

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

SHEILA WALKER and
BARBARA ROBINSON,

Plaintiffs,

Case No. 10-C-192

KEN MCCOY,

Defendant.

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No 11-C-388

KEN MCCOY,

Defendant.

UNITED STATES OF AMERICA AMENDED COMPLAINT

The United States of America, by and through its counsel, James L. Santelle, United States Attorney for the Eastern District of Wisconsin, and Lennie A. Lehman, Assistant United States Attorney, for its Amended Complaint alleges as follows:

JURISDICTION AND VENUE

1. The United States brings this action to enforce the Fair Housing Act, as amended, 42 U.S.C. §§ 3601-3631. It is brought on behalf of Sheila Walker, Barbara Robinson, and Robinson's children, to wit: Anthony Robinson, V.R. and T.R. (collectively, "Complainants").

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3612(o).

3. Venue is in the Eastern District of Wisconsin under 28 U.S.C. § 1391(b) and 42 U.S.C. § 3612(o), in that the events, acts or omissions giving rise to this action occurred in this district.

PARTIES

4. Plaintiff is the United States of America. The United States brings this action on behalf of the Complainants, as follows:

a. Complainant Sheila Walker (“Walker”) is an African American resident of the Eastern District of Wisconsin. Walker is an “aggrieved person” as defined by the Fair Housing Act, 42 U.S.C. § 3602(i).

b. Complainant Barbara Robinson (“Robinson”) and her children, Anthony Robinson, V.R. and T.R. are African American. At all times relevant to this complaint, they were residents of the Eastern District of Wisconsin. Robinson and her children are “aggrieved persons” as defined by the Fair Housing Act, 42 U.S.C. § 3602(i).

5. At all times relevant to the Complaint, Defendant, Kenneth McCoy, was the owner and manager of a three-bedroom rental property located at 339 South Webster Street, Green Bay, Wisconsin (“Subject Property”) within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

6. Defendant owns five single-family rental units in the Green Bay area.

FACTUAL ALLEGATIONS

7. In August 2009, Walker and Robinson were looking for a house to rent for themselves and Robinson’s three minor children. On or about August 17, 2009, Walker, in response to a newspaper advertisement, spoke to McCoy by telephone about renting one of his houses.

8. Walker spoke to McCoy specifically about renting the Subject Property. During the conversation, Walker told McCoy, among other things, that five people would be living in the property, including three children, and that she was originally from Milwaukee. McCoy told Walker he would call her back later that day, but he did not.

9. Walker, by her voice, is readily identifiable as African American.

10. On August 18, 2009, Walker called McCoy by telephone again and asked him why he did not call her back. McCoy responded that he and his partners would not rent to anyone from Milwaukee. McCoy has no partners in his residential rental business.

11. According to the 2000 United States Census, Milwaukee's African American population is approximately 37% compared to 1.4% in Green Bay.

12. On August 27, 2009, Walker again called McCoy and asked him if he would please talk to his partners, as she needed a place to live right away. McCoy responded that the neighbors may have a problem with her renting the Subject Property, that it was in a nice neighborhood and he wanted to keep it that way.

13. McCoy never called Walker back after any of these telephone conversations.

14. On or about August 28, 2009, McCoy received a written application for the Subject Property from a white couple who indicated they were moving to Green Bay from outside of town and that three people would be occupying the Subject Property.

15. On or about August 31, 2009, Metropolitan Milwaukee Fair Housing Council¹ prepared to test McCoy's rental practices for racial discrimination by using a white tester with the pseudonym Amanda Kowalski ("Kowalski"), who had a voice racially identifiable as a white female. For purposes of the testing, Kowalski was assigned rental qualifications similar to the Complainants' rental qualifications.

16. In early September, Kowalski spoke to McCoy about renting a house from him. In response to McCoy's questions, Kowalski said she was from Milwaukee and had three children. McCoy said he would call Kowalski back and he did so the same day, indicating he had two nice properties available, one of them being the Subject Property. McCoy further gave Kowalski a website for her to view the properties on-line and invited her to call him back if she had any questions.

17. On or about October 1, 2009, McCoy rented the Subject Property to the white couple who indicated they were moving to Green Bay from out of town and that three people would be occupying the Subject Property.

18. Upon information and belief, McCoy has owned at least three of his five rental properties for at least ten years and has never rented any of his properties to an African American.

¹ The Metropolitan Milwaukee Fair Housing Council ("MMFH") is a non-profit fair housing organization with its principal place of business located in Milwaukee, Wisconsin. MMFH's mission includes working to ensure that all persons have equal access to housing in Wisconsin and the elimination of unlawful discriminatory housing practices. As part of its program activities, MMFH receives and investigates complaints of unlawful housing discrimination, including the use of "testers" or persons who, without the intent to rent or purchase housing, pose as home seekers to obtain information about the conduct of housing providers to determine whether discriminatory housing practices are occurring.

19. On or about January 15, 2010, Walker and Robinson filed verified complaints of discrimination with the Department of Housing and Urban Development (“HUD”) alleging that McCoy had discriminated against them and Robinson’s minor children on the basis of race in the matter of housing in violation of the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.*

20. Pursuant to the requirements of 42 U.S.C. § 3601(a) and (b), the Secretary of HUD (“Secretary”) conducted an investigation of the complaint, attempted conciliation without success and prepared a final investigative report. Based on the information gathered in this investigation, the Secretary, pursuant to 42 U.S.C. § 3601(g)(1), determined that reasonable cause existed to believe that McCoy had committed illegal discriminatory housing practices in connection with the Subject Property. Therefore, on March 22, 2011, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination, pursuant to 42 U.S.C. § 3601(g)(2)(A), charging that McCoy had engaged in discriminatory practices, in violation of the Fair Housing Act.

21. On March 23, 2011, Walker and Robinson, through their attorney, made a timely election to have the HUD charge resolved in a federal civil action, pursuant to 42 U.S.C. § 3612(a).

22. The Secretary subsequently authorized the United States Attorney General to file this action on behalf of the Complainants, pursuant to 42 U.S.C. § 3612(o).

23. On August 10, 2011, during a deposition taken under oath, McCoy made statements that his decision not to rent to Walker was based, in part, on familial status, to wit: McCoy was asked if his decision not to rent to Walker was based on the fact that she had kids, to which McCoy responded, “[t]hat was one of the reasons. It’s not any one reason. It’s not because she’s black, it’s not because of the kids, it’s not income or anything. But none of those things are favorable.”

CLAIMS FOR RELIEF

24. By the actions and statements set forth above, McCoy has:

a. Refused to negotiate for the rental of, or otherwise made unavailable or denied dwellings to persons because of race and/or familial status, in violation of Section 804(a) of the Fair Housing Act, 42 U.S.C. § 3604(a); and

b. Made statements with respect to the rental of dwellings that indicate a preference, limitation, or discrimination based on race and/or familial status, or an intention to make any such preference, limitation, or discrimination, in violation of Section 804(c) of the Fair Housing Act, 42 U.S.C. § 3604(c).

c. Discriminated against persons in the terms, conditions, privileges of rental of dwellings because of race and/or familial status, in violation of the Fair Housing Act, 42 U.S.C. § 3604(a) and (b).

25. As a result of the conduct or actions of McCoy, Complainants have suffered damages and are aggrieved persons within the meaning of 42 U.S.C. § 3602(i).

26. McCoy's discriminatory actions and statements as set forth above were intentional, willful, and taken in disregard for the rights of the Complainants.

PRAYER FOR RELIEF

WHEREFORE, the United States requests that the Court enter an order that:

A. Declares that McCoy's discriminatory practices, as set forth above, violate the Fair Housing Act, 42 U.S.C. § 3601, et seq.;

B. Enjoins McCoy, his agents, employees, successors, and all other persons in active concert or participation with any of them from discriminating on the basis of race and/or familial status, in violation of the Fair Housing Act, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1);

C. Awards monetary damages to the Complainants, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1); and

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

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