

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
ANDOVER FOREST HOMEOWNERS)	CIVIL ACTION NO. _____
ASSOCIATION, INC. and EMG)	
COMMERCIAL PROPERTIES, LLC d/b/a EMG)	
MANAGEMENT SERVICES, LLC,)	
)	DEMAND FOR JURY TRIAL
Defendants.)	ELECTRONICALLY FILED
)	

COMPLAINT

The United States of America alleges as follows:

1. The United States brings this action to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (the “Fair Housing Act” or the “Act”), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 to 3619. The United States brings this action on behalf of George and Tiffiney Veloudis, and their minor child, C.V. (collectively, “the Complainants”), pursuant to Section 812(o) of the Fair Housing Act, 42 U.S.C. § 3612(o).

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3612(o).
3. Venue is proper under 28 U.S.C. § 1391 because the events giving rise to the claims occurred in the Eastern District of Kentucky, the subject property is located in this District, and the Defendants do business in this District.

The Defendants and Subject Property

4. Defendant Andover Forest Homeowners Association, Inc. (“HOA”) is an active, non-profit corporation with its principal place of business at 141 Prosperous Place, Suite 21B, in Lexington, Kentucky (Fayette County). The HOA represents the homeowners at Andover Forest, a/k/a the Brighton Place Subdivision, a residential development consisting of 481 single-family homes in Lexington.
5. Defendant EMG Commercial Properties, LLC d/b/a/ EMG Management Services, LLC (“EMG”) is an active Kentucky for-profit corporation with its principal place of business at 141 Prosperous Place, Suite 21B, in Lexington, Kentucky (Fayette County). EMG, as an agent of the HOA, manages Andover Forest and all its single-family homes, including 1241 Sheffield Place, in Lexington (the “subject property”). This includes corresponding with homeowners, assessing and collecting fines, advising the HOA regarding a wide variety of matters relating to the operation of Andover Forest, carrying out decisions of the HOA, and enforcing the HOA’s rules and regulations, including the HOA’s Declaration of Covenants, Conditions and Restrictions for Brighton Place Subdivision (“DCR”), which is deemed a part of the HOA’s by-laws.
6. The subject property is a dwelling as defined by 42 U.S.C. § 3602(b).

Factual Allegations

7. At all times relevant to this action, Dr. George Veloudis and Mrs. Tiffiney Veloudis resided at the subject property with their minor child, C.V.

8. C.V. is a person with a disability.¹ He was diagnosed with cerebral palsy in November 2010, when he was two years old. Because of C.V.'s disability, he requires daily speech, occupational, and physical therapy.
9. On April 15, 2011, George and Tiffiney Veloudis, in consultation with C.V.'s medical providers, purchased and installed a playhouse at the subject property. The playhouse is equipped with features that were designed to aid C.V. in his therapy.
10. On April 29, 2011, George and Tiffiney Veloudis received a "Restriction Violation" notice from EMG, on behalf of the HOA, regarding the playhouse. The letter stated that an "unauthorized structure" had been constructed on the subject property and that the HOA's DCR prohibited building a "structure" without the expressed written authorization of the HOA's board of directors.
11. On May 3, 2011, EMG, on behalf of the HOA, emailed Dr. Veloudis the forms needed to obtain the HOA's approval to keep the playhouse on the subject property.
12. Dr. Veloudis emailed the completed forms back to EMG on May 13, 2011. In the email, Dr. Veloudis included the following request for a reasonable accommodation and reasonable modification:

As a side note, this [playhouse] was especially built for our two year old son who has cerebral palsy. The inside has the necessary steps, ladders, and essentials needed for his day to day physical and occupational therapy. This was a less expensive alternative than modifying the inside and outside of our home to accommodate his disability, as his medical treatments and therapies are quite expensive.

¹ The term "disability" is synonymous with the term "handicap" as defined in 42 U.S.C. § 3602(h). The United States uses the term "disability."

When we purchased our home in 2008, our son was not [born] yet and therefore the obstacles our home would present to a child with a physical disability was unforeseen. Please take this into consideration.

13. On May 18, 2011, EMG, on behalf of the HOA, informed Mr. Veloudis that the playhouse was a prohibited “structure” under the HOA’s DCR, and ordered him to remove the structure immediately.
14. On June 14, 2011, the Veloudises, through their attorney, sent a letter to EMG expressing disagreement with the HOA’s conclusion that the playhouse was a prohibited structure under Article V of the DCR and reiterating that C.V. is an individual with a disability and that the playhouse was installed for the purpose of helping C.V. with his therapy.
15. EMG, on behalf of the HOA, sent a second notice of noncompliance to the Complainants on June 16, 2011.
16. On November 16, 2011, the HOA, through its attorney, sent a letter to the Complainants’ attorney. The letter stated that the Complainants were in violation of the HOA’s DCR and that the HOA’s board of directors had voted to impose a fine of \$50 per day, beginning on November 28, 2011, until the playhouse was removed. The letter further stated that the Complainants’ right to vote and to use the common areas at Andover Forest had been suspended. The letter informed the Complainants that they had ten days to request a hearing before the HOA board of directors to appeal the matter.
17. On November 22, 2011, the Veloudises requested a hearing.
18. The hearing was held on or about December 6, 2011. At the hearing, the HOA affirmed that the playhouse was a prohibited structure. The HOA upheld the

suspension of the Complainants' community privileges as well, but refrained from fining them. The HOA also, for the first time, inquired about C.V.'s disability, and requested that the Complainants provide a written supplement regarding C.V.'s need for the playhouse.

19. On December 12, 2011, the Complainants' attorney informed the HOA's attorney that the HOA had previously permitted another homeowner to have an enclosed playhouse on her property for six years. That homeowner moved the playhouse to another neighbor's property for her children's use, where it stayed for an additional two years. The playhouse was finally removed from the neighbor's property in 2007 after the neighbor's children outgrew it.
20. On January 11, 2012, the Complainants, through their attorney, submitted their written supplement to the HOA. The written supplement outlined C.V.'s need for the playhouse, and included a formal request for a "reasonable accommodation or modification of a housing policy," an article about the benefits of a therapeutic playhouse, and supporting documents from C.V.'s speech therapist and physical therapist. On January 17, 2012, the Complainants, through their attorney, provided Defendants a letter from Dr. Linda Michaud, Director of Rehabilitation at Cincinnati Children's Hospital Medical Center. The letter, dated January 9, 2012, read: "This letter is being provided at the request of Dr. and Mrs. George Veloudis. I am confirming their 3 year old son, [C.V.], has a disability. As his pediatric rehabilitation specialist, I am requesting [C.V.]'s playhouse remain on their property as it aids in his therapy."
21. On January 31, 2012, the HOA board of directors met to consider the

Complainants' request for a reasonable accommodation and modification. Its findings were memorialized in a letter from its attorney to the Complainants' attorney on February 7, 2012. Again, the HOA concluded that the playhouse was a prohibited structure under the DCR. The letter stated that the Complainants had not provided adequate information for the HOA to make a determination as to whether the playhouse was "reasonable and necessary." However, the HOA stated that it would grant a "temporary exemption" for the playhouse, pending a court order or a successful mediation outcome.

22. On February 27, 2012, the Complainants filed a fair-housing complaint with the United States Department of Housing and Urban Development ("HUD"), alleging, among other things, that the HOA and EMG had failed to grant their request for a reasonable accommodation and modification.
23. Mediation was held on April 5 and 26, 2012, but an agreement could not be reached.
24. On April 25, 2012, the Complainants provided the HOA additional documentation to support their accommodation request. The documentation included a joint report from C.V.'s physical therapist and occupational therapist. The joint report detailed the nature of C.V.'s disability, the purpose and goals of C.V.'s therapy, and further discussed the medical necessity of the playhouse.
25. On May 1, 2012, the Complainants, through their attorney, sent a letter to the HOA's attorney disagreeing that the HOA had granted them a temporary exemption for the playhouse because the Complainants were still being sanctioned by the HOA for their reasonable accommodation and modification

request. The letter noted that the Complainants continued to have the status of members in “bad standing” with the HOA, which prevented them from voting, accessing the HOA’s website, or using the amenities in Andover Forest.

26. On July 11, 2012, the HOA’s board of directors passed a resolution granting the Complainants’ request to keep the playhouse on the subject property. The HOA conditioned its approval, however, on the Complainants meeting onerous requirements, including providing medical updates for C.V.
27. The HOA’s conditional approval, which came over a year after the Complainants’ initial request and only after the Complainants had filed a complaint with HUD, included requirements that were unreasonable and burdensome. The Complainants rejected the HOA’s conditions, but, in response to one of the HOA’s demands, they had the playhouse moved to their backyard on September 27, 2012.
28. On April 26, 2013, the Complainants purchased a new home outside Andover Forest. After making changes to the property so that it would be accessible for C.V., the family moved into the new home in July 2014.

HUD Administrative Process

29. The Complainants filed a timely complaint with HUD on February 27, 2012.
30. 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. 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 November 14, 2014, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the above-named defendants with engaging in unlawful discrimination and retaliation in violation of the Act.

31. On November 26, 2014, the HOA and EMG elected to have the claims asserted in the HUD Charge resolved in a civil action pursuant to 42 U.S.C. § 3612(a).
32. On December 1, 2014, the Administrative Law Judge issued a Notice of Election to Proceed in United States Federal District Court and terminated the administrative proceeding on the Complainants' complaint.
33. Following this Notice of Election, the Secretary of HUD authorized the Attorney General to commence this civil action pursuant to 42 U.S.C. § 3612(o).

Fair Housing Act Violations

34. Plaintiff realleges and incorporates by reference herein the allegations described above.
35. By the conduct described in the foregoing paragraphs, the Defendants have:
 - a. Discriminated in the terms, conditions, or privileges of the sale 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);
 - b. Refused to permit an individual with a disability, at his or her own expense, to make reasonable modifications to existing premises, when such modifications may be necessary to afford that person full enjoyment of the premises, in violation of 42 U.S.C. § 3604(f)(3)(A);
 - c. Refused to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford an individual

with a disability an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B); and

- d. Coerced, intimidated, threatened, or interfered with a person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, rights granted or protected by section 804 of the Act.
36. The Complainants are “aggrieved persons” within the meaning of 42 U.S.C. § 3602(i), and have suffered injuries as a result of Defendants’ discriminatory conduct.
37. Defendants’ actions as described above were intentional, willful, and taken in disregard for the rights of the Complainants.

Prayer for Relief

WHEREFORE, the United States of America prays that the Court enter an ORDER:

1. Declaring that the Defendants’ discriminatory conduct as set forth above violates the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*;
2. Enjoining the Defendants, their agents, employees, successors, and all other persons in active concert or participation *with any of* them from:
 - a. Discriminating because of a disability, including failing to grant a reasonable accommodation or refusing to permit a reasonable modification, in violation of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*;
 - b. Interfering with or threatening to take any action against any person engaged in the exercise or enjoyment of rights granted or protected by the Fair Housing Act;

- c. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of the Defendants' past unlawful practices to the position they would have been in but for the discriminatory conduct; and
 - d. 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 the Defendants' unlawful practices; and
3. Awarding monetary damages to the Complainants pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1).

The United States further prays for such additional relief as the interest of justice may require.

Dated: December 23, 2014

Respectfully submitted,

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