

THE DEFENDANTS AND SUBJECT PROPERTY

4. Defendant Fairfax Manor Group LLC, d/b/a Fairfax Manor Townhomes (“Fairfax Manor”) is an active limited liability company in Tennessee with its principal address at 6685 Popular Avenue, Suite 200, in Germantown, Tennessee. Fairfax Manor owns the subject property, a gated community of 134 apartments, located at 1875 Camberley Circle in Memphis, Tennessee.
5. Defendant Cannon, Austin & Cannon, Inc. (“CAC”) is a for-profit corporation with its principal address at 6685 Popular Avenue, Suite 200, in Germantown, Tennessee. CAC is the property management company that manages and has an office at the subject property. At all times relevant to the complaint, CAC’s responsibilities included negotiating leases, communicating with tenants, collecting rent, and arranging for maintenance of the subject property.
6. At all times relevant to the complaint, Defendant Nelson Cannon managed CAC and oversaw the on-site property manager, Defendant Sam Kraker.
7. At all times relevant to the complaint, Defendant Sam Kraker was the on-site property manager. Mr. Kraker, as an agent for CAC, accepted rental applications, negotiated leases, collected rent, communicated with tenants, and arranged for maintenance of the subject property.
8. The apartments at Fairfax Manor are “dwellings” as defined by the Fair Housing Act, 42 U.S.C. § 3602(b).

FACTUAL ALLEGATIONS

9. Marcie Grossberg lived at the subject property independently for over a decade until on or about July 23, 2010, when she had two strokes and was found unconscious in her home.
10. Ms. Grossberg is a person with a disability.¹ As a result of her strokes, she has cognitive and physical impairments that substantially limit her ability to work, walk, and take care of herself. At all times relevant to this complaint, she relied on a walker to maintain her balance and help her walk.
11. Gary Grossberg is Ms. Grossberg's brother. He is also his sister's primary caregiver, and Ms. Grossberg granted him power of attorney.
12. On October 28, 2011, Ms. Grossberg, Mr. Grossberg, and Mr. Grossberg's then-girlfriend, Joann Alvarado, signed a lease for a three-bedroom apartment at Fairfax Manor, 6416 Camberley Court East, Unit 8. The lease was from November 1, 2011, to October 31, 2012.
13. After Ms. Grossberg lived for about a year in a nursing home, and on or about November 1, 2011, she, Mr. Grossberg, and Ms. Alvarado moved into 6416 Camberley Court East, Unit 8.
14. At all times relevant to the complaint, Defendants did not assign parking spaces to tenants.
15. At all times relevant to the complaint, the parking lot behind the Grossbergs' apartment did not have designated parking spaces for persons with disabilities.

¹ The term "disability" is synonymous with the term "handicap" as defined in 42 U.S.C. § 3602(h). The United States uses the term "disability."

There was no sidewalk running parallel to the parking lot that would provide access to multiple parking spaces.

16. The Grossbergs' apartment was at the end of a row of town-house style apartments. From the Grossbergs' patio was a small sidewalk that led to four stairs with a handrail. At the end of the stairs was the parking lot and in the first parking space (nearest to the Grossbergs' apartment) was a concrete parking bumper. No other parking spaces in this parking lot had concrete parking bumpers.
17. The distance between the end of the concrete parking bumper and curb was not wide enough to allow Ms. Grossberg to use her walker to get around it.
18. In or about November 2011, Mr. Grossberg verbally asked Mr. Kraker to remove the concrete parking bumper because it was difficult for Ms. Grossberg to get around it with her walker.
19. From November 2011 to 2013, Mr. Grossberg continued to verbally ask Mr. Kraker to remove the concrete parking bumper for his sister. On one occasion Mr. Grossberg offered to remove the concrete parking bumper himself; on another occasion he offered to pay for its removal.
20. On one or more occasions during the period 2011 to 2013, Mr. Kraker spoke with CAC and Mr. Cannon about Mr. Grossberg's request to remove the concrete parking bumper for Ms. Grossberg, and Mr. Cannon said that he would "look into it," or words to that effect.
21. Despite Mr. Grossberg's repeated requests, Defendants did not remove the bumper from November 2011 through June 2013.

22. In or about November 2011, Mr. Grossberg verbally asked Mr. Kraker to assign the two parking spaces closest to the Grossbergs' apartment to allow Ms. Grossberg room to navigate her walker. Ms. Grossberg needed the extra room afforded with a second parking space to use her walker to get in and out of a car. Mr. Kraker responded that "we do not assign parking," or words to that effect, and did not provide the Grossbergs with any assigned parking spaces close to their apartment.
23. From November 2011 to 2013, Mr. Grossberg continued to verbally ask Mr. Kraker to assign the two parking spaces closest to their apartment for his sister.
24. Defendants never granted the Grossbergs' request to assign the two parking spaces closest to their apartment.
25. As a result of Defendants' refusal to assign parking to the Grossbergs, other tenants and non-residents parked their vehicles in the two parking spaces closest to the Grossbergs' apartment.
26. When others parked their vehicles in the parking spaces closest to the Grossbergs' apartment, Ms. Grossberg did not leave her home and she canceled meetings, appointments, and outings with friends.
27. On October 31, 2012, the Grossbergs and Ms. Alvarado's lease expired and Defendants continued to accept rent from the Grossbergs and Ms. Alvarado as month-to-month tenants for seven months.
28. On or about May 18, 2013, Defendants sent to the Grossbergs a notice requesting that they pay a \$250 security deposit for a satellite dish, giving the Grossbergs until May 31, 2013, to cure this lease violation.

29. On or about May 22, 2013, Marcie Grossberg fell as she tried to navigate the concrete parking bumper with her walker. The police were called and Ms. Grossberg was transported by ambulance to a hospital.
30. On or about May 27, 2013, Mr. Grossberg wrote a letter to Fairfax Manor and Mr. Kraker, identifying his sister as “a disabled stroke victim” and stating that “the concrete [parking bumper] blocks her right of passage which we have respectfully asked you to remove for well over a year and the parking dilemma with a new tenant command your immediate attention.”
31. In the May 27, 2013 letter, Mr. Grossberg explained that Ms. Grossberg fell on May 22, 2013 and was rushed to the emergency room. The letter contained a cc: to the U.S. Attorney’s Office for the Western District of Tennessee and to civil rights organizations.
32. On or about May 27, 2013, Ms. Alvarado hand-delivered the letter from Mr. Grossberg described in paragraphs 30–31 to Mr. Kraker.
33. On or about May 29, 2013, Defendants’ attorney sent to the Grossbergs and Ms. Alvarado a notice to vacate the property by June 30, 2013.
34. On or about May 29, 2013, an Assistant U.S. Attorney visited the subject property and viewed the concrete parking bumper.
35. On May 30, 2013, the Assistant U.S. Attorney sent a letter to Mr. Kraker and Fairfax Manor to inform them that he had received a complaint from Ms. Grossberg regarding her request to remove the bumper and that he wanted to discuss why the request had been denied. The letter explained the necessity of the modification:

At present the distance from the end of the [concrete parking bumper] to the side curb running along her parking space is not wide enough to allow her to use the walker. I have personally inspected the parking area and verified that the parking stop interferes with her ability to use her walker.

The letter enclosed a copy of the Joint Statement of the Department of Housing and Urban Development (“HUD”) and the Department of Justice, Reasonable Modifications Under the Fair Housing Act (March 5, 2008).

36. On or about June 20, 2013, the Grossbergs filed a fair housing complaint against Defendants with the Tennessee Human Rights Commission (“THRC”). This fair housing complaint was also filed with HUD on or about June 24, 2013.
37. On or about June 24, 2013, Mr. Kraker received a notification letter from THRC that the Grossbergs had filed a fair housing complaint.
38. On or about June 26, 2013, Nelson Cannon received a notification letter from THRC that the Grossbergs had filed a fair housing complaint.
39. On June 28, 2013, Defendants returned the Grossbergs’ money order for their July rent.
40. On or about July 1, 2013, Fairfax Manor filed an eviction action against the Grossbergs and Ms. Alvarado.
41. On or about July 3, 2013, Defendants hired a contractor to remove the concrete parking bumper. The contractor charged the Defendants \$65 to remove the bumper and haul it away.
42. On or about July 11, 2013, a law enforcement officer served the eviction summons and complaint when Ms. Grossberg was home. Ms. Grossberg was very upset and, later that day, had a seizure and was rushed to the hospital.
43. On or about August 8, 2013, the Grossbergs filed a complaint in the Chancery

Court of Shelby County (CH-13-11832), which alleged that Fairfax Manor and CAC violated the FHA and the Tennessee Human Rights Act.

44. On or about August 15, 2013, the Grossbergs obtained a preliminary injunction, which stayed the eviction for 45 days. In or about October 2013, the Grossbergs moved out.

HUD ADMINISTRATIVE PROCESS

45. The Complainants filed a timely complaint with HUD on June 24, 2013.
46. Pursuant to 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 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 illegal discriminatory housing practices had occurred. Therefore, on August 31, 2017, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the above-named defendants with engaging in unlawful discrimination and retaliation in violation of the FHA.
47. On September 12, 2017, Defendants elected to have the claims asserted in the HUD Charge resolved in a civil action pursuant to 42 U.S.C. § 3612(a).
48. On September 13, 2017, the Administrative Law Judge issued a Notice of Election to Proceed in United States Federal District Court and terminated the administrative proceeding on the Complainants' complaint.
49. Following this Notice of Election, the Secretary of HUD authorized the Attorney General to commence this civil action pursuant to 42 U.S.C. § 3612(o).

CAUSE OF ACTION

50. Plaintiff realleges and incorporates by reference herein the allegations described above.
51. By the conduct described in the foregoing paragraphs, the Defendants have:
- a. Discriminated in the terms, conditions, or privileges of the 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);
 - b. Refused to permit an individual with a disability, at his or her own expense, to make reasonable modifications to existing premises, when such modifications may be necessary to afford that person full enjoyment of the premises, in violation of 42 U.S.C. § 3604(f)(3)(A);
 - c. Refused to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B); and
 - d. Coerced, intimidated, threatened, or interfered with a person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, rights granted or protected by section 804 of the FHA, in violation of 42 U.S.C. § 3617.
52. The Complainants are “aggrieved persons” within the meaning of 42 U.S.C. § 3602(i), and have suffered injuries as a result of Defendants’ discriminatory conduct.
53. Defendants’ actions as described above were intentional, willful, and taken in disregard for the rights of the Complainants.

PRAYER FOR RELIER

WHEREFORE, the United States of America 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, successors, and all other persons in active concert or participation with any of them, from:
 - a. Discriminating because of a disability, including failing to grant a reasonable accommodation or refusing to permit a reasonable modification, in violation of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*;
 - 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 Complainants pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1).

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

Dated: October 12, 2017

D. MICHAEL DUNAVANT
United States Attorney
Western District of Tennessee

s/ David Brackstone (BPR 27989)
Assistant United States Attorney
167 North Main Street, Suite 800
Memphis, Tennessee 38103
Tel: (901) 544-4231
Fax: (901) 544-4230
Email: David.Brackstone@usdoj.gov

Respectfully submitted,
JEFFERSON B. SESSIONS III
Attorney General

s/ John M. Gore
JOHN M. GORE
Acting Assistant Attorney General
Civil Rights Division

s / Sameena Shina Majeed
SAMEENA SHINA MAJEED
Chief, Housing and Civil Enforcement Section

s/ Michelle Teresa Garcia
MICHAEL S. MAURER
Deputy Chief
MICHELLE TERESA GARCIA (IL Bar 6278918)
(Local Admission Pending)
Trial Attorney
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Avenue, N.W. – G St.
Washington, DC 20530
Tel: (202) 305- 3826
Fax: (202) 514-1116
Email: Michelle.Garcia@usdoj.gov