

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FT. WORTH DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 4:15-CV-00304
)	
CITY OF FORT WORTH, TEXAS,)	
)	
Defendant.)	
)	

COMPLAINT

The United States of America alleges as follows:

INTRODUCTION

1. The United States brings this action for declaratory and injunctive relief, and monetary damages and civil penalties, against the City of Fort Worth, Texas (the “City”), under the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended (“FHA”), 42 U.S.C. §§ 3601 *et seq.*, and Title II of the Americans with Disabilities Act of 1990, as amended (“ADA”), 42 U.S.C. §§ 12131-12134, and Title II’s implementing regulation, 28 C.F.R. Part 35.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action and may grant the relief sought herein pursuant to 28 U.S.C. §§ 1331 and 1345; 42 U.S.C. § 3614(a), (b); 42 U.S.C. §§ 12133 and 12134; and 28 U.S.C. §§ 2201 and 2202.

3. Venue is proper under 28 U.S.C. § 1391 because the events or omissions giving rise to the claims alleged herein occurred in the Northern District of Texas and because the Defendant and the property at issue in this action are located there.

DEFENDANT

4. Defendant City of Fort Worth, located in Tarrant County, is a unit of government organized under the laws of the State of Texas, and is a “public entity” within the meaning of the ADA, 42 U.S.C. § 12131(1), 28 C.F.R. § 35.104, and is therefore subject to Title II of the ADA, 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35.

5. The City is governed by a mayor and an eight-member City Council. The mayor is the ninth voting member of the City Council.

6. The City’s Code Compliance Department (“Code Compliance”), among other things, investigates complaints of potential violations of the City’s zoning ordinance and issues citations to property owners who fail to abate zoning violations.

7. The City’s Zoning Commission (the “Zoning Commission”) consists of nine members who are appointed by the City Council. The Zoning Commission makes recommendations to the City Council regarding applications for zoning changes, variances, and other zoning matters.

8. The City’s Planning and Development Department (“Planning and Development”) drafts reports for the Zoning Commission and the City Council that indicate whether zoning change requests are compatible with the existing land use and consistent with the City’s comprehensive land-use plan.

9. After receiving a report from Planning and Development and a recommendation from the Zoning Commission on zoning change applications, the City Council makes the final decision whether to accept or reject the requested change.

FACTUAL ALLEGATIONS

10. Under the City's zoning ordinance, only single-family dwelling use is permitted in A-5 residential districts. Fort Worth, Tex. Zoning Ordinance ch. 4, art. VI.

11. Under the City's zoning ordinance, "family" is defined as: "Any individual or two or more persons related by blood, adoption or marriage or not more than five unrelated persons living and cooking as a single housekeeping unit or home and expressly excluding lodging, boarding or fraternity houses." Fort Worth, Tex. Zoning Ordinance ch. 9.

12. Under the City's zoning ordinance, "community home" is defined as: "A community-based residential home containing not more than eight persons with disabilities and two non-resident supervisory personnel and which meets the requirements of the Community Homes for Disabled Persons Location Act, chapter 123.001, Texas Human Resources Code." Fort Worth, Tex. Zoning Ordinance ch. 9. Community homes are allowed by right in A-5, single-family residential districts. There are at least twenty community homes in A-5, single-family residential districts in the City.

Ebby's Place, LLC

13. Ebby's Place, LLC is a Texas-based limited liability company with its principal place of business in Fort Worth, Texas.

14. Ebby's Place, LLC provides a residence called "Ebby's Place," a four-bedroom home for persons with disabilities recovering from drug and alcohol addiction. Ebby's Place is located at 6245 Granite Creek Drive in Fort Worth, Texas, and is in an A-5, single-family residential zone.

15. Ebby's Place is home to between five and eight residents with disabilities. Residents live together to reinforce and encourage their mutual commitment to recovery by

assisting one another to refrain from alcohol or drug usage and to monitor one another for signs of such use.

16. Ben Patterson (“Patterson”) is the owner and sole member of Ebby’s Place, LLC.

17. Residents of Ebby’s Place have successfully completed at least a 30-day drug or alcohol treatment program, pay rent, and sign a contract to follow house rules. Residents are prohibited from using drugs or alcohol and must agree to mandatory drug testing. Residents must also work, seek employment, or attend school and must work with sponsors to maintain their sobriety.

18. Ebby’s Place residents share bedrooms, bathrooms, the living room, and the kitchen. They purchase their groceries together every week. They often eat meals and spend their free time together.

19. A manager lives on site.

20. Five or fewer unrelated persons are permitted to live in an A-5, single-family residential zone as of right.

Code Citations and Requests for Reasonable Accommodation

21. On or about August 7, 2010, Code Compliance received a complaint from a neighbor of Ebby’s Place that the owner was running a business. At the time, Ebby’s Place had more than five residents.

22. On May 6, 2011, the City sent a letter to Patterson stating that Ebby’s Place violated the City’s zoning ordinance by operating a business in a residentially zoned district. The letter gave Patterson fourteen days to comply with the ordinance or he would receive a citation with a fine not to exceed \$2,000 per day.

23. On or about May 20, 2011, Ebby’s Place told Code Compliance that it reduced its

number of residents to six.

24. On or about May 23, 2011, Code Compliance issued a citation for operating a business in a residential zone to Patterson.

25. On or about May 23, 2011, Patterson informed Code Compliance that he was not in violation of the City's zoning ordinance because Ebby's Place is protected by the ADA.

26. Between June 2011 and August 2012, Code Compliance continued to give Patterson citations every two weeks, issuing six additional citations. The total amount in fines for the seven citations is more than \$7,400.

27. On or about March 15, 2012, counsel for Ebby's Place wrote a letter to the City requesting a reasonable accommodation¹ to the five-person limit on unrelated persons in an A-5, single-family residential zone to allow Ebby's Place to have at least eight residents.

28. On April 11, 2012, the City denied the request for a reasonable accommodation in a letter.

29. On April 17, 2012, Ebby's Place filed a complaint with the Department of Housing and Urban Development ("HUD") alleging that the City refused to provide a reasonable accommodation.

30. In its response to the HUD complaint, the City claimed that Ebby's Place had failed to properly request a reasonable accommodation.

31. In response to the City's claim, on April 30, 2012, counsel for Ebby's Place sent a second letter to the City requesting as a reasonable accommodation a waiver of the five-person

¹ The term "reasonable accommodation" as used in this Complaint refers, collectively, to "reasonable accommodations" under the FHA and the phrase "reasonable modifications" as used in the implementing regulation for Title II of the ADA at 28 C.F.R. § 35.130(b)(7).

limit on the number of unrelated individuals that can reside together in an A-5, single-family residential district.

32. After receiving the letter, the City instructed Ebby's Place to apply for a zoning variance to request a reasonable accommodation of the five-person limit.

33. Pursuant to the City's instruction, on or about May 11, 2012, Ebby's Place attempted to request a reasonable accommodation and apply for a zoning variance to be considered a community home, which would allow it to have up to eight individuals in a single-family residential district. The same day, a Senior Planner for the City told Patterson that Ebby's Place could not receive a variance because the residents of Ebby's Place were not considered persons with disabilities under the City's Code.

34. On or about August 14, 2012, the City informed HUD via e-mail that to properly request a reasonable accommodation, Ebby's Place needed to request from the City's Board of Adjustment relief from the definition of family, seek an opinion that Ebby's Place is a "community home," or apply for a zoning change.

35. On or about September 10, 2012, Ebby's Place again applied for a reasonable accommodation by seeking a zoning change. Ebby's Place requested to re-zone the home from A-5 One-Family to PD/A-5 Planned Development, which would permit eight residents in the home as of right. The City acknowledged that this application was a request for a reasonable accommodation.

36. On October 10, 2012, Planning and Development wrote a Staff Report concluding that the proposed zoning change is incompatible with surrounding land uses and inconsistent with the comprehensive plan. Planning and Development forwarded this report to the Zoning Commission.

37. On or about November 14, 2012, the Zoning Commission held a hearing on the proposed zoning change. Neighbors attended the hearing and objected to the zoning change.

38. At the meeting, Patterson explained that Ebby's Place has had as few as five residents, but that they needed up to eight residents for the house to sustain itself financially and to provide residents therapeutic support for recovery. He also said that he would address any potential parking concerns.

39. On or about November 14, 2012, the Zoning Commission voted unanimously (9-0) to deny the proposed zoning change. The Zoning Commission stated that its denial was based on the potential impact on parking and that the five residents allowed by the zoning code was sufficient.

40. On December 4, 2012, the City Council reviewed the denial of the proposed zoning change at a meeting.

41. At the meeting, Patterson explained to the City Council that Ebby's Place does not always have eight residents in the house, but having eight makes Ebby's Place financially sustainable. Patterson also said that he met with the Ebby's Place residents and developed a plan to reduce any potential parking congestion.

42. At the conclusion of the December 4, 2012 hearing, the City Council voted unanimously (9-0) to accept the recommendation of the Zoning Commission to deny the zoning change request. The City Council stated that the five residents allowed by the zoning code is sufficient.

43. On December 11, 2012, after denying the proposed zoning change, the City sent a letter to counsel for Ebby's Place stating that Patterson has sixty days to "wind down his business and cease operating illegally."

44. The City failed to make accommodations in its rules, policies, practices, procedures, or services, when such an accommodation was necessary to avoid discrimination on the basis of disability and to afford the residents with disabilities an equal opportunity to use and enjoy their dwelling.

45. The City's zoning ordinance does not include a policy or procedure concerning reasonable accommodations that may be necessary to avoid discrimination on the basis of disability and to afford persons with disabilities equal opportunities to use and enjoy dwellings.

46. On or about April 22, 2013, Ebby's Place amended its HUD complaint to include the City Council's December 2012 denial of a reasonable accommodation.

47. On June 12, 2013, HUD referred the complaint to the Department of Justice pursuant to 42 U.S.C. § 3610(e)(2).

CLAIMS FOR RELIEF

Count I: Violations of the Fair Housing Act

48. The allegations listed above are incorporated herein by reference.

49. The residence at 6245 Granite Creek Drive is a "dwelling" within the meaning of 42 U.S.C. § 3602(b), and the residents of the home are persons with disabilities within the meaning of 42 U.S.C. § 3602(h).²

50. Defendant City of Fort Worth's actions described above constitute:

² Throughout this Complaint, the United States uses the term "disability" instead of "handicap." For purposes of the Act, the terms have the same meaning. See *Helen L. v. DiDario*, 46 F.3d 325, 330 n. 8 (3d Cir.) ("The change in nomenclature from 'handicap' to 'disability' reflects Congress' awareness that individuals with disabilities find the term 'handicapped' objectionable."), *cert. denied sub nom., Pa. Sec'y of Pub. Welfare v. Idell S.*, 516 U.S. 813 (1995).

a. discrimination in the sale or rental, or otherwise making unavailable or denying, a dwelling because of disability, in violation of the FHA, 42 U.S.C. § 3604(f)(1);

b. discrimination 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, in violation of the FHA, 42 U.S.C. § 3604(f)(2); and

c. a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with disabilities an equal opportunity to use and enjoy a dwelling, in violation of the FHA, 42 U.S.C. § 3604(f)(3)(B).

51. Defendant City of Fort Worth's actions described above constitute a denial of rights protected by the Fair Housing Act to a group of persons, which denial raises an issue of general public importance, in violation of 42 U.S.C. § 3614(a).

52. Defendant City of Fort Worth's actions described above constitute a discriminatory housing practice, in violation of 42 U.S.C. § 3614(b)(1), which was referred to the Attorney General by the Secretary of HUD.

53. The residents of Ebby's Place, Patterson, and prospective residents of Ebby's Place are "aggrieved persons" within the meaning of 42 U.S.C. §§ 3602(i) and 3614(d)(1)(B), and have suffered harm and damages as a result of Defendant's conduct.

Count II: Violations of the Americans with Disabilities Act

54. The allegations listed above are incorporated herein by reference.

55. The residents are "qualified individuals with disabilities" within the meaning of the ADA, 42 U.S.C. §§ 12102 and 12131(2) and 28 C.F.R. § 35.104.

56. Defendant City of Fort Worth is a public entity within the meaning of the ADA,

42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104.

57. The Department of Justice is the federal agency responsible for administering and enforcing Title II of the ADA, 42 U.S.C. §§ 12131-12134 and 28 C.F.R. Part 35, and is authorized to bring this action under 42 U.S.C. §§ 2000d-1 and 12133, and 29 U.S.C. § 794(a)(2). The Attorney General has commenced this action based on reasonable cause to believe that a person or group of persons has been discriminated against and that such discrimination raises issues of general public importance. 42 U.S.C. § 12133. The United States seeks declaratory and injunctive relief and compensatory damages against the City.

58. The United States has attempted informal resolution of this matter and has exercised good faith concerted efforts to seek the City of Fort Worth's voluntary compliance with the ADA, but the City refuses to come into compliance with the law. All conditions precedent to the filing of this Complaint have occurred or been performed.

59. Defendant City of Fort Worth's actions described above:

a. constitute discrimination in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. Part 35;

b. exclude individuals with disabilities from participation in and deny them the benefits of the services, programs, or activities of a public entity on the basis of disability, in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. § 35.130(a);

c. otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service, in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. § 35.130(b)(1)(vii); and

d. fail to make reasonable modifications in policies, practices, or procedures necessary to avoid discrimination on the basis of disability, in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. § 35.130(b)(7).

60. The residents of Ebby's Place, Ben Patterson, and Ebby's Place's prospective residents are aggrieved persons under the ADA. 42 U.S.C. § 12203(c).

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

a. Declaring that the Defendant's actions violate the Fair Housing Act and the Americans with Disabilities Act;

b. Enjoining the Defendant, its officers, employees, agents, successors and all other persons in active concert or participation with it, from enforcing the City of Fort Worth's zoning ordinance in a manner that discriminates because of disability in violation of the Fair Housing Act and the Americans with Disabilities Act;

c. Ordering the Defendant to take all affirmative steps to ensure its compliance with the Fair Housing Act and Americans with Disabilities Act, including steps necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate to the extent practicable the effects of its unlawful housing practices as described herein;

d. Ordering the Defendant to take all affirmative steps to restore, as nearly as practicable, the victims of the Defendant's unlawful practices to the position they would have been in but for the Defendant's discriminatory conduct;

e. Awarding monetary damages, pursuant to the FHA, 42 U.S.C. § 3614(d)(1)(B), and the ADA, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35 to all aggrieved persons; and

f. Assessing a civil penalty against the Defendant in an amount authorized

by 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest.

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

Dated: April 22, 2015

Respectfully submitted,

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Certificate of Service

On April 22, 2015, I electronically submitted the foregoing document with the clerk of court for the United States District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

s/Tamica H. Daniel