

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 AVATAR PROPERTIES, INC.,)
 MIDRIDGE CONDOMINIUM ASSOC.,)
 RICHARD MORWAY and STACEY)
 DIODATI,)
)
 Defendants.)

Civil No.

JURY TRIAL REQUESTED

COMPLAINT

The United States of America (“United States”) alleges as follows:

NATURE OF THE ACTION

1. This action is brought by the United States to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the “Fair Housing Act”), 42 U.S.C. §§ 3601-3631. It is brought on behalf of Edward Tirrell, Michaela Tirrell and Edward’s minor son, BT, 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 pursuant to 42 U.S.C. § 1391(b) and 42 U.S.C. § 3612(o) because the events giving rise to the United States’ claims occurred in this judicial district, and they concern or otherwise relate to real property located in this judicial district.

PARTIES AND THE SUBJECT PROPERTY

4. The Midridge Condominium complex, located at Midridge Circle in Londonderry, New Hampshire (the “subject property”), is a dwelling within the meaning of 42 U.S.C. § 3602(b), and does not qualify for any exemptions under the Fair Housing Act.

5. Defendant Avatar Properties, Inc. (“Avatar”) is a Florida corporation with a principal place of business at 8601 N. Scottsdale Rd., Suite 225, Scottsdale, Arizona 85253. At all times relevant to this Complaint, Avatar served as the management company hired by Defendant Midridge Condominium Association to manage the day-to-day functions of the subject property.

6. Defendant Midridge Condominium Association (the “Association”) is a condominium association with a principal place of business at 1-40 Midridge Circle, Londonderry, New Hampshire 03053. The Association is comprised of the owners at the subject property.

7. Defendant Richard Morway (“Morway”), at all times relevant to this Complaint, was an employee of Avatar and was the on-site property manager at the Midridge Condominium complex. Defendant Richard Morway resides in Windham, New Hampshire.

8. Defendant Stacey Diodati (“Diodati”), at all times relevant to this Complaint, was Avatar’s liaison for the Midridge Condominium complex. Defendant Stacey Diodati resides in Salem, New Hampshire.

9. Edward and Michaela Tirrell are a married couple with a mailing address of 5 Fox Street, Windham, New Hampshire 03087. Michaela Tirrell owned Unit 5 in the subject property from 1999 until April of 2014, and lived there during that time except for a brief period of time

in 2013. Edward Tirrell and his minor son BT lived in Unit 5 at the subject property between 2011 and April of 2014, except for a brief period of time in 2013.

FACTUAL ALLEGATIONS

10. Edward Tirrell is a person with a disability within the meaning of the Fair Housing Act. He is limited in the major life activity of walking as a result of a spinal cord injury he suffered in 1994. His left leg is partially paralyzed, and as a result he wears a leg brace. Additionally, he has arthritis in his hips. As a result of these impairments, Edward Tirrell is unable to walk distances in excess of 50 feet without the risk of falling. Additionally, he experiences considerable difficulty climbing up or down stairs.

11. The Midridge Condominium complex is comprised of five buildings. The Association assigns residents of each building a specific parking area where the resident is allowed to park one vehicle under a covered carport, and one vehicle in an uncovered parking space.

12. The Tirrells' assigned parking area was located behind their unit, and it was accessible only by a staircase with nine steps.

13. The Association designated the area directly in front of the Tirrells' unit as a visitors parking area and prohibited residents from parking there. From their unit, the Tirrells could access the visitors parking area without having to traverse the steps they would need to use to get to their assigned parking area.

14. On December 2, 2013, Michaela Tirrell sent a reasonable accommodation request to Diodati. In that request, she stated "Ed will need to use the visitor parking for the vehicle he is driving. He has a handicap placard & it is too painful for him to use the steps in the back of our

building to get to his vehicle. If there is some paper work we need to fill out to do this without penalty please let us know so we can comply.”

15. Diodati forwarded Michaela Tirrell’s reasonable accommodation request to the Association’s Board of Directors via email. The Board discussed the request by email, and subsequently informed Diodati that they would not grant the reasonable accommodation request.

16. On December 9, 2013, Diodati sent an email to Michaela Tirrell, stating “I am sorry to inform you that this request was denied. The Board asked that you review the designated parking maps for the Association which is in the Rules and Regulation book and that the circle is for visitors only.” The Association did not offer the Tirrells any alternative accommodation.

17. On January 16, 2014, Michaela Tirrell sent an email to Diodati and Morway. The email stated that Edward Tirrell needed a “handicap accessible parking spot no further than 50 feet from unit 5.” Attached to that email was a letter from Edward Tirrell’s primary care physician, Ihab Ziada, MD, dated January 16, 2014, addressed “To Whom it may concern.” The letter stated that Mr. Tirrell suffered from a spinal cord injury leading to weakness and atrophy of his lower extremities, making him unable to get up and down stairs, and putting him at risk of falling if he needed to walk more than 50 feet. The letter concluded by stating, “please consider [Mr. Tirrell’s] limitations and accommodate him with access to his home.”

18. On January 31, 2014, while the Tirrells were awaiting a response to their January 16, 2014, reasonable accommodation request, Edward Tirrell’s vehicle was towed. On that date, the Tirrells arrived home at 6:00 p.m. and found there was no parking available in the designated lot for their building. Because they had been told they could not park in the visitor parking spaces, the Tirrells instead parked in the parking lot designated for a different building

within the complex. At about 9:00 p.m. that evening, Edward Tirrell learned his vehicle had been towed. Edward Tirrell had to pay \$250.00 to get his vehicle back from the towing company.

19. At a February 17, 2014, Board meeting of the Association, the Board voted unanimously to deny the January 16, 2014, reasonable accommodation request.

20. To justify the denial of the January 16, 2014, reasonable accommodation request, Morway sent Michaela Tirrell an email on February 21, 2014, stating that the board had “spent a lot of money to update and clarify the parking. They do not want to start making changes at this point.” Again, the Association, Avatar, Morway and Diodati offered no alternative accommodation.

21. Because of his disability, and because of Defendants’ refusal to provide him with a parking space near the front entrance to his residence, Mr. Tirrell’s physical condition deteriorated, and he experienced substantial difficulty accessing his vehicle.

22. After the Defendants failed to grant their request for a parking space in the visitors parking area in front of their building, Mr. and Mrs. Tirrell filed a timely housing discrimination complaint on March 7, 2014, with the U.S. Department of Housing and Urban Development’s Office of Fair Housing and Equal Opportunity (“HUD”).

23. On April 24, 2014, the Tirrells moved out of the subject property.

24. Pursuant to the requirements of 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. 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 discriminatory housing practices had occurred. Accordingly, on

September 24, 2014, the Secretary issued a Charge of Discrimination (the “Charge”) pursuant to 42 U.S.C. § 3610(g)(2)(A), charging defendants with engaging in discriminatory practices in violation of the Fair Housing Act.

25. On October 8, 2014, Defendants made a timely election to have the claims asserted in HUD’s Charge of Discrimination decided in a civil action pursuant to 42 U.S.C. § 3612(a).

26. On October 9, 2014, the Administrative Law Judge issued a Notice of Election and terminated the administrative proceeding on the complaint filed by the Tirrells.

27. Following this Notice of Election, the Secretary of HUD authorized the Attorney General to commence a civil action, pursuant to 42 U.S.C. § 3612(o).

FAIR HOUSING ACT CLAIM

28. Plaintiff re-alleges and incorporates by reference all allegations set forth in the paragraphs above.

29. Defendants violated the Fair Housing Act by discriminating against the Tirrells 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 by denying their reasonable accommodation requests to be allowed to park in the visitors parking area when such accommodation was necessary to afford the Tirrells an equal opportunity to use and enjoy their dwelling. 42 U.S.C. §§ 3604(f)(2) and (f)(3)(B).

30. As a result of Defendants’ discriminatory conduct, Edward Tirrell, Michaela Tirrell and BT have suffered damages and are aggrieved persons, as defined in 42 U.S.C. § 3602(i).

31. The discriminatory actions of the Defendants were intentional, willful, and taken in disregard of the federally protected rights of Edward Tirrell, Michaela Tirrell and BT.

Therefore, the United States of America requests that this Court:

1. Declare that the discriminatory conduct of Defendants as set forth above violates the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*;

2. Enjoin Defendants, their agents, employees, successors, and all other persons in active concert or participation with them from discriminating because of disability, in violation of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*;

3. Order Defendants to take such affirmative steps as may be necessary to restore, as nearly as practicable, Edward Tirrell, Michaela Tirrell and BT to the positions they would have been in but for the discriminatory conduct;

4. Order Defendants 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 their unlawful conduct, including implementing policies and procedures to ensure that no applicants or residents are discriminated against because of disability; and

5. Award monetary damages to Edward Tirrell, Michaela Tirrell and BT, 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.

Respectfully submitted,

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