

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 21-cv-1432
)	
CHAD EILMAN, et al.)	JURY TRIAL DEMANDED
)	
Defendants.)	
_____)	

AMENDED COMPLAINT

The United States of America brings this action to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601–3631 (the “Fair Housing Act”). This action is brought under 42 U.S.C. § 3612(o) on behalf of Angela McLean, against Chad Eilman, Jeffrey Eilman, and Christine Neigum for discriminating against Ms. McLean because of her disability. The United States alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o)(1).
2. Venue is proper under 28 U.S.C. § 1391(b) because the events giving rise to the claims alleged in this complaint occurred in, and defendants and property at issue in this action are located in, the Eastern District of Wisconsin.

THE PARTIES AND THE SUBJECT PROPERTY

3. Plaintiff is the United States of America.

4. Sleepy Hollow Apartments (“Sleepy Hollow”) is a multi-family apartment complex. Sleepy Hollow has three buildings with eight units per building for a total of twenty-four units. The complex is located on Forest Court in Oconomowoc, Wisconsin.

5. The units at Sleepy Hollow are “dwellings” within the meaning of 42 U.S.C. § 3602(b).

6. At all relevant times, Mr. Chad Eilman (“Mr. Eilman”), Mr. Jeffrey Eilman, and Ms. Christine Neigum (together, “Defendants”) co-owned Sleepy Hollow. Mr. Eilman, Mr. Jeffrey Eilman, and Ms. Christine Neigum are siblings.

7. Mr. Eilman, Mr. Jeffrey Eilman, and Ms. Christine Neigum are residents of the state of Wisconsin.

8. At all relevant times, Mr. Eilman managed the rental property for the benefit of himself, Mr. Jeffrey Eilman, and Ms. Christine Neigum. In managing the rental property, Mr. Eilman acted as an agent and with the consent of Mr. Jeffrey Eilman and Ms. Christine Neigum. Mr. Eilman had actual and apparent authority to manage the property on their behalf and acted within the scope of his position as manager of the rental property.

FACTUAL ALLEGATIONS

9. The complainant in this case is Ms. Angela McLean.

10. Ms. McLean [REDACTED]. Her physical or mental impairments substantially limit one or more of her major life activities, and she has a record of having such impairments, as defined by the Fair Housing Act, 42 U.S.C. § 3602(h)(1)–(2).

11. In September of 2019, Ms. McLean became entitled to receive social security disability benefits monthly after the United States Social Security Administration determined

Ms. McLean had one or more medical conditions that significantly limited her ability to do basic work-related activities.

12. Principal Life Insurance Company approved Ms. McLean to receive long-term disability benefits on September 17, 2019. The policy paid out benefits for a maximum of twenty-four months.

13. On November 19, 2019, Ms. McLean's psychologist, Dr. David Radovich, PsyD, whose care she had been under since September of 2017, prescribed an assistance animal for therapeutic emotional support. He wrote her a prescription letter, which stated, in pertinent part:

Angela McLean is my patient, and has been under my care since September 2017. I am very familiar with her medical history and functional restrictions heightened by her mental condition. She meets the definition of disabled under the Americans with Disabilities Act, the Rehabilitation Act of 1973, and the Fair Housing Act.

As a result of her condition, Angela has [REDACTED]. In order to assist in alleviating these difficulties, and to improve her ability to lead a better life, I am prescribing an Emotional Support Animal.

14. Shortly after Dr. Radovich wrote the prescription, in or after November of 2019, Ms. McLean adopted her assistance animal, a five-pound chihuahua puppy named "Roxy."

15. Ms. McLean trained her assistance animal to bark when approached by strangers, which helps Ms. McLean feel safe and alleviates symptoms of [REDACTED]. Her assistance animal also reduces symptoms of Ms. McLean's [REDACTED] by making her feel happier, getting her out of bed every day, and giving her a reason to socialize with strangers. Ms. McLean's assistance animal has significantly improved her ability to function normally and her quality of life.

16. In or around June of 2020, Ms. McLean started looking for a cheaper apartment than the one she lived in because of financial difficulties. She saw a craigslist advertisement for an open apartment for rent in Sleepy Hollow.

17. On June 12, 2020, Ms. McLean reached out via text message to Mr. Eilman and arranged to view an apartment that day.

18. On the same day, Mr. Eilman met with Ms. McLean and showed her a second-floor unit located at 838 Forest Court in Oconomowoc. At that time, Sleepy Hollow had two unoccupied units available to rent: a second-floor unit and a ground-floor unit.

19. During their June 12 meeting, Ms. McLean submitted to Mr. Eilman an application for an apartment and verification of her income. She also informed him that she had an assistance dog. She showed Mr. Eilman the letter from her psychologist, Dr. Radovich, prescribing an assistance animal.

20. Mr. Eilman responded by stating that dogs were not allowed at Sleepy Hollow. Ms. McLean encouraged him to look into the law on the matter.

21. On or around June 12, 2020, Mr. Eilman discussed Ms. McLean's application and her assistance animal with his brother and co-owner, Mr. Jeffrey Eilman.

22. After speaking with his brother, also on June 12, 2020, Mr. Eilman called Ms. McLean and they discussed her application. In that phone call, Mr. Eilman suggested that Ms. McLean might be allowed to keep an assistance dog if she rented the apartment. He also asked Ms. McLean to provide more information on her finances, which she did. He additionally offered her the available ground-floor unit. She agreed to rent this unit.

23. Ms. McLean was financially and otherwise qualified to rent the apartment.

24. On June 13, 2020, Ms. McLean notified Mr. Eilman by text message that she had “bought [her] dog a bright red vest that says ‘Support Dog’ on both sides. So, when [she] take[s] her out and [is] approached, people will know.” She sent this text message to follow up on the conversations she had had with Mr. Eilman the previous day about her dog.

25. On June 13, 2020, in response to Ms. McLean’s text message about purchasing the vest, Mr. Eilman replied: “Sounds good. :) I have a meeting scheduled with the other owners tomorrow evening and should have an answer for you Monday.”

26. On June 15, 2020, Mr. Eilman and Ms. McLean spoke over the phone about her application. In the call, he notified her that her rental application had been preliminarily approved.

27. By June 22, 2020, Mr. Eilman had deposited Ms. McLean’s security deposit check.

28. On June 22, 2020, Mr. Eilman emailed Ms. McLean her lease and “additional terms of agreement for residency.” He informed her that “[f]inalization of this lease [wa]s dependent on meeting [her] support animal.” The lease term was from August 1, 2020 to July 31, 2021 and the rent payment set at \$700 monthly. Heat and water were included in the rent. The apartment also came with a storage unit.

29. On June 23, 2020, Ms. McLean asked Mr. Eilman via email if the original upstairs unit she had seen was still available or if Sleepy Hollow had other open units for her to choose from. Mr. Eilman replied that “nothing else [wa]s available” besides the ground-floor unit.

30. On June 25, 2020, Ms. McLean met Mr. Eilman at the ground-floor unit so she could take measurements and bring her assistance animal for him to meet (“June 25 meeting”).

31. The June 25 meeting lasted approximately forty minutes. During this meeting, the assistance dog barked when approached by strangers but quieted in response to Ms. McLean’s commands. She explained to Mr. Eilman that her dog barks to alert her to strangers coming toward them. During this meeting, her assistance dog did not present any threat or danger to Mr. Eilman or any other person. Her behavior was typical for a dog in a new environment when a stranger comes close.

32. During the June 25 meeting, Mr. Eilman expressed his concern to her about other tenants seeing her assistance dog. He indicated that he could evict her if her assistance dog barked in the apartment.

33. In the June 25 meeting, Ms. McLean made several offers to alleviate Mr. Eilman’s concerns about her assistance dog. She explained that she would be home with her assistance dog most of the time and that she would put a bark-suppressing collar on her when she left. She also offered to have Roxy professionally trained to minimize any disruptive barking. She additionally offered to drive to a different neighborhood for dog walks to minimize contact between her dog and other tenants. She told him her assistance animal would always wear her red “Support Dog” vest when outside the apartment. Following her meeting with Mr. Eilman, Ms. McLean contacted a dog trainer and enrolled her assistance dog in a training course.

34. After the June 25 meeting, Mr. Eilman discussed Ms. McLean and her assistance animal with his brother and co-owner Mr. Jeffrey Eilman.

35. On June 26, 2020, Ms. McLean and Mr. Eilman exchanged several emails throughout the day about her application and request to have an assistance dog. Early in the day, Ms. McLean emailed Mr. Eilman to ask him to hold the apartment for her while her assistance dog completed professional training. She informed him that the training was for the purpose of addressing her assistance dog's barking. She stated that her lease for her current apartment extended to August 31, 2020, and that she and her assistance animal could remain there while completing training.

36. Ms. McLean intended to pay for both apartments during the month of August, when her tenancy at Sleepy Hollow would have begun. Had Mr. Eilman accepted her offer, Ms. McLean would have had more than two months to train her dog.

37. On the same day, Mr. Eilman responded to Ms. McLean's email to inform her that "after discussing with the other owners," they would "not be able to move forward with the leasing process at this time" and that they were "unable to hold a unit on the hopes that a barky dog with its own anxiety issues can be corrected in such a short amount of time." He told her that she could "apply again on a future listing" and that they "can reassess the situation then."

38. Ms. McLean responded by email to inform Mr. Eilman that the trainer "guarantee[d] results in a few weeks." She sent a follow-up email later that afternoon to ask, "[w]as this the final decision?" And later that day, Mr. Eilman responded that she was "free to check back for vacancies when the issue is resolved, but [they] can't move forward on the leasing process on hopes or promises of effective training. And as things are right now, the barking is a noise issue that WILL draw complaints."

39. Ms. McLean responded by email and asked, “[d]o you throw out crying babies, too? Just kidding. Thank you for letting me know.” Mr. Eilman replied, “if I got enough complaints from neighbors then yes, the option to remove a parent with a child who is a nuisance to surrounding tenants is legal and definitely an option we would consider.”

40. Soon after, Defendants returned Ms. McLean’s security deposit.

41. On June 26, 2020, after notifying Ms. McLean that he would not be able to rent to her, Mr. Eilman texted a current resident who had previously told him that her mother was interested in renting the open ground-floor unit. He informed her that the unit was now available and invited her mother to fill out an application. That person, who was not a person with a disability and did not have an assistance animal, subsequently rented the apartment.

42. On or around July 6, 2020, Ms. McLean signed a twelve-month lease for the studio apartment that she then-currently lived in. She renewed her lease at \$872 per month, which did not include heat or storage.

43. Ms. McLean suffered economic harm, emotional distress, and other harm as a result of Defendants’ discriminatory housing practices as alleged in this complaint.

HUD COMPLAINT AND CHARGE OF DISCRIMINATION

44. On July 30, 2020, Ms. McLean filed a timely complaint of housing discrimination on the basis of disability with the United States Department of Housing and Urban Development (“HUD”) against Mr. Jeffrey Eilman and Ms. Christine Neigum. On September 2, 2020, Ms. McLean amended her complaint to add Mr. Eilman.

45. Pursuant to 42 U.S.C. § 3610, the Secretary of HUD investigated her allegations, attempted conciliation without success, and prepared a final investigative report.

46. On September 29, 2021, the Secretary of HUD, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that respondents had violated the Fair Housing Act. Therefore, the Secretary issued a charge of discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging Defendants with unlawful discrimination on the basis of disability in violation of the Fair Housing Act.

47. On October 18, 2021, Defendants timely elected to have their claims heard in federal court rather than by an Administrative Law Judge pursuant to 42 U.S.C. § 3612(a).

48. On October 19, 2021, the Administrative Law Judge assigned to the case issued a Notice of Election to Proceed in United States District Court and terminated the administrative proceedings on Ms. McLean's complaint.

49. Pursuant to 42 U.S.C. § 3612(o), the Secretary of HUD authorized the Attorney General to commence and maintain a civil action on behalf of the complainant in United States District Court.

50. On November 8, 2021, Defendants and the United States entered into a written tolling agreement extending the deadline for the United States to commence a civil action to December 17, 2021.

VIOLATIONS OF THE FAIR HOUSING ACT

51. Plaintiff realleges and incorporates by reference the allegations set forth above.

52. By the actions and statements described above, Defendants have:

- a. Discriminated in the rental, or otherwise made unavailable or denied, a dwelling to a renter on the basis of the disability of that renter, in violation of 42 U.S.C. § 3604(f)(1)(A);

b. Discriminated against a person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of the disability of that person, in violation of 42 U.S.C. § 3604(f)(2)(A);

c. Refused to make reasonable accommodations in the rules, policies, practices, or services, when such accommodations were necessary to afford Ms. McLean an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B); and

d. Made one or more statements with respect to the rental of a dwelling that indicated a preference, limitation, or discrimination based on disability, or an intention to make any such preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c).

53. Defendants' conduct, as described above, constitutes one or more "discriminatory housing practice[s]" within the meaning of 42 U.S.C. § 3602(f).

54. As a result of Defendants' conduct, Ms. McLean has been injured and is an "[a]ggrieved person" as defined by 42 U.S.C. § 3602(i).

55. Defendants' discriminatory conduct was intentional, willful, and/or taken in disregard of the rights of others.

PRAYER FOR RELIEF

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

1. Declares Defendants' actions, policies, and practices, as alleged in this complaint, violate the Fair Housing Act;

2. Enjoins Defendants, their agents, employees, successors, and all other persons in active concert or participation with any of them from:

- a. Discriminating on the basis of disability, in violation of the Fair Housing Act;
- b. Discriminating in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of disability;
- c. Stating any preference, limitation, or discrimination on the basis of disability;
- d. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, Ms. McLean to the position she would have been in but for the discriminatory conduct; and
- e. Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future;

3. Awards monetary damages to Ms. McLean pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1); and

4. Awards such additional relief as the interests of justice may require.

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