

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)	Case: 5:06-cv-12087
)	Assigned To: O'Meara, John Corbett
Plaintiff,)	Referral Judge: Morgan, Virginia M
)	Filed: 05-08-2006 At 08:52 AM
v.)	CMP USA V. FAIRWAYS TRAILS, ET AL (
)	TAM)
)	
FAIRWAY TRAILS LIMITED, L.P.,)	<u>COMPLAINT</u>
BENCHMARK MANAGEMENT CORP.,)	
BENCHMARK MICHIGAN PROPERTIES,)	HON.
INC., and NICOLE MORBACH,)	
)	
Defendants.)	
)	

The United States of America alleges:

INTRODUCTION

1. This action is brought by the United States to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (Fair Housing Act), 42 U.S.C. §§ 3601-3619.

2. The United States brings this action on behalf of Harry Tyus, pursuant to Section 812(o) of the Fair Housing Act, 42 U.S.C. § 3612(o).

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o).

4. Venue is proper in the Southern Division of the Eastern District of Michigan, because the events giving rise to this claim occurred in Washtenaw County, Michigan, which is in the Southern Division. 28 U.S.C. § 1391(b)(2).

THE DEFENDANTS

5. At all times relevant to the allegations contained herein, Defendant Fairway Trails Limited, L.P., was the owner of Fairway Trails Apartments; Defendant Benchmark Management Corporation was the management company for Fairway Trails Apartments; Defendant Benchmark Michigan Properties, Inc. was the general partner of Fairways Trails Limited, L.P.; and Defendant Nicole Morbach was employed by Benchmark Management Corporation as the property manager at Fairway Trails Apartments ("Defendants").

6. Fairway Trails Apartments is a 231-unit apartment complex located at 130 South Hewitt Road, Ypsilanti, Michigan 48197. The apartments at Fairway Trails Apartments are dwellings within the meaning of Section 802(b) of the Fair Housing Act, as amended, 42 U.S.C. § 3602(b).

ALLEGATIONS

7. Complainant Harry Tyus (Mr. Tyus) is an individual with a "handicap" as defined by the Fair Housing Act, 42 U.S.C. § 3602(h). At all relevant times, Mr. Tyus had congestive heart failure, diabetes and high blood pressure. He was prescribed oxygen to assist with breathing, and he was substantially limited in the major life activity of walking. At all relevant times, Mr. Tyus received monthly Social Security Disability Income payments from the Social Security Administration.

8. On or around February 3, 2004, Mr. Tyus's pastor, James E. Hendricks, entered into a lease agreement with Fairway Trails, Ltd. ("Subject Property"), with Mr. Tyus listed as the resident for Apartment 101.

9. During the month of May 2004, Mr. Tyus made an oral request to pay his rent after he received his Social Security Disability check on the third Wednesday of each month. Mr. Tyus made this request, which he called a request for a reasonable accommodation, to Defendant Morbach. Within one week, Defendant Morbach informed Mr. Tyus that his request was denied.

10. During the month of June 2004, Mr. Tyus contacted the Fair Housing Center of Southeastern Michigan ("FHC") to seek their assistance. On June 30, 2004, the Executive Director of the FHC sent a letter to Defendant Morbach informing her that Mr. Tyus was a person with a disability and that the FHC was requesting that Defendants grant him a "reasonable accommodation" so that he could pay his rent on the 20th of each month without being assessed a late fee.

11. Defendants issued a Demand for Possession dated July 4, 2004, signed by Defendant Morbach on July 6, 2004, and notarized on July 21, 2004.

12. In a letter dated July 8, 2004, Defendants' attorney denied the Fair Housing Center's request that Defendants allow Mr. Tyus to pay his rent on the 20th of each month without being assessed a late fee.

13. Mr. Tyus obtained representation from Legal Services of Southeastern Michigan in the eviction matter, and on or about September 1, 2004, an attorney for Mr. Tyus filed an Answer, Affirmative Defenses and a Counterclaim alleging, *inter alia*, that Defendants violated the Fair Housing Act when they denied the request for a reasonable accommodation.

14. On October 6, 2004, a bench trial was held, and Washtenaw County Circuit Court Judge John B. Collins ruled in favor of Mr. Tyus. Judge Collins found that Mr. Tyus is a person with a disability, and he ordered Defendants to grant the request for a reasonable accommodation so that Mr. Tyus could pay his rent several days after receiving his Social Security Disability check each month. Judge Collins also ordered Defendants to waive the late fees they had charged Mr. Tyus in August and September 2004.

15. In a letter dated October 8, 2004, Defendants' attorney, who had represented Defendants at the court hearing two days earlier, informed Mr. Tyus that Defendants would not renew his lease when it expired on January 31, 2005.

16. On or about November 23, 2004, Mr. Tyus received a new lease for his Fairway Trails apartment, which he signed and returned to Defendants, thereby entering a lease that would run from February 1, 2005, through January 31, 2006.

17. On or about December 29, 2004, Defendants served on Mr. Tyus a Notice to Quit, which stated that he must move out of his

apartment by January 31, 2005 because his tenancy was being terminated as of that date.

18. In a letter dated January 10, 2005, Defendants' attorney informed Mr. Tyus that he had been provided the new lease in error, and that the Notice to Quit dated December 29, 2004 was still in effect.

19. On or about January 31, 2005, Mr. Tyus vacated his apartment at Fairway Trails Apartments pursuant to the Notice to Quit and the letter dated January 10, 2005.

THE ADMINISTRATIVE COMPLAINT

20. On or about April 18, 2005, Mr. Tyus filed a verified complaint of discrimination with the Department of Housing and Urban Development ("HUD") alleging that Defendant Nicole Morbach violated the Fair Housing Act by retaliating in violation of 42 U.S.C. § 3617. On January 31, 2006, the HUD complaint was amended to add Benchmark Management Corporation, Fairway Trails Limited, L.P., and Benchmark Michigan Properties, Inc. as respondents and to include an allegation under 42 U.S.C. § 3604(f)(1).

21. Pursuant to the requirements of 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD ("Secretary") conducted and completed an investigation of the complaint and engaged in conciliation efforts, which were unsuccessful.

22. Thereafter, the Secretary prepared a final investigative report based upon the information gathered during the investigation, and the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that there was reasonable cause to believe that discriminatory housing practices had occurred. HUD issued its Determination of Reasonable Cause on or about March 21, 2006.

23. HUD issued its Charge of Discrimination against the Defendants on or about March 21, 2006, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging Defendants with engaging in discriminatory housing practices, in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, et seq.

24. On or about April 7, 2006, Mr. Tyus made a timely election to have the claims resolved in federal court, pursuant to 42 U.S.C. § 3612(a).

25. Subsequently, on or about April 10, 2006, the Secretary, through the Regional Counsel of HUD for Region V, authorized the Attorney General to file this action on behalf of the Complainant, pursuant to 42 U.S.C. § 3612(o)(1).

VIOLATIONS OF LAW

26. Defendants' conduct, described in paragraphs 7 through 19 above, constitutes coercing, intimidating, threatening, or interfering with any 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, any right granted or protected by §§ 3603-3606, in violation of 42 U.S.C. § 3617.

27. As a result of Defendants' conduct, Complainant Harry Tyus has suffered damages and is an aggrieved person within the meaning of 42 U.S.C. § 3602(i).

28. The discriminatory actions of Defendants were intentional, willful, or taken in disregard for the rights of the Complainant.

PRAYER FOR RELIEF

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

1. Declares that the discriminatory housing practices of Defendants as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.*;

2. Enjoins Defendants, their agents, employees, and successors, and all other persons in active concert or participation with them from:

a) coercing, intimidating, threatening or interfering with any person in the exercise or enjoyment of rights protected by the Fair Housing Act; and

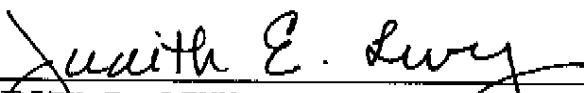
b) failing to put Harry Tyus in the position he would have been in if Defendants had not interfered with his rights under the Fair Housing Act.

3. Awards monetary damages to Complainant Harry Tyus 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,
STEPHEN J. MURPHY
United States Attorney

By:



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The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed: Wayne

(c) Attorneys (Name, Address and Telephone Number)
 JUDITH E. LEVY
 ASSISTANT U.S. ATTORNEY
 211 W. FORT STREET, STE. 2001
 DETROIT, MI 48226

DEFENDANTS

FAIRWAY TRAILS, LIMITED, L.P.,
 BENCHMARK MGT. CORP., BENCHMARK MICHIGAN
 PROPERTIES, INC., AND NICOLE MORBACH
 County of Residence of First Listed

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
 PHILLIP J. NEUMAN, ESQ.
 TAUBMAN, NADIS & GOROSH, P.C.
 29201 TELEGRAPH ROAD, STE. 510
 SOUTHFIELD, MI 48034

3663

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PLA	DEF		PLA	DEF
Cit			Case: 5:06-cv-12087	1	<input type="checkbox"/>
Cit			Assigned To: O'Meara, John Corbett		
			Referral Judge: Morgan, Virginia M	5	<input type="checkbox"/>
			Filed: 05-08-2006 At 08:52 AM		
Cit			CMP USA V. FAIRWAYS TRAILS, ET AL (TAM)	5	<input type="checkbox"/>

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 161 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21: 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 167 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

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4
3

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

42 U.S.C. §§ 3601 — 3619

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

5/8/2006

x Judith E. Levy

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes:
