

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. _____
)	
DANNIE R. PENDYGRAFT and)	
RITA BALLARD-PENDYGRAFT,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America alleges as follows:

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 the “Act”), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 to 3619. The United States brings this action on behalf of Kimberly Clark (the “Complainant”), pursuant to Section 812(o) of the Fair Housing Act, 42 U.S.C. § 3612(o).

Jurisdiction and Venue

2. The Court has jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 42 U.S.C. § 3612(o).
3. Venue is proper under 28 U.S.C. § 1391 because the Defendants reside in the Eastern District of Kentucky and the actions giving rise to the United States’ claims occurred in the Eastern District of Kentucky.

The Defendants and the Subject Property

4. Defendants Dannie Pendygraft (“Pendygraft”) and Rita Ballard-Pendygraft (“Ballard-Pendygraft”), Pendygraft’s wife, reside in Lexington, Kentucky. At all times relevant to

this action, Defendant Pendency owned and managed five rental properties in Lexington. Among the rental properties the Defendant Pendency owned was 737 Maple Avenue, Lexington, Kentucky (the “subject property”). At all times relevant to this action, the Defendants jointly owned the subject property.

5. The subject property is a dwelling within the meaning of 42 U.S.C. § 3602(b).

Factual Allegations

6. On March 18, 2011, Ms. Clark entered into a weekly written lease agreement to rent a furnished bedroom at the subject property for \$85 per week.
7. Ms. Clark initially moved in with her adult son. The other bedrooms in the house were rented separately to other tenants.
8. Ms. Clark fell behind on rent after moving into the subject property.
9. From March 2011 through the termination of Ms. Clark’s tenancy on August 5, 2011, Defendant Pendency subjected Ms. Clark to severe, pervasive and unwelcome sexual harassment, on multiple occasions, including but not limited to:
 - a. Repeated unwelcome sexual advances, gestures, and comments;
 - b. Sexual touching of Ms. Clark;
 - c. Repeated requests for sexual favors while wearing his Fayette County Deputy Constable badge and carrying his service weapon;
 - d. Repeatedly entering her room without notice or permission to do so while Ms. Clark was sleeping and requesting sexual favors;
 - e. Offering tangible housing benefits, including forgiveness or reduction of rent, in exchange for sexual favors;

- f. Refusing to provide an air conditioner for her room in the summer months because she resisted his sexual advances; and
 - g. Threatening to evict or otherwise condition housing benefits if Ms. Clark refused his requests for sex acts.
10. Defendant Pendency filed for eviction against Ms. Clark for back rent. An order of eviction was issued by the Fayette County District Court on August 5, 2011.
11. Ms. Clark vacated the home on or around August 5, 2011.
12. Defendant Ballard-Pendency is liable for the discriminatory conduct of her agent, Defendant Pendency, as described above.

HUD Administrative Process

13. On May 23, 2012, Ms. Clark filed a complaint with the Lexington-Fayette Urban County Human Rights Commission (“LFUCHRC”), a local public agency certified under the Fair Housing Assistance Program, 42 U.S.C. § 3610(f), alleging that the Defendants discriminated against her in the rental of the subject property because of sex. On the same day, LFUCHRC referred the complaint to the U.S. Department of Housing and Urban Development (“HUD”).
14. In accordance with 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD conducted and completed an investigation of the complaint, attempted conciliation without success, and prepared a final investigative report. Based on the information gathered in the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that illegal discriminatory housing practices had occurred. Therefore, on August 24, 2015, the Secretary issued a Charge of Discrimination

pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the Defendants with engaging in discriminatory practices on the basis of sex in violation of the Fair Housing Act.

15. On August 31, 2015, Ms. Clark elected to have the claims asserted in HUD's charge resolved in a civil action pursuant to 42 U.S.C. § 3612(a).
16. On August 31, 2015, the Administrative Law Judge issued a Notice of Election and terminated the administrative proceeding on the HUD complaint.
17. Following this Notice of Election, the Secretary of HUD authorized the Attorney General to commence a civil action pursuant to 42 U.S.C. § 3612(o).

Fair Housing Act Violations

18. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-17, above.
19. The conduct of the Defendants described above constitutes:
 - a. Discrimination in the terms, conditions, or privileges of the rental of dwellings, or in the provision of services or facilities in connection therewith, because of sex, in violation of Section 804(b) of the Fair Housing Act, 42 U.S.C. § 3604(b);
 - b. The making of statements with respect to the rental of dwellings that indicates a preference, a limitation, or discrimination based on sex, in violation of Section 804(c) of the Fair Housing Act, 42 U.S.C. § 3604(c); and
 - c. Coercion, intimidation, threats or interference with persons in the exercise or enjoyment of, or on account of their having exercised or enjoyed, their rights under Section 804 of the Fair Housing Act, in violation of Section 818 of the Fair Housing Act, 42 U.S.C. § 3617.

20. The Complainant is an aggrieved person within the meaning of 42 U.S.C. § 3602(i), and has suffered injuries as a result of the Defendants' discriminatory conduct.

21. The Defendants' actions as described above were intentional, willful, and taken in disregard for the rights of the Complainant.

Prayer for Relief

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

1. Declaring that the Defendants' discriminatory conduct as set forth above violates the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*;
2. Enjoining 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 sex, including engaging in sexual harassment, against any person in any aspect of the rental of a dwelling;
 - b. Interfering with or threatening to take any action against any person engaged in the exercise or enjoyment of rights granted or protected by the Fair Housing Act;
 - 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 practices; and
3. Awarding monetary damages to the Complainant pursuant to 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: September 29, 2015

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