

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	
v.	)	Electronically filed
	)	
CITY RESCUE MISSION OF NEW CASTLE	)	
and JAMES HENDERSON,	)	
	)	
Defendants.	)	

**COMPLAINT**

The United States of America brings this action against defendants City Rescue Mission of New Castle and James Henderson 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, on behalf of Kenneth DeFiore, and against defendant City Rescue Mission of New Castle to enforce Title III of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12181-12189, and its implementing regulations, 28 C.F.R. Part 36. Kenneth DeFiore suffered discrimination by Defendants City Rescue Mission of New Castle and James Henderson when they made housing unavailable to him on account of his disability. Defendants turned away Mr. DeFiore, who is blind, when he told them he needed to have his service animal accompany him in the homeless shelter. The United States seeks injunctive and declaratory relief, as well as monetary damages, the basis for which is alleged as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 3612(o)(1), 42 U.S.C. § 3614(a) and 42 U.S.C. § 12188(b)(1)(B).

2. Venue is proper under 28 U.S.C. § 1391(b), because the claims alleged herein arose in the Western District of Pennsylvania.

**II. PARTIES AND SUBJECT PROPERTY**

3. Kenneth DeFiore is blind. He is an individual with a disability as defined by the Fair Housing Act, 42 U.S.C. § 3602(h), as well as the ADA, 42 U.S.C. § 12102.

4. Mr. DeFiore resides in Lawrence County, Pennsylvania.

5. Defendant City Rescue Mission of New Castle ("CRM") operates a 39-bed homeless shelter providing temporary lodging and other services to persons who are homeless. The homeless shelter is at 319 South Croton Avenue, New Castle, Pennsylvania.

6. CRM is a dwelling, as set forth in the Fair Housing Act, 42 U.S.C. § 3602(b).

7. CRM is a public accommodation, as set forth in the ADA, 42 U.S.C. § 12181(7)(K).

8. One of the programs offered by CRM is the Crossroads Program, which provides shelter and other services for up to ninety days.

9. Defendant James Henderson is CRM's Crossroads Program Manager. Defendant Henderson's business address is 319 South Croton Avenue, New Castle, Pennsylvania.

**III. FACTUAL ALLEGATIONS**

10. Mr. DeFiore was diagnosed with blindness by his physician in September 2006.

11. Upon the recommendation of his physician, Mr. DeFiore has used a trained service animal since September 2005 to assist him in his everyday activities.

12. His current service animal, a Labrador retriever named Gabby, has assisted Mr. DeFiore since November 2010.

13. Gabby was trained at Freedom Guide Dogs, located in Cassville, New York.

14. On or about November 2, 2011, Mr. DeFiore became homeless when his landlord evicted him from his apartment.

15. On or about December 5, 2011, Mr. DeFiore telephoned CRM to request a place to stay at the shelter through participation in the Crossroads Program.

16. During the telephone conversation, Mr. DeFiore spoke with both the desk person and Mr. Henderson, the manager of the program. He explained to each of them that he was blind, required the use of a service animal, and needed shelter due to his recent eviction.

17. Defendants informed Mr. DeFiore that they could not accept him with his service animal because CRM was not equipped to handle animals.

18. Mr. DeFiore reiterated that Gabby was a service animal, specifically a guide dog, and that he could not be without her because of his disability.

19. Mr. Henderson refused Mr. DeFiore's request once again and Mr. DeFiore ended the call.

20. After the telephone call with Defendants, Mr. DeFiore contacted Lynn Henry, a caseworker for Lawrence County Community Action, an organization that serves the needs of individuals with low incomes.

21. Mr. DeFiore described his telephone call with the Defendants to Ms. Henry.

22. Ms. Henry called CRM and spoke with Mr. Henderson. She informed Mr. Henderson that she was looking for a bed for Mr. DeFiore and that his service animal would need to accompany him due to his disability.

23. Mr. Henderson told Ms. Henry that CRM was not capable of accepting service animals, but that if Mr. DeFiore kept the animal elsewhere, he could stay at the shelter.

24. Mr. DeFiore's request for an accommodation was reasonable and necessary to afford Mr. DeFiore a full and equal opportunity to use the shelter.

25. The accommodation Mr. DeFiore requested would not have imposed an undue financial or administrative burden on Defendants, and it did not require a fundamental alteration in the nature of their business.

26. CRM's vacancy logs for December 1, 2011 through December 22, 2011 establish that there was at least one vacant bed available each day at the shelter, yet Mr. DeFiore remained homeless until December 22, 2011, when he obtained housing elsewhere.

27. As a result of CRM's denial of Mr. DeFiore's request for shelter, Mr. DeFiore became increasingly despondent and suffered significant damages. He became so desperate that Mr. DeFiore attempted suicide by lying on the ground in the middle of a busy intersection. He was picked up by police and taken to a local hospital where he underwent a psychiatric evaluation.

#### **IV. MR. DEFIORE'S DISCRIMINATION COMPLAINT TO HUD**

28. On July 5, 2012, Mr. DeFiore timely filed a complaint of discrimination with the United States Department of Housing and Urban Development ("HUD"), pursuant to the Fair Housing Act. The complaint was amended on September 13, 2012 to add Mr. Henderson as a Respondent.

29. Pursuant to 42 U.S.C. § 3610(a) and (b), the Secretary of HUD conducted and completed an investigation of the complaint, attempted conciliation without success, and prepared a final investigative report.

30. 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 April 15, 2013, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging Defendants with engaging in discriminatory practices in violation of the Fair Housing Act.

31. On April 30, 2013, Mr. DeFiore 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).

32. On the same date, the Administrative Law Judge issued a Notice of Election to Proceed in United States Federal District Court and terminated the administrative proceedings on Mr. DeFiore's complaint.

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

**V. FIRST FAIR HOUSING ACT CLAIM FOR RELIEF**

34. Defendants CRM and James Henderson, through the actions described above, have violated the Fair Housing Act by:

- a. Discriminating in the sale or rental, or otherwise making unavailable or denying a dwelling, to Mr. DeFiore because of his disability, in violation of 42 U.S.C. § 3604(f)(1);
- 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, to Mr. DeFiore because of his disability, in violation of 42 U.S.C. § 3604(f)(2); and
- c. Refusing to make reasonable accommodations in the rules, policies, practices, or services, when such accommodations were necessary to

afford Mr. DeFiore an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).

35. Mr. DeFiore has suffered and continues to suffer damages as a result of Defendants' Fair Housing Act violations. He is an "aggrieved person" within the meaning of 42 U.S.C. § 3602(i).

36. Defendants' discriminatory actions were intentional, willful, and/or taken in disregard of the federally protected rights of Mr. DeFiore.

**VI. SECOND FAIR HOUSING ACT CLAIM FOR RELIEF**

37. Defendants CRM and James Henderson, through the actions described above, have violated the Fair Housing Act by:

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

38. In addition to Mr. DeFiore, there may be other persons who have been injured by Defendants' discriminatory actions and practices as described above. Such individuals are also aggrieved persons within the meaning of 42 U.S.C. § 3602(i).

39. Defendants' discriminatory actions were intentional, willful, and/or taken in disregard of the federally protected rights of others.

**VII. TITLE III OF THE AMERICANS WITH DISABILITIES ACT  
CLAIM FOR RELIEF**

40. Defendant CRM, through the actions described above, has violated Title III of the Americans with Disabilities Act and its implementing regulations at 28 C.F.R. Part 36 by:

- a. Engaging in a pattern or practice of discriminating against individuals with disabilities under 42 U.S.C. § 12188(b)(1)(B)(i) and/or discriminating against Mr. DeFiore or other individuals with disabilities in a manner that raises “an issue of general public importance” under 42 U.S.C. § 12188(b)(1)(B)(ii);
- b. Discriminating on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of CRM, in violation of 42 U.S.C. § 12182(a);
- c. Denying the opportunity of Mr. DeFiore to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of CRM, in violation of 42 U.S.C. § 12182(b)(1)(A)(i); and
- d. Failing to make a reasonable modification in its policies, practices, or procedures, when such modification was necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to Mr. DeFiore, in violation of 42 U.S.C. § 12182(b)(2)(A)(ii).

41. Mr. DeFiore has suffered and continues to suffer damages as a result of Defendant CRM’s ADA violations. He is an “aggrieved person” within the meaning of 42 U.S.C. § 12188(b)(2)(B).

WHEREFORE, the United States requests entry of an ORDER that:

1. Declares that Defendants' conduct, as alleged herein, violates the Fair Housing Act and Title III of the Americans with Disabilities Act;
2. Enjoins Defendants, and all other persons in active concert or participation with them, from:
  - a. Discriminating in the rental, or otherwise making unavailable or denying, a dwelling to any renter because of disability;
  - b. Discriminating against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of disability;
  - c. Failing or refusing to make reasonable accommodations as required by 42 U.S.C. § 3604(f)(3)(B);
  - d. Discriminating against any person in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the Defendants, on the basis of disability;
  - e. Denying the opportunity of any person to participate in or benefit from the goods, services, facilities, advantages, or accommodations of CRM;
  - f. Failing to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations;
  - g. 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 Defendants' discriminatory conduct; and

- h. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, Kenneth DeFiore and any other aggrieved persons to the position he or she would have been in but for the discriminatory conduct, including implementing policies and procedures to ensure that no applicants or residents of CRM are discriminated against because of disability;

3. Awards monetary damages to Kenneth DeFiore, pursuant to the Fair Housing Act at 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1) and the Americans with Disabilities Act at 42 U.S.C. § 12188(b)(2)(B);

4. Awards monetary damages to other aggrieved persons, pursuant to the Fair Housing Act at 42 U.S.C. § 3614(d)(1)(B) and the Americans with Disabilities Act at 42 U.S.C. § 12188(b)(2)(B);

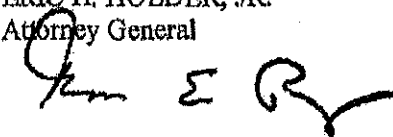
5. Assesses civil penalties pursuant to the Fair Housing Act at 42 U.S.C. § 3614(d)(1)(C) and the Americans with Disabilities Act at 42 U.S.C. § 12188(b)(2)(C);

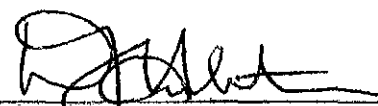
6. The United States further requests such additional relief as the interests of justice may require.


Date: June 28, 2013


Respectfully submitted,


ERIC H. HOLDER, JR.  
Attorney General

  
THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

  
DAVID J. HICKTON  
United States Attorney  
Western District of Pennsylvania

by   
STEVEN H. ROSENBAUM  
Chief  
Housing and Civil Enforcement Section  
Civil Rights Division

  
ELIZABETH A. SINGER  
Director, U.S. Attorneys' Fair Housing Program  
Housing and Civil Enforcement Section  
Civil Rights Division

  
AMIE S. MURPHY  
Assistant United States Attorney  
Western District of Pennsylvania  
700 Grant Street, Suite 4000  
Pittsburgh, PA 15219  
Telephone: (412) 894-7379  
Fax: (412) 644-6995  
Email: Amie.Murphy@usdoj.gov  
New York Bar No. 4147401