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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
111 EAST 88<sup>TH</sup> PARTNERS,  
  
Defendant.

16 Civ. \_\_\_\_\_

**COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff, the United States of America, by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, alleges as follows:

**PRELIMINARY STATEMENT**

1. This is a civil action for declaratory relief, injunctive relief, and monetary damages under the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.* (the “Act”), brought by the United States of America on behalf of Gregory Reich (the “Complainant”) to redress discrimination on the basis of disability.

2. As alleged more fully below, defendant 111 East 88<sup>th</sup> Partners (“Defendant”), located in Manhattan, New York, is the owner and operator of a 61-unit condominium building located at 111 East 88<sup>th</sup> Street, New York, New York 10128. Defendant has unlawfully discriminated against Complainant based on his disability by denying his request for a

reasonable accommodation and interfering, coercing, or intimidating Complainant in his exercise or enjoyment of rights protected by the Act.

3. Defendant's conduct violates the Act and should be declared unlawful and enjoined, and appropriate monetary damages should be awarded.

#### **JURISDICTION AND VENUE**

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

5. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) because the events or omissions giving rise to the United States' claims occurred there, and the property that is the subject of this suit is located there.

#### **PARTIES AND PROPERTY**

6. The United States of America is the plaintiff in this action.

7. Defendant is a partnership that owns and operates a 61-unit condominium building located at 111 East 88<sup>th</sup> Street, New York, New York 10128 (the "Property"). Defendant maintains a principal place of business at 242 West 49th Street, New York, New York 10019.

8. Complainant Gregory Reich is the property lessee of an apartment owned by Defendant in the Property.

9. Complainant's apartment in the Property is a "dwelling," as defined by the Act, 42 U.S.C. § 3602(b).

10. Complainant is an "aggrieved person" as that term is defined in the Act, 42 U.S.C. § 3602(i), and has suffered damages as a result of Defendant's conduct.

### **PROCEDURAL BACKGROUND**

11. On July 27, 2015, Complainant timely filed a verified complaint with the U.S. Department of Housing and Urban Development (“HUD”) alleging that (1) Defendant denied him reasonable accommodation; (2) Defendant denied him reasonable accommodation in retaliation for a previous complaint that Complainant had filed with HUD; and (3) Defendant sought a burdensome and unnecessary quantity of medical information in connection with his request for a reasonable accommodation to intimidate him and interfere with his rights under the Act.

12. Pursuant to the requirements of 42 U.S.C. § 3610(a) and (b), the Secretary of HUD (the “Secretary”) conducted and completed an investigation of the administrative complaint.

13. On September 21, 2016, the Secretary issued a Charge of Discrimination pursuant to 42 U.S.C. § 3610(g), charging Defendant with engaging in discriminatory housing practices in violation of the Act.

14. On October 6, 2016, Defendant timely elected to have the charge resolved in a federal civil action pursuant to 42 U.S.C. § 3612(a). Following this election, the Secretary authorized the Attorney General to file this action on Complainant’s behalf, pursuant to 42 U.S.C. § 3612(o)(1).

### **FACTUAL ALLEGATIONS**

15. Complainant Gregory Reich suffers from depression and Other Specified Personality Disorder. He has also long suffered from chronic kidney disease, in addition to a litany of medical problems that include diabetes requiring insulin and coronary artery disease. In or about March 2015, he was diagnosed with End Stage Renal Disease, requiring dialysis and,

potentially, a kidney transplant. Complainant's new diagnosis has led to a significant deterioration of his mental health and a reduced capacity to care for himself. Complainant is a person with a disability as defined by the Act, 42 U.S.C. § 3602(h).

16. Complainant's father entered into a written lease dated August 9, 1960 with Defendant's predecessor-in-interest. Article 35 and Rule and Regulation No. 8 of the lease prohibit tenants from keeping and/or harboring a dog without express written permission of Defendant. Paragraph 19 of the lease requires the tenant to pay attorney's fees incurred by Defendant for prosecuting or defending legal actions pertaining to the tenancy.

17. Complainant's parents vacated the subject apartment in 1980, and Complainant succeeded his parents as the statutory tenant. Complainant has lived in the subject apartment his entire life. The apartment is subject to the New York City Rent and Rehabilitation Law, or rent control. Although the Property converted to a condominium in 1987, pursuant to Article 9-B of the New York Real Property Law, Complainant was not required to, and did not, purchase his unit, instead continuing as a rent controlled tenant subject to the terms of the original 1960 lease.

**I. Complainant's Previous Request for Reasonable Accommodation and Related Proceedings**

18. In 1997, Complainant adopted a dog, Orion. Complainant did not seek a reasonable accommodation from Defendant at the time. In 1998, Defendant commenced an eviction case against Complainant. The eviction case was dismissed pursuant to New York City's 3 month pet rule, which allows a tenant to keep a pet in violation of a lease provision if the landlord fails to take action within 3 months of learning of a pet's presence in the apartment.

19. Orion passed away in June 2006. Shortly thereafter, in September 2006, Complainant adopted another dog, named Maddy. Maddy is a medium-sized mixed breed dog that Complainant rescued from an animal shelter.

20. On September 12, 2006, Defendant served Complainant with a 15-day notice to cure the violation of the no-pet clause of the lease.

21. On September 30, 2006, Defendant served Complainant with a Notice of Termination to terminate his tenancy effective October 31, 2006. In response, on October 24, 2006, Complainant wrote to Defendant requesting that Maddy be allowed to remain in the apartment as a reasonable accommodation. On October 31, 2006, Defendant served Complainant with a Holdover Notice of Petition in New York City Housing Court, dated November 1, 2006.

22. On November 20, 2006, Complainant filed a discrimination complaint with HUD, which was referred by HUD to the New York State Division of Human Rights (“NYSDHR”) for investigation. In March 2007, NYSDHR issued a determination of probable cause and scheduled a hearing. Defendant elected to have the complaint adjudicated by the Supreme Court of New York. NYSDHR therefore commenced litigation in the Supreme Court of New York, New York County, Index Number 402894/2007, alleging that Defendant unlawfully discriminated against Complainant. Upon motion by Complainant, the Housing Court eviction action was stayed pending the outcome of the NYSDHR litigation.

23. On September 5, 2014, the Supreme Court of New York granted a motion *in limine* filed by Defendant in the NYSDHR litigation precluding Complainant from introducing evidence that he was currently impaired as a result of his previous psychological conditions, based on findings by Complainant’s therapist that, as of March 2014, Complainant no longer met the criteria for his previous diagnoses of Dysthymic Disorder or Schizoid Personality Disorder. On October 29, 2014, the Supreme Court of New York dismissed the NYSDHR action without prejudice based on the September 5, 2014 decision.

24. In February 2015, Defendant filed a motion in the Housing Court eviction proceeding, seeking summary judgment of possession, issuance of a warrant of eviction, and a money judgment for market-rate rent for Complainant's use and occupancy of the apartment during the eviction proceeding, in the amount of \$304,850 plus interest, and attorney's fees. On February 26, 2016, the Housing Court denied the motion for summary judgment and further stayed the Housing Court proceeding pending the outcome of Complainant's July 2015 HUD complaint.

25. The Housing Court eviction proceeding remains stayed. Prior to HUD's issuance of the Charge of Discrimination, Defendant filed a motion in the Housing Court to lift the stay, but the Housing Court has not acted on that motion.

## **II. Complainant's Instant Request for Reasonable Accommodation**

26. On June 18, 2015, Complainant, through his counsel, requested a reasonable accommodation to keep an emotional support dog in his apartment based upon updated medical information provided by his physician and therapist. Complainant provided Defendant with a letter dated May 16, 2015 from his treating physician and a letter dated June 8, 2015 from his therapist.

27. Complainant's physician stated in her May 16, 2015 letter that Complainant's existing diagnosis of chronic kidney disease had recently been revised to End-Stage Renal Disease, requiring hemodialysis or peritoneal dialysis, and, potentially, a kidney transplant to avoid an otherwise imminent death.

28. Complainant's therapist stated in his June 8, 2015 letter that this new physical illness, diagnosed in March 2015, had a serious impact on Complainant's mental and emotional state, leading to new diagnoses of Other Specified Depressive Disorder with melancholic

features, and Other Specified Personality Disorder. Living with Maddy ameliorated Complainant's depression, which consequently increased his capacity to care for himself and manage the symptoms of his physical illness.

29. On June 28, 2015, Defendant requested that Complainant provide the following in connection with his request for an accommodation: (1) "Copies of all of . . . [Complainant's therapist's] session notes relating to his session with [Complainant] for the period commencing May 1, 2014 to the present," including typed copies of any handwritten notes; and (2) "[c]opies of [Complainant's] medical records and medical history."

30. Defendant also stated that it reserved the right to have Complainant examined by a physician it had selected, and to require Complainant, his physician, and his therapist to appear to answer questions under oath relating to Complainant's disability and accommodation request.

31. Believing Defendant's requests for medical information were so burdensome as to constitute a denial of the reasonable accommodation request, Complainant filed his complaint with HUD.

## **FIRST CLAIM FOR RELIEF**

### **Denial of Reasonable Accommodation under the Act**

32. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 31 of this Complaint as if fully set forth in this paragraph.

33. Defendant violated the Fair Housing Act, 42 U.S.C. § 3604(f)(2), by discriminating against Complainant in the terms, conditions, and privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of disability.

34. Defendant violated the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(B), by 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 a dwelling.

35. The discriminatory actions of Defendant were intentional, willful, and taken in disregard for Complainant's rights.

## **SECOND CLAIM FOR RELIEF**

### **Interference, Coercion, or Intimidation under the Act**

36. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 31 of this Complaint as if fully set forth in this paragraph.

37. Defendant violated the Fair Housing Act, 42 U.S.C. § 3617, by coercing, intimidating, threatening, or interfering with Complainant in the exercise or enjoyment of, or on account of Complainant having exercised or enjoyed a right granted or protected by Section 3604 of the Act.

WHEREFORE, Plaintiff requests that the Court enter judgment:

1. Declaring that Defendant's policies and practices as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*;

2. Enjoining Defendant, its officers, employees, agents, successors, and all other persons in active concert or participation with it, from:

(a) discriminating 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 a dwelling, because of disability, in violation of 42 U.S.C. § 3604(f)(2);

- (b) failing or refusing to make reasonable accommodations as required by 42 U.S.C. §§ 3604(f)(3)(B);
- (c) failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, aggrieved persons to the position they would have been in but for the discriminatory conduct; and
- (d) coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of any person having exercised or enjoyed, or on account of any person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by Section 3604 of the Fair Housing Act;

3. Awarding monetary damages to Complainant for injuries caused by Defendant's discriminatory conduct, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1); and

5. Granting such further relief as this Court may deem just and proper.

The United States requests trial by jury.

Dated: New York, New York  
December 7, 2016

Respectfully submitted,

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Southern District of New York

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