

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF WEST VIRGINIA

U.S. DISTRICT COURT  
FILED AT WHEELING, WV

JAN 14 2011

NORTHERN DISTRICT OF WV  
OFFICE OF THE CLERK

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 WHEELING HOUSING AUTHORITY, )  
 )  
 Defendant. )  
 )  
 \_\_\_\_\_ )

Civil No. 5:11-cv-9

**COMPLAINT**

The United States of America alleges as follows:

**NATURE OF THE 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 ("Fair Housing Act"), 42 U.S.C. §§ 3601-3631. It is brought on behalf of Kathy Green and her two minor children, pursuant to 42 U.S.C. §§ 3612(o).

**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).

3. Venue is proper under 28 U.S.C. § 1391(b), because the claims alleged herein arose in the Northern District of West Virginia.

### **PARTIES AND THE SUBJECT PROPERTY**

4. Defendant Wheeling Housing Authority is a federally funded entity that owns, operates, and manages five public housing developments consisting of residential properties used as housing for persons of low income in the city of Wheeling, West Virginia.

5. Hil-Dar Apartments (“Hil-Dar” or the subject property) is an 89-unit residential property located on Hil-Dar Street, Wheeling, West Virginia and is one of the public housing developments owned, operated and managed by the Defendant. Hil-Dar’s units are “dwellings” within the meaning of the Fair Housing Act, 42 U.S.C. §3602(b).

6. Kathy Green, who is black, resided at the subject property, at 1064 Hil-Dar Street, from 2006 through December 2010. Ms. Green has a minor son and daughter, who are black, who resided with her at the subject property (collectively, the “Green family”).

### **FACTUAL ALLEGATIONS**

7. Beginning in November 2007, the Green family became the target of racial harassment by a neighboring family, who are also residents of Hil-Dar, because the Green family is black. The harassment has included verbal abuse, racial slurs, threats, assaults or attempted assaults of members of the Green family.

8. The racial harassment has caused Ms. Green to fear for the safety of her family.

9. The Wheeling Housing Authority knew or should have known of this racial harassment because Ms. Green complained repeatedly to the Defendant about it, both orally and in writing. In addition, the Defendant knew of the harassment because the police were called to Hil-Dar in response to an incident of harassment.

10. In her complaints to the Wheeling Housing Authority, Ms. Green identified Raymond Asbury and his family as the residents of Hil-Dar who were threatening and harassing her family. Raymond Asbury is a white neighbor of Ms. Green who lives in the Hil-Dar Apartments.

11. Mr. Asbury and his family harassed Ms. Green and her minor children on the basis of their race. On separate occasions Mr. Asbury cursed at Ms. Green's son and threatened to fight him; Mr. Asbury called her son a "nigger" on repeated occasions; and Mr. Asbury's minor son called Ms. Green's daughter a "nigger."

12. The Wheeling Housing Authority was provided with authority under the lease with the tenants of Hil-Dar Apartments to terminate the tenancy of any tenant who threatened and harassed another tenant because of their race.

13. On November 19, 2007, Ms. Green filed a written complaint with the Wheeling Housing Authority alleging racial harassment by Mr. Asbury. Specifically, she alleged that Mr. Asbury had cursed at her minor son, threw his coat off to fight her son, and called her son a "nigger." The Wheeling Housing Authority took seven months from this first written report, during which time the harassment continued, to initiate lease termination proceedings against the Asbury family. Once Mr. Asbury received a lease termination notice, the Asbury family accorded themselves the right to a hearing before the Wheeling Housing Authority on the evidence supporting the eviction. The Wheeling Housing Authority failed to notify Ms. Green about the hearing and therefore Ms. Green did not attend. The Wheeling Housing Authority presented no evidence, other than what was contained in the Asbury tenant file, supporting Ms. Green's allegations. The hearing officer for the Wheeling Housing Authority determined that there was insufficient evidence to support the eviction of the Asbury family.

14. The Green family timely filed a complaint of discrimination against the Defendant with the United States Department of Housing and Urban Development (“HUD”), pursuant to the Fair Housing Act.

15. Pursuant to 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD conducted and completed an investigation of the complaints, 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 September 8, 2010, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging Defendant with engaging in discriminatory practices in violation of the Fair Housing Act.

16. On September 27, 2010, the Defendant timely elected to have the claim asserted in HUD’s Charge of Discrimination resolved in a civil action pursuant to 42 U.S.C. § 3612(a).

17. On September 28, 2010, the Administrative Law Judge issued a Notice of Election of Judicial Determination and terminated the administrative proceedings on and Ms. Green’s complaint.

18. Following this Notice of Election, the Secretary of HUD authorized the Attorney General to commence a civil action, pursuant to 42 U.S.C. § 3612(o).

#### **FAIR HOUSING ACT VIOLATIONS**

19. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-19, above.

20. Defendant, through the above-referenced actions, has:

- a. Discriminated in the terms, conditions or privileges of the rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of race, in violation of 42 U.S.C. § 3604(b); and
- b. Coerced, intimidated, threatened, or interfered with a person in the exercise or enjoyment of, or on account of their having exercised or enjoyed, or on account of their having aided or encouraged any other person in the exercise or enjoyment of, a right granted or protected by section 804 of the Fair Housing Act.

21. Ms. Green and her two minor children have suffered and continue to suffer damages as a result of Defendant's violations of 42 U.S.C. §§ 3604(b) and 3617. Each is an "aggrieved person" within the meaning of 42 U.S.C. § 3602(i).

22. The discriminatory actions of the Defendant, as set forth above, were intentional, willful, and/or taken in disregard of the federally protected rights of others.

WHEREFORE, the United States prays that the court enter an ORDER that:

1. Declares that the Defendant's conduct, as alleged herein, violates the Fair Housing Act;
2. Enjoins the Defendant, its officers, employees, agents, successors and all other persons in active concert or participation with it, from further:
  - a. Discriminating against any person in the terms, conditions, or privileges of rental of a dwelling because of race or color;
  - b. Coercing, intimidating, threatening, or interfering with a person in the exercise or enjoyment of, or on account of their having exercised or enjoyed, or on account of their having aided or encouraged any other person in the exercise or enjoyment of, a right granted or protected by section 804 of the Fair Housing Act.

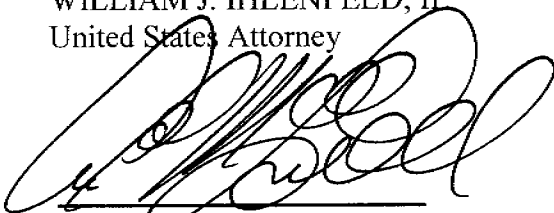
- c. Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of the Defendant's discriminatory conduct; and
  - d. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, all persons harmed by the Defendant's discriminatory conduct to the position they would have been in but for the Defendant's discriminatory conduct.
3. Awards monetary damages pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1), to the Green family.

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

Date: January 14, 2011

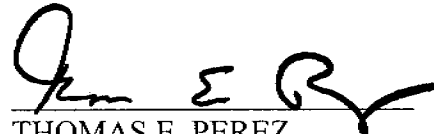
Respectfully submitted,

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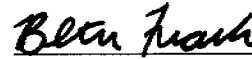
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