

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

LCW FAMILY LIMITED PARTNERHSIP; )

LCW MANAGEMENT CORPORATION; )

GREGORY NELSON; and NANCY )

WALLACE. )

Defendants. )

CASE NO. 8:13CV00350

**COMPLAINT AND REQUEST FOR JURY TRIAL**

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 Freddie Penrose, pursuant to 42 U.S.C. § 3612(o), as well as 42 U.S.C. § 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 a substantial part of the events or omissions giving rise to the United States’ claims occurred there, and the property that is the subject of this suit is located there.

**DEFENDANTS AND THE SUBJECT PROPERTY**

4. The Subject Property, Lake Candlewood Apartments, is an approximately 183-unit residential apartment complex located at 1528 North 120<sup>th</sup> Street, Omaha, Nebraska. These units are “dwellings” within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

5. Defendant LCW Family Limited Partnership is a limited partnership and an owner and operator of Lake Candlewood Apartments in Omaha, Nebraska.

6. Defendant LCW Management Corporation is a general partner of LCW Family Limited Partnership and is the property management company at Lake Candlewood Apartments.

7. Defendant Gregory Nelson is a partner in LCW Family Limited Partnership and the sole owner of LCW Management Corporation, and resides in Carrollton, Texas. Mr. Nelson sets the rules and policies for Lake Candlewood Apartments, including the policies for assistance animals. He sets these policies in coordination with the office and leasing manager, Defendant Nancy Wallace.

8. Defendant Nancy Wallace is employed as the office and leasing manager of Lake Candlewood Apartments and sets the policies for Lake Candlewood Apartments in coordination with Defendant Nelson.

**FACTUAL ALLEGATIONS**

**Defendants’ Policies and Practices Regarding Service Animals and Pets**

9. Between at least October 2009 and October 1, 2012, the Defendants had a “no pets” policy regarding animals in the rental units that they own or manage. During this time, Defendants did not waive their no-pets policy for tenants with disabilities who needed assistance

animals. The “no pets” policy was specifically incorporated into Paragraph 26 of Subject Property’s lease, which states:

It is the policy of the Landlord to not allow pets in this complex. If the Landlord determines that tenant has a pet occupying premises, the lease shall terminate after fourteen (14) days written notice from the Landlord, the damage deposit shall be forfeit and re-rental fees shall immediately be due and payable, along with any charge for damages to the premises.

11. In July 2012, the Fair Housing Center of Nebraska-Iowa conducted testing at the Subject Property to evaluate whether Defendants were enforcing the no-pets policy against tenants with disabilities who need assistance animals. Testing is a simulation of a housing transaction that compares responses given by housing providers to different types of home-seekers to determine whether illegal discrimination is occurring.

12. On July 5, 2012, a tester from the Fair Housing Center of Nebraska-Iowa contacted Lake Candlewood Apartments. She spoke to Defendant Wallace and had the following conversation:

Tester: “Okay, I don’t have a pet, but I do have a companion dog for my disability that I’ve had for a couple years. Would a doctor’s statement verifying this be okay?”  
Ms. Wallace: “No pets at all.”  
Tester: “Okay, well, he’s not a pet, he’s a companion animal for my disability.”  
Ms. Wallace: “Right.”  
Tester: “So, would a doctor’s note then be okay with you?”  
Ms. Wallace: “No, no, the owner just is very adamant about no pets policy.”

13. The United States Department of Justice also conducted testing at the Subject Property to evaluate whether defendants were enforcing the no-pets policy against tenants with disabilities who need assistance animals.

14. On July 18, 2012, a United States Department of Justice tester contacted Lake Candlewood Apartments. He spoke to Defendant Wallace. He informed her that “I have what’s

called a support animal.” Before the tester finished his statement, Defendant Wallace commented “No pets, at all.” The tester continued, “Even if I have, like, a doctor’s letter or a…” to which Defendant Wallace interrupted and commented, “correct, correct.”

15. Beginning in October 1, 2012, Defendants implemented a new policy entitled “Management Policy for Service and Emotional Support Animals” (“Management Service Animal Policy”). The policy allows tenants with disabilities to request a waiver of Defendants’ no pet policy for their assistance animals.

Mr. Penrose’s Request for a Reasonable Accommodation

16. In October 2009, Freddie Penrose moved to 1527 North 120<sup>th</sup> Plaza, of the Subject Property. While living at the Subject Property, Mr. Penrose executed three lease agreements that contained the “no pets” policy implemented by the Defendants.

17. At all relevant times, Mr. Penrose is and has been disabled as defined by the Fair Housing Act, 42 U.S.C. § 3206(h). Mr. Penrose has been diagnosed with multiple sclerosis, a condition that substantially impairs his walking, social interaction, self-care, learning and ability to perform manual tasks.

18. In March or April 2012, Mr. Penrose informed Defendant Wallace of his disability.

19. In a letter dated May 23, 2012, Mr. Penrose’s medical provider wrote a letter for Mr. Penrose, which stated in part: “I believe that a companion pet would be very beneficial and medically necessary to augment Mr. Penrose’s pharmaceutical and physical therapies. Please accommodate him in this request. Please allow Mr. Penrose to house a pet.”

20. In or around June 2012, Mr. Penrose executed a new lease at the Subject Property and moved into a two-bedroom apartment in Lake Candlewood Apartments with his daughter and an assistance animal, a cat named "Fargo."

21. On or around June 26, 2012, Defendant Wallace learned that Mr. Penrose had Fargo in his apartment and spoke to him about removing the cat. During the conversation, Mr. Penrose requested a reasonable accommodation to allow him to keep Fargo, explained that Fargo was an assistance animal, and that he had documentation from his medical provider. Defendant Wallace stated, "I know what [Defendant Nelson] will say, no." Defendant Wallace issued an oral lease violation notice and gave Mr. Penrose fourteen days to remove Fargo from his apartment or face eviction.

22. On or around July 3, 2012, Mr. Penrose spoke with Defendant Nelson by telephone. Mr. Penrose made an oral request to keep Fargo in his apartment and explained that the cat was an assistance animal. Mr. Penrose informed Defendant Nelson of his disability and that he had a letter from his medical provider recommending an assistance animal. Defendant Nelson informed Mr. Penrose that he must remove Fargo from his apartment or face eviction.

23. Following his phone call with Defendant Nelson, Mr. Penrose faxed Defendant Nelson a written request for a reasonable accommodation. The letter requesting a reasonable accommodation also included a copy of the letter from Mr. Penrose's medical provider and a copy of the Joint Statement of HUD and the Department of Justice on Reasonable Accommodations under the Fair Housing Act. The letter from Mr. Penrose stated in part:

I am requesting an accommodation to have an assistance animal. I am both embarrassed and somewhat humiliated that I need to ask you personally for this accommodation. I have a letter from my Neurologist describing my disability, multiple sclerosis, and his recommendation that this accommodation is needed and that it will be a positive addition to my current regime of treatment and disease management.

24. On July 5, 2012, Defendant Wallace, at the direction of Defendant Nelson, sent Mr. Penrose a written eviction notice. The eviction notice stated he was in “non-compliance” with the rental agreement because of “cat in apartment.” The notice further stated that Mr. Penrose had fourteen days to be in compliance with the rental agreement or the rental agreement would terminate.

25. In a letter dated October 1, 2012, Defendant Nelson informed Mr. Penrose that his request for an assistance animal would be granted, if Mr. Penrose signed the Management Service Animal Policy. The October 1, 2012 letter informed Mr. Penrose that if he refused to sign the Management Service Animal Policy within five days and comply with the terms of that policy within thirty days, Defendants would initiate eviction proceedings.

26. Mr. Penrose expressed concern to Mr. Nelson about several requirements contained within the Management Service Animal Policy. On November 12, 2012, following correspondence between Mr. Penrose and Defendant Nelson, Mr. Penrose signed the Management Service Animal Policy.

27. On February 28, 2013, Mr. Penrose voluntarily moved out of the Subject Property.

#### **HUD ADMINSTRATIVE PROCESS**

28. On or around July 23, 2012 Mr. Penrose filed a timely Fair Housing Complaint against Lake Candlewood Apartments and Nancy Wallace with the United States Department of Housing and Urban Development (“HUD”). The Complaint was amended on or around March 15, 2013, to, among other things, add Defendant Gregory Nelson and LCW Management Corporation as respondents. The Complaint was amended a second time, on or around August

20, 2013, to among other things, add Defendant LCW Family Limited Partnership as a respondent.

29. Pursuant to 42 U.S.C. § 3610, the Secretary of HUD 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 Defendants violated 42 U.S.C. §§ 3604(f)(2), (f)(3), 3604(c), and 3617 of the Fair Housing Act. Therefore, on September 24, 2013, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the above-named Defendants with engaging in discriminatory housing practices on the basis of disability.

30. On September 25, 2013, Mr. Penrose elected to have the claims asserted in the HUD Charge resolved in a civil action pursuant to 42 U.S.C. § 3612(a). On this same date, the Administrative Law Judge issued a Notice of Election to Proceed in United States Federal District Court and terminated the administrative proceeding on Mr. Penrose's complaint.

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

**FIRST CLAIM FOR RELIEF**

32. Plaintiff re-alleges and incorporates by reference the allegations set forth above.

33. By the actions set forth above, Defendants have:

- 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 disability, in violation of 42 U.S.C. § 3604(f)(2);

- b. Refused to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604 (f)(3)(B);
- c. Made or caused to be made statements with respect to a dwelling that indicate a preference, limitation, or discrimination based on disability or an intention to make any such preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c); and
- d. Coerced, intimidated, threatened, or interfered with the exercise or enjoyment of any right granted or protected by the Fair Housing Act, in violation of 42 U.S.C. § 3617.

- 34. As a result of Defendants' conduct, Mr. Penrose has been injured and is an "aggrieved person" as defined by 42 U.S.C. § 3602(i).
- 35. The discriminatory actions of the Defendants were intentional, willful, and taken in reckless disregard of the rights of Mr. Penrose and other persons with disabilities who need assistance animals.

**SECOND CLAIM FOR RELIEF**

- 36. Plaintiff re-alleges and incorporates by reference the allegations set forth above.
- 37. By the actions set forth above, Defendants have engaged in:
  - 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); or



- b. A denial to a group of persons rights granted by the Fair Housing Act, which denial raises an issue of general public importance, in violation of 42 U.S.C. § 3614(a).
38. In addition to Mr. Penrose, other persons may have been injured by Defendants' discriminatory actions and practices as described above. Such individuals are aggrieved persons under the Fair Housing Act, 42 U.S.C. §§ 3602(i) and 3614(d)(1)(B).

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;
2. An injunction against Defendants, their agents, employees, successors, and all other persons in active concert or participation with any of them from:
  - a. Discriminating on the basis of disability, in violation of the Fair Housing Act;
  - b. Discriminating in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of disability;
  - c. Stating any preference, limitation, or discrimination on the basis of disability;
  - d. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, Mr. Penrose and other victims of Defendants' past unlawful practices to the position they would have been in but for the discriminatory conduct; and

e. 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 Defendants' unlawful practices.

3. An award of monetary damages to Mr. Penrose pursuant to 42 U.S.C. §§ 3612(o)(3), 3613(c)(1) and 3614(d)(1)(B);

4. An award of monetary damages to each additional person aggrieved by Defendants' discriminatory housing practices, pursuant to 42 U.S.C. § 3614(d)(1)(B); and

5. A civil penalty against each Defendant in order to vindicate the public interest, pursuant to 42 U.S.C. § 3614(d)(1)(C) and 28 C.F.R. § 85.3(b)(3).

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

The United States of America hereby requests that the trial of the above and the foregoing action should be held in Omaha, Nebraska, and that the case be calendared accordingly.

Dated: November 25, 2013

Respectfully submitted,

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s/ ~~Jocelyn Samuels~~  
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<sup>1</sup> Acting Assistant Attorney General Jocelyn Samuels, Chief of the Housing and Civil Enforcement Section Steven Rosenbaum, and Deputy Chief Sameena Shina Majeed do not intend to receive electronic notifications in this matter.