

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL CROOM,

Defendant.

COMPLAINT FOR CIVIL RIGHTS VIOLATIONS

COMES NOW Plaintiff the United States of America, by and through KENNETH J. GONZALES, United States Attorney, and RUTH FUESS KEEGAN, Assistant United States Attorney, and for its complaint against Defendant Michael Croom alleges as follows:

INTRODUCTION

1. This is an action by the United States of America to enforce the provisions of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 through 3619.

2. The United States brings this action on behalf of Complainant Dereck Scott pursuant to 42 U.S.C. § 3612(o).

JURISDICTION AND VENUE

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

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and 42 U.S.C. § 3612(o).

PARTIES

5. Plaintiff is the United States of America.

6. At all times relevant to the Complaint, Defendant Michael Croom was the owner and manager of the subject property, a single family residential house located at 5407 Kettle Road, NW, Albuquerque, New Mexico.

7. Complainant Dereck Scott is, and was at all material times, married to Aisle McGrath. Complainant and his wife had three-year-old twin children when they moved into the subject house in the fall of 2008 and had a third child while living in the subject house. Complainant and his family were tenants at the subject property.

FACTUAL ALLEGATIONS

8. On October 1, 2008, Complainant and his wife entered into a one-year lease agreement with Defendant to rent the subject property for nine hundred fifty dollars (\$950.00) per month. The lease provided in relevant part that rent is due on the first day of each month and if not paid by the fifth day, the tenant shall pay a thirty-five dollar (\$35.00) delinquent charge and \$5.00 for each day thereafter.

9. The parties entered into a second one-year lease on October 1, 2009 with the same material terms, except that Defendant extended the grace period to the sixth day of the month.

10. Defendant offered to the Complainant and his family a third signed one-year lease commencing November 1, 2010, with the same material terms, except that the initial delinquent charge was reduced to twenty-five dollars (\$25.00). Complainant agreed to and signed the third one-year lease but apparently failed to return the executed lease to Defendant.

11. Over the years, Complainant was occasionally late with rent payments. Defendant did not serve Complainant with a notice of default or take any other adverse action, but rather accepted the late payments, as was his custom with his other tenants.

12. The house Complainant rented from Defendant is a "dwelling" within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

13. In early 2011, Complainant became ill with what would later be diagnosed as multiple sclerosis. This illness substantially impaired his major life activities, such that he had to use a wheelchair and he expected to have to use a wheelchair indefinitely.

14. At all relevant times in the Complaint, Complainant was an individual with a disability as defined by the Fair Housing Act, 42 U.S.C. § 3602(h).

15. In early 2011, Complainant's wife, Aisle McGrath, wrote a letter to Defendant informing him of Complainant's illness and requested a "wooden detachable ramp placed in the front and back of the house." Defendant responded, "Do whatever is necessary to accommodate Dereck."

16. The Complainant had floating detached ramps installed.

17. In the spring of 2011, Complainant's parents moved across the street to help Complainant.

18. Complainant was late with May rent, made on or about May 7, 2011. Defendant accepted payment, did not send a notice of default or otherwise complain about the late payment.

19. Complainant was late with August rent, mailed on or about August 14, 2011. Defendant accepted payment, did not send a notice of default or otherwise complain about the late payment.

20. Complainant was late with September rent, made on or about September 7, 2011. Defendant served Complainant and his family with a notice of default on or about September 7, 2011. Complainant mailed the late fee to Defendant on or about September 9, 2011. Defendant returned the late fee payment with a letter dated September 12, 2011.

21. In September 2011, Complainant was diagnosed with multiple sclerosis.

22. In late September to early October 2011, Complainant became very ill and was hospitalized.

23. Complainant's occupational therapist prepared recommendations dated October 6, 2011 for modifications to the subject property, all of which were to accommodate Complainant's disability, and many of which the occupational therapist noted were necessary for Complainant's safety.

24. On October 6, 2011, Complainant's father, Troy Scott, sent a letter to Defendant requesting permission to make the recommended modifications to the subject property for Complainant's use and enjoyment of the premises and for his personal safety ("First Request"). The modifications included, among other items, widening the master bathroom door, installing a higher toilet in the master bathroom and removing the area under the sink for easy wheelchair access in the master bathroom and kitchen. Troy Scott assured Defendant that all modifications would be made by licensed contractors at Complainant's expense and, if

Defendant wished, the Complainant would return the property to its original condition when he moved out of the property.

25. On or about October 7, 2011, Complainant mailed October rent to Defendant.

26. By letter dated October 7, 2011, Defendant refused all the requests to make changes to the subject property, with the exception of placing a ramp at the back door, stating, "It is my business judgement that the structural alterations you propose would not enhance the property, but rather would limit the marketability. That is the answer to your inquiry and I would ask that you not attempt to debate my decision."

27. On October 8, 2011, Defendant faxed the October 7 letter to Troy Scott and personally delivered to Complainant a Notice of Default and Termination of Tenancy effective November 31, 2011. Defendant offered Complainant a month-to-month lease, raised the rent to nine hundred and seventy-five dollars (\$975.00), shortened the grace period to the fourth day of the month, and raised the initial delinquent charge to thirty-five dollars (\$35.00).

28. On or about October 8, 2011, the Complainant paid a fifty-dollar late fee.

29. By letter dated October 27, 2011, Complainant's neighbor and advocate, Stephen Bradley, delivered a letter to Defendant asking for a "reasonable accommodation/modification," as required by "the Fair Housing Act Under Section 804(f)(3)(A/B), the Americans with Disabilities Act, HUD and the Department of Justice," to accommodate Complainant's disability ("Second Request"). The modifications requested in the Second Request were more limited than those in the First Request. The Second Request again reassured Defendant that the requested modifications would be made at Complainant's

expense with licensed contractors. The Second Request also offered documentation from Complainant's doctor certifying that the request was necessary.

30. Defendant sent a letter dated October 28, 2011 by certified mail to Complainant, withdrawing the previous offer of a month-to-month lease and terminating the tenancy. Defendant told Complainant and his family to "vacate the premises no later than November 30, 2011."

31. On November 1, Complainant paid the increased rent payment of nine hundred and seventy-five dollars (\$975.00) for November 2011 as offered in the option for a month to month lease in the October 8 Notice of Default and Termination of Tenancy.

32. By letter dated November 1, 2011, Defendant returned to Complainant the twenty-five dollars of the increased rent for November and refunded \$5.00 for overpayment of late fee for October rent. Defendant concluded, "To ensure a full refund of your deposit please vacate no later than November 30, 2011 and leave the premises clean and undamaged."

33. In an undated letter sent to Complainant in late November, Defendant purported to explain the reasons for his decision to terminate the lease. Defendant stated that "collecting the rent has been an issue from the first month of the tenancy [although the problem] somewhat abated until August of this year when rent [was late] followed by late payment in September and October . . ." Defendant further stated:

I realize, Scott, you have been struck with a tragedy with which no one should have to deal. I have tried to be supportive and cooperative, but I have been receiving demands that I modify my rental house to comply with your needs. This simple truth is that my rental house no longer meets your needs. I'm sorry. You need to find living quarters that meet your requirements for daily living.

34. In the same letter, Defendant offered to extend the deadline to vacate the premises "until January 31, 2012 provided you agree to vacate by that date. The rent would remain the same and would, as always, be due on the first day of the month." Otherwise, Defendant stated, he would evict the Complainant and his family.

35. By letter dated December 1, 2011, Defendant told Complainant and his family that the month to month tenancy had ended on November 30, 2011, "[y]ou have no right of possession in the property," and to vacate the premises "no later than December 31, 2011."

36. On January 17, 2012, Defendant entered into one year lease agreement with a different married couple, neither of which had disabilities, for the subject property. The lease provides for rent in the amount of nine hundred and fifty dollars (\$950.00), due the first of the month with a grace period to the sixth day of the month.

37. Other prior and current tenants of Defendant's properties were late with rental payment on multiple occasions. A number of the tenants on month to month tenancy had been issued "Notices of Default and Termination of Tenancy" for late payment of rent, but none were evicted despite the late payments. One tenant was late paying rent and received a "Notice of Default and Termination of Tenancy" for four consecutive months in 2010. The tenant was not evicted. Upon information and belief, none of these tenants had a disability.

HUD ADMINISTRATIVE PROCESS

38. On December 19, 2011, Complainant filed a timely fair housing complaint with HUD alleging, among other things, that Defendant had engaged in housing discrimination on the basis of Complainant's disability. Complainant filed an amended complaint dated July 10, 2012, and a second amended complaint dated July 23, 2012.

39. 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 September 20, 2012, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the above-named Defendant with engaging in discriminatory practices based on Complainant's disability and retaliation in violation of the Fair Housing Act.

40. On October 3, 2012, Complainant elected to have the claims asserted in the HUD Charge resolved in a civil action pursuant to 42 U.S.C. § 3610(a). On October 4, 2012, the Administrative Law Judge issued a Notice of Election to Proceed in United States District Court and terminated the administrative proceeding.

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

VIOLATION OF 42 U.S.C. § 3604(f)(1)(A) AND (f)(3)(A)

42. It is unlawful to discriminate in the sale or rental of — or to otherwise make unavailable or deny — a dwelling to any buyer or renter because of a disability of that buyer or renter. 42 U.S.C. § 3604(f)(1)(A). Discrimination includes a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. 42 U.S.C. § 3604(f)(3)(A).

43. Defendant violated 42 U.S.C. § 3604(f)(1)(A) and 42 U.S.C. § 3604(f)(3)(A). Defendant denied rental housing — or made rental housing unavailable — to Complainant because of his disability, by refusing requests made on behalf of Complainant to permit Complainant, at his own expense, to make reasonable modifications of the premises he was occupying. The modifications were necessary to afford Complainant full enjoyment of the premises, and Complainant agreed to restore the premises to the condition that existed before the modification. Defendant also denied rental housing — or made rental housing unavailable — to Complainant because of his disability by taking actions to evict Complainant from the premises after Complainant requested that he be allowed to make reasonable modifications.

VIOLATION OF 42 U.S.C. § 3604(f)(2)(A) AND (f)(3)(A)

44. It is unlawful to discriminate against any person in the terms, conditions or privileges of the sale or rental of a dwelling — or in the provision of services or facilities in connection with such dwelling — because of a disability. 42 U.S.C. § 3604(f)(2)(A). Discrimination includes a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. 42 U.S.C. § 3604(f)(3)(A).

45. Defendant violated 42 U.S.C. § 3604(f)(2)(A) and 42 U.S.C. § 3604(f)(3)(A). Defendant discriminated against Complainant in the terms, conditions or privileges of the rental of Complainant's single family home—or in the provision of services or facilities in connection with the single family home—because of his disability, by refusing requests made on behalf of Complainant to permit Complainant, at his own expense, to make reasonable modifications of the premises he was occupying. The modifications were necessary to afford Complainant an equal opportunity to use and enjoy the premises. Defendant further discriminated against Complainant in the terms, conditions or privileges of the rental of the single family home—or in the provision of services or facilities in connection with the home — because of his disability by taking actions to evict Complainant and his family from the single family house based on Complainant's request for modifications.

VIOLATION OF 42 U.S.C. § 3617

46. It is unlawful to coerce, intimidate, threaten or interfere with any 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 — any right granted or protected by Section 3603, 3604, 3605 or 3606 of this title. 42 U.S.C. § 3617.

47. Defendant coerced, intimidated, threatened or interfered with Complainant in the exercise or enjoyment of a right to reasonable modifications. Defendant responded to the request for reasonable modifications by taking the following adverse actions against Complainant set forth herein, including: (1) On October 8, 2011, Defendant served a notice of default and Termination of Tenancy; (2) On the same date, Defendant offered a month-to-month lease instead of a yearly lease as had been previously offered to Complainant, raised the rent, shortened the grace period for late payments, and increased the delinquent charge for late payments; (3) On October 29, 2011, Defendant withdrew his offer of a month-to-month lease with increased rent and penalties for late payment and ordered Complainant to vacate the premises by November 30, 2011; and (4) Defendant the extended the deadline until January 31, 2012, but then shortened it again to December 31, 2011.

VIOLATION OF 42 U.S.C. § 3604(c)

48. It is unlawful to make, print, or publish any statement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on disability, or an intention to make any such preference, limitation, or discrimination 42 U.S.C. § 3604(c).

49. Defendant violated 42 U.S.C. § 3604(c). Defendant made a statement with respect to the rental of a dwelling that indicated his preference for a tenant without a disability in writing, "I have been receiving demands that I modify my rental house to comply with your needs. This simple truth is that my rental house no longer meets your needs. . . . You need to find living quarters that meet your requirements for daily living."

50. Defendant's discriminatory actions were intentional, willful and taken in disregard of the rights of Complainant.

51. As a result of Defendant's conduct, Complainant has suffered damages and is an aggrieved person within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(i).

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff requests a trial by jury.

REQUEST FOR RELIEF

WHEREFORE the United States of America respectfully requests that this Court enter an ORDER:

1. Declaring that Defendant's policies and practices — as alleged in this Complaint — violated the Fair Housing Act;

2. Enjoining Defendant, his officers, employees, agents, successors and all other persons in active concert or participation with him, from:

a. Discriminating in the rental, or otherwise making unavailable or denying, a dwelling to any 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 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 permit, at the expense of Complainant, reasonable modifications of premises occupied by Complainant when such modifications may be necessary to afford Complainant full enjoyment of the premises, in violation of 42 U.S.C. § 3604(f)(3)(A);

d. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the Complainant and his family to the position they would have been in but for the discriminatory conduct;

e. Failing or refusing to take such actions as may be necessary to prevent the recurrence of any such discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of Defendant's unlawful conduct, and implementing policies and procedures to ensure that no rental applicants or tenants are discriminated against because of disability; and

f. 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 Sections 803-806 of the Fair Housing Act, in violation of 42 U.S.C. § 3617.

3. Awarding monetary damages to Complainant pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1); and
4. Awarding the United States such additional relief as is just and proper.

Respectfully Submitted,

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