UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
CIVIL NO. _____

United States of America, Plaintiff, v. Daryl L. Bushee, Defendant.	)))))))))	**COMPLAINT**

The United States of America, for its Complaint, states and alleges as follows:

INTRODUCTION

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

2. The United States brings this action on behalf of Michelle Swib and her two minor children, A.W. and I.W., pursuant to 42 U.S.C. § 3612(o).

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o).

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 42 U.S.C. § 3612(o), because the actions giving rise to this action occurred in the District of Minnesota and because Defendant lives and does business in this District.

PARTIES

5. Plaintiff is the United States of America ("United States").

6. At all relevant times, Defendant Daryl L. Bushee ("Mr. Bushee") has owned two six-unit apartment buildings located at 1019 and 1023 Fourth Avenue, NW, East Grand Forks, Minnesota 56721 ("the Apartments").

7. At all relevant times, Defendant Mr. Bushee has been the manager for the Apartments. He resides at 19415 430th Avenue, S., East Grand Forks, MN 56721.

8. The complainant, Michelle Swib, is an individual currently residing at 304 Fifth Avenue, NW, Roseau, MN 56751. Ms. Swib is the mother of two minor children, A.W. and I.W., who reside with her. A.W. has mental disabilities and requires the assistance of a service animal to help manage her conditions.

FACTUAL ALLEGATIONS

9. The subject unit in the Apartments became available when the existing tenants provided the Defendant with a notice of intent to vacate in July 2007.

10. The Defendant ran advertisements in the Grand Forks Herald from July 20, 2007 until July 26, 2007, listing the subject unit for rent as follows: "3 Bed, 2 bath, laundry, dishwasher, air, private entrance. No dogs. $625."

11. On or about July 26, 2007, Ms. Swib called the phone number listed in the advertisement and spoke to the Defendant. Mr. Bushee told Ms. Swib that the unit was available and that he accepted Section 8 vouchers. However, when Ms. Swib mentioned that she had a service dog for her disabled daughter, Mr. Bushee stated that he had put

"no dogs" in the advertisement for a reason. Ms. Swib tried to explain what a service animal was, that it was akin to a seeing-eye dog for the blind and offered to show Mr. Bushee a doctor's note for the dog, but Mr. Bushee responded that it did not matter, and he did not have to accept the dog. When Ms. Swib explained that federal law required landlords to accept service animals, Mr. Bushee stated that he knew that he did not have to accept dogs because he had been through such a request before with a tenant and had won a lawsuit.

12. At no time did the Defendant ask for additional information about Ms. Swib's daughter's need for a service animal, in spite of her offer of a doctor's statement explaining her daughter's need of a service animal. Instead, the Defendant indicated that he would not accept dogs, as outlined in the advertisement.

13. The subject unit remained available until August 2007, at which time the then-existing tenants rescinded their notice of intent to vacate.

14. On or about September 26, 2007, Ms. Swib filed a timely complaint with the United States Department of Housing and Urban Development ("HUD"), pursuant to the Fair Housing Act, 42 U.S.C. § 3601, *et seq.* Ms. Swib alleged that she and her children were injured by the discriminatory acts of Defendant when she was denied the opportunity to view or rent the subject unit based on Defendant's "no dog" policy. In addition, Ms. Swib alleged that she and her children were denied a reasonable accommodation to such policy and that Defendant's actions expressed a discriminatory preference against renters with disabilities who use service animals.

15. 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, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause exists to believe that discriminatory housing practices occurred.

16. On December 29, 2008, HUD issued a Charge of Discrimination under 42 U.S.C. § 3610(g)(2)(A), charging Defendant with engaging in discrimination in violation of the Fair Housing Act.

17. On January 19, 2009, Defendant elected, pursuant to 42 U.S.C. § 3612(a), to have the claims asserted in the Charge of Discrimination resolved in a civil action under 42 U.S.C. § 3612(o).

18. On January 21, 2009, the Administrative Law Judge issued a Notice of Election and Judicial Determination and terminated the administrative proceedings regarding Ms. Swib's complaint.

19. Thereafter, the HUD Secretary authorized the Attorney General to commence a civil action pursuant to 42 U.S.C. § 3612(o).

FAIR HOUSING CLAIMS

20. Through the actions described above, the Defendant has:

(a) discriminated in the rental, or otherwise made unavailable or denied, a dwelling to any renter because of a disability of a person intending to reside in that dwelling after it is so rented, in violation of 42 U.S.C. § 3604(f)(1)(B);

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

(c) made statements with respect to the rental of a dwelling that indicate a preference, limitation, or discrimination based on disability, or an intention to make any such preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c).

21. As a result of the Defendant's conduct, Ms. Swib and her two minor children are aggrieved persons, as defined in 42 U.S.C. § 3602(i), and have suffered injuries.

22. Defendant's discriminatory actions were intentional, willful, and taken in disregard of the rights of Ms. Swib and her two minor children.

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

1. Declaring that Defendant's policies and practices, as alleged in this Complaint, violate the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*;

2. Enjoining Defendant, his officers, employees, agents, successors, and all other persons in active concert or participation with him, from discriminating on account of disability against any person in any aspect of the rental of dwellings; and

3. Awarding monetary damages to Michelle Swib and her two minor children, 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.

Dated: February 18, 2009

Respectfully submitted,

FRANK J. MAGILL, JR.
United States Attorney

s/ Ana H. Voss

BY: ANA H. VOSS
Assistant U.S. Attorney
Attorney ID Number 483656
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5600
ana.voss@usdoj.gov

Attorneys for Plaintiff
United States of America