

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA**

UNITED STATES OF AMERICA,

Plaintiff,

FAIR HOUSING OF THE DAKOTAS
and STARLA OVERBEE,

Plaintiff-Intervenors,

v.

PHYLLIS ROGERS, RICHARD ROGERS,
and TRIPLE R INDUSTRIES, INC.,

Defendants.

Case No.: CIV 08-4175

FIRST AMENDED COMPLAINT

The United States of America (“United States”) 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 Starla Overbee and Fair Housing of the Dakotas pursuant to 42 U.S.C. §§ 3612(o) and 3614(a).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345, 42 U.S.C. § 3612(o) and 42 U.S.C. § 3614(a).

3. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendants reside there and because a substantial part of the events or omissions giving rise to the United States’ claims occurred there.

DEFENDANTS

4. At all times relevant to this case, Defendants Phyllis Rogers and Richard Rogers owned and managed three residential properties located in Sioux Falls, South Dakota. The first property has eight units and is located at 115-117 North Trapp Avenue. The second property also has eight units and is located at 119-121 North Trapp Avenue. The third property has 12 units and is located at 931 West Seventh Street. Each of these properties is a “dwelling” within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

5. Defendants own and manage these properties through Triple R Industries, Inc., a South Dakota corporation with its principal place of business in Sioux Falls. Phyllis Rogers is the President of Triple R Industries and Richard Rogers is its Vice President.

FACTUAL ALLEGATIONS

6. In or about June 2007, Defendants rented Apartment Number 7 at 117 North Trapp Avenue to Starla Overbee.

7. At the time of the rental, Defendant Phyllis Rogers informed Ms. Overbee that Defendants did not rent to individuals with children or “Africans.”

8. Ms. Rogers has told other tenants on numerous occasions that Defendants do not rent to families with children, or words to that effect. Defendants do not rent and have not rented to individuals with children.

9. Ms. Rogers has also told other tenants that she does not rent to, or does not prefer, African-Americans, or words to that effect.

10. In or about July 2007, Defendants came to believe that Ms. Overbee’s grandson, who visited from time to time, was living with Ms. Overbee, in violation of Defendants’ policy

and practice of not allowing children to live in the units. Defendants questioned Ms. Overbee and other tenants as to whether Ms. Overbee's grandson lived in her unit.

11. Ms. Overbee informed Fair Housing of the Dakotas, a private, non-profit fair housing organization, of Defendants' statements and actions. Thereafter, Fair Housing of the Dakotas investigated whether Defendants violated the Fair Housing Act. This investigation included, inter alia, locating and interviewing current and former tenants.

12. On September 17, 2007, after learning that Fair Housing of the Dakotas had contacted tenants, Ms. Rogers telephoned and spoke to an employee of Fair Housing of the Dakotas. During this conversation, Ms. Rogers stated that children could visit but were not allowed to live at Defendants' properties, or words to that effect.

13. On or about March 3 and 4, 2008, Fair Housing of the Dakotas and Ms. Overbee filed complaints of discrimination with the U.S. Department of Housing and Urban Development ("HUD"), pursuant to 42 U.S.C. § 3610(a).

14. Pursuant to 42 U.S.C. § 3610(a) and (b), the Secretary of HUD investigated these complaints, attempted conciliation without success, and prepared final investigative reports. Based on the information gathered in the course of this investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g), determined that reasonable cause existed to believe that Defendants violated the Fair Housing Act by refusing to rent based on familial status and by making discriminatory statements based on familial status and race. Accordingly, on September 24, 2008, pursuant to 42 U.S.C. § 3610(g)(2)(A), the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination against Defendants.

15. On October 7, 2008, Fair Housing of the Dakotas and Ms. Overbee timely elected

to have these charges resolved in a federal civil action, pursuant to 42 U.S.C. § 3612(a).

16. The Secretary of HUD subsequently authorized the Attorney General to file this action on behalf of Fair Housing of the Dakotas and Ms. Overbee, pursuant to 42 U.S.C. § 3612(o).

FIRST CLAIM FOR RELIEF

17. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-16, supra.

18. By the actions and statements referred to in the foregoing paragraphs, Defendants have:

- (a) Refused to rent, refused to negotiate for the rental for, or otherwise made unavailable or denied, a dwelling because of familial status, in violation of 42 U.S.C. § 3604(a); and
- (b) Made statements with respect to the rental of a dwelling that indicated a preference, limitation or discrimination based on race and/or familial status, in violation of 42 U.S.C. § 3604(c).

19. Fair Housing of the Dakotas has suffered damages as a result of Defendants' violations of 42 U.S.C. §§ 3604(a) and (c) and is an "aggrieved person" pursuant to 42 U.S.C. § 3602(i). Starla Overbee has suffered damages as a result of Defendants' violations of 42 U.S.C. § 3604(c) and is an "aggrieved person" pursuant to 42 U.S.C. § 3602(i).

20. Defendants' actions, as set forth above, were intentional, willful and/or taken in reckless disregard for the rights of others.

SECOND CLAIM FOR RELIEF

21. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-20, supra.

22. Defendants have also discriminated against a former African-American tenant on the basis of race or color, by, among other things, (a) blaming him for excessive noise, damage to the building facilities, and luggage that she claimed disappeared from a common area, none of which he was responsible for; and (b) telling him that “you people” pay their bills late or not at all. Defendants rented to this former African-American tenant in September 2007, after Defendants became aware that Starla Overbee had complained of Defendants’ discrimination to Fair Housing of the Dakotas. Prior to September 2007, Defendants had not rented an apartment to an African-American tenant. After he moved out, the former tenant filed a race discrimination complaint with the Sioux Falls Human Relations Commission, which is pending.

23. By the statements and conduct described in paragraph 22, above, Defendants have discriminated because of race or color in the terms, conditions, or privileges of rental of a dwelling or in the provisions of services or facilities in connection therewith, in violation of 42 U.S.C. 3604(b), and have made statements indicating a preference, limitation or discrimination based on race and/or familial status, in violation of 42 U.S.C. § 3604(c).

24. Defendants’ conduct and statements, as described above in paragraphs 1-23, constitute:

- (a) A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601-3619, 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. §§ 3601-3619, which raises an issue of general public importance, in violation of 42 U.S.C. § 3614(a).

25. In addition to Starla Overbee and Fair Housing of the Dakotas, other persons may have been injured by Defendants' discriminatory actions and practices as described above. Such individuals are also "aggrieved persons" under the Fair Housing Act, 42 U.S.C. § 3602(i).

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

1. Declares that Defendants' actions, policies and practices, as alleged herein, violate the Fair Housing Act;
2. Declares that Defendants have engaged in a pattern or practice of discrimination in violation of the Fair Housing Act, or have denied rights guaranteed under the Fair Housing Act to a group of persons, which denial raises an issue of general public importance;
3. Enjoins Defendants, their agents, employees and successors, and all other persons in active concert or participation with them, from:
 - (a) discriminating on the basis of race, color, or familial status;
 - (b) stating any preference, limitation or discrimination on the basis of race, color, national origin or familial status; and
 - (c) failing or refusing to take such 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 Defendants' unlawful housing practices;
4. Award monetary damages, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1), to

Starla Overbee and Fair Housing of the Dakotas, and, pursuant to 42 U.S.C. § 3614(d)(1)(B), to all other persons harmed by Defendants' discriminatory practices; and

5. Assess a civil penalty against Defendants, pursuant to 42 U.S.C. § 3614(d)(1)(C), to vindicate the public interest.

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

Dated June 4, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2009, I filed the foregoing document entitled **First Amended Complaint** via the Court's CM/ECF system, which shall send notice via electronic mail to the following counsel of record:

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