

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,) Civil Action No. 1:11CV617
)
Plaintiff,)
)
v.)
)
CINCINNATI CAPITAL PARTNERS)
LXXIII, LLC, AND PAULA WISHAM,)
)
Defendants.)
_____)

COMPLAINT AND DEMAND FOR JURY TRIAL

The United States of America (“United States”) alleges as follows:

NATURE OF THE ACTION

1. This action is brought by the United States to enforce the Fair Housing Act, as amended, 42 U.S.C. §§ 3601-3631. It is brought on behalf of Housing Opportunities Made Equal (“HOME”), pursuant to 42 U.S.C. § 3612(o).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and under 42 U.S.C. § 3612(o).

3. Venue is proper under 28 U.S.C. § 1391(b) because the events giving rise to this action occurred in this judicial district.

PARTIES AND THE SUBJECT PROPERTY

4. Defendant Cincinnati Capital Partners LXXIII, LLC (“Cincinnati Capital Partners”), is a domestic limited liability company formed in 2007 pursuant to Ohio law with a

registered office in Cincinnati, Ohio. Cincinnati Capital Partners is the owner of the subject property, Valley Woods Apartments, located at 2162 Karla Avenue, Cincinnati, Ohio. William A. Moore, Jr. is the only partner of Cincinnati Capital Partners. At all times relevant to the complaint, Mr. Moore was responsible for the overall management and daily operation of the subject property.

5. Defendant Paula Wisham was the former property manager of the subject property at all times relevant to the Complaint. Her employment at the subject property ended on approximately March 31, 2010.

6. Valley Woods Apartments is an apartment complex consisting of six buildings and a total of sixty-three apartments. Valley Woods Apartments and the apartment contained therein are dwellings within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

FACTUAL ALLEGATIONS

7. On or about February 19, 2010, HOME received an anonymous complaint from a tenant at the subject property, who complained that the property manager was discriminating against African Americans.

8. In February and March 2010, HOME conducted tests at Valley Woods Apartments to evaluate the Defendants' compliance with the Fair Housing Act. The testing confirmed that the property manager treated African American prospective tenants less favorably than Hispanic prospective tenants.

9. On Tuesday, February 23, 2010, an African American male tester called Valley Woods Apartments and spoke with Ms. Wisham. The tester asked Ms. Wisham whether an apartment was available. Ms. Wisham told the tester that the apartment that had been available may have been rented, and she directed him to call back on Thursday, February 25, 2010. The

tester called back on that date and Ms. Wisham told the tester that the apartment was available. After determining that the tester could see the apartment on Saturday, February 27, 2010, Ms. Wisham told the tester to call back the following day, on Friday, February 26, 2010, to schedule a time to see the apartment on Saturday. The tester called back on Friday, February 26, 2010, and spoke with Ms. Wisham at approximately 6:24 p.m. Ms. Wisham told the tester that she was holding the apartment for someone and that he should call back on either Wednesday, March 3, 2010, or Thursday, March 4, 2010, to see if the apartment was still available.

10. On Saturday, February 27, 2010, at approximately 10:19 a.m., a Hispanic male tester called Valley Woods Apartments and spoke with Ms. Wisham, who told him that the apartment was available and that he could see it that day. Over the next four days, the Hispanic tester called multiple times to schedule an appointment to see the apartment, identifying himself each time. Each time, Ms. Wisham told him that the apartment was available and that he could come view it that day. The Hispanic tester ultimately scheduled an appointment to view the apartment on Wednesday, March 3, 2010. On that day, the Hispanic tester went to Valley Woods Apartments and was shown the apartment by Mr. Moore.

11. On Monday, March 15, 2010, at approximately 8:12 p.m., an African American male tester called Valley Woods Apartments, and got the answering machine, which said not to leave a message. He then immediately received a return call from Ms. Wisham. The tester said that he was calling about the apartment for rent, and Ms. Wisham told him that the apartment had been rented. The tester asked when another unit would be available and Ms. Wisham said that she didn't know and that the tester could call back in two weeks.

12. On Tuesday, March 16, 2010, at approximately 11:16 a.m., a Hispanic male tester called Valley Woods Apartments, and Ms. Wisham told him that the apartment was available

and that he could see it the next day. The tester asked if he could see it that day (Tuesday), and Ms. Wisham agreed. At approximately 11:30 a.m., the Hispanic tester went to Valley Woods Apartments and was shown the apartment by Ms. Wisham.

13. Ms. Wisham's statements to the African American testers that the apartment was not available, as detailed above in paragraphs 9 and 11, were false. In fact, Apartment 9 at 2160 Karla Avenue in Valley Woods Apartments was available for rent throughout the time period of the African American and Hispanic testers' inquiries and was not held for anyone during that time period. The apartment was not rented until sometime in April 2010.

14. HOME is a nonprofit fair housing organization serving the Greater Cincinnati, Ohio, area. HOME's mission is to eliminate illegal discrimination in housing, especially racial discrimination, and to promote balanced living patterns.

15. As a result of Defendants' discriminatory conduct, the mission of HOME has been frustrated. It has expended funds, and its staff has spent time on this matter and diverted resources that could have been spent working in other areas. HOME is an aggrieved person as defined in 42 U.S.C. § 3602(i).

HUD ADMINISTRATIVE PROCESS

16. On or about March 25, 2010, HOME filed a timely fair housing complaint with the United States Department of Housing and Urban Development ("HUD"), alleging violations of the Fair Housing Act.

17. 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 on 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 Defendants had engaged in illegal discriminatory housing practices. Accordingly, on July 19, 2011, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A).

18. The Secretary charged Defendants with engaging in discriminatory practices in violation of the Fair Housing Act, 42 U.S.C. § 3604(a) and (d).

19. On August 8, 2011, HOME filed an election to have the case heard in federal district court. On August 9, 2011, HUD's Office of Administrative Law Judges issued a Notice of Election to Proceed in United States Federal District Court and terminated the administrative proceedings on the complaint against Defendants.

20. Following this Notice of Election, the Secretary of HUD authorized the Attorney General to commence a civil action, pursuant to 42 U.S.C. § 3612(o).

FAIR HOUSING ACT VIOLATIONS

21. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-20, above.

22. In taking the actions alleged in this Complaint, the Defendants have violated Section 804 of the Fair Housing Act, 42 U.S.C. § 3604, by:

- a. Refusing to negotiate for the rental of, or otherwise making unavailable or denying dwellings to persons because of race and national origin, in violation of 42 U.S.C. § 3604(a); and
- b. Representing to persons because of race and national origin that dwellings are not available for inspection or rental when such dwellings are in fact so available, in violation of 42 U.S.C. § 3604(d).

23. HOME is an “aggrieved person” within the meaning of 42 U.S.C. § 3602(i), and has suffered injuries as a result of Defendants’ discriminatory conduct.

24. Defendants’ discriminatory actions were intentional, willful, and taken in disregard for the rights of others.

PRAYER FOR RELIEF

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

1. Declares that the discriminatory conduct of Defendants as set forth above violates the Fair Housing Act;

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

a. Discriminating in violation of the Fair Housing Act against any person in any aspect of the sale or rental of a dwelling because of race or national origin;

b. Failing or refusing to take such affirmative steps that may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of Defendants’ unlawful housing practices.

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

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

Dated: September 7, 2011

Respectfully submitted,

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