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U.S. DISTRICT COURT
INDIANA POLICE CIVIL

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SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 THE CITY OF COLUMBUS, INDIANA,)
)
 Defendant.)

Civil Action No.

1:09-cv-1225 LJM-DML

CIVIL COMPLAINT

1. This action is brought by the United States of America to enforce the provisions of the Fair Housing Act, as amended, 42 U.S.C. § 3601 et seq. ("the Act").
2. This Court has jurisdiction over this action under 28 U.S.C. § 1345 and 42 U.S.C. § 3614(a) and (b).
3. Defendant City of Columbus, Indiana ("the City") is a political subdivision of the State of Indiana, located in Bartholomew County within the Southern District of Indiana.
4. Venue is proper because the claims alleged herein arose in the Southern District of Indiana.
5. The City of Columbus, through its Board of Zoning Appeals ("BZA"), exercises zoning and land use authority over land within its boundaries. The City of Columbus Zoning Ordinance contains the City's zoning and land use regulations, which

are administered, together with the Zoning Ordinance for Bartholomew County, by the Columbus/Bartholomew County Planning Department ("Planning Department").

6. Addiction Counseling Treatment Services d/b/a Bethesda House ("Bethesda House") is a not-for-profit corporation whose principal place of business is in the City of Columbus. At all times relevant to the discriminatory conduct alleged in this Complaint, Bethesda House was owned and managed by Mike Harris and Brenda Harris. Brenda Harris currently operates and manages Bethesda House.

7. The property located at 423/425 Lafayette Avenue in Columbus, Indiana ("the subject property") is located in a Restricted Buffer district ("RB District"). The Zoning Ordinance allows various non-residential uses in this district as of right, including day care centers, schools and other educational institutions, doctor's offices and other non-retail businesses, and churches, community centers, libraries and other similar establishments. In addition, there are a number of single-family and multi-family structures in the RB District that the City treats as legal nonconforming uses.

8. The subject property has three separate living units on the first and second floor. The BZA has determined that the subject property is a multi-family residence for at least three families and that it could continue to be used as a multi-family residence consistent with the Zoning Ordinance. Pursuant to the Zoning Ordinance's definition of family, which defines the term to include up to five unrelated persons, fifteen unrelated persons could reside in the subject property consistent with the Zoning Ordinance.

9. The Chief Building Inspector for the City has determined that under the City's Building and Occupancy Code, up to eleven persons may reside in the subject property.

10. The subject property is a dwelling within the meaning of 42 U.S.C. § 3602(b).

11. At all times relevant to the complaint, the subject property has been owned by the Clementine Charitable Trust (“the Trust”).

12. The Trust has agreed to lease the subject property to Bethesda House for the purpose of operating a recovery home for persons who are recovering from drug or alcohol addiction. Bethesda House intends to limit occupancy to persons who are recovering from drug or alcohol addiction and are not currently using illegal drugs or alcohol, and to subject residents and prospective residents to testing for controlled substances.

13. The prospective residents of the recovery home at the subject property will be substantially limited in one or more major life activities, will be perceived as being substantially limited in one ore more major life activities, and/or will have a record of being substantially limited in one or more major life activities. The prospective residents will therefore be “handicapped” within the meaning of 42 U.S.C. § 3602(h).

The 2005 Application

14. In late 2004, Bethesda House informed staff with the City of Columbus/Bartholomew County Planning Department that Bethesda House intended to operate a recovery home at the subject property and sought guidance as to the process for obtaining any necessary approval. The staff informed Bethesda House that it should seek a special use variance to permit the subject property to be used as a residence for persons recovering from drug or alcohol addiction.

15. On or about January 19, 2005, Bethesda House filed a Special Use Application with the office of the Planning Department, seeking permission to operate an addictive behavior recovery home at the subject property.

16. The Zoning Ordinance permits the Board of Zoning Appeals ("BZA") to grant a special use variance provided specified criteria are met.

17. The BZA held hearings on Bethesda House's application on February 22, 2005 and March 29, 2005. Bethesda House explained its plan to operate a home for persons recovering from drug and alcohol addiction and explained how Bethesda House would be similar to homes that had operated for a number of years in Bloomington, Indiana. Bethesda House also explained steps it had agreed to take to address concerns expressed by some members of the community, including plans to limit visitations and to allow members of the community who were not affiliated with Bethesda House to have input into who was accepted for residency.

18. At the hearings, community members and one or more BZA members made statements indicating their opposition to persons recovering from drug or alcohol addiction living at the subject property.

19. On March 29, 2005, the Board of Zoning Appeals denied the Bethesda House special use application to operate an addictive recovery home by a vote of 4 to 1. The reasons stated by the BZA for denying the application were pretextual and not supported by the record. In fact, the BZA denied the application because the prospective residents would be persons recovering from drug or alcohol addiction.

The 2007 Application

20. On or about April 10, 2007, Bethesda House filed a second Special Use Application with the office of the Planning Department. In a letter accompanying the Use Variance Application, Bethesda House indicated that it was also seeking a reasonable accommodation pursuant to the Fair Housing Amendments Act, 42 U.S.C. § 3604(f), and Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134 (“the ADA”).

21. The Planning Department staff issued a report concluding that Bethesda House met all criteria for a use variance and recommending that the BZA grant the application. The staff report was presented to the BZA and entered into the record.

22. The BZA held hearings on the Application on June 26, 2007 and July 24, 2007. Bethesda House again explained its proposal to operate a group home for persons recovering from drug and alcohol addiction and the steps it had taken to address some of the concerns previously expressed by community members. Bethesda House also introduced a statement by the City’s Chief Code Enforcement Officer concluding that up to eleven persons could reside in the subject property and explained that it would abide by that restriction.

23. At the hearings, community members and one or more BZA members made statements indicating their opposition to persons recovering from drug or alcohol addiction living at the subject property.

24. On July 24, 2007, the Board of Zoning Appeals denied the Bethesda House special use application to operate an addictive recovery home by a vote of 4 to 1. The reasons stated by the BZA for denying the application were pretextual and not

supported by the record. In fact, the BZA denied the application because the prospective residents would be persons recovering from drug or alcohol addiction.

Bethesda House's HUD Complaint

25. On or about June 16, 2005, Bethesda House timely filed a complaint with the Department of Housing and Urban Development ("HUD"), pursuant to the Fair Housing Act, as amended, 42 U.S.C. § 3610(a), alleging discrimination on the basis of disability in the City's application of its zoning code.

26. Pursuant to 42 U.S.C. § 3610(g)(2)(C), the Secretary determined that the matter involved the legality of a local zoning or other land use law or ordinance and, on or about February 2, 2005, referred the matter to the Attorney General for appropriate action under 42 U.S.C. § 3614(b)(1).

27. The Department of Justice notified the City of Columbus of the HUD referral but informed the City that it would hold its investigation in abeyance pending the disposition of the second Bethesda House Special Use Application.

28. On or about May 1, 2008, Bethesda House filed an amended complaint with HUD pursuant to the Fair Housing Act, as amended, 42 U.S.C. § 3610(a), alleging discrimination on the basis of disability in the application of the City's housing code. The HUD Secretary referred that complaint to the United States, pursuant to 42 U.S.C. § 3610(g)(2)(C), on May 20, 2008.

Count I

29. Defendant, through the actions described above in paragraphs 1-28, has:

(a) discriminated in the rental or otherwise made unavailable or denied a dwelling to renters and potential renters, because of a handicap of such renters or prospective renters, in violation of 42 U.S.C. § 3604(f)(1);

(b) discriminated against persons in the terms, conditions, or privileges of the rental of a dwelling because of the handicaps of persons who are likely to reside in that dwelling in violation of 42 U.S.C. § 3604(f)(2); and

(c) refused to make one or more reasonable accommodations in rules, policies, practices, or service, which are necessary to afford persons with handicaps an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).

30. Defendant, through the actions described above in paragraphs 1-28, has engaged in one or more discriminatory housing practices within the meaning of 42 U.S.C. § 3602(f) and 42 U.S.C. § 3614(b).

31. Bethesda House is an aggrieved person as defined in 42 U.S.C. § 3602(i), and has suffered damages as a result of Defendant's conduct.

32. Defendant's conduct, as described above in paragraphs 1-28, was intentional, willful, and taken in reckless disregard for the rights of others.

Count II

33. The United States re-alleges paragraphs 1-32, above.

34. The City's conduct, as described in paragraphs 1-32, constitutes a denial to a group of persons of rights granted by the Fair Housing Act that raises an issue of general public importance under 42 U.S.C. § 3614(a).

35. Bethesda House, the prospective residents of Bethesda House, and persons associated with them, are or may be aggrieved persons as defined in 42 U.S.C. § 3602(i), and have or may have suffered damages as a result of Defendant's conduct.

Prayer for Relief

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

1. Declares that the actions of the City of Columbus described herein constitute a violation of the Fair Housing Act;
2. Enjoins the City of Columbus, its agents, employees, assigns, successors and all other persons in active concert or participation with it, from violating the Fair Housing Act by discriminating on the basis of disability;
3. Enjoins the City of Columbus, its agents, employees, assigns, successors and all other persons in active concert or participation with it, from refusing to permit the operation of the Bethesda House dwelling located at 423/425 Lafayette Avenue;
4. Requires such action by the City of Columbus as may be necessary to restore all persons aggrieved by the City's discriminatory housing practices to the position they would have occupied but for such discriminatory conduct;
5. Awards monetary damages to each person aggrieved by the City of Columbus's discriminatory housing practices, pursuant to 42 U.S.C. § 3614(d)(1)(B); and
6. Assesses a civil penalty against the City of Columbus to vindicate the public interest, in an amount of money authorized by 42 U.S.C. § 3614(d)(1)(C).

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

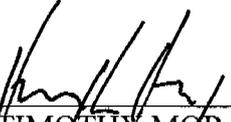
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