

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA EVANSVILLE DIVISION

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UNITED STATES OF AMERICA,
Plaintiff,
v.
RATHBONE RETIREMENT COMMUNITY, INC., CHARLES LUDWYCK, JANET LUDWYCK and NORMA HELM,
Defendants.

CIVIL NO.

3 : 08 -cv- 174 RLY -WGH

COMPLAINT

The United States of America alleges as follows:

NATURE OF ACTION

1. This action is brought by the United States to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (the "Fair Housing Act"), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619. It is brought pursuant to: (a) 42 U.S.C. § 3612(o) on behalf of Jasper Spellazza and Dennis Underhill; and (b) 42 U.S.C. § 3614(a).

JURISDICTION AND VENUE

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, 42 U.S.C. § 3612(o) and 42 U.S.C. § 3614(a).

3. Venue is proper pursuant to 28 U.S.C. § 1391(b), because the events giving rise to this action occurred in this judicial district.

DEFENDANTS

4. Defendant Rathbone Retirement Community, Inc. (“RRCI”) is an Indiana for-profit corporation. Since about December 21, 2004, it has operated the Rathbone Retirement Community (the “Rathbone”), a multi-family independent and assisted living facility for persons fifty-five years of age or older located at 1320 Southeast Second Street, Evansville, Indiana 47713.

5. Defendant Charles Ludwyck is a resident of Redmond, Washington. Mr. Ludwyck serves as RRCI’s President and, at all times relevant to this complaint, co-owned the Rathbone with Defendant Janet Ludwyck.

6. Defendant Janet Ludwyck is a resident of Redmond, Washington. Mrs. Ludwyck serves as RRCI’s Secretary and, at all times relevant to this complaint, co-owned the Rathbone with Defendant Charles Ludwyck.

7. Defendant Norma Helm is the Rathbone’s Administrator and held this position at all times relevant to this complaint. As the Rathbone’s Administrator, Ms. Helm manages the day to day operations of the Rathbone.

FACTUAL ALLEGATIONS

8. The Rathbone is a two-story multi-family dwelling comprised of about fifty-eight studio, one-bedroom, and two-bedroom apartments. Each of the Rathbone’s apartments is located along one of the facility’s five corridors. Access between the Rathbone’s two stories is gained by means of seven staircases and one elevator. The facility has numerous common use areas including a music room, a card and game room, a physical exercise area, a coin-operated laundromat, a reception area, a library and a dining room.

9. The apartments at the Rathbone are “dwellings” within the meaning of 42 U.S.C. § 3602(b).

10. Residents of the Rathbone may choose to live there under either an independent or assisted living program. Independent living residents receive weekly housekeeping and linen services, as well as three meals per day in the Rathbone’s common dining room. Assisted living residents receive weekly housekeeping and linen services and three meals per day, but also receive a variety of individually tailored medical related, nutritional, and personal care services for a fee not greater than about five hundred dollars per month.

11. The Rathbone and/or RRCI requires that all applicants for admission “[b]e of high moral character, 55 years of age or older, ambulatory, mentally alert and in good health.” Ms. Helm has stated that ambulatory means that if an individual was “capable of moving from place to place he would qualify for admission to our facility – even if the person required some form of assistance in moving about, be it a cane, walker, or a electric or nonelectric wheelchair or scooter.”

12. Jasper Spellazza is eighty-four years old. He resided at the Rathbone from about October 21, 2002, to about July 2007. At all times relevant to this complaint, Mr. Spellazza had chronic gait disturbance secondary to osteoarthritis of the knee. Mr. Spellazza is substantially limited in one or more major life activities, including walking, and is handicapped or disabled within the meaning of 42 U.S.C. § 3602(h).

13. At all times relevant to this complaint, Mr. Spellazza’s son, William Spellazza, had power of attorney over his father’s affairs.

14. On about October 21, 2002, Mr. Spellazza moved into a one-bedroom apartment at the Rathbone. At that time, Mr. Spellazza used a cane for assistance in walking.

15. On about May 18, 2006, Mr. Spellazza moved to a two-bedroom unit at the Rathbone, apartment number 2108. Prior to May 2006, Mr. Spellazza purchased a motorized scooter, which he used to navigate about his apartment, the Rathbone's common dining room, and other areas of the facility.

16. On about July 14, 2006, Mr. Spellazza purchased a motorized wheelchair, which he used to navigate about his apartment, the Rathbone's common dining room, and other areas of the facility.

17. From about December 30, 2002, through July 2007, Mr. Spellazza received weekly visits at the Rathbone from a nurse, and bi-weekly visits from a certified nursing assistant ("CNA"). None of Mr. Spellazza's nurses and/or CNAs were employed by, or affiliated with, the Rathbone. Mr. Spellazza was never enrolled in the Rathbone's assisted living program.

18. At all times relevant to this complaint, Mr. Spellazza was "ambulatory" for purposes of admission to, and continued residency at, the Rathbone.

19. Dennis Underhill is approximately seventy-six years old. Mr. Underhill resided at the Rathbone from about July 1, 2007, to about January 2008. At all times relevant to this complaint, Mr. Underhill had permanent nerve damage in his right leg and left arm. Mr. Underhill is substantially limited in one or more major life activities, including walking, and is handicapped or disabled within the meaning of 42 U.S.C. § 3602(h).

20. At all times relevant to this complaint, Mr. Underhill used a motorized wheelchair.

21. At all times relevant to this complaint, Mr. Underhill was “ambulatory” for purposes of admission to, and continued residency at, the Rathbone.

22. On about July 1, 2007, Ms. Helm prepared and distributed a written notice to all of the Rathbone’s residents who used motorized wheelchairs and/or scooters. The notice prohibited the use of motorized wheelchairs and scooters in all residents’ apartments and in the Rathbone’s common dining room during meals.

23. Mr. Spellazza received a copy of the July 1, 2007 notice on about that date.

24. Mr. Underhill received a copy of the July 1, 2007 notice on about that date.

25. On multiple occasions after July 1, 2007, Mr. Spellazza used his motorized wheelchair and/or scooter in his apartment and/or the Rathbone’s common dining room.

26. On multiple occasions after July 1, 2007, Mr. Underhill used his motorized wheelchair in his apartment and/or the Rathbone’s common dining room.

27. On about July 5, 2007, Mr. Spellazza received a letter signed by Ms. Helm advising him that he had thirty days to vacate the Rathbone. In the letter, Ms. Helm stated that Mr. Spellazza was being evicted because he was unable to ambulate inside his apartment and because he refused to comply with the July 1, 2007 policy restricting the use of motorized wheelchairs and scooters in residents’ apartments and in the Rathbone’s common dining room.

28. Rathbone policy states that if a resident’s physical or mental condition deteriorates during residency, Ms. Helm will consult with the resident’s family and physician. Then, if it is recommended, the resident will be transferred to a hospital or nursing home equipped to meet the resident’s needs.

29. Ms. Helm failed to contact William Spellazza prior to issuing the July 5, 2007 eviction notice.

30. Ms. Helm failed to contact Mr. Spellazza's personal physician prior to issuing the July 5, 2007 eviction notice.

31. In about July 2007, Mr. Spellazza moved from the Rathbone to another multi-family independent and assisted living facility located in Indiana.

32. RRCI and/or the Rathbone never billed Mr. Spellazza for any damages to his apartment.

33. On about July 2, 2007, Mr. Underhill attempted to enter the Rathbone's common dining room in his motorized wheelchair and was told by Ms. Helm that in order to eat there, he would have to sit in a dining room chair. Ms. Helm then summoned Rathbone employees to forcibly remove Mr. Underhill from his wheelchair. When Mr. Underhill refused to be moved, Ms. Helm stated that he had to abide by the July 1, 2007 policy restricting the use of motorized wheelchairs and scooters, and that there would eventually be no such assistive devices permitted anywhere at the Rathbone.

34. In about January 2008, Mr. Underhill moved out of the Rathbone because of the defendants' July 1, 2007 policy restricting the use of motorized wheelchairs and scooters.

35. On about September 7, 2007, Mr. Spellazza filed a timely complaint with the United States Department of Housing and Urban Development pursuant to the Fair Housing Act, alleging discrimination on the basis of disability.

36. On about December 17, 2007, Mr. Spellazza's complaint was amended to add Mr. and Mrs. Ludwyck as respondents.

37. On about June 16, 2008, Mr. Underhill filed a timely complaint with the United States Department of Housing and Urban Development pursuant to the Fair Housing Act, alleging discrimination on the basis of disability.

38. Pursuant to 42 U.S.C. § 3610(a) and (b), the Secretary of the United States Department of Housing and Urban Development conducted and completed investigations of Mr. Spellazza and Mr. Underhill's complaints, attempted conciliation without success, and prepared final investigative reports. Based upon the information gathered in the investigations, 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 September 25, 2008, the Secretary issued Charges of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the above named defendants with engaging in discriminatory practices in violation of 42 U.S.C. § 3604 of the Fair Housing Act.

39. On October 8, 2008, Mr. Spellazza and the above named defendants elected to have the claims asserted in the United States Department of Housing and Urban Development's Charges of Discrimination resolved in a civil action pursuant to 42 U.S.C. § 3612(a).

40. On October 8, 2008, an Administrative Law Judge issued Notices of Election and Judicial Determinations and terminated the proceedings on Mr. Spellazza and Mr. Underhill's complaints.

41. Following these Notices of Election, the Secretary of the Department of Housing and Urban Development authorized the Attorney General to commence a civil action pursuant to 42 U.S.C. § 3612(o).

FIRST CLAIM FOR RELIEF

42. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-41 above.

43. By the actions and statements referred to in the foregoing paragraphs, defendants have:

- a. Discriminated in the rental of a dwelling or otherwise made housing unavailable to Mr. Spellazza and Mr. Underhill because of a disability in violation of 42 U.S.C. § 3604(f)(1)(A);
- b. Discriminated against Mr. Spellazza and Mr. Underhill in the terms, conditions, or privileges of a rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of a disability in violation of 42 U.S.C. § 3604(f)(2)(A);
- c. Refused to make reasonable accommodations in rules, policies, practices, or services which were necessary to afford Mr. Spellazza and Mr. Underhill an equal opportunity to use and enjoy a dwelling in violation of 42 U.S.C. § 3604(f)(3)(B); and
- d. Made, printed, or published one or more notices or statements with respect to the rental of a dwelling that indicate a preference, limitation, or discrimination based on disability in violation of 42 U.S.C. § 3604(c).

44. Mr. Spellazza and Mr. Underhill are “aggrieved persons” within the meaning of 42 U.S.C. § 3602(i).

45. As a result of the defendants' discriminatory conduct, Mr. Spellazza and Mr. Underhill have suffered and continue to suffer damages.

46. The discriminatory actions of the defendants were intentional, willful, and taken in disregard of the federally protected rights of Mr. Spellazza and Mr. Underhill.

SECOND CLAIM FOR RELIEF

47. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-41 above.

48. By adopting and enforcing a policy restricting the use of motorized wheelchairs and scooters at the Rathbone, defendants have:

- a. Discriminated in the rental of dwellings or otherwise made housing unavailable to persons because of disabilities in violation of 42 U.S.C. § 3604(f)(1);
- b. Discriminated against persons in the terms, conditions, or privileges of rentals of dwellings, or in the provision of services or facilities in connection with such dwellings, because of disabilities in violation of 42 U.S.C. § 3604(f)(2); and
- c. Made, printed, or published one or more notices or statements with respect to the rental of dwellings that indicate a preference, limitation, or discrimination based on disability in violation of 42 U.S.C. § 3604(c).

49. Defendants' conduct, as described above, constitutes:

- 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; and/or

- b. a denial to a group of persons rights granted by the Fair Housing Act; 42 U.S.C. §§ 3601-3619, which denial raises an issue of general public importance.

50. There may be persons in addition to Mr. Spellazza and Mr. Underhill who have been injured by, and may have suffered damages as a result of, the defendants' conduct. All of these persons are "aggrieved persons" within the meaning of 42 U.S.C. § 3602(i).

51. The discriminatory actions of the defendants were intentional, willful, and taken in disregard of the federally protected rights of others.

PRAYER FOR RELIEF

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

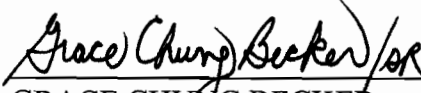
1. Declares that the defendants' discriminatory conduct as alleged herein violates the Fair Housing Act, 42 U.S.C. §§ 3601-3619;
2. Enjoins the defendants, their agents, employees, successors, and all other persons in active concert or participation with any of them from discriminating because of a disability in violation of the Fair Housing Act, 42 U.S.C. §§ 3601-3619;
3. Awards monetary damages to Mr. Spellazza and Mr. Underhill, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1);
4. Awards monetary damages to all other persons harmed by the defendants' discriminatory practices for injuries caused by the defendants' discriminatory conduct pursuant to 42 U.S.C. § 3614(d)(1)(B); and
5. Assesses a civil penalty against the defendants in order to vindicate the public interest pursuant to 42 U.S.C. § 3614(d)(1)(C).

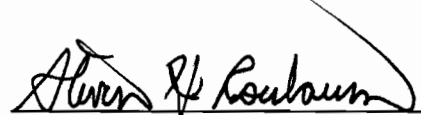
The United States further prays for such additional relief as the interests of justice may require.

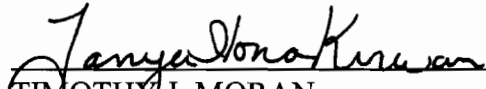
Respectfully submitted,

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