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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,	)	
	)	Civil No. 09-00123-E
Plaintiff,	)	
	)	<b>COMPLAINT</b>
v.	)	
	)	
SHELLEY MILTON AND EDWARD MILTON,	)	
	)	
Defendants.	)	

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**INTRODUCTION**

1. This action is brought by the United States to enforce the Fair Housing Act, 42 U.S.C. §§ 3601-3619.

2. The United States brings this action on behalf of Frank Tyler Atkinson (“Complainant”) and his minor children, B.A. and C.A., 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 District of Idaho, since the events giving rise to this claim occurred in Idaho Falls, Idaho. 28 U.S.C. § 1391(b)(2).

5. Unit #4 at 179 College Avenue, Idaho Falls, Idaho (“the Subject Property”) is a two-bedroom apartment on the second floor of a fourplex, which is part of an eight-unit apartment complex in the District of Idaho.

6. The Subject Property is a dwelling within the meaning of Section 802(b) of the Fair Housing Act, as amended, 42 U.S.C. §3602(b).

#### **DEFENDANTS**

7. At all times relevant to the allegations contained herein, Defendants Shelley Milton and Edward Milton owned and managed the Subject Property.

#### **THE ADMINISTRATIVE COMPLAINANTS**

8. Complainant Frank Tyler Atkinson is the parent and has joint custody of two minor children, B.A. and C.A.

9. Pursuant to a custody agreement, the minor children reside with Complainant two evenings each week and every other weekend, plus alternating holidays and two weeks of vacation.

#### **ALLEGATIONS**

10. In January 2008, Complainant was searching for housing in Idaho Falls, where his former spouse had relocated with their children. Complainant had left his job in Boise to move closer to his children.

11. On or about January 11, 2008, Complainant found an advertisement for a two-bedroom apartment for rent on PostRegister.com, the online edition of the local newspaper, the Idaho Falls Post Register. The advertised monthly rent was \$340.

12. On January 11, 2008, Complainant called the telephone number listed in the advertisement to inquire about renting the apartment and spoke to Defendant Shelley Milton, who identified herself to Complainant as “Shelley.” Ms. Milton told Complainant that she had a two-bedroom, upstairs apartment available to rent for \$340 per month. Complainant told Defendant Shelley Milton that he was moving to Idaho Falls and wanted to pay a few months’ rent in advance, as he did not yet have a job in the area. Ms. Milton seemed pleased with the

prospect of receiving rent in advance. Ms. Milton gave Complainant the address of the property and invited him to view the unit.

13. Defendant Shelley Milton then asked Complainant if he would be the only occupant of the unit. Complainant replied that his two children, who were ages 3 and 1, stayed with him every other weekend.

14. Upon learning that Complainant had young children, Defendant Shelley Milton told Complainant that she could not rent the apartment to him because it was an upstairs apartment and there were liability issues with children living upstairs.

15. Defendant Shelley Milton told Complainant she expected to have a vacancy on the first floor soon, but she did not know when. She then quickly ended the call.

16. On January 11, 2008, following his conversation with Defendant Shelley Milton, Complainant called the Boise office of the Department of Housing and Urban Development ("HUD") to report his experience. Complainant spoke with HUD investigator Bobbi Olson.

17. Immediately after speaking with Complainant, the HUD investigator called the phone number Complainant provided and spoke to Defendant Shelley Milton. Ms. Milton told the HUD investigator that Defendants only rented to families with children in the ground floor apartments because of safety and liability concerns. When the investigator asked for her last name, Ms. Milton refused to provide her last name and could be heard speaking to a man in the background; Ms. Milton then put the investigator on hold and disconnected her.

18. After the call was disconnected, the HUD investigator called Defendants' number again and Defendant Edward Milton answered. Mr. Milton told the investigator that they did not want children on the second floor. When told that it was illegal to discriminate against families with children, Mr. Milton stated that he knew it was illegal and they would not refuse to rent to a family with children on the second floor, but they would "try to discourage them." Mr. Milton added that Complainant had children the "perfect size to fall."

19. On January 20, 2008, Defendants rented the Subject Property for \$325 per month to a single adult male occupant with no children.

20. Complainant's replacement housing was less desirable and more expensive than the Subject Property: Complainant had wanted to rent a two-bedroom apartment for himself and his children, but instead rented a one-bedroom apartment in Idaho Falls for \$390 per month.

### **THE ADMINISTRATIVE COMPLAINT**

21. On or about January 22, 2008, Complainant filed a complaint of discrimination (HUD Form 903) with HUD alleging that Defendants had discriminated against Complainant and his minor children on the basis of familial status in violation of the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.*

22. 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.

23. 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 on the basis of familial status had occurred. HUD issued its Determination of Reasonable Cause on July 31, 2008.

24. HUD issued its Charge of Discrimination against the Defendants on July 31, 2008, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging Defendants with engaging in discriminatory housing practices on the basis of familial status in violation of the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.*

25. On or about August 14, 2008, Complainant and the Defendants made a timely election to have the claims resolved in federal court, pursuant to 42 U.S.C. § 3612(a).

26. Subsequently, on or about August 26, 2008, the Secretary, through the Regional Counsel of HUD, authorized the Attorney General to file this action on behalf of Complainant and his minor children, pursuant to 42 U.S. C. § 3612(o)(1).

### **VIOLATIONS OF LAW**

27. Defendants' conduct, described in paragraphs 10-20 above, constitutes:

- a. a refusal to rent after the making of a bona fide offer, or a refusal to negotiate for the rental of, or otherwise making unavailable or denying, a dwelling to Complainant and his minor children, because of familial status, in violation of 42 U.S.C. § 3604(a);
- b. discrimination against Complainant and his minor children in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status, in violation of 42 U.S.C. § 3604(b); and
- c. the making of statements with respect to the rental of a dwelling that indicate any preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c).

28. As a result of Defendants' conduct, Complainant Frank Tyler Atkinson and his minor children have suffered damages and are aggrieved persons within the meaning of 42 U.S.C. § 3602(i).

29. The discriminatory actions of Defendants were intentional, willful, or taken in disregard for the rights of Frank Tyler Atkinson and his minor children.

#### **PRAYER FOR RELIEF**

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

1. Declares that the discriminatory housing practices of Defendants Shelley Milton and Edward Milton, 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 any of them from discriminating on the basis of familial status against any person in any aspect of the rental of a dwelling, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1);

3. Awards monetary damages to the Complainant and his minor children pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1); and

4. Provides such additional relief as the interest of justice may require.

RESPECTFULLY SUBMITTED this 16 day of March, 2009.

THOMAS E. MOSS  
United States Attorney

  
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ROBERT C. GRISHAM  
Assistant United States Attorney