to a table.

14. Defendants encourage residents to eat in the Shoreline Restaurant and Monarch Café and also encourage residents to dine together.

A. Sedgebrook's Dining Room Policies

15. Beginning in at least September 2011, and continuing to the present, Defendants have adopted and enforced a series of policies that prohibited, and then limited, residents with disabilities living in independent living apartments from eating at the Shoreline Restaurant and Monarch Café.

16. Specifically, in or about September 2011, Defendants adopted a Personal Service Provider Policy (“2011 PSP Policy”) that provided that privately hired personal service providers were not permitted to assist residents who required assistance eating in either the Shoreline Restaurant or Monarch Café. The 2011 PSP Policy (Exhibit A) provided in relevant part, “The PSP may assist the resident with transportation to and from the dining areas in the Community but the PSP is not allowed to stay with the resident in the Shoreline Restaurant or Monarch Café during dining time.”

17. The 2011 Resident Handbook (Exhibit B) reiterated the restriction on PSPs assisting residents in the dining rooms: “A Personal Service Provider is allowed to escort a Resident to and from their table in the Shoreline restaurant or Café but a Personal Service Provider is not allowed to stay with the Resident in the Shoreline restaurant or Café during meal time.”

(emphasis in original).

18. In or about April 2012, Defendants adopted the “Dining Services Policy for Independent Living Shoreline Restaurant and Monarch Café” (“2012 Dining Services Policy”), which outlined the criteria a resident must meet to use the Café or Restaurant. The 2012 Dining Services Policy (Exhibit C) required that a resident “must be able to feed himself/herself in the independent living dining room” and provided:

A resident using the Restaurant or Café should meet the following criteria:

- 1.1 Able to follow directions and communicate with others;
- 1.2 Able to dine with little or no assistance; and
- 1.3 Exhibit acceptable social behavior. Examples of unacceptable social behavior include, but are not limited to: a) food debris on clothing; b) use of uncontrollable or continued yelling or offensive language or gestures; c) drool, food and/or liquid seeping from the mouth; d) offensive body odor; e) continual rudeness, arguing and/or threatening behavior to staff, other residents and/or guests; and f) inadequately controlled incontinence.

- 1.4 Able to access the restroom on their own or with the assistance of a Personal Service Provider (PSP).

19. Like the 2011 PSP Policy, the 2012 Dining Services Policy also provided that a “PSP will not be allowed to dine in the Restaurant or Café with the resident.”

20. In or about June 2013, the Defendants revised their “Dining Services Policy for Residential Living Restaurant and Café” (“2013 Dining Services Policy”) (Exhibit D). The 2013 Dining Services Policy continued to require that a resident must be able to follow directions, communicate with others, dine with little or no assistance, and feed him or herself in order to eat in Sedgebrook’s dining facilities. The prohibition on PSPs staying with residents during dining times remained in the 2013 version as well. For the first time, the 2013 Dining Services Policy enumerated the types of reasonable accommodations that the Executive Director of Sedgebrook may offer to a resident who needed assistance in the Shoreline Restaurant and Monarch Café: allowing those who have been banned as a result of not meeting the 2013 Dining Services Policy’s requirements to eat prior to restaurant opening or after its closing (*e.g.*, before 4:30 pm or after 6:30 pm), waiving the delivery fee for delivery to the resident’s apartment at the Executive Director’s discretion, or providing credit for meals not taken.

21. In or about February 2014, Sedgebrook revised its Personal Service Provider (“2014 PSP Policy”) (Exhibit E) to allow personal service providers to eat with, and provide some assistance to, residents who needed assistance in the Monarch Café. Under the 2014 PSP Policy, personal service providers are not allowed to stay and assist residents in the Shoreline Restaurant during meal time.

22. In practice, the 2014 PSP Policy allows personal service providers or family members to assist a resident with, for example, setting up a plate, cutting food, and placing food

on utensils in the Monarch Café. However, neither personal service providers nor family members, including spouses, are allowed to assist residents with such activities in the Shoreline Restaurant. Family members and personal service providers remain barred from feeding a resident in either the Café or the Restaurant under the 2014 PSP Policy and 2013 Dining Services Policy.

23. As a result of the policies described in paragraphs 15 through 22, above, residents with disabilities who needed assistance feeding themselves due to their disabilities were unable to have a personal service provider or a family member, including a spouse, assist them with such things as setting up their plate, cutting their food, placing their food on utensils, or feeding in one or both of Sedgebrook's communal dining facilities.

24. Failure to follow these policies could, and did, result in residents with disabilities losing their dining privileges at the Restaurant and Café and being made to eat in their apartments.

B. Sedgebrook's Personal Service Provider Policy

25. Beginning in or about September 2011 and continuing until at least February 2014, Defendants maintained a written policy that allowed residents who needed assistance caring for themselves to independently hire personal services providers to provide 24-hour care in eight- or 12-hour shifts but prohibited residents from hiring live-in personal service providers. (Exhibit A).

26. Residents with disabilities, through their family members, requested that they be granted exceptions to Sedgebrook's policy prohibiting live-in care because live-in care would better meet their health-related needs. Sedgebrook denied or failed to respond to these requests.

27. Other residents would have preferred to have live-in care as well, but did not seek exceptions to Sedgebrook's rule because they knew similar requests had been denied.

28. In or about February 2014, Sedgebrook amended its PSP Policy and removed the ban on live-in personal service providers. (Exhibit E). However, according to Sedgebrook's Executive Director, Sedgebrook is now charging a \$175 per month fee for residents who employ live-in care. No fee is charged to residents who employ shift care.

29. Residents, applicants, and prospective residents who needed assistance in the Shoreline Restaurant or Monarch Café or who wanted to hire live-in personal service providers have disabilities¹ within the meaning of 42 U.S.C. § 3602(h).

C. Sedgebrook's Policies Harmed Residents and their Families

The Hoovers

30. Al and Katy Hoover² moved into Sedgebrook on November 20, 2012, in large part because of the amenities it offered, including the communal dining options.

31. When the Hoovers moved in, the Defendants were aware that Mr. Hoover had advanced Rheumatoid Arthritis that affected his hands and left him unable to grasp objects, which in turn made him unable to feed himself.

32. When they first moved in, the Hoovers regularly ate at the Restaurant, with Ms. Hoover helping to feed her husband.

33. In or around February 2013, a Sedgebrook employee called Ms. Hoover and informed her that her feeding of Mr. Hoover was a violation of Sedgebrook's dining policies.

¹ Although the Act refers to the protected class as persons with "handicap[s]," the term "disabilities" is synonymous and generally preferred, *see Bragdon v. Abbott*, 524 U.S. 624, 631 (1998), and will be used in this Complaint.

² Mr. Hoover passed away on September 23, 2013.

34. After that call, in or around February 2013, two Sedgebrook employees visited the Hoovers in their apartment and stated that other residents had complained about Ms. Hoover feeding her husband. The employees gave the Hoovers a document indicating that Ms. Hoover was not allowed to assist her husband in the dining room. The Hoovers did not recognize this document as any part of the information they received prior to moving in or at any point since and were previously unaware that Sedgebrook's policies would prohibit Mr. Hoover from receiving assistance eating at the Sedgebrook dining facilities.

35. After the Hoovers were told that Mr. Hoover could no longer eat in the Restaurant, they met with Darrell Jensen, Sedgebrook's Interim Executive Director, who also told them that Mr. Hoover was no longer allowed in the Restaurant but that he could eat in the Café, the private dining room if other residents were not using it, or their apartment.

36. Ms. Hoover wrote a letter dated May 13, 2013 to David Reis, CEO of Senior Care Development, LLC, a company affiliated with Defendant Lincolnshire Senior Care, LLC, and other Sedgebrook and Life Care Services, LLC executives (Exhibit F) expressing that she was unsatisfied with the resolution offered by Mr. Jensen. She wrote, in part:

One of the main selling points for us was the social atmosphere of the Shoreline Dining Room. This is the best place to meet people and is the best dining option. It is a part of what we are paying for. Now we are banished and made to feel like second-class citizens.

37. In response to Ms. Hoover's letter described in the previous paragraph, the Defendants offered the Hoovers monetary compensation of \$12.00 per day, waived the \$5 delivery fee for meals ordered from the Café, and offered use of the private dining room when it was not being occupied by other residents and their guests.

Alice Benjamin

38. Sedgebrook resident Alice Benjamin³ had Parkinson's disease, which impacted her ability to control her movements.

39. Ms. Benjamin preferred eating in the Café and ate there regularly with her personal service provider dining with her and assisting her as needed.

40. Sometime prior to July 25, 2012, Sedgebrook management told Ms. Benjamin that she could not have her personal service provider dine with her in the Café.

41. During a July 25, 2012 "Town Hall Meeting" with Mr. Reis, Ms. Benjamin asked Mr. Reis why she could not have her personal service provider dine with her in the Café. Mr. Reis did not answer the question and instead directed her to speak with Cathy Swan, Sedgebrook's Resident Life Director. At some point thereafter, Ms. Swan told Ms. Benjamin that she could no longer eat in the Café because she was unable to eat there unassisted.

42. Subsequently, Ms. Benjamin was able to eat only in her apartment assisted by her personal service provider.

The Millers

43. Dr. Sheldon and Ms. Phyllis Miller moved into Sedgebrook in April 2007.⁴ When they moved into Sedgebrook, Ms. Miller had a heart condition and used a wheelchair, and Dr. Miller had Alzheimer's disease, was visually impaired, and used a wheelchair.

44. The Millers enjoyed dining and socializing with friends at the Restaurant and ate there regularly from the time they moved in until December 2011.

³ Ms. Benjamin passed away on May 4, 2014.

⁴ Ms. Miller passed away in February 2012. Dr. Miller passed away in October 2012.

45. Due to his disabilities, Dr. Miller was unable to properly use utensils and required assistance with eating, which he received from his son or his wife. Also due to his disabilities, Dr. Miller would get anxious if his wife or son left his side during the meal and would call out for them.

46. In or around 2011, the Millers began receiving phone calls and visits from a Sedgebrook employee who indicated that other residents were complaining about Dr. Miller being fed in the Restaurant or about the noise he created when he called for his wife.

47. Believing that Sedgebrook permitted family to assist a resident eat in the Café, the Millers began eating in the Café, with Mr. Miller assisting his father.

48. In or around December 2011, there was an incident in the Café when Dr. Miller became agitated when his son left the table briefly to retrieve something and, in attempting to move his wheelchair away from the table, flipped the wheelchair because the wheels were locked. Neither Dr. Miller nor anyone else was injured.

49. On or about December 19, 2011, Ms. Swan and Sedgebrook's then-Executive Director Valerie McGhee met with Mr. Miller. They informed Mr. Miller that his father was no longer allowed to eat in the Café or Restaurant because Dr. Miller was unable to eat independently. They also denied Mr. Miller's request that his father's personal service provider be able to assist the family feed Dr. Miller.

50. Following the meeting described in the previous paragraph, the Millers stopped eating in the communal dining areas and began eating only in their apartment.

51. The Millers also required at-home care because of their disabilities, and privately employed care from several personal service providers on a shift schedule. The Millers hired shift care, as opposed to live-in care, because of the Defendants' policy prohibiting live-in care.

52. The shift schedule resulted in an inadequate level of care for the Millers.

53. Mr. Miller requested that the Defendants allow his parents to hire a live-in caregiver in or around November 2010 and again in or around June 2011.

54. The Defendants denied the Millers' requests for permission to hire live-in care.

FAIR HOUSING ACT CLAIMS

55. Plaintiff re-alleges and hereby incorporates by reference the allegations set forth in paragraphs 1 through 54, above.

56. Defendants have and employ policies and practices that prohibit and limit residents with disabilities from eating at the Shoreline Restaurant and Monarch Café.

57. Defendants have and employ policies and practices that prohibit residents with disabilities from hiring live-in personal service providers.

58. Defendants, through the actions described in paragraphs 15 through 54 and 56 through 57, above, have:

- a. Discriminated in the terms, conditions, or privileges of sale or rental of a dwelling, and in the provision of services of facilities in connection with such a dwelling, because of disability, in violation of 42 U.S.C. § 3604(f)(2); and
- b. Refused to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use or enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).

59. Defendants' conduct, described above, 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.*; and/or
- b. A denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, which denial raises an issue of general public importance.

60. There are persons who are victims of Defendants' discriminatory housing practices who are "aggrieved persons" as defined in 42 U.S.C. § 3602(i) and who may have suffered injuries and damages as a result of Defendant's actions and practices described above, including, but not limited to, current or former Sedgebrook residents the Millers, the Hoovers, and Ms. Benjamin, and these residents' families.

61. Defendants' conduct, described above, was intentional, willful, and taken in disregard of the Fair Housing Act and the rights of others.

PRAYER FOR RELIEF

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

1. Declares that Defendants' discriminatory policies and practices, as alleged herein, violate the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*;
2. Enjoins Defendants, their officers, agents, employees, and successors, and all other persons in active concert or participation with them from:
 - a. Discriminating on account of disability in violation of the Fair Housing Act;
 - b. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of Defendants' past unlawful practices to the position they would have been in but for the discriminatory policies and practices;and

c. 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 Defendants' discriminatory practices.

3. Awards monetary damages to all persons harmed by Defendants' discriminatory practices for injuries caused by Defendants' discriminatory conduct, pursuant to 42 U.S.C. § 3614(d)(1)(B); and

4. Assesses a civil penalty against Defendants in order to vindicate the public interest, pursuant to 42 U.S.C. § 3614(d)(1)(C) and 28 C.F.R. § 85.3(b)(3).

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

Respectfully submitted,

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