

FILED  
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S. H. CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMIE KELLY,

Defendant

CIVIL ACTION NO. 16-5099

**COMPLAINT**

The United States of America alleges as follows:

NATURE OF ACTION

1. The United States 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, *et seq.* (“Fair Housing Act”). This action is brought on behalf of Jennifer Seiler (“Ms. Seiler”), pursuant to Section 812(o) of the Fair Housing Act, 42 U.S.C. § 3612(o).

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. § 3612(o).

3. Venue is proper in this District under 28 U.S.C. § 1391(b) because the events or omissions giving rise to the United States’ claims occurred there, and the property that is the subject of this suit is located there.

PARTIES AND PROPERTY

4. The subject property is a three-unit residential property located at 636 Adams Street, Rapid City, South Dakota (“Subject Property”).

5. The Subject Property is comprised of three individual rental units consisting of a studio apartment in the upper attic, a two-bedroom unit on the main level, and a one-bedroom unit on the basement level, Unit C. The three units each contain separate bathrooms and kitchens, but share a common laundry space.

6. The Subject Property is a “dwelling” within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

7. At all times relevant to this Complaint, Defendant Amie Kelly was the sole owner and manager of the Subject Property.

8. Ms. Seiler is a single woman who at all times relevant to this Complaint had legal and physical custody of her 17-year-old daughter.

#### FACTUAL ALLEGATIONS

9. In or around July 2015, Defendant placed a Craigslist advertisement for the rental of a one-bedroom/one-bathroom basement unit at the Subject Property, Unit C. Defendant also placed a “For Rent” sign on the front lawn of the Subject Property.

10. Rent for Unit C was advertised as \$625 per month for one person. An additional amount of \$100 per month would be added for each additional resident.

11. On or around July 20, 2015, Ms. Seiler called Defendant in response to the Craigslist advertisement. During the call, Ms. Seiler expressed interest in renting Unit C and informed Defendant that both she and her 17-year-old daughter would be occupying the unit if approved.

12. On or around July 20, 2015, Defendant sent an email to Ms. Seiler with the subject line, “lease/rental application.” Two files were attached—*Adams Rental Lease.doc* and *Perfect rentals.pdf*.

13. The lease Defendant sent to Ms. Seiler on July 20, 2015, included the following term: "No minor under the age of 18 is to be allowed to be on or about the premises without adult supervision."

14. On or around July 20, 2015, Ms. Seiler responded to Defendant's email by noting that she had received the attached copy of the blank lease. Ms. Seiler also informed Defendant that the additional document attached to Defendant's email was not a rental application, but rather some type of receipt from Defendant's property listing.

15. Because she did not receive a copy of Defendant's rental application, Ms. Seiler attached her resume to her reply email and supplied Defendant with three personal/business references and two rental references. Ms. Seiler also offered to provide her social security number so Defendant could run a background check, and she informed Defendant that she had a copy of her prior lease, several rent receipts, and proof of a full return of her prior security deposit.

16. On or around July 21, 2015, Ms. Seiler verbally offered to supply Defendant with proof of her "taxable income."

17. Defendant neither requested any of the supplementary documents or information offered by Ms. Seiler, nor did she inform Ms. Seiler that the information offered was insufficient to help determine her rental qualifications.

18. On or around July 22, 2015, Defendant sent an email to Ms. Seiler apologizing for sending the wrong form and noting that she had yet to review Ms. Seiler's materials. Defendant informed Ms. Seiler that they could take care of details in a few days when Ms. Seiler would be in Rapid City. Defendant attached an electronic copy of a rental application to the email.

19. On or around July 22, 2015, Ms. Seiler sent Defendant an email and a text indicating that she would be in town on Sunday, July 26, 2015, and that she could have a friend drop off a check for the security deposit if Defendant agreed to rent the Subject Property to Ms. Seiler and her daughter.

20. Defendant neither responded to Ms. Seiler's email or text message, nor did she inform Ms. Seiler of any outstanding information still required to process her rental application at that time.

21. At 9:23 a.m. on July 23, 2015, Defendant emailed Ms. Seiler: "After reviewing all my applications, I decided to go with a bachelor. In the past, I have always rented to bachelors, that has worked best."

22. Contrary to Defendant's email to Ms. Seiler, Defendant had not yet approved the rental application of the eventual tenant, Luke Stevenson ("Mr. Stevenson"), nor had she received a rental application from him.

23. Mr. Stevenson is a single male without children.

24. Mr. Stevenson did not tour the Subject Property until sometime after 9:30 a.m. on July 23, 2015.

25. Mr. Stevenson did not submit his rental application to Defendant until July 24, 2015.

26. Defendant emailed Mr. Stevenson on Saturday, July 25, 2015, confirming that she had received his rental application. Defendant stated in her email that she would "make a couple of calls on Monday," but that "[i]n all likelihood," she would choose his application. This email was sent two days after Defendant had told Ms. Seiler that she had "decided to go with a bachelor."

27. On or around July 28, 2015, Defendant notified Mr. Stevenson that he was approved to rent Unit C at the Subject Property.

28. Defendant did not receive Mr. Stevenson's deposit check until August 1, 2015.

29. Ms. Seiler had to make alternative plans for housing before the start of the school year. Ms. Seiler had to hastily sign a lease at a significantly more expensive apartment complex, buy a vehicle because the new complex was not on a bus line, and switch her daughter's school.

30. As a result of Defendant's discriminatory acts, Ms. Seiler has suffered damages, including economic loss, emotional distress, inconvenience, and loss of a unique housing opportunity.

#### HUD ADMINISTRATIVE PROCESS

31. On or around August 10, 2015, Ms. Seiler filed a timely fair housing complaint against Defendant Amie Kelly with the United States Department of Housing and Urban Development ("HUD").

32. On or around June 13, 2016, Ms. Seiler filed an amended fair housing complaint against Defendant Amie Kelly with HUD.

33. Pursuant to 42 U.S.C. § 3610, the Secretary of HUD conducted and completed an investigation of the complaint and amended complaint, attempted conciliation without success, and prepared a final investigative report. Based upon 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 Defendant violated the Fair Housing Act. Therefore, on September 14, 2016, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging Defendant with engaging in discriminatory housing practices on the basis of sex and familial status in violation of the Fair Housing Act.

34. On October 3, 2016, Defendant elected to have the claims asserted in HUD's Charge of Discrimination resolved in a civil action pursuant to 42 U.S.C. § 3612(a).

35. On October 4, 2016, the Administrative Law Judge issued a Notice of Election to Proceed in United States Federal District Court and terminated the administrative proceeding on Ms. Seiler's HUD complaint.

36. 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).

COUNT ONE

37. Plaintiff re-alleges and incorporates by reference the allegations set forth above.

38. By the actions set forth above, Defendant:

- a. Refused to rent after the making of a bona fide offer, or refused to negotiate for the rental of, or otherwise made unavailable or denied, a dwelling to Ms. Seiler because of sex and familial status, in violation of 42 U.S.C. § 3604(a);
- b. Discriminated against Ms. Seiler in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status, in violation of 42 U.S.C. § 3604(b);
- c. Made, printed, or published, or caused to be made, printed, or published any notice, statement, or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on sex and familial status, or an intention to make any such preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c);

d. Represented to Ms. Seiler because of sex and familial status that a dwelling was not available for rental when such dwelling was in fact so available, in violation of 42 U.S.C. § 3604(d).

39. As a result of Defendant's conduct, Ms. Seiler has been injured and is an "aggrieved person" as defined by 42 U.S.C. § 3602(i).

40. The discriminatory actions of Defendant were intentional, willful, and taken in reckless disregard of the rights of Ms. Seiler.

PRAYER FOR RELIEF

WHEREFORE, the United States of America requests that this Court:

1. Declare that the discriminatory conduct of the Defendant, as set forth above, violates subsections 804(a), 804(b), 804(c), and 804(d) the Fair Housing Act;
2. Enjoin Defendant, her agents, employees, successors, and all other persons in active concert or participation with her from:
  - a. Discriminating against any person on the basis of sex in any aspect of the rental, sale, use, or enjoyment of a dwelling;
  - b. Discriminating against any person on the basis of familial status in any aspect of the rental, sale, use, or enjoyment of a dwelling;
  - c. 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;
  - d. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, Ms. Seiler 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 and to eliminate, to the extent practicable, the effects of Defendant's unlawful conduct, including implementing policies and procedures to ensure that no applicants or residents are discriminated against because of sex or familial status;
3. Award monetary damages to Ms. Seiler pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1); and
4. Order such additional relief as the interests of justice may require.

Dated this 2<sup>nd</sup> day of November, 2016.

Respectfully submitted,

RANDOLPH J. SEILER  
United States Attorney

  
ALISON J. RAMSDELL  
Assistant U.S. Attorney  
PO Box 2638  
Sioux Falls, SD 57101-2638  
Phone: (605) 357-2338  
[Alison.Ramsdell@usdoj.gov](mailto:Alison.Ramsdell@usdoj.gov)