

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 02-WY-0460-AJ (OES)

HOUSING FOR ALL,
RAMONA GAVIN,
DEBRA WOODS,
PATRICE SWAIN,
SHARON HERNDON, and
DELILAH HICKS,

Plaintiffs,

v.

MONROE GROUP LTD.,
ALICE ROBINSON,
THE AURORA MONTVIEW HEIGHTS LIMITED PARTNERSHIP,

Defendants.

AMENDED COMPLAINT

Plaintiffs Housing for All, Ramona Gavin, Debra Woods, Patrice Swain, Sharon Herndon, and Delilah Hicks, by and through their attorneys, Fox & Robertson, P.C., hereby bring this Amended Complaint against Defendants Monroe Group Ltd., Alice Robinson, and The Aurora Montview Heights Limited Partnership for violation of the Fair Housing Act at the Montview Heights apartment complex.

Jurisdiction

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. § 3613(a)(1)(A).
2. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

Parties

3. Plaintiff Housing for All (“HFA”) is a Colorado non-profit corporation. HFA’s mission is to eliminate housing discrimination, increase free choice in housing and promote integration of housing throughout the Denver metro area. To accomplish this mission, HFA works with governmental and quasi-governmental agencies, housing providers, housing service providers and housing consumers. It provides information, conducts education, counseling, mediation, outreach, and testing, assesses and investigates complaints, and engages in policy analysis.

4. Plaintiff Ramona Gavin is and was at all times material hereto a resident of Colorado. Ms. Gavin lived at 14319 Montview Boulevard, Apt. B, Aurora, Colorado 80011 in the Montview Heights apartment complex from approximately 1995 to 2002. Ms. Gavin currently lives at 2800 Grape Street, Denver, Colorado 80207. Ms. Gavin had two children under the age of 18 living with her at the Montview Heights apartment complex: Shealean Gavin, born March 12, 1994; and Charles Gavin, born May 18, 1997.

5. Plaintiff Debra Woods is and was at all times material hereto a resident of Colorado. Ms. Woods has lived at 14397 Montview Boulevard, Apt. D, Aurora, Colorado 80011 in the Montview Heights apartment complex since approximately 1988. Ms. Woods has five children under the age of 18 living with her at the Montview Heights apartment complex: Lareana Sturdivant, born June 13, 1984; Javige Sturdivant, February 25, 1986; Elisha Sturdivant, born April 1, 1988; Grace Sturdivant, born August 23, 1990; and Sarai Sturdivant, born April 24, 1993.

6. Plaintiff Patrice Swain is and was at all times material hereto a resident of Colorado. Ms. Swain has lived at 14399 Montview Boulevard, Apt. E, Aurora, Colorado 80011 in the Montview Heights apartment complex since approximately 1998. Ms. Swain has three children under the age of 18 living with her at the Montview Heights apartment complex: Denotra Swain, born August 15, 1987; Maurice Futrell Jr., born January 31, 1990; and Chandra Swain, December 28, 1992. Ms. Swain also has a son, Jashar Swain, born August 20, 1988, who now lives with her at Montview Heights, but did not live with her for several months in 2002.

7. Plaintiff Sharon Herndon is and was at all times material hereto a resident of Colorado. Ms. Herndon has lived at 14397 Montview Boulevard, Apt. C, Aurora, Colorado 80011 in the Montview Heights apartment complex since approximately 1999. Ms. Herndon has two children under the age of 18 living with her at the Montview Heights apartment complex: Marcus Edward Brayant Barge, born July 3, 1990; and Vanessa Alexandria Glass, born August 27, 1996.

8. Plaintiff Delilah Hicks is and was at all times material hereto a resident of Colorado. Ms. Hicks has lived at 14387 Montview Blvd., Apt. F, Aurora, Colorado 80011 in the Montview Heights apartment complex since approximately 1983. Ms. Hicks has two children under the age of 18 living with her at the Montview Heights apartment complex: Bobby Hicks, born June 10, 1986; and Jarred Hicks, born April 2, 1988.

9. Plaintiffs Gavin, Woods, Swain, Herndon and Hicks will be referred to herein as "Individual Plaintiffs."

10. Defendant Monroe Group Ltd, (“Monroe Group”) is a corporation incorporated under the laws of Colorado. Its principal address is 5140 E. 9th Ave, Denver, Colorado 80202. On information and belief, Monroe Group manages the Montview Heights Apartment complex.

11. Defendant Alice Robinson is and was at all times material hereto a resident of Colorado. Ms. Robinson is the on-site manager of the Montview Heights Apartment Complex, residing at 14389 Montview Boulevard, Apt. E, Aurora, Colorado 80011 and is employed by Monroe Group.

12. Defendant The Aurora Montview Heights Limited Partnership (“AMHLP”) is a Colorado limited partnership. Its principal address is 4221 S. Yarrow Court, Lakewood, Colorado 80235. Defendant AMHLP owns the Montview Heights apartment complex (“Montview Heights”) located at 14389 Montview Blvd. in Aurora, Colorado.

Factual Allegations

13. Montview Heights is an apartment complex in Aurora, Colorado, that consists of eight buildings of two-story units.

14. Defendants have promulgated and enforced -- and continue to enforce -- a curfew at the Montview Heights apartments for individuals under the age of 18. The curfew has required, at various times, that all individuals under the age of 18 be indoors after a certain time of the evening. This time has varied, including 8:00 or 9:00, and at times has been 10:00 on Friday and Saturday nights.

15. According to the Montview Heights policy, when Defendant Robinson or another agent of Defendants perceives or receives a report of an alleged violation of the curfew, he or she

may issue a “ticket” to the resident perceived to be in violation. When one resident has received three “tickets,” he or she may be evicted.

16. Defendants have issued a number of tickets pursuant to the curfew policy and, on information and belief, some residents have been evicted as a result.

17. The curfew is a facially discriminatory restriction on the use of the facilities at Montview Heights by the Individual Plaintiffs’ children, which in turn discriminates against the Individual Plaintiffs on the basis of their familial status.

18. This curfew significantly restricts the Individual Plaintiffs’ ability to use and enjoy their residence at Montview Heights and its other facilities with their children and to formulate and enforce their own disciplinary systems, and otherwise discriminates against them in the terms, conditions, privileges, services and facilities at Montview Heights on the basis of their familial status.

19. All three Defendants are jointly and severally liable for the enactment, promulgation and enforcement of the curfew. In particular, Defendants Monroe Group and AMHLP have a non-delegable duty to comply with the Fair Housing Act and are therefore liable for the acts of Defendant Robinson and other individuals acting or purporting to act as their agents.

20. The impact of the curfew on the Individual Plaintiffs includes but is not limited to that described herein.

21. The Individual Plaintiffs have received tickets for violating the curfew. Examples of those tickets are described below.

22. In or about April of 2001, Plaintiff Ramona Gavin's two children were playing in the yard of her home. Ms. Gavin was inside her home at the time. The two children came inside at approximately 9:30 p.m. The next day, a ticket was taped to Ms. Gavin's front door, stating that she had violated the curfew.

23. In the evening of May 17, 2001, Ms. Gavin telephoned a taxi company to arrange for a taxi to take her and her two children to a store in order to purchase supplies for her son's birthday party, which was to take place the next day. Ms. Gavin's children were sitting on the front steps of Ms. Gavin's apartment, waiting for the taxi, while Ms. Gavin was just inside her home getting ready. When the taxi arrived, Ms. Gavin and her two children got into the cab and went to the store. The two children were waiting outside Ms. Gavin's apartment for not more than ten minutes.

24. The following day, May 18, 2001, Ms. Gavin hosted her son's fourth birthday party. Guests at the party included a number of adults and children. The party took place both in the front and back yards of Ms. Gavin's home, and the children played there and in the Montview Heights playground. Most of the children left by approximately 9:30 p.m, but several children remained to spend the night at Ms. Gavin's home. These several children, Ms. Gavin's own children, as well as several adults, were outside in the backyard until approximately 10:45 p.m.

25. On or about May 21, 2001, Ms. Gavin found another ticket taped to her door listing two curfew violations, one each on May 17 and May 18, 2001.

26. One evening in June of 2001, Ms. Gavin was barbecuing in her backyard after 9:00 p.m. Ms. Gavin's two children and one other child were with her, playing in the yard. Sometime after the barbecue, she was issued another ticket asserting that she had violated the curfew on the evening of the barbecue.

27. Ms. Gavin has, on several occasions, witnessed Defendant Robinson walking around the grounds of Montview Heights shouting "curfew time!" For example, on May 1, 2001, at approximately 8:00 p.m., Ms. Gavin witnessed Ms. Robinson shouting "curfew time!"

28. On other occasions, Defendant Robinson has shouted "curfew time!" from inside her own apartment, looking out from her upstairs window. For example, in or about July of 2001, Shealean and Charles Gavin went to a neighbor's home to accompany their friend, Chandra Swain, back to their home to spend the night. On the way back to Ms. Gavin's home, Ms. Robinson yelled out her window at the three children, telling them to get inside.

29. Plaintiff Debra Woods has received tickets for the following violations of the curfew: her son Javigie Sturdivant and his friends were playing outside after 9:00 p.m.; one of Ms. Woods's daughters was outside between 8:00 and 8:30 p.m.; one of Ms. Woods's children walked to the laundry room to purchase a soda between 8:00 and 9:00 p.m.; and one of Ms. Woods's children returned home from a movie after curfew time.

30. Plaintiff Patrice Swain has received at least three tickets for curfew violations. Each of these tickets was issued because her children were playing outside -- either in her own yard or in a yard belonging to a neighbor, whose children are friends with Ms. Swain's children.

31. For example, sometime in late 2001, Ms. Swain's son Jashar was playing outside with a friend near the friend's home, which is also located at Montview Heights. Jashar came back inside Ms. Swain's home no later than 9:10 p.m. The following day, a curfew ticket was hanging on Ms. Swain's door.

32. Plaintiff Sharon Herndon has received one ticket for a curfew violation. In or about April of 2001, Ms. Herndon was doing the family's laundry. She still had one load in the dryer, and was not feeling well, so she asked her son to retrieve the laundry for her. At approximately 8:15 p.m., Ms. Herndon's son went to the laundry room, approximately 20 feet away from her unit, and brought back the laundry. The next day, Ms. Herndon found a ticket taped to her door accusing her of violating the curfew.

33. Ms. Herndon has also seen Defendant Robinson walking around the Montview Heights complex calling out, "It's curfew time!" Most recently, at approximately 10:15 on the evening of February 22, 2002, Ms. Herndon heard Ms. Robinson shouting, "It's past curfew!" or words to that effect.

34. Ms. Hicks has received two tickets for curfew violations. Both tickets were posted on Ms. Hicks's door after her children were outside after 8:00 p.m. Both tickets were received in approximately the last 12 months.

35. In addition to the threat of eviction that comes with every ticket, the Individual Plaintiffs are (variously) injured by the curfew in ways that include but are not limited to the following:

- a. they are restricted in their ability to have gatherings with their children in their yards;
- b. they are restricted in their ability to permit their children to play outside in the evening;
- c. they are restricted in their ability to permit their children to walk to and from other apartments at Montview Heights, which inhibits their ability to make friends at the complex;
- d. they are restricted in their ability to invite friends with children to their homes;
- e. they are restricted in their ability to ask their children to run errands for them after the curfew, for example, to retrieve laundry or take out the trash; and
- f. they are restricted in their ability to permit their children to visit friends or relatives or go on other outings that will result in their returning home after curfew.
- g. they are restricted in their ability to permit their children to work in employment that may result in their returning home after curfew.

36. The Individual Plaintiffs have suffered, continue to suffer and will in the future suffer, irreparable injuries including but not limited to extreme stress, humiliation, embarrassment, emotional distress, and deprivation of the right to equal housing opportunities regardless of familial status.

37. The actions of Defendants in promulgating and enforcing the curfew described herein has caused and will continue to cause distinct and palpable injury to HFA.

38. Violations of the Fair Housing Act by Defendants have been and will continue to be a barrier to the elimination of housing discrimination, to free choice in housing and to the integration of housing and therefore frustrate HFA's mission. For example, Defendants' actions perpetuate discrimination against families with children and send the message that such discrimination is acceptable.

39. Defendants' discrimination has required and will continue to require HFA to make a greater effort -- and to divert scarce resources -- to, among other things, educating members of the public concerning the requirements of the Fair Housing Act and otherwise to counteracting the adverse impact of such discrimination. This perceptibly impairs HFA's counseling, educational and outreach missions.

40. HFA also diverted and continues to divert scarce resources -- including but not limited to those devoted to the investigation and litigation of the present lawsuit -- to investigating, detecting, identifying and counteracting housing discrimination in the community, including that of Defendants.

41. HFA has suffered, continues to suffer and will in the future suffer, irreparable injuries including but not limited to those set forth herein. HFA's injuries are traceable to Defendants' discriminatory conduct and will be redressed by the relief requested.

Claim For Relief: Violation of The Fair Housing Act

42. Plaintiffs reallege and incorporate by reference the allegations set forth in this Complaint as if fully set forth herein.

43. The actions of Defendants alleged herein violate the Fair Housing Act, 42 U.S.C. § 3601 et seq. Such violations include but are not limited to:

- a. discrimination in the terms, conditions, and privileges of the rental of apartments at Montview Heights and in the provision of services or facilities in connection therewith because of familial status, in violation of 42 U.S.C. § 3604(b); and
- b. making, printing, or publishing, or causing to be made, printed, or published a notice, statement, or advertisement that indicates a preference, limitation, and/or discrimination based familial status, and/or an intention to make such preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c).

44. Plaintiffs have been injured by Defendants' actions including but not limited to the injuries alleged herein.

45. Plaintiffs are "aggrieved persons" as defined in 42 U.S.C. §§ 3602(i) and 3613(a)(1)(A).

46. Defendants' actions were all taken intentionally, maliciously and/or with reckless and/or callous indifference for the Plaintiffs' federally protected rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction;
2. That this Court issue an order declaring Defendants to be in violation of the Fair Housing Act;
3. That this Court issue an injunction ordering Defendants, their agents, employees, and successors, and all other persons in active concert or participation with them to cease from discriminating on the basis of familial status in any aspect of the rental of a dwelling, including but not limited to revoking the curfew, ceasing to enforce same, and informing all tenants that the policy is no longer effective and that any “tickets” issued with respect to violations of the curfew are ineffective;
4. That this Court award Plaintiffs compensatory damages in an amount to be determined at trial;
5. That this Court award Plaintiffs exemplary and punitive damages for Defendants’ intentional, malicious, reckless, and/or callous conduct, such damages to be in an amount commensurate with each Defendant’s ability to pay and sufficient to deter future illegal conduct;
6. That this Court award Plaintiffs their reasonable attorneys’ fees and costs; and
7. That this Court award such additional or alternative relief as may be just, proper and equitable.

Plaintiffs demand a jury for all claims that may be tried to a jury.

Respectfully submitted,

FOX & ROBERTSON, P.C.

Amy F. Robertson
Timothy P. Fox
910 - 16th Street
Suite 610
Denver, CO 80202
303.595.9700

Dated: September 10, 2002

Attorneys for Plaintiffs

Addresses of Plaintiffs:

Housing for All
1600 Downing St.
Suite 650
Denver, CO 80218

Patrice Swain
14399 Montview Blvd.
Apt. E
Aurora, CO 80011

Ramona Gavin
2800 Grape Street
Denver, CO 80207

Sharon Herndon
14397 Montview Blvd.
Apt. C
Aurora, CO 80011

Debra Woods
14397 Montview Blvd.
Apt. D
Aurora, CO 80011

Delilah Hicks
14387 Montview Blvd.
Apt. F
Aurora, CO 80011