

investigation, HUD charged Defendant with disability discrimination and failure to make reasonable accommodation in violation of the Fair Housing Act. Under the Fair Housing Act, Defendant elected to have the claims asserted in the HUD charge determined in a civil action.

4. The United States, therefore, brings this action for injunctive relief and monetary damages on behalf of LaDonna Smith pursuant to the Fair Housing Act, 42 U.S.C. § 3612(o).

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1335 and 42 U.S.C. § 3612(o).

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

PARTIES

7. Plaintiff is the United States of America.

8. Defendant Kurt Schimnich is a Minnesota resident and the owner of the apartment at 501 ½ 8th Avenue North, part of a duplex located in St. Cloud, Minnesota. 501 ½ 8th Avenue North is a “dwelling” within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

9. Defendant Kurt Schimnich is the sole owner of and manages the duplex at 501 ½ 8th Avenue North.

10. LaDonna Smith was a prospective tenant of 501 ½ 8th Avenue North. Ms. Smith has mental disabilities and mobility impairments and is legally blind. These

impairments substantially limit her major life activities. Because of her conditions, individually and in combination, Smith is a person with disabilities under the Act, 42 U.S.C. § 3602(h). Ms. Smith's nineteen-pound assistance dog, Lexi, ameliorates the effects of her disabilities by providing emotional support and helps her engage in major life activities.

FACTS

11. In or around March 2012, Ms. Smith heard about the unit at 501 ½ 8th Avenue North, owned and managed by Schimnich. She had been looking for an apartment that suited her needs and was referred to Defendant's property by a community group. She was told that the rent would be approximately \$450 per month.

12. Ms. Smith went to look at the property with her cousin, Wendy Turner. Ms. Turner wrote down the phone number from a sign advertising the property for rent.

13. On April 2, 2012, Ms. Smith called that number on her cell phone. She reached Defendant and told him that she was interested in the subject property and wanted to look at it.

14. Ms. Smith told Schimnich that she had been told the rent was around \$450 per month. Schimnich told her that it was actually \$495 per month. Schimnich did not mention any qualifications for Ms. Smith to rent the property.

15. Ms. Smith then set up a date to see the subject property on April 3, 2012.

16. On April 3, 2012, Ms. Smith brought her dog, Lexi, and her cousin, Wendy Turner, along to view the subject property. They arrived at the property 15 to 20 minutes before Defendant.

17. Defendant looked at Ms. Smith, said that he would not allow pets, and refused to let her in to view the apartment.

18. Ms. Smith told Defendant that the dog, Lexi, was not a pet, but a support animal. Defendant repeatedly stated that no pets were allowed, and Ms. Smith continued to insist that the dog was a support animal.

19. Ms. Smith told Defendant that she had Lexi's registration and other paperwork certifying that she was an emotional support animal, and Ms. Turner stated that she had paperwork stating that Defendant could not discriminate against Ms. Smith because of the support animal.

20. Defendant said something to the effect that Ms. Smith was not going to "swindle" or "strong-arm" him into renting to her.

21. Defendant stated that he would not show Ms. Smith the apartment because of her dog.

22. Ms. Turner asked what Defendant's name was and wrote it down. Ms. Turner then informed Defendant that Ms. Smith no longer wished to rent from him and that they would be filing a complaint.

23. Defendant then got in his van and left. The name of his company, Kurt Schmnich Construction, was written on the side of the van.

PROCEDURAL BACKGROUND

24. As required by the Fair Housing Act, 42 U.S.C. § 3610(a) and (b), the Secretary of HUD conducted an investigation of the complaint made by Smith, attempted conciliation without success, and prepared a final investigative report.

25. Based on the information gathered in his investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g), determined that reasonable cause exists to believe that illegal discriminatory housing practices occurred. Therefore, on or about September 12, 2013, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination pursuant to 42 U.S.C. § 3610(g), charging the Defendant with discrimination under the Fair Housing Act under 42 U.S.C. §§ 3604(f)(1), 3604(f)(2), 3604(f)(3)(B), and 3604(c).

26. On October 16, 2013, Respondent Kurt Schimnich timely elected to have the claims asserted in HUD's Charge of Discrimination resolved in a federal civil action pursuant to 42 U.S.C. § 3612(a).

27. On October 17, 2013, a HUD Administrative Law Judge issued a Notice of Election and terminated the administrative proceedings on the HUD complaint filed by Smith. 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).

28. The United States now timely files this Complaint pursuant to the Fair Housing Act, 42 U.S.C. § 3612(o).

FAIR HOUSING ACT VIOLATIONS

29. The United States incorporates by reference the preceding paragraphs of this Complaint.

30. Defendant discriminated against Ms. Smith, a person with a disability, in the rental of the dwelling to Ms. Smith by denying her the opportunity to view the dwelling because of her support animal, required because of her disability, in violation of

42 U.S.C. § 3604(f)(1)(A).

31. Defendant discriminated against Ms. Smith, a person with a disability, in the terms, conditions, or privileges of sale or rental of a dwelling because of her disability, in violation of 42 U.S.C. § 3604(f)(2)(A).

32. Defendant made statements with respect to the dwelling that indicated discrimination on the basis of Ms. Smith's disability, in violation of 42 U.S.C. § 3604(c).

33. Defendant refused to make a reasonable accommodation in rules, policies, practices, or services, when such an accommodation was necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).

34. As a result of Defendant's conduct, Ms. Smith is an aggrieved person as defined in 42 U.S.C. § 3602(i) and has suffered injuries as a result of Defendant's actions.

35. Defendant's discriminatory actions were intentional, willful, and taken in disregard of the rights of Ms. Smith.

REQUEST FOR RELIEF

WHEREFORE, the United States requests that this Court:

1. Declare that Defendant's discriminatory housing practices as set forth above violate the Fair Housing Act;

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

- A. Discriminating in the sale or rental, or otherwise making unavailable or denying, a dwelling to any buyer or 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 sale or 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. Making statements with respect to a dwelling that indicate discrimination or an intent to discriminate on the basis of disability, in violation of 42 U.S.C. § 3604(c); and
- D. Refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).

3. Order Defendant to take such affirmative steps as may be necessary to restore, as nearly as practicable, Ms. Smith to the position she would have been in but for the discriminatory conduct;

4. Order Defendant to take such actions 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 his unlawful conduct, including implementing policies and procedures to ensure that no applicants or residents are discriminated against because of disability;

5. Award monetary damages to Ms. Smith pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1); and

6. Order such additional relief as the interests of justice require.

DATE: 11/15/13

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