

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
FITCHBURG HOUSING AUTHORITY)
and ROBERT W. HILL, in his capacity)
as Executive Director of the Fitchburg)
Housing Authority,)
)
Defendants.)
_____)

CIVIL NO. 4:09-cv-40087

COMPLAINT

The United States of America alleges as follows:

NATURE OF ACTION

1. This action is brought by the United States to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 *et seq.* ("Fair Housing Act"). It is brought on behalf of Sally Wiesman pursuant to Section 812(o) of the Fair Housing Act, 42 U.S.C. § 3612(o), and pursuant to Section 814(a) of the Fair Housing Act, 42 U.S.C. § 3614(a).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 3612(o) and 3614(a). Venue is proper in this judicial district pursuant to 42 U.S.C. § 1391(b), because the events giving rise to this action occurred in this judicial district.

PARTIES

3. Defendant Fitchburg Housing Authority (“Authority”) operates public housing in the City of Fitchburg, Massachusetts. The Authority receives funding from the State of Massachusetts and federal funding from the United States Department of Housing and Urban Development. The Authority owns and operates public and subsidized housing, including the Daniels Heights housing development in Fitchburg, Massachusetts. At all times relevant to the complaint, Robert W. Hill was the Executive Director of the Housing Authority.

4. The units at Daniels Heights and the Authority’s other public housing sites are “dwellings” within the meaning of 42 U.S.C. § 3602(b).

5. Sally Wiesman is a forty-nine year old woman who has been diagnosed with multiple sclerosis, major depression, and a panic disorder. These conditions substantially limit Ms. Wiesman’s ability to sleep, work, and carry on other important activities. Ms. Wiesman is handicapped or disabled within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(h).

FACTUAL ALLEGATIONS

6. On or about October 31, 2006, Sally Wiesman filled out the Authority’s application for public housing. On the application, Ms. Wiesman requested “Elderly/Handicapped” housing and listed her disability as multiple sclerosis. On the income portion of the application, she listed her social security disability income.

7. On or about November 21, 2006, Ms. Wiesman signed a lease and moved into Apartment #4 at the Daniels Heights housing development.

8. In a letter dated May 24, 2006 to Roger Thout, the Authority’s Housing Manager, regarding damage to her unit, Ms. Wiesman stated that she had a “medically documented

'situational' panic disorder."

9. On or about June 15, 2007, Ms. Wiesman sent a letter to Mr. Thuot complaining about the actions of her downstairs neighbor. Among other things, Ms. Wiesman complained that her downstairs neighbor had been continuously slamming doors and having loud conversations with others, sometimes before 8:00 a.m. and after 8:00 p.m. Ms. Wiesman asked Mr. Thuot to ask her downstairs neighbor to "refrain from such disturbances."

10. On June 26, 2007, the Authority received a letter from Dr. John Aney, a psychiatrist, stating that Ms. Wiesman had been diagnosed with major depression and panic disorder, and that "[a]ny effort to reduce her overall level of environmental stress would be helpful in alleviating her condition."

11. On or about June 23, 2007, Ms. Wiesman sent another letter to Mr. Thuot which referenced her disabilities and stated, "Unfortunately, stress, physical or emotional (or both), cause an 'MS Relapse.'" She also enclosed an article from a local newspaper, dated February 15, 2007, which had been written about her struggle with multiple sclerosis.

12. On or about July 22, 2007, Ms. Wiesman sent a letter to Mr. Thuot again complaining that her downstairs neighbor was "hostile."

13. On or about August 20, 2007, Ms. Wiesman sent a letter to the Authority to document her previous complaints about her downstairs neighbor. On or about August 22, Ms. Wiesman sent another letter to the Authority to document additional harassment by her downstairs neighbor, which she identified as "bullying." She also complained that her downstairs neighbor was "talking very loudly."

14. On or about August 28, 2007, Dr. Carolina Ionete sent a letter to Mr. Thuot

explaining that Ms. Wiesman was a patient at the UMASS Memorial Multiple Sclerosis Center. The letter stated that “[d]ue to her condition, Sally has increased fatigue and weakness, bladder dysfunction, vision dysfunction, and sensory disturbance. She also suffers from depression and anxiety. . . . It is important for Sally to avoid stressful situations, as stress can exacerbate her depression, anxiety and neurologic symptoms.”

15. On or about October 1, 2007, Ms. Wiesman sent a note to Mr. Thuot asking him to ask her downstairs neighbor to “tone it down again.” She also complained that another downstairs neighbor was now participating in the noise and harassment. She also complained about the noise that her other downstairs neighbor’s grandchildren made when they came to visit.

16. On or about November 5, 2007, Ms. Wiesman sent a letter to Mr. Thuot asking for permission to move to another building at Daniels Heights. She stated, “I can no longer tolerate all the noise from the apartment below me.” She also complained about the intimidating behavior of her downstairs neighbors, stating, “I’m not well and cannot stand up for myself especially to bullying. It’s better to distant [sic] myself from their presence. Please let me know which apartment I can move into and when.”

17. Ms. Wiesman sent a follow-up letter on or about November 12, 2007 asking what was being done about the noise from the downstairs apartment and again stating that she needed to move to another apartment. She specifically requested Apartment #33. She stated, “I’d like to find some resolve before the snow. I’m VERY tired. I can’t rest due to the noise from apartment # 3 below me. I’m undergoing tests for cancer now in addition to having MS. Sleep is when the body repairs itself. Will you help me?” Upon information and belief, Apartment #33 was vacant

at the time Ms. Wiesman made her request.

18. On or about November 18, 2007, Ms. Wiesman sent a letter to the Authority again documenting her complaints against her neighbors. In this letter, she again mentioned her request for a transfer to another apartment.

19. On or about November 26, 2007, the Authority received Ms. Wiesman's transfer application. The application asked for the reason for the request and gave four possible options: (1) Apartment too small for household, (2) Apartment too big for household, (3) Medical reasons, and (4) Other (specify). Ms. Wiesman chose "other" and added "Noise disturbances 24/7 from neighbor's apartment." The written description of the reason for the transfer stated, "Noise disturbances deny me my lawful right to peace and to fully enjoy my apartment. 'Nuisance' legal requirements have been ignored by tenant and Fitchburg Housing Authority."

20. In a letter dated November 27, 2007, Bob Pacetti, Director of Operations for the Authority, denied Ms. Wiesman's request for a transfer, stating that she was not eligible under the Authority's transfer policy. The letter informed Ms. Wiesman that she was permitted to request a private conference or redetermination of the decision, and such a request must be in writing and delivered to the Executive Director no later than twenty days after the date of the denial.

21. The Authority's transfer policy states that a transfer "will be made under the following conditions *only* and at the discretion and convenience of the Authority to insure maximum utilization of units, maximum income and most expeditious use of maintenance staff." Under "Health," the following four conditions are listed:

(a) In the case where a tenant can no longer negotiate stairs, according to adequate

verification from a medical doctor, a tenant may be transferred from a 2nd floor apartment to a first floor one. (applies to Daniels Heights)

(b) In the case where a tenant becomes sufficiently disabled to require a specially designed apartment, according to adequate verification from a medical doctor, a tenant may be transferred from a standard apartment to a handicapped one.

(c) In the case where a tenant becomes disabled to the extent that he/she requires the supportive environment of a Congregate unit, according to both adequate verification from a medical doctor and approval by the M.A.T. team, a tenant may be transferred from a standard apartment to a Congregate one.

(d) In the case where a tenant's condition improves to the extent he/she no longer requires the supportive environment of a Congregate unit and requests a transfer after residence in the Congregate complex for six months, the tenant may be transferred from the Congregate section to a standard apartment.

22. On or about December 26, 2007, Ms. Wiesman wrote a letter to Mr. Pacetti stating, "Since I have documented anxiety impairment, which has worsened since living here, I should be granted a transfer. I can not be in 'good health' status as long as I am exposed to continuous anxiety-inducing 'unreasonable' noises and disruptions. . . . Good health refers to my MS being in remission. Following this letter of request, shall be a letter from my doctor." The letter asked for a transfer to Apartment #33 because it was "a ground level apartment with no other apartment below or above it."

23. On or about January 11, 2008, Dr. John Aney wrote a letter explaining that Ms. Wiesman's "conditions are adversely affected by stress, including exposure to loud noise. She

would clearly benefit from transfer to a quieter apartment in her complex.” Ms. Wiesman mailed the letter to the Authority.

24. At some point after her transfer request was denied, Ms. Wiesman called Mr. Pacetti, who told her that the matter was out of his hands and to contact Executive Director Hill. Ms. Wiesman called and left a message for Mr. Hill. On or about January 8, 2008, Ms. Wiesman wrote a letter to Executive Director Hill requesting a conference regarding the Authority’s denial of her transfer request. Mr. Hill did not respond to the telephone call or the letter.

25. On or about January 23, Ms. Wiesman wrote a letter asking Mr. Pacetti to mail her a copy of the “legal reasons” why the Authority denied her transfer. Mr. Pacetti did not respond to that letter.

26. On or about January 29, 2008, Ms. Wiesman gave her written thirty-day notice to vacate. She paid rent for the entire month of February and moved out on or about February 17. Mr. Thuot sent a letter, dated January 31, instructing Ms. Wiesman to leave the keys on the kitchen counter and inform him when she was fully moved out. Ms. Wiesman moved out because she was not granted a transfer to another apartment, and staying in her current apartment was causing her health to decline.

27. The Authority’s reasonable accommodation policy states: “The policy of the Fitchburg Housing Authority in making ‘Reasonable Accommodations’ for persons with disabilities is most commonly applied in the following situations: [1] to accommodate an applicant who has been offered a job or a current employee, by making the workplace accessible to and useable by that person; [2] to accommodate an applicant or tenant who requires modifications to an inaccessible dwelling unit; and [3] to make programs, services, activities,

non-housing facilities, and common spaces accessible and useable by person with disabilities.”

The policy further states that the Authority “may provide reasonable accommodations by making structural alterations to an existing facility or, if an equivalent result can be achieved, by other means such as by the employment of auxiliary aids or by the utilization of the FHA’s transfer policy.”

28. The Authority implements its reasonable accommodation and transfer policies in such a way to effectively preclude reasonable accommodations that involve a transfer for persons with disabilities other than mobility impairments, unless that person is transferring to or from a congregate living unit.

29. On March 12, 2009, Ms. Wiesman filed a timely complaint with the United States Department of Housing and Urban Development (“HUD”) alleging that Defendants discriminated against her on the basis of disability.

30. In addition to the HUD complaint, on April 8, 2009, Ms. Wiesman filed a complaint in the United States District Court for the District of Massachusetts alleging that Defendants discriminated against her on the basis of disability. No trial date has been set in that case.

31. 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 in the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that illegal discriminatory housing practices had occurred. Therefore, on March 11, 2009, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A),

charging the above named Defendants with engaging in discriminatory practices, in violation of 42 U.S.C. § 3604(f) of the Fair Housing Act.

32. On April 1, 2009, the Authority elected to have the claims asserted in the United States Department of Housing and Urban Development's Charge of Discrimination resolved in a civil action pursuant to 42 U.S.C. § 3612(a).

33. On April 1, 2009, the Chief Administrative Law Judge issued a Notice of Election of Judicial Determination and terminated the administrative proceeding on Ms. Wiesman's complaint.

34. Following this Notice of Election, the Secretary of the United States Department of Housing and Urban development authorized the Attorney General to commence a civil action, pursuant to 42 U.S.C. § 3612(o).

FIRST CLAIM FOR RELIEF

35. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-34, above.

36. Defendants, through the above-referenced actions, have:

- (a) Discriminated in the rental, or otherwise made unavailable or denied, a dwelling to Ms. Wiesman because of a disability, in violation of 42 U.S.C. § 3604(f)(1)(A);
- (b) Discriminated in the terms, conditions, or privileges of sale or rental of a dwelling, in violation of 42 U.S.C. § 3604(f)(2)(A); and
- (c) Refused to make reasonable accommodations in rules, policies, practices, or services, which were necessary to afford the Ms. Wiesman an equal

opportunity to use and enjoy a dwelling, in violation of
42 U.S.C. § 3604(f)(3)(A).

37. Ms. Wiesman is an “aggrieved person” within the meaning of 42 U.S.C. §3602(i).

38. As a result of the Defendants’ discriminatory conduct, Ms. Wiesman has suffered actual injury and damages.

39. The discriminatory actions of the Defendants were intentional, willful, and taken in disregard of the federally protected rights of Ms. Wiesman.

SECOND CLAIM FOR RELIEF

40. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1–39, above.

41. Defendants’ conduct described above constitutes:

- (a) A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, in violation of 42 U.S.C. § 3614(a); or
- (b) A denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, which raises an issue of general public importance, in violation of 42 U.S.C. § 3614(a).

42. In addition to Ms. Wiesman, there may be other victims of Defendants’ discriminatory actions and practices who are “aggrieved persons” as defined in 42 U.S.C. § 3602(i). These persons may have suffered actual injury and damages as a result of Defendants’ discriminatory conduct.

43. Defendants' actions were intentional, willful, and taken in disregard for the rights of others.


WHEREFORE, the United States of America prays for relief as follows:

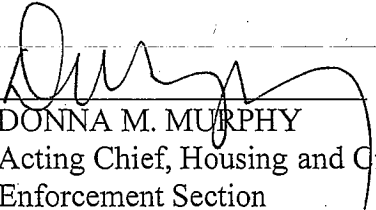
1. A declaration that the discriminatory conduct of Defendants as set forth above violates the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*;
2. A declaration that Defendants have engaged in a pattern or practice of discrimination in violation of the Fair Housing Act, or has denied rights under the Fair Housing Act to a group of persons raising an issue of general public importance;
3. An injunction against Defendants, their agents, employees, successors, and all other persons in active concert or participation with any of them from discriminating because of a disability, in violation of the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*; and
4. Awards of monetary damages to all persons harmed by Defendants' discriminatory practices, including Ms. Wiesman, pursuant to 42 U.S.C. §§ 3612(o)(3), 3613(c)(1), and 3614(d)(1)(B).
5. Assessment of a civil penalty against Defendants in an amount authorized by 42 U.S.C. § 3614(d)(1)(C) and 28 C.F.R. § 85.3(b)(3) to vindicate the public interest.


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

Dated: May 1, 2009

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