

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,)	
)	CIVIL ACTION NO. <u>3:13-cv-166</u> (Groh)
Plaintiff)	Electronically Filed November 14, 2013
)	
v.)	
)	COMPLAINT and JURY DEMAND
THE WHITACRES, LLC and)	
JAMES WHITACRE)	
)	
)	
Defendants.)	
_____)	

The United States of America alleges as follows:

NATURE OF ACTION

1. The United States brings this action 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 *et seq.* (“Fair Housing Act”). This action is brought on behalf of Nathan and Tara Farley, 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 42 U.S.C. § 3612(o).
3. Venue is proper in this District under 28 U.S.C. § 1391(b) because the events or omissions giving rise to the United States’ claims occurred there, and the property that is the subject of this suit is located there.

PARTIES AND PROPERTY

4. During all relevant times, Defendant The Whitacres, LLC (“Whitacres”) has owned and operated the Whitacres Mobile Home Court (“WMHC”), a 95-lot mobile home

community located at 384 Patrick Court in Inwood, West Virginia. The Whitacres' principal place of business is 51 Ambassador Circle, Martinsburg, West Virginia 25405.

5. During all relevant times, defendant James Whitacre has been a principal owner and member of The Whitacres, LLC. Defendant Whitacre shares property management responsibilities for the WMHC with his sister, Cynthia Bonfili and his father, Patrick Whitacre, along with two other family members.
6. The WHMC is a "dwelling[s]" within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

FACTUAL ALLEGATIONS

7. At all relevant times, Nathan Farley is and has been disabled as defined by the Fair Housing Act, 42 U.S.C. § 3206(h). He has been diagnosed with Post-Traumatic Stress Disorder ("PTSD"), among other psychiatric conditions. These conditions substantially impair his ability to work, leave the home, and perform tasks related to daily living. Mr. Farley receives benefits from the Social Security Administration because of his psychiatric disability.
8. At all relevant times, Nathan and Tara Farley lived together in the subject property with their three children (hereinafter the "Farleys").
9. On or around December 1, 2007, Nathan and Tara Farley signed a lease agreement for the subject property. Paragraph 21 of that lease states: "**NO DOGS OR OUTSIDE PETS PERMITTED EXCEPT FOR THE HANDICAPPED IMPAIRED.** Violation of paragraph-21 (21) will result in eviction and/or termination of this lease . . . [.]" (emphasis in original). At the time, the Farleys did not own an animal.

10. In June, 2009, the Farleys were victims of a home invasion. Mr. Farley was shot in the stomach and required medical treatment. The incident resulted in his Post Traumatic Stress Disorder (hereinafter “PTSD”), while also exacerbating previous psychiatric conditions, causing panic attacks and difficulty with performing tasks related to daily living, including sleeping, leaving the home, interacting with others, and working.
11. In December 2011, Mr. Farley obtained an assistance animal – a dog named “Gizmo” – from an acquaintance in order to help him cope with his PTSD. The assistance animal reduced the number of his panic attacks and allowed him to sleep through the night, handle large crowds, and go outdoors more easily.
12. In the end of December 2011 or early January 2012, Cynthia Bonfili, Defendant Whitacre’s sister, observed Mr. Farley walking Gizmo. She told Mr. Farley that he would have to remove Gizmo unless he submitted proof that Gizmo was a “trained” assistance animal and that Mr. Farley was disabled.
13. Following the conversation with Ms. Bonfili, Mr. Farley removed Gizmo from the unit, placed him with a relative and gathered documents establishing that he was disabled and needed Gizmo for his disability.
14. In December 2011 or January 2012, Patrick Whitacre, Defendant Whitacre’s father, visited Mr. Farley’s unit to determine whether Gizmo had been removed. Tara Farley explained to Mr. Whitacre that Gizmo had been removed and that Mr. Farley needed Gizmo as an assistance animal needed to help him cope with his disability. Mr. Whitacre stated that Mr. Farley would need to put the information from his doctor in the community drop box.

15. A few days later, and in January 2012, Mr. Farley submitted a formal request for a reasonable accommodation in a letter to Defendant Whitacre. Mr. Farley's letter stated that he had a psychiatric disability that impairs his ability to complete tasks related to daily living and that his doctor proscribed an assistance animal to help with his disability. Attached to the letter was a prescription from his doctor stating that "[a]bove pt. has been under my care and needs his dog/ESA to help with his emotional and mental well being." Mr. Farley's letter requested that defendants provide a response in ten days.
16. Defendants never responded to Mr. Farley's reasonable accommodation request or asked for additional information. After the ten-day period lapsed, Mr. Farley brought his assistance animal back to his unit.
17. Approximately six months later, and on or around June 30, 2012, Defendant Whitacre observed Mr. Farley outside his unit, carrying his assistance animal. Defendant Whitacre confronted Mr. Farley in an angry and threatening manner in front of other residents, shouting that Mr. Farley was not allowed to have Gizmo. Mr. Farley explained to Defendant Whitacre that he already submitted a reasonable accommodation request and that he needed Gizmo as an assistance animal for his disability. He attempted to show Defendant Whitacre "tags" that indicated that Gizmo was an emotional support animal and offered to give him a copy of the letter he had previously submitted, along with the prescription from his doctor. Defendant responded by stating that the dog had to be "certified ADA-compatible" and professionally trained. Defendant Whitacre also threatened to evict Mr. Farley, threw the animal tags at him and told him he was a "worthless punk." The public confrontation and threat of eviction was humiliating for Mr. Farley and caused him substantial anxiety.

18. A few days later, on July 3, 2012, Defendants filed a Petition for Summary Relief against the Farleys in the Magistrate Court of Berkeley County, seeking an eviction on the basis that the Farleys breached the no-pet policy in the lease.
19. On July 17, 2012, the Farleys appeared in front of the Magistrate Court. During the eviction hearing, Mr. Farley showed the judge a letter written by his doctor, dated July 5, 2012, stating:

Mr. Farley has been under my care as his primary care physician. He has a history of chronic PTSD Because of insecurities that he experiences with this medical condition, an emotional support animal (E.S.A) might help with his emotional and mental well-being. The presence of a companion animal would help him by providing needed companionship, emotional and mental support, and a feeling of security.

Relying on the doctor's letter, the Magistrate Court dismissed the eviction case.

20. On July 13, 2012, Defendant Whitacre sent Mr. Farley a letter stating that their bank returned the Farleys' July 2012 rent check because of "insufficient funds." The letter stated that payment had to be made by July 18, 2012.
21. On July 17, 2012, the day Mr. Farley received Defendants' letter, he placed a second rent check in the Defendants' drop box. Although Defendants received the check by July 18, they refused to deposit it.
22. On July 25, 2012, Defendants filed their second eviction petition against the Farleys in the Magistrate Court of Berkeley County, alleging non-payment of July 2012 rent. Defendants had not previously attempted to evict other tenants, who, like the Farleys, were less than 30 days late on their rent payment. Defendants' practice has been to work with tenants who are late on their rent before attempting eviction. Defendants have permitted other tenants to be several months in arrears before commencing eviction proceedings.

23. On August 4, 2012, an eviction hearing was held on Defendants' second petition. Ms. Farley explained to the Magistrate Court that Mr. Farley had submitted the July payment on July 17. Defendant Whitacre admitted to receiving the check and holding onto it. Upon hearing that Defendant had the check and chose not to cash it, the Magistrate Court denied Defendants' request to evict the Farleys.
24. At the conclusion of the hearing, Defendant Whitacre told Mr. Farley he "was not done with the dog situation" and threatened Mr. Farley that he would take him back to court because of the dog.

HUD ADMINISTRATIVE PROCESS

25. On or around April 22, 2012, Mr. Farley filed a timely fair housing complaint against James Whitacre and The Whitacres, LLC with the United States Department of Housing and Urban Development ("HUD"). On July 29, 2013, the complaint was amended to remove Tara Farley as an aggrieved person and to add her as a complainant.
26. Pursuant to 42 U.S.C. § 3610, 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 Defendants violated the Fair Housing Act. On August 21, 2013, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the James Whitacre and The Whitacres, LLC with engaging in discriminatory housing practices on the basis of disability, in violation of 42 U.S.C. §§ 3604(f)(1), (f)(2), (f)(3)(B), (c) and 3617.

27. On September 12, Mr. and Ms. Farley timely elected to have the claims asserted in the HUD Charge resolved in a civil action pursuant to 42 U.S.C. § 3612(a). On this same date, the Administrative Law Judge issued a Notice of Election to Proceed in United States Federal District Court and terminated the administrative proceeding on Mr. and Ms. Farley's complaint.

28. 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).

COUNT I

29. Plaintiff re-alleges and incorporates by reference the allegations set forth above.

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

- a. 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 disability, in violation of 42 U.S.C. § 3604(f)(2);
- b. Refused to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604 (f)(3)(B);
- c. Made statements with respect to the rental of a dwelling that indicated a preference, limitation, or discrimination based on handicap, or an intention to make any such preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c); and

d. Coerced, intimidated, threatened, or interfered with the exercise or enjoyment of any right granted or protected by the Fair Housing Act, in violation of 42 U.S.C. § 3617.

31. As a result of Defendants' conduct, Mr. and Ms. Farley have been injured and are "aggrieved person[s]" as defined by 42 U.S.C. § 3602(i).

32. The discriminatory actions of the Defendants were intentional, willful, and taken in reckless disregard of the rights of Mr. Farley and Ms. Farley and other persons with disabilities who need assistance animals.

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays for relief as follows:

1. A declaration that the discriminatory conduct of Defendants as set forth above violates the Fair Housing Act;
2. An injunction against Defendants, their agents, employees, successors, and all other persons in active concert or participation with any of them from:
 - a. Discriminating on the basis of disability, in violation of the Fair Housing Act;
 - b. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, Mr. and Ms. Farley to the position they would have been in but for the discriminatory conduct; and
 - c. Failing or refusing to take such affirmative steps 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 Defendants' unlawful practices.

3. An award of monetary damages to Mr. and Ms. Farley 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: November 14, 2013

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Respectfully submitted,

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