

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 5:13-cv-566-OC-10PRC

TRINITY VILLAS, INC. AND
DEBBIE CRAWFORD, individually,

Defendants.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, the United States of America ("United States"), by A. Lee Bentley, III, Acting United States Attorney for the Middle District of Florida, by and through the undersigned Assistant United States Attorney, hereby files this Complaint, and states as follows:

NATURE OF ACTION

1. This is a civil action brought by the United States to enforce the Fair Housing Act, 42 U.S.C. § 3601, *et seq.* ("the Act"), on behalf of Gloria Tobin.

JURISDICTION AND VENUE

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

3. Venue is proper in the Middle District of Florida under 28 U.S.C. §§ 1391(b) and 42 U.S.C. § 3612(o), in that the events or omissions giving rise to this action occurred in this judicial district.

3.7

PARTIES

4. Plaintiff is the United States, and it is filing suit on behalf of Gloria Tobin.

5. Defendant Trinity Villas, Inc. owns and operates Trinity Villas (“subject property”), a 162-unit housing complex located at 3738 N.E. 8th Place in Ocala, Florida.

6. At all times material hereto, Defendant Trinity Villas, Inc. received federal funding for the subject property through the U.S. Department of Housing and Urban Development’s (“HUD”) Assisted Housing Programs, including the Section 202 Supportive Housing for the Elderly Program, the Section 811 Supportive Housing for Persons with Disabilities Program, and project-based Section 8 rental assistance.

7. At all times material hereto, Defendant Debbie Crawford was the property administrator of Trinity Villas.

FACTUAL ALLEGATIONS

8. Gloria Tobin was involved in an accident in 2005, which crushed her pelvis. As a result of her pelvic injury, Ms. Tobin has spinal and hip complications that severely impede her ability to walk and requires her to utilize a walker and a cane to assist with ambulation. Thus, Ms. Tobin is a person with disabilities or “handicaps” within the meaning of the Act, 42 U.S.C. § 3602(h).

9. As noted above, the subject property comprises 162-units. These units are all “dwellings” within the meaning of 42 U.S.C. § 3602(b).

10. On or about October 4, 2010, Ms. Tobin moved into unit 218A, a one-bedroom apartment located on the second floor of the subject property. Unit 218A is a considerable distance from the elevator, but was located near a stairwell that leads to the first floor. Ms. Tobin’s rent was paid, in part, through project-based Section 8 rental assistance.

11. Unit 218A is located directly above, and is identical to, unit 117A at the subject property. Unit 117A has direct access to a door leading to the ground floor of the apartment complex. Ms. Tobin had to climb the stairs in order to access unit 218A from that same door. Units 218A and 117A were both standard units and were not “accessible” units, meaning that they did not have modifications such as lowered countertops, roll in showers, or cabinets removed.

12. On or around July of 2011, Mary Shouse occupied unit 117A at the subject property. On or about July 19, 2011, Jay McKenzie, the son of Ms. Shouse, informed Defendant Crawford that his mother would be vacating unit 117A on August 1, 2011. Mr. McKenzie further informed Defendant Crawford that Ms. Tobin should get unit 117A because of the ease of access to the ground floor and because he observed that Ms. Tobin had great pains going up and down the stairs. Mr. McKenzie also informed Ms. Tobin that his mother would be vacating unit 117A on August 1, 2011.

13. On or about July 28, 2011, Ms. Tobin met with Defendant Crawford and requested a transfer to unit 117A due to Ms. Tobin’s limited mobility. Defendant Crawford was on notice that Ms. Tobin wanted a ground floor unit. Defendant Crawford was aware that Ms. Tobin utilized a cane or a walker.

14. In response to Ms. Tobin’s transfer request on July 28, 2011, Defendant Crawford instructed Ms. Tobin to obtain a physician’s note verifying that the move was “medically necessary.”

15. Defendant Crawford did not inform Ms. Tobin on July 28, 2011 that Ms. Tobin needed to submit Defendant Trinity Villas, Inc.’s “Reasonable Accommodation Form” or “Verification Form” in conjunction with her request and/or the physician’s note.

16. Unit 117A of the subject property became available on August 1, 2011.

17. Ms. Tobin complied with Defendant Crawford's request and obtained a note from her internist, Jayaprakash N. Shetty, M.D. Dr. Shetty's note, dated August 2, 2011, stated: "Mrs. Tobin is under my care for her medical problems. Due to the nature of her medical problems, she should be staying in a ground floor apartment. It is medically necessary."

18. On August 2, 2011, Ms. Tobin delivered Dr. Shetty's note to Defendant Crawford. Defendant Crawford was on notice that it was medically necessary for Ms. Tobin to have a ground floor unit per the physician's note.

19. On August 11, 2011, Ms. Tobin saw Defendant Crawford on the subject property and asked her why she had not made any attempts to contact her regarding the transfer to unit 117A. Ms. Tobin advised Defendant Crawford that she needed to know the status of the transfer because she had made arrangements to move.

20. On August 18, 2011, Ms. Tobin stopped by Defendant Crawford's office to discuss the request; however, Defendant Crawford was unable to meet on that date.

21. On August 22, 2011, Ms. Tobin met with Defendant Crawford to discuss Ms. Tobin's request to transfer to unit 117A. During the meeting, Defendant Crawford confirmed the availability of unit 117A. Defendant Crawford also informed Ms. Tobin of Defendant Trinity Villas, Inc.'s Transfer Policy, which Defendant Crawford said permitted transfers only in two instances: 1) when there is an increase in family size, or 2) a need for an "accessible" unit.

22. On August 22, 2011, Defendant Crawford also told Ms. Tobin that Ms. Tobin could not transfer to unit 117A because Dr. Shetty's note did not indicate that Ms. Tobin needed an "accessible" unit. Defendant Crawford told Ms. Tobin, "You have to stay in your apartment. No exceptions." Further, Defendant Crawford stated that she couldn't allow the transfer because

she would be showing favoritism and would have to allow others to request transfers in similar situations.

23. In response to Defendant Crawford's statements at the August 22, 2011 meeting, Ms. Tobin told her that she did not need an "accessible" unit, but rather needed a first floor unit to eliminate the stairs and walking distance to the elevator. Ms. Tobin informed Defendant Crawford that Ms. Tobin's ability to walk had diminished and the accommodation was "medically necessary." Ms. Tobin also told Defendant Crawford that Defendant Crawford's actions would force Ms. Tobin to move.

24. On August 23, 2011, Defendants rented unit 117A to a person without a physical disability.

25. On or about August 30, 2011, Ms. Tobin, not knowing that unit 117A had been rented, reiterated to Defendant Crawford her request for a ground-floor unit. Ms. Tobin also asked Defendant Crawford to provide her with a letter explaining why the letter from Dr. Shetty was insufficient.

26. By letter dated August 31, 2011, Defendant Crawford restated the Transfer Policy, which permits a transfer 1) "from a studio to a 1 bedroom due to change in family composition" and 2) "the need for a different type of unit (an accessible unit)." In her letter, Defendant Crawford acknowledged that Ms. Tobin did not want or need an "accessible" unit.

27. In early September of 2011, Ms. Tobin again reiterated her reasonable accommodation request to Defendant Crawford. Ms. Tobin obtained a letter dated September 6, 2011 from her physical therapist, Laurel Haupt, stating that Ms. Tobin was "having significant difficulty getting up and down the stairs to her apartment and has been advised by her family MD and her orthopedist that she should not use stairs, and should only do limited walking." The

letter further stated that “[t]he elevator is too far of a walk for her to utilize it, and due to her limited walking tolerance, she needs to use the quickest exit when trying to get outside.” Further, Ms. Haupt wrote that “[i]f possible, Ms. Tobin needs to live in a ground floor apartment to allow her to avoid the use of stairs. The use of stairs puts excessive strain on her with her current medical limitations, and . . . she has been told that she should not use the stairs. If an apartment comes available that she could move into, please consider her for the apartment.”

28. Defendants did not transfer Ms. Tobin to any ground-floor unit.

29. Defendant Trinity Villas, Inc.’s Transfer Policy states that “the transfer must be to a different type of unit according to our occupancy standards.” The Transfer Policy does not state that transfers based on medical need may be made only to “accessible” units.

30. Defendant Trinity Villas, Inc.’s Occupancy Standards, which are incorporated into the Transfer Policy by reference, permit a transfer “needed for medical reasons such as a need for a ground-floor unit, to accommodate a person with a disability.”

31. Defendant Trinity Villas, Inc.’s “Resident Selection Criteria” permits reasonable accommodations to its Transfer Policy. The Resident Selection Criteria states, in part, that: “Trinity Villas has a No Transfer policy unless in house transfers for over occupied unit size and transfers needed for medical reasons such as the need for a ground floor unit to accommodate a person with a disability.”

32. Defendant Trinity Villas, Inc. also has a Reasonable Accommodation Policy, which supersedes the Transfer Policy. The Reasonable Accommodation Policy states that reasonable accommodations are provided to residents and applicants “who are disabled and because of that disability need a change or exception to our usual rules or policies . . . to be able to fully use and enjoy this community.” The Reasonable Accommodation Policy provides that

residents must fill out and return the Reasonable Accommodation Form, and if requested, the Verification Form. The Verification Form is only necessary, however, “if the need for the accommodation ... is not obvious.”

33. On March 5, 2012, Ms. Tobin was forced to vacate the subject property because Defendants did not grant her request to transfer to a ground-floor unit. By vacating the subject property, Ms. Tobin forfeited the benefit of living in Section 8 subsidized housing.

HUD’S ADMINISTRATIVE PROCESS

34. On or about October 19, 2011, November 22, 2011, and June 5, 2013, Ms. Tobin timely filed original and amended complaints with HUD, alleging that Trinity Villas, Inc. and Debbie Crawford had discriminated against Gloria Tobin on the basis of disability, in violation of the Fair Housing Act.

35. 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. On September 30, 2013, based on 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 had engaged in illegal discriminatory housing practices on the basis of disability.

36. Therefore, on September 30, 2013, the Secretary issued a Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the Defendants with engaging in discriminatory practices against Gloria Tobin on the basis of her disability, in violation of the Fair Housing Act, 42 U.S.C. § 3604(f)(1), (f)(2) and (f)(3).

37. On or about October 18, 2011, Defendants elected to have the claims asserted in HUD’s Charge of Discrimination resolved in a civil action, pursuant to 42 U.S.C. § 3612(a). On

that same date, the Chief Administrative Law Judge issued a Notice of Election to Proceed in United States Federal District Court and terminated the administrative proceeding pursuant to 42 U.S.C. § 3612(o).

FAIR HOUSING ACT VIOLATIONS

38. The Defendants, through the actions referenced above, have:

- a. Discriminated against Gloria Tobin in the rental, or otherwise made unavailable or denied, a dwelling to her because of her disability, in violation of the Fair Housing Act, 42 U.S.C. § 3604(f)(1), when they failed to transfer Ms. Tobin to a ground-floor unit as a reasonable accommodation;
- b. Discriminated against Gloria Tobin in the terms, conditions, or privileges of rental of a dwelling or in the provision of services or facilities in connection with a dwelling, because of her disability, in violation of the Fair Housing Act, 42 U.S.C. § 3604(f)(2), when they failed to transfer Ms. Tobin to a ground-floor unit as a reasonable accommodation; and
- c. Refused to make reasonable accommodations in their rules, policies, practices or services when they failed to transfer Ms. Tobin to a ground-floor unit as a reasonable accommodation when such accommodations were necessary to afford Gloria Tobin equal opportunity to use and enjoy her dwelling, in violation of the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(B).

39. Gloria Tobin is an aggrieved person, as defined in 42 U.S.C. § 3602(i), and has suffered damages as a result of the Defendants' discriminatory conduct as described above.

40. The discriminatory actions of the Defendants were intentional, willful, and taken in disregard of Gloria Tobin's federally protected rights.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an order that:

1. Declares that the Defendants' discriminatory policies and practices as set forth above violate the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*;

2. Enjoins the Defendants, their agents, employees, successors, and all other persons in active concert or participation with any of them from discriminating on the basis of disability in violation of the Fair Housing Act;

3. Enjoins the Defendants, their agents, employees, successors, and all other persons in active concert or participation with them from refusing to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy their dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B);

4. Compels the Defendants, their agents, employees, successors, and all other persons in active concert or participation with any of them 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 possible, the effects of the Defendants' discriminatory conduct;

5. Compels the Defendants, their agents, employees, successors, and all other persons in active concert or participation with any of them to take such affirmative steps as may be necessary to restore, as nearly as practicable, Gloria Tobin to the position she would have been in but for the discriminatory conduct; and

6. Awards monetary damages to Gloria Tobin pursuant to the Act, 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.

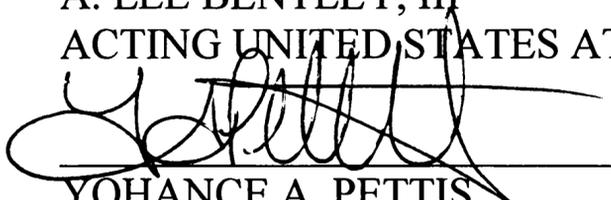
THE UNITED STATES DEMANDS TRIAL BY JURY.

Dated: November 18, 2013

Respectfully submitted:

A. LEE BENTLEY, III
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