

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) CIVIL NO. _____
)
 AIR PARK – DALLAS ZONING) JURY DEMANDED
 COMMITTEE, AIRPARK GP, L.L.C.,)
 HENRY BILLINGSLEY, LUCY)
 BILLINGSLEY, CROW-BILLINGSLEY)
 AIR PARK, LTD., DAVID NOELL, and)
 LUCILIO PEÑA,)
)
 Defendants.)

COMPLAINT

The United States of America alleges as follows:

NATURE OF ACTION

1. This action is brought by the United States on behalf of Sheryl Pick 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 *et seq.* (the “Fair Housing Act”).

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). 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 Air Park – Dallas Zoning Committee (“the zoning committee”) is an

unincorporated association and the governing body of Air Park Estates, a residential and commercial development in Plano, Texas.

4. From August 2004 to April 2008, the four members of the zoning committee were Defendants Henry Billingsley, Lucy Billingsley, David Noell, and Lucilio Peña.

5. Defendant Crow-Billingsley Air Park, Ltd. is a limited partnership that owns the community areas of Air Park Estates.

6. Defendant Airpark GP, L.L.C. is the general partner of Crow-Billingsley Air Park, Ltd.

7. 6345 Douglas Street, Plano, Texas (the "subject property"), is a "dwelling" within the meaning of 42 U.S.C. § 3602(b).

8. Sheryl Pick has resided at the subject property since 1983. Ms. Pick was diagnosed with adrenomyeloneuropathy, a progressive neurological disorder, in 1998. This condition substantially limits Ms. Pick's ability to walk. Ms. Pick is handicapped or disabled within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(h).

FACTUAL ALLEGATIONS

9. In or about October 1983, Sheryl Pick and her husband, Alfred Pick, moved into the subject property, a residence located within Air Park Estates.

10. In or about 2002, Mr. Pick sought to build a footbridge with handrails over a culvert in the Picks' front lawn to allow Ms. Pick to reach her mailbox and to provide her easily navigable access to the street in case of emergency. Mr. Pick asked John Hammond and Dean Mize, who were members of the zoning committee at the time, whether he needed the committee's permission to install the bridge. Mr. Hammond and Mr. Mize each told Mr. Pick

that he did not need the zoning committee's approval to install the footbridge because it was not a "structure" under the restrictive covenant, which states that "[n]o building, fence or other structure shall be commenced, erected, or maintained" without being "submitted to and approved in writing" by the zoning committee. The Picks subsequently had the footbridge installed at their own expense. The property on which the footbridge is located is owned by Crow-Billingsley Air Park, Ltd.

11. The rights of way in Air Park Estates contain other objects, including a post at 6315 Douglas Street, a bush at 6340 Curtis Street, pillars at 6360 Curtis Street, shrubs and large stones at 6345 Fairchild Street, trees and shrubs at 6335 McCamey Street, a large planter at 6300 Beech Street, a tree at 6335 Fairchild Street, and mailboxes at 6305 Fairchild Street, 6335/45 Fairchild Street, and 1620 Air Park Lane. The owners of those properties either have not been asked to remove the objects in the rights of way or have been given explicit permission to keep those objects.

12. On or about August 24, 2004, the four members of the zoning committee at that time (Henry Billingsley, Lucy Billingsley, David Noell, and Lucilio Peña) voted to inform Mr. and Ms. Pick that they were required to remove the footbridge. On or about September 15, 2004, the zoning committee sent a letter to Mr. and Ms. Pick informing them that they must remove the "structure" on their property that violated the property's restrictive covenants. On September 30, 2004, a letter from the zoning committee clarified that the allegedly offending structure was the footbridge.

13. On or about October 8, 2004, Ms. Pick sent a letter to the zoning committee informing them of her disability and requested that she be allowed to keep the footbridge as a

reasonable accommodation or modification.

14. On or about October 17, 2004, all four members of the zoning committee agreed to notify Mr. and Ms. Pick that they must remove the footbridge. On or about October 22, 2004, the zoning committee informed the Picks that they must remove the footbridge and threatened legal action if the Picks failed to remove the bridge. On or about November 23, 2005, an attorney retained by the zoning committee informed the Picks that failure to remove the footbridge would result in a lawsuit. On or about January 16, 2006, the zoning committee voted to sue Mr. and Ms. Pick. On or about January 18, 2006, the zoning committee filed a lawsuit (“the lawsuit”) against Alfred Pick in Collin County, Texas for violating Air Park Estates’ restrictive covenant.

15. On or about February 26, 2007, Ms. Pick sent a new letter to the zoning committee, informing them that her disability was “severe” and asking to keep the footbridge as a reasonable accommodation or modification. Ms. Pick attached a letter from her treating physician, Alan Martin, describing Ms. Pick’s condition and her need for accommodation.

16. On or about March 7, 2007, zoning committee members Henry Billingsley, Lucy Billingsley, and David Noell again voted to not allow Ms. Pick to keep the footbridge but recommended that she submit plans for an at-grade walkway. On or about March 28, 2007, the zoning committee communicated that decision to Ms. Pick via letter.

17. On or about March 26, 2007, Ms. Pick sent the zoning committee a letter proposing an alternative footbridge in return for dismissal of the lawsuit.

18. On or about June 4, 2007, the zoning committee informed Ms. Pick that it had tentatively approved her proposal of an alternative footbridge.

19. On July 11, 2007, Sheryl and Alfred Pick filed a timely complaint against Henry Billingsley with the United States Department of Housing and Urban Development, pursuant to the Fair Housing Act, alleging discrimination on the basis of disability. On July 20, 2007, Ms. Pick amended the complaint to add Air Park – Dallas Zoning Committee, Crow-Billingsley Air Park, Ltd., Airpark GP, L.L.C., Lucy Billingsley, David Noell, and Lucilio Peña as respondents. The complaint was again amended on November 20, 2007 to identify Crow-Billingsley Air Park, Ltd. as a separate entity from Airpark GP, L.L.C. and to remove Alfred Pick as a complainant.

20. Pursuant to 42 U.S.C. §§ 3610(a) and (b), the Secretary of the United States Department of Housing and Urban Development 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 4, 2008, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the above named defendant with engaging in discriminatory practices, in violation of 42 U.S.C. § 3604(f) of the Fair Housing Act.

21. On March 25, 2008, Defendants 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).

22. On March 28, 2008, the Administrative Law Judge issued a Notice of Election of Judicial Determination and terminated the administrative proceeding on Ms. Pick's complaint.

23. Following this Notice of Election of Judicial Determination, 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).

FAIR HOUSING ACT VIOLATIONS

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

a. Refused to permit, at the expense of the handicapped person, reasonable modification of existing premises occupied or to be occupied by such persons if such modification may be necessary to afford such person full enjoyment of the premises, in violation of 42 U.S.C. § 3604(f)(3)(A);

b. Discriminated against a handicapped person in the terms, conditions, or privileges of sale of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability, in violation of 42 U.S.C. § 3604(f)(2)(B); and

c. Refused to make reasonable accommodations in rules, policies, practices, or services, which were necessary to afford Ms. Pick an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).

25. Ms. Pick is an "aggrieved person" within the meaning of 42 U.S.C. § 3602(i).

26. As a result of the Defendants' discriminatory conduct, Ms. Pick has suffered and continues to suffer damages.

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

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. 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
3. Award of monetary damages to Ms. Pick 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.

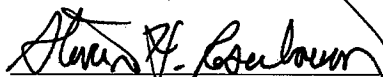
Dated: April 24, 2008


JOHN L. RATCLIFFE
United States Attorney

KEVIN McCLENDON
Assistant U.S. Attorney
Eastern District of Texas
Texas State Bar # 13408620
101 East Park Blvd., Suite 500
Plano, Texas 75074
Phone: (972) 509-1201
Fax: (972) 509-1209
E-mail: Kevin.McClendon@usdoj.gov

MICHAEL B. MUKASEY
Attorney General


GRACE CHUNG BECKER
Acting Assistant Attorney General


STEVEN H. ROSENBAUM
Chief, Housing and
Civil Enforcement Section
Civil Rights Division


REBECCA B. BOND
Deputy Chief
DANA MULHAUSER, Lead Attorney
Housing and Civil Enforcement Section
Civil Rights Division,
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Northwestern Building, 7th Floor
Washington, D.C. 20530
Phone: (202) 305-0007
Fax: (202) 514-1116
E-mail: Dana.Mulhauser@usdoj.gov