

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Civil No. 19-_____

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 DOROTHY GORECKI,)
 ANNETTE ALLEY,)
)
 Defendants.)

**COMPLAINT
(Jury Trial Demanded)**

The United States of America (“United States”), for its complaint against Defendants Dorothy Gorecki (“Gorecki”) and Annette Alley (“Alley”), alleges as follows:

NATURE OF ACTION

1. This is an action brought by the United States to enforce the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601, *et seq.*

2. The United States brings this action for injunctive relief and monetary damages on behalf of Tami Lewis (“Lewis”) and her minor children, pursuant to 42 U.S.C. § 3612(o).

3. The United States alleges that Defendants discriminated against Lewis and her minor children: (1) by seeking to evict them for maintaining an emotional support animal for one of Lewis’ minor children, A.L., who is a person with disabilities; (2) by denying Lewis’ request to keep an emotional support animal as a reasonable

accommodation that was necessary to afford A.L. an equal opportunity to use and enjoy the dwelling; and (3) by refusing to allow Lewis and her minor children to live in the dwelling with A.L.'s emotional support animal when such reasonable accommodation was necessary to afford A.L. an equal opportunity to use and enjoy the dwelling, all in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(f)(1), 3604(f)(2), and 3604(f)(3)(B). The United States further alleges that Defendants retaliated against Lewis and her minor children by interfering with their enjoyment of the dwelling on account of their exercise of protected rights, also in violation of the Fair Housing Act, 42 U.S.C. § 3617.

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), because the alleged discrimination and retaliation occurred in this District and the dwelling at issue is located in this District.

PARTIES

6. Plaintiff is the United States of America.

7. The aggrieved parties are Tami Lewis and her three minor children, including A.L.

8. A.L. has a disability within the meaning of 42 U.S.C §3602(h). He has severe Down syndrome, is nonverbal, and has significant social anxiety. A.L.'s disabilities affect

several major life functions and activities, including, but not limited to, sleeping, eating, and interacting with others.

9. From approximately October 1, 2015, through September 30, 2016, Lewis and her three minor children resided at 710 Penn Street, Apartment 2, Foley, Minnesota 55118 (“the Subject Property”). The Subject Property is a dwelling located in an apartment complex in Foley, Minnesota.

10. At all times relevant to this Complaint, Defendant Gorecki owned the apartment complex that included the Subject Property.

11. At all times relevant to this Complaint, Defendant Alley was an agent of Defendant Gorecki and the manager of the apartment complex that included the Subject Property.

FACTS

12. On or about September 22, 2015, Lewis signed a lease for the Subject Property, a two-bedroom apartment, for herself and her three minor children, including A.L. The lease Lewis signed ran from September 22, 2015, through March 31, 2016, after which it automatically converted to a month-to-month tenancy. Lewis and her children moved into the Subject Property on or about October 1, 2015.

13. Lewis’ lease for the Subject Property included a \$25 late fee for rent paid after the eighth day of the month. No other lease provisions addressed the last date by which late rental payments would be accepted. The lease also included a provision that stated that no animal of any kind may be kept on or about the premises without the prior

written consent of the landlord and required the tenant to purchase insurance coverage for the animal, if approved.

14. Lewis' rental application, which Defendants received and processed, specified that A.L. was receiving Social Security benefits for his disability.

15. A religious entity was subsidizing Lewis' rent. The entity was delinquent in making Lewis' April and May 2016 rental payments, which were paid on or about June 1, 2016. Defendants took no adverse housing action in response to these late payments, issued no lease violation or termination notices, and assessed no late fee.

16. In May 2016, Lewis was considering purchasing a home or otherwise moving and asked Defendants for a letter of reference. On May 18, 2016, Defendants provided Lewis with a reference letter, which stated that Lewis was "clean and tidy"; that there had never been "any verbal or written tenant violations"; that Lewis had made no "unreasonable requests during her tenancy"; and that Lewis was "respectful and friendly and also helpful with the apartment building and exterior of the property."

17. On or about June 10, 2016, Dr. Kevin Stiles, who was treating A.L., recommended using a "mid-sized dog" as an emotional support animal for A.L. to alleviate the symptoms of his disabilities. Dr. Stiles provided a note that stated A.L. "HAS SIGNIFICANT SOCIAL ANXIETY AND REQUIRES A SERVICE ANIMAL TO AID IN HIS EMOTIONAL STATE. A SERVICE DOG IS MY RECOMMENDATION." (Capitalization in original.)

18. On or about June 10, 2016, Lewis sent a letter to Defendant Gorecki in which she requested that Defendants provide a reasonable accommodation by allowing her to

have an emotional support animal for A.L. at the Subject Property. Lewis included in her letter to Defendant Gorecki the note from Dr. Stiles.

19. Lewis thereafter took A.L. to a local shelter to select a dog. A.L. rejected every dog, except a German Shepard puppy, who laid his head in A.L.'s lap, eliciting an affectionate response from A.L., who was nonverbal.

20. Pending Defendants' response to her June 10, 2016 reasonable accommodation letter, Lewis kept the emotional support dog at her mother's residence but occasionally took the dog to the Subject Property to visit A.L.

21. On or about June 28, 2016, Defendants sent a letter to Lewis, which was signed by Defendant Gorecki, denying Lewis' reasonable accommodation request, stating that the "companion animal" did not meet the provisions of the Subject Property's "Pet Lease." The letter concluded by directing Lewis to terminate her lease, stating in relevant part: "We are requesting a 30 day notice from you to vacate and find housing more suitable for your family and its needs. We want to thank you for your tenancy throughout the past year."

22. Attached to the June 2016 denial letter was a document entitled, "Animal Lease Addendum" ("Addendum"). The signature lines at the bottom of the Addendum were crossed out and the word "Sample" was written across the lines, indicating to Lewis that the Addendum was being provided for only informational purposes and not offered for her signature.

23. The Addendum attached to the June 2016 denial letter contained the following requirements:

- a. The tenant must provide “a current medical letter from their doctor requesting the special need stating patient’s name and purpose for animal”;
- b. Only “one animal of the age at least 6 months is authorized and under the weight restriction of 35 pounds”;
- c. The tenant must not “leave their animal unattended for any period of time inside or outside the apartment complex”;
- d. The tenant must only use a single “designated area” for the animal’s waste and cannot dispose of animal waste in the “apartment dumpsters or garbage cans”;
- e. The animal must not cause “any annoyance or discomfort” to other tenants and the tenant must “remedy immediately any complaints”;
- f. The tenant must “agree to provide proof of liability insurance covering the animal”; and
- g. The tenant must “agree that the Owner reserves the right to revoke the permission, and thus the privileges, to keep the animal should the [t]enant break this agreement.”

24. Upon receiving the June 28, 2016 denial letter, Lewis spoke with Defendant Alley, who told her that an untrained “companion pet” was different from a “service animal” and that an animal “cannot be both.” Defendant Alley also stated that a “companion pet” can only be a small animal, such as a “lapdog.” Lewis explained that her son’s right to an emotional support animal is the same as his right to a service animal, but Defendant Alley disagreed.

25. To appease Defendants, Lewis requested that Dr. Stiles revise the wording of his note to address the distinction between a service animal and an emotional support animal. Dr. Stiles revised his note to read: “[A.L.] HAS SIGNIFICANT SOCIAL ANXIETY AND REQUIRES A SERVICE ANIMAL TO AID IN HIS EMOTIONAL STATE. A SERVICE DOG IS MY RECOMMENDATION. AS PER YOUR REQUIREMENT FOR A PROPER LABEL FOR THE SERVICE ANIMAL, HE REQUIRES AN EMOTIONAL SUPPORT ANIMAL. **THE SEMANTICS OF MY**

VERBAGE IN THIS LETTER IS SPECIFIC AND LEGALLY BINDING. THIS CHILD NEEDS TO BE ALLOWED TO HAVE THE EMOTIONAL SUPPORT OF A DOG. SEMANTICALLY THIS IS A TYPE OF SERVICE ANIMAL. END OF ARGUMENT.” (Capitalization and emphasis original.)

26. On or about June 28, 2016, Lewis sent Dr. Stiles’ revised note to Defendant Gorecki.

27. On or about June 28, 2016, Lewis brought the emotional support dog to the Subject Property, with her understanding that A.L. was legally entitled to an emotional support animal.

28. The presence of the emotional support dog in the Subject Property alleviated the symptoms of A.L.’s disability by relieving his anxiety and by providing an emotional outlet for him. As a result, A.L. slept better and had fewer and less severe emotional outbursts.

29. Lewis never received a written response to Dr. Stiles’ revised note that Lewis provided to the Defendants on June 28, 2016.

30. On or about July 26, 2016, Lewis received a written notice of lease violation from Defendants. The notice stated that Lewis had violated the lease by: “harboring an animal” in her unit; “failing to provide a doctor’s statement”; and failing to “agree to the Pet Lease requirement” prior to bringing the animal into the Subject Property. Defendants’ letter demanded that Lewis correct the situation “immediately” by removing the animal until all information listed in the Addendum was provided and warned that failure to do so, or allowing any animal in the Subject Property, would result in the termination of her lease.

31. On July 27, 2016, Steven Schmidt (“Schmidt”), an attorney at a Minnesota legal aid organization, wrote a letter to Defendants on behalf of Lewis. Schmidt stated that he represented Lewis, and that A.L. was entitled to the dog as an emotional support animal because the dog alleviated the symptoms of A.L.’s anxiety by calming him. Schmidt further outlined the obligation of housing providers to make reasonable accommodations under the Fair Housing Act and under the Minnesota Human Rights Act. In the letter Schmidt renewed Lewis’ June 10, 2016 reasonable accommodation request that Defendants allow Lewis to keep the emotional support dog in the Subject Property. Schmidt concluded the letter by informing Defendants that landlords are prohibited from retaliating against people who assert their legal rights under the Fair Housing Act and under the Minnesota Human Rights Act. Schmidt requested a response from Defendants within seven days of receipt of the letter.

32. Defendant Gorecki received Schmidt’s letter by certified mail on July 30, 2016.

33. Defendants never responded to Schmidt’s July 27, 2016 letter.

34. After Lewis’ reasonable accommodation requests, Defendants frequently called Lewis, visited Lewis, and sent text messages to Lewis, repeatedly communicating that Lewis would need to get a smaller emotional support dog to remain a tenant; that the emotional support dog “has to go”; that Lewis needed insurance for the emotional support dog; that Lewis was violating the Addendum; and that Defendants would accept only an emotional support dog that weighed less than 35 pounds.

35. At all times relevant, A.L.'s emotional support dog weighed less than 35 pounds.

36. At all times relevant, Lewis' brother was a tenant in the same apartment complex as the Subject Property. Lewis' brother owned and maintained an adult Boxer dog, whose weight exceeded 35 pounds. Lewis' brother was not required to submit medical documentation establishing a disability, the medical need for the dog, or proof of insurance for the dog. At no time did Defendants issue any lease-violation notices concerning the dog to Lewis' brother, nor did Defendants seek to terminate his lease.

37. Despite the positive reference letter Defendants provided Lewis in May 2016, which included Defendants' statement that Lewis had never received written or verbal lease violation notices, after Lewis made the reasonable accommodation requests in June of 2016, for an emotional support dog for A.L., Defendants began accusing Lewis of lease and rule violations, including, but not limited to: mishandling the trash; parking incorrectly; and allowing her children to make noise. Defendants also informed Lewis that they had received tenant complaints about her, including A.L.'s emotional support dog making "scratching noises."

38. After Lewis' reasonable accommodation requests, Defendant Gorecki told Lewis that she was "terrorizing" the property and that she was acting "sassy," "mouthy" and "disrespectful."

39. In July 2016, in response to Defendants' accusations, Lewis obtained signed statements by several of her immediate neighbors, which stated that A.L.'s emotional support dog did not bother them. Lewis shared these statements with Defendants.

Defendants, however, continued to assert to Lewis that her neighbors were complaining about the emotional support dog.

40. On or about August 20, 2016, Defendant Alley sent a text message to a tenant in the same complex as the Subject Property, which stated that Lewis “got the dog without permissions and won’t get rid of it.”

41. The religious entity that subsidized Lewis’ rent was late on paying her August 2016 rent.

42. On or about August 25, 2016, Defendants served a notice of intent to terminate Lewis’ lease, directing Lewis to vacate the Subject Property by September 30, 2016. The notice cited late rent, complaints received for noise caused by her children, and garbage bags being left outside her unit as the reasons for the termination. The letter did not provide any opportunity to make the rent payment to avoid lease termination.

43. The religious entity that subsidized Lewis’ rent paid Lewis’ August and September 2016 rent on or about September 1, 2016. Defendants cashed the check but did not withdraw the lease termination notice to Lewis.

44. On August 25, 2016, Defendants also served a notice of intent to terminate lease on another tenant, referred to as “E.V.” At the time of the notice, E.V. was more than three months late on her rental payments. Unlike Lewis’ termination notice, the notice to E.V. provided E.V. with an opportunity to continue her residency by paying the outstanding rent by August 31, 2016.

45. On or before September 30, 2016, Lewis and her three minor children voluntarily, and in a timely manner, vacated the Subject Property in response to Defendants' notice of intent to terminate the lease.

46. On or about September 30, 2016, Defendants charged \$350 for "Legal Fees" against Lewis' security deposit. Lewis' lease, however, did not contain any provision for charging tenants or withholding security deposits to satisfy "Legal Fees," only specifically allowing reasonable attorney fees if a party prevails in a legal action or proceeding. There was no legal action or proceeding initiated with respect to Lewis' vacating the Subject Property.

47. After Lewis and her minor children vacated the Subject Property, Defendants provided a negative rental reference to at least one of Lewis' prospective landlords. Lewis was rejected for the rental unit for which she had applied with that prospective landlord.

48. Lewis and her minor children could not find other rental housing after Defendants' lease termination. For several months Lewis and her minor children were forced to reside in an old recreational vehicle ("RV") with no heat, no running water, no electricity, and no working toilet. Because the RV did not have adequate space, Lewis was forced to give away A.L.'s emotional support dog, which resulted in A.L.'s disability being aggravated. Lewis had no way to explain to A.L. why the dog was gone, and because A.L. was nonverbal, he had no way to ask about the dog, instead repeatedly tapping on his legs in a manner that he used to summon the dog. Unable to sustain this lifestyle, Lewis moved from Minnesota to Utah, some 1,200 miles away from her family, friends, and social

network, and A.L. could not obtain another emotional support animal until Lewis purchased a house nearly a year later.

PROCEDURAL BACKGROUND

49. As required by the Fair Housing Act, 42 U.S.C. § 3610(a) and (b), the Secretary of the U.S. Department of Housing and Urban Development (“HUD”) conducted an investigation of the complaint made by Lewis, attempted conciliation without success, and prepared a final investigative report.

50. Based on the information gathered in the investigation, the Secretary of HUD, pursuant to 42 U.S.C. § 3610(g), determined that reasonable cause exists to believe that illegal discriminatory housing practices occurred.

51. On February 14, 2019, the Secretary of HUD issued a Determination of Reasonable Cause and Charge of Discrimination pursuant to 42 U.S.C. § 3610(g), charging Defendants with discrimination under the Fair Housing Act.

52. On February 26, 2019, Lewis 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).

53. On February 26, 2019, a HUD Administrative Law Judge issued a Notice of Election and terminated the administrative proceedings on the HUD complaint filed by Lewis. 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).

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

FAIR HOUSING ACT VIOLATIONS

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

56. Defendants violated section 3604(f)(1)(A) of the Fair Housing Act by making housing unavailable to Lewis and her three minor children when Defendants denied Lewis' request to keep an emotional support animal at the Subject Property as a reasonable accommodation that was necessary to afford A.L., Lewis' minor child, an equal opportunity to use and enjoy the dwelling, and when Defendants sought to evict Lewis and her minor children from the Subject Property for maintaining an emotional support animal for A.L. 42 U.S.C. § 3604(f)(1)(A).

57. Defendants violated sections 3604(f)(2)(A) and (f)(3)(B) of the Fair Housing Act by refusing to allow Lewis and her three minor children to live at the Subject Property with A.L.'s emotional support animal, when such reasonable accommodation was necessary to afford them an equal opportunity to use and enjoy their dwelling. 42 U.S.C. § 3604(f)(2)(A) and (f)(3)(B).

58. Defendants violated section 3617 of the Fair Housing Act by interfering with the rights of Lewis and her three minor children to a reasonable accommodation: by enforcing arbitrary, unnecessary, and unlawful restrictions on the weight and type of emotional support animal A.L. could have as a reasonable accommodation; by repeatedly threatening Lewis and her three minor children with eviction; and by providing a negative reference regarding Lewis to a prospective landlord. 42 U.S.C. § 3617.

59. Lewis and her three minor children are aggrieved persons, as defined in 42 U.S.C. § 3602(i), and have suffered injuries as a result of Defendants' discriminatory actions.

60. Defendants' discriminatory actions were intentional, willful, and taken in disregard of the rights of Lewis and her three minor children.

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, Lewis and her three minor children to the position they 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 Lewis and her three minor children 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: 3-26-19

ERICA J. MacDONALD
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