

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

MICHAEL NIEMAN, J.S. PROPERTY)
MANAGEMENT, L.C., and ELDERS,)
INC.,)

Defendants.)

Civil No. C10-2068

COMPLAINT

The United States of America (“United States”) alleges as follows:

NATURE OF THE ACTION

1. This action is brought by the United States 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. It is brought pursuant to 42 U.S.C. § 3612(o) on behalf of Eula Harris and Darlene Jensen, and pursuant to 42 U.S.C. § 3614(a).

JURISDICTION AND VENUE

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

3. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the United States’ claim occurred there.

PARTIES AND THE SUBJECT PROPERTY

4. Park Towers Apartments (“Park Towers”) is an 84-unit residential property located at 500 Sycamore Street in Waterloo, Iowa, 50703. Park Towers receives project-based Section 8 funding. *See* 42 U.S.C. § 1437f(a)–(k). The units at Park Towers are “dwellings” within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

5. Defendant Michael Nieman is a resident of Waterloo, Iowa. At all times relevant to this action, Mr. Nieman has been the building manager and maintenance supervisor at Park Towers. Mr. Nieman is the only full-time employee at Park Towers and is responsible for all aspects of management, including interviewing and approving prospective tenants, processing rental applications, determining tenant rent payments, processing maintenance requests, and overseeing the maintenance staff.

6. Defendant J.S. Property Management, L.C., is an Iowa limited liability company whose principal place of business and mailing address is 2455 McCarthy Road SE, Cedar Rapids, Iowa, 52403. J.S. Property Management, L.C., operates Park Towers and hired Michael Nieman as the Building Manager and Maintenance Supervisor both on its own behalf and on behalf of Elders, Inc. J.S. Property Management, L.C., supervises Michael Nieman as an employee. Joyce Steffen is a member and the owner and registered agent of J.S. Property Management, L.C.

7. Defendant Elders, Inc., is an Iowa nonprofit corporation that owns Park Towers. The principal place of business and mailing address for Elders, Inc., is 500 Sycamore Street, Waterloo, Iowa, 50703. Darwin Dirksen is the registered agent for Elders, Inc.

FACTUAL ALLEGATIONS

8. Eula Harris is a fifty-three-year-old single woman who resided at Park Towers from approximately April 30, 2007, until approximately February 5, 2009.

9. Darlene Jensen is a forty-two-year-old single woman who resided at Park Towers from approximately April 24, 2007, until approximately November 30, 2008.

10. Since at least December 2007, Mr. Nieman has subjected female tenants of Park Towers to discrimination on the basis of sex, including severe, pervasive, and unwelcome sexual harassment. Such conduct has included, but is not limited to, commenting on female tenants' body parts and making other inappropriate sexual remarks; making inappropriate sexual gestures; entering dwelling units of female tenants without permission or notice; and conditioning or suggesting that he will condition tangible housing benefits including rent, cable television, lockout fees, and permission to have roommates on the provision of sexual favors.

11. In or about December 2007, Ms. Harris was getting on the elevator at Park Towers when Mr. Nieman came toward her, made a sexual gesture by grabbing his groin, and said, "You know you want some of this," or words to that effect.

12. In or about December 2007, Ms. Harris was crying in her unit because she could not afford her cable television payment and Mr. Nieman had disconnected the cable. Mr. Nieman asked her what was wrong and upon learning why she was crying, said, "You know what you can do about that," or words to that effect.

13. Mr. Nieman made frequent sexual comments to Ms. Harris throughout her tenancy, including telling her, "Boy, your nipples are showing good through that shirt," or words to that effect, and making remarks about the penis size of white men. In response to Ms. Harris's comment on Mr. Nieman's short stature, he remarked that he is not, "little where it counts," or words to that effect.

14. On one occasion during Ms. Harris's tenancy, Mr. Nieman suggested that he would exchange Ms. Harris's \$25 monthly rent payment for a sexual favor by saying, "You know what you can do," or words to that effect, to avoid having her mother pay her rent for her.

15. On another occasion during Ms. Harris's tenancy, Ms. Harris phoned Mr. Nieman because she had locked herself out of her apartment. She explained that she did not have the \$20 lockout fee because she had no income, and Mr. Nieman told her that she would need to "think about" how she was going to pay the fee, or words to that effect.

16. Ms. Harris repeatedly declined Mr. Nieman's sexual offers, but felt nervous, uncomfortable, and afraid of Mr. Nieman. As a result of Mr. Nieman's actions, Ms. Harris moved out of Park Towers in February 2009.

17. Mr. Nieman made numerous inappropriate sexual comments about Ms. Jensen's appearance throughout the course of her tenancy, including, on occasion, telling her that she was looking hot or that her breasts looked good.

18. In or about September 2007, Ms. Jensen sought permission to have her niece Ashley Huntley stay with her at Park Towers to help care for Ms. Jensen following surgery. Mr. Nieman remarked that the arrangement was acceptable to him because Ms. Huntley was "good to look at," or words to that effect. Mr. Nieman made a similar comment about Ms. Huntley on at least one other occasion.

19. In or about June 2008, Ms. Jensen sought to have Clyde Johnson, Jr., added to her lease or otherwise permitted to stay with her as a roommate. When asked for his permission, Mr. Nieman offered to permit Mr. Johnson to stay in exchange for oral sex. Ms. Jensen was extremely embarrassed, but feared that if she did not submit to the request she would be evicted or denied permission to have Mr. Johnson as a roommate. Ms. Jensen wrote Mr. Nieman a note

telling him that she would give in to his request, and he came to her unit. After Ms. Jensen performed oral sex on Mr. Nieman, Mr. Johnson was allowed to stay at Park Towers without being added to the lease or being charged rent.

20. Mr. Nieman's behavior scared Ms. Jensen and made her feel uncomfortable being around him, so Ms. Jensen began staying in her unit until Mr. Nieman left Park Towers for the day, usually around 4:30 p.m. As a result of Mr. Nieman's conduct and actions, Ms. Jensen moved out of Park Towers in November 2008.

21. When taking the actions alleged in Paragraphs 10-20, Mr. Nieman was acting within the scope of his authority as Building Manager and Maintenance Supervisor at Park Towers on behalf of J.S. Property Management, L.C., and Elders, Inc.

22. Ms. Harris and Ms. Jensen timely filed complaints of discrimination with the United States Department of Housing and Urban Development pursuant to 42 U.S.C. § 3610(a).

23. 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 an investigation of the complaints, attempted conciliation without success, and prepared a final investigative report. 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 September 30, 2010, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), against defendants Nieman, J.S. Property Management, L.C., and Elders, Inc.

24. On October 11, 2010, Ms. Harris elected to have the claims asserted in the Charge of Discrimination resolved in a civil action pursuant to 42 U.S.C. § 3612(a).

25. On October 12, 2010, an Administrative Law Judge issued a Notice of Election to Proceed in United States Federal District Court and terminated the administrative proceeding on Ms. Harris's and Ms. Jensen's complaints.

26. Following this Notice of Election, the Secretary of the United States 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

27. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1–26, above.

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

- a. Refused to rent, refused to negotiate for the rental of, or otherwise made unavailable or denied a dwelling because of sex, in violation of 42 U.S.C. § 3604(a);
- b. Discriminated in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of sex, in violation of 42 U.S.C. § 3604(b);
- c. Made statements with respect to the rental of a dwelling that indicated a preference, limitation, or discrimination based on sex, in violation of 42 U.S.C. § 3604(c); and
- d. Coerced, intimidated, threatened, or interfered with a person in the exercise or enjoyment of, or on account of her having exercised or enjoyed, their rights granted or protected by section 804 of the Fair Housing Act, in violation of 42 U.S.C. § 3617.

29. Ms. Harris and Ms. Jensen have suffered and continue to suffer damages as a result of defendants' discriminatory conduct. Each is an "aggrieved person" pursuant to 42 U.S.C. § 3602(i).

30. The discriminatory actions of defendants were intentional, willful, and taken in disregard of the federally protected rights of Ms. Harris and Ms. Jensen.

SECOND CLAIM FOR RELIEF

31. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1–30, above.

32. Defendants' actions, conduct, and statements, as described above, constitute:

- a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601–3631, in violation of 42 U.S.C. § 3614(a);
or
- b. A denial to a group of persons of the rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601–3631, which raises an issue of general public importance, in violation of 42 U.S.C. § 3614(a).

33. In addition to Eula Harris and Darlene Jensen, other persons may have been injured by defendants' discriminatory actions and practices as described above. Such individuals are also "aggrieved persons" under the Fair Housing Act, 42 U.S.C. § 3602(i).

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

PRAYER FOR RELIEF

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

1. Declares that defendants' actions, policies, and practices, as alleged herein, violate the Fair Housing Act;

2. Declares that defendants have engaged in a pattern or practice of discrimination in violation of the Fair Housing Act, or have denied rights guaranteed under the Fair Housing Act to a group of persons, which denial raises an issue of general public importance;

3. Enjoins defendants, their agents, employees, and successors, and all other persons in active concert or participation with them, from:

- a. Discriminating on the basis of sex in any aspect of the rental or lease of a dwelling;
- b. Discriminating in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of sex;
- c. Stating any preference, limitation, or discrimination on the basis of sex;
- d. Coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of their having exercised or enjoyed, their rights under the Fair Housing Act; and
- e. Failing or refusing to take such steps as may be necessary to prevent recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of defendants' unlawful housing practices;

4. Awards compensatory and punitive damages, pursuant to 42 U.S.C. §§ 3612(o)(3), 3613(c)(1), and 3614(d)(1)(B), to each identifiable victim harmed by defendants' discriminatory practices; and

5. Assesses a civil penalty against defendants, based on the second claim for relief and 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,

Dated: November 10, 2010.

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