

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
GREENBRIER VILLAGE HOMEOWNER’S)
ASSOCIATION, INC., GASSEN COMPANY,)
INC., and DIANE BROWN)
)
Defendants.)

Civil Action No. _____

COMPLAINT

The United States of America, by and through its attorney, John R. Marti, Acting United States Attorney for the District of Minnesota, brings this suit against Defendants Greenbrier Village Homeowners’ Association, Inc., Gassen Company, Inc. and Diane Bowen (collectively, “Defendants”) for violation of the Fair Housing Act based on familial status. Defendants discriminated against residents with children by treating children less favorably than adults in their ability to use common areas. Defendants also effectively prevented children from accessing common areas at all by requiring adult supervision at all times, regardless of the circumstances. Finally, Defendants made, printed and published discriminatory statements that indicated a preference or limitation against families with children having full access and enjoyment to the amenities and privileges available to all residents. In support of this Complaint, the United States of America alleges as follows:

NATURE OF ACTION

1. This is a civil action brought by the United States to enforce the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.* (the “Act”). It is brought on behalf of Elaine Gustafson, her two minor great-grandchildren and the estate of her deceased partner Richard H. Wise (collectively, “Complainants”). The United States also brings this action on behalf of all other aggrieved persons.

2. The United States alleges that Defendants discriminated on the basis of familial status in violation of the Fair Housing Act, 42 U.S.C. § 3604(b) and 3604(c).

3. On about July 16, 2012, Elaine Gustafson filed a complaint of discrimination on behalf of herself, her two minor great grandchildren, and her partner Richard Wise with the United States Department of Housing and Urban Development (“HUD”). After an investigation, HUD charged Defendants with familial status discrimination, in violation of the Fair Housing Act.

4. Under the Fair Housing Act, Complainant Elaine Gustafson elected to have the claim asserted in the charge be decided in this civil action under 42 U.S.C. § 3612(a).

5. The United States, therefore, brings this action for injunctive relief and damages on behalf of the Complainants pursuant to the Fair Housing Act, 42 U.S.C. § 3612(o).

6. The United States also brings this action for injunctive relief and damages on behalf of all other aggrieved persons pursuant to the Fair Housing Act, 42 U.S.C. § 3614(a).

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §§ 3612(o) and 3614(a) of the Fair Housing Act and 28 U.S.C. §§ 1331 and 1345.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391 because the alleged discrimination and discriminatory statements occurred in this district, the housing property at issue is located in this district, and defendants reside in this district.

PARTIES

9. Plaintiff is the United States of America. The United States brings this action on behalf of the aggrieved persons as follows:

- a. Since 2002, Elaine Gustafson has owned the unit in which she and her two minor great grandchildren live at The Condominiums of Greenbrier Village (“Greenbrier Village”) in a building commonly known as “Greenbrier II.” Ms. Gustafson and her great grandchildren are “aggrieved persons” as defined by the Fair Housing Act, 42 U.S.C. § 3602(i).
- b. From 2002 until his death on August 2, 2012, Richard Wise owned and resided in the same unit as Elaine Gustafson. Elaine Gustafson is the beneficiary of his estate and the co-executor of his will. The estate of Richard Wise is an “aggrieved person” as defined by the Fair Housing Act, 42 U.S.C. § 3602(i).

- c. In addition to the Complainants, there are other victims of the Defendants' discriminatory housing practices who are "aggrieved persons" as defined in 42 U.S.C. § 3602(i), and who may have suffered injuries as a result of the conduct described below.

10. Defendant Greenbrier Village Homeowners' Association, Inc. ("Association"), a Minnesota non-profit corporation, is the governing body and umbrella association of Greenbrier Village. Greenbrier Village has six (6) condominium buildings and contains approximately 462 condominium units total.

11. Greenbrier Village's condominium units are dwellings within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

12. Defendant Association is responsible for the enactment and enforcement of the rules and regulations that govern the common areas (also referred to as the "common property") of Greenbrier village and restrict activities permitted in the common areas or common property of Greenbrier Village.

13. Each building within Greenbrier Village has a homeowners' association, known as a "sub-association." Greenbrier II's sub-association is known as "Greenbrier Village Condominium II Association." Greenbrier II is located at 10531 Cedar Lake Road, Minnetonka, Minnesota, 55305.

14. At least since 2003, Defendant Gassen Company, Inc. ("Gassen") has been the property management agent at Greenbrier Village. Defendant Gassen is a Minnesota Corporation.

15. At least since 2003, Defendant Diane Brown has been employed by Defendant Gassen as the on-site property manager for Greenbrier Village. In her role as the on-site property manager, Defendant Brown authored and/or published, or caused to be authored and/or published, written documents under the name “Greenbrier Management” and the “Greenbrier office.”

FACTUAL ALLEGATIONS

16. On or about June 6, 2011, Defendant Association formed a committee to consider the idea of changing the existing Association’s Rules and Regulations regarding playing on the grounds and common areas.

17. On July 25, 2011, Defendant Association enacted a rule affecting the use of the common areas of Greenbrier Village (herein referred to as the “Common Areas rule”).

18. The Common Areas rule, located in paragraph (C)(3)(a) of Greenbrier Village’s Rules and Regulations, stated as follows:

Grounds and Landscaping: Playing, picnicking or sunbathing on the common grounds, including lawns, sidewalks, landscaped areas and parking areas is not permitted. Lawn chairs and/or sunbathing are allowed on decks and patios or within the confines of the pool area only. Bicycles, tricycles, scooters, skates, skate boards, roller blades, etc. may not be used on the property.

19. The Common Areas rule was not widely distributed or published to Greenbrier Village residents after it was enacted.

20. At the time, page 10, paragraph E of Greenbrier Village's Rules and Regulations contained a rule entitled "Children." The Children rule stated in part that "[c]hildren are not allowed to play in the hallways, stairwells, driveways, elevators, garages or any potentially dangerous area of the condominium property." This rule was in effect at Greenbrier Village at least from August 2003 until approximately December 2012.

21. At all times relevant to this Complaint, the Association's Rules and Regulations also contained a rule governing "Complaint, Enforcement and Appeals Procedures."

22. The Complaint, Enforcement and Appeals Procedures Rule states that the Association "will undertake a procedure for complaint handling only if the complainant has first attempted and failed to obtain voluntary compliance without the Association's intervention." The rule contains following specific procedures:

- a. "Complaints regarding rule violations by homeowners must be submitted in writing to the Management Company. The complainant should have already discussed the complaint with the offending party and must indicate the response received. Anonymous complaints will not be accepted."
- b. "Upon receipt of a written complaint, the Management Company will give notice of the infraction to the Resident."

23. The Complaint, Enforcement and Appeals Procedures Rule sets forth how First, Second, and Third (or on-going) offenses are handled, and contemplates the use of

warning letters and potential fines. With respect to warning letters, the rule states that the letter shall provide an opportunity for the alleged offender to be heard before the Board or applicable enforcement committee or subcommittee.

24. On April 30, 2010, Gustafson was awarded custody of her two minor great-grandchildren, a girl and a boy, who are now 9 and 11 years old.

25. From April 30, 2010 to August 2, 2012, Gustafson lived with her great-grandchildren and her partner, Richard Wise.

26. Richard Wise died on August 2, 2012.

27. From August 2, 2012 to the present, Gustafson has continued to live with her two great-grandchildren in the same residence.

28. On or about August 12, 2011, Gustafson and Wise received a Rule Violation Notice. It stated, in relevant part: "Description of violation: Children on complex. Rules and Regulations, page 10, Item E, states that children are not allowed to play in the common areas. Please have children refrain from this activity to avoid fines. Also, enclosed is the new rule governing children playing on the complex." The notice did not identify who made the complaint.

29. A handwritten note signed by "The Greenbrier Office" accompanied the August 12, 2011 Rule Violation Notice. The note advised Gustafson and Wise of the Common Areas rule, and directed them to place the rule in their rule book, and to abide by the new rule.

30. On or about August 16, 2011, Gustafson and Wise received another rule violation notice, this time in the form of a letter from Defendant Brown, citing them for

violating the new Common Areas rule. A copy of the Common Areas rule was enclosed with the letter.

31. The August 16, 2011 violation letter stated, in relevant part: “This office has received another complaint about the children in your care being out on the grass by the building. I am enclosing a copy of the new rule, which clearly stated that children are not allowed on the grass or landscaping on the premises. This is a rule recently passed by the HOA Board, and I’m sure you understand that exception cannot be made for one family without other families expecting the same treatment. Possibly your children could use the playground across Cedar Lake Road for picnicking and playing. This would solve the problem for everyone. Otherwise if the violation continues, I will have no option other than to begin fining you for each breach of this rule.”

32. Wise responded to the August 16, 2011 rule violation letter by writing to Brown’s supervisor, Kris Knowles, at Gassen. Among other things, Wise asked that Defendants identify who submitted a complaint related to the rule violation notices.

33. On or about September 7, 2011, Defendant Brown responded to Wise’s letter, stating that she had been instructed to write the August 16, 2011 rule violation letter after a board member communicated a complaint about Complainant’s great-grandchildren to her. She also disclosed that the Common Areas rule had not been given to all residents; that the new rule was rescinded after learning of “some new laws pertaining to the use of common areas;” and that she was sorry that Wise and his family “were caught in the middle of this change.” Brown did not identify any names of persons whose submitted complaints related to the August 12, 2011 and August 16, 2011 notices.

34. On September 26, 2011, the Association held a board meeting. The board meeting minutes reflect that the Common Area Rule was rescinded because of a “recent change in discrimination laws.” The Common Areas Rule was in effect from July 25, 2011 to September 26, 2011.

35. On April 18, 2012, Defendant Brown wrote a letter to Gustafson and Wise, stating that Defendants had received “numerous” complaints about Gustafson’s great-grandchildren that weekend. Brown did not identify any complainants in the letter. The letter stated that she was not issuing a violation notice for an infraction or assessing them with a fine. Instead, the letter requested that Gustafson and Wise “take into consideration the comfort of the other residents living here and have your grandchildren observe the Greenbrier rules.” The letter also stated that “while playing on the grass or sidewalks *is* allowed, playing in the landscaping and trees *is not*” (emphasis in original).

36. In or around April 2012, Gustafson saw a “Reminders” notice from the Greenbrier Management on a bulletin board in the laundry room on her floor. The bulletin boards in the laundry rooms of Greenbrier Village are used by Greenbrier Management to communicate with residents. The Reminders notice stated: “Kids playing on the grounds must be supervised by an adult at all times. Kids may not play in the garage, driveway, parking lots, or by the pond. If the kids are in the grass, they may not dig, ride bikes, slide down hills, or in any way hinder the growth of the lawn. They cannot play in the trees or planted areas and may not jump off balconies.”

37. The Reminders notice also stated: “The sounds of children playing near a building can be disturbing, especially if they are yelling, screaming, or crying. Out of

respect for your neighbors, games that necessitate such noise should be taken to a park or across the street to the playground at the school.”

38. On or about May 15, 2012, Gustafson submitted a housing discrimination information form to HUD, which stated that children were not allowed to play on common grounds without supervision. On July 16, 2012, Ms. Gustafson filed a formal housing discrimination complaint with HUD.

39. On July 16, 2012, HUD sent all of the Defendants a letter informing them of the HUD complaint filed by Gustafson.

40. In or around August 2012, Defendant Brown received four written complaints from residents living in Greenbrier II regarding Complainant's great-grandchildren. On information and belief, these four resident complaints were submitted at the request of Defendants.

41. Gustafson's great-grandchildren were never determined to have damaged any property, real or personal, at Greenbrier Village.

42. Between November 21, 2005 and June 1, 2011, Greenbrier management issued thirteen rule violation notices to families with minor children for violations of the Associations Rules and Regulations Section E, "Children." No violation notices were issued pursuant to Section E in this time period to households without minor children.

43. From July 25, 2011 to September 26, 2011, the time period during which the Common Areas rule was in effect, no adult was cited or received a written warning or rule violation notice for his or her use of a bicycle, tricycle, skate board, scooter, skates, and/or roller blades on the Greenbrier Village property.

44. Adult residents routinely ride bicycles on the common area property in Greenbrier Village.

45. In addition to threatening Gustafson and Wise with a fine for violating the Common Areas rule, Defendants gave a verbal warning to a resident for violating the Common Areas rule for playing catch with his granddaughter in the common area.

46. In issuing the rule violations against Gustafson and Wise, Defendants failed to adhere to the complaint procedures contained in the Homeowner's Association's Rules and Regulations.

47. Because of Defendants' interpretation of the Children Rule and the requirement that children had to be supervised by an adult at all times, Gustafson did not permit her great-grandchildren to play outside or in the common areas during the summer of 2012, out of fear that they would be cited for an infraction and subjected to fines.

48. During the summer of 2012, Gustafson was also unable to take her great-grandchildren to a park off the premises because she had to provide care to Wise, who was suffering from health issues and had been put into hospice care in the Complainants' home.

49. Before he died on August 2, 2012, Wise lamented to Gustafson that children should be able to play outside at their own home. Instead, the children remained inside, even during good weather.

50. After Wise's death, until HUD issued its charge of discrimination on September 20, 2013, Gustafson continued not to allow the children to play outside based

on Defendants' interpretation of the Children Rule and the requirement that children had to be supervised by an adult at all times.

COUNT I

(Fair Housing Act Violations)

51. The United States incorporates by reference paragraphs 1-50 herein.

52. Defendants, through the above-referenced actions, discriminated against Elaine Gustafson, her two great-grandchildren, and Richard Wise in the terms, conditions, or privileges of sale or 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).

53. Defendants, through the above-referenced actions, discriminated against Elaine Gustafson, her two great-grandchildren and Richard Wise when they made statements indicating a preference, limitation or discrimination based on familial status, in violation of 42 U.S.C. § 3604(c).

54. As a result of Defendants' conduct, Elaine Gustafson, her two great-grandchildren and the estate of Richard Wise are aggrieved persons as defined in 42 U.S.C. § 3602(i) and have suffered injuries as a result of Defendants' actions.

55. Defendants' actions and statements were intentional, willful, and taken in disregard for the rights of Complainants.

COUNT II

(Pattern or Practice of Discrimination)

56. The United States incorporates by reference paragraphs 1-50 herein.

57. The Defendants' discrimination on the basis of familial status, as described above, constitutes:

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

58. In addition to the Complainants, there are other victims of Defendants' discriminatory actions and practices who are "aggrieved persons" as defined in 42 U.S.C. § 3602(i). These persons may have suffered injuries as a result of Defendants' discriminatory conduct.

59. Defendants' actions and statements were intentional, willful, and taken in disregard for the rights of the other aggrieved persons.

PRAYER FOR RELIEF

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

- A. Declares that the discriminatory housing practices of Defendants as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.*;
- B. 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;

- C. Enjoins Defendants, their agents, employees, and successors and all other persons in active concert or participation with them from discriminating on the basis of familial status, in violation of the Act;
- D. Orders Defendants to take such affirmative steps as may be necessary to restore, as nearly as practicable, the Complainants and all other aggrieved persons to the position they would have been in but for the discriminatory conduct;
- E. Orders Defendants to take such actions 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 their unlawful conduct, including implementing policies and procedures to ensure that no applicants or residents are discriminated against because of familial status;
- F. Awards monetary damages to Elaine Gustafson, her two minor great-grandchildren and the Estate of Richard H. Wise, pursuant to 42 U.S.C. §§ 3612(o)(3), 3613(c)(1) and 3614(d)(1)(B);
- G. Awards monetary damages to all other aggrieved persons, pursuant to 42 U.S.C. § 3614(d)(1)(B);
- H. Assesses civil penalties against Defendants in the amounts authorized by 42 U.S.C. § 3614(d)(1)(C), to vindicate the public interest.

I. Awards such additional relief as the interest of justice may require.

Dated: November 25, 2013

Respectfully Submitted
ERIC H. HOLDER, JR.
Attorney General of the United States

/s/ Jocelyn Samuels
JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

/s/ Elizabeth A. Singer
STEVEN H. ROSENBAUM
Chief
ELIZABETH A. SINGER
Director, U.S. Attorney's Fair Housing Program
Housing & Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Penn. Ave., NW – NWB
Washington, D.C. 20530
E-Mail: Elizabeth.Singer@usdoj.gov
Phone: (202) 514-6164

JOHN R. MARTI
Acting United States Attorney

/s/ Bahram Samie
BAHRAM SAMIE
Assistant United States Attorney
Attorney I.D. No. 392645
District of Minnesota
600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
E-Mail: bahram.samie@usdoj.gov
Phone:(612) 664-5600