

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No. 5:10CV186DCB-JMR
	)	
v.	)	
	)	
JANIE KELLY, RICHARD COWART, and	)	
PHYLIS COWART,	)	
	)	
Defendants.	)	
_____	)	

**FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

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

NATURE OF 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, 42 U.S.C. §§ 3601 *et seq.* (the “Fair Housing Act”). This action is brought on behalf of Breezie R. Penny and her minor child, M. E., pursuant to 42 U.S.C. § 3612(o).

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).
3. Venue is proper under 28 U.S.C. § 1391(b) because the events or omissions giving rise to the United States’ claims occurred in this judicial district.

PARTIES AND PROPERTY

4. Defendants Richard and Phylis Cowart are the owners of Shamrock Apartments (“Shamrock”), a forty-eight unit apartment building located at 711 Belva Drive in Vicksburg, Mississippi.
5. Defendant Janie Kelly is the property manager and onsite decision-maker at Shamrock and acts as an agent for Defendants Richard and Phylis Cowart. Her responsibilities include showing units to prospective applicants, processing rental applications, and evaluating whether tenants are complying with the terms of their lease. Defendant Kelly lives in an apartment in Shamrock.
6. The apartments at Shamrock that are owned and managed by Defendants are “dwelling[s]” within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).
7. Breezy R. Penny, who is white, resided in Unit 7 at Shamrock from on or around February 25, 2007, to on or around September 4, 2007. She occupied the apartment with her minor daughter, M. E., who is biracial, in that her father is black.

FACTUAL ALLEGATIONS

8. On or around February 21, 2007, Ms. Penny called Shamrock regarding available apartments. She spoke to Defendant Kelly, who informed her that there was an apartment available. Ms. Penny visited Shamrock to view the apartment and filled out a rental application. On that same date, Defendant Kelly approved Ms. Penny’s application for her and her children to rent Unit 7. Ms. Penny did not sign a leasing agreement at this time, but was nonetheless permitted to move into her apartment about one week later.
9. On or around March 1, 2007, Defendant Kelly came to Ms. Penny’s apartment for her to sign the lease. The lease included a six-month term that was to end on August 31, 2007,

and included a provision that upon expiration, the lease would be automatically renewed on a month-to-month basis. At the time Defendant Kelly visited Ms. Penny, M. E. was present. This was the first time Defendant Kelly saw M. E.

10. On or around March 1, 2007, Defendant Kelly made statements to a white occupant of Shamrock regarding M. E. She referred to her as a “black and white child,” and asked the white occupant to inform her if she observes any black visitors at Ms. Penny’s apartment, because she would “get her out of these apartments” or words to that effect.
11. Defendant Kelly also made statements to a tenant and a prospective tenant indicating a preference to limit the number of black tenants at Shamrock. Specifically, she stated that “she does not like renting to black people, because all they do is cause trouble, especially black men,” or words to that effect, on or around March 1, 2007. She also stated on or around January 2007, that she is “trying to weed out all of the black tenants at Shamrock to make it a better place to live,” or words to that effect.
12. On or around April 19, 2007, a friend of Ms. Penny who is black came to Ms. Penny’s apartment. The following day, she received a call from Defendant Kelly informing her that neighbors were complaining about her visitor. Defendant Kelly warned her that she was not permitted to have visitors not listed on her lease and informed her that if any other issues arose, she would be evicted. Notably, Ms. Kelly did not prohibit other tenants from having visitors not listed on their lease.
13. On or around June 23, 2007, the same black friend came to visit Ms. Penny at her apartment around 1:45 a.m. and began knocking on her door. Ms. Penny did not immediately answer the door, and the visitor called Ms. Penny’s phone to ask to be let in which Ms. Penny did. While Ms. Penny’s friend was at the door knocking, Ms.

Penny's neighbors in Unit 6 overheard and observed the black visitor at her door. They called the police and the police arrived shortly thereafter. The officers asked Ms. Penny if she was safe, and when she responded that she was fine, they left her apartment.

14. Ms. Penny received a call from Defendant Kelly that same day informing her that she did not like the fact that the police were called to the property. She further stated that she was evicting her because of this incident. By contrast, when the police were called to a white couple's apartment at Shamrock, Defendant Kelly did not threaten to evict them on this basis.
15. On June 23 later that day, Defendant Kelly served Ms. Penny with a 30-day notice to vacate the premises. An attorney acting on behalf of Ms. Penny sent a letter to Defendant Kelly challenging the notice to vacate. In response Defendant Kelly notified Ms. Penny that she could continue to reside in the apartment until her lease expired on August 31, 2007, but that her lease would not be renewed. Ms. Penny moved out of the apartment on or around September 4, 2007.
16. At the time Defendants required her to move, Ms. Penny was qualified and ready to continue renting at Shamrock. Before she was notified of the termination of her lease, she intended to continue to rent her apartment on a month-to-month basis as permitted by her lease.

#### HUD ADMINISTRATIVE PROCESS

17. On or around May 27, 2008, Ms. Penny filed a timely Fair Housing Complaint with the United States Department of Housing and Urban Development ("HUD"), alleging, among other things, that Defendant Kelly had engaged in housing discrimination on the basis of race. Ms. Penny's complaint was amended in July 2008 to add Defendant

Richard Cowart as a respondent and in September 2010 to, among other things, add claims.

18. 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 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), charging the above-named defendants with engaging in discriminatory practices, based on race and/or color, in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(a), 3604(b), and 3604(c).
19. On October 19, 2010, Defendants Richard Cowart and Janie Kelly elected to have the claims asserted in the HUD Charge resolved in a civil action pursuant to 42 U.S.C. § 3612(a). On this same date, the Administrative Law Judge issued a Notice of Election to Proceed in United States Federal District Court and terminated the administrative proceeding on Ms. Penny's complaint.
20. Following this Notice of Election, the Secretary of HUD authorized the Attorney General to commence civil action, pursuant to 42 U.S.C. § 3612(o).

#### FAIR HOUSING ACT VIOLATIONS

21. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-16, above.
22. By the actions set forth above, Defendants have discriminated against Ms. Penny by:

- a. Making housing unavailable because of race or color, in violation of 42 U.S.C. § 3604(a);
  - b. Discriminating in the terms, conditions, or privileges of rental of a dwelling because of race or color, in violation of 42 U.S.C. § 3604(b);
  - c. Making discriminatory statements with respect to housing because of race or color, in violation of 42 U.S.C. § 3604(c); and
  - d. Coercing, intimidating, threatening, or interfering with the exercise or enjoyment of any right granted or protected by the Fair Housing Act, in violation of 42 U.S.C. § 3617.
23. Ms. Penny and her daughter, M. E., are “aggrieved persons” within the meaning of 42 U.S.C. § 3602(i), and have suffered injuries as a result of Defendants’ discriminatory conduct.
24. The discriminatory actions of the Defendants were intentional, willful, and taken in disregard of the federally protected rights of Ms. Penny and her minor daughter, M. E.

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays for relief as follows:

1. A declaration that the discriminatory conduct of Defendants as set forth above violates the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*;
2. An injunction against Defendants, their agents, employees, successors, and all other person in active concert or participation with any of them from discriminating on the basis of race or color, in violation of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*;
3. An award of monetary damages to Ms. Penny and her daughter pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1).

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

Dated: May 11, 2011.

JOHN M. DOWDY, JR.  
United States Attorney

/s/ Mitzi Dease Paige  
MITZI DEASE PAIGE  
Assistant United States Attorney  
188 E. Capitol Street,  
One Jackson Place, Suite 500  
Jackson, Mississippi 39201  
(601) 973-2840  
(Mississippi Bar No. 6014)  
Mitzi.Paige@usdoj.gov

Respectfully submitted,

ERIC H. HOLDER, JR.  
Attorney General

/s/ Thomas E. Perez  
THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

/s/ Steven H. Rosenbaum  
STEVEN H. ROSENBAUM  
Chief, Housing and Civil  
Enforcement Section  
Civil Rights Division

/s/ Jessica Clarke Crockett  
MICHAEL S. MAURER  
Deputy Chief  
JESSICA CLARKE CROCKETT  
Attorney  
Housing and Civil Enforcement Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Northwestern Building, 7th Floor  
Washington, D.C. 20530  
Phone: (202) 305-4013  
Fax: (202) 514-1116  
[Jessica.Clarke@usdoj.gov](mailto:Jessica.Clarke@usdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on May 19, 2011, I filed the foregoing document via the Court's CM/ECF system, which shall send notice to the following counsel of record at the electronic mail addresses indicated below:

Jeffrey A. Walker  
Alison Tasma Vance  
Butler, Snow, O'Mara, Stevens & Cannada, PLLC  
jeff.walker@butlersnow.com  
alison.vance@butlersnow.com

R. E. Parker, Jr.  
Clifford C. Whitney III  
Penny B. Lawson  
Varner, Parker & Sessums, P.A.  
rep@vpslaw.com  
ccw@vpslaw.com  
plawson@vpslaw.com

s/ Jessica Clarke Crockett