

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 DONNA MARTI, THE VELNA MARTI)
 IRREVOCABLE INCOME TRUST,)
 CHERYL LEE BRILL, WALLY)
 WETHERBEE, THOMAS CLARKIN,)
 AND FIVE STAR REAL ESTATE, LLC,)
)
 Defendants.)
 _____)

Civil Action No.

CA09-453

COMPLAINT

The United States of America alleges as follows:

NATURE OF THE ACTION

1. This action is brought by the United States 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. §§ 3601-3619 (the Fair Housing Act). It is brought on behalf of Maribel Concepcion and her minor children, and Quetsy Colon and her minor children, 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 under 28 U.S.C. § 1345, and 42 U.S.C. §§ 3612(o).

3. Venue is proper under 28 U.S.C. § 1391(b), because the claims alleged herein

arose in the District of Rhode Island.

PARTIES

4. At all times relevant to this Complaint, Defendant Velna Marti Irrevocable Income Trust (the "Trust") owned the property located at 156 Laurens Street, Cranston, R.I. (the "Trust property"). The property consists of a single-family home with a garage and a yard. The Trust property is a dwelling within the meaning of 42 U.S.C. § 3602(b).

5. At all times relevant to this complaint, Defendant Donna Marti was the trustee and beneficiary of the Trust. As trustee, Ms. Marti was responsible for renting the Trust property, and has done so at all times relevant to this action.

6. At all times relevant to this action, Defendant Cheryl Lee Brill was a realtor affiliated with Defendant Five Star Real Estate, LLC ("RE/MAX"). At all times relevant to this Complaint, Ms. Brill's Rhode Island real estate license was held by the office of RE/MAX. RE/MAX provided Ms. Brill with office space inside their office at 2000 Warwick Avenue, Warwick, Rhode Island. RE/MAX provided Ms. Brill the use of desk space, a reception area, real estate listings, forms, advertising materials, and telephone and other communications tools. Ms. Brill's business cards prominently displayed the RE/MAX logo and address. Ms. Brill's internet website prominently featured the RE/MAX logo. Ms. Brill's contract with RE/MAX required all of her commissions relating to any listings to be paid directly to RE/MAX, and RE/MAX then provided her remuneration. Ms. Brill acted as the agent of RE/MAX.

7. Defendants RE/MAX and Cheryl Lee Brill were engaged in the business of brokering residential real property.

8. Defendant Wally Wetherbee is married to Defendant Cheryl Lee Brill. Mr. Wetherbee assists his wife in her real estate business and is held out to the public as the administrator for her real estate business. His position is listed as “Administrator” for her real estate practice on their joint website (www.cherylandwally.com) and on their RE/MAX real estate business card.

FACTUAL ALLEGATIONS

9. At all times relevant to this Complaint, Defendants Brill and Wetherbee of RE/MAX were real estate professionals hired by the Trust and Ms. Marti to find renters for the Trust property.

10. In or about March 2008, at Ms. Marti and the Trust’s direction, Mr. Wetherbee placed an ad on the internet website Craigslis.com, (“Craigslis”), advertising the Trust property for rent, and he placed a “For Rent” sign on the property. Mr. Wetherbee took calls from and interviewed potential renters, showed the property, performed criminal, employment, and credit checks on potential renters, and presented qualified renters to Ms. Marti. He received a fee of one month’s rent for these services.

11. Ms. Marti and the Trust had used Defendants Brill and Wetherbee on at least two occasions previous to the March 2008 listing to rent the Trust property.

12. At all times relevant to this Complaint, including from March through May 26, 2008, Defendant Marti engaged the realtors to rent the Trust property. She told Mr. Wetherbee that she did not want to rent the Trust property to families with children.

13. Mr. Wetherbee placed an ad on the internet site, Craigslis, that stated, “No cats,

dogs or children please.” This ad was running at all times relevant to this Complaint, and up to and including May 9, 2008.

14. On or about May 9, 2008, Complainant Maribel Concepcion saw the advertisement for the Trust property on Craigslist, and called the phone number listed therein. She ultimately spoke with Defendant Wetherbee, who asked her who would be occupying the property. When she replied that she and her two children would be renting the home, Mr. Wetherbee told her that he would not show her the property because she had children, and that the owner would not rent to families with children.

15. Between March and May 9, 2008, Complainant Quetsy Colon saw the advertisement for the Trust property on Craigslist, and called the phone number listed therein. She ultimately spoke with Defendant Wetherbee, who asked her who would be occupying the property. When she replied that she and her two children would be renting the home, Mr. Wetherbee told her that he would not show her the property because she had children, and that the owner would not rent to families with children.

16. On or about May 26, 2008, subsequent to Ms. Concepcion’s and Ms. Colon’s inquiries about the property and Mr. Wetherbee’s refusal to show or rent the property to them because the families had children, Ms. Marti and the Trust rented the Trust property to three single men, including Mr. Fred Summers. During the course of the negotiation to rent the property, Mr. Wetherbee told Mr. Summers that a condition to renting the house was “no kids and no loud parties.”

17. On or about May 9, 2008, at least two potential renters, Ms. Concepcion and Ms.

Colon, were discouraged from and denied rental of the Trust property because of the “no children” provision in the advertisement and the Defendants’ enforcement of that provision.

18. At all times relevant to this Complaint, both Ms. Concepcion and Ms. Colon had one or more of their children under the age of eighteen domiciled with them.

19. On or about March 10, 2009, Defendant Marti told HUD Investigator Linda M. Tragakis, that she “has the right not to rent to families with children” or words to that effect.

HUD INVESTIGATION AND CHARGES

20. On or about April 15, 2009, upon learning the identity of Ms. Marti and the Trust, Ms. Concepcion timely filed a complaint of discrimination with the Department of Housing and Urban Development (“HUD”) alleging that Donna Marti and the Trust discriminated on the basis of familial status in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.*

21. On or about May 9, 2008, Complainant Quetsy Colon filed a complaint of discrimination with the Department of Housing and Urban Development (“HUD”) alleging that the Defendants Cheryl Lee Brill, Wally Wetherbee, RE/MAX, Donna Marti, and the Trust discriminated on the basis of familial status in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.*

22. Pursuant to the requirements of 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD conducted an investigation of the complaints alleged in paragraphs 20 and 21 above, attempted conciliation without success, and prepared Final Investigative Reports. Based on the information gathered in these investigations, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that Defendants committed illegal

discriminatory housing practices in connection with the subject property. Therefore, on July 8, 2009, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination in each case, pursuant to 42 U.S.C. § 3610(g)(s)(A), charging that the Defendants had engaged in discriminatory practices, in violation of the Fair Housing Act.

23. On July 28, 2009, Defendants in the Colon case timely elected to have their charges resolved in a federal civil action, pursuant to 42 U.S.C. § 3612(a).

24. On July 29, 2009, Defendants in the Concepcion case timely elected to have their charges resolved in a federal civil action, pursuant to 42 U.S.C. § 3612(a).

25. Following these Notices of Election, the Secretary of HUD, through his designees, authorized the Attorney General to commence a civil action, pursuant to 42 U.S.C. § 3612(o).

FIRST CLAIM FOR RELIEF

26. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-25, above as pertains to Complainant Colon and her minor children.

27. By the actions set forth above, Defendants have:

(a) Refused to negotiate for the rental of housing, denied housing, or otherwise made housing unavailable because of familial status, in violation of 42 U.S.C.

§ 3604(a); and

(b) Made, printed, or published, or caused to be made, printed, or published, one or more notices, statements, or advertisements, with respect to the sale or rental of a dwelling that indicated a preference, limitation, or discrimination based on familial status, in violation of 42 U.S.C. § 3604(c).

28. By the actions set forth above, Defendants Cheryl Lee Brill, Wally Wetherbee, and RE/MAX have discriminated in making available a residential real estate-related transaction or in the terms or conditions of such a transaction because of familial status, in violation of 42 U.S.C. § 3605.

29. Complainant Colon and her minor children have suffered damages as a result of Defendants' discriminatory conduct.

30. Defendants' actions as described above were intentional, willful, and taken in disregard for the rights of the Complainant Colon and her minor children.

SECOND CLAIM FOR RELIEF

31. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-25, above as pertains to Complainant Concepcion and her minor children.

32. By the actions set forth above, Defendants Donna Marti and the Trust have:

(a) Refused to negotiate for the rental of housing, denied housing, or otherwise made housing unavailable because of familial status, in violation of 42 U.S.C. § 3604(a); and

(b) Made, printed, or published, or caused to be made, printed, or published, one or more notices, statements, or advertisements, with respect to the sale or rental of a dwelling that indicated a preference, limitation, or discrimination based on familial status, in violation of 42 U.S.C. § 3604(c).

33. Complainant Concepcion and her minor children have suffered damages as a result of Defendants' discriminatory conduct.

34. Defendants' actions as described above were intentional, willful, and taken in disregard for the rights of the Complainant Concepcion and her minor children.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the court enter an order that:

1. Declares that Defendants' discriminatory policies and practices, as alleged herein, violated the Fair Housing Act as amended, 42 U.S.C. §§ 3601 *et seq.*;
2. Enjoins Defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with any of them, from discriminating on the basis of familial status in violation of the Fair Housing Act;
3. Awards monetary damages, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1) from Ms. Marti and the Trust to Ms. Concepcion and her minor children; and
4. Awards monetary damages, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1) from the Defendants to Ms. Colon and her minor children.

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

Dated: September 24, 2009

PETER F. NERONHA
United States Attorney
District of Rhode Island

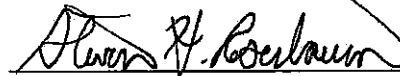


RICHARD MYRUS
Assistant United States Attorney
District of Rhode Island
50 Kennedy Plaza, 8th Floor
Providence, R.I. 02903
Tel: (401) 709-5000
Fax: (401) 709-5001
Richard.Myrus@usdoj.gov

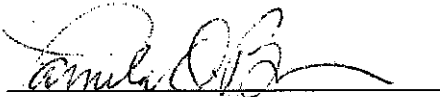
ERIC H. HOLDER, JR.
Attorney General



LORETTA KING
Acting Assistant Attorney General
Civil Rights Division



STEVEN H. ROSENBAUM
Chief, Housing and Civil
Enforcement Section
Civil Rights Division



REBECCA B. BOND
Deputy Chief
PAMELA O. BARRON
Trial Attorney
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Avenue, N.W.
Northwestern Building, 7th Floor
Washington, DC 20530
Tel: (202) 514-1968
Fax: (202) 514-1116
Pamela.Barron@usdoj.gov
Virginia State Bar #20828