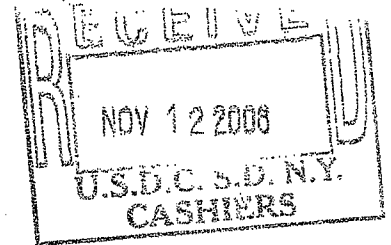


JUDGE BUCHWALD

FILE COPY

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08 CV 9783



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :
 :
 Plaintiff, : COMPLAINT
 :
 v. : 08 Civ. _____

THE TOWNSEND HOUSE CORP., : JURY TRIAL DEMANDED
 :
 Defendant. :
 :
 -----X

Plaintiff, the United States of America, by its attorney,
Michael J. Garcia, United States Attorney for the Southern
District of New York, alleges for its complaint upon information
and belief as follows:

PRELIMINARY STATEMENT

1. This is a civil action for declaratory relief,
injunctive relief and monetary damages under the Fair Housing
Act, as amended 42 U.S.C. §§ 3601, et seq. (the "Act"), brought
by the United States of America (the "United States") on behalf
of Maria Mostajo and Mark Schein ("Complainants") on behalf of

themselves and their eleven-year-old child (the "child"), to redress discrimination on the basis of disability.

2. As alleged more fully below, defendant The Townsend House Corp. ("Townsend House"), the owner-operator of a cooperative apartment building located at 176 East 71st Street, New York, New York, 10021, unlawfully discriminated against Complainants and their child based on his disability.

3. Townsend House's conduct violates the Fair Housing Act, 42 U.S.C. §§ 3601, et seq., and should be declared unlawful and enjoined, and appropriate monetary damages should be awarded.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and 42 U.S.C. § 3612(o) because Townsend House is in this district and the events giving rise to the Complaint occurred in this district.

THE PARTIES

6. Plaintiff is the United States of America ("United States").

7. Townsend House is a private cooperative development. Townsend House is a 20-story apartment building with 97 cooperative apartments, located at 176 East 71st Street, New York, New York, 10021.

8. Maria Mostajo and Mark Schein are tenant-shareholders of

an apartment at 176 E. 71st Street, New York, New York, 10021. They are the parents of the child, who resides with his parents at Townsend House. Complainants and their child have lived at the Townsend House since approximately October 1999.

9. Complainants' apartment constitutes a "dwelling" within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

10. Complainants and their child are aggrieved persons as that term is defined by the Act, 42 U.S.C. § 3602(i), and have suffered damages as a result of the defendant's conduct.

PROCEDURAL BACKGROUND

11. On or about July 2, 2008, Complainants filed a Housing Discrimination Complaint with the U.S. Department of Housing and Urban Development ("HUD") alleging discrimination on the basis of disability.

12. Pursuant to the requirements of 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD (the "Secretary") conducted and completed an investigation of the administrative complaint.

13. Based on the information gathered in the HUD investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that Townsend House discriminated against Complainants and their minor child and violated the Fair Housing Act.

14. On September 29, 2008, the Secretary issued a Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging

Townsend House with engaging in discriminatory housing practices in violation of the Fair Housing Act.

15. On October 14, 2008, Townsend House timely elected to have the charge resolved in a federal civil action pursuant to 42 U.S.C. § 3612(a). Following this election the Secretary authorized the Attorney General to file this action on behalf of Complainants, pursuant to 42 U.S.C. § 3612(o)(1).

FACTS

16. The child is an eleven-year old who has been diagnosed with Autistic Spectrum Disorder ("Asperger's Syndrome"), a pervasive developmental disorder, and Central Auditory Processing Disorder. The child's Asperger's Syndrome combined with his Central Auditory Processing Disorder significantly impairs his day-to-day functioning, including his ability to learn, hear and care for himself. The child is a person with a disability as defined by the Fair Housing Act, 42 U.S.C. § 3602(h).

17. The Townsend House maintains a policy prohibiting dogs and other pets in the building, even on a temporary basis. The policy is contained within the Townsend House's "House Rules," which constitute part of the shareholders' lease agreement.

18. In or about January 2007, Complainants wrote a letter to Townsend House requesting a reasonable accommodation for their child. Specifically, Complainants requested that Townsend House make an exception to its "no-pet" policy to permit the child to have a dog as a medically-prescribed assistance animal.

19. Complainants' request informed Townsend House of their child's medical condition, and was accompanied by psychological reports to confirm the child's diagnoses and literature outlining the benefits of having an assistance dog.

20. In response to Townsend House's request for additional documentation, in April 2007, Complainants provided Townsend House with two letters from the child's medical providers addressing his disabilities and recommending an assistance animal.

21. On August 1, 2007, David Berkey, then-counsel for Townsend House, informed Complainants that Townsend House asked to have an independent professional retained to confirm the child's medical condition, provided that Complainants consented and agreed to cover the expense. Complainants objected to having their child subjected to additional evaluation, but suggested that the independent physician speak to the child's doctors to obtain any necessary information.

22. On December 18, 2007, Mr. Berkey told Complainants that Townsend House was ready to proceed with the evaluation, on several conditions, including that Complainants agree to cover the entire cost of the evaluation, as well as any legal fees incurred by Townsend House in connection with reviewing the request for a reasonable accommodation.

23. In a January 28, 2008 report, the psychologist retained by Townsend House agreed that the child's condition was

a disability under the Americans with Disabilities Act ("ADA"), and agreed with the recommendation for the reasonable accommodation of a dog.

24. On May 23, 2008, Mr. Berkey provided Complainants with a revised Pet License Agreement.

25. The Pet License Agreement contained numerous unreasonable restrictions including, inter alia, requirements that the dog may not: (1) weigh 10 pounds or more fully grown; (2) remain in the apartment if the child was not present for an extended period; (3) be released from its carrier case or placed on the ground in the common areas of the building; (4) exercise or play on Complainants' private terrace; (5) be left alone in the apartment for more than two hours; (6) be brought into Complainants' apartment unless the Complainants obtain liability insurance of not less than one million dollars for bodily injury or property damage caused by the dog.

26. Complainants objected to the restrictions imposed by the Pet License Agreement and provided alternative language for Townsend House's consideration.

27. On June 23, 2008, Complainant Schein met with Townsend House's Board of Directors to discuss the terms of the License Agreement, including Complainants' objections.

28. On June 30, 2008, after consideration of Complainants' objections, Townsend House agreed to adjust the weight limit to that of a fully grown dog up to 25 pounds, but refused to modify

or remove any of the other restrictions.

CLAIM FOR RELIEF

For Violations of 42 U.S.C. §§ 3604(f)(2) and 3604(f)(3)(B)

29. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 28 of this Complaint as if fully set forth in this paragraph.

30. Townsend House violated the Fair Housing Act, 42 U.S.C. § 3604(f)(2), by discriminating against Complainants and their child in the terms, conditions, and privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of disability.

31. Townsend House violated the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(B), by refusing to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling.

32. The discriminatory actions of Townsend House were intentional and taken in disregard of Complainants' and the child's rights.

RELIEF REQUESTED

WHEREFORE, Plaintiff the United States of America requests that the Court enter judgment:

1. Declaring that Townsend House's policies and practices as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, et seq.;

2. Enjoining Townsend House, its officers, employees,

agents, successors, and all other persons in active concert or participation with it, from:

(a) discriminating in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of disability, in violation of 42 U.S.C. § 3604(f)(2);

(b) failing or refusing to make reasonable accommodations as required by 42 U.S.C. § 3604(f)(3)(B); and

(c) failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, Complainants and their child to the position they would have been in but for the discriminatory conduct;

3. Awarding monetary damages to Complainants for injuries caused by Townsend House's discriminatory conduct, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1); and


4. Granting such further relief as this Court may deem just and proper.

The United States requests trial by jury.

Dated: New York, New York
November 12, 2008

MICHAEL J. GARCIA
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Southern District of New York
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United States of America

By:


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