

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 13-C-1358

ALLEGRO APARTMENTS, LLC,
and ASYA MUSHINSKY,

Defendants.

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 Juliane and Charles Quella, who suffered discrimination on account of Juliane’s disability by Defendants Allegro Apartments, LLC. and Asya Mushinsky. 42 U.S.C. § 3612(o). 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)(1).
2. Venue is proper under 28 U.S.C. § 1391(b), because the events giving rise to the claims alleged herein occurred in the Eastern District of Wisconsin.

II. PARTIES AND SUBJECT PROPERTY

3. Juliane Quella is a woman with physical and mental disabilities as defined by 42 U.S.C. § 3602(h). Her physical disabilities include debilitating migraine headaches and back problems causing chronic pain. Her mental disabilities include bi-polar disorder, for which she has received Social Security Income since 2009. Ms. Quella's physical and mental disabilities limit her major life activities, including her ability to leave her home, interact with others, and manage her physical needs.

4. Ms. Quella has a disability-related need for her dog (at times referred to as a "service dog," "assistance dog" or "working dog"), which performs tasks that ameliorate the effects of her disabilities, including, but not limited to, alleviating her pain by taking her mind off of it, calming her, improving her mood, and alerting Charles Quella, her husband, to the need for potential medical intervention on her behalf.

5. Defendant Allegro Apartments, LLC, at all times relevant to this Complaint, owned the property at 4015 Erie Street, Racine, Wisconsin 53402-3052 ("subject property"). The subject property is a dwelling as defined by 42 U.S.C. § 3602(b). The subject property is a 96-unit, residential rental property containing one and two bedroom units.

6. Defendant Asya Mushinsky, at all times relevant to the Complaint, was a "member manager" (an individual who holds an ownership interest in the company and participates in its day-to-day management) of Allegro Apartments, LLC, and manages the subject property herself. Asya Mushinsky does not live at the subject property, nor did she at any time during the events that give rise to this Complaint. In addition to the subject property, Asya Mushinsky owns at least one other residential real estate rental property.

III. FACTUAL ALLEGATIONS

7. Since about May, 2010, Ms. Quella has used her assistance dog, Zeus, a Jack Russell terrier and miniature Doberman Pinscher mix, to ameliorate the symptoms of her disabilities.

8. Ms. Quella's assistance dog has been classified as a service dog by her doctor, James J. Logan, MD, of Mauston, Wisconsin, since on or before December 17, 2012.

9. In or around January, 2013, Mr. and Ms. Quella were looking for an apartment to rent. Ms. Quella saw an advertisement in the *Racine Journal Times* newspaper, listing one and two bedroom apartments for rent for \$395-\$585 per month. The advertisement listed two telephone numbers.

10. On January 28, 2013 Ms. Quella called one of the telephone numbers listed in the advertisement and spoke to a woman whom she now knows to be Asya Mushinsky, who talked to both herself and her husband, Charles Quella. Ms. Mushinsky stated she had a one-bedroom apartment available for \$375 per month that would be available February 1, 2013.

11. During the conversation, Ms. Quella disclosed that she had a "working dog," to which Asya Mushinsky replied, "No, no dogs."

12. At that point in the conversation, Ms. Quella handed the phone to her husband, Charles Quella, at which time he tried to explain to Ms. Mushinsky that his wife was disabled, and needed the dog for her disability, and that the law required landlords to make reasonable accommodations to persons with disabilities. At this point Ms. Mushinsky became agitated and stated, "To Hell with the state, no dogs," or words to that effect, and hung up the phone.

13. In January 2013, the subject property had four vacant one bedroom units. In February 2013, the subject property had six vacant one-bedroom units.

14. At all times relevant to the Complaint the Quellas received a total monthly income of approximately \$1800 and were paying rent of \$650.

15. Despite Ms. Mushinsky's stated "no pets" policy," at all times relevant to the Complaint, several tenants had dogs and other animals residing with them in their units at the subject property.

16. Defendants charged some, but not all, tenants with dogs a "pet deposit" and/or monthly "pet fee" regardless of whether she is aware that the tenant is disabled and the animal is a service or assistance animal.

17. Defendants refused to make a reasonable accommodation to their rules, policies or practices when such accommodations may have been necessary to afford Ms. Quella and her husband equal opportunity to use and enjoy the subject property.

IV. THE QUELLA'S COMPLAINT

18. On or about May 2, 2013, the Quellas timely filed a complaint of discrimination against Defendant Allegro Apartments, LLC, with HUD, pursuant to the Fair Housing Act. On June 3, 2013, the complaint was amended to add Defendant Asya Mushinsky as a respondent.

19. 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.

20. 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 26, 2013, 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.

21. On October 17, 2013, the Quellas 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).

22. On October 17, 2013, the Administrative Law Judge assigned to the case issued a Notice of Election to Proceed in United States Federal District Court and terminated the administrative proceedings on the Quellas' complaint.

23. 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).

V. FAIR HOUSING ACT VIOLATIONS

24. Defendants, through the actions described above, have violated the Fair Housing Act by:

- a. Discriminating in the rental of and denying a dwelling to the Quellas because of Ms. Quella's disability, in violation of 42 U.S.C. § 3604(f)(1)(A);
- b. Refusing to make reasonable accommodations in the rules, policies, practices, or services, when such accommodations were necessary to afford the Quellas an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B); and
- c. Making statements with respect to the rental of a dwelling that indicates a limitation or discrimination based on Ms. Quella's disability, in violation of 42 U.S.C. § 3604(c).

25. Juliane and Charles Quella have suffered damages as a result of Defendants' Fair Housing Act violations. They are "aggrieved persons" within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(i).

26. Defendants' discriminatory actions were intentional, willful, and/or taken in disregard of the federally protected rights of Juliane and Charles Quella.

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

1. Declares that Defendants' conduct, as alleged herein, violates the Fair Housing Act;
2. Enjoins Defendants, and all other persons in active concert or participation with them, from:
 - a. Discriminating in the rental, or otherwise making unavailable or denying dwellings to renters because of disability;
 - b. Discriminating against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of disability;
 - c. Failing or refusing to make reasonable accommodations as required by 42 U.S.C. § 3604(f)(3)(B);
 - d. Making any statement with respect to the rental of a dwelling that indicates limitation or discrimination based on disability, or an intention to make any such limitation or discrimination;
 - e. 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 their discriminatory conduct; and
 - f. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, Juliane and Charles Quella to the position

they would have been in but for the discriminatory conduct, including implementing policies and procedures to ensure that no applicants or residents are discriminated against because of disability.

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

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

Dated this 2nd day of December, 2013, at Milwaukee, Wisconsin.

/s/ James L. Santelle
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