UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. **CASE NO: 6:08-cv-00891-Orl-35DAB**

FOUNTAIN VIEW APARTMENTS, INC., MILDRED CHASTAIN, and JAMES W. STEVENS,

Defendants.
_____/

O R D E R

THIS CAUSE comes before the Court for consideration of Plaintiff, United States of America's, Motion for Partial Summary Judgment (Doc. No. 85) (the "Motion") and Defendant's Memorandum in Opposition filed in response thereto (Doc. No. 89). Plaintiff moves for partial summary judgment concerning Defendant's liability for violations of 42 U.S.C. §§ 3604(a) and (c) regarding familial status. Upon consideration of all relevant filings and case law and being otherwise fully advised, the Court finds that Plaintiff's Motion (Doc. No. 85) should be **GRANTED**.[1]

[1]Pursuant to the Court's ruling on the Motion for Partial Summary Judgment (Doc. No. 85), the Court also DENIES as moot Plaintiff's Motion for Leave to File a Reply to Defendants' Memorandum in Opposition (Doc. No. 90).

I. BACKGROUND

A. Case History

This case is brought by the United States and Plaintiff Intervenors, Lewarna Williams, Rachael Hunter, and Donnell Williams, Jr., to enforce 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 to 3619 ("Fair Housing Act" or "FHA"). The United States of America ("Plaintiff" or the "Government") filed its Complaint in this case on June 4, 2008, contending that Defendants have discriminated against prospective tenants by refusing to rent apartments on the bases of race and familial status. When the Complaint was filed, the United States was aware of only Defendant Mildred's Chastain's discriminatory conduct, which extends to her employer, Fountain View Apartments, Inc., ("Fountain View") pursuant to the doctrine of vicarious liability.[2] On August 11, 2009, the Government filed its Amended Complaint, adding James W. Stevens as a Defendant in this case. (Doc. No. 87.) James W. Stevens is the owner of Fountain View Apartments, Inc., and is involved in managing Fountain View and implementing the alleged discriminatory practices. (Doc. No. 69 at 3.)

While the instant Motion was filed prior to the Amended Complaint, the Government seeks the same relief against Defendant Stevens as it does against the two original Defendants. (Doc. No. 85 at 5 n.3.) Because Defendant Stevens allegedly employed and directed those individuals responsible for the discriminatory housing practices alleged against Fountain View, the facts relevant to Defendant Steven's liability in this case were already alleged in the Motion. Id. Additionally, Defendant

2 Meyer v. Holley, 537 U.S. 280, 285-86 (2003)(principal is vicariously liable for the acts of its agent even if the principal neither authorized nor had knowledge of the agent's acts); Northside Realty Assocs., Inc. v. United States, 605 F.2d 1348, 1353 (5th Cir. 1979) (corporation liable for violations of Fair Housing Act by its agents).

Stevens joined in Defendants' Joint Response to the instant Motion. (Doc. No. 89 at 1.) Thus, the Court considers the Government's Motion with respect to all Defendants in this case.

The Government moves for partial summary judgment as to Defendants' liability for violations of 42 U.S.C. §§ 3604(a) and (c), concerning discriminatory housing practices on the basis of familial status.[3] According to the Government, Defendants have engaged in unlawful discriminatory housing practices on the basis of familial status at Fountain View Apartments by:

> "(a) making or causing to be made 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 such preference, limitation, or discrimination; (b) refusing to negotiate for the rental of, or otherwise making unavailable a dwelling because of familial status; (c) restricting or attempting to restrict the choices of available dwellings by steering persons with children to another apartment complex; and (d) discouraging persons with children from renting dwellings owned and managed by the Defendants."

(Doc. No. 85 at 2.) Defendants contend, however, that "the evidence in this case does not support the Plaintiff's allegation that the Defendants engaged in a 'pattern and practice' of familial status discrimination." (Doc. No. 89 at 3.) Defendants further argue that there are material issues of fact which preclude partial summary judgment in the Government's favor. Id.

B. Undisputed Facts

On summary judgment, the Court need only consider the undisputed facts that are pertinent to the salient issues regarding whether Defendants violated §§ 3604(a)

3 In its disposition of the instant Motion, the Court does not consider Plaintiff's claim regarding familial status pursuant to 42 U.S.C. § 3604(b), Plaintiff's claims regarding discrimination on the basis of race or color, or the remedies to be imposed for Defendants' liability pursuant to §§ 3604(a) and (c).

and (c) of the Fair Housing Act and whether Defendants have engaged in a pattern and practice of discrimination on the basis of familial status. Thus, the Court addresses only those undisputed facts relevant to the Court's disposition of the instant Motion.

Fountain View Apartments is located at 910 S. Volusia Avenue, Orange City, Florida 32763. Defendant Fountain View Apartments, Inc., a Florida corporation created in 2001, owns and manages Fountain View Apartments. Defendant James W. Stevens ("Stevens") is the sole officer and director of Fountain View Apartments, Inc., owning one hundred percent of the corporation. Stevens resides on the property and is responsible for tasks, such as interacting with potential tenants, showing apartments, and hiring and supervising Fountain View staff. Defendant Mildred Chastain ("Chastain") was employed by Fountain View as the manager during all times relevant to this case. As the manager of Fountain View Apartments, Chastain's duties included, among other tasks, distributing applications, renting and showing apartments, and maintaining signed leases. Additionally, when Stevens was off the property, Chastain was the primary decision-maker at Fountain View Apartments.

Fountain View Apartments consists of forty-one separate units for rent: six efficiencies, thirty-one one-bedroom units, and four two-bedroom units. Fountain View Apartments is a "dwelling" under the definition of 42 U.S.C. § 3602(b). Fountain View Apartments has at no time been occupied solely by individuals 62 years of age or over. Further, Fountain View Apartments has at no time been intended and operated for occupancy by persons fifty-five years of age or older, nor has it satisfied the necessary requirements to qualify for the 55 and over exemption, pursuant to 42 U.S.C. § 3607(b).

From at least 1998 to 2008, Defendants used a rental application containing the language "ADULTS ONLY." The rental application was used in connection with the rental of an apartment at Fountain View Apartments. Pursuant to discovery in this case, Defendants provided the Government with at least forty-one rental applications containing the language "ADULTS ONLY" in the space designated for number of children. Defendant Mildred Chastain wrote "ADULTS ONLY" on the rental application in the space designated for number of children.

From at least 2001 continuing to 2008, Defendants used a lease for tenants at Fountain View Apartments containing the following language, "No children, animals or other pets are permitted." (Doc. No. 93, ¶ 53.) The lease was used in connection with the rental of an apartment at Fountain View Apartments. Pursuant to discovery in this case, Defendants provided the Government with at least sixteen leases containing the language, "No children, animals or other pets are permitted."

From approximately 2002 to 2008, Sharon Maynard was an employee of Defendant Fountain View. Sharon Maynard was hired and supervised by Defendant James Stevens. Sharon Maynard understood Fountain View Apartments to have an "adults-only" policy. Sharon Maynard told applicants with children that Fountain View Apartments was an adults-only community and would recommend that the applicants go to Greenleaf Gardens Apartments.[4]

From approximately 2000 to 2007, Linda Jolman was an employee of Defendant Fountain View. Linda Jolman was hired and supervised by Defendant James Stevens. Linda Jolman was under the assumption that Fountain View

4 Greenleaf Gardens Apartments is an apartment complex located within one mile of Fountain View Apartments. (Doc. No. 93 at 10.)

Apartments was an adult community. Linda Jolman turned away people with children a "couple of times" over the phone because of her assumption. (Doc. No. 85, Exh. 9 at 57:7.) Additionally, "a few times," Linda Jolman turned away individuals who came into the office with a child, telling them it was an adult community. Id. at 57:19-25.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when the movant can show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Fennell v. Gilstrap, 559 F.3d 1212, 1216 (11th Cir. 2009)(citing Welding Servs., Inc. v. Forman, 509 F.3d 1351, 1356 (11th Cir. 2007)). Which facts are material depends on the substantive law applicable to the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The moving party bears the burden of showing that no genuine issue of material fact exists. Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir. 1991). Evidence is reviewed in the light most favorable to the non-moving party. Fennell, 559 F.3d at 1216 (citing Welding Servs., Inc., 509 F.3d at 1356). A moving party discharges its burden on a motion for summary judgment by showing or pointing out to the Court that there is an absence of evidence to support the non-moving party's case. Denney v. City of Albany, 247 F.3d 1172, 1181 (11th Cir. 2001)(citation omitted). When a moving party has discharged its burden, the non-moving party must then go beyond the pleadings, and by its own affidavits, or by depositions, answers to interrogatories, and admissions on file, designate specific facts showing there is a genuine issue for trial. Porter v. Ray, 461 F.3d 1315, 1321 (11th Cir. 2006)(citation omitted). The party opposing a motion for summary judgment must rely on more than

conclusory statements or allegations unsupported by facts. Evers v. Gen. Motors Corp., 770 F.2d 984, 986 (11th Cir. 1985)("conclusory allegations without specific supporting facts have no probative value").

III. DISCUSSION

On these facts, the Government seeks summary judgment regarding Defendants' liability for violations of 42 U.S.C. § 3604(a) and (c) on the basis of familial status. "Familial status" is defined by the FHA as "one or more individuals (who have not attained the age of 18 years) being domiciled with . . . a parent or another person having legal custody of such individual or individuals . . . ." 42 U.S.C. § 3602(k)(1). Additionally, the Government requests that the Court "enter an order declaring . . . that the Defendants' conduct constitutes a pattern or practice of resistance to the full enjoyment of rights granted by the FHA and a denial to a group of persons of rights granted by the FHA." (Doc. No. 85 at 2.) The Court considers the following in turn: (A) the Government's § 3604(c) claim; (B) the Government's § 3604(a) claim; and (C) whether Defendants' conduct constitutes as pattern and practice of discrimination on the basis of familial status.

A. 42 U.S.C. § 3604(c)

The gravamen of the Government's contention under 42 U.S.C. § 3604(c) is that Defendants repeatedly made express statements which reflect discrimination on the basis of familial status at Fountain View Apartments. Section 3604(c) makes it unlawful "[t]o make, print, or publish . . . any notice, statement or advertisement, with respect to

the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on . . . familial status" or to "cause [such statements] to be made." Section 3604(c) is "violated if an ad [,notice or statement] for housing suggests to an ordinary reader that a particular [protected group] is preferred or dispreferred for the housing in question." Jancik v. HUD, 44 F.3d 553, 556 (7th Cir. 1995)(citations omitted). Plaintiff need not prove an intent to discriminate by the Defendant to establish a claim under § 3604(c). Id. (citing Housing Opportunities Made Equal, Inc. v. Cincinnati Enquirer, Inc., 943 F.2d 644, 646 (6th Cir. 1991)). However, courts "have allowed parties to establish violations of section 3604(c) by proving an actual intent to discriminate." Soules v. HUD, 967 F.2d 817, 824 (2d Cir. 1992)(citations omitted).

It is undisputed that, from at least 1998 through 2008, Defendants used a rental application containing the language "ADULTS ONLY" in connection with the rental of apartments at Fountain View Apartments. (Doc. No. 93, ¶ 50.) Further, at least since 2001, Defendants used leases for tenants of Fountain View Apartments, which contained the language, "No children, animals or other pets are permitted." Id. at ¶ 53.

With regard to the rental application, Defendants contend that the application is ambiguous, and thus, the Court should not grant summary judgment in the Government's favor because "an examination of the Defendants' subjective intent is required to determine its true meaning." (Doc. No. 89 at 12.) Defendants also identify certain tenants of Fountain View Apartments that had included children on the appropriate line on the application. Defendants, therefore, argue that there is a "genuine issue of material fact . . . as to whether the Defendants harbored a discriminatory preference to exclude families with children. . . ." (Doc. No. 89 at 13-14.)

Concerning the lease language, Defendants acknowledge that the use of such language "would be a *per se* violation of the Act were it to appear for example on a rental application, a brochure, [or] an advertisement. . . ." Id. at 14. Defendants argue, without any legal authority, that the language in this instance is not a *per se* violation because it appeared on a lease, and for the lease to subject Defendants to liability, the Government must prove that it was shown to prospective tenants simultaneously with the application. Id.

The Court finds Defendants' arguments unavailing. The pertinent question in a § 3604(c) analysis is whether the language suggests to an ordinary reader that potential tenants with a child or children are preferred or dispreferred for the housing in question. Whether or not Defendants had an intent to discriminate is only germane to a claim under § 3604(c) when the statement at issue does not, on its face, indicate a preference or limitation. Jancik, 44 F.3d at 556. Because the emphasis in a section 3604(c) analysis is the effect the language itself has on an ordinary reader, the handful of exceptions to Defendants' "adults-only" policy that Defendants have identified has no significance in the Court's § 3604(c) analysis.

Not only does the phrase, "ADULTS ONLY," at a minimum suggest to an ordinary reader that children are dispreferred by Defendants, but it could hardly be more explicit that children are simply not permitted to reside at Fountain View. Defendants' contention that a handwritten modification to the application form, causing the line to read "No. of ADULTS ONLY," creates an ambiguity is specious, particularly in light of the fact that "ADULTS ONLY" is emphasized with all capital lettering. Defendants' identification of Ms. Coller's application, one application out of all applications received

on which the prospective tenant wrote a "1" in the space, does not alter the Court's finding that the application language would suggest to an ordinary reader that children are dispreferred at Fountain View Apartments. Rather, the fact that only one individual of many applicants reached the illogical conclusion that the application's reference to "No. of ADULTS ONLY" sought disclosure of the "[Number] of ADULTS ONLY" reinforces the Court's conclusion that the interpretation urged by Defendants is without merit. Ultimately, when questioned by the Court on this point at the Pretrial Conference in this case, Defendants' counsel conceded it was without merit.[5]

Likewise counsel conceded that even if an argument could honestly be asserted that the application as ambiguous, the undisputed evidence concerning the lease language resolves any ambiguity. Defendants' leases, containing the language, "No children, animals or other pets are permitted," in conjunction with Defendants' concession that such language would constitute a *per se* violation of the relevant statute (Doc. No. 89 at 14), makes it indisputably clear that children were "dispreferred" at Fountain View. Jancik, 44 F.3d at 556 ("Evidence that the author or speaker intended his or her words to indicate a prohibited preference obviously bears on the question of whether the words in fact do so."). Thus, the Court finds that no reasonable jury could find that Defendants have not violated § 3604(c).

B. 42 U.S.C. § 3604(a)

Section 3604(a) makes it unlawful "[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of . . . familial status . . . ." The

5 The Pretrial Conference in this case was held in open court on December 17, 2009.

Government contends that Defendants violated § 3604(a) by engaging "in a pattern or practice of discriminating or denied rights protected by the FHA to a group of persons on the basis of familial status by. . ." (1) refusing to negotiate with, (2) steering away, and (3) discouraging applicants with children. (Doc. No. 85 at 14-15.)

To establish its claim under § 3604(a), the Government must prove that Defendants have engaged in "unequal treatment on the basis of [familial status] that affects the availability of housing." Jackson v. Okaloosa County , Fla., 21 F.3d 1531, 1542 (11th Cir. 1994); Bonasera v. City of Norcross, No. 09-11514, 2009 WL 2569097, at *2 (11th Cir. Aug. 21, 2009). In Jackson, the Eleventh Circuit recognized that discriminatory rental decisions and steering on the basis of a protected status, familial status in this case, are violations of § 3604(a). 21 F.3d at 1542 n.17 (citations omitted).

Aside from Defendants' general assertion that genuine issues of material fact preclude summary judgment in the Government's favor, Defendants do not defend against the Government's § 3604(a) claim. Defendants offer no legal authority and no argument directly addressing the § 3604(a) allegation.

The undisputed facts in this case establish clearly that Defendants have violated § 3604(a) by refusing to negotiate with and steering away potential tenants with children. Sharon Maynord and Linda Jolman admitted turning away individuals with a child or children, telling such individuals that Fountain View Apartments is an adult community. Further, Sharon Maynard steered such individuals to Greenleaf Gardens Apartments pursuant to Defendant Mildred Chastain's instruction. Considering these undisputed facts in conjunction with Defendants' use of applications that explicitly state

"ADULTS ONLY" and leases that explicitly prohibit children, no reasonable jury could find that Defendants have not violated § 3604(a).

C. Pattern or Practice

The Government's authority to bring the claims in this case is derived from 42 U.S.C. § 3614(a), which enables the Government to bring a civil action against "any person or group of persons . . . engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by the [Fair Housing Act]." Alternatively, the Government may also bring a suit if the alleged violation "raises an issue of general public importance . . . ." 42 U.S.C. § 3614(a). In this case, the Government brings its claim of familial status discrimination on both bases (Doc. No. 87 at 9), although only one is required. United States v. Pelzer Realty Co., Inc., 484 F.2d 438, 444 (5th Cir. 1973).[6] Further, the parties agree that the Attorney General of the United States has standing to bring this action. (Doc. No. 93, ¶ 30.) Nevertheless, because the Government's Motion specifically requests the Court to find that "Defendants' conduct constitutes a pattern or practice of resistance to the full enjoyment of rights granted by the FHA . . . ," (Doc. No. 85 at 2) the Court considers whether Defendants have engaged in a pattern or practice of familial status discrimination, as prohibited by the Fair Housing Act.

To establish a pattern or practice of discrimination, the Government must prove "more than the mere occurrence of isolated or 'accidental' or sporadic discriminatory acts[;]" rather, it must prove by preponderance of the evidence that discrimination is the

6 Cases decided by the Fifth Circuit before October 1, 1981, are binding precedent in the Eleventh Circuit today. Bonner v. Prichard, 661 F.2d 1206 (11th Cir. 1981)(en banc).

Defendants' "standard operating procedure." Int'l Bhd. of Teamsters v. United States, 431 U.S. 324, 336 (1977).[7] Each pattern or practice case turns on its own facts. United States v. West Peachtree Tenth Corp., 437 F.2d 221, 227 (5th Cir. 1971). Further, there is no mathematical formula for determining whether a defendant has engaged in a pattern or practice of discrimination. Id.; see United States v. West Peachtree Tenth Corp., 437 F.2d 221, 227 (5th Cir. 1971)(citing a case in which three violations of § 3604 constituted a "pattern or practice" of discrimination); United States v. Lansdowne Swim Club, 894 F.2d 83, 88-89 (3d Cir. 1990)(upholding lower court's finding that the repeated rejections of three qualified, prospective tenants was probative of a pattern or practice of discrimination);

Defendants contest the Government's pattern and practice allegation with respect to familial status, arguing that (1) there is a genuine issue of material fact as to whether Defendants engaged in unlawful discrimination on the basis of familial status, and (2) the Government has failed to establish that Defendants have a pattern or practice of discrimination. Defendants rely solely on Int'l Bhd. of Teamsters to argue that any acts of discrimination that may have occurred were merely isolated, accidental, or sporadic acts that do not reflect a pattern or practice of discrimination. Additionally, Defendants proffer evidence to suggest that Fountain View does not have a "policy" of discrimination on the basis of familial status, including identifying children who have resided at Fountain View Apartments.

Again, the Court finds Defendants' arguments completely unavailing. It is a rare circumstance to find such pervasive and conspicuous evidence of discrimination on the

7 The 1988 Amendments to the FHA "extend to families with children the same protections that the FHA previously had afforded principally to minorities and members of religious groups." Soules v. HUD, 967 F.2d 817, 821 (2d Cir. 1992).

basis of familial status as the Court finds in this record. The record in this case includes forty-one executed applications for housing at Fountain View explicitly stating "ADULTS ONLY" and fifteen executed leases including the language, "No children, animals or other pets are permitted." Further, Defendant Mildred Chastain specifically changed the original form of the application, which reflected no preference regarding familial status, to read "ADULTS ONLY." This evidence, in and of itself, establishes a pattern or practice of resistance to the full enjoyment of rights granted by the FHA.

Furthermore, two Fountain View employees, both hired and supervised by Defendant James Stevens, believed that Fountain View Apartments was an "adults-only" community. Both employees expressed that belief to prospective tenants with children, turning those tenants away from Fountain View Apartments. While the foregoing evidence is indicative of a "policy" at Fountain View to discriminate on the basis of familial status, the Government need only prove that Defendants have a "pattern *or* practice" of unlawful discrimination. Additionally, the existence of children permitted to reside at Fountain View Apartments does not preclude the Government from establishing a pattern or practice of discrimination on the basis of familial status. Lansdowne Swim Club, 894 F.2d at 89 (the court "need not find that [defendant] always discriminated to find that it engaged in such a pattern or practice"); United States v. Garden Homes Management, Corp., 156 F. Supp. 2d 413, 425 (D. N.J. 2001). Considering the number, variety, and consistency of the FHA violations by the Defendants in this case, the Court finds as a matter of law that Defendants' conduct clearly constitutes "a pattern or practice of resistance to the full enjoyment of . . . rights granted by [the FHA]." 42 U.S.C.A. § 3614(a).

IV. CONCLUSION

For the reasons set forth herein, bolstered by Defense counsel's concessions at the Pretrial Conference, which were compelled by this record, it is hereby **ORDERED** that Plaintiff's Motion for Partial Summary Judgment (Doc. No. 85) is **GRANTED**, and thus, Plaintiff's Motion for Leave to File a Reply to Defendants' Memorandum in Opposition (Doc. No. 90) is **DENIED** as moot.

DONE AND ORDERED in Orlando, Florida, on this 22nd day of December 2009.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies Furnished To:
Counsel of Record