

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No. 3 :12-cv-255
	)	
v.	)	Electronically filed
	)	
ALTOONA HOUSING AUTHORITY,	)	
	)	
Defendant.	)	
	)	

**COMPLAINT**

The United States of America brings this action to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 ("Fair Housing Act"), 42 U.S.C. §§ 3601-3631. This action is brought on behalf of United States citizen Freda Neely, who suffered discrimination on account of her race by Defendant Altoona Housing Authority. The United States seeks injunctive and declaratory relief, as well as monetary damages, the basis for which is alleged as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o).
2. Venue is proper under 28 U.S.C. § 1391(b), because the claims alleged herein arose in the Western District of Pennsylvania.

**II. PARTIES AND SUBJECT PROPERTY**

3. Freda Neely is a black woman residing with her son and grandson in Altoona, Pennsylvania.

4. The United States brings this action on behalf of Ms. Neely pursuant to 42 U.S.C. §§ 3612(o).

5. Defendant Altoona Housing Authority (“AHA”) is a federally funded entity that operates three public housing developments and administers the Section 8 Housing Choice Voucher Program in the city of Altoona, Pennsylvania. Defendant AHA’s main office is located in Altoona, Pennsylvania.

6. One of the properties owned and operated by Defendant AHA is Fairview Hills Apartments, located at 224 East Maple Avenue, Altoona, Pennsylvania. The apartment units at Fairview Hills are “dwellings” within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

7. Ms. Neely was a resident of Fairview Hills from June 2005 through June 2011 with her son, and grandson. Ms. Neely’s son and grandson are also black.

8. During the relevant timeframe, approximately 90% of the residents of Fairview Hills were white.

### **III. FACTUAL ALLEGATIONS**

#### **A. Defendant AHA’s Application of the “One Strike” Policy to Evict Ms. Neely**

9. Ms. Neely is a retired special education teacher who taught for twenty years in the New York City Public School System. Due to increasing health concerns, in 2005, Ms. Neely decided to leave the fast-paced lifestyle of New York City.

10. Ms. Neely decided upon Altoona, Pennsylvania because she felt that it would give her son and grandson a “calmer atmosphere” than what is offered in a major city.

11. In June 2005, she began renting a unit in the Fairview Hills Complex.

12. Ms. Neely is unable to work due to multiple, worsening health concerns including chronic obstructive pulmonary disease (“COPD”).

13. On August 28, 2009, Defendant AHA issued a notice of intent to evict Ms. Neely based upon its “One Strike” policy, and did not offer Ms. Neely an opportunity for a grievance hearing that would otherwise have been required by United States Department of Housing and Urban Development (“HUD”) regulations.

14. Under HUD regulations, public housing authorities must afford tenants administrative due process through the opportunity for a grievance hearing before an eviction. 24 C.F.R § 966.53.

15. As an exception to this requirement, a public housing authority may forgo offering a grievance hearing prior to eviction under a “One Strike” policy when there is, among other things, “[a]ny criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the [public housing authority].” 24 C.F.R § 966.51(a)(2)(A).

16. Application of the “One Strike” policy is at the discretion of the housing authority and does not require proof “beyond a reasonable doubt” – the standard in a criminal proceeding – of the alleged activity.

17. Because lease terminations are civil actions, the determination as to whether the criminal activity occurred only needs to be based upon the preponderance of the evidence.

18. The eviction notice issued to Ms. Neely quoted AHA’s “One Strike” policy and referred to an incident that occurred nine days earlier, on August 19, 2009, involving a verbal altercation between Ms. Neely and her neighbor, who is white, to which the police responded and issued Ms. Neely a summons for disorderly conduct.

19. According to the police report, Ms. Neely’s neighbor alleged that Ms. Neely approached him as he was walking into his residence and demanded to speak with his girlfriend,

who also resided at the apartment. When he asked Ms. Neely why she wanted to speak with his girlfriend, she allegedly began yelling, swearing, and claiming that his girlfriend was spreading rumors that she was selling her prescription pain medication. Ms. Neely, who is in poor health and uses portable oxygen for COPD, allegedly yelled at him repeatedly to “Come outside I’ll kick your a\*\*!”

20. The police officer interviewed Ms. Neely and she denied swearing at her neighbor or threatening him, however the police officer credited her neighbor and issued Ms. Neely a summons for “disorderly conduct.”

21. The next day, the Administrative Officer for Fairview Hills (“AO”) exchanged emails with the police officer who responded to the August 19 incident.

22. In her email, the AO expressed that she was having some difficulty with three Fairview Hills tenants, including Ms. Neely, who she referred to as the “EMA Gang” (EMA purportedly refers to East Maple Avenue, the street on which they live). The AO stated, “I am going to think about all of this and someone is going to get evicted, I’m quite sure of it.”

23. Of the three women that the AO referred to as the EMA Gang, Ms. Neely is the only one who is black.

24. On October 20, 2009, Defendant AHA filed a complaint in Magisterial Court to take possession of Ms. Neely’s home.

25. On December 10, 2009, Defendant AHA’s Section 8 coordinator sent Ms. Neely a letter notifying her that her application for a housing choice voucher had been withdrawn from the waiting list because she was under eviction at Fairview Hills.

26. On January 5, 2010, a Magisterial District Judge found Ms. Neely guilty of disorderly conduct, a summary offense, in connection with the August 19, 2009 verbal

altercation with her neighbor. Ms. Neely promptly appealed this finding to the Blair County Court of Common Pleas.

27. On March 3, 2010, the Magisterial District Judge granted possession of Ms. Neely's home, along with judgment costs, to Defendant AHA. Ms. Neely appealed the order and a hearing was scheduled for May 12, 2011 in the Blair County Court of Common Pleas. Ms. Neely remained in her home while the appeal was pending.

28. On March 14, 2011, two months before the upcoming hearing on Ms. Neely's appeal of her eviction, Defendants sent Ms. Neely a letter informing her that she had failed to properly add her grandson to her lease, as part of her annual recertification with the AHA. The letter stated that Ms. Neely's actions violated the terms of her lease and that Defendant AHA would include this information in the pending appeal from her eviction.

29. The letter further stated that the Defendants recently learned that Ms. Neely's grandson was living with her by contacting the Blair County Public Assistance Office and the Altoona Area School District.

30. Ms. Neely's grandson had been living with her openly and attending the local school since the inception of Ms. Neely's lease agreement in 2005. He had friends in the Fairview Hills community who he played with outside.

31. Ms. Neely's grandson spent the summers with his mother who still resides in New York City. Ms. Neely listed him on her original lease, but removed his name in 2008 since he was with his mother at the time that she executed the document. Thereafter, Ms. Neely was in communication with Defendant AHA regarding whether to include him on her lease or during the annual recertification and she was told not to.

32. On March 19, 2010, the Blair County Court of Common Pleas sustained Ms. Neely's appeal on the disorderly conduct charge and found her not guilty in connection with the August 19, 2009 verbal altercation with her neighbor.

33. Defendant AHA was aware that Ms. Neely was found not guilty; nevertheless they proceeded with the eviction against her based upon the verbal altercation as well as the recently added allegation that her grandson was not added to her lease agreement.

34. On May 12, 2011, Ms. Neely and Defendant AHA entered into a Consent Order to resolve the appeal on Ms. Neely's pending eviction.

35. Pursuant to the Consent Order, Ms. Neely agreed to vacate her home at Fairview Hills by June 30, 2011.

36. Defendant AHA agreed in the Consent Order not to give negative references regarding Ms. Neely to prospective landlords.

37. The Consent Order does not contain admissions by either party and the Court did not make findings on the underlying eviction claim. Moreover, the suit did not involve claims or counterclaims related to civil rights or, more specifically, the Fair Housing Act.

38. Ms. Neely was under the impression that Defendant AHA would also provide her with a Section 8 voucher, however nothing to that effect appears in the Consent Order and Defendant AHA subsequently informed her that she was ineligible for a voucher due to the eviction.

**B. Treatment of Similarly Situated White Tenants**

39. Defendant AHA treated Ms. Neely less favorably than similarly situated white tenants in applying the "One Strike" policy to evict her without a grievance hearing.

40. Defendant AHA has declined to apply the “One Strike” policy in numerous instances involving white tenants with lease violations such as domestic disturbances, unauthorized live-ins, open fires, fighting, public drunkenness, disorderly conduct, and arrests by the police.

(i) **Tenant A**

41. Tenant A is a white woman who resided at Fairview Hills during the relevant timeframe.

42. According to Tenant A’s tenant file maintained by Defendant AHA, the police were summoned to Tenant A’s unit on numerous occasions due to her behavior while highly intoxicated.

43. In August 2008, the police responded to a call from Tenant A’s ex-boyfriend (another Fairview Hills tenant) who reported that she was harassing him and threatening suicide while intoxicated.

44. In September 2008, the police responded to a complaint made by Tenant A’s neighbors that she was outside her apartment intoxicated, screaming, yelling, and striking her parents. Tenant A’s parents also called the police because she threatened to commit suicide.

45. In August 2011, the police arrested Tenant A at her unit for public drunkenness and disorderly conduct. She subsequently pleaded guilty to both charges.

46. Also in August 2011, an unauthorized person living in Tenant A’s unit created a disturbance.

47. In September 2011, the police received a call that Tenant A was screaming and punching holes in her walls.

48. These incidents, particularly the public drunkenness and disturbing the peace, met the standard of “criminal activity of any kind that threatens the health, safety or right to peaceful enjoyment of the Landlord’s property by other Residents or employees of the Landlord” – the “One Strike” policy – yet Defendant did not apply the policy to Tenant A let alone threaten to evict her until October 14, 2011, after Defendants received a letter from a Pennsylvania Human Relations Commission fair housing investigator inquiring why Tenant A was treated more favorably than Ms. Neely.

49. Despite the numerous lease violations cited in Tenant A’s eviction notice, including the same provision regarding criminal activity cited in Ms. Neely’s eviction notice, Defendant AHA did not apply the “One Strike” policy to evict Tenant A.

**(ii) Tenant B**

50. Tenant B is a white woman who resided at Fairview Hills during the relevant timeframe.

51. According to Tenant B’s tenant file, she was involved in two incidents in 2009 that infringed upon the “health, safety or right to peaceful enjoyment of the Landlord’s property by other Residents.”

52. In July 2009, Tenant B’s son put his hands around the neck of another tenant’s child and tried to choke him. When the child’s parents confronted Tenant B, Tenant B, her boyfriend, and her brother threatened them. The police responded to a call regarding the incident; however, they did not arrest anyone. Defendant AHA issued a warning notice to Tenant B advising her that her behavior was unacceptable and that if these problems persisted they would take further action against her.



53. In November 2009, a Fairview Hills tenant submitted a complaint form against Tenant B. She claimed that Tenant B was fighting with another neighbor outside and when she stepped outside for a cigarette, Tenant B called her a “b\*tch” and told her to “go back into [her] f\*ck\*ng house.”

54. Defendants did not issue Tenant B an eviction notice for these incidents. Although Tenant B was never arrested for these incidents, the “One Strike” policy does not require an arrest to be applicable, nor does it require the same proof as is required for criminal convictions. Further, Defendant AHA could have initiated an eviction against Tenant B without invoking the policy, yet they did not.

(iii) **Tenant C**

55. Tenant C is a white woman who resided at Fairview Hills during the relevant timeframe.

56. Tenant C was involved in an incident that met the criteria for application of the “One Strike” policy that was documented in her tenant file.

57. In February 2009, Tenant C was involved in a domestic disturbance and was arrested by police during this incident for a “disorderly house.”

58. During the incident, Tenant C punched and pulled clumps of hair (dreadlocks) out of the victim’s scalp. Tenant C’s victim was black. Tenant C pleaded guilty to the charged offense.

59. Three months later, Tenant C received an eviction notice dated May 12, 2009 citing the February incident and that she had an unauthorized guest in her unit.

60. Prior to the eviction notice, Defendant AHA sent her a number of warning letters, one regarding another violent domestic disturbance that occurred in 2008.

61. Despite Tenant C's behavior meeting the criteria for application of the "One Strike" policy, she was expressly offered a grievance hearing, which she elected to take.

(iv) **Tenant D**

62. Tenant D is a white woman who resided at Fairview Hills during the relevant timeframe.

63. On October 13, 2009, Tenant D was involved in an outdoor physical altercation with her boyfriend. The police were called and Tenant D's boyfriend was arrested and charged with public drunkenness.

64. On October 20, 2009, Tenant D received an eviction notice, but was allowed to remain on the property.

65. Tenant D's boyfriend was not a tenant on her lease and Defendant AHA banned him from the property after the October 2009 incident. Nevertheless, Tenant D permitted her boyfriend to return to the unit to babysit her children.

66. In March 2009, Tenant D received a second eviction notice and was offered a grievance hearing. Despite the criteria for the "One Strike" policy having been met during the October incident, Defendant AHA did not invoke it during the first eviction (or the second) and, in fact, permitted Tenant D to remain on her property for the following four months.

67. Tenant D did not elect to have a hearing and voluntarily vacated her unit in April 2009.

**D. Ms. Neely's Discrimination Complaint**

68. Ms. Neely timely filed a complaint of discrimination against Defendant AHA with the United States Department of Housing and Urban Development ("HUD"), pursuant to the Fair Housing Act.

69. Pursuant to 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD conducted and completed an investigation of the complaints, attempted conciliation without success, and prepared a final investigative report.

70. 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 27, 2012, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging Defendants with engaging in discriminatory practices in violation of the Fair Housing Act.

71. On October 16, 2012, the Defendants timely elected to have the claim asserted in HUD's Charge of Discrimination resolved in a civil action pursuant to 42 U.S.C. § 3612(a).

72. On October 16, 2012, the Administrative Law Judge issued a Notice of Election of Judicial Determination and terminated the administrative proceedings on Ms. Neely's complaint.

73. 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).

#### IV. FAIR HOUSING ACT VIOLATIONS

74. The United States re-alleges and incorporates by reference the allegations set forth in Paragraphs 1-71, above.

75. Defendant AHA, through the above-referenced actions, has:

- a. Refused to rent or negotiate to rent or otherwise made unavailable or denied a dwelling to a person because of race, in violation of 42 U.S.C. § 3604(a); and

- b. Discriminated in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of race, in violation of 42 U.S.C. § 3604(b).

76. Ms. Neely has suffered and continues to suffer damages as a result of Defendant AHA's violations of 42 U.S.C. §§ 3604(a) and (b). She is an "aggrieved person" within the meaning of 42 U.S.C. § 3602(i).

77. The discriminatory actions of Defendant AHA were intentional, willful, and/or taken in disregard of the federally protected rights of others.

WHEREFORE, the United States requests entry of an ORDER that:

1. Declares that Defendant AHA's conduct, as alleged herein, violates the Fair Housing Act;
2. Enjoins Defendant AHA, and all other persons in active concert or participation with them, from further:
  - a. Refusing to rent or negotiate to rent or otherwise make unavailable or deny a dwelling to a person because of race;
  - b. Discriminating against any person in the terms, conditions, or privileges of rental of a dwelling because of race or color;
  - c. Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of the above actions in the future and to eliminate, to the extent practicable, the effects of Defendant AHA's conduct; and
  - d. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, all persons harmed by the above actions taken by Defendant AHA.

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

Date: December 14, 2012.

Respectfully Submitted,

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