

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
CIVIL NO.

United States of America,)
)
) **COMPLAINT**
)
v.)
)
Van Raden Properties, Inc.)
and Van Raden Homes, Inc.,)
)
)
) Defendants.

The United States of America, for its Complaint, states and alleges as follows:

INTRODUCTION

1. This is an action brought by the United States to enforce the provisions of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 - 3619.

2. The United States brings this action on behalf of Fair Housing of the Dakotas, pursuant to 42 U.S.C. § 3612(o).

JURISDICTION AND VENUE

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

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 42 U.S.C. § 3612(o), because the actions giving rise to this action occurred in the District of Minnesota and because defendants do business in this District.

THE PARTIES

5. Plaintiff is the United States of America (“United States”).

6. At all relevant times, Defendant Van Raden Homes, Inc. (“Van Raden Homes”), a North Dakota corporation, has owned the Elm Street Apartments, located at 418 South Elm Street, Moorhead, Minnesota (“Elm Street Apartments”).

7. At all relevant times, Defendant Van Raden Properties, Inc. (“Van Raden Properties”), a North Dakota corporation, has been the management company for the Elm Street Apartments. Its principal place of business is in Fargo, North Dakota.

8. Fair Housing of the Dakotas (“FHD”) is a private, non-profit fair housing organization, serving North and South Dakota and the surrounding areas, including Moorhead, Minnesota.

FACTUAL ALLEGATIONS

9. FHD works to eliminate housing discrimination and to ensure equal housing opportunities for all. It provides fair housing services, including assistance to individuals pursuing legal rights and remedies, housing assistance, counseling, community education, investigation of complaints of housing discrimination, and fair housing testing to determine whether housing providers engage in discriminatory housing practices.

10. On or about January 9, 2007, FHD's housing coordinator received a complaint of housing discrimination on the basis of disability regarding a property owned and managed by defendants. The prospective renter who made the complaint told FHD's housing coordinator that he had responded to an advertisement in the *Fargo Forum*, the primary newspaper in southeast North Dakota and much of northwest Minnesota, for the property advertised by defendants. The prospective renter stated that when he telephoned the number in the advertisement, the woman answering the telephone rejected him because he wanted his service animal to live with him, and defendants' policy prohibited dogs of his dog's breed and dogs weighing more than 40 pounds. The prospective renter said that he had specified that his dog was a service animal, weighing only 35 pounds.

11. On January 17, 2007, based on the complaint received, FHD conducted a rental test, using two fair housing testers, to evaluate defendants' compliance with the Fair Housing Act. Testers are persons who, without the intent to rent property, seek information about the availability of rental property to determine whether discriminatory practices are occurring.

12. On January 17, 2007, Tester #1, posing as a single mother of a child with a disability, telephoned the number provided in the *Fargo Forum* advertisement. She spoke with a woman who answered the telephone "Van Raden Properties" and who told the Tester that a two-bedroom apartment was available. The Tester then indicated that her autistic son had a therapy dog and asked whether they would accept a doctor's

statement verifying the dog as a service animal. When the Tester stated that the dog was a “black Lab,” she was told by the woman that the breed was unacceptable, even if it was full grown and weighed only 37 pounds.

13. At no time did the unidentified woman ask for additional information about the Tester’s son’s need for a service animal, in spite of the Tester’s offer of a doctor’s statement explaining the need for a service animal for her autistic son. Instead, the woman directed the Tester to the Humane Society for a list of landlords that allow pets.

14. Later in the afternoon on January 17, 2007, Tester #2, posing as a single mother with a child, telephoned the number in the advertisement in the *Fargo Forum* to inquire about the two-bedroom apartment for rent. She spoke to a woman identifying herself as “Tracy” who told the Tester that the apartment was available and that no pets were allowed in the building. Tracy gave the Tester the address so she could drive by the building, as well as information about rental terms, utilities, amenities, background checks, and credit policies. Tester #2 told Tracy that she would call back if she was interested in the apartment.

15. At all times relevant to this action, defendants had a “no pet” policy in effect at the subject property.

16. In or about April 2002, defendants implemented a written policy on service animals. The policy requires that a rental applicant (1) provide a written statement about why the animal is needed, (2) complete a Service Animal Application, (3) complete a

Service Animal Request Form, and (4) complete a Service Animal Addendum. The policy also indicates that rental applicants are provided with a copy of the service animal policy. If accepted, renters with service animals are required to provide proof of renter's liability insurance of \$100,000. The requirement for renter's insurance in the standard lease agreement does not mandate a specific coverage amount.

17. Under defendants' service animal policy, dogs with an adult weight of under 40 pounds are "preferred" and several full and mixed breeds are banned.

18. On or about June 12, 2007, FHD filed a timely complaint with the United States Department of Housing and Urban Development ("HUD"), pursuant to the Fair Housing Act, alleging that it was injured by the discriminatory acts of defendants when one of its testers was denied the opportunity to view or rent the apartment based on defendants' service animal policy. In addition, FHD alleged that the tester was denied a reasonable accommodation to such policy and that defendants' actions expressed a discriminatory preference against renters with disabilities who use service animals.

19. 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. Based upon the information gathered, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause exists to believe that discriminatory housing practices occurred.

20. On September 9, 2008, HUD issued a Charge of Discrimination under 42 U.S.C. § 3610(g)(2)(A), charging defendants with engaging in discrimination in violation

of the Fair Housing Act.

21. On September 29, 2008, defendant Van Raden Properties elected, pursuant to 42 U.S.C. § 3612(a), to have the claims asserted in the Charge of Discrimination resolved in a civil action under 42 U.S.C. § 3612(o).

22. On September 30, 2008, the Administrative Law Judge issued a Notice of Election and Judicial Determination and terminated the administrative proceedings regarding FHD's complaint. Thereafter, the HUD Secretary authorized the Attorney General to commence a civil action pursuant to 42 U.S.C. § 3612(o).

FAIR HOUSING CLAIMS

23. Through the actions described above, defendants have:
- (a) discriminated in the rental, or otherwise made unavailable or denied, a dwelling to a renter because of disability, in violation of 42 U.S.C. § 3604(f)(1);
 - (b) discriminated in the terms, conditions, or privileges of rental of a dwelling because of disability, in violation of 42 U.S.C. § 3604(f)(2);
 - (c) refused 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, in violation of 42 U.S.C. § 3604(f)(3)(B); and
 - (d) made, printed, or published a notice, statement, or advertisement with respect to the rental of a dwelling that indicates 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).

24. As a result of defendants' conduct, FHD is an aggrieved person as defined in 42 U.S.C. § 3602(i) and has suffered injuries, including frustration of its mission and diversion of its resources.

25. Defendants' discriminatory actions were intentional, willful, and taken in disregard of the rights of FHD.

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

1. Declaring that defendants' policies and practices, as alleged in this Complaint, violate the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*;

2. Enjoining defendants, their officers, employees, agents, successors, 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 or prospective renter because of disability, in violation of 42 U.S.C. § 3604(f)(1); and

(b) discriminating in the terms, conditions, or privileges of the rental of a dwelling based on disability, in violation of 42 U.S.C. § 3604(f)(2);

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

(d) communicating and/or publishing a policy of prohibiting certain service animals and requiring additional rental insurance from those who use service animals, in violation of 42 U.S.C. § 3604(c).

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

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

Dated: October 29, 2008

Respectfully submitted,

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s/ M. Tripler

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